

**American Federation of Television and Recording Artists, Portland Local (KGW Radio) and Peter Weissbach.** Cases 36–CB–1491 and 36–CB–1523

January 28, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS  
FOX, LIEBMAN, HURTGEN, AND BRAME

On October 23, 1991, Administrative Law Judge David G. Heilbrun issued the attached decision. The General Counsel filed exceptions and a supporting brief. The Charging Party filed exceptions, a supporting brief, and a reply brief.<sup>1</sup> The Respondent filed an answering brief.

This case presents issues concerning the Respondent Local's implementation of procedures developed by its parent national organization, the American Federation of Television and Recording Artists, to implement its obligations under the Supreme Court's *Beck* decision.<sup>2</sup> In *Beck*, the Court held that the union collected fees and dues from bargaining unit employees under its statutory grant of authority to serve as the exclusive bargaining representative, but then used some of that money for purposes wholly unrelated to the grant of authority that gave it the right to collect that money, and in ways that were antithetical to the interests of some of the workers that it was required to serve.<sup>3</sup> The Supreme Court in *Beck* limited the dues and fees a union can collect from objecting nonmember employees under a contractual union-security clause to amounts expended only on activities germane to the union's role as collective-bargaining representative. Subsequent to the judge's decision in this case, the Board issued its decisions in *California Saw & Knife Works*, 320 NLRB 224 (1995), enfd. sub nom. *International Association of Machinists & Aerospace Workers v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 325 NLRB 813 (1998), and *Paperworkers Local 1033 (Weyerhaeuser Paper Co.)*, 320 NLRB 349 (1995), revd. on other grounds sub nom. *Buzenius v. NLRB*, 124 F.3d 788 (6th Cir. 1997), vacated 525 U.S. 979 (1998), resolving numerous issues that arose from the *Beck* decision.<sup>4</sup>

The Board has considered the decision and the record in light of the exceptions and briefs and in light of its

<sup>1</sup> The Charging Party attached as exhibits to his brief copies of four sections of the *Codification of Statements on Auditing Standards* published by the American Institute of Certified Public Accountants (AICPA). The Respondent moved to strike these documents because they were not introduced into evidence at the hearing. We find it appropriate to take official notice of these and other sections of the AICPA codification.

<sup>2</sup> *Communications Workers of America v. Beck*, 487 U.S. 735 (1988).

<sup>3</sup> *Marquez v. Screen Actors Guild, Inc.*, 525 U.S. 33 (1998), citing *Beck*, 487 U.S. at 743–744.

<sup>4</sup> The Board in *California Saw* found it appropriate to apply the duty of fair representation standard in assessing a union's obligations under *Beck*. *California Saw*, 320 NLRB at 228–230.

decision in *California Saw* and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order only to the extent consistent with this Decision and Order.<sup>5</sup>

1. The General Counsel excepts to the judge's failure to find that the Respondent violated Section 8(b)(1)(A) by failing to inform the Charging Party of his *Beck* rights before his obligations under the negotiated union-security clause attached. The General Counsel further asserts that in remedying this violation the Board should extend the remedy to other similarly situated employees. We find no merit in the General Counsel's arguments.

In *California Saw* and *Weyerhaeuser*, the Board held that a union breaches its duty of fair representation if it fails to inform unit employees of their *Beck* rights at the time it first seeks to obligate them to pay fees and dues under a union-security clause. Specifically, the Board held that in the initial *Beck* notice, the union should inform the employees that they have the right to be or remain nonmembers of the union, and that nonmembers have the right (1) to object to paying for union activities not germane to the union's duties as collective-bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable them to intelligently decide whether to object; and (3) to be apprised of any internal union procedures for filing objections. *California Saw*, 320 NLRB at 233. The purpose of the initial *Beck* notice is to advise employees of their right, should they choose not to join the union, to limit their dues obligations in accordance with *Beck*.

Here, before the Respondent sought to obligate the Charging Party to pay dues and fees, the Charging Party notified the Respondent of his intention to remain a nonmember and to pay only that portion of his fees and dues associated with collective bargaining, grievance adjustment, and contract administration. Thus, it is clear that, at a time before the Respondent was legally obligated to inform him of his rights, the Charging Party was fully aware of his *Beck* rights and chose to exercise them. Further, it is clear from the record that the Respondent acknowledged the Charging Party's objection and treated him as an objecting nonmember from the time it received his request "to obtain 'financial core' status."

Under these circumstances, where the Charging Party had actual knowledge of his rights under *Beck*, had successfully exercised his right to become an objecting nonmember, and was treated as an objecting nonmember by the Respondent from the time it received his request, it would elevate form over substance to find that the Respondent was thereafter obligated to inform him of the procedures associated with how to exercise his right to object. We therefore conclude, in agreement with the

<sup>5</sup> The Charging Party and the Respondent requested oral argument. These requests are denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

judge, that the Respondent did not act unlawfully by failing to provide the Charging Party with initial notice of his *Beck* rights and that the complaint allegation to that effect should be dismissed.

Further, we find without merit the General Counsel's request that a remedy for the Respondent's alleged failure to give initial *Beck* notice be provided not just to the Charging Party but also to other "similarly situated" employees. For the reasons we have stated, we have found no violation in the Respondent's failure to give *Beck* notice to the Charging Party, and the General Counsel has not shown that there are any other unit employees to whom the Respondent unlawfully failed to give *Beck* notice. Thus, the General Counsel has failed to establish the existence of a defined and easily identifiable class of employees who have been adversely affected by any alleged failure to give *Beck* notice, so as to warrant a class-wide remedy.<sup>6</sup> In the absence of any such showing, we reject the General Counsel's request.

2. The judge found that the Respondent's failure to apportion the Charging Party's initiation fees and to charge him initiation fees only for expenses associated with collective-bargaining purposes violated Section 8(b)(1)(A). There were no exceptions to this finding, and we adopt it. The judge, however, declined to extend his recommended remedy for this violation to include other similarly situated nonmember employees, in addition to the Charging Party, who may have been charged full initiation fees over their objection. The General Counsel excepts to the judge's failure to extend the affirmative remedy to other unnamed but similarly situated employees as sought in the complaint. We find no merit in this exception.

Where the General Counsel has alleged and proven unlawful conduct against a defined and easily identifiable class of employees, the Board, with court approval, has found it appropriate to extend remedial relief to all members of that class, including individuals not named in the complaint. See, e.g., *Grand Rapids Press*, 325 NLRB 915 (1998) and cases cited therein. However, in this case we do not find that the General Counsel has established a basis for extending the remedy for the violation found to employees other than the Charging Party.

The record discloses that the unit contained approximately 20 nonmember employees at the time of hearing. However, the record does not reflect that any other identifiable unit employee who filed a *Beck* objection was charged full initiation fees; indeed, the General Counsel concedes in his brief that there were no other *Beck* objectors in the unit during the relevant period.<sup>7</sup> Since there is

no evidence that the Respondent's unlawful action affected any person or class of persons other than the Charging Party, we agree with the judge that make-whole relief should be limited to him. See, e.g., *Laborers Local 426 (Building Contractors)*, 280 NLRB 610 fn. 2 (1986); *Longshoremen ILA Local 851 (West Gulf Maritime Association)*, 194 NLRB 1027 (1972).

3. The judge dismissed the complaint allegation concerning the potential chargeability of lobbying expenses related to conditions of employment under the Respondent's *Beck* policy based on his finding that during the period covered by the complaint, the Respondent had not incurred any lobbying expenses which it treated as chargeable to objectors. He further rejected the argument, renewed here by the General Counsel and the Charging Party, that lobbying expenses can never be properly chargeable to objectors whatever their purpose. We adopt the judge's dismissal based solely on the fact that no lobbying expenses were charged to objectors during the period in question. We therefore find it unnecessary to pass on his further finding with respect to the chargeability of lobbying expenses generally.

4. The General Counsel and the Charging Party except to the judge's dismissal of the complaint allegation concerning the sufficiency of the Respondent's accounting procedures. Specifically, the complaint alleged, and they assert, that the expenditure information provided by the Respondent to the Charging Party was not sufficient to permit him as an objecting nonmember employee to assess whether to file a challenge to his dues allocation because the information was not audited and verified by an independent accountant. In light of our decision in *California Saw*, we find merit to their arguments concerning verification of expenditure information provided to nonmember objectors and thus reverse the judge's conclusion that the information provided by the Respondent to objecting nonmember employees satisfied its legal obligations.<sup>8</sup>

The procedures utilized by the Respondent in providing information to objecting nonmembers are fully set forth in the judge's decision. Briefly, the Respondent provided the Charging Party with an annual report of

<sup>8</sup> Neither the General Counsel nor the Charging Party assert that the expenditure information was deficient because the accountant who prepared the report was not sufficiently independent. However, we note that Dennis Berggren, the licensed public accountant who performed the compilation, is associated with an independent Portland area accounting firm which has provided the Respondent with professional services for about a 3-year period. Moreover, there was no contention or indication in the record that he was not objective or that the tasks undertaken by him in creating the report were beyond his skills. See *California Saw*, 320 NLRB at 240-241. Thus, we find Berggren to be "independent" within any generally accepted meaning of the word. See *Ferriso v. NLRB*, 125 F. 3d 865, 870-872 (D.C. Cir. 1997), denying enforcement of *Electronic Workers IUE (Paramax)*, 322 NLRB 1 (1996); citing, inter alia, *Codification of Statements on Auditing Standards*, Statement on Auditing Standard No. 1, Sec. 220 at 31 (AICPA 1995).

<sup>6</sup> See *California Saw* and case cited at 254.

<sup>7</sup> The General Counsel suggests that this is because the 20 or so nonmembers in the unit who could potentially have filed *Beck* objections were not notified of their *Beck* rights. However, as we have specifically noted, there is no evidentiary support for that assertion in the record.

final expenses for the year ending December 31, 1989. That annual report was prepared by its licensed accountant, Dennis Berggren. Berggren consulted a schedule of expenses prepared by the Respondent's national parent office for guidance in determining the manner in which to prepare a report, as well as in classifying categories of expenditures as either chargeable or nonchargeable. He also utilized financial information from the Respondent's national office schedule as to the chargeability of that office's expenditures to prepare those aspects of his report involving chargeability of the portion of the Respondent's per capita dues submitted to the national office. In preparing that portion of his report concerning local expenditures, he used a general ledger he created from the Respondent's checks and then used a computer to categorize the Respondent's annual expenditures. To determine salary allocation for the Respondent's staff, Berggren reviewed its executive director's weekly time records, which contained the executive director's detailed breakdown of his hours into categories of activities, which categories were then designated by Berggren as chargeable or nonchargeable. Once the salary allocation between chargeable and nonchargeable activities was determined for the Respondent's executive director, it was applied to his parttime support person as well.

The transmittal letter which accompanied Berggren's report stated that it was a compilation of fund expenses, rather than an audit or review. Consistent with record evidence on the accounting profession's use of that term, the letter explained that the "compilation" was based on the representations of the Respondent. The record reflects that the difference between a "compilation," a "review," and an "audit" is the degree to which the accountant undertakes an independent investigation to verify the accuracy of the subject's representations. A compilation is a financial statement prepared by an accountant based solely on information supplied by the reported entity. In performing a review, an accountant would similarly rely on the representations of the reported entity, but would further analyze the information for consistency and question the reported entity's management concerning any information which appeared to deviate from expected norms. An audit involves an accountant's independent confirmation of the reliability of the financial information contained in the financial report through such procedures as gathering information from outside entities and testing of selected information. Although each of the above-described accounting services may be used in selected situations, it is clear that no independent "verification" of financial information has been accomplished by an accountant preparing a compilation. Thus, in accordance with the standard practice of accounting professionals when submitting compilations of financial information, the transmittal letter accompanying Berggren's report noted that the accounting firm did not express an

opinion or give any other form of assurance as to the representations on which the information was based.<sup>9</sup>

The Board in *California Saw* held that if an employee chooses to object to paying dues for activities not germane to the union's role as bargaining agent and obtain a reduction in fees for such activities, the employee must be apprised of the percentage of the reduction, the basis for the calculation, and the right to challenge the union's figures. 320 NLRB at 233. In ascertaining whether the information given objectors satisfies the union's duty of fair representation, the Board assesses whether the information is sufficient to enable objectors to determine whether to challenge the dues-reduction calculations. *Id.* at 239.

The Board in *California Saw* clearly envisioned that some type of verification of the information provided to nonmember objectors is necessary for a union to fulfill its obligations under the duty of fair representation to provide sufficient information. That section of *California Saw* concerning "Verification of expenditures" consistently uses the term "audit" in describing the task necessary in providing expenditure information to objectors. 320 NLRB at 240-242. As record evidence described above makes clear, "audit" is a generally accepted term of art in the accounting profession. It describes a service performed by which an accountant undertakes an independent verification of selected transactions within the major categories of financial information presented in the accountant's report. The accountant then issues a report accompanied by an opinion letter certifying that, in the accountant's opinion, the report presents fairly, in all

<sup>9</sup> The letter further indicated that, because the Respondent uses a cash basis accounting system, rather than an accrual system, the schedule was not intended to present fund expenses "in conformity with generally accepted accounting principles." Under a cash basis system, financial statements are prepared on the basis of cash receipts and disbursements; consequently, revenue is recognized when received rather than when earned, and expenses are recognized when paid rather than when the obligation is incurred. Accrual accounting is considered to provide a better indication of an entity's financial performance than the cash basis of accounting. For that reason, where the audited entity uses a cash basis accounting system, the auditor's report will state that the financial statements do not purport to present the entity's financial position and results of operations in conformity with generally accepted accounting principles. Burton, Palmer and Kay, *Handbook of Accounting and Auditing* (1981), pp. 16-25, 16-26. The record indicates that cash basis bookkeeping is used by many organizations, and audits can be prepared of cash basis financial information. In finding, *infra*, that the expenditure information provided by the Respondent to the Charging Party was not sufficiently verified under the principles enunciated in *California Saw*, we do not rely on the Respondent's failure to use the accrual method of accounting. In that regard, we note that the purpose of the financial information which a union is required to provide to *Beck* objectors is not to apprise the objector of the union's financial position but rather to inform the objector of the basis for its calculation of the fees it is charging to objectors. We need not here decide the outcome if a cash basis accounting system were not consistently applied or were used to present an inaccurate picture of a union's expenditures.

material respects, the financial information which was the subject of the audit.

Although *California Saw* does not specifically define the meaning of “audit,” ascribing the generally accepted meaning of the term to the verification necessary for a union to fulfill its obligations to objecting nonmembers is consistent with “[t]he fundamental purpose for requiring an audit of union expenditures,” that is, “to provide objecting nonmembers with a reliable basis for calculating the fees they must pay.” 320 NLRB at 242. Further, in reviewing the sufficiency of the verification procedure at issue in *California Saw*, the Board held that in the NLRA context it is required only that “the usual function of an auditor be performed, i.e., to determine that the expenses claimed were in fact made.”<sup>10</sup> This definition of the function of an auditor required to be performed under the Act precisely describes the type of verification provided by an accountant performing an auditing of expenditures service. Thus, requiring an audit within the generally accepted meaning of the term, in which the auditor independently verifies that the expenditures claimed were actually made rather than accepts the representations of the union, is consistent with the plain language, purpose, and intent of *California Saw*.

We will therefore evaluate cases involving the accuracy of the expenditure information provided objecting nonmembers against this verification requirement. It is settled that determinations concerning whether particular expenditures are chargeable are legal determinations which are outside the expertise of the auditor. Thus, as we have stated, the function of the auditor is to verify that the expenditures that the union claims it made were in fact made for the purposes claimed, not to pass on the correctness of the union’s allocation of expenditures to the chargeable and nonchargeable categories.<sup>11</sup> Further, as has repeatedly been stated in a variety of contexts, absolute precision is not required, even under the more exacting requirements for public sector union objectors deriving from first amendment considerations.<sup>12</sup> Therefore, contrary to the urgings of the Charging Party, we do not conclude that any particular type of audit is mandated by the verification requirement under *California Saw*.<sup>13</sup>

<sup>10</sup> *California Saw* at 241, quoting approvingly the Second Circuit’s decision in *Price v. Auto Workers UAW*, 927 F. 2d 88, 93 (1991), cert. denied 502 U.S. 905 (1991), which interpreted the Supreme Court’s decision in *Chicago Teachers Union Local 1 v. Hudson*, 475 U.S. 292 (1986).

<sup>11</sup> See *California Saw* at 241 and cases cited therein. See also *Price v. Auto Workers UAW*, 927 F.2d 88, 93 (1991), cert. denied 502 U.S. 905, supra.

<sup>12</sup> *Hudson*, 475 U.S. at 307 fn. 18, cited in, e.g., *Ferriso v. NLRB*, 125 F.3d at 871.

<sup>13</sup> See *Abrams v. Communications Workers of America*, 59 F.3d 1373, 1381 (D.C. Cir. 1995), cited in *Ferriso*, supra, in which the D.C. Circuit found a procedure sufficient under the duty of fair representation by which expenditure information was recorded by employees for only a small percentage of their time and was randomly verified by an independent firm. See also *Gwitz v. Ohio Education Association*, 887

We merely find that expenditure information provided at this stage of the procedure must be verified by a determination that the expenses claimed were in fact made.

The report created by Berggren, as the judge noted, was accomplished in accordance with professional standards for compilations. However, as is clearly conceded, because it was not an audit it did not express an opinion or give any other form of assurance as to the representations on which the report was based. As Berggren testified, he relied solely on the representations of Pemble-Belkin, the Respondent’s executive director, and the union in preparing the report and did not in any manner undertake to verify the accuracy of the expenditures. Therefore, in light of the above analysis of precedent, we conclude that the evidence presented establishes that the preparation of the Respondent’s financial report submitted to the Charging Party<sup>14</sup> was not accomplished in a manner sufficient to meet the Board’s verification of expenditures requirement.<sup>15</sup>

We find here, consistent with the complaint allegation, that the information provided to the Charging Party was not verified and thus that the Respondent violated its duty of fair representation by not providing information sufficient to enable the Charging Party as an objector to

F.2d 678, 680–682 (1989), also cited approvingly in *Ferriso*, in which the Sixth Circuit found, in a public employee context, that *Hudson* did not mandate a union to utilize the highest level of auditing service to provide reliable information to nonmember objectors.

<sup>14</sup> The record does not reflect that any other identifiable unit employee filed a *Beck* objection and received inadequately verified information about the Respondent’s expenditures. To the contrary, as stated above, the General Counsel concedes in his brief that there were no other *Beck* objectors during the relevant period. Thus, consistent with our remedy with respect to the initiation fees violation, we will limit our remedy for the violation found here to the Charging Party only.

<sup>15</sup> We note, however, that *California Saw* does not mandate that an audit of expenditure information be provided in every instance. *California Saw* held that a union may utilize a “local presumption” in which no separate allocation of the union’s expenditures is performed but instead it is presumed, for accounting purposes, that the percentage of the local’s expenditures that is chargeable to objectors is at least as great as the percentage of its parent union’s expenditures that is chargeable. Although no independently verified information has to be provided concerning the local’s expenditures where the local presumption is utilized, there is no violation of the duty of fair representation because the parent organization’s major categories of expenditures, verified supporting expenditure information, and allocation between chargeable and nonchargeable expenditures is provided to the objectors. To the extent a nonmember at the objecting stage has doubts as to the accuracy of the financial information on which a “locally presumed” allocation of chargeable dues and fees is based, the objector may at a later stage challenge the figures used in computing the dues reduction, and the union bears the burden of proving that the local union’s expenditures are “chargeable to the degree asserted.” *California Saw*, 320 NLRB at 242, relying on *Price*, 927 F.2d at 93. However, in *California Saw*, the union involved did not avail itself of the local presumption, and the Board analyzed the sufficiency of the information provided to objectors under the verification requirement set forth therein. Similarly, in this case, because the Respondent did not rely on a local presumption and instead undertook to provide information concerning its expenditures, we have analyzed the sufficiency of the information provided under the verification requirement of *California Saw*.

determine whether to challenge the Respondent's dues-reduction calculations. However, it was not alleged, nor do we find, that the proportionate share charged the objecting nonmember was improperly calculated. To the contrary, although not verified, the proportionate share assessed the Charging Party may very well be accurate.<sup>16</sup> In any event, although a union must give objectors sufficient information to make a reasoned judgment whether to challenge the dues-reduction calculations, a union need not at the prechallenge stage, establish that its calculations are justified. That burden is created only if and after the objector files a challenge to the union's figures. See *Teamsters Local 443 (Connecticut Limousine Service)*, 324 NLRB 633, 634-635 (1997). Thus, although we will require the Respondent to provide to the Charging Party audited information or information supported by a local presumption to remedy the Respondent's failure to do so, we will not at this stage require the Respondent to refund any dues withheld based on the unverified expenditure information. If, based on the information received, the Charging Party determines that the dues charged him were improper, he may contest them in a challenge procedure where, as stated above, the Respondent bears the burden of proving the expenditures are chargeable to the degree asserted. *Id.*, citing *CWA Local 9403 (Pacific Bell)*, 322 NLRB 142, 144 (1996), *enfd. sub nom. Finerty v. NLRB*, 113 F.3d 1288 (D.C. Cir. 1997), *cert. denied* 552 U.S. 995 (1997).<sup>17</sup>

#### ORDER

The National Labor Relations Board orders that the Respondent, American Federation of Television and Recording Artists, Portland Local, Portland, Oregon, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Withholding in escrow any portion of Peter Weissbach's initiation fees which was exacted from him to pay for nonrepresentational activities.

(b) Providing to nonmember objectors expenditure information that is neither verified by an independent auditor nor supported by a local presumption.

(c) 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 designed to effectuate the policies of the Act.

(a) Reimburse, with interest, Peter Weissbach for any portion of any initiation fees paid by him after he filed his objection which was exacted from him for nonrepresentational purposes.

<sup>16</sup> See *Hohe v. Casey*, 956 F.2d 399, 415-416 (2d Cir. 1992).

<sup>17</sup> In Member Hurtgen's view, the challenge may be brought to the Board in the form of a charge and complaint. Chairman Truesdale and Members Fox and Liebman find it unnecessary to pass on this issue as it is not raised in this case.

(b) For all accounting periods covered by the complaint, provide Peter Weissbach with information concerning expenditures by the Respondent (or, in the event that the Respondent relies on a local presumption, expenditures by its parent union) that has been verified by an independent auditor. If Weissbach, with reasonable promptness after receiving this information, challenges the dues reduction calculation for any such accounting period, process such challenge, *nunc pro tunc*, as it would otherwise have done, in accordance with the principles of *California Saw & Knife*, 320 NLRB 224 (1995).

(c) Within 14 days after service by the Region, post at its offices in Portland, Oregon, copies of the attached notice marked "Appendix."<sup>18</sup> Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(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 that the Respondent has taken to comply.

MEMBER BRAME, dissenting.

I did not participate in the Board's *California Saw* decision<sup>1</sup> or subsequent cases applying the principles articulated in that case. I express no opinion as to the correctness of the Board's implementation of the Supreme Court's *Beck* decision<sup>2</sup> in those cases. However, without endorsing the rationale of *California Saw*, I agree with my colleagues that when a union demands that nonmembers pay dues pursuant to a union-security clause, Supreme Court and circuit court precedent mandates that sufficient information be provided to objecting nonmembers so that they can decide whether to challenge the amount of dues assessed them.<sup>3</sup> Accepting my col-

<sup>18</sup> 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."

<sup>1</sup> *California Saw & Knife Works*, 320 NLRB 224 (1995), *enfd. sub nom. International Association of Machinists & Aerospace Workers v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), *cert. denied sub nom. Strang v. NLRB*, 525 U.S. 813 (1998).

<sup>2</sup> *Communication Workers of America v. Beck*, 487 U.S. 735 (1988).

<sup>3</sup> *Chicago Teachers Union Local 1 v. Hudson*, 475 U.S. 292 (1986), cited in, e.g., *Ferriso v. NLRB*, 125 F.3d 865, 869 (D.C. Cir. 1997), and *Abrams v. Communications Workers of America*, 59 F.3d 1373, 1379 (D.C. Cir. 1995). As noted by the majority, an objector must be apprised of the percentage of reduction of dues and fees and the basis for the calculation. *California Saw* at 233. With respect to the latter, the Board recognized that under the Supreme Court's *Hudson* decision, adequate disclosure would include the major categories of expendi-

leagues' determination that this information must be audited in order to meet the verification requirement articulated in *California Saw*, I dispute their finding that a local exclusive collective-bargaining representative (local union) may satisfy its obligation through use of the "local presumption," in which the local union provides to objectors the required data by using financial information obtained from and pertaining to its national or international, rather than the local union itself. Such a tantalizing alternative to the more exacting, individualized verification requirements set forth in the majority opinion subverts the principles of *Beck* rooted in *Hudson* concerning an objector's ability to knowledgeably assess whether he has been charged dues and fees for only those activities germane to the union's role as collective-bargaining representative. Moreover, it offers no safe haven to any local union that relies on it.

Initially, I note that in addressing the issue of local presumption in this case my colleagues overreach. Here, the Respondent did not resort to the use of the local presumption in providing information to the objecting non-member Charging Party. Further, nowhere in the record did it argue that, had it done so, it would have fulfilled its obligation to provide sufficient information. To the contrary, the Respondent here undertook to provide detailed information to the Charging Party concerning its own expenditures. The majority nevertheless determined that the Respondent had not fulfilled its responsibilities under *California Saw* because, albeit detailed, this information was not verified by an independent audit of expenditures. However, although not raised by any party to this proceeding, my colleagues take it upon themselves to find that the Respondent had an alternative available, i.e., the use of the local presumption, which would allow it to fulfill its obligation to provide sufficient information while providing virtually no information whatsoever concerning its own expenditures. Moreover, the majority gives the Respondent another chance to avail itself of the local presumption in ordering that the Respondent remedy its failure to provide sufficient information by providing either audited information or information supported by a local presumption. In sum, in this context, I conclude that my colleagues have reached well beyond the facts of this case, the record, and the issues raised to provide the Respondent with an escape from the verification rule that they themselves have imposed.

More fundamentally, however, the majority's proposal does not in any manner comport with the fundamental purpose underlying *Beck* and *Hudson*'s disclosure requirements. The majority affirms that the fundamental purpose for making the disclosure is to furnish an objector with a reliable basis for calculating the fees he must pay sufficient to enable him to decide whether he wishes

to contest his assessed fees. In furtherance of this purpose, the majority has determined that the local union must provide verified information assuring a nonmember objector that "the expenses claimed were in fact made."<sup>4</sup> Yet, at the same time, the majority allows a local union to fulfill its obligation by providing *no* information at all concerning its actual expenditures.

Specifically, the majority's footnote 15 suggests that a local union may take the audited financial statement of its national or international, which is not the exclusive representative, and use the national or international's allocation between chargeable and nonchargeable expenditures as its own. In doing so, the majority is apparently assuming, without any support, that a local union's expenditures mirror those of its national or international, both typically and for each specific year. Alternatively, the majority is finding that local unions may use their national or international's allocation figures without regard to either whether there is any rational basis for assuming the national or international's allocation mirrors that of the local union, or the fact that the local and the national or international serve different roles in the union structure and typically perform quite dissimilar functions. In any event, a local union's adoption of its national or international's allocation as its own provides no information at all to the nonmember objector concerning the local union's allocation.

Further, concerning the expenditures themselves, the majority's endorsement of the use of the local presumption fails to recognize that, under *California Saw* and the majority decision here, the objector is entitled to verification "*to determine that the expenses claimed were in fact made* (emphasis added)."<sup>5</sup> Use of the local presumption would allow local unions to meet their obligation to provide objectors with verified information in order for the objectors to determine whether to challenge a local union's assessment without providing one shred of information concerning whether the local union in fact made any expenditures. If the stated purpose of the provision of information at this stage is to give an objector sufficient information to make an informed decision as to whether to challenge his assessment, the majority's alternative of local presumption falls woefully short of this stated objective.

Finally, as the majority acknowledges, should the objector decide to challenge the local union's assessment, the local union must bear the burden of establishing that its actual expenditures were chargeable to the extent asserted. The majority would have us believe that this makes the use of the local presumption benign because, if there are any problems with the locally presumed information, it would be remedied at the challenge stage

tures, as well as verification by an independent auditor. *California Saw* at fn. 83, quoting *Hudson*, supra, 292 fn. 18.

<sup>4</sup> This requirement, set forth in *California Saw* at 241, ultimately derives from *Chicago Teachers Union Local 1 v. Hudson*, 475 U.S. 292 (1986).

<sup>5</sup> *Id.*

when the local union must prove both the fact and the allocation of its expenditures. Such proof must be preceded by an independent examination of the local union's books and records at least as extensive as an audit, so this deferral of proof to the challenge stage merely postpones what may become inevitable under the majority's scenario. Faced with virtually no information concerning a local union's expenditures, an objecting nonmember would have no recourse short of challenging the "locally presumed" figures in order to get the information to which he was entitled concerning the local union's actual allocation and expenditures. Thus, objectors would inevitably become challengers, and local unions which saved the cost of providing verified figures to objectors must provide this verified information at the challenge stage. Any significant deviation between the actual and presumed allocation and expenditures would fuel the objectors' mistrust of their representative and produce more challenges. To the extent the locally presumed information overstated the local union's chargeable expenses, the antecedent notice would likewise be inadequate to serve its purpose and would put the local union back to where it was at the objection stage—obligated to provide required information concerning its own expenditures so objecting nonmembers could decide whether to file challenges. This certainly cannot be what the Supreme Court intended in *Beck* and *Hudson*.

APPENDIX  
NOTICE TO 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.

WE WILL NOT withhold in escrow any portion of the initiation fees paid by Peter Weissbach which was exacted from him to pay for nonrepresentational activities.

WE WILL NOT provide to nonmember objectors expenditure information that is neither verified by an independent auditor nor supported by a local presumption.

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 reimburse, with interest, Peter Weissbach for that portion of his initiation fees which was exacted from him for nonrepresentational activities.

WE WILL provide Peter Weissbach with information concerning our expenditures (or, in the event that we rely on a local presumption, expenditures by our parent union) that has been verified by an independent auditor.

AMERICAN FEDERATION OF  
TELEVISION AND RECORDING ARTISTS,  
PORTLAND LOCAL

*Dale B. Cubbison*, Esq. for the General Counsel.

*Gene Mechanic* and *Susan Dobrof*, of Portland, Oregon, for the Respondent.

*Steven J. Nemirow*, of Portland, Oregon, for the Charging Party.

DECISION  
STATEMENT OF THE CASE

DAVID G. HEILBRUN, Administrative Law Judge. These cases were tried at Portland, Oregon on December 13, 1990. The charges were filed by Peter Weissbach on October 23, 1989, and February 21, 1990, and the consolidated complaint was issued on July 12, 1990. The primary issue is whether American Federation of Television and Recording Artists, Portland Local, the Respondent, failed to accord lawful rights of financial core membership in violation of Section 8(b)(1)(A) of the National Labor Relations Act.

On the entire record, including my observation of the demeanor of witnesses, and after consideration of oral argument made by the General Counsel before the hearing closed and the authorized posthearing brief filed by Respondent,<sup>1</sup> I make the following

FINDINGS OF FACT  
I. JURISDICTION

This case associates to KGW Radio, an Oregon corporation engaged at Portland in the business of radio broadcasting. Over representative and material 12-month periods KGW Radio has had gross revenue in excess of \$500,000, while purchasing and receiving goods and materials valued in excess of \$50,000 at its Portland, Oregon facilities directly from sources outside Oregon, or from suppliers within the State which in turn obtained them directly from outside Oregon.

On these admitted facts I find that KGW Radio is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and as is further admitted, that Respondent is a labor organization within the meaning of Section 2(5). Such circumstances establish jurisdiction over Respondent for purposes of this proceeding under the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

*A. Case Context*

On June 29, 1988, the United States Supreme Court issued its decision in *Communications Workers v. Beck*, 487 U.S. 735 (1988). Drawing on analogous precedents as directly applicable to this case, *Beck* held that agency fees paid pursuant to a union-security agreement may not be expended over the nonmember payer's objection about activities of the labor organization that are unrelated to collective bargaining, contract administration, or grievance adjustment.

Respondent is a local affiliate of American Federation of Television and Recording Artists (AFTRA), which is headquar-

<sup>1</sup> Respondent filed supplemental and second supplemental posthearing briefs on April 1 and May 1, respectively. Such filings without a validating order are not authorized by the Board's Rules and Regulations; however I do not see any prejudice arising from these irregularities and do no more than record this observation.

tered in New York City. It presently represents approximately 350 members covered by collective-bargaining agreements with Portland area radio and television stations. The servicing of these agreements, and fulfillment of larger functions such as enforcing AFTRA broadcasting codes, organizing activity and general administration, is performed by full-time Executive Director Stuart Pemble-Belkin. He is assisted in his functioning by part-time employee Loraine Heuer, an office clerical and secretary whose weekly schedule can fluctuate as workload and budgetary factors dictate. The local typically has annual dues income of about \$100,000.

Following the *Beck* decision AFTRA established a national policy regarding dues objections, which developed definitions of "chargeable" employment related expenditures and "non-chargeable" expenditures. This written policy included a notification of rights to nonmember dues payers, creation of audit and accounting procedures, an entitlement of nonmembers to make objections, a basis for calculating reduced dues owed by objectors, and a dispute resolution procedure in terms of dollar amounts found to be involved. A separate and detailed audit protocol associated to this national policy exemplified (1) chargeable collective-bargaining (and related) types of activities and expenditures; (2) nonchargeable institutional or ideological matters; and (3) "mixed activities" which might or might not in whole or in part be chargeable under *Beck*. This final group of mixed activities included lobbying, which AFTRA defined as "designed to improve employee terms and conditions of employment." This protocol also created various forms for use by affiliated locals in the application of *Beck* to their activities, in express contemplation of audited summaries.

Peter Weissbach was employed as a talk show host by KGW Radio on August 21, 1989. Respondent was then party to a 3-year collective-bargaining agreement with KGW Radio which was effective until July 1, 1991. The bargaining unit for which Respondent was exclusive representative included Weissbach's occupation, and a union-security clause with standard phraseology required that he become and remain a union member in good standing by the 30th day of his employment. Over the course of several months following this Weissbach and Respondent exchanged correspondence concerning his desire, as stated in an originating letter dated September 7, 1989, to pay union dues only in proportion to Respondent's *Beck*-sanctioned services. The upshot of this correspondence, and actions taken between the parties as dealings extending into early 1990, was that Weissbach was provided an annual schedule of final expenses for a year ending December 31, 1989. Soon thereafter he made a two-part payment of financial core dues, covering a time period commencing generally with the end of his grace period under the union-security clause following employment and the end of a dues year later in 1990. A separately assessed and paid initiation fee of \$350 has been retained by Respondent in an escrow account.

#### Accounting Matters

##### 1. National office

The most recent accounting report entered into evidence respecting AFTRA was a schedule of fund expenses allocated between chargeable and nonchargeable character for the 6-month period ending April 30, 1989. As performed by New York City CPA firm, Weber Lipshie & Co., this schedule of more than \$82 million in total AFTRA outlays resulted in a tabulation of 85.37 percent as chargeable expenses and 14.63

percent as nonchargeable. Several notes were appended to the schedule. The first was a one-page summary of "significant accounting policies" which described the handling of depreciation and amortization, certain specific subjects such as treatment of income taxes, severance pay and leases, plus comment on AFTRA's fundamental cash basis of accounting.

A second note to the schedule set forth definitions that had guided the audit. As appearing verbatim in the schedule these read:

Chargeable expenses are those incurred by [AFTRA] that relate to expenditures for those activities undertaken by [AFTRA] to advance the employment-related interest of the employees it represents. These "chargeable" expenditures include, but are not limited to the following expenses related to negotiations with employers; enforcing collective bargaining agreements; informal meetings with employer representatives; member and staff committee meetings concerned with matters relating to employment practices and/or collective bargaining provisions; discussions of work-related issues with employers; handling employees' work-related problems through grievance and arbitration procedures, administrative agencies or informal meetings; lobbying with respect to matters related to conditions of employment; union administration and litigation relating to any of the above.

Nonchargeable expenses are those expenditures which are spent for: Community services; lobbying which benefits represented employees as citizens rather than as workers; cost of affiliations with non-AFTRA organizations; support of political candidates who are favorably disposed to interest of represented employees; recruitment or members to the union; members-only benefits.

The third note to the schedule briefly described the "significant factors and assumptions" used in the allocating between chargeable and nonchargeable expenses. Here 14 categories of AFTRA outlays were covered which spanned subjects, or groupings of subjects, from the largest at "salaries, payroll taxes and employee benefit programs" of nearly \$1 million to a final and relatively insignificant \$2736 for interest. Illustratively the salaries, etc. category was allocated based on time as spent by personnel, with the compensation paid to "assistants and clerical personnel" of AFTRA allocated in the same percentage as their supervisors. Each of the remaining thirteen subjects had comment relating it to *Beck* principles.

The transmittal letter dated June 20, 1989, which accompanied this schedule advised AFTRA that the audited schedule was produced "in accordance with generally accepted *accounting standards*," however this was not to be taken as meaning that it presented fund expenses "in conformity with generally accepted *accounting principles*" because of the client's cash basis of operating (emphasis added). Doug Philips, a managing partner of Weber Lipshie, testified that the schedule and allocation of fund expenses provided to AFTRA was done as an "audit," because this was the same "level of accountant's report as represented by its basic financial statements.

##### 2. Portland local

Dennis Berggren is a licensed accountant with the Portland area firm of Henness & Berggren, and has provided professional accounting work to Respondent for about 3 years. Berggren's usual services have been the organization's year-end financial report, its LM-2 for the U.S. Department of La-

bor, and a “990” for the Internal Revenue Service. His accounting work for Respondent expanded in mid-1989, when he prepared for the first time a “core report” covering the 6 months ending June 30, 1989.

Berggren testified that he initially consulted material from the National AFTRA office on the way of preparing a core report, and then also referred to the recently produced schedule of Weber Lipshie. This gave him the 85 plus percent/14 plus percent allocation for per capita AFTRA remittancing, plus guidance on classifying other categories of expenditure as between chargeable and nonchargeable.

As Weber Lipshie had done Berggren appended a series of notes to his first core report for Respondent. Each of his three notes correspond as to heading with Weber Lipshie’s. However except for note two they were more limited in scope. The summary of significant accounting policies only treated income taxes, Respondent’s cash basis of accounting and depreciation, while note three as significant factors and assumptions used in the allocation set forth only nine items. The statement of definitions under note two was identical to its counterpart for the National AFTRA schedule.

Berggren subsequently prepared a core report for calendar year 1989. He testified that this was preceded by his accountability function of creating a general ledger from all checks issued, and obtaining computer generated categories for all of Respondent’s annual expenditures. After a further banking reconciliation the full 1989 core report was compiled in much the same format as before. Berggren determined the principal item of salary allocation from weekly time records prepared by Pemble-Belkin. In these chargeable versus nonchargeable time was segregated, including instance by instance labeling of sporadic “other” activities as a workweek breakdown by hours. Here a 94.4-percent portion resulted, and this same percentage was applied to the *salary* of Heuer to establish the allocation pertinent to her work as Respondent’s sole clerical employee. The total of all 20 expense categories in this year end core report showed chargeable expenses as 88.37 percent of Respondent’s overall function. The transmittal of this core report for 1989 was made by letter dated May 31, 1990, in which Evenness & Berggren expressly advised that their work did not constitute an audit nor an opinion or assurance regarding the financial representations of management. Further, they stated that the schedule so transmitted was not intended to present fund expenses in conformity with generally accepted accounting principles, by reason of Respondent operating essentially “on a cash receipts and disbursements basis.”

Having examined this full year core report, and a related compilation report covering Respondent’s revenue, expense, and fund balance change for calendar year 1989, Philips testified that Berggren’s work was reasonably done. Philips held such opinion because the unverified data provided Berggren by Respondent resulted in the same accounting “level” as traditionally used for the Portland Local’s basic and recurring financial reports, and those of a governmentally required nature.

#### Issues

As framed by the consolidated complaint there are three specific issues involved in the case. While Weissbach alone is the Charging Party these substantive issues are claimedly of general application to “other objectors . . . other nonmembers . . . and financial core members.”

The first issue is a three-part proposition of whether Respondent failed in a *Beck*-mandated duty to institute proper procedures for dues objectors, failed to provide notification of the right to so object, and failed to establish a procedure whereby allocations and calculations could be challenged.

The second issue is whether lobbying expenditures, or the potential for lobbying expenditures, may be chargeable or potentially chargeable to the dues of an objecting financial core member.

The third issue is whether the allocation information furnished to an objecting financial core member need be audited, and thus independently verified, by an accounting firm in conformity with generally accepted accounting principles.

#### Discussion

The *Beck* case followed a grant of certiorari, made expressly to resolve decisional conflicts between the circuits on “the important question” involved. In then rendering its decision the court first disposed of points regarding NLRA preemption, the authority of federal courts to rule in dues-objection cases on grounds of the judicially created fair representation duty, and the extent, if at all, that First Amendment rights might successfully be invoked.

Drawing from only one small part of the court’s total analysis regarding jurisdictional questions, it was clearly enough held that federal courts may pass, notwithstanding *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959), on a dues-objection claim grounded in Section 8(a)(3) where that statutory provision of the NLRA emerges as a collateral issue to the independent basis for relief. Having thus qualified NLRA precepts as part of its rationale, the court revisited *Machinists v. Street*, 367 U.S. 740 (1961), and *Ellis v. Railway Clerks*, 466 U.S. 435 (1984), concluding in the process that similarities between Section 2, Eleventh of the Railway Labor Act and Section 8(a)(3) itself revealed a congressional intent that the same meaning was to be taken from these comparative provisions of the two statutes. The *Beck* opinion also analyzed legislative history on, the matter of compulsory unionism and the related “free rider” issue as a traditional component of voluntary unionism in a narrow and, for purposes of this case, most applicable sense. The Court cast its question as whether financial core members are required by their obligatory payment of dues to support union activities beyond those germane to collective-bargaining, contract administration, and grievance adjustment; saying in terse answer to this question that they need not. In a conclusionary passage of *Beck*’s majority opinion, the Court viewed Section 8(a)(3) as authorizing only the exemption of fees and dues necessary to “performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.” *Beck* at 762–763.

The statutory provision on which the General Counsel grounds the consolidated complaint here is Section 8(b)(1)(A). While Section 8(b)(1)(A) does not have express treatment in *Beck*, it was not merely the emergence of the collateral unfair labor practice issue but also that the appealing union was seeking to defend themselves on NLRA grounds that influenced the Court’s holding. Specifically the Court found Federal jurisdiction to decide an interpretive question under Section 8(a)(3) because of the actionable duty of fair representation claim underlying the *Beck* proceedings. This interplay is sufficient to look to *Beck*, and the authorities relating thereto, for clues

about how issues relating to activities of this small, modestly budgeted local union fits into the large picture.

The clues are sparse at best. As an instance of non-Board litigation *Beck* is grandiose in sweep and light in details of application. My one point of departure is reference to “labor management issues,” this seemingly a broader notion than “collective bargaining” as coupled with contract administration grounded in negotiated language and grievance adjustment, a phenomenon of workplace dispute resolution even narrower in its operation. I also observe that in the first of two underlying decisions by the Court of Appeals, Fourth Circuit, a disallowed category of expenditure was “lobbying efforts” on behalf, for instance, of the Panama Canal Treaty and Equal Rights Amendment; this category having been classified by the union as “labor legislation.” *Beck v. Communications Workers of America (C.W.A.)*, 776 F.2d 1187, 1210–1211 (1985).

From a separate source, and notwithstanding that it appears in a dissent, I note the scenario drawn by Justice Whittaker in *Street*, supra at 780, wherein imagined dues remittance and objector configurations could lead to “onerous and impractical” remedies stemming from “problems” of accounting and proof. In a case of comparable vintage to *Street*, involving too the same railroad industry, a Supreme Court opinion in another dues objection case noted that “[a]bsolute precision in the calculation of such proportion is not, of course, to be expected or required; we are mindful of the difficult accounting problems that may arise.” *Railway Clerks v. Allen*, 373 U.S. 113, 122 (1963). In still another dues protest case the *Allen* decision has recently been cited with approval as a longstanding precedent under the Railway Labor Act for the proposition that unions may not force nonmembers to support ideological or political causes. *Dean v. Transworld Airlines*, 924 F.2d 805 (9th Cir. 1991). Additionally *Service Employees Local 535 (North Bay Center)*, 287 NLRB 1223 (1988) is noted, a case where the Board adopted an administrative law judge decision rendered prior to, and with stated awareness of, the Supreme Court’s pending decision in *Beck* pursuant to its grant of certiorari. The pointed commentary in *Service Employees Local 535* was that restriction of agency fee amounts existed at that point in time only “under the RLA and in the public employment sector,” a proposition for which *Allen* was specifically cited.

To the extent dues-objection issues have appeared in public employment areas a lead case is *Chicano Teachers Union v. Hudson*, 475 U.S. 292 (1986). The opinion in *Hudson* drew its theoretical basis from *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), a case holding that nonunion employees of the public sector have a constitutional right to prevent a union from spending part of their required service fees in contribution to political candidates and political views unrelated to collective bargaining. From this point of departure the Court in *Hudson* dealt with the legal adequacy of procedures established in that public employment setting for objecting teachers to protest the handling of their dues. *Hudson* held that a valid procedure must minimize risk that dues might temporarily be used for impermissible purposes, that objectors have a clear statement of the basis for their proportionate share of collective-bargaining costs, and that disputes be amenable to prompt and fair resolution. In a sufficient sense of the word these procedural safeguards of *Hudson* are what paragraph 9(a) of the consolidated complaint alleges to be as one component of Respondent’s overall failure to meet a duty of fair representation.

Respecting methods and standards of accounting an issue found as part of the allegations contained in paragraph 9(b) of the consolidated complaint, both parties cite *Gwartz v. Ohio Education Association*, 887 F.2d 678 (6th Cir. 1989); *Andrews v. Education Association of Cheshire*, 829 F.2d 335 (2d Cir. 1987); and *Dashiell v. Montgomery County*, 134 LRRM 2242 (1990).<sup>2</sup> On the basis of these cases the verification process was characterized again as not requiring “absolute precision,” and the task of classifying expenditures as chargeable and non-chargeable was imposed on the union itself and not the authenticating accountant. *Andrews* further specifically held that the *Hudson* case should not be read to require that a union procedure for dues objections should not be constitutionally infirm simply because of not according the “least restrictive process imaginable” for mounting protest.

Against this decisional background two major points should be noted. First, this is not a public employee sector case, and second, this proceeding arises under the Board’s statutory jurisdiction to prevent unfair labor practices as contrasted with Federal Court litigation where powers and considerations of the forum are so much broader. In this sense I find no defect in Respondent’s dues protest procedure developed as it was in compliance with the voluntary policy devised by National AFTRA in late 1988.<sup>3</sup> The key definitions of chargeable versus nonchargeable are plainly tied to the respective phenomena of collective bargaining, or unrelated activity respectively. The forms and instructions show a sincerity of purpose in fulfilling fair proportioning, and the key factors of time breakdown as to Pemble-Belkin’s actual work are well documented and devoid of any claimed inaccuracy. The challenge procedure, even assuming its application in private sector employment, sufficiently establishes a basis to effectively object, particularly inasmuch as the respected American Arbitration Association is used in the resolution of challenges. Notably that organization has already established formal Rules for Impartial Determination of Union Fees, a valuable codification in dispute resolution, and comparable to the organization’s existing rules in other areas where it has traditionally functioned.

In the last analysis the question is whether a traditional standard of accounting practices must apply in the typical *Beck* situation. When deciding *Industrial Security Services*, 289 NLRB 459 (1988), the Board held an EAJA applicant to such a standard, for purposes of determining eligibility relative to net worth. This rationale, applicable for statutory and technical reasons, is in stark contrast to the *Beck*-type disclosures that could conceivably arise in many thousands of individual situations among the nationally spread, unionized work force. A dissenting member simply found such a holding too strict and “inconsistent with the intent of Congress,” however more significantly the Board majority expressed its intention not to be “harsh,” and held open that only “accurate and properly authenticated” financial data was the real standard in satisfying a burden of proof. Taking this thinking into account, and the *Allen*

<sup>2</sup> This decision by a Federal District Court was affirmed at 925 F.2d 750 (4th Cir. 1991).

<sup>3</sup> Respondent contends in its brief that the General Counsel failed to prove nonreceipt of the AFTRA policy as set forth in the fall issue of its national magazine. On the contrary Pemble-Belkin conceded that the magazine would not have been furnished to Weissbach during the first 30 days of his employment, a period within which his initiating protest was made. I see no further significance to this point other than to correct Respondent’s inaccurate claim.

observation against requiring “absolute precision,” I conclude that not only were Respondent’s *Beck*-responsive policies and procedures appropriate compliance with the law, but that the compilation accounting report was sufficient to meet policy objectives of the law.

As to lobbying expenses the issue is moot in the first instance. However beyond that, Respondent has anticipated a mixed feature to the generic subject of lobbying by labor organizations, and for this reason is geared to set forth a breakdown of lobbying expenses should they occur. The case law plainly and predictably excludes ideological and political causes from what financial core members can be required to support; however, there remain areas in which lobbying efforts could have a clear and direct relationship to a represented bargaining unit. This is most evident with regard to minimum wage increase legislation, as done from time to time under the Fair Labor Standards Act. Here any increase in legally required minimum compensation has the indirect result of lifting the absolute wage floor of a bargaining unit, and at least narrowing any gap between what is legally required and what is being sought through collective bargaining.

The General Counsel amended out the word “nonrepresentational” from paragraph 9(b)(i) of the consolidated complaint, and thus harmonized its contention that lobbying expenditures by their very nature were nonchargeable and improper under *Beck*. Because of the mootness involved, but more importantly because in my view a lobbying expense could relate to “labor-management issues” affecting a bargaining unit, I conclude that no violation has occurred in terms of this subject.

A further issue concerns the manner of Berggren’s accounting services. He was not asked, the cases do not require, and his profession does not equip him to apportion the outlays of his client between matters fitting either the chargeable or nonchargeable definitions he inherited from National AFTRA. The disclaimer of having “audit[ed]” Respondent for its allocations is but an instance of how the highest level of accountancy is not required. It must be remembered here that, as Berggren and Philips both effectively testified, even an accountant’s compilation is not done without the acceptance of a reasonable degree of awareness and diligence with respect to accuracy. The American Institute of Certified Public Accountants (AICPA) maintains “compilation and review standards” under which the responsibility of an accountant is judged when “associated with financial statements that are not audited.” These are specifically intended to apply in situations where the accountant merely assists in the client’s preparation of financial statements, “without giving any assistance about them (i.e., compilation services).” Arens and Loebbecke, “Auditing: An Integrated Approach,” 2d Edition (1980) Prentice-Hall, Inc. I also note *Tama Meat Packing Corp.*, 291 NLRB 657 (1988), in which, relative to issues under Section 8(a)(5) of the Act, the Board held that an inspection of financial records by procedures “less comprehensive than an AICPA audit” was warranted. Significantly, too, the Board noted the exorbitant cost that would have applied had a local union been required to pay for a full audit, the high-

est of three recognized modes of financial reporting by professional accountants.

The only untreated portion of the consolidated complaint’s operative paragraph 9 is its subparagraph (c), in which Respondent’s claimed failure to reduce Weissbach’s “initiation fees (and dues)” is alleged to be a violation. This allegation provides the basis to treat the escrowing of Weissbach’s \$350 initiation fee, an amount long since paid in and initially claimed by Respondent to be unapportionable. The fact that this amount remains in escrow long after Berggren’s 1989 report established the 88 +/11 + allocation breakdown is not explained. I conclude that Respondent’s failure to refund the proportionable amount of Weissbach’s initiation fee is a sufficient flaw to require a finding of unfair labor practices in that limited regard.

As to Respondent’s affirmative defense contending that Weissbach has not exhausted internal remedies of the AFTRA policy, I see no basis to apply a deferral principle in such regard. As a private individual Weissbach is not positioned comparably with parties to a collective-bargaining relationship, the instance in which deferral from a statutory procedure usually arises. On this basis I reject Respondent’s amended affirmative defense.

#### REMEDY

Having found that Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of the Act, I shall recommend that it cease and desist therefrom and that it take certain action designed to effectuate the policies of the Act.

In remedy of the violation of Section 8(b)(1)(a) of the Act, I shall recommend that Respondent refund, with interest, the proportionate amount of Weissbach’s initiation fee that has been withheld from him as an escrowed amount. Such reimbursement shall be in accordance with an interest computation done in the manner prescribed by *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The General Counsel has requested a remedy running to persons other than Weissbach. I see no basis to broaden the scope of this proceeding beyond Weissbach’s own individual dues protest. Accordingly, I deny the General Counsel’s request to include other “similarly situated” individuals.

#### CONCLUSIONS OF LAW

1. KGW Radio is an employer within the meaning of Section 2(2), (6), and (7) of the Act.
2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has violated Section 8(b)(1)(A) of the Act by unlawfully withholding the entire initiation fee paid by Weissbach, including that portion paid by him which is not chargeable as an expenditure for collective-bargaining purposes.
4. Respondent has not violated the Act in any other regard.  
[Recommended Order omitted from publication.]