

District Councils Nos. 8, 16 and 33 of the International Brotherhood of Painters and Allied Trades, AFL-CIO; and Local Union No. 4 of the International Brotherhood of Painters and Allied Trades, AFL-CIO (Meiswinkel/RFJ, Inc.) and Thomas Matulis. Case 20-CB-9268

March 24, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

The principle issues presented in this case¹ are whether the Respondents violated Section 8(b)(1)(A) of the Act by: (1) failing to inform bargaining unit employees of their rights under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying dues to support union expenditures nongermane to its role as a collective-bargaining representative; and (2) continuing to charge employees who filed *Beck* objections for expenses related to nonrepresentational functions.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions only to the extent consistent with this Decision and Order.

The Respondents are Local 4 and District Councils 8, 16, and 33 of the International Brotherhood of Painters.³ The Employer, Meiswinkel/RFJ, Inc., is a member of the Northern California Drywall Contractors Association (the Association), which is the exclusive bargaining representative for Meiswinkel and various other employer-members engaged in the painting and drywall taping and finishing business. From 1989 to July 1993, the Association and the Respondents were party to a collective-bargaining agreement containing a union-security clause which stated: "[a]ny workmen employed by the employers for a period of thirty days . . . shall as a condition of employment become members of the Union by tendering full and uniform initiation fees. . . . and . . . thereafter shall

maintain their continuous good standing in the Union . . . by paying regular dues."

Employees met their financial obligations under this union-security arrangement through payments to both the District Councils and their member locals. Dues and fees owed to the District Councils are known as "working assessments." They are generally deducted from employees' paychecks pursuant to checkoff authorizations and are submitted to the District Council in whose jurisdiction the employee worked. Moneys owed the locals are paid directly "over-the-counter."

Charging Party Thomas Matulis was a member of Respondent Local 4. He testified that, during the term of the 1989-1993 contract, he paid dues to Local 4 and working assessments to the three Respondent District Councils when he worked in their respective geographic jurisdictions. On March 29, 1993, Matulis notified the Respondents in writing that he was resigning his union membership, and he asserted a *Beck* objection to the expenditure of his dues and working assessments for non-representational purposes.⁴ Matulis credibly testified that after he raised a *Beck* objection the Respondents failed to provide him with any information regarding the percentage breakdown of funds spent on representational and nonrepresentational activities, and that he was continuously charged full dues and working assessments.

The judge found "that there is no obligation in law" for a union to notify employees of their *Beck* rights or to maintain a procedural system to enable employees to exercise their *Beck* rights. He further concluded, however, that a union choosing not to have a *Beck* system may not collect "any dues whatsoever" from an objecting employee pursuant to a contractual union-security clause and must give notice of this fact immediately to an objecting employee. Accordingly, the judge dismissed the complaint allegations that the Respondent District Councils unlawfully failed to maintain a *Beck* system, but he found that they violated Section 8(b)(1)(A) of the Act, after Matulis filed his *Beck* objection, by failing to inform Matulis that he had no financial obligations under the union security clause and by thereafter collecting working assessments from him.

The judge reached the same result with respect to Respondent Local 4. Although he acknowledged that Local 4 may have had a valid *Beck* policy, the judge credited the testimony of Matulis and found that after he filed his *Beck* objection he received no notice or information about his financial obligations and that dues were collected from him on at least two occasions after he objected. Accordingly, the judge found that Local 4 violated Section 8(b)(1)(A) of the Act.

¹ On October 19, 1995, Administrative Law Judge Clifford H. Anderson issued the attached decision. Respondents District Council 8 and Local 4 filed exceptions and a supporting brief, and the General Counsel filed limited exceptions and a supporting brief. Respondent District Council 16 filed a brief in opposition to the General Counsel's limited exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² Respondents District Council 8 and Local 4 have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the finding.

³ District Council 33 merged with District Council 16 in 1994. There are no exceptions to the judge's finding that District Council 16 thereafter became liable for the prior acts and conduct of District Council 33. We note that there also are no exceptions to the judge's findings that timely service of the charge on Respondent District Council 8 constituted service on Respondent District Councils 16 and 33.

⁴ The Respondents concede that they spend dues and working assessments on nonrepresentational activities, although District Council 16 asserts such expenditures are "de minimis."

Finally, having found that it was unlawful to collect any money from Matulis after his *Beck* objection, the judge found it unnecessary to address the complaint allegations that the Respondents unlawfully charged Matulis for nonrepresentational activities and for representational activities not attributable to his bargaining unit. For the reasons explained below, we disagree with several of the judge's findings and conclusions.

Subsequent to the judge's decision, the Board addressed a number of *Beck*-related issues in *California Saw & Knife Works*, 320 NLRB 224 (1995), enf. sub nom. *Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 525 U.S. 813 (1998). There, as here, bargaining unit employees were covered by a contractual union-security clause requiring the payment of dues and fees as a condition of employment. Interpreting and applying *Beck*, the Board held that there was a statutory duty to inform nonmember unit employees of their rights under *Beck* and that the duty attaches "at the time the union first seeks to obligate" them to pay dues pursuant to a union-security clause. 320 NLRB at 233. Specifically, the Board held that:

when or before a union seeks to obligate an employee to pay fees and dues under a union-security clause, the union should inform the employee that he has the right to be or remain a nonmember and that nonmembers have the right (1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to intelligently decide whether to object; and (3) to be apprised of any internal union procedures for filing objections. If the employee chooses to object, he must be apprised of the percentage of the reduction, the basis for the calculation, and the right to challenge these figures. [*Id.*]

The Board explained that these notice requirements furnish significant protection to the interests of the individual nonmember unit employee vis-a-vis *Beck* rights, without compromising the countervailing collective interests of bargaining unit employees in ensuring that every unit employee contributes to the cost of collective bargaining. The Board further emphasized in *California Saw* that a union is afforded a wide range of reasonableness under the duty of fair representation in satisfying its notice obligation.⁵ "We stress that the union meets [its notice] obligation as long as the union has taken reasonable steps to insure that all employees whom the union seeks to obligate to pay dues under a union-security clause are given notice of their *Beck* rights."⁶

⁵ *Id.* at 235.

⁶ *Id.* at 233.

We find that the Respondents failed to abide by the foregoing requirements of *California Saw*.⁷ First, the record shows that the Respondents failed to give Matulis and other unit employees initial notice of their *Beck* rights and, second, upon receipt of a *Beck* objection from Matulis, they failed to provide him with information about the percentage breakdown between representational and nonrepresentational expenditures, the basis for the calculation, and the right to challenge these figures. See e.g. *Teamsters Local 443 (Connecticut Limousine Service)*, 324 NLRB 633 (1997). They also continued to charge him the full amount of dues and working assessments, including amounts spent on unspecified nonrepresentational activities. We find that by this conduct the Respondents violated Section 8(b)(1)(A) of the Act.⁸

Although we have found that the Respondents unlawfully charged Matulis for nonrepresentational expenses, we disagree with the judge's conclusion that "absent a sufficient '*Beck*' system the collection of any dues whatsoever is impermissible and a violation of Section 8(b)(1)(A)." The Board specifically rejected this notion in *Weyerhaeuser Paper*, holding that notwithstanding the unlawful failure of the union therein to inform employees of their *Beck* rights, it was "still entitled to collect dues for expenses related to representational activities" *Id.* at 350 fn. 4.⁹ The basis for this holding is that to deny a union use of an employee's dues to finance the costs of performing its functions of a bargaining representative would clearly defeat one of the essential goals of the Act—to eliminate "free riders," i.e., "employees who receive the benefits of union representation but are unwilling to contribute their *fair share* of financial support to such union."¹⁰ There is no question here that the Re-

⁷ In *Paperworkers Local 1033 (Weyerhaeuser Paper Co.)*, 320 NLRB 349 (1995), enf. denied in part sub nom. *Buzenius v. NLRB*, 124 F.3d 788 (6th Cir. 1997), vacated 525 U.S. 979 (1998), a companion case to *California Saw*, the Board held that a union's initial *Beck* notice obligations extended to all unit employees, including current union members who did not receive notice at the time they entered the bargaining unit.

⁸ In adopting the judge's finding that the Respondents continued to collect full dues from Matulis after he filed an objection, we rely solely on Matulis' credited testimony. We do not rely on the adverse inference drawn by the judge from the failure of the Respondents to produce subpoenaed financial records pertaining to employee payments of dues and working assessments. Local 4 and District Council 8 assert that they provided documents bearing on Matulis' dues payments in a subpoena enforcement proceeding, yet the General Counsel did not introduce them at the hearing. The General Counsel has not contested that assertion. As those documents could have been introduced by either the Respondents or the General Counsel, we find it inappropriate to draw an inference adverse to any of the parties.

⁹ Accord: *Hudson v. Chicago Teachers Union Local No. 1*, 117 F.R.D. 413, 415 fn. 1 (N.D.Ill. 1987) (holding on remand from the United States Supreme Court that objectors are not entitled to complete restitution of all fees paid under unconstitutional procedure; they could only recover that portion of the fees used to support political causes to which they objected).

¹⁰ *Beck*, 487 U.S. at 749–750, quoting *Radio Officers v. NLRB*, 347 U.S. 17, 41 (1954).

spondents negotiated the 1989–1993 collective-bargaining contract on behalf of Matulis and incurred expenses in carrying out this and other statutory functions of benefit to Matulis. The costs of these and any other functions which the Respondents can establish satisfy the test of representational expenses under *Beck* are lawfully chargeable to Matulis.

The foregoing analysis brings us to issues that the judge’s analysis foreclosed; that is, what, specifically, were the Respondents entitled to charge Matulis, after his *Beck* objection, as expenses related to representational activities? In this regard, the General Counsel contends that the Respondents unlawfully charged Matulis for political expenses, charitable contributions, and organizing expenses, and for expenses incurred by representational activities outside of Matulis’ bargaining unit.

For the reasons discussed below, the issues pertaining to the chargeability of these expenses shall be severed from the instant proceeding and remanded to the judge. At the time this case was litigated, the Board had not issued its decision in *California Saw* defining the *Beck* obligations of unions in general or, specifically, the standard to be applied in determining the chargeability of union expenditures. With respect to the latter, the Board in *California Saw* held that the legality of charging objectors for a particular union expense depends on “whether they are germane to the union’s role in collective bargaining, contract administration and grievance adjustment.” 320 NLRB at 239. The Board further held that a union does not act unlawfully by charging objectors for representational expenses on other than a unit-by-unit basis (*id.* at 237);¹¹ nor does it act unlawfully “by charging . . . for litigation expenses as long as the expense is for ‘services that may ultimately inure to the benefit of the members of the local union by virtue of their membership in the parent organization.’” *Id.* at 239, citing *Lehnert v. Ferris Faculty Assn.*, 500 U.S. 507, 524 (1991).

As for organizing expenses, the Board has yet to decide the applicable standard by which to measure their chargeability to objectors. In *Connecticut Limousine Service*, supra, a Board majority identified several questions relevant to that determination including, for example, whether the expenditures for organizing were necessary to “preserve uniformity of labor standards in the organized workforce” as asserted by the union therein and “what kinds of employers, either in the Employer’s specific industry or in competing industries, the Union might attempt to organize in order to preserve uniform labor standards.” 324 NLRB at 637.¹²

¹¹ See also *Communications Workers Local 9403 (Pacific Bell)*, 322 NLRB 142, 143–144 (1996), *enfd. sub nom. Finerty v. NLRB*, 113 F.3d 1288 (D.C. Cir. 1997).

¹² The Board remanded these questions to an administrative law judge for further record development and for issuance of a supplemental decision setting forth to what extent, if at all, organizing expenses

In the absence of this defining precedent at the time that the instant dispute arose, we find it appropriate to sever these chargeability issues from this proceeding and remand them to the judge for further proceedings, including, if necessary, a reopening of the hearing to adduce additional evidence, and for the issuance of a supplemental decision containing findings of fact, conclusions of law, and a recommended Order. In deciding the chargeability of these expenses, the judge shall consider the guidelines set forth by the Board in *California Saw* and *Connecticut Limousine*.

AMENDED REMEDY

Having found that the Respondents violated Section 8(b)(1)(A), we shall order them to cease and desist and take certain affirmative action that will effectuate the policies of the Act. In accordance with *California Saw*, supra, we shall order the Respondents to notify all bargaining unit employees of their rights under *Beck* and *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963).¹³ The *Beck* notice shall contain sufficient information, for each accounting period covered by the complaint to enable those employees to decide intelligently whether to object. See, e.g., *California Saw*, 320 NLRB at 233. We shall order the Respondents to notify in writing those employees whom it initially sought to obligate to pay dues or fees under the union-security clause on or after October 8, 1992, of their right to elect nonmember status and to make *Beck* objections with respect to one or more of the accounting periods covered by the complaint. With respect to any such employees who, with reasonable promptness after receiving their notices, elect nonmember status and file *Beck* objections with respect to any of those periods, we shall order the Respondents, in the compliance stage of the proceeding, to process their objections, nunc pro tunc, as it would otherwise have done, in accordance with the principles of *California Saw*. The Respondents shall then be required to reimburse these objecting nonmember employees for the reduction in their dues and fees, if any, for nonrepresentational activities that occurred during the accounting period or periods covered by the complaint in which they have objected.¹⁴ We shall further order the Respondents

are chargeable to objectors. However, subsequent to issuance of the decision in *Connecticut Limousine*, the case was settled and, hence, no supplemental judge’s decision will be forthcoming.

¹³ The General Counsel does not allege, as a separate violation, the failure of the Respondents to notify unit employees of their *General Motors* rights. As stated in *California Saw*, however, “*Beck* rights accrue only to nonmembers. Thus, in order to fully inform nonmember employees of their *Beck* rights, a union must tell them of this limitation and must tell them of their *General Motors* right to be and remain nonmembers.” 320 NLRB at fn. 57. *Weyerhaeuser* expressly extended this concomitant notice obligation to all unit employees, including “those who are still full union members and who did not receive those notices before they became members.” 320 NLRB at 349.

¹⁴ Except with respect to the date set forth in this reimbursement remedy, it is consistent in all respects with the remedy provided in *Teamsters Local 435 (Mercury Warehouse & Delivery Service)*, 327

to provide Thomas Matulis, as a *Beck* objector, with the financial information and additional notice of rights required by *California Saw*. Finally, we will order the Respondents to reimburse Matulis for the dues collected from him that are not germane to the Respondents' representational activities. Interest on the amount of proportionate back dues and fees owed to objectors shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the following Respondent Unions, their officers, agents, and representatives, cease and desist from the actions noted below and take the affirmative actions set forth in full below following their names.

A. District Council Nos. 8 and 16 of the International Brotherhood of Painters and Allied Trades, AFL-CIO, and Local 4 of the International Brotherhood of Painters and Allied Trades, AFL-CIO, shall

1. Cease and desist from

(a) Failing to notify unit employees, when they first seek to obligate them to pay fees and dues under a union-security clause, of their right to be and remain nonmembers; and of the right of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the Unions' duties as bargaining agents, and to obtain a reduction in fees for such activities.

(b) Failing to provide unit employees who have filed a *Beck* objection with information about the percentage of the reduction in dues and fees charged to *Beck* objectors, the basis for that calculation, and the right to challenge these figures.

(c) Charging employees for nonrepresentational activities after they have filed a *Beck* objection.

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify all unit employees in writing who have been obligated to pay dues and fees under the union-security clause of their right to be or remain nonmembers; and of the rights of nonmembers under *Communications Workers v. Beck*, supra, to object to paying for union activities not germane to the Unions' duties as

bargaining agents, and to obtain a reduction in fees for such activities.

(b) For each accounting period since October 8, 1992, provide Thomas Matulis and other unit employees who file a *Beck* objection with information about the percentage of the reduction in dues and fees charged to *Beck* objectors, the basis for that calculation, and the right to challenge these figures.

(c) Notify in writing those employees whom the Respondents initially sought to obligate to pay dues or fees under the union-security clause on or after October 8, 1992, of their right to elect nonmember status and to make *Beck* objections with respect to one or more of the accounting periods covered by the complaint.

(d) With respect to any employees who, with reasonable promptness after receiving the notices prescribed in paragraph 2(c), elect nonmember status and file *Beck* objections, process their objections in the manner set forth in the amended remedy.

(e) Reimburse, with interest, Thomas Matulis, and other unit employees who file objections for any dues and fees exacted from them for nonrepresentational activities in the manner set forth in the amended remedy section.

(f) Preserve and, within 14 days of a request, make available to the Board or its agents, for examination and copying, all records necessary to analyze the amount of back dues to be paid Matulis.

(g) Within 14 days after service by the Region post at its business offices and meeting halls copies of the attached notice marked "Appendix A."¹⁵ Copies of the notice, on forms provided by the Regional Director for Region 20 in English and such additional languages as the Regional Director determines are necessary to fully communicate with employees, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

(h) Sign and return to the Regional Director copies of the notice for posting by employers, if willing, who are signatory to the collective bargaining agreement with the Respondents at all places on their premises where notices to employees are customarily posted.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region at-

NLRB No. 87 fn. 16 (1999), and *Association for Retarded Citizens Employees Union (Opportunities Unlimited of Niagara)*, 327 NLRB No. 88 fn. 14 (1999). In those cases, the complaint allegations were specific as to dates subsequent to commencement of the 10(b) period when employees, without being informed of their *Beck* rights, were subjected to applicable union-security clauses. Accordingly, the commencement date of the reimbursement remedy was tied to those post-10(b) period specific dates. Here, by contrast, the complaint generally alleges that "at no material time" have the Respondents provided notice of *Beck* rights and, therefore, the reimbursement remedy is appropriately dated from commencement of the 10(b) period—October 8, 1992.

¹⁵ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

testing to the steps that the Respondents have taken to comply.

B. Local 4 of the International Brotherhood of Painters and Allied Trades, AFL–CIO, shall

1. Cease and desist from

(a) Refusing to acknowledge Thomas Matulis' resignation from union membership

(b) In any like or related manner restraining or coercing employees in the exercise of their rights protected by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Acknowledge in writing Thomas Matulis' resignation from union membership.

(b) Within 14 days after service by the Region post at its business office and meeting hall copies of the attached notice marked "Appendix B."¹⁶ Copies of the notice, on forms provided by the Regional Director for Region 20 in English and such additional languages as the Regional Director determines are necessary to fully communicate with employees, after being signed by the Respondent's authorized representatives, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and return to the Regional Director copies of the notice for posting by employers, if willing, who are signatory to the collective-bargaining agreement with the Respondents at all places on their premises where notices to employees are customarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint allegations pertaining to the chargeability of certain union expenses to *Beck* objectors are severed from this proceeding and remanded to the judge for further proceedings consistent with this Decision and Order.

IT IS FURTHER ORDERED that for those issues presented to the judge, he shall prepare and serve on the parties a supplemental decision containing credibility resolutions, findings of facts, conclusions of law, and recommendations to the Board. Following service of the supplemental decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall apply.

APPENDIX A

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail to notify unit employees, when we first seek to obligate them to pay dues and fees under a union-security clause, of their right to be and remain nonmembers; and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the Unions' duties as bargaining agents, and to obtain a reduction in fees for such activities.

WE WILL NOT fail to provide unit employees who have filed a *Beck* objection with information about the percentage of the reduction in dues and fees charged to *Beck* objectors, the basis for that calculation, and the right to challenge these figures.

WE WILL NOT charge employees for nonrepresentational activities after they have filed a *Beck* objection.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL notify all unit employees in writing of their rights to be or remain nonmembers; and of the rights of nonmembers under *Communications Workers v. Beck*, supra, to object to paying for union activities not germane to the Unions' duties as bargaining agents, and to obtain a reduction in fees for such activities.

WE WILL notify in writing those employees whom we initially sought to obligate to pay dues or fees under the union-security clause of their right to elect nonmember status and to make *Beck* objections with respect to one or more of the accounting periods covered by the complaint.

WE WILL process the *Beck* objections of any employees whom we initially sought to obligate to pay dues or fees under the union-security clause on or after October 8, 1992, who elect nonmember status and file such objections with reasonable promptness after receiving notice of their right to object.

WE WILL, for each accounting period since October 8, 1992, provide Thomas Matulis and other unit employees who file a *Beck* objection with information about the percentage of the reduction in dues and fees charged to

¹⁶ See fn. 15, above.

Beck objectors, the basis for that calculation, and the right to challenge these figures.

WE WILL reimburse, with interest, Thomas Matulis and other unit employees who file objections for any fees exacted from them for nonrepresentational activities for each accounting period since October 8, 1992.

LOCAL 4 OF THE INTERNATIONAL
BROTHERHOOD OF PAINTERS & ALLIED
TRADES, AFL-CIO

DISTRICT COUNCILS 8 AND 16 OF THE
INTERNATIONAL BROTHERHOOD OF PAINTERS
& ALLIED TRADES,
AFL-CIO

APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to acknowledge Thomas Matulis' resignation from union membership.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL acknowledge in writing Thomas Matulis' resignation from union membership.

LOCAL 4 OF THE INTERNATIONAL
BROTHERHOOD OF PAINTERS AND ALLIED
TRADES, AFL-CIO

Jonathan J. Seagle, Kathleen C. Sneider and Ivan Rodriguez, Esqs., for the General Counsel.

James E. Eggleston, Esq. (Eggleston, Siegel & Le Witter), of Oakland, California, for Respondent Local 4 and District Council 8.

David A. Rosenfeld, Esq. (Van Bourg, Weinberg, Roger & Rosenfeld), of Oakland, California, for Respondent District Council 16 and Respondent District Council 33

Thomas Matulis, pro se.

DECISION

STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge. I heard the above-captioned case in trial on February 14 and 15, 1995, in San Francisco, California. Posthearing briefs were submitted on March 21, 1995.

The matter arose as follows. On April 7, 1993, Thomas Matulis, an individual, filed a charge with Region 20 of the National Labor Relations Board docketed as Case 20-CA-9268 against District Council Nos. 8, 16, and 33 of the International Brotherhood of Painters and Allied Trades, AFL-CIO (Respondent District Council 8, Respondent District Council 16, Respondent District Council 33 sometimes collectively Respondent District Councils) and Local 4 of the International Brotherhood of Painters and Allied Trades, AFL-CIO (Respondent Local 4 and, collectively with Respondent District Councils, Respondents or the Unions). The Regional Director for Region 20 issued a complaint respecting the charge on May 21, 1993. The matter came on for trial before Administrative Law Judge George M. Christensen on March 9, 1994 and, after a day of hearings, was indefinitely postponed pending resolution of certain matters.

On October 21, 1994, Deputy Chief Administrative Law Judge Earledean V. S. Robbins issued an order reassigning the matter from Judge Christensen to me. On October 31, 1994, I issued an order ruling on motions and notice of reconvened hearing scheduling the matter for reopening on February 14, 1994.

The complaint alleges and the answers of Respondents deny that the Unions, in various ways since on and after March 29, 1993, violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) by failing to accord the Charging Party the procedural and substantive rights required by the Supreme Court in its decision in *Communications Workers v. Beck*, 487 U.S. 735 (1988).

All parties were given full opportunity to participate at the hearing, to introduce relevant evidence, to call, examine, and cross-examine witnesses, to argue orally, and to file post-hearing briefs. On the entire record here, including helpful briefs from the General Counsel, the Charging Party, and the Respondents,¹ and from my observation of the witnesses² and their demeanor, I make the following.³

FINDINGS OF FACT

I. The filing and service of the charge

The complaint alleges the charge was filed on April 7, 1993, and served on the Respondents on April 8, 1993. The answer of Respondent District Council 8 and Respondent Local 4 admits the filing of the charge as alleged and the service of the charge on them "some time after." The answer of Respondents

¹ Respondent District Council 16's brief contains ad hominem references to the Charging Party which are impertinent and pernicious and therefore will be stricken.

² By agreement of the parties, the matters placed in evidence in the hearing before Judge Christensen were not retried de novo before me, but rather were simply incorporated into the record.

³ As a result of the pleadings and the stipulations of the parties at the trial, there were few disputes of fact regarding collateral matters. Where not otherwise noted, the findings here are based on the pleadings, the stipulations of counsel, or unchallenged credible evidence.

District 16 and District 33 denies both the filing and the service.

In evidence are both a charge bearing the regional date stamp and docket date entry of April 7, 1993, and an affidavit of service of the charge indicating service on District Council 8 and Local 4 by means of prepaid certified mail deposited in the mail on April 8, 1993.

At the March 9, 1994, hearing before Judge Christensen, counsel for District Councils 16 and 33 argued and the General Counsel conceded that service was not accomplished on District Councils 16 and 33 until November 1993 admittedly after the 6-month period following the filing of the charge.

I find that the charge was filed on April 7, 1993, and was served on Local 4 and District Council 8 on or about April 12, 1993. I further find that neither District Council 16 nor 33 was physically served with a copy of the charge within 6 months of its filing.

II. JURISDICTION

Northern California Drywall Contractors Association (the Association) is an organization composed of various employers, including Meiswinkle/RFJ, Inc., which represents its employer-members in negotiating and administering collective-bargaining contracts with various labor organizations including the Respondents. At all relevant times the constituent employer-members of the Association during the course and conduct of their business operations have annually purchased and received at their California facilities goods and materials valued in the aggregate in excess of \$50,000 directly from points outside the state of California.

I find that the employer-members of the Association, including Meiswinkle/RFJ, Inc., are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

III. LABOR ORGANIZATIONS

The Respondents, and each of them, at all times relevant to these proceedings, have been and are now,⁴ labor organizations within the meaning of Section 2(5) of the Act.

IV. ALLEGED UNFAIR LABOR PRACTICES

A. Background

District Councils 8, 16, and 33 have had a longstanding collective-bargaining relationship with the Association on behalf of its employer-members. The General Counsel entered into evidence a collective-bargaining agreement between District Councils 8, 16, and 33 and the Association that was effective by its terms from 1989 through July 31, 1993, and covered painting and drywall employees (the contract).

The contract includes the following language:

Article 6: Employees and Hiring Practices Section 8

Any workmen employed by the employers for a period of thirty days. . . shall as a condition of employment become members of the Union by tendering full and uniform initiation fees in effect, and all workmen accepted into membership thereafter shall maintain their continuous good standing in the Union as a condition of employment by paying regular dues. In the event that a workman fails to tender the required fee or

dues in accordance with the section, the Union shall notify the Employer in writing, and the Employer shall discharge the workman within forty-eight hours.

The contract also contains dues-checkoff provisions. Other employers have adopted the terms of the contract and other contracts entered into by the District Councils with other employers cover classifications other than tapers including, for example, painters.

There is no dispute that the District Councils engaged in collective bargaining, contract administration, and grievance adjustment on behalf of Association member-employer's employees covered by the contract. The District Councils also received working assessments at relevant times of 50 cents per employee working hour. These working assessment moneys are deducted by the employers from employee paychecks and sent via trust fund intermediaries to the District Councils in whose jurisdiction each employee undertook his or her employment during the applicable period.⁵ Union membership is held in local unions which are members of the respective District Councils. The constituent local unions of the District Councils, including Local 4 within District Council 8, receive membership initiation fees and periodic dues from employees covered by the contract's union-security provisions.

B. Events Respecting Thomas Matulis

Thomas Matulis had been a member of Respondent Local 4 and worked under the contract. On March 29, 1993, Matulis resigned his union membership, asserted "*Beck*" rights under that designation, expressed willingness to pay only moneys expended in representing him, and sought an accounting of moneys expended by the District Councils.⁶

The record is confused respecting Thomas Matulis' work history regarding what geographic areas he worked in at particular times, whether or not he had signed dues-checkoff authorizations for the District Councils and to what extent moneys were either deducted from his paycheck and/or paid by employers to District Councils through their trust payments.

At the time of his resignation on March 29, 1993, Matulis was employed by Meiswinkle/RFJ, which is a San Francisco based painting contractor. He testified to working in San Mateo County, the City of Oakland, Alameda County, and in the city and county of San Francisco following his resignation. He testified that dues were taken out of his paychecks respecting District Council payments without specificity. Respecting Local 4 dues, it appears that Local 4 consistently refused to accept dues from Matulis after his resignation save in one disputed instance in 1994. In that case the Union's agent, Rodney Reclus, testified money was received not as dues but as a vol-

⁴ Respondent District Council 33 merged into District Council 16 in 1994 after the issuance of the complaint and is no longer an existing, independent entity.

⁵ District Council 8 includes the California counties of San Francisco, Lake, Marin, Mendocino, and Sonoma. District Council 16 covered the counties of Alameda, Contra Costa, El Dorado, Napa, Placer, Sacramento, Sierra, Solano, and Yolo prior to its merger with District 33. District 33 prior to its subsumption into District 16 included counties Monterey, San Benito, San Mateo, Santa Clara, and Santa Cruz. Respondent Local 4 is located in San Francisco and is a member of District Council 8.

⁶ In so doing Matulis made it clear to the Respondents that he was objecting to paying any amount to the Respondents in excess of moneys spent by the Respondents on representational expenses. Matulis and others who take similar positions are referred to on occasion in this decision as objectors

untary payment to the Union and has been held in escrow to date pending the resolution of this case.

C. Analysis and Conclusions

1. Matters concerning District Councils 16 and 33⁷

a. The issue of the service of the charge

Respondent District Councils 16 and 33 argue that the lack of timely service of the charge upon them requires dismissal of the complaint as to them. The same argument was advanced to Judge Christensen during the period he was presiding over the case and was opposed by the General Counsel. Judge Christensen denied the motion by Order dated April 5, 1994. There is no evidence the order was appealed to the Board. The Order held, in essence, that the timely service on District Council 8 constituted service on all identified collective-bargaining representatives of employees under the contract including District Council 16 and District Council 33 citing, *inter alia*, *The Oregon, Southern Idaho and Wyoming District Council of Laborers*, 243 NLRB 405 (1979); *Electrical Workers IUE (Spartus Corp.)* 271 NLRB 607 (1984).

Judge Christensen's analysis was cogent and his cases on point. No arguments presented on brief undermine his holding. I specifically adopt Judge Christensen's April 5, 1994 order. Accordingly I also find Respondent District Councils 16 and 33 were timely served by means of the service of the charge on District Council 8 as found, *supra*.

b. The Beck allegations: the failure to maintain a Beck policy as a per se violation of the Act

The complaint alleges at paragraph 9(f) that the Respondents, including District Councils 16 and 33, at no relevant time either had in place or applied to Matulis or any other unit employee:

a "Beck" system to apprise and allow Unit employees to exercise the rights accorded them under *CWA v. Beck*, 487 U.S. 735 (1988). . . .

The complaint at subparagraphs 11(b), in part, and 11(c) and (d) similarly allege that the Unions failed to provide Matulis various procedural rights required of labor organizations by the Court in *Beck*.

District Councils 16 and 33 have never had a procedure of any kind respecting dues objectors.

Rejecting the primary assumption of the complaint as well as the specific allegations noted above, I find that there is no obligation in law, the Act, or the doctrine of fair representation as enunciated by the Board and the courts that a labor organization subject to the provisions of the Act must have a *Beck* policy in place, if the union has entered into a contract or contracts with an employer or employers containing union security. More particularly, I find that a labor organization does not, by that fact alone, violate Section 8(b)(1)(A) of the Act. Since I construe complaint allegation 9(f) and the noted subsections of complaint paragraph 11 in the context of paragraph 9 and the remainder of the complaint to be no more than such an allegation in differing degrees of detail, I shall dismiss each of the noted allegations as to District Councils 16 and 33.

It is important to understand the theoretical foundation on which this conclusion rests. The General Counsel's complaint and, to a certain extent, the arguments of the parties on brief deal with the sufficiency of a procedural mechanism for dealing with dues objectors under union-security clauses—a *Beck* policy—as a free standing or independent matter respecting which the Act may be violated. Thus, the General Counsel contends that, if a labor organization has a union-security clause in a contract under the jurisdiction of the Act and has no valid *Beck* policy, Section 8(b)(1)(A) of the Act is violated. This is the theory underlying complaint subparagraph 9(f) quoted above.

I view the entire set of issues respecting *Beck* procedural requirements as properly analyzed in the context of a labor organization's defense to allegations that employees were not fairly represented in a unit covered by a union-security clause. Thus, if a union has and applies a valid *Beck* policy respecting objectors, certain actions consistent with that policy may not violate the Act whereas the same conduct, not in conformity with a valid *Beck* policy, may violate the union's duty of fair representation.

As discussed below, a current, valid *Beck* policy may be a necessary precondition to enforcing or even attempting to enforce union-security obligations by a labor organization. Other rights and obligations of both unions and employees may be effected by the existence of a valid *Beck* policy. If violations of the Act are to be found within regard to such actions and conduct however, it is the union's dealings with the unit members regarding union-security obligations which violate the Act not the conceptually different proposition that the union did not have or did not follow a particular policy approved by *Beck*.

c. The allegation that District Councils 33 and 16 did not acknowledge Matulis' resignation from membership in Local 4 or recognize him as a Beck objector

Complaint subparagraph 11(a) alleges the Respondents failed to grant and/or acknowledge Matulis' request to resign from membership in Local 4. Complaint subparagraph 11(b) alleges the Respondents failed and refused to recognize and treat Matulis as a *Beck* objector.

Counsel for Respondent District Councils 33 and 16 argued at trial that only Local 4 had any obligation whatsoever to deal with Matulis concerning his membership in Local 4. I agree as to the narrow issue of membership as opposed to matters concerning union-security payments which are elsewhere addressed here. I shall therefore dismiss paragraph 11(a) as to District Councils 33 and 16. I have earlier dismissed the portion of complaint subparagraph 11(b) that alleged the Unions' failure to have a *Beck* procedure as a freestanding violation of the Act.

Complaint subparagraphs 11(a) and (b) also put in issue, in my view, the District Councils' obligations as beneficiaries, under the union-security language of the contract, of union-security payments deducted from employees wages. This is so because when the District Councils learned of Matulis' resignation, they were also put on notice that he was a dues objector.

I find that all Unions signatory to the contract, which did not have a valid *Beck* system in place, violate the rights of objectors if they fail to inform objectors, immediately on learning that particular employees are objectors, that the union-security provisions of the contract will not be applied to them in any manner whatsoever and will not in future be applied to them,

⁷ District Council 33 had been merged into District Council 16. The merger and the contract, see further discussion immediately below, is sufficient in my view to hold District 16 liable for the acts and conduct of District Council 33.

unless and until a valid *Beck* system is established and put into operation.

Objectors who are working under a contract with union-security provisions—and employees like Matulis who may be assigned work within the jurisdiction of any of the signatory District Councils are such employees irrespective of whether or not they have in fact actually worked in a particular District Council’s jurisdiction, must be timely informed by all signatory unions that the union-security provisions of the contract do not apply to them and will not be applied unless and until a valid *Beck* system is put in place.

As discussed supra, a union has no obligation to have a *Beck* system. If it does not however, it must make clear to objectors that the union-security provisions of all the union’s contracts do not apply to such objectors because no *Beck* system is maintained by the union. This is an affirmative obligation on the part of the union arising out of the fact that it has entered into a contract with union-security provisions and does not have a *Beck* system in place. Since objectors have no obligation to pay any moneys to the union in the absence of a *Beck* procedure, and the language of the union-security clause does not fully inform them of this fact, the union as to objectors has created a situation where the objector employees it represents are not fully informed of their rights and obligations under the contract. In such a situation the Board explicitly requires a union under its duty of fair representation to immediately and completely inform them of their rights. *Electrical Workers IUE Local 444 (Paramax Systems)*, 311 NLRB 1031 (1993).⁸

Since there is no question that the District Councils did not notify Matulis upon learning of his objector status, that the union-security clause of the contract—insofar as it compelled employee union-security payments to District Councils—would not be applicable to him, each District Council failed in its duty of fair representation and therefore violated Section 8(b)(1)(A) of the Act. To this extent complaint subparagraph 11(a) and (b) are sustained.

d. The Unions’ alleged wrongful collection of Matulis’ union-security payments

The complaint alleges at subparagraph 11(e) that the Respondents, including District Councils 16 and 33, collected full union-security fees from Matulis which, as further alleged at complaint subparagraph 11(f), included charges for non-representational expenditures.

The District Councils argue however that there is no evidence that Matulis or, for that matter, anyone else who objected to the payment of dues, ever worked under the contract in their jurisdiction and/or had District Council dues deducted from his or her paycheck and remitted to the District Councils.

⁸ *Paramax* addressed a union’s failure to inform employees that the union-security clause which facially required them to become and remain “members of the Union in good standing” as a matter of law required only, under the Supreme Court’s holding in *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), the tender of dues and initiation fees without any obligation to join the union. The union-security clause in the instant case makes it clear that employees need only pay dues and initiation fees to the Union, not join it, in order to satisfy the union-security obligation. The fact that dues objectors who have made their views known to the Union have no obligation to pay anything at all, if the Union has no objector fee determination mechanism, is the ambiguous aspect of objecting employee rights under the contract requiring full union explanation in the instant case.

On this record, I reject the factual contention that no deductions were made from Matulis’ paycheck and remitted to the District Councils for two reasons. First, even if confused and imprecise, Matulis did testify to having District Council dues taken from his paycheck and further testified to having worked within the jurisdiction of District Council 16. Thus there is testimony that such deductions occurred. Second, Respondents could have introduced their business and financial records respecting Matulis as a dues payer during relevant periods and chose not to do so. I draw an adverse inference respecting this fact. Thus, I find that at relevant periods District Council 16 received, even if unknowingly, funds deducted from Matulis wages after he had notified Respondents of his resignation and objector status.

This factual finding ripens the issue previously rejected in an isolated context, supra. If a union receives union-security payments from an objector, the receipt must be consistent with a properly applied *Beck* objector policy. The law is clear that, absent a sufficient “*Beck*” system, the collection of any dues whatsoever is impermissible and a violation of Section 8(b)(1)(A) of the Act. I find therefore that District Council 16 and District Council 33 each violated Section 8(b)(1)(A) of the Act when they received moneys collected from Matulis as a known dues objector under the compulsion of the union-security clause of the contract.

I therefore sustain subparagraph 11(e) of the complaint as to District Councils 16 and 33 to the extent it alleges that the Respondents violated Section 8(b)(1)(A) in continuing to collect dues without having a valid *Beck* system in place.

Complaint subparagraph 11(e) alleges that the Respondents collected “full” dues from Matulis and complaint subparagraph 11(f) alleges that the collected dues were expended by the Unions in part on nonrepresentational matters. Again, I find the allegations to be theoretically unsound and an improper admixture of elements of a *Beck* defense with elements of a prima facie case of improper fee collection. If a valid *Beck* objector policy is not in place and properly applied to a particular objector, any collection of union security compelled payments of any amount is a violation of the Act irrespective of whether the compelled payments are: (1) full dues or some other lesser amount or (2) in what manner or for what purpose the labor organization expended the moneys received.⁹ The issues of the amount of fees compelled and the use of those fees are relevant only to a *Beck* defense which is not at issue here. This being so, the addition aspect of complaint paragraph 11(e) alleging “full” dues and complaint subparagraph 11(f) do not allege facts material to the finding of a violation of the Act on this record. I shall therefore not address them further.

e. Summary of findings and conclusions respecting District Councils 16 and 33

Respecting a preliminary matter, I found that the charge was not in fact served on District Council 16 or District Council 33 within the 6 months following its filing. I further found however, that as a result of the joint responsibility of the District Councils for the collective-bargaining agreement, the timely

⁹ There are situations where the amount of the payments deducted or the representational or nonrepresentational nature of the union’s expenditures are relevant to determine if a particular objector policy is valid or if a particular policy is, in fact, being properly applied to a particular objector. On the facts of the instant case, however, the District Councils had no such policy.

service on District Council 8 was sufficient service on District Councils 16 and 33 as well.

Although there was no question that District Councils 16 and 33 were at all times without any policy for establishing union-security payment amounts for dues objectors as delineated in the Supreme Court's decision in *Beck*, I found that there is no obligation on the part of a labor organization to maintain such a policy. I therefore dismissed the General Counsel's complaint allegations in that regard in subparagraphs 9(f), a portion of 11(b), (c), (d), and aspects of (e) and (f).

There is no doubt that the District Councils did not respond to Matulis when informed that he was resigning his membership in Local 4 and objecting to the payment of union security obligated fees expended by the Unions for nonrepresentational activities. I found that District Councils 16 and 33 had no obligation to deal with Matulis respecting his membership in Local 4, but were required, on learning of his dues objector status, to inform him that he had no obligation under the contract's union-security provisions to pay any money to the District Councils and would not have such an obligation unless and until a valid policy for determining dues objector fee amounts were applied to him.

Accordingly I found no merit to the General Counsel's allegation in complaint subparagraph 11(a) that the District Councils wrongfully failed to communicate with Matulis respecting his union membership and shall dismiss that allegation. I found merit to the General Counsel's allegation in subparagraph 11(b) that the District Councils violated Section 8(b)(1)(A) of the Act when they wrongfully failed to inform Matulis, on learning of his dues objector status, that he had no obligation under the contract union-security provisions to pay any money to the District Councils and would not have such an obligation unless and until a valid policy for determining dues objector fee amounts were applied to him.

I found that the District Councils wrongfully caused dues deductions to be made from Matulis' wages and remitted to the District Councils in violation of Section 8(b)(1)(A) of the Act and therefore sustained the portion of the General Counsel's complaint subparagraph 11(e) alleging that violation. I further found that such a violation existed irrespective of whether the amount withheld from Matulis was "full" dues or whether or not the Unions did or did not spend moneys for non-representational matters. Thus I did not find merit to these additional contentions in complaint subparagraphs 11(e) and (f).

2. Matters concerning Local 4 and District Council 8¹⁰

a. The contention that the union-security clause was never applied to Matulis after his resignation from Local 4 and notification to the Unions that he was a dues objector

An initial contention of District 8 and Local 4 is that neither labor organization at any time after Matulis' resignation sought nor collected dues from Matulis and thus no union-security obligation was ever in force at relevant times. I reject this de-

fense on two grounds. First, neither District 8 nor Local 4, on this record, made it clear to Matulis that he had no obligations under the union-security provisions of the contract to pay funds to the Unions. Simply put, there is no evidence that Matulis and the Unions had reached some common, unambiguous understanding after his resignation that he would have not union-security obligations under the contract.

Second, I find that District 8 has not met the affirmative testimony of Matulis that he had District Council dues deducted from his paycheck after his resignation from the Union. I draw the same adverse inference as to District Council 8 that I did as to District 16, *supra*. District Council 8 could have introduced records of dues payments made on behalf of Matulis, but did not do so. As to Local 4, it is clear that on at least one occasion moneys were paid by Matulis and received by Local 4. Local 4's agent Rodney Reclus testified the moneys were retained by Local 4 in escrow to await the outcome of this proceeding. This means the moneys were taken and/or retained under a continuing, if conditional, claim of right. I find this is sufficient without further resolution of the conflicting versions of events to rebut any suggestion that Local 4 made it clear to Matulis that the union-security provisions of the contract did not apply to him and that he had no obligation to pay whatsoever.

b. The complaint allegations respecting District Council 8 and Local 4

As discussed in greater detail under the Section of this decision dealing with matters concerning District Council 16 and District Council 33, the General Counsel has made a variety of allegations that the Respondents violated Section 8(b)(1)(A) of the Act because of their absent or invalid *Beck* dues objector policies. Even though District Council 16 and District Council 33 had no *Beck* policy at all at relevant times, I dismissed all these allegations as to them because I found there is simply no obligation for a union to have a *Beck* policy and therefore the Act is not violated when one does not exist or exists but is in some way inadequate.

Accordingly, based on the analysis concerning the noted allegations of the complaint respecting District Councils 16 and 33, *supra*, I shall dismiss the following sections of the complaint as to District Council 8 and Local 4: complaint subparagraph 9(f), the portion of 11(b) dealing with a *Beck* policy, 11(c), 11(d), and the aspects of complaint subparagraphs 11(e) and (f) dealing with the contention that "full" dues were paid and contention as to the representational or non-representational nature of the Unions' expenditures.

Further, as noted above, I find that unions must immediately inform objecting employees employed in units covered by union-security provisions either of the valid *Beck* provisions maintained by the labor organization or, in the alternative when no such valid provisions exist or are disclosed and applied, that the union-security provisions of the contract will not be applied in any manner to the objector and therefore he or she need not pay anything under them. Having found that District Council 8 and Local 4 were obligated to but did not explicitly inform Matulis on learning of his resignation and dues objector status, either that he did not have to pay any union-security obligation moneys whatsoever to the Unions or that it was applying a valid *Beck* dues objector policy to him, I further find they each violated Section 8(b)(1)(A) of the Act. *Electrical Workers IUE Local 444 (Paramax Systems)*, *supra*.

¹⁰ While certain of the contentions respecting District Council 8 and Local 4 as opposed to District Councils 16 and 33 differed, the bulk of the allegations addressed all the Respondents and the factual situations presented were identical. In those similar situations the full analysis and consideration set forth, *infra*, as to District Councils 16 and 33 is not repeated in complete detail as to District Council 8 and Local 4. Full and equal consideration of the allegations and arguments of the parties occurred, however, as to each allegation and each Respondent.

Accordingly, I sustain the General Counsel's complaint subparagraph 11(a) as to Local 4 respecting its failure to acknowledge Matulis' resignation and sustain complaint subparagraph 11(b) as to its failure to inform him of his rights as a dues objector. For the reasons noted supra, I shall dismiss subparagraph 11(a) as to District 8. I sustain complaint paragraph 11(b) as to District Council 8 for its failure to inform him of his rights as a dues objector.

Further, having found that District Council 8 and Local 4 received union-security payments from Matulis after he notified them of his resignation from Local 4 and his dues objector status, I find that both District Council 8 and Local 4 violated their duty of fair representation to Matulis and in so doing violated Section 8(b)(1)(A) of the Act. Thus, I sustain the General Counsel's complaint allegations in subparagraph 11(e) dealing with union-security moneys without further characterization as "full."

c. The relevance of Beck to the decision here

The parties litigated whether or not Local 4's policy respecting objectors was in place at relevant times and whether or not it met the requirements of *Beck* and subsequent cases. I find these issues are simply not ripe for decision on the facts of this case. First, as discussed, supra, I have rejected the General Counsel's contention that a union must have a valid *Beck* procedure in place to avoid violating the Act. Given this threshold conclusion, there is no need to test the validity of any given *Beck* policy unless it is otherwise relevant to the remaining allegations of the complaint.

Second, I have declined to resolve the issue of whether or not the Unions in fact charged Matulis "full" as opposed to some other type of dues and declined to determine whether or not the Unions undertook expenditures for nonrepresentational expenses. Neither contention, even if true, is relevant to the violations found because no Union contended its *Beck* policy, if any, had ever been applied to Matulis or any other employee.

There is only one objector at issue in this case on this record: Matulis. There is no dispute that the *Beck* program of Local 4, was ever applied to Matulis. Thus, valid or not, the Local 4 *Beck* program may not constitute a defense to any collection of dues from Matulis by any Respondent nor may it constitute a defense to Respondent's wrongful failure, as found above, to notify him that the union-security provisions of the contract simply did not apply to him.

d. Summary of findings and conclusions respecting District Council 8 and Local 4

With the exception of the responsibility I have found on Local 4's part to acknowledge the resignation of Matulis and for the same reasons as set forth in the section of this decision concerning them, my findings regarding the allegations of the complaint against Local 4 and District Council 8 parallel those made supra as to District Councils 16 and 33.

Thus, I found that there is no obligation on the part of a labor organization to maintain a valid *Beck* policy. I therefore dismissed the General Counsel's complaint allegations in that regard in subparagraphs 9(f), a portion of 11(b), 11(c), 11(d), and aspects of 11(e) and (f) without determining if Local 4's policy was sufficient under *Beck* or if it was in place at relevant times.

I found that District Council 8 had no obligation to deal with Matulis respecting his membership in Local 4. Accordingly I found no merit to that portion of complaint subparagraph 11(a)

that that alleges District Council 8 wrongfully failed to communicate with Matulis respecting his union membership and shall dismiss that allegation. I found merit to subparagraph 11(b) that the District Council 8 and Local 4 violated Section 8(b)(1)(A) of the Act when they wrongfully failed to inform Matulis, on learning of his dues objector status, that he had no obligation under the contract union-security provisions to pay any money to the Unions and would not have such an obligation unless and until a valid policy for determining dues objector fee amounts were applied to him. In this context I found that Local 4 also violated the Act as alleged in subparagraph 11(a) in failing to acknowledge Matulis' resignation by providing him with this information.

I found that the District Council 8 wrongfully caused dues deductions to be taken from Matulis' wages and remitted to the District Council. I also found that Local 4 received and held moneys from Matulis under claim of right, at a time when Matulis was not properly under any valid compulsion under the union-security provisions of the contract to pay such moneys. In so acting District Council 8 and Local 4 were each in violation of Section 8(b)(1)(A) of the Act. I therefore sustained the portion of the General Counsel's complaint subparagraph 11(e) alleging that violation. I further found that such a violation existed irrespective of whether the moneys withheld from Matulis were "full" dues or whether or not the Union's did or did not spend moneys for nonrepresentational matters. Thus I did not find merit to these additional contentions in complaint subparagraphs 11(e) and 11(f).

3. Final summary and conclusions

The General Counsel's complaint alleged at paragraph 9(f) that Respondents violated the Act in having no valid *Beck* policy. I found as a matter of law that no labor organization need have such a policy and that it is not a violation of the Act for a union to be without such a policy. I therefore dismissed complaint subparagraphs 9(f), a portion of 11(b), 11(c), and 11(d) as to all the Respondents.

Rather I found that the relevance of such a *Beck* policy is that, absent a valid policy which provides procedural mechanisms for the calculation of a proper fee amount for objectors, a union may neither enforce a union-security provision against objectors nor create the impression—through other than full and immediate disclosure of the fact of the absence of a legal obligation of any declared objector to pay—among objectors that the union-security provisions would or could apply to such persons at all. I concluded that, if a union seeks to collect money from objectors pursuant to the compulsions of a union-security clause, it must have a valid *Beck* policy and must properly and timely inform objectors of that fact. If there is no such valid *Beck* policy, the union may not compel objectors, either through affirmative collection efforts or through inaction and failure to disclose to objecting employees their rights, to satisfy union-security obligations irrespective of whether or not the Union spends collected dues and fees on nonrepresentational expenses.

I have further found that Respondents, and each of them, violated Section 8(b)(1)(A) of the Act by failing to affirmatively inform Matulis, immediately on learning of his objector status, that the union-security provisions of the collective-bargaining contract would not apply to him and that he would have no obligation whatsoever to pay dues or initiation fees directly or by means of checkoff unless and until Respondents applied the terms of a valid *Beck* policy to him. I therefore

sustained complaint subparagraph 11(b) to the extent it alleges the Unions failed to properly inform Matulis of his rights once he had indicated he was an objector.

I found the Unions received funds directly or indirectly from Matulis following his resignation and announcement of objector status at a time when he was under no union-security obligation. Accordingly, Respondents, and each of them, violated Section 8(b)(1)(A) of the Act by wrongfully receiving, directly or indirectly through checkoff, moneys from Thomas. I therefore sustain the relevant portion of complaint subparagraph 11(e).

Since there was no contention that Local 4's policy had ever been fully communicated to Matulis or applied to him, the validity of that policy is not relevant to the resolution of the issues of the complaint and will not be further addressed. Further since I found on this record that it is immaterial whether or not the Unions individually or collectively expended funds for nonrepresentational expenses, I have made no findings with regard thereto and will dismiss complaint subparagraphs 11(e) and (f) to the extent they deal with the quantum of dues retained by Respondents and the nature of the Unions' expenditures.

REMEDY

Having found that Respondents have engaged in certain unfair labor practices in violation of Section 8(b)(1)(A) of the Act, I shall order that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

I shall order Respondents to refund all moneys collected from Matulis since his notification to the Unions of his resignation and objector status, with interest calculated in accordance with Board policy.¹¹ Further, each Respondent will be required to inform Matulis in writing and all other objectors immediately upon learning of their objector status, in writing, that all union-security provisions in agreements between Respondents and any employer will not apply to the objector and the objector will therefor not be obligated to pay any dues or fees whatsoever under the union-security provisions unless and until a valid objector policy is disclosed to, and properly applied to the objector.

The General Counsel seeks a remedy directing the Respondents to put in place and maintain valid *Beck* policies. I decline to grant the requested relief. I found no obligation on the part of the Unions to have a *Beck* policy and no violation of the Act by the Unions for the failure to have such a policy. The General Counsel's requested remedy may not be imposed under any theory that unions should have such a policy.

The Respondents are directed to collect no dues or initiation fees from any objectors, including Matulis, under compulsion of union-security arrangements unless and until valid *Beck* policies are timely disclosed and applied to such objectors. As noted supra, no labor organization, including the Respondents here, need have such a policy so long as no dues and initiation fees are collected from objectors and objectors are immediately informed of their rights once they communicate their objector status to the union. If the Respondents, or any of them, seek to collect such fees, then they must first create and implement a

valid *Beck* policy and thereafter collect appropriate fees as established pursuant to the major application of that policy.

The General Counsel seeks, in the alternative to the *Beck* policy request discussed, supra, that the Respondents be obligated to notify certain individuals including nonunion members and others who joined the Union during the 10(b) period, who are or become unit members, that the Unions will not apply the union-security provisions of the contract to objectors. The General Counsel also urges that I require the Union to give these same individuals their "initial *Beck* notice" and implement the remaining elements of a *Beck* policy. While the standard Board remedial notice which I have directed to be posted, infra, will accomplish in part what the General Counsel desires he seeks a regular, recurrent disclosure obligation on the part of the Respondents to non member employees before they become objectors as well as to objectors who have perfected their status. Thus, the General Counsel is seeking to obligate the Unions to notify preobjecting unit employees of their rights: (1) to become objectors and (2) of their rights, if they become objectors.

The Board has recently held that the Court's decision in *Beck* has caused it to rethink the entire area of a labor organization's obligations under the Act to fully disclose to employees the nature and extent of their obligations under union-security clauses. *Electrical Workers IUE Local 444 (Paramax Systems)*, supra. The Board in *Paramax* explicitly obligated a union to notify each employee in writing of the employee's rights under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), to pay dues and initiation fees without being obligated to join the union. The Board held that because the wording of the union-security clause itself was ambiguous with respect to the employee's obligation to join the union, the union was obligated to explain to the employees their legal rights and obligations under it.

The Board's announcement in *Paramax* that in light of *Beck* it would now obligate unions to fully disclose employee rights and obligations under union-security clauses could be argued to extend to requiring unions to explain to employees their *Beck* rights when the contract union-security clause or other explanation distributed to employees does not make such rights clear. A closer reading of the decision clearly indicates this is not the Board's holding, however. Rather the decision in declining to require a union to explain *Beck* rights to employees augurs strongly to the contrary. Thus, the Board's remedy in *Paramax* did not require the union to notify objecting employees in writing about their *Beck* rights, the remedy limited itself to obligating the union to inform employees of their *General Motors* rights even though the union-security clause in the case did not explain *Beck* rights.

Paramax is current law. Thus, the Board currently requires union explanation of *General Motors* rights to employees, but does not require union disclosure and explanation of employee *Beck* rights. Given the Board's holding, I find it is not appropriate to grant the General Counsel's request that I require the Unions to explain *Beck* rights to employees before they have indicated to the union that they object to the expenditure of their union-security clause obligation fees for nonrepresentation matter.¹²

¹¹ See *New Horizons for the Retarded*, 283 NLRB 1173 (1987). See also *Florida Steel Corp.*, 231 NLRB 651 (1977), and *Isis Plumbing Co.*, 138 NLRB 716 (1962).

¹² Special union disclosure remedies have also historically been required where there is evidence that a union is affirmatively misleading employees as to the operative rules under the contract, see, e.g., *Elec-*

CONCLUSIONS OF LAW

1. The employer-members of the Association are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondents are, and each of them is, labor organizations within the meaning of Section 2(5) of the Act.

3. The Respondents violated Section 8(b)(1)(A) of the Act by engaging in the following acts and conduct:

(a) Failing to inform nonunion member-employees who object to paying dues in excess of the amounts the union spends on representation matters that the union-security provisions in collective-bargaining agreements entered into by the Respondents and various employers do not and will not apply to the objectors unless and until the Respondents notify them of a valid *Beck* objector policy and timely apply it to them.

(b) Enforcing the union-security clause of the contract as to, and collecting dues and fees from, nonunion member-employees who object to paying dues in excess of the amounts spent on representation.

4. The unfair labor practices described above are unfair labor practices affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5. The allegations of the complaint not specifically sustained above are without merit and shall be dismissed.

[Recommended Order omitted from publication.]

