

**United Steelworkers and Steelworkers Local 4800  
(George E. Failing Co.) and Donald F. Hughes.**  
Cases 17–CB–3803 and 17–CB–4080

September 17, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN  
AND HURTGEN

On March 12, 1993, Administrative Law Judge Robert W. Leiner issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs. The Respondents, United Steelworkers and Steelworkers Local 4800, filed an answering brief in support of the judge's decision.

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

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, and conclusions only to the extent consistent with this Decision and Order.

I. BACKGROUND

The parties have stipulated that the Respondents have established and maintained a procedure implementing employee rights under *Communications Workers v. Beck*, 487 U.S. 735 (1988). The procedure provides for annual notice to bargaining unit employees of their right under *Beck* to object to the Respondents' expenditure of funds collected under a union-security agreement on activities unrelated to collective bargaining, contract administration, or grievance adjustment. This *Beck* notice is contained in the January/February issue of the Respondents' publication, *Steelabor*, which is mailed to all bargaining unit employees.

The Respondents' *Beck* procedure requires that nonmember employees who wish to file a *Beck* objection must do so within a window period of the first 30 days following an objector's initial date of hire, or during the first 30 days following an anniversary date of such hiring. Effective January 14, 1992, the Respondents' procedure was amended to provide that a *Beck* objection must be filed "during the first thirty days following the individual's initial date of hire into the [bargaining] unit or an anniversary date of such hiring; provided, however, that if the individual lacked knowledge of this Procedure, the individual shall have a 30 day period commencing on the date the individual became aware of the Procedure to perfect a notice of objection."

The General Counsel alleges that the Respondents' *Beck* procedure unlawfully fails to provide notice of *Beck* rights—apart from its annual publication notice—to two groups of nonmember employees: (1) employees when they resign their union membership; and (2) employees when they are rehired by the Employer and choose not to join the Union. The General Counsel further alleges that the Respondents' *Beck* procedure unlawfully fails to

grant these two groups of nonmember employees a separate window period for the filing of *Beck* objections.

The judge dismissed these complaint allegations, finding that the record was devoid of evidence that any rehired or newly resigned employee had failed to receive notice of *Beck* rights via the publication *Steelabor*. In the absence of any affected employees, the judge additionally found it unnecessary to decide whether rehired employees and newly resigned employees must be granted a separate window period for the filing of *Beck* objections.

Our decision in *California Saw & Knife Works*,<sup>1</sup> which set forth a union's obligations under the duty of fair representation vis-à-vis *Beck* rights, issued after the judge's decision in this case. In light of *California Saw & Knife Works*, we find that the Respondents' *Beck* procedure unlawfully fails to provide a separate window period during which employees who resign their union membership may file objections. See *Polymark Corp.*, 329 NLRB No. 7 (1999). We further find that the remaining complaint allegations lack merit, and we shall dismiss them.

II. THE BOARD'S DECISION IN *CALIFORNIA SAW  
& KNIFE WORKS*

A. *Notice of Beck Rights*

In *Communications Workers v. Beck*, supra, the Supreme Court held that the National Labor Relations Act does not permit a collective-bargaining representative, over the objection of dues-paying nonmember employees, to expend funds collected under a union-security agreement on activities unrelated to collective bargaining, contract administration, or grievance adjustment.<sup>2</sup> In *California Saw & Knife Works*, supra, the Board found that the union violated its duty of fair representation by failing to provide notice of *Beck* rights to unit employees covered by a union-security agreement who were not members of the union. 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.[<sup>3</sup>]

<sup>1</sup> 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).

<sup>2</sup> 487 U.S. at 752–754.

<sup>3</sup> *California Saw & Knife Works*, supra at 233.

The Board further found, however, that a union does not have an obligation under the duty of fair representation to issue an additional notice of *Beck* rights to employees at the time they resign their union membership. The Board reasoned that such an additional notice at the time of resignation was unnecessary because all unit employees will have received notice of their *Beck* rights at least once prior to the time of their resignation, pursuant to the rules set forth in *California Saw & Knife*.<sup>4</sup> As the Board has stated, the *Beck* “notice requirement is satisfied by giving the unit employee notice once and is not a continuing requirement.”<sup>5</sup>

The Board explained that these notice requirements furnish significant protection to the interests of the individual nonmember unit employee vis-à-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 that a union is afforded a wide range of reasonableness under the duty of fair representation in satisfying its notice obligation. “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.”<sup>6</sup>

#### B. Window Period Requirement to File *Beck* Objections

The Board in *California Saw & Knife Works* additionally found unlawful the requirement that *Beck* objections be filed during a window period, solely as applied to employees who resign their membership following the expiration of the window period. The Board held:

A unit employee may exercise *Beck* rights only when he or she is not a member of the union. An employee who resigns union membership outside the window period is thereafter effectively compelled to continue to pay full dues even though no longer a union member, and the window period in this circumstance operates as an arbitrary restriction on the right to refrain from union membership and from supporting nonrepresentational expenditures. In light of our duty to uphold the fundamental labor policy of “voluntary unionism” . . . we agree with the judge that the January window period, as applied solely to employees who resign their union membership after the expiration of the window period, con-

stitutes arbitrary conduct violative of the [union’s] duty of fair representation.[<sup>7</sup>]

The Board clarified that the General Counsel had not alleged the window period for filing objections to be unlawful, other than in the limited circumstance involving resignees, and the Board indeed noted that several courts have found permissible the use of a window period for filing objections under public sector labor law, the Railway Labor Act, and the National Labor Relations Act.<sup>8</sup>

### III. THE COMPLAINT ALLEGATIONS

#### A. Newly Resigned Employees

We shall dismiss the complaint allegation that the Respondents’ *Beck* procedure unlawfully fails to provide notice of *Beck* rights to employees when they resign their union membership. As set forth above, the Board specifically held in *California Saw & Knife Works* that a union’s duty of fair representation does not require the provision of *Beck* notice at the time of resignation from the union. Further, the record evidence establishes that the Respondents took reasonable efforts through its annual publication to apprise all bargaining unit employees of their *Beck* rights and the Respondents’ procedures for invoking their rights.

The Board in *California Saw* and *Polymark Corp.* did find unlawful, however, that portion of a union’s *Beck* procedure which—as in this case—failed to grant employees who resign their union membership a separate window period following resignation in which to file a *Beck* objection.<sup>9</sup> We accordingly find the requirement set forth in the Respondents’ *Beck* procedure that objections be filed during a window period to be unlawful *solely* with respect to its failure to grant employees who resign their union membership a separate window period following resignation in which to file a *Beck* objection. We note that the complaint alleges the window period to be unlawful on its face with respect to resignees, and our unfair labor practice finding is accordingly not precluded by the absence of record evidence that any employee resigned union membership during the time period covered by the complaint.

#### B. Rehired Employees

The complaint additionally alleges that the Respondents’ *Beck* procedure unlawfully fails to grant employ-

<sup>4</sup> Id., 320 NLRB at 235.

<sup>5</sup> *Paperworkers Local 1033 (Weyerhaeuser Paper Co.)*, 320 NLRB 349, 350 (1995), enf. denied in part sub nom. *Buzenius v. NLRB*, 124 F.3d 788 (6th Cir. 1997), vacated mem. 525 U.S. 979 (1998).

Member Hurtgen does not pass on whether a union can satisfy its “duty of fair representation” obligations by giving *Beck* notice only once. See *California Saw*, fn. 41. In this regard, he notes that the respondent here gives annual notices.

<sup>6</sup> *California Saw & Knife Works*, 320 NLRB at 233.

<sup>7</sup> Id., 320 NLRB at 236. A Board majority has reaffirmed this holding in *Polymark Corp.*, supra, slip op. at 3–4.

<sup>8</sup> *California Saw & Knife Works*, supra at 236 (citations omitted).

<sup>9</sup> As the Board majority noted in *Polymark*, supra, slip op. at 4, fn. 9, although the Seventh Circuit held in favor of a union with respect to the enforceability of a similar window period in *Nielsen v. Machinists Local 2569*, 94 F.3d 1107, 1116–1117 (1996), the Board was not a party to that proceeding. Further, the Seventh Circuit subsequently deferred to the Board’s administrative expertise and specifically enforced as a reasonable statutory interpretation the finding of a window period violation in *California Saw*, 133 F.3d at 1017–1019.

ees rehired by the Employer, and who choose not to join the Union at that time, a separate window period for the filing of *Beck* objections. As set forth above, the procedure for invoking *Beck* rights provides a window period for the filing of objections during the first 30 days following the individual's "initial date of hire into the [bargaining] unit or an anniversary date of such hiring." We are faced with the question whether the clause is so clear as to preclude ambiguity as to its meaning.

The starting point for such an interpretation is that an unlawful construction will not be presumed. Thus, in *NLRB v. New Syndicate Co.*, 365 U.S. 695, 699–700 (1961), the Supreme Court stated that "we will not assume that unions and employers will violate [a] federal law . . . . As stated by the Court of Appeals, 'In the absence of provisions calling explicitly for illegal conduct, the contract cannot be held illegal because it failed affirmatively to disclaim all illegal objectives.'" It is also well settled that "in contract interpretation matters, the parties' intent underlying the language of the contract is always paramount. . . . To determine that intent, the Board will look to both the contract language and relevant extrinsic evidence." *Lear Siegler*, 293 NLRB 446, 447 (1989).<sup>10</sup>

This analytical framework is useful by way of analogy in our disposition of the window period allegation as to rehired employees. The clause is susceptible of being lawfully interpreted to mean that a newly rehired employee is granted a new window period commencing on the date of rehire, and on the anniversary date of his or her rehire. The General Counsel has introduced no evidence that the Respondents intend the clause to be interpreted otherwise, or that they have applied the clause to deny a new window period to any rehired employee. Being susceptible of this lawful interpretation, and absent evidence that the provision was unlawfully applied as to rehired employees, we find that the Respondent has not unlawfully failed to grant newly rehired employees, who choose not to join the union, a separate window period for the filing of *Beck* objections. Under the principles set forth above, the General Counsel has not met his burden to establish that the clause is unlawful on its face as applied to rehired employees.

The General Counsel also alleges that the Respondents fail to provide notice of *Beck* rights to employees when

<sup>10</sup> See also *Painters District Council 51 (Manganaro Corp., Maryland)*, 321 NLRB 158, 161 (1996), quoting *Teamsters Local 982 (J. K. Barker Trucking Co.)*, 181 NLRB 515, 517 (1970), *affd.* 450 F.2d 1322 (D.C. Cir. 1971) ("[I]f the meaning of the clause is clear, the Board will determine forthwith its validity under [Sec.] 8(e); and where the clause is not clearly unlawful on its face, the Board will interpret it to require no more than what is allowed by law. On the other hand, if the clause is ambiguous, the Board will not presume unlawfulness, but will consider extrinsic evidence to determine whether the clause was intended to be administered in a lawful or unlawful manner. In the absence of such evidence, the Board will refuse to pass on the validity of the clause." [Footnotes omitted].)

they are rehired by the Employer. As discussed above in connection with the window period, the evidence does not establish that under the Respondents' procedures rehires would not be treated as "initial" hires. Further, there is no contention that "initial" hires do not receive the required *Beck* notice. Accordingly, we find that the General Counsel has not shown that rehires would not, under Respondents' procedures, receive notice of their *Beck* rights at the time of their rehire. Therefore, we shall dismiss this allegation.<sup>11</sup>

#### CONCLUSIONS OF LAW

1. George E. Failing Co. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondents United Steelworkers and Steelworkers Local 4800 are labor organizations within the meaning of Section 2(5) of the Act.

3. By maintaining that portion of their *Beck* procedure which prevents employees who have resigned from the Union from filing a *Beck* objection within a reasonable period after their union resignation, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

4. The Respondents have not otherwise violated the Act as alleged in the complaint.

#### REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondents to amend their *Beck* procedure to make it clear that bargaining unit employees who have resigned from the Union may file objections to the collection of fees for nonrepresentational expenses at any time, or, at the option of the Union, within a reasonable period specifically designated in the *Beck* procedure and not to be less than 30 days, after the resignation is submitted.

#### ORDER

The National Labor Relations Board Orders that the Respondents, United Steelworkers and Steelworkers Local 4800, respectively located in Pittsburgh, Pennsylvania, and Enid, Oklahoma, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Maintaining that portion of their *Beck* procedure which prevents employees who have resigned from the

<sup>11</sup> We shall likewise dismiss the complaint allegation that the Respondents violated Sec. 8(b)(2) of the Act by attempting to cause and causing the Employer to discriminate against its employees in violation of Sec. 8(a)(3) of the Act. The record contains no evidence that the Respondents requested the Employer to terminate any employee pursuant to the union-security clause.

Union from filing a *Beck* objection within a reasonable period after their union resignation.

(b) 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) Amend their *Beck* procedure to make it clear that bargaining unit members who have resigned from the Union may file objections to the collection of fees for nonrepresentational expenses at any time, or, at the option of the Union, within a reasonable period specifically designated in the *Beck* procedure and not to be less than 30 days, after the resignation is submitted.

(b) Within 14 days after service by the Region, post at their business office and meeting hall copies of the attached notice marked "Appendix."<sup>12</sup> Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondents' authorized representative, 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 and members 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 sufficient copies of this notice for posting by George E. Failing Company, if willing, at all locations where notices to George E. Failing Company's unit 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 Respondents have taken to comply.

MEMBER LIEBMAN, dissenting in part.

I join all parts of the majority decision but one. Contrary to the majority, I find that the requirement that *Beck*<sup>1</sup> objections be filed during a window period does not unreasonably restrict the right of employees to file *Beck* objections, and in no sense impairs their right to resign union membership. *Polymark Corp.*, 329 NLRB No. 7, slip op. at 5 (1999) (Members Fox and Liebman, dissenting). The Respondents allow members to resign union membership at any time. "The fact that an employee may have to wait some period of time after resigning from the union to obtain a reduction in the fees [he or she] is charged as a non-member may make resignation less *attractive* to the employee at that particular time, but that hardly means that the employee is in any

sense being compelled to remain a member of the union against [his or her] will." *Id.*, slip op. at 5. As the Seventh Circuit Court of Appeals has explained in holding that a union does not violate its duty of fair representation by requiring that *Beck* objections be filed during a window period, "[n]othing in the NLRA or in *Beck* confers a right to instantaneous action[.]" *Nielsen v. Machinists Local 2569*, 94 F.3d 1107, 1116 (7th Cir. 1996), cert. denied mem. 520 U.S. 1165 (1997). The window period at issue in this proceeding, in my view, "fall[s] within a generous range of reasonableness" (*id.* at 1117) afforded unions under the duty of fair representation. I would accordingly dismiss the complaint allegation that the window period is unlawful because it does not grant employees who resign their union membership a separate, new window period following resignation in which to file a *Beck* objection.

## APPENDIX

### 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.

WE WILL NOT maintain that portion of our *Beck* procedure which prevents employees who have resigned from the Union from filing a *Beck* objection within a reasonable period after their union resignation.

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

WE WILL amend our *Beck* procedure to make it clear that bargaining unit members who have resigned from the Union may file objections to the collection of fees for nonrepresentational expenses at any time, or, at the option of the Union, within a reasonable period specifically designated in the *Beck* procedure and not to be less than 30 days, after the resignation is submitted.

UNITED STEELWORKERS AND STEELWORKERS  
LOCAL 4800

*Francis A. Molenda, Esq.*, for the General Counsel.  
*Rudolph L. Milasich Jr., Esq.*, of Pittsburgh, Pennsylvania, for the Respondent-Union.  
*Hugh L. Reilly, Esq.*, of Springfield, Virginia, for the Charging Party.

## DECISION

### STATEMENT OF THE CASE

ROBERT W. LEINER, Administrative Law Judge. On January 2, 1990, Donald F. Hughes, the Charging Party, an employee of George E. Failing Company, Enid, Oklahoma, filed and served an unfair labor practice charge alleging violation of Section 8(b)(1)(A) and (2) of the Act against Respondents, United

<sup>12</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> 487 U.S. 735 (1988).

Steelworkers and Steelworkers Local 4800. On January 25, 1990, Hughes filed and served an amended charge in that case. Thereafter, on July 5, 1991, Hughes filed and served a further charge alleging violation of Section 8(b)(1)(A) and (2) against Respondents in Case 17-CB-4080.

On June 12, 1992, the General Counsel issued an order consolidating cases, consolidated complaint and a notice of hearing alleging violation of Section 8(b)(1)(A) and of the Act because Respondents, in substance, maintained an inadequate notification procedure of employee rights guaranteed under Section 8(a)(3) of the Act, as interpreted by the Supreme Court of the United States in *Communications Workers v. Beck*, 487 U.S. 735 (1988). On June 24, 1992, Respondents filed a timely answer, admitting certain allegations of the complaint, denying others, and denying that it committed the alleged violations of the Act.

Bearing date of December 9, 1992, counsel for the General Counsel submitted a motion, with notice to and agreement of all parties herein, to stipulate the record and submit same to the decision of an administrative law judge "in lieu of a formal hearing before an administrative law judge." Counsel for the General Counsel further requested that, upon the granting of the aforesaid motion, a date be set for the filing of briefs to the administrative law judge.

The chief administrative law judge having thereafter duly designated me as the administrative law judge in this matter, on December 16, 1992, I issued an order accepting the stipulation of facts, formal documents, and General Counsel's December 9, 1992 motion, together with any duly filed briefs, as the entire record in this matter, and further set a time for filing of briefs. Thereafter, all parties submitted briefs which have been duly considered.

On the entire record as defined above, including the briefs, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

#### The Employer Engaged in Commerce

The consolidated complaint alleges, the Respondents admit, and I find, that at all material times, the Employer, George E. Failing Company, a corporation, with an office and place of business in Enid, Oklahoma, has been engaged in the manufacture of drilling rigs. During the 12-month period ending May 31, 1992, the Employer, in the course and conduct of its business operations, sold and shipped from its Enid, Oklahoma facility products, goods, and materials valued in excess of \$50,000 directly to points outside the State of Oklahoma. As Respondents concede, I find that, at all material times, the Employer has been and is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

### II. RESPONDENTS AS STATUTORY LABOR ORGANIZATION

As Respondents concede, Respondents, and each of them, are now, and at all material times have been, labor organizations within the meaning of Section 2(5) of the Act.

### III. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. Admissions in the Pleadings and the Stipulation of Facts

The complaint alleges and Respondents admit that, at all times since April 7, 1955, pursuant to Section 9(a) of the Act,

Respondents jointly have been the exclusive collective-bargaining representative of all employees in the Employer in the following unit:

All production and maintenance employees employed by the Employer at its Enid, Oklahoma plant, including janitors and warehousemen; but excluding all office and clerical employees, Technical employees, cafeteria employees, field service men, service station attendants, guards and supervisors as defined in the Act.

The parties stipulated that, at all material times, Respondents United Steel Workers of America, and the Employer have maintained in effect and enforced a collective-bargaining agreement covering wages, hours, and other terms and conditions of employment of unit employees, described above, which agreement, in article I thereof, contains the following terms:

#### Section 7. Union Membership

a. All employees hired after the date of execution of this Agreement must, after a 60-day probationary period, become and remain members of the Union in good standing as a condition of employment.

b. It shall be a condition of employment that all employees of the Company covered by this Agreement, who are members of the Union in good standing on the effective date of this Agreement, shall remain members in good standing and those who are not members on the effective date of this Agreement shall, by the 60th day following the effective date of this Agreement, become and remain members in good standing in the Union.

c. The Company recognizes and will not interfere with the rights of its employees to become members of the Union. It is agreed that there would be no intimidation or coercion of employees for membership and the Company agrees that there shall be no discrimination against any employees because of membership in the Union.

#### B. The Beck Notification Procedure

The parties further stipulated that:

8. At all material times, Respondents have established and maintained a procedure whereby dues-paying non-member employees employed in the unit set out above . . . are annually notified of their right to object, pursuant to *C.W.A. v. Beck*, 487 U.S. 735 (1988), to Respondents' expenditure of funds collected pursuant to the section of the collective-bargaining agreement set out above in paragraph 7 on activities unrelated to collective-bargaining, contract administration or grievance adjustment.

9. The procedure of Respondents referred to above in paragraph 8 provided, from July 26, 1988, until it was amended on January 14, 1992, that nonmember employees objecting to Respondents' expenditure of funds on activities unrelated to collective-bargaining, contract administration or grievance adjustment must do so "during the first thirty days following the objector's initial date of hire into the USWA represented unit or during the first thirty days following an anniversary date of such hiring." Effective January 14, 1992, the procedure of Respondents referred to above in paragraph 8 provides that nonmember employees objecting to Respondents' expenditure of funds on activities unrelated to collective-bargaining, contract administration or grievance adjustment must do so "during the first thirty days following either the individual's initial date of hire into the

USWA represented unit or an anniversary date of such hiring; provided, however, that if the individual lacked knowledge of this Procedure, the individual shall have a 30 day period commencing on the date the individual became aware of the Procedure to perfect a notice of objection.”

10. The Jan./Feb. 1992 Edition of Steelabor was mailed to the home of each USWA member during the week of March 6, 1992, and that Edition contains at page 23 an article on the Procedure which quotes Paragraphs 1 and 2 of the Procedure in their entirety, which sets forth the reduction percentage, and which states that a detailed breakdown between representational and non-representational activities with a report by an independent auditor is available upon request.<sup>1</sup> The Jan./Feb. 1991 Edition of Steelabor contains a substantially similar article on the then existing Procedure and was mailed to the home of each USWA member during the 1st Quarter of 1991.

11. The Procedure was adopted initially by the USWA in late 1978 and was applied through December 16, 1986, to any USWA-represented person who objected to his or her dues monies being expended for partisan political or ideological expenditures not related to collective bargaining. On December 16, 1986, the Procedure was amended to require that an objector be a nonmember. Prior to July 26, 1988, the Procedure required that a notice of objection be made during the first 15 days following the objector's initial date of membership or during the first 15 days following an anniversary date of such membership.

12. [Omitted as irrelevant]

13. During the period covered by the Complaint and the Charges, no bargaining unit employee of the Employer has resigned membership in the USWA.

#### C. The Complaint

The complaint alleges the existence of Respondents' procedure of annually notifying dues-paying nonmember employees of their rights, pursuant to *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to the Respondents' expenditure of funds, collected from employees pursuant to the above union-security obligation, lawful under Section 8(a)(3) of the Act, on activities unrelated to collective bargaining, contract administration, or grievance adjustment, "unrelated objects." It

<sup>1</sup> The text of the amended procedure (amended January 14, 1992) is:

#### USWA PROCEDURE

1. Any individual, who is not a member of the United Steelworkers of America and who is required to pay dues to the United Steelworkers of America pursuant to a contractual union security arrangement but objects to supporting partisan political or ideological expenditures by the United Steelworkers of America which are not necessarily or reasonably ensured for the purpose of performing the duties of an exclusive collective bargaining representative, shall have the right upon perfecting a notice of objection to obtain an advance reduction of a portion of such individual's dues obligation commensurate with expenditures unrelated to collective bargaining as required by law.

2. To perfect a notice of objection, the individual must send an individually signed notice to the International Secretary-Treasurer during the first thirty days following either the individual's initial date of hire into the USWA represented unit or an anniversary date of such hiring; provided, however, that if the individual lacked knowledge of this Procedure, the individual became aware of the Procedure to perfect a notice of objection. Any objection thus perfected shall expire on the next succeeding hiring anniversary date unless renewed by a notice of objection perfected as specified above.

also alleges that, while this procedure also provides that non-member employees, making such objections, must do so within "the first 30 days following an objector's initial date of hire or during the first 30 days following an anniversary date of such hiring," the procedure is unlawfully deficient because it does not provide for a separate notice of a right to object and a separate opportunity to object to Respondents' expenditure of funds for unrelated objects when the employee is *rehired* (and chooses not to join Respondents) or when a member of Respondents *resigns* his union membership.

In short, therefore, the General Counsel alleges violation of Section 8(b)(1)(A) and (2) because Respondents' *Beck* non-member employee notification and objection procedures do not include, for rehired employees (rehires) and employee-members who resign union membership (resignees), two separate rights: a separate notice of right to object and a separate opportunity to object when the employee enters the classifications of "rehires" or "resignees."

#### D. The General Counsel's Argument

All parties agree that in *Communications Workers v. Beck*, supra, the Supreme Court held that the proviso to Section 8(a)(3) of the Act does not permit a union, over the objections of dues-paying nonmember employees, to expend funds collected pursuant to a union-security clause on activities unrelated to collective bargaining, contract administration, or grievance adjustment. For the Union to do so, it engages in activities which violates the Union duty of fair representation of nonmember employees.

The General Counsel issued the instant complaint pursuant to the "guidelines," issued by the Board's General Counsel, interpreting the *Beck* decision and its application to the National Labor Relations Act in the light of other Supreme Court and appellate court decisions. Those decisions principally involve the constitutional rights of public employees objecting to union expenditure of funds secured from the employees pursuant to the obligations imposed by union-security clauses,<sup>2</sup> or similar objections from employees under the Railway Labor Act.

The General Counsel's guidelines recognize that the Railway Labor Act is not necessarily on all fours with the National Labor Relations Act, and that cases involving public employees, decided on constitutional, rather than statutory grounds, may raise formidable distinctions. The General Counsel therefore concedes that the Board and Courts may ultimately hold that some of the requirements imposed by case law developed in the public and Railway Labor sectors do not apply to the private sector under the National Labor Relations Act. I shall, never-

<sup>2</sup> The General Counsel's brief, from time to time, asserts that the alleged violation of Sec. 8(b)(1)(A) and (2) of the Act here is due to Respondents' failure to observe, for rehires and resignees, the "crystal clear guidelines of the General Counsel which calls for a separate notice and opportunity to object." Indeed, the General Counsel asserts: "[T]hat simple directive has been ignored by the Respondents and constitutes the violation of these cases." While the Board's administrative law judges almost always find the General Counsel's legal opinions and arguments interesting, often cogent, and sometimes persuasive, we have never yet been urged to find a violation of the Act pursuant to the General Counsel's ipse dixit. Violations of the Act will be found not on the basis of Respondents' failure to comply with the General Counsel's guidelines or other opinion; rather, the violations, if any, will be found because the facts, as interpreted by the Board, constitute violations of the Act.

theless, assume, arguendo, that the Supreme Court's positions with regard to the objecting rights of employees employed in the public sector and under the Railway Labor Act, cited in the General Counsel's guidelines (attached to the General Counsel's brief here), apply absolutely to private sector employees whose rights are determined under the Act.

In particular, the General Counsel concedes that, since *Beck* involved *nonmember* employees who objected to the expenditure of funds for unrelated objects, the employee must be a *nonmember* of the union in order to qualify for *Beck* rights under the Act. There is also no dispute that employees employed under a union-security clause need not be "full union members" in order to retain employment under the obligations of union security. The Supreme Court has defined the obligation of compulsory "membership" for purposes of union-security obligations so that the employee can be required only to pay the usual initiation fees and dues to the union to comply with this statutory union security obligation. Actual "membership" in the union is not required. *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963).

It must be noted, in particular, that the General Counsel's complaint does not attack the quality of *Beck* information given annually by Respondents to nonmembers. The focus of the General Counsel's complaint is the failure to give further *notice* of *Beck* rights to the two classes of employees specified in the complaint (rehires and resignees) and the failure to give the special *opportunities to object* beyond the two 30-day periods specified in Respondents' procedure. The General Counsel takes the position that if the Union's procedure, as here, has a "time window" for filing objections, the time period must be "reasonable"; and that the rehires and resignees were not provided with reasonable filing periods in light of their special status.

The General Counsel's brief cites and relies on the following specific paragraph in the General Counsel's guideline, itself citing no case authority, to support the allegations of the complaint:

If a new employee (who is not a member) joins the unit after the notice or if a member resigns after the notice, a separate notice and opportunity to object must be given to these employees.

#### E. The Charging Party's Argument

The Charging Party, citing the formidable fiduciary relationship imposed on unions by the Act, asserts that the two classifications alleged in the complaint (rehires and resignees), by their very status, are "potential objectors" to union expenditure for unrelated objects; and that they, as "potential objectors," are not full, voluntary members of the union and are entitled to special *Beck* treatment: separate notification and objecting rights.<sup>3</sup>

<sup>3</sup> As above noted, the General Counsel's position, pursuant to the General Counsel's guidelines, is that in order to qualify for *Beck* rights, the employee must be a nonmember of the union (the General Counsel's guidelines, p. 2). While the Charging Party concedes that under *Kidwell v. Transportation Communications International Union*, 946 F.2d 283 (4th Cir. 1991), full members are not entitled to *Beck* protections it urges the Board not to adopt the *Kidwell* conclusions because in *Kidwell*, the employee relationship with the labor organization was voluntary membership and not compelled by a union-security clause under the National Labor Relations Act (C.P. Br. 10). As will be seen hereafter, it is unnecessary for me to reach or decide the question of

#### F. Respondents' Position

The Respondents argue, broadly, that the stipulated facts do not support a finding of restraint, coercion, or discrimination of rehires or resignees. In particular, there is no allegation that any employee was being coerced or restrained and, indeed, Respondents observe that during the period covered by the complaint and charges, no bargaining unit employee has resigned membership. Furthermore, Respondents argue that even assuming that the complaint alleges the violation of the duty of fair representation by maintaining a *Beck* procedure which does not allow members who resign to object outside the window period, the complaint must still be dismissed for failure of proof. Respondents urge that there are no facts in the record that any member has resigned membership; that essentially, the Board is being called upon to render an advisory opinion about a factual occurrence that has not taken place or may never take place; and that Respondents' *Beck* procedures for rehires and resignees are neither arbitrary, discriminatory, nor in bad faith.

#### Discussion and Conclusions

The complaint is concerned with two problems under *Beck* procedures: (1) the Respondents' obligation to give *notice* of *Beck* procedures to nonmembers; and (2) the limitations imposed on objecting nonmembers to the use of union security-imposed contributions for purposes "unrelated" to collective bargaining, contract administration, or grievance adjustment. The complaint relates the above two conditions to two classes of employees: (A) rehires and (B) resignees.

With regard to Respondents' obligation to notify nonmembers of their *Beck* rights, it is stipulated that Respondents' existing procedure is to *annually* notify dues-paying nonmember unit employees of their *Beck* rights. With regard to the rights of nonmember employees to *object* to the expenditure of funds on "unrelated activities," the stipulated facts show that from July 26, 1988, and thereafter, employees had two periods in which to object: during the first 30 days following the initial date of hire, or 30 days following the anniversary date of hiring.<sup>4</sup> In January 1992, a third 30-day window was added: employees who lacked knowledge of the right to object received a further 30-day period.

In addition, it was stipulated that in the first quarter of 1991 and again on or about March 6, 1992, all *union members* were notified of their *Beck* rights: both as to Respondents' obligation (1) to annually notify nonmembers of the right to object by filing a notice of objection; and (2) of the two (and then three) 30-day periods in which the objections must be filed.

In short, the record establishes that Respondents' procedure provides that all nonmembers, certainly since 1988, are annu-

whether *Beck* notification should be given to all represented employees, full members, core members, and nonmembers.

<sup>4</sup> As above noted, it is stipulated that Respondents annually notify dues paying nonmember employees of their *Beck* rights. The General Counsel does not attack this procedure as such. The record is barren of *when* that annual notification occurs. Furthermore, the stipulated facts appear to create a substantial ambiguity concerning a material fact: since nonmember-objecting employees, certainly since 1988, have had the right to object "during the first 30 days following the objector's initial date of hire" if the "annual notice" of *Beck* rights does not occur on the "initial date of hire," then this first of two periods, the right to object during the first 30 days after initial hire, would become illusory. It becomes illusory if the notification date were not coincidental with the initial date of hire. In view of the position I take in disposing of the case, the resolution of this matter is not necessary.

ally notified of their *Beck* rights to object and are provided with two 30-day (and after January 1992, a third 30-day) periods in which to perfect their objections to the Respondents' use of union-security obligated funds for unrelated objects. In addition, the record establishes that all unit union members employed in the first quarter of 1991 and on or about March 1992 received the same information supplied to nonmembers.<sup>5</sup>

Counsel for the General Counsel bases his argument on the unlawful inadequacy of Respondents' notification and objection procedures on Respondents' failure to "take into consideration the crystal clear guidelines of the General Counsel which call for a separate notice and opportunity to object whenever a new employee joined the unit or a member resigns from the union" (G.C. Br. 6). The General Counsel then states that "that simple directive has been ignored by the Respondents and constitutes the violation in these cases." The General Counsel's guidelines, however, provide only:

If a new employee (who was not a member) joins the unit after the notice or if a member resigns after the notice, a separate and opportunity to object must be given to these employees.

It is evident, on comparing this the General Counsel guideline position (unaccompanied by citation of authority) with the General Counsel's complaint here, that the *guideline* specifies, inter alia, that it is the classification of nonmember "new employee" who joins the unit (after the annual notice) who must be given both a separate notice and an opportunity to object. Similarly, the member who resigns after the notice allegedly must be given similar special treatment. The *complaint*, however, does not address the problem of the "new employee"; rather, the complaint alleges that these special *Beck* notification and objecting rights must be accorded to the class of employees who are "rehired" and choose not to join Respondents. While it is maybe reasonable to insist, as the guidelines insist, that a "new hire" (who is not already a member of the Union) who will become subject to the union-security clause following the 60th day of employment (coincidental to the ending of the 60-day probationary period) should be given notification of his *Beck* rights: that he may continue in employment without obligation to become a full union member, this may certainly not be the case with regard to "rehires." In the case of new hires, the General Counsel's guidelines may well address a problem (under the union-security obligation) which calls for immediate notification to the *newly hired* employee of his legal rights to avoid full union membership and to avoid paying full union dues to support political and other activities of the union unrelated to collective bargaining, contract administration, or grievance adjustment. In short, the General Counsel's *complaint* addresses the case of *rehires* whereas his legal support in the guidelines addresses *new hires* a classification far different than "rehires."

Thus, unlike the guidelines reference to and protection of *newly hired* employees who are not and were not members of

the union, former unit employees who are *rehired* into the unit may or may not have been union members prior to the hiatus in their employment. If they were nonmembers employed in the period as far back as 1988, they would have received, under Respondents' *Beck* procedures, their annual notice of *Beck* rights together with a reminder of the periods of objection. If they were members of the Union in the first quarter of 1991 or on or about March 26, 1992, they were also notified by the Union of their *Beck* rights under the stipulated facts.

Thus, the stipulated facts show that a procedure for notifying employees of *Beck* rights was initiated in late 1978 and, through December 16, 1986, was applied to any union-represented employee who objected to his or her dues monies being expended for partisan political or ideological expenditures, not related to collective bargaining. In July 1988, the objecting periods were increased from 15 to 30 days.

As a consequence of the difference between *newly hired* employees who are nonmembers and the classification of "rehires," alleged by the General Counsel's complaint to merit special consideration, the support of the General Counsel's complaint found in the General Counsel's guidelines is non-existent. The guidelines refer specifically only to *new hires*; the General Counsel's complaint specifies only "rehires."

Insofar as this abbreviated record is concerned, at least the *rehires* who, at all material times, were nonmembers may well have received their annual notification of *Beck* rights if they were employed commencing 1988. If the rehires were union members in the first quarter of 1991 and/or March 26, 1992, and then rehired, they received by mail actual notice on those dates of Respondents' *Beck* procedures including notice of annual notification and the objecting periods. As opposed to this evidence that at least some rehires (members and nonmembers) received (or apparently received) *Beck* notice, there is simply no *evidence* in this stipulated record that any *rehired* employee did not receive actual notice pursuant to the Respondents' procedure of annually notifying nonmembers of *Beck* rights including the rights to object and mailing notice in 1991 and 1992 to members. Also, members in 1991 and 1992 who may have become nonmembers, had actual *Beck* notice.

The record, therefore, is barren of any *evidence* that any rehired employee was *not* notified of *Beck* rights. The most that can be said of the General Counsel's case, on this stipulated record, is that a rehired employee *may have been* a nonmember who was employed after Respondents made their annual *Beck* notification, then laid off and then rehired at a time prior to annual notification. But the record does not suggest, much less show, the existence of any such class of rehired employees. What the record does show is affirmative proof that Respondents maintained a procedure where employees who were nonmembers (and certain members) in the period since 1988, at least, received *Beck* notification. What the record does not show is that any employee in the protected class of "rehire," failed to receive such notice. That an individual in such a class might exist is speculative. It does not form the basis for a finding of fact that such a class does exist. Absent *evidence* that such an individual or class exists, there can be not only no finding of fact thereof, but no legal conclusion that Respondents failed in their duty of fair representation to such a speculative class of rehired employees. The record, as it exists, shows only that Respondents maintained a procedure whereunder at least certain classes of rehired employees received actual notice of *Beck* rights. There is simply no evidence that any rehired em-

<sup>5</sup> As noted, the General Counsel's complaint is directed to the alleged necessity for additional notice and objection rights of certain nonmember employees. To the extent that the Charging Party seeks to enlarge the scope of the complaint and remedy to include, under the rubric of "potential objectors," the union members as well, I must necessarily reject that proposed enlargement as outside the scope of the General Counsel's complaint. *Operating Engineers (Tribune Properties)*, 304 NLRB 439, 442 fn. 6 (1991).

ployee failed to receive such notice. The General Counsel's guidelines, the authority for the instant complaint would protect new hires, not rehires, as in the complaint. Again, in the absence of such *evidence*, there can be no finding of fact supporting the conclusion of Respondents' violation of their obligation of fair representation of rehired employees under the *Beck* requirement.

Similarly, with regard to members who *resigned* their union membership, all that this record affirmatively shows is that if they were members in the first quarter of 1991 or in March 1992, they received actual notice of their *Beck* rights. In addition, as nonmembers, they would thereafter annually receive notice of their *Beck* rights. The stipulated record shows that at no material time was there a resignation of membership of a unit employee. As in the case of "rehires," above, all that this record affirmatively shows is that had there been some "resignees," if they were employed at the first quarter of 1991 and on or about March 26, 1992, they received actual notice of Respondents' *Beck* objecting procedures. Not only does the stipulated record show that in the period covered by the complaint and the charges that no bargaining unit employee resigned membership in the Union, but, as in case of "rehires," there is no evidence that any such "resignee" did not have actual knowledge derived from notification to members (in 1991 and 1992) or notification on an annual basis to nonmembers if the resignee was at one time a nonmember. In short, the record does not show that any resignee, if there had been one, was without notice of his *Beck* rights.

The complaint, nevertheless, may be interpreted as describing a violation of Section 8(b)(1)(A) and (2) of the Act because the Respondents' *Beck* procedures, operating in futuro, will not protect *rehires* under Respondents' procedures. If that is the thrust of the General Counsel's dissatisfaction with Respondents' existing *Beck* notification and objection procedures, then the complaint should address that issue: that rehires and resignees, *not previously on actual notice* of *Beck* rights, are deserving of special *Beck* notification protection under the Act. On this record, no individuals have been affirmatively shown to have not been afforded *Beck* rights. In order to avoid the finding of a violation of the Act based on speculation, the General Counsel's allegations should be confined to the protection of any classification (otherwise entitled to *Beck* notification) of individuals who have not been accorded *Beck* notification.

In this regard, it might be helpful to observe that Respondents' *Beck* procedures are not unlawful on their face because of the omission of special protection for the two classes alleged by the General Counsel to warrant special protection. This is not a case like that of a union-security clause, unlawful on its face, which derives its coercive effect from noncompliance with the statutory proviso to Section 8(a)(3) of the Act.

In view of the above findings and conclusions, I specifically refrain from reaching or deciding the issue posed by the General Counsel's guidelines: whether Respondents' *Beck* procedures would be unlawful (mere annual notification to nonmembers) if the complaint allegation referred not to "rehires" but to *newly hired* employees who were not members of the Union. Thus, I refrain from reaching or deciding the position taken by the General Counsel guidelines: that it would be a violation of Section 8(b)(1)(A) and (2) of the Act to have *Beck* notification which fails to separately notify (and give separate opportunity to object) to new employees who are not members of the Union and who become unit employees after Respondents' annual

notice to nonmembers is given. I pass only on the allegations of the complaint as supported by the stipulation of facts. The stipulation shows, on the one hand, that Respondents maintain, certainly since 1988, a procedure whereunder some classes of rehires and some classes of resignees appear to have been given actual notice of their *Beck* rights. The stipulated facts fail to show that any rehired employee or any resignee did not have actual notice of *Beck* rights. A request for a finding that Respondents' *Beck* procedures are unlawful because they fail to accord to resignees and rehires special notification rights on the occurrence of the rehiring or resignation fails to show facts on which to find a failure of the obligation of fair representation. In short, neither the allegations nor the facts disclose that under Respondents' procedures, the members of such classifications were without actual notice of their *Beck* rights.

Wholly apart from the problem of the notice of *Beck* rights is, as the General Counsel alleges, the separate problem of the opportunity to object on the part of nonmembers.

On this record, in the period 1988 through 1992, nonmembers (resignees and rehires) had the right to object in two 30-day periods: within 30 days of the date of first hire—or rehire; and again within a 30-day period following the employees' anniversary date of hire.

The General Counsel characterizes these periods as arbitrary (G.C. Br. 6) and notes that the continued existence of these periods in Respondents' *Beck* procedures "fail to take into consideration the crystal clear guidelines of the General Counsel which call for separate notice and opportunity to object whenever a new employee joins the unit or a member resigns from the Union."

We are not dealing with abstractions or a hypothetical case. Having passed the issue of whether these two classifications of nonmembers require special notification of their *Beck* rights, I can find no justification in giving such classifications special periods in which to file objections apart from the procedures already prescribed by Respondents. The General Counsel's complaint does not allege general statutory violation by virtue of the Union's existing *Beck* procedures with regard to the two 30-day opportunities (now three 30-day opportunities) for objecting nonmembers to perfect their objections. Rather, the complaint allegations are directed toward these two 30-day windows of opportunity, which allegedly become arbitrary and coercive only by virtue of the alleged special status of resignees and rehires. Since I have already found that the status of resignees and rehires, under the existing stipulated facts, does not impose special *notice* obligations on Respondents, and since the General Counsel does not otherwise attack the objecting periods of other nonmember unit employees, the question whether the existing 30-day periods would become unlawful (if rehires and resignees were not to be afforded special treatment) becomes an academic question. I therefore need not decide whether, if resignees and rehires merited special *notice* requirements, the existing 30-day periods, during which objections must be perfected, become arbitrary and, as the Charging Party appears to argue (and Respondents clearly resist) that the inability of a member who resigns, for instance, to file an *immediate Beck* objection is an unlawful impediment to resignation under *Pattern Makers League v. NLRB*, 473 U.S. 95 (1985).<sup>6</sup>

<sup>6</sup> There is nothing in the stipulation of facts or the complaint which actually alleges the existence of any obligation of any employee, mem-

## CONCLUSIONS OF LAW

1. George E. Failing Co. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Steelworkers of America and Steelworkers Local 4800 (Respondent Unions), and each of them, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent Unions, at all material times, have been, and jointly are, pursuant to Section 9(a) of the Act, the exclusive collective-bargaining representative of all employees' of the Employer in the following unit:

All production and maintenance employees employed by the Employer at its Enid, Oklahoma plant, including janitors and warehousemen; but excluding all office and clerical employees, Technical employees, cafeteria employees, field service men, service station attendants, guards and supervisors as defined in the Act.

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ber or nonmember, to remit the "periodic dues," mentioned in Sec. 8(a)(3) to the Respondents. I regard such omission as an oversight and will not dispose of the case on that ground.

4. At all material times, Respondent Unions and the above Employer have maintained and enforced a collective-bargaining agreement which lawfully requires, pursuant to Section 8(a)(3) of the Act, that the Employer's unit employees become and remain members of Respondent Unions as a condition of continued employment and to pay certain periodic dues and initiation fees to Respondent Unions.

5. The General Counsel has failed to prove, by a preponderance of the credible evidence, that the above-named Respondent Unions violated their duty of fair representation under Section 8(b)(1)(A) and (2) of the Act by failing to provide a separate notice of a right to object to Respondent Unions' expenditure of funds on activities unrelated to collective bargaining, contract administration, or grievance adjustment when unit employees are rehired by the above Employer and choose not to join Respondents or when a member of Respondents resigns such membership.

[Recommended Order for dismissal omitted from publication.]