

Transport Workers of America, AFL–CIO, and Its Local 525 (Johnson Controls World Services, Inc.) and Luman J. Eggleston, Sr. and Noah B. Butt, IV and Mitchel L. Sohm and Charles N. Barrett. Cases 12–CB–3552, 12–CB–3560, 12–CB–3617, and 12–CB–3635

September 30, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX
AND HURTGEN

On June 3, 1994, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The General Counsel, the Respondents, and the Charging Parties filed exceptions and supporting briefs, and the Respondents and the Charging Parties filed reply briefs.

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 and to adopt the recommended Order as modified and set forth in full below.¹

The complaint alleges that the Respondents violated Section 8(b)(1)(A) and (2) of the Act by (1) refusing to provide employees who have made objections under *Communications Workers v. Beck*, 487 U.S. 735 (1988), with a unit-by-unit allocation of representational and nonrepresentational expenditures and by charging them for extra unit expenditures; (2) by charging nonmember objectors for certain nonrepresentational expenditures; and (3) by refusing to accept the resignation and process the objections of Charging Party Mitchell Sohm, as well as by failing to give Sohm pertinent financial information and by not providing him with a refund for the nonrepresentational portion of his dues.

I. CHARGEABILITY ISSUES

Respondent International represents both public and private sector employees. Some of the employers of these employees are under the jurisdiction of the NLRA; others are under the jurisdiction of the Railway Labor Act. During the period covered by the complaint, Respondent International had a membership of over 105,000 members in approximately 60 affiliated locals. The International has been a party, along with these locals, to 50 collective-bargaining agreements, at least 45 of which have contained union-security clauses.

One such local, Respondent Local 525, represents, jointly with Respondent International, employees of private sector employers who have been awarded service contracts with governmental entities that are under the jurisdiction of the NLRA, including the bargaining unit of mechanic and ground-services employees of Johnson Controls World Services, Inc. (Johnson Controls). Dur-

ing 1991–1992, Local 525 was party to 13 contracts containing union-security clauses covering, among others, 49 nonmembers, 24 of whom filed *Beck* objections during this period. All of these objectors were in the Johnson Controls unit. The Johnson Controls collective-bargaining agreement requires that Employer to deduct dues and initiation fees from the pay of unit members and send them to Respondent International, which retains 30 percent and sends the remaining 70 percent back to Local 525.

The Respondents objection procedure does not require Respondent International to allocate expenditures it charges to nonmembers on a unit-by-unit basis, nor does it prohibit Respondent Local 525 from charging objecting nonmembers for activities outside the Johnson Controls’ bargaining unit. Accordingly, Respondent International does not allocate its expenditures unit by unit, and the Respondents charge nonmember objectors for extra unit expenditures. The General Counsel contends that both practices are proscribed under the Supreme Court’s decision in *Ellis v. Railway Clerks*, 466 U.S. 435 (1984), interpreting section 2, Eleventh, of the Railway Labor Act, and by analogy, it is argued, its statutory equivalent, Section 8(a)(3) of the NLRA. The General Counsel also contends that the Respondents violated the Act by charging objectors for certain specific expenditures enumerated in the stipulation because those expenditures were not directly attributable to the objectors bargaining unit.

In *California Saw & Knife Works*, 320 NLRB 224 (1995), *enfd. sub nom. Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), *cert. denied sub nom. Strang v. NLRB*, 525 U.S. 813 (1998), the Board held, *inter alia*, “that a union does not violate its duty of fair representation by not allocating and disclosing its expenses on a unit-by-unit basis, nor does it act unlawfully by charging objectors for out-of-unit expenses, as long as the expenses charged are for services that may ultimately inure to the benefit of the members of the local union by virtue of their membership in the parent organization.” *Id.* at 239 (citing *Lehnert v. Ferris Faculty Assn.*, 500 U.S. 507, 524 (1991)).

Applying the principles of *California Saw*, we find, in agreement with the judge, that Respondent International’s practice of not allocating all expenses on a unit-by-unit basis does not violate the Act, and that Local 525’s practice of charging objectors for extra unit representational expenses is also not in and of itself unlawful. We also reject the General Counsel’s claim that, because certain expenditures enumerated in the stipulation were not directly attributable to the objectors’ bargaining units, the Respondents violated the Act by treating those expenditures as chargeable to the objectors. Accordingly, we dismiss those allegations in the complaint.²

¹ We shall modify the judge’s recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

² The General Counsel litigated this case on the theory that objectors can be charged only for representational expenses—i.e., those germane

The General Counsel also attacks a specific subclass of the extra-unit expenditures enumerated in the parties' stipulation on the basis that these expenditures are for nonrepresentational activities—i.e., activities “not germane to collective bargaining” under *Beck*—and are therefore not chargeable to objectors.³ Specifically, the General Counsel places at issue certain expenditures that the Respondents have described in their *Beck* procedures as “expenses for legislative, executive branch and administrative agency representation on legislative and regulatory matters closely related to the negotiation or administration of contracts and working conditions.”

With respect to Respondent Local 525, the General Counsel contends that the following expenditures stipulated by the parties as having been charged to nonmember objectors during the audit year ending March 31, 1992, are nonrepresentational, and thus nonchargeable to them (numbers correspond to stipulation paragraphs; emphasis added):

36(b)(6) Conversing with Air Force Labor Relations personnel, the purpose of which was working conditions of *represented employees*, i.e., new Air Force Rules restricting the number of overtime hours that contractors could work their employees which were *in direct contravention of the terms of the collective-bargaining agreement between the contractor and Respondent Unions*; the Air Force implementation of a self-help program, the effect of which would be to take away *bargaining-unit work* from the contractor; and the Air Force reduction in ambulance service available on weekends and evenings whereby diminishing the immediate safety responsiveness available for *represented employees*.

....

(12) Telephoning Air Force Labor Relations staff primarily to monitor Contract Charge Requests initiated by the Air Force or the contractor, the result of which,

to collective bargaining and similar support services, that are directly related to representation of their unit, a theory which the Board rejected in *California Saw*. No party made any argument to the judge as to whether the particular out-of-unit expenditures alleged in the complaint were for activities that may ultimately inure to the benefit of the objectors bargaining unit, which is the test the Board adopted in *California Saw*. (The General Counsel's belated attempt to raise this argument for the first time in its exceptions brief is not properly before us.) Accordingly, in dismissing certain complaint allegations relating to extra unit expenditures, we do not pass on that issue.

³ In his brief to the judge, the General Counsel conceded that some expenditures contained in the parties' stipulation are representational. As to those expenditures, the only basis on which he argued that they were not chargeable to the objectors in this case was that they were not exclusively and directly attributable to the objectors' bargaining unit. As explained above, the mere fact that these expenditures may be extra unit does not render them nonchargeable under *California Saw*. Accordingly, we have dismissed the complaint allegations pertaining to these charges.

when approved, directly impacted on the terms and conditions of *the represented employees*.

....

(14) Conversing with the National Aeronautical and Space Administration Labor Relations staff, at their initiation, the purpose of which was general inquiries regarding the Respondent Local 525's representation of *unit employees of their contractors*.

The General Counsel further contends that the following expenditures stipulated by the parties as having been charged to nonmember objectors by Respondent Local 525 during the audit year ending March 31, 1991, are nonrepresentational, and thus nonchargeable to them (numbers correspond to stipulation paragraphs; emphasis added):

38(a) Telephoning Air Force Labor Relations personnel primarily to monitor Contract Change Requests initiated by the Air Force or the contractor, the result of which, when approved, directly impacted on the terms and conditions of *the represented employees*.

....

(c) Conversing with the National and Aeronautical and Space Administration Labor Relations Staff, at their initiation, the purpose of which was general inquiries regarding the Respondent Local 525's representation of *unit employees of contractors*.

The judge found that each of the above expenditures is germane to collective bargaining and that Respondent Local 525 did not violate that Act by charging them to nonmember objectors. In each instance, Respondent Local 525 was engaged in representing bargaining unit members concerning wages, hours, or terms and conditions of employment. The Federal Government plays a unique role in setting these terms and conditions where, as here, the employer has a contractual relationship with it through one or more of its agencies, including those involved herein—the U.S. Air Force and the National Air and Space Administration. Thus, the direct and indirect expenses incurred by Respondent Local 525 in meeting and speaking by telephone with these agencies with respect to issues such as governmental restrictions on the hours of Federal contract employees, the implementation of a self-help program that threatened the diminution of bargaining unit work, cutbacks in Government-provided ambulance service available to unit employees, monitoring contract change requests, and general inquiries from the governmental entity about the representation of unit employees are for activities that are representational in nature and attributable to the objecting nonmembers own bargaining unit. We find that the judge's discussion of these issues is consistent with *California Saw*, and we adopt his findings that these expenses are fully charge-

able to objecting nonmembers. We shall dismiss the pertinent complaint allegations.

With respect to Respondent International, the General Counsel contends that the following expenditures stipulated by the parties as having been charged to nonmember objectors during the audit year ending March 31, 1992, are nonrepresentational, and thus nonchargeable to them (numbers correspond to stipulation paragraphs):

39 (a) Represented approximately 35 Federal Aviation Administration, hereinafter called FAA, licensed mechanics and dispatchers, who were unit employees, during FAA investigations of work performance, including assistance in drafting responses to letters of inquiry, and representation at informal conferences after issuance of suspensions or civil penalties. One such case went to hearing before the National Transportation Safety Board. Docket No. SE-12201, 12202.

....

(d) Supplied legal representation before the [National Mediation Board (NMB)] in Case No. R-6107 (Henson Airlines) objecting to the NMB's decision to hold in abeyance Respondent International's petition for election while considering a single-carrier petition filed by the Airline Pilot Association.

The General Counsel further contends that the following expenditures stipulated by the parties as having been charged to nonmember objectors by Respondent International during the audit year ending August 31, 1991, are nonrepresentational, and thus nonchargeable to them (numbers correspond to stipulation paragraphs):

40(a) Represented approximately 30 FAA licensed mechanics and dispatchers, who were unit employees, during FAA investigations of work performance, including assistance in responding to inquiries and informal conferences scheduled with FAA attorneys.

(b) Preparation and preservation of position papers in response to drug testing regulations governing unit transit providers and safety sensitive aviation personnel.

(c) Conducted three seminars with unit mechanics to explain the parameters of the License Protection Program.

(d) Provided legal representation before the National Mediation Board in Case No. R-6022 (U.S. Air) regarding the scope and composition of a petitioned-for unit of employees who had not previously been represented by Respondent International.

The judge found that each of the expenditures set forth above are representational and fully chargeable to objectors. The General Counsel and the Charging Parties except, contending that the evidence in the record is insufficient to support this finding.

We cannot determine, based solely on the written stipulation accepted by the judge, whether or not these extra unit expenses are, as required by *California Saw & Knife*, both (1) "germane to the unions' role in collective bargaining, contract administration, and grievance adjustment" and (2) were incurred "for services that may ultimately inure to the benefit of the members of the local union by virtue of their membership in the parent organization," 320 NLRB at 239, quoting *Lehnert v. Ferris*. This includes the expenditures set forth in stipulated subparagraphs 39(d) and 40(d), which arguably concern organizing employees in other units. In *Connecticut Limousine Service*, 324 NLRB 633 (1997), the Board identified several questions relevant to determining the chargeability of organizing expenses, including, for example, whether the expenditures were necessary to "preserve uniformity of labor standards in the organized workforce" and "what kinds of employers, either in the specific industry or in competing industries, the Union might attempt to organize in order to preserve uniform labor standards." *Id.* at 637.

In sum, we find it appropriate to sever the chargeability issues relating to Respondent International and remand them to the judge for further proceedings, including, if necessary, a reopening of the hearing to adduce additional evidence, and for the issuance of a supplemental decision containing findings of fact, conclusions of law, and a recommended Order.⁴

II. THE SOHM OBJECTION

Mitchell L. Sohm was employed in the Johnson Controls' bargaining unit on May 7, 1992, when he resigned his union membership and filed a *Beck* objection. Respondent Local 525 received the resignation and objection on May 15 and accepted Sohm's resignation, but it refused to accept his objection and permit him to pay a reduced fee. The Respondents, who retained Sohm's dues and fees, maintain a policy providing for a window period of January of each year during which all objections must be filed by bargaining unit employees.

The judge found that Respondent Local 525 violated Section 8(b)(1)(A) and (2) by refusing to honor the objection filed by Sohm upon his resignation from union membership, by thereafter refusing to provide Sohm with a breakdown of representational and nonrepresentational expenses charged to him, and by failing to refund to Sohm the nonrepresentational portion of dues received and retained by the Respondents since receipt of his objection. We agree with the judge.

⁴ To the extent that any or all of the expenditures described in stipulation subpars. 39(d) and 40(d) are deemed by the judge on remand to be litigation expenses, Member Hurtgen does not find that Respondent International can lawfully charge for litigation expenses incurred outside the Johnson Controls unit. See the dissent in *California Saw & Knife Works*, 320 NLRB 224, 239 fn. 78 (1995), *enfd.* 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 525 U.S. 813 (1998).

In *California Saw & Knife Works*, supra, the Board held, inter alia, that the requirement that *Beck* objections be filed during a window period, solely as applied to bargaining unit members who resign their union membership following the expiration of the window period, effectively operates as an arbitrary restriction on the right of employees to resign their union membership:

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 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 emphasized by the Court in *Pattern Makers* [473 U.S. 95, 107 (1985)], we agree with the judge that the January window period, as applied solely to employees who resign their membership after the expiration of the window period, constitutes arbitrary conduct violative of the [union's] duty of fair representation.

Recently, the Board has reaffirmed these principles in *Poly-mark Corp.*, 329 NLRB No. 7 (1999).

We, therefore, find that the Respondents imposition of a window period limitation on the filing of *Beck* objections on employees who have recently resigned their union memberships violates the Respondents' duty of fair representation because it operates as an arbitrary restriction on the right to resign from union membership. Accordingly, we find, in agreement with the judge, that the Respondents violated Section 8(b)(1)(A) by refusing to accept Sohm's objection.⁵ We also find that the Respondents unlawfully failed to provide Sohm with the information to which he was entitled under *California Saw* as a *Beck* objector: (1) the assurance that the Respondents will refrain from charging him for nonrepresentational functions; (2) the percentage by which his dues and fees will be reduced; (3) the basis for the calculation, including the percentages of his dues and fees spent on representational and nonrepresentational activities; and (4) the assurance that he would have an opportunity to challenge the Respondents' determinations.⁶ We also find that the Respondents violated Section 8(b)(1)(A) by failing to refund to Sohm the portion of his dues and fees that were spent on nonrepresentational activities. Finally, we find,

⁵ We shall reverse the judge and dismiss the 8(b)(2) allegation, however, in the absence of evidence that the Respondents sought to "cause or attempt to cause [Johnson Controls] to discriminate against [Sohm] in violation of subsection 8(a)(3)."

⁶ We construe the allegation in the complaint that the Respondents failed to provide Sohm with the "Unions agency fee policy" to relate to all of the above information to which Sohm is entitled as an objector. See *Dyncorp Support Services Operations*, 327 NLRB 950, 953 fn. 11 (1999).

consistent with the judge, that the Respondents have maintained and enforced a *Beck* objection policy which prevents employees in the Johnson Controls collective-bargaining unit who have resigned from the Union from filing objections to the payment of fees for expenditures reflecting nonrepresentational activities for a reasonable time after their resignations.

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusions of Law 4 and 5.

"4. Respondent Local 525, except for the issues that are being remanded, did not violate the Act by charging objecting nonmembers for the expenses enumerated in the parties stipulation and described therein as having been incurred on legislative, executive branch and administrative agency representation on legislative and regulatory matters closely related to the negotiation or administration of contracts and working conditions.

"5. The Respondents violated Section 8(b)(1)(a) of the Act by refusing to accept employee Mitchell Sohm's *Beck* objection, by failing to provide him with postobjection financial information, by failing to refund the nonrepresentational portion of dues received and retained by the Respondents since receipt of his objection, and by maintaining and enforcing a *Beck*-objection policy which prevents employees in the Johnson Controls collective-bargaining unit who have resigned from the Union from filing objections to the payment of fees for expenditures reflecting nonrepresentational activities for a reasonable time after their resignations."

AMENDED REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondents to accept Sohm's objection, provide him with postobjection financial information consisting of (1) the assurance that the Respondents will refrain from charging him for nonrepresentational functions; (2) the percentage by which his dues and fees would be reduced; (3) the basis for the Respondents' calculations, including the percentage of expenditures that are representational and nonrepresentational; and (4) the assurance that he will have the opportunity to challenge the Respondents' determination. We shall also order the Respondents to make Sohm whole for any excess dues and fees paid to the Respondents for nonchargeable expenditures through a refund of such excess amounts commencing with the filing of Sohm's objection, with interest computed according to *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Finally, we shall order the Respondents to amend their policy concerning the processing of objections to make clear that they will accept objections from recently resigned per-

fectured *Beck* objectors that are filed within a reasonable time following their resignations.

ORDER

The National Labor Relations Board adopts the recommended order of the administrative law judge as modified and set forth in full below and orders that the Respondents, Transport Workers of America, AFL-CIO, and its Local 525, their officers, agents and representatives shall

1. Cease and desist from

(a) Refusing to accept employee Mitchell Sohm's objection to the payment of dues or fees for nonrepresentational expenditures.

(b) Refusing to provide Mitchell Sohm with postobjection financial information.

(c) Failing to refund the nonrepresentational portion of dues received and retained by the Respondents since receipt of Sohm's objection.

(d) Maintaining and enforcing a policy which prevents employees in the Johnson Controls collective-bargaining unit who have resigned from the Respondents from filing objections to the payment of fees for expenditures reflecting nonrepresentational activities for a reasonable time following their resignations.

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

(a) Amend its policy concerning the processing of objections to the expenditure of funds for nonrepresentational activities to make clear that it will accept objections from perfected *Beck* objectors that are filed within a reasonable time following their resignations and will permit them to receive a reduction of their dues and fees for expenditures reflecting nonrepresentational activities.

(b) Accept and process Mitchell Sohm's *Beck* objection.

(c) Provide Mitchell Sohm with postobjection financial information, as provided in the remedy section of this decision.

(d) Make Mitchell Sohm whole for the nonrepresentational portion of dues and fees received and retained by Respondents since receipt of Sohm's objection, with interest.

(e) Preserve and, within 14 days from the date of a request, make available to the Board and its agents for examination and copying all records necessary to calculate the amount of the refund due Sohm.

(f) Within 14 days after service by the Region, post at their business office and meeting hall copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region

⁷ 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."

12, 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.

(g) Sign and return sufficient copies of this notice for posting by Johnson Controls World Services, Inc., if willing, at all locations where notices to the Johnson Controls unit employees are customarily posted.

(h) 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.

IT IS FURTHER ORDERED that the complaint allegations pertaining to the chargeability of expenses by Respondent International to *Beck* objectors set forth in paragraphs 39(a) and (d) and 40(a)-(d) in the stipulation of facts are severed from this proceeding and remanded to the judge for further proceedings consistent with this Decision and Order.

MEMBER FOX, dissenting in part.

While I agree with the majority in other respects, I do not agree, for the reasons set forth in the dissent in *Poly-mark Corp.*, 329 NLRB No. 7 (1999), that the Respondents violated their duty of fair representation by refusing to honor Charging Party Sohm's untimely attempt to file a *Beck* objection. I therefore also find that the Respondents did not violate their duty of fair representation by failing to provide Sohm with the information required to be furnished to *Beck* objectors or by failing to refund the nonrepresentational portion of his dues.

APPENDIX

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

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

Section 7 of the Act gives employees these rights.

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

WE WILL NOT refuse to accept the objections filed by nonmember employees to the payment of dues or fees for

nonrepresentational expenditures within a reasonable time following their resignations.

WE WILL NOT refuse to provide employees who have filed objections under *Communications Workers v. Beck*, 487 U.S. 735 (1988), with a pertinent financial information.

WE WILL NOT fail to refund the nonrepresentational portion of dues received and retained by Transport Workers of America, AFL-CIO, and its Local 525 since receipt of Shom's objection.

WE WILL NOT maintain and enforce a policy which prevents employees in the Johnson Controls World Services, Inc. collective-bargaining unit who have resigned from the Respondents from filing objections to the payment of fees for expenditures reflecting nonrepresentational activities within a reasonable time following their resignations.

WE WILL amend our policy concerning the processing of objections to the expenditure of funds for nonrepresentational activities to make clear that we will accept objections from recently resigned perfected *Beck* objectors that are filed within a reasonable time following their resignations and permit them to obtain a reduction in dues and fees for the portion of union expenditures reflecting nonrepresentational activities.

WE WILL accept and process Mitchell Sohm's *Beck* objection, WE WILL provide him with pertinent financial information, and WE WILL make him whole for the nonrepresentational portion of the dues and fees that we have received and retained since receiving his objection, with interest.

TRANSPORT WORKERS UNION OF AMERICA,
AFL-CIO, AND ITS LOCAL 525

Evelyn M. Korschen, Esq., for the General Counsel.

Arthur Luby, Esq. (O'Donnell, Schwartz & Anderson), of Washington, D.C., for Respondent TWU.

Richard Sivica, Esq. (Egan, Lev & Sivica, PA), of Orlando, Florida, for TWU, Local 525.

John Scully, Esq., Right to Work Legal Defense (National Foundation), of Springfield, Virginia, for the Charging Parties.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was opened by me June 23, 1993, pursuant to a joint motion by the parties and the formal documents and pleadings and a stipulation of facts were filed by the parties and duly received with the parties granted leave to file briefs which were timely filed. The consolidated complaint in this case was filed on November 19, 1992, by the Regional Director for Region 12 of the National Labor Relations Board (the Board) and is based on charges filed by individuals Luman J. Eggleston Sr. on February 10, 1992, Noah B. Butt on March 2, 1992, Mitchell L. Sohm on July 30, 1992, and Charles N. Barrett on September 19, 1992. The complaint as amended alleges that Respondents, Transport Workers of America, AFL-CIO (the International)

and Local 525 violated Section 8(b)(1)(a) and (2) of the National Labor Relations Act (the NLRA or the Act) by charging objecting nonmembers of the appropriate bargaining unit represented by the Respondents as their collective-bargaining representative, for nonrepresentational activities, failing and refusing to provide them with an accounting and breakdown of representational and nonrepresentational expenditures on a unit-by-unit basis, charging them for amounts which, in part, pertain to nonrepresentational activities, including inter alia: legislative, executive branch, and administrative agency representation on legislative and regulatory matters closely related to the negotiation or administration of contracts and working conditions. The appropriate bargaining unit is: all mechanic and ground service employees of Johnson Controls World Services, Inc. (Employer or Johnson Controls). The above-described unit is one of many distinct bargaining units represented by Respondents. Local 525 represents only employees of private contractors who have contracts with the United States Government at Cape Canaveral, Florida, whereas the International represents employees through other local unions in both the public and private sectors. In its brief the General Counsel withdrew the allegation contained in paragraphs 9(c)(i), (iii), (iv), and (v) of the consolidated complaint and also withdrew the allegations contained in paragraph 10 of the consolidated complaint inasmuch as the record evidence is insufficient to warrant a finding. As this is a stipulated record and the parties have filed extensive briefs detailing their legal arguments, I have relied heavily on the stipulated record as it appears in the stipulation of facts and on the briefs of the parties in setting forth their positions in this decision.

On the entire record here and my review of the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, Johnson Controls has been a corporation with an office and place of operations at the Eastern Space and Missile Center, Cape Canaveral Air Force Station, Florida (the Launch Base Support Project), and has been engaged in the business of providing ground support services for the United States Air Force. During the 12-month period ending December 31, 1991, Johnson Controls, in conducting its business operations described above, provided services in excess of \$50,000 to the United States Air Force pursuant to a service contract with the United States Government. At all times material, Johnson Controls has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATIONS

The complaint alleges and Respondents admit and I find that at all times material, Respondent International and Local 525 have been labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

Facts

This case involves the interpretation and application of the Supreme Court's decision in *Communications Workers of America v. Beck*, 487 U.S. 735 (1988), in which the Supreme Court held that Section 8(a)(3) of the National Labor Relations Act does not "permit a union, over the objections of dues-paying non-member employees, to expend funds so collected

[pursuant to a union-security clause] on activities unrelated to collective bargaining, contract administration, or grievance adjustment” id. at 738. The Court held that a union may exact from nonmember employees “only those fees and dues necessary to performing the duties of an exclusive representative of the employees dealing with the employer on labor-management issues.” Id. at 762–763, citing its prior decision in *Ellis v. Railway Clerks*, 466 US 435, 448 (1984). The General Counsel contends that “because the Supreme Court in *Beck* explicitly held that Section 8(a)(3) is the statutory equivalent of, and in all material respects identical to, certain provisions of the Railway Labor Act (RLA). Id. at 745, and because the Supreme Court and the circuit courts of appeals have specifically limited union exactions from nonmember employees under the RLA, and in the public sector, the standards enunciated in those cases must therefore also apply to cases arising under the NLRA, and accordingly Respondent Unions herein must be held to the same proscriptions.” Thus, the remaining issues before me as set out in the General Counsel’s brief are:

1. Whether or not Respondent Unions’ failure to break down expenses into representational and nonrepresentational categories on a unit-by-unit basis in its disclosure statements to objecting nonmembers and by charging objecting nonmembers for representational expenses not attributable to the bargaining unit in which the objectors are employed violated Section 8(b)(1)(A) of the Act.

2. Whether or not Respondent Unions’ charge to objecting nonmembers for expenses incurred on “legislative, executive branch and administrative agency representation on legislative and regulatory matters closely related to the negotiation or administration of contracts and working conditions” are lobbying expenses or litigation not attributable to the objecting nonmembers’ bargaining unit and, thus, violated Section 8(b)(1)(A) of the Act.

Respondent International represents employees in various occupations in the United States employed in the public sector and an equal proportion employed in the private sector by employers under the jurisdiction of the RLA and infrequently under the jurisdiction of the NLRA. The International is organized into three divisions, the surface transit division, the airline division, and the rail division. Local unions are the smallest units within the International. Respondent Local 525 represents employees of private sector employers in various industries who have been awarded service contracts with governmental agencies and which are under the jurisdiction of the National Labor Relations Act. At the relevant periods involved herein, the International had in excess of 105,000 members and had approximately 60 affiliated Locals and in combination with these local unions was party to 50 collective-bargaining agreements of which at least 45 contained union-security provisions with approximately 500 nonmembers in represented bargaining units with approximately 24 to 25 employees filing dues objection applications in 1991 and 1992 respectively. Local 525 was party to 15 collective-bargaining agreements of which 13 contained union-security provisions with 49 nonmembers of which 24 nonmembers filed dues objection applications. All of the objecting nonmembers were in the bargaining unit of the mechanic and ground service employees of the employer, Johnson Controls. The collective-bargaining agreements variously provide that union members and agency fee payers have periodic dues and initiation fees deducted from their pay and paid by their employers to either the Local or to the International which

sends to the other its applicable portion. In the instant case the collective-bargaining agreement provides that the employer, Johnson Controls, send the dues and fees to the International, which retains 30 percent for a per capita tax payable to the International by Local 525 and sends the remaining 70 percent to Local 525.

During the relevant period the International and Local 525 had collective-bargaining agreements with 15 employers who each were parties to service contracts with governmental agencies. The current collective-bargaining agreement between the Respondents and Johnson Controls was effective December 1, 1992, and expires November 30, 1995, and contains a union-security clause in substantially similar or identical form as have been contained in predecessor agreements between the parties. The moneys collected pursuant to the union-security clause are shared by the International, Local 525, and the AFL–CIO. These moneys are spent on both representational and non-representational activities. The Respondents have adopted a procedure for compliance with *Beck* by advising employees covered by the collective-bargaining agreement of their right to object to the collection of fees from their pay for nonrepresentational activities pursuant to union-security clauses. There has been a fee objection procedure in place during all relevant times herein which requires Respondent International to annually notify all represented employees including both members and nonmembers of their rights under the procedure by including a notice in each December issue of the TWU (Transport Workers Union) Express. However, there is no provision therein for ensuring that the employees receive this publication and notice contained therein. The December 13 and 31, 1991 issues of the TWU Express both contained the fee objection procedure. In addition, the independent auditors report for the International for the year ending August 31, 1991, was contained in the fee objection procedure in the December 31, 1991 issue of the TWU Express and an independent auditors report for the International for the year ending August 31, 1992, was contained in the TWU Express of November 30, 1992. An accountant’s compilation report and an independent auditor’s report for Local 525 were published for the years ending March 31, 1991, and March 31, 1992, respectively.

In accordance with the fee objection procedure, the Respondents charge nonmembers an amount for representational activities without a showing that the representational activities were engaged in on behalf of any particular bargaining unit. Thus, these expenses are not broken down or calculated on a unit-by-unit basis.

Pursuant to section 3.g, of the provisions of the fee objection procedure, since 1991 Respondent Unions have charged objectors for a portion of their expenses which Respondent Unions have categorized under the fee objection procedures as “expenses for legislative, executive branch, and administrative agency representation on legislative and regulatory matters closely related to the negotiation or administration of contracts and working conditions.”

Pursuant to section 3.g, of the fee objection procedure, during audit year ending March 31, 1992, Respondent Local 525 charged the following expenses:

- (a) The direct expenses of a round-trip airline ticket each for Local 525 President Eddie Hill and Local 525 Vice President Chris Hunt from Florida to Washington, D.C., and one overnight hotel accommodation each in Washington, D.C., associated with their trip to visit U.S.

Representative Jim Bacchus, D-Orlando, the purpose of which was to elicit from him, as an elected official, his assistance to put pressure on Unified Services, Inc., a government contractor with whom Respondent Unions had a collective-bargaining agreement, to timely pay its employees and to timely make contributions into the employees' health and pension benefits funds. For an extended period of time Unified Services, Inc. had been untimely paying its employees and untimely making its contributions to the benefit funds of represented employees.

(b) The indirect expenses associated with Respondent Local 525's elected officials' performance of the following duties:

(1) Traveling round-trip to Washington, D.C., as outlined in paragraph (a) above.

(2) Telephoning Representative Bacchus' office and speaking with Legislative Aide Vince Wilmore for the purpose of seeking assistance from the office of Representative Bacchus in resolving the aforementioned problems with Unified Services, Inc.

(3) Drafting a letter for mass mailing to congresspersons, federal agencies, and military personnel to elicit support in putting pressure on Unified Services, Inc. to correct its deficiencies in paying salaries to represented employees and making contributions into the employees' benefits fund.

(4) Conversing with Air Force labor relations personnel, the purpose of which was to clarify the status of Unified Services, Inc.'s payment of salaries and contributions into the benefits fund and to elicit the support of the Air Force into pressuring Unified Services, Inc. to make timely payment.

(5) Writing to Representative Bacchus and Senator Bob Graham regarding the ongoing problems with Unified Services, Inc. and eliciting their support in pressuring the contractor to make timely salary payments and contributions into the benefits fund.

(6) Conversing with Air Force labor relations personnel the purpose of which was working conditions of represented employees, i.e., new Air Force rules restricting the number of overtime hours that contractors could work their employees which were in direct contravention of the terms of the collective-bargaining agreement between the contractor and Respondent Unions; the Air Force implementation of a self-help program, the effect of which would be to take away bargaining unit work from the contractor; and the Air Force reduction in ambulance service available on weekends and evenings thereby diminishing the immediate safety responsiveness available for represented employees.

(7) Telephoning Senators Mack and Graham and Congressman McCullum the purpose of which was to elicit from each elected official help in exerting pressure on Unified Services, Inc. to pay the represented employees in a timely fashion and make timely contributions to the benefits fund.

(8) Telephoning Representative Bacchus' office the purpose of which was to elicit from Bacchus' staff support in exerting pressure on Unified Services, Inc. to pay the represented employees in a timely fashion and make timely contributions to the benefits fund.

(9) Telephoning Air Force labor relations personnel regarding the continuing problems with Unified Services, in timely paying employees and making contributions to the benefits fund and seeking the assistance of the Air Force labor relations personnel to rectify the ongoing problem.

(10) Conversing with Air Force labor relations personnel when they came to the Respondent Local 525 office seeking the status of Unified Services, Inc.'s payment or nonpayment of salaries and contributions into the benefits fund.

(11) Telephoning Air Force labor relations staff concerning Johnson Controls World Services, Inc.'s unilateral implementation of a new hourly rate for represented firefighters and eliciting the Air Force's assistance in ensuring that the wages required in the service contract were being paid by the contractor to represented employees.

(12) Telephoning Air Force labor relations staff primarily to monitor contract change requests initiated by the Air Force or the contractor, the result of which, when approved, directly impacted on the terms and conditions of the represented employees.

(13) Meeting with Air Force labor relations the purpose of which was to respond to labor relation inquiries about the status of various issues germane to the Respondent Local 525's representation of unit employees of a contractor, i.e., placement of picket lines, security clearance of unit employees, status of grievances, etc.

(14) Conversing with the National Aeronautical and Space Administration labor relations staff, at their initiation, the purpose of which was general inquiries regarding the Respondent Local 525's representation of unit employees of their contractors.

Pursuant to section 3.g, of the fee objection procedure, during audit year ending March 31, 1991, Respondent Local 525 charged the following indirect expenses associated with Respondent Local 525:

(a) Telephoning Air Force Labor Relations personnel primarily to monitor Contract Change Requests initiated by the Air Force or the contractor, the result of which, when approved, directly impacted on the terms and conditions of the represented employees.

(b) Meeting with Air Force Labor Relations personnel the purpose of which was to respond to their inquiries about the status of various issues germane to the Respondent Local 525's representation of unit employees of a contractor, i.e., placement of picket lines, security clearances for unit employees, status of grievances, etc.

(c) Conversing with the National Aeronautical and Space Administration Labor Relations staff, at their invitation, the purpose of which was general inquiries regarding the Respondent Local 525's representation of unit employees of contractors.

During the audit year ending August 31, 1992, Respondent International charged objectors for a portion of its expenditures for legislative, executive branch, and administrative agency representation on legislative and regulatory matters. All such expenses charged to nonmember objectors were incurred for work performed by the law firm of O'Donnell, Schwartz & Anderson in Washington, D.C. Total expenditures in this category were \$96,048 in fees and \$29,731 in expenses. Man hours

were spent providing legal advice and representation on behalf of unit employees on matters involving unit issues, including representation before courts and administrative agencies (considered by Respondent International to be chargeable expenses). Man hours were spent on lobbying, including lobbying before Congress and the Executive Branch and meetings with the AFL-CIO and TWU officials during which legislation was the chief topic (considered by Respondent International to be nonchargeable expenses). All lobbying activity occurred in Washington, D.C. Respondent International, in preparing its calculation of chargeable expenses, assigned half of the fees and half of the expenses as chargeable expenses and the remaining half as nonchargeable expenses. Therefore, during the audit year ending August 31, 1992, Respondent International charged objectors \$62,889.70 in fees and expenses for legislative, executive branch, and administrative agency representation on legislative and regulatory matters. Specifically, Respondent International charged the following expenses:

(a) Represented approximately 35 Federal Aviation Administration, hereinafter called FAA, licensed mechanics and dispatchers, who were unit employees, during FAA investigations of work performance, including assistance in drafting responses to letters of inquiry, and representation at informal conferences after issuance of suspensions or civil penalties. One such case went to a hearing before the National Transportation Safety Board. Docket No. SE-12201, 12202.

(b) Filed position papers with the Department of Transportation (DOT) supporting American Airlines' application for exemption to operate jet aircraft out of O'Hare Airport and to not allow non-mechanic personnel to change aircraft light bulbs. The purpose of the opposition was because the exemption, if approved, would take work away from unit employees.

(c) Supplied legal representation before the National Mediation Board (NMB) in *U.S. Air Shuttle, Inc.*, 19 NMB 388 (1992), and File No. C-6459 (AMR) seeking to preserve the representational rights of unit employees.

(d) Supplied legal representation before the NMB in Case No. R-6107 (Henson Airlines) objecting to the NMB's decision to hold in abeyance Respondent International's petition for election while considering a single-carrier petition filed by the Airline Pilot Association.

(e) Legal preparation and representation in court in *Flagship Airlines, Inc. v. Transport Workers Union of America*, et al., C.A. 3-92-0438 (M.D. Tenn.) (Wiseman) opposing the employer's application for temporary restraining order and preliminary injunction sought against Respondent International for strike activities engaged in on behalf of represented employees. The case settled without any admission of liability.

(f) Attendance at three meetings of the American Airlines President's Council, an official body established by the employer and chaired by the Vice President of Respondent International for the purpose of providing legal advice and assistance to the chairman on matters pertaining to unit employees.

(g) Attendance at four meetings of the TWU International Executive Council, an official body within Respondent International, for the purpose of providing legal advice and reporting on enacted laws, specifically the Omnibus Drug Testing Act, the Intermodal Surface Transit Effi-

ciency Act, and the Presidential Emergency Board's recommendation with respect to collective-bargaining impasses on Amtrak.

(h) Presentation of legal seminars in Dallas, TX and Chicago, IL to officers of several Locals covering the Railway Labor Act, the Federal Aviation Act, Labor Management Reporting and Disclosure Act, and the American with Disabilities Act.

(i) Legal support to negotiators during the 1991 collective bargaining with American Airlines and with Flagship Airlines, two employers with whom Respondent International has a collective-bargaining relationship.

(j) Conducted contract arbitration with Flagship Airlines, Inc.

During the audit year ending August 31, 1991, Respondent International charged objectors for a portion of its expenditures for legislative, executive branch, and administrative agency representation on legislative and regulatory matters. All such expenses charged to nonmember objectors were incurred for work performed by the law firm of O'Donnell, Schwartz & Anderson in Washington, D.C. Total expenditures in this category were \$112,056 in fees and \$20,219 in expenses. Man hours were spent providing legal advice and representation on behalf of unit employees or matters involving unit issues, including representation before courts and administrative agencies (considered by Respondent International to be chargeable expenses). Man hours were spent on lobbying, including lobbying before Congress and the Executive Branch and meetings with the AFL-CIO and TWU officials during which legislation was the chief topic (considered by Respondent International to be nonchargeable expenses). All lobbying activity occurred in Washington, D.C. Respondent International, in preparing its calculation of chargeable expenses, assigned half of the fees and half of the expenses as chargeable expenses and the remaining half as nonchargeable expenses. Therefore, during the audit year ending August 31, 1991, Respondent International charged the objectors \$66,173.74 in fees and expenses for legislative, executive branch, and administrative agency representation on legislative and regulatory matters. Specifically, Respondent International charged the following expenses:

(a) Represented approximately 30 FAA licensed mechanics and dispatchers, who were unit employees, during FAA investigations of work performance, including assistance in responding to inquiries and informal conferences scheduled with FAA attorneys.

(b) Preparation and presentation of position papers in response to proposed drug testing regulations governing unit transit providers and safety sensitive aviation personnel.

(c) Conducted three seminars with unit mechanics to explain the parameters of the License Protection Program.

(d) Provided legal representation before the National Mediation Board in Case No. R-6022 (U.S. Air) regarding the scope and composition of a petitioned-for unit of employees who had not previously been represented by Respondent International.

(e) Provided legal representation before the National Mediation Board in Case No. C-6424 (Northwest Airlines Foremen's Association) wherein Respondent International sought a re-certification of representation to recognize the affiliation of Northwest Airlines Foremen's Association

with Respondent International and an order to require Northwest to bargain with the re-certified representative. Re-certification was granted.

(f) Assisted Northwest Airlines Foremen's Association, subsequent to its affiliation with Respondent International, in drafting a termination agreement when the craft was eliminated by Northwest Airlines.

(g) Supplied legal representation in *Transport Workers Union et al v. Alaska Airlines*, No. C91-690WD, wherein Respondent International sought an injunction to enjoin the employer's unilateral changes in working conditions after certification.

(h) Attendance at four meetings of the International Executive Council, an official body within Respondent International, for the purpose of providing legal advice and reporting on the Railroad Safety Act, the Transportation Appropriations Act and the Presidential Emergency Board's recommendation with respect to collective bargaining impasse on Conrail.

(i) Attendance at three meetings of the American Airlines President's Council, an official body established by the employer and chaired by the Vice President of Respondent International, for the purpose of providing legal advice and assistance to the chairman on matters pertaining to unit employees.

(j) Conducted a legal seminar for officers of Local 512 in Chicago, IL covering the Railway Labor Act, the Federal Aviation Act, and various other laws pertaining to the negotiation and administration of collective bargaining agreements.

(k) Provided legal advice and drafted a brief in relation to a major contract arbitration over the chain of custody of urine samples with American Airlines.

(l) Provided day-to-day legal counsel to the air transport division officials on an as-needed basis pertaining to matters involving negotiation and administration of collective bargaining agreements.

With one exception, none of the foregoing fees and expenses related directly to the Johnson Controls bargaining unit at issue in the instant matter. The one exception pertained to advice and counsel given Respondent Local 525 as to the law relating to a decertification drive which occurred during the summer of 1992.

Contentions of the Parties

A. The General Counsel's Position

The General Counsel contends that the United States Supreme Court, in *Beck*, requires labor unions subject to the National Labor Relations Act, to satisfy the same duties and obligations previously imposed on unions under the Railway Labor Act concerning the collection of dues and fees from nonmembers pursuant to contractual union-security provisions. In the *Beck* case, the Supreme Court phrased the issue as whether the "financial core" obligation (which is defined in *NLRB v. General Motors Corp.*, 373 U.S. 734, 742 (1963), is limited to the obligation to pay initiation fees and monthly dues imposed on employees pursuant to a union-security provision authorized by Section 8(a)(3) of the Act) "includes the obligation to support union activities beyond those germane to collective-bargaining, contract administration, and grievance adjustment." *Id.* at 745. In *Beck*, the Court held that its prior decision in *Machinists v. Street*, 367 U.S. 740 (1963), was, "controlling" insofar as that

case held that Section 8(a)(3) of the Act and section 2, Eleventh of the Railway Labor Act (the RLA) are "statutory equivalents" and with good reason, because their nearly identical language reflects the fact that in both Congress authorized compulsory unionism only to the extent necessary to ensure that those who enjoy union-negotiated benefits contribute to their cost" *Id.* at 746. The Court held that the common legislative purpose was the elimination of "free riders." Thus the Court held that Section 8(a)(3) of the Act authorizes "the exaction of only those fees and dues necessary to performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues." *Id.* at 762-763.

The General Counsel notes that the Board has not yet issued a decision interpreting *Beck* but that the Second and Fourth Circuit Court of Appeals have each decided cases concerning these issues which are not entirely consistent. In *Beck v. Communications Workers*, 776 F.2d 1187 (4th Cir. 1985), the Fourth Circuit held that expenditures for political, labor legislation, community services, and organizing purposes were not chargeable to objectors under the Act. The Fourth Circuit remanded issues concerning other categories of expenditures to the district court and on rehearing, en banc, a majority of the court of appeals affirmed the resolution of these allocation issues. 800 F.2d 1280 (4th Cir. 1991). The General Counsel contends that in its affirmance of the court of appeals decision, the Supreme Court implicitly approved of these resolutions of the allocation issues. The General Counsel notes that the Fourth Circuit did not address issues concerning the type of notice which must be furnished to nonmembers, nor what procedural requirements may be permissibly imposed on employees asserting such rights, nor the quantum of information which must be disclosed to an objector. The Second Circuit has also addressed a number of issues arising under *Beck* in *Price v. Automobile Workers*, 927 F.2d 88 (2d Cir. 1991). The Second Circuit upheld various portions of the union's rebate plan adopted after *Beck*. It found however that the union had not had its allocation of expenditures verified by an independent auditor as it found it had a duty to do; that the use of a "local presumption" to determine the proportion of chargeable expenditures by local unions was proper; and that the American Arbitration Association (AAA) procedure for selecting an arbitrator was proper.

The General Counsel further contends that the Supreme Court has also applied the rationale of *Street v. Hanson*, 351 U.S. 255 (1956), to agency shop provisions in the public sector, citing *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), wherein the Supreme Court relied on earlier cases construing section 2, Eleventh of the RLA to uphold the constitutionality of union-security provisions in the public sector, and at the same time extending to public employees the same right to object to a union's use of their exacted fees to finance non-representational activities. The General Counsel also cites *Chicago Teachers AFT Local 1 v. Hudson*, 475 U.S. 292 (1986), wherein the Supreme Court in a case involving public employees, established procedural safeguards which unions must adopt before being permitted to collect agency fees from objecting employees. The General Counsel also cites *Lehnert v. Ferris Faculty Assn.*, 500 U.S. 507 (1991), another public sector case, which concerned the kinds of expenditures which could be charged to objectors. The Court majority, relying on its earlier decisions in *Street v. Hanson*, "and their progeny" set out three guidelines for determining which activities may be

properly charged to objecting employees. The chargeable expenditures must be (1) germane to collective-bargaining activity; (2) justified by the Government's vital policy interest in labor peace and avoiding "free riders"; and (3) must not significantly add to the burden of free speech inherent in allowance of the union shop. *Id.* at 1959. The Court also reaffirmed that the burden of proof in these cases is the union's.

Applying these criteria, the General Counsel contends that the Respondent Unions violated Section 8(b)(1)(a) of the Act by charging objecting nonmembers for "expenses for legislative, executive branch, and administrative agency representation on legislative and regulatory matters closely related to the negotiation or administration of contracts and working conditions" to the extent that such expenses were for lobbying activities and/or litigation expenses not attributable to the objector's own bargaining unit. The General Counsel cites *Lehnert* in which the majority in reference to *Street* and its progeny construing the RLA, stated, "Specifically, those cases make clear that expenses that are relevant or 'germane' to the collective-bargaining functions of the union generally will be constitutionally chargeable to dissenting employees. *They further establish that, at least in the private sector, those functions do not include political or ideological activities.*" (Emphasis added.) *Lehnert*, 500 U.S. at 516.

The General Counsel contends that the Court in *Lehnert* unanimously concluded that a union's lobbying activities which did not relate to ratification and implementation of the dissenting employees' collective-bargaining agreement were too attenuated to the Union's representational functions to be chargeable. The Court also decided that the only reason for permitting a public sector union to charge objectors for lobbying related to ratification and implementation of the agreement, was because of the dual role of government as both employer and policymaker. As that dual role clearly does not exist in the private sector as involved in this case, there is no justification for permitting it here. Thus, the General Counsel contends that to the extent the expenses were incurred for lobbying activities, they are not chargeable to objecting nonmembers and to the extent expenses were incurred for litigation activities, they were representational. However, since the litigation expenses were not attributable to the objector's own bargaining unit, they are nonchargeable expenses. The General Counsel concedes that those expenses incurred in seeking the assistance of public elected officials to apply pressure to Unified Services Inc. as an employer and party to a collective-bargaining agreement with the Respondent Unions, and on officials of the governmental agency with which Unified Services Inc. had a service contract, the purpose of which was to require it to abide by its contractual obligations, are not lobbying expenses but rather are germane to collective bargaining and are representational expenses. However, the General Counsel contends inasmuch as such expenses were not directly attributable to the objecting nonmembers own bargaining unit, Respondent Unions' charge of such expenses to the objecting nonmembers is unlawful. The General Counsel also concedes that the expenses incurred by Respondent Local 525 in making inquiries with a governmental agency which had a service contract with an employer with whom Respondent Unions had a collective-bargaining agreement, relative to placement of picket lines, security clearance of unit employees, and status of grievances, are not lobbying expenses, but rather are germane to collective bargaining and are representational expenses. However, here again the

General Counsel contends that since such expenses are not directly attributable to the objecting nonmembers' own bargaining unit, Respondents' charge of these expenses to the objectors is unlawful. The General Counsel concedes that expenses incurred when Respondent Local 525 telephoned the Air Force labor staff concerning Johnson Controls' alleged unilateral implementation of new hourly rates for represented firefighters, are not lobbying expenses but rather are activities germane to collective bargaining and are lawful chargeable expenses since they are representational in nature and attributable to the objecting nonmembers' own bargaining unit. The General Counsel contends that the expenses incurred by Respondent Local 525 when conversing with a governmental agency regarding new rules restricting the number of overtime hours that contractors could work employees and the governmental agency's implementation of a self-help program, and reduction in ambulance service appear to be political in nature and are far too attenuated from Respondent Local 525's statutory duty to negotiate and administer collective-bargaining agreements on behalf of the individual objector's unit to be statutorily chargeable. The General Counsel argues further that even where a particular piece of legislation or agency rule or regulation may be said to "benefit" an objector's bargaining unit, as for example, union opposition to the self-help program as a means of preserving unit jobs performing such work, an objector may support such rule or regulation because it has the potential to reduce the federal budget or streamline the Federal bureaucracy and that, to force the objector to subsidize even those "beneficial" legislative/rule making activities clearly burdens the employee's freedom to choose his own political agenda. Finally the General Counsel contends that a union's duty of fair representation under the Act has never been held to require a union to engage in legislative (rulemaking) or political activities even where such activity might "benefit" unit objectors.

The General Counsel contends that the remaining expenses incurred by Local 525, wherein it conversed with a governmental agency staff making general inquiries regarding its representation of unit employees of contractors, and monitored contract change requests initiated either by the contractor or the governmental agency, the result of which, when approved, directly impacted on the terms and conditions of represented employees, do not appear to be incurred for the conduct of activities in which Local 525 owes a duty of fair representation to the objecting nonmembers being charged. The General Counsel asserts that Respondent Unions bear the burden of proving the proportion of chargeable expenses to total expenses citing *Chicago Teachers v. Hudson*, 475 U.S. at 306; *Abood*, 431 U.S. 239-240 fn. 40; and *Railway Clerks v. Allen*, 373 U.S. at 122. The General Counsel contends that the record evidence is insufficient to meet the Union's burden and that the expenditures should be found to be nonrepresentational and nonchargeable to objecting nonmembers. The General Counsel also contends that the expenses incurred by the International before the National Mediation Board in objecting to its decision to hold in abeyance the International's petition for an election while considering a single-carrier petition and in processing a petition for representation of employees who were not previously represented by the International are prerepresentational activities and are not germane to collective bargaining and cannot be lawfully charged to objecting nonmembers. The General Counsel contends that expenses incurred by the International in preparing and presenting position papers in response to drug testing regu-

lations governing unit employees are political and too attenuated from the International's duty to negotiate and administer collective-bargaining agreements to be statutorily chargeable. This is so even if the International's efforts may be said to "benefit" an objector's bargaining unit as the objector's position on the issue may differ from the International's and he should not be required to subsidize the Union's political agenda. A union's duty of fair representation has never been held to require that it engage in legislative (rulemaking) or political activities even if these activities might benefit unit objectors.

The General Counsel next contends that Respondent Unions violated Section 8(b)(1)(A) of the Act by failing to break down expenses into representational and nonrepresentational categories on a unit-by-unit basis in its disclosure statement and by charging objecting nonmembers for representational expenses not attributable to their individual unit. Since the Respondent Unions do not calculate their representational expenses on a unit-by-unit basis, the disclosures to objecting nonmembers contain no evidence of what portion of total expenditures are directly related to the unions' representation of the objector's own bargaining unit. Thus this information is of very little relevance to individual objectors. The International represents 60 different bargaining units in different industries throughout the United States and Local 525 represents 15 bargaining units in various industries throughout the east and southeast United States. Without the breakdown of expenditures on a unit-by-unit basis, it is impossible for an objector to know what percentage of the total expenses are being charged to him and whether the amount is reasonable and whether a challenge to that charge would be successful. The General Counsel contends that the Respondent Unions' failure to furnish a unit-by-unit breakdown, as well as the charging of objecting nonmembers for representational expenses which are not attributable to the objector's own bargaining unit, are violative of Section 8(b)(1)(A) of the Act. Relying on *Ellis v. Railway Clerks*, 466 U.S. at 448, the General Counsel contends that the Supreme Court stated in that case that a union's right to collect dues or fees is derived from its status as exclusive bargaining representative of a unit as the principal justification of Congress for authorizing the union shop was the elimination of free riders whom the union was obliged to represent. To this end the Court said, "The test must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues." Applying this standard, the Court held that objecting employees must pay both the "direct cost" and any other expenses necessary to perform the duties of the union as the representative "of the employees in the bargaining unit." Id. at 448. The Court also held that organizing expenses are not chargeable against objectors "where a unionshop provision is in place and enforced, all employees in the relevant unit are already organized. By definition, therefore, organizing expenses are spent on employees outside the collective-bargaining unit already represented." Id. at 453. The Court also held that expenses of litigation arising out of the unit or that are concerned with unit employees are chargeable, and those which are not connected with the bargaining unit are not chargeable to objectors. Id. at 453. Since the Supreme Court in *Beck*, ruled that Section 8(a)(3) and section 2, Eleventh of the RLA should be interpreted in like manner, and the Court in *Ellis*, limited fees

collected from objecting nonmembers to those directly related to the collective-bargaining contract administration and grievance adjustment concerns of the bargaining unit represented by the union, the same standard should be applied to the Respondent Unions under the Act. The General Counsel further relies on *Lehnert* 500 U.S. 507, in which the Court majority held that while they had consistently looked to determine whether non-ideological expenses were germane to collective bargaining, they had never interpreted the test to require a direct relationship between the expense and a tangible benefit to the objector's bargaining unit, but that there must be some indication that the payment to state or national affiliates is for services that may ultimately inure to the benefit of members of the unit as a result of their membership in the parent organization and the union bears the burden of proving the proportion of chargeable expenses to total expenses. The General Counsel notes that the majority in this case then permitted a local union to charge objectors for program expenditures of the parent organization which were destined for states other than where the objectors lived and declined to disturb the findings of the lower court that these costs were "germane to collective bargaining and similar support services" Id. at 1963. However, four of the five justices in the majority refused to extend this rationale to litigation expenses or union literature reporting such activities both of which did not concern the objector's bargaining unit but likened such expenses to lobbying and held they were not germane relying on *Ellis* wherein the Court held that the RLA prohibited the use of objectors' fees on extra-unit litigation. The minority, led by Justice Scalia, reached the same conclusion but on different grounds, and found that a tangible benefit to the objector's unit was required but could be found in having expert consulting services available even in years when they were not used.

The Court's decision in *Lehnert* does not lend support to the Union's failure to break down its expenditures on a unit-by-unit basis. In that case the local represented a single unit of faculty at a state college and the National Education Association with which the Local was affiliated represented the same type of employees (educators) who had common interests and bargaining goals. In the instant case the International has assumed responsibility for allocating its expenditures into representational and nonrepresentational categories and has done so on the basis of national expenditures. As a result of the top down nature of this procedure for determining objectors' dues, the amount charged to individual objectors has a far more tenuous relationship to the actual collective-bargaining expenditures than in *Lehnert*. Moreover, as Respondent Unions represent a broad spectrum of employees in a variety of classifications and industries covered by different statutes, it is not apparent that Respondent Unions' collective-bargaining activities may "ultimately inure to the benefit of the members of the local union by virtue of their membership in the parent organization," as required by the majority in *Lehnert*. The General Counsel also contends that an argument by the union in *Andrews v. Cheshire Education Assn.*, 829 F.2d 335 (2d Cir. 1987), was rejected by the Second Circuit wherein the Court held that "the procedures mandated by Hudson are to be accorded all nonmembers of agency shops regardless of whether the Union believes them to be excessively costly." Therefore, to the extent that the procedure adopted by the Respondent Unions does not allocate expenditures by unit, it falls short of protecting the objecting nonmember's right to be charged only for those expenses for

the union's performance of its duties as the employee's exclusive representative. The General Counsel argues further that even assuming arguendo, that the Act does not require a unit-by-unit accounting, of expenditures, the holding in *Ellis* regarding litigation expenditures suggests a finding of a violation to the extent all objectors are charged the same proportion of their litigation expenses without regard to whether it affects their own bargaining unit. In *Lehnert* the Court found the first amendment to the Constitution barred the passing on of extra-unit litigation expenses which the Court held were akin to political activity and not germane to the union's duty as exclusive bargaining representative. Thus, since the allocation of some litigation expenses was not undertaken on a unit-by-unit basis, litigation expenses may not be charged to objectors outside the unit in which the litigation arose. Inasmuch as none of the expenses enumerated in stipulation of fact paragraphs 39 and 40 were directly related to the objectors' bargaining unit at Johnson Controls, such charges were for extra-unit litigation and violative of Section 8(b)(1)(A) of the Act as alleged in paragraphs 7(e)(iv), 8(c)(vi) and (vii) of the consolidated complaint. Respondent Unions' failure to break down such litigation expenditures on a unit basis and its collection of fees for such expenses from the named objectors, violated Section 8(b)(1)(A) of the Act as alleged in paragraphs 7(e)(iii), 8(c)(vi), and 9(c)(vii) of the consolidated complaint.

B. The Charging Parties' Position

The Charging Parties contend that the Respondents have violated their rights by failing to comply with the requirements of *Beck* by continuing to charge the Charging Parties and similarly situated nonmembers for nonrepresentational activities; failing and refusing to provide nonmembers with a breakdown of representational and nonrepresentational activities on a unit-by-unit basis; charging nonmembers for representational activities not attributable to their bargaining unit; and charging nonmembers for legislative, executive branch, and administrative lobbying. The Charging Parties cite *Chicago Teachers AFT Local 1 v. Hudson*, 475 U.S. 292 (1986); *Damiano v. Matish*, 830 F.2d 1363 (6th Cir. 1987); *Lowary v. Lexington Local Board of Education*, 854 F.2d 131 (6th Cir. 1988); and *Lowary v. Lexington Local Board of Education*, 903 F.2d 422 (6th Cir. 1990); wherein, they maintain that the Courts have unequivocally held that all agency fee collections must be provided pursuant to procedures to protect the constitutional rights of nonmembers prior to deducting any agency fees.

The Charging Parties further contend that the standards used by the Respondent Unions to calculate their financial core fee are legally erroneous because the Unions do not allocate the cost of their activities on a unit-by-unit basis. The NLRA does not permit the Respondents to charge nonmembers in one bargaining unit for expenditures in other discrete bargaining units which have no relation to employees in the initial bargaining unit. Thus Respondents cannot legally charge nonmembers in the Johnson Controls unit for activities they perform for public sector employees, employees covered by the RLA, and employees covered by the NLRA but who are in entirely separate units. Respondent Local 525 is a party to 15 different collective-bargaining agreements, including unrelated units of employees of employers in different industries throughout the nation. The units which the International has affiliation with are even less related to the Johnson Controls unit than those of the Local as the majority of the employees in the Locals repre-

sented by the International are not even NLRA units but rather are almost equally divided between public sector employees and RLA employees and only infrequently workers in NLRA units.

The Charging Parties rely on *Paperworkers Local 620 (International Paper)*, 309 NLRB 44 (1992), as instructive if not controlling on this issue as in that case the Board struck down a "pooled" voting system wherein one bargaining unit could veto the votes cast by a different bargaining unit in a contract ratification vote. Thus the Charging Parties argue that identical considerations apply when employees in the Johnson Controls unit are required to support even collective-bargaining activities provided for other employees in other bargaining units. The Charging Parties argue that employees can only be charged for activities which their Section 9 representative and its affiliates perform in negotiation and enforcement of their own collective-bargaining agreement with their employer under congressional intent and the Board's administration of the Act, with limited exceptions such as a union's institutional overhead under *Ellis v. Brac*, 466 U.S. 435, 448-449 (1984). In support of this argument, they note that the Act speaks in terms of collective bargaining in a unit appropriate for such purposes and does not define collective bargaining as the obligation of any and every union to bargain with any and every employer. Similarly, the Board's Rules and Regulations speak in terms of individual bargaining units, as does the Casehandling Manual. They also cite Board decisions grounded on the "unit-by-unit" concept and specifically *Motown Record Corp.*, 197 NLRB 1255 (1972); *Chester Valley, Inc.*, 251 NLRB 1435 (1980); and *Torrington Co.*, 305 NLRB 938 (1991). They also cite *NLRB v. Pittsburgh Plate Glass*, 404 U.S. 157 (1971), in which the Supreme Court adhered to the unit concept as the cornerstone of the Act. They further rely on the *Ellis* case which was cited by the Supreme Court in the *Beck* case as controlling and identical wherein In *Ellis* the Court said at 466 U.S. at 448, the "test must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues." They also rely on this decision for its finding that organizing expenses spent on employees outside the bargaining unit already represented are not chargeable to objecting nonmembers. The Charging Parties also rely on *Lehnert* wherein the Supreme Court rejected a broad based unit-by-unit requirement for all expenditures, but stated that this did not mean that a union had carte blanche to expend dissenters' money for bargaining activities which were wholly unrelated to the employees in the bargaining unit and stated that there must be some indication that the payment is for services that may ultimately enure to the benefit of the local unit members because of their membership in the parent union. The Court also stressed that the union has the burden of proving the proportion of the expenses which are chargeable to the total expenses and that the Unions cannot simply presume that everything it does in every unit is chargeable to all units because *Lehnert* did not rule that it was unlawful per se. The Charging Parties also contend that *Lehnert* is distinguishable because all of the units involved in that case were composed of teachers and university professors who arguably had some "community of interest," whereas here, Respondent International represents diverse employees in units which have no "community of interest." The only "community of interest" shown by the Local is that its units each bargain with an employer who has a service

contract with a government agency and the employers are engaged in different types of work and their employees have no “community of interest” that could impact on collective bargaining.

The Charging Parties also argue that practical reasons favor case-by-case proofs of unit chargeability under the Act to enable the Board and the courts to develop a factually based body of law concerning the meaning in *Lehnert* of the terms “may ultimately enure” and “not performed for the direct benefit of” as they assert that there are “gross conflicts of interest that lurk in cross-unit chargeability.” In support of this position they cite the International’s affiliates and their representation primarily of employees covered under the RLA and public sector labor laws which they argue are per se “wholly unrelated” to the NLRA and the Johnson Controls’ bargaining unit. They also contend that even some of the NLRA units create conflicts as a number of the collective-bargaining agreements in which the Local was a signatory or another local of the International was a signatory did not contain union-security agreements. They thus question the consistency of requiring employees represented by employers with union-security agreements to subsidize collective-bargaining activities in units that do not have union-security agreements with the stated legislative justification for union-security agreements, which is the elimination of free riders.

The Charging Parties also contend that the standards used by Respondent Unions to calculate the Charging Parties’ “Financial Core Fee” are legally erroneous because the Union charges employees for legislative and administrative lobbying. They cite *Beck* which held that labor unions cannot charge nonmembers for legislative activities under the NLRA and note that the unions in this case, notwithstanding *Beck*, charge objectors for a portion of expenses which the Unions categorize as “expenses for legislative, executive branch and administrative agency representation on legislative and regulatory matters closely related to the negotiation and administration of contracts and working conditions.” Thus the Charging Parties contend that there is no justification under any case arising under the NLRA for charging objecting nonmembers for these expenses. They also cite *Street*, 367 U.S. at 768–769 and fn. 17 wherein the Supreme Court said in construing the RLA, “§ 2, Eleventh is to be construed to deny the unions, over an employee’s objection, the power to use his exacted funds to support political causes which he opposes.” The Charging Parties contend that the sole exception to the prohibition against charging objecting nonmembers for lobbying expenses is in the case of public sector employees wherein some public sector collective-bargaining agreements are ratified by legislative bodies and the courts have held that representation in the public sector is permitted for that purpose only, citing *Abood*, 431 U.S. 209. They argue further that even under the more expansive standard for charging for legislative activities in the public sector, the Charging Parties cannot be charged for any of the Respondents’ lobbying activities as the division of representational activities by the International is an arbitrary division split down the middle and is thus a mere guess. They argue moreover that even if certain of the expenses charged nonmembers by the International such as expenses charged by a law firm were classified as litigation rather than lobbying, they are still not chargeable to the Charging Parties as litigation can only be charged to nonmembers if it is for their own bargaining unit. With the single exception involving a decertification drive, none of the litigation or litiga-

tion-like activities involved the Johnson Controls’ bargaining unit. They further contend that the Charging Parties should not be charged for even these expenses since it involved an internal union matter and the interests of the union were contrary to the interests of the Charging Parties since if the union were decertified, the nonmembers would be relieved of paying any fees and participants in a decertification drive should not be charged for the union’s legal expenses as well as their own. The Charging Parties also note that the International included several legislative activities involving drug testing which they characterize as a highly ideologically charged issue. In addition the International charged for numerous other nonbargaining unit activities and most, if not all of those activities appear to involve issues that would directly impact on RLA employees or occasionally public sector employees. Moreover, none of the lobbying activities of the Local involved the Johnson Controls’ bargaining unit agreement.

The Charging Parties seek as the remedy in this case: (1) complete restitution of all allegedly unlawfully taken fees; (2) individual notice to all affected employees; (3) unitwide remedies for the entire bargaining unit; and (4) formal NLRB notices to the bargaining unit which are “truthful and specific with regard to individual employee rights and options under the law.”

C. The Respondents’ Position

The Respondents list the issues as: (a) Whether Respondent’s failure to account for expenses on a unit-by-unit basis violates Section 8(b)(1)(A) of the Act as alleged? (b) Whether Respondents have charged *Beck* objectors for nonchargeable expenses in violation of Section 8(b)(1)(A) of the Act as alleged? (c) Whether Respondent Local 525 has refused to honor Mitchell Sohm’s *Beck* objection in violation of Section 8(b)(1)(A) of the Act as alleged?

With respect to the issue of unit-by-unit accounting, the Respondents contend that the General Counsel takes the position that objectors have the right not to contribute to the pool of shared resources such as in the case of a strike fund unless they can establish that in each instance the charged contributions were spent on pooled services actually used by the Charging Party’s own bargaining unit during the year in question. The Respondents contend that every court to have considered this issue, including the Supreme Court in *Lehnert* has rejected this argument as inconsistent with the idea of an agency fee, citing *Crawford v. Air Line Pilots Assn.*, 870 F.2d 155, 158–159 (4th Cir. 1989); *Pilots Against Illegal Dues v. Airline Pilots Assn.*, 131 LRRM 2514, 2515–2516 (D. Colo. 1989), affd. 938 F.2d 1123 (10th Cir. 1991); *Abels v. Monroe County Education Assn.*, 489 N.E.2d 533, 537, 539 (Ind. App. 1986), cert. denied 480 U.S. 905 (1987). The Respondents note that in *Ellis* the Supreme Court held, that under the RLA, objecting nonmembers may only be charged for those activities “germane to collective-bargaining activity.” The *Lehnert* Court considered whether this test prohibits using objectors’ fees for activities that are closely related to collective bargaining generally but were not undertaken directly on behalf of the objectors’ bargaining unit and the Supreme Court stated in *Lehnert* that they had never interpreted this test to require that there be a direct relationship between the expense involved and a tangible benefit to the objectors’ bargaining unit. In *Ellis*, the Supreme Court recognized that objectors may be required to contribute to expenses or activities which are normally or reasonably util-

ized to carry out the duties of the union as the exclusive collective-bargaining representative. In *Lehnert*, the Supreme Court was unanimous in recognizing that it is normal and reasonable for unions to pool their resources for such activities across all represented bargaining units and Justice Blackman in the majority opinion stated that part of the bargaining unit's payments which contributes to the pool's resources which is potentially available to the unit is assessed for the unit's protection, even if it is not used by the unit during the particular year. *Lehnert* also stated that unit-by-unit accounting was foreclosed by the Court's prior decisions, citing *Ellis*. Respondents argue further that although *Lehnert* arose in the public sector, and was decided under the First Amendment, the parties in *Lehnert* proceeded on the basis that *Ellis* controlled the question of unit-by-unit accounting and the *Ellis* Court initially decided whether the challenged expenditures were chargeable under the RLA and then decided whether they were chargeable under the first amendment. The Court in *Lehnert* held that *Ellis* forecloses the unit-by-unit accounting requirement. As the Court had made clear in *Beck*, the general standard for chargeability *Ellis* established under the RLA, applies under the NLRA as well. *Lehnert* is not distinguishable and controls this claim. Three possible arguments to attempt to distinguish these cases are without merit and should be rejected. Initially, although *Lehnert* is a public sector case under the first amendment, the public sector law concerning unit-by-unit accounting is derived from RLA case law, particularly the Court's earlier decision in *Ellis*. As the Court made clear in *Beck*, the RLA principles as to what is a chargeable expenditure are controlling with the right to object under the NLRA as both statutes were enacted to address free rider concerns. Secondly, since *Lehnert* concerns employees affiliated with the National Education Association (NEA), rather than the TWU as involved here, an argument could be made that this case is distinguishable because of that relationship and that units represented by the NEA have a closer affinity with each other so as to permit cost sharing within the NEA but not with the TWU. However, the Court in *Lehnert* did not even discuss the composition of the NEA or the units it represents and held that once it is shown the expenses charged are germane to collective bargaining, no greater relationship is necessary. Finally, because the local union in *Lehnert* represented only a single unit, the dues paid to the local were of necessity spent only on the local's own bargaining unit. In the instant case the Respondents represent employees in more than one bargaining unit and pooling of resources from members of different bargaining units takes place within the local union, as well as the International. There is no suggestion in *Lehnert* that its holding is limited to affiliated unions. Rather all of the Supreme Court's reasons for allowing pooling of resources are at their strongest in the case of local union expenditures.

Respondents further argue that it is both normal and reasonable for a union to use dues and fees from all represented bargaining units to create a pool of resources available to all represented bargaining units. Although the purposes for which unions pool their resources are legion, two examples are the utilization of national staff to engage in bargaining and grievance handling and national union strike benefits. As recognized in *Abood*, supra, the pooling of resources across all represented bargaining units enables a national union to create a permanent staff of lawyers, expert negotiators, economists, and research staff whose services may be made readily available to all units.

The strike fund provides an immediate benefit in terms of bargaining strength, even if the unit does not have to draw on the fund. Respondents argue further that the burdens of unit-by-unit accounting would be enormous on any multiunit local such as Local 525 and overwhelming on the International. The International maintains approximately 60 different affiliated locals, and is a party (with the locals) to at least 50 collective-bargaining agreements. Assuming arguendo that chargeable expenditures by the International could be directly identified as benefiting a particular unit, unit-by-unit accounting would require dividing the chargeable expenditures into 60 categories. Additionally many of the International's locals are responsible for administering several collective-bargaining agreements such as in the case of Local 525. Although in the abstract it may be possible to set up accounting methods for allocating staff expenses and various other expenses incurred by the International, the actual task of carrying out those calculations is beyond the capacity of real organizations with finite resources. Respondents further contend that unit-by-unit accounting would punish employees who choose to be represented by multiunit affiliated unions by denying them the ability to spread the cost of collective bargaining over all represented employees and by imposing on them overwhelming difficult accounting requirements. The failure to meet these burdens by the union will permit objecting nonmembers to opt out of paying their fair share and will result in free riding. Objecting nonmembers cannot assert any duty of fair representation interest that would militate against charging them their fair share of the cost of pooled resources available to the bargaining unit.

In addressing the issue of litigation expenses, the Respondents note that there is no evidence in the record of either litigation or legal expenses incurred by Local 525. Respondents note the statement of Justice Blackman, writing for himself and three other Justices in *Lehnert*, 500 U.S. at 526, wherein he stated that it is unconstitutional to charge for "the expenses of litigation that does not concern the dissenting employees' bargaining unit." They contend that Justice Blackman distinguished litigation expenses from other chargeable expenses which do not have to be broken down by bargaining unit on two grounds "the important political and expressive nature of litigation" and the fact that "union litigation may cover a diverse range of areas from bankruptcy proceedings to employment discrimination." *Id.* Respondents contend that Justice Blackman's opinion requires only that general litigation be charged on a unit-by-unit basis but that his intent is less clear concerning litigation that is an integral part of the collective-bargaining process and that does not cover a "diverse range of areas" and does not have an "important political or expressive nature." Respondents thus contend that they lawfully charge objectors their proportionate share of such litigation expenses and are not required to do so on a unit-by-unit basis.

With respect to the category of expenses designated by Respondents as expenses for legislative, executive branch, and administrative agency representation on legislative and regulatory matters closely related to the negotiation or administration of contracts and working conditions, Respondents contend that all of the above expenses are properly chargeable to objectors. Thus Respondents contend that lobbying is not per se non-chargeable. rather, citing *Beck*, 487 U.S. at 745, they contend that the test is whether the expenditures are "germane to collective bargaining" or citing *Ellis*, 466 U.S. at 448, supports "activities or undertakings normally or reasonably employed to

implement or effectuate the duties of the union as the exclusive representative.” Respondents also contend that *Lehnert* conclusively establishes that lobbying can be “germane to collective bargaining” as the Court in that case found “advancing their members’ interests in the legislative and other political areas” was germane to the union’s effective representation of its members. However principally on first amendment grounds, the Court concluded that “the State constitutionally may not compel its employees to subsidize legislative lobbying outside the limited context of contract ratification or implementation,” quoting *Ellis*, 466 U.S. at 456. Respondents argue that under the NLRA only the “germaneness” test governs and a union is accorded a number of reasonable options to pursue its legitimate goals including the option of legislative activity.

Respondents thus contend that in evaluating Local 525’s activities, it is critical to observe that it exclusively represents private sector employees whose employers have been awarded service contracts with government agencies. Therefore the employers with which Local 525 has labor agreements are in turn in a contractual relationship with governmental agencies (such as the Air Force or NASA in this case) and the relationship between the government and the contractors thus directly impacts upon the wages, hours, and terms and conditions of employment of the employees represented by Local 525 and the contractors are regulated by Federal statutes such as the Service Contract Act and the Contract Work Hours and Safety Standards Act. None of the contacts by Local 525 representatives with elected government officials as set out in the stipulation of facts were for the purpose of influencing any pending or potential legislation. Rather they were to resolve an ongoing wage and benefit dispute with an employer, Unified Services, Inc. (USI) at Cape Canaveral Air Force Station. USI had a contract with the Air Force to perform janitorial work at Cape Canaveral Air Force Station and a labor agreement with Local 525 and was repeatedly late in the payment of wages and delinquent in the payment of fringe benefits. As efforts to resolve this wage and benefit problem were unsuccessful, Local 525 sought the assistance of United States Congressman Jim Bacchus whose district includes the Cape Canaveral Air Force Station and Local 525’s president and vice president traveled to Washington, D.C., to meet with Bacchus and obtain his support to put pressure on USI to make timely wage and benefits payments. Pursuant to their efforts Congressman Bacchus wrote to the Secretary of the Air Force urging him to look into the matter. In addition to these efforts Local 525 representatives wrote to Bacchus and Florida Senators and to another congressman who represented a nearby district as well as making telephone calls to Bacchus concerning this issue. Respondents argue that the sole reason for communicating with these elected officials was to elicit their support concerning the USI matter and that these communications were thus germane to their effective representation of bargaining unit members. In addition, Local 525 communicated with nonelected government employees on matters directly involving bargaining unit employees. It dealt with Air Force labor relations concerning USI’s delinquent payment of wages and fringe benefit contributions. Additionally, it conversed with labor relations with respect to (1) new Air Force rules restricting the number of hours employees could work as the rules were in contravention of the labor agreement; (2) a new Air Force “self help” program which would reduce bargaining unit work; and (3) reduction of emergency reserve personnel which would diminish the safety of unit personnel. All

of these matters directly impacted the wages, hours, and terms and conditions of employment of the bargaining unit members and it was normal, reasonable and germane for Local 525 to converse with the Air Force about them. Additionally Local 525 telephoned Air Force labor relations staff concerning Johnson Control’s unilateral implementation of a new hourly rate for represented fire fighters and seeking the Air Force’s assistance in ensuring that the wages provided under the service contract between the Air Force and Johnson Controls were paid the contractor’s represented employees. If the Union had filed a grievance or a lawsuit, those expenses would have been chargeable and the use of a more expeditious route of contacting the Government agency by telephone did not render the expenses associated with the telephone call nonchargeable. Additionally, there are on occasion contract change requests which directly impact on the terms and conditions of the represented employees and in order to monitor these changes, Local 525 would occasionally telephone Air Force Labor Relations. These expenses were normal, reasonable and germane to the Union’s bargaining function. On occasion NASA would initiate conversations with Local 525 about its representation of unit employees of their contractors. Similarly, Air Force labor relations would inquire of Local 525 concerning its representation of unit employees of a contractor’s concerning such matters as placement of picket lines, security clearance of unit employees status of grievances and others. Responding to these inquiries from the government is normal, reasonable, and germane and is properly deemed chargeable.

With regard to other activities by the International, Respondents address several matters outlined in the stipulation of facts. The International spent time representing bargaining unit aircraft mechanics and dispatchers under investigation by the Federal Aviation Administration (FAA) who were subject to suspension or revocation of their dispatch, airframe, and power plant certificates for alleged errors arising out of bargaining unit work performance. The suspension or revocation of their license would have precluded their continuing to hold bargaining unit positions and thus the outcome of the FAA investigation directly implicates the rates of pay, hours, and working conditions of the affected bargaining unit employees and their rights under the collective-bargaining agreement. Therefore the TWU’s efforts to assist these employees in these matters were direct consequences of their role as collective-bargaining representative to make and maintain agreements concerning rates of pay, hours, and working conditions and the TWU would otherwise have no interest in intervening in these disputes. Likewise, the TWU would have no interest in preserving the work maintenance work referred to in the stipulation of facts in the absence of its collective-bargaining agreement with American Airlines covering the employees.

The International further argues that position papers it filed with the Department of Transportation on drug testing stand on no different footing. “Employees who test positive for drugs and cannot offer a satisfactory alternative explanation must be removed from their positions.” citing *Bluestein v. Skinner*, 908 F.2d 451 (9th Cir. 1990). Consequently the TWU had an obvious interest in assuring that mandatory drug testing procedures were fair. Similarly, the work of TWU before the National Mediation Board was germane to collective bargaining. In *US Air Shuttle, Inc.*, 19 NMB 388 (1993), the issue was whether the TWU would be able to continue to administer and enforce its collective-bargaining agreement and whether that agreement

continued to apply in light of the NMB's ruling that it was the same carrier as US Air. Although these matters related to representation issues they did not involve persuading employees to join or support unions but involved only assuring that petitions were expeditiously handled in accordance with NMB Rules and Regulations and the protection of the rights of the TWU and its members during reconfiguration of one or more carriers. This technical regulatory work is standard fare for any union representing RLA covered employees and does not involve the expressive or ideological content that the *Lehnert* Court was concerned with.

Analysis

As the cases cited by the parties set out, the rights of objecting nonmembers are to be protected by ensuring that they are not charged for expenses incurred by a union which are not germane to the union's obligation and duty to represent them. As also set out by the cases cited by the parties Congress was concerned with the elimination of "free riders" so as to avoid objecting nonmembers reaping the benefits of collective bargaining while not sharing in the cost associated with collective bargaining which cost is incurred by a union charged with representing them. In requiring an accounting to ensure that nonmembers are not charged for expenses other than those undertaken by the Unions for representational purposes, it is necessary to consider in this case whether that accounting must be done on a unit-by-unit basis as contended by the General Counsel and Charging Parties. After a review of the record and the contentions of the parties as set out in their briefs, I find that the Unions did not violate the Act by their refusal to engage in unit-by-unit accounting and by their charging of the various expenses as set out in the statement of facts.

With respect to the issue of unit-by-unit accounting, I find that the Unions were not obligated to engage in unit-by-unit accounting and their refusal or failure to engage in it was not violative of the Act. I find that unit-by-unit accounting is at odds with the comprehensive sharing of risk and burden by employees represented by the Unions. Thus the insurance like method of pooling of dues and fees, places large reserves of money and representational and legal talent as well as other expertise as required, at the disposal of the collective-bargaining representatives on behalf of the represented employees. The requirement of unit-by-unit accounting with the corresponding argument that employees in one bargaining unit should not pay for expenses incurred on behalf of employees in other bargaining unit, defeats the purpose of cost sharing. While the Charging Parties might in 1 year contend that expenses incurred by other bargaining units on behalf of their members, should not be borne by them, in a subsequent year substantial expenses might be incurred by the Charging Parties' own bargaining unit on their behalf. If these costs were all to be charged to the Charging Parties own bargaining unit it might be unable to bear them through the collection of dues and fees limited to the employees in the affected bargaining unit. I thus find persuasive the arguments made by the Respondents and the cases cited by them in support of their position, particularly *Lehnert*, which I find foreclosed the unit-by-unit accounting requirement. I find that *Lehnert*, although a public sector case, is applicable to the NLRA as the Court had earlier in *Beck* relied on the general standard for chargeability established in *Ellis* under the RLA as applicable under the NLRA.

With respect to the various expenses incurred by the Unions' as set out in the statement of facts, I find that they were all

germane to collective bargaining and that the Unions did not violate the Act by charging them to fees paid by the Charging Parties. I find that in every instance these expenses were incurred on behalf of the employees in the affected bargaining units.

With respect to the expenses charged to objecting nonmembers I find the following were properly chargeable.

Pursuant to section 3,g, of the provisions of the fee objection procedure, since 1991 the Respondent Unions have charged objectors for a portion of their expenses which Respondent Unions have categorized under the fee objection procedures as "expenses for legislative, executive branch, and administrative agency representation on legislative and regulatory matters closely related to the negotiation of contracts and working conditions." I find that the direct expenses charged by Local 525 during audit years ending March 31, 1992, and 1991, for round-trip airline tickets and overnight hotel accommodations from Florida to Washington, D.C., to enlist the help of a U.S. Representative, as an elected official to put pressure on Unified Services, Inc., a government contractor with whom Respondent Local 525 had a collective-bargaining agreement, to timely pay its employees and to timely make contributions into the employees' health and pension benefit funds, were properly charged to objecting nonmembers, as were the indirect expenses incurred as set out above in the statement of facts in this decision. The Union was engaged in representing bargaining unit members concerning wages, hours, or terms and conditions of employment. At the outset because of the unique situation of government contractors who have a contractual relationship with the United States Government through one or more of its agencies, the United States Government plays a vital role in setting the wages, hours, and terms and conditions of employment of the unit members by its contractual agreements with and requirements imposed on the government contractors. The determinations of the Federal Government and its agencies (such as NASA or the Air Force in this case) directly impact on the unit employees' wages, hours, and terms and conditions of employment. Thus the direct and indirect expenses incurred by the Unions in contacting and appearing before the governmental officials and agencies as set out above were germane to Local 525's responsibilities as collective-bargaining representative of the unit employees and were properly and reasonably charged to the objecting nonmembers. Similarly, conversations held with Air Force labor relations personnel concerning new Air Force Rules restricting the member of overtime hours that contractors could work their employees in contravention of the terms of the collective-bargaining agreement directly impacted the wages, hours, and terms and conditions of employment of the employees represented by the Respondent Unions. The telephoning of Air Force labor relations staff concerning Johnson Controls World Services, Inc.'s unilateral implementation of a new hourly rate for represented firefighters and eliciting the Air Forces' assistance in ensuring that the contractually required wages were paid to represented employees also directly impacted on the employees wages and terms and conditions of employment and were properly chargeable to objecting nonmembers. Similarly, telephoning Air Force labor relations staff to monitor contract change requests initiated by the Air Force or the contractor were properly chargeable as they directly impacted on the terms and conditions of the represented employees. Meeting with Air Force labor relations to respond to Labor Relations inquiries about the status of various issues

germane to Local 525's representation of unit employees of a contractor, i.e., placement of picket lines, security clearance of unit employees, status of grievances were properly chargeable as they directly impacted on represented employees' wages, hours, and terms and conditions of employment. Similarly, conversations held with the National Aeronautical and Space Administration Labor Relations staff, at their initiation, for general inquiries of Local 525's existing representation of unit employees of their contractors were germane to their representation of unit employees. Similarly the indirect expenses charged for the above-discussed monitoring of contract change requests, responding to inquiries about the status of various issues and general inquiries regarding Local 525's representation of unit employees of contractors were germane and properly chargeable.

The various representations engaged in on behalf of represented employees by the International during audit years ending March 31, 1992, and 1991, were also properly chargeable as they directly impacted the employees hours, wages, and terms and conditions of employment including the representation of FAA licensed mechanics and dispatchers who were unit employees during FAA investigations of work performance and representation at informal conferences after issuance of suspensions or civil penalties and including a hearing before the National Transportation Safety Board. This is certainly comparable to a union's representation of its represented employees in disciplinary cases before an arbitrator wherein the employees' jobs are in jeopardy. The filing of position papers by the International with the Department of Transportation supporting American Airline's application for exemption to operate jet aircraft out of O'Hare Airport and not to allow nonmechanic personnel to change aircraft light bulbs, stemmed from its role as collective-bargaining representative of affected employees and was germane and reasonable and the expenses incurred thereby were properly chargeable. The legal representation before the National Mediation Board (NMB) in *US Air Shuttles, Inc.*, case seeking to preserve the representational rights of unit employees was germane to collective bargaining and properly chargeable. Similarly the legal representation before the NMB in the Henson Airlines case objecting to the NMB's decision to hold in abeyance Respondent International's petition for election while considering a single-carrier petition filed by the Airline Pilot Association, was germane and properly chargeable. I also find expenses for the legal preparation and representation in court in *Flagship Airlines, Inc. v. TWU*, supra, with respect to opposing the employer's application for a temporary restraining order and preliminary injunction sought against Respondent International for strike activities engaged in on behalf of represented employees, to be germane to collective bargaining and properly chargeable. I also find expenses incurred by Respondent International for attendance at meetings in both audit years of the American Airlines President's Council, an official body established by the employer and chaired by the vice president of Respondent International for the purpose of providing legal advice and assistance to the chairman on matters pertaining to unit employees were germane to collective bargaining and properly chargeable. I also find that expenses incurred for attendance at meetings of the TWU International Executive Council in both audit years, for the purpose of providing legal advice and reporting on enacted laws were germane to collective bargaining and properly chargeable. I also find that expenses incurred by the International for the

presentation of legal seminars in both audit years were germane to collective bargaining and properly chargeable. I also find that legal support to negotiators during the 1991 collective bargaining with American Airlines and with Flagship Airlines was germane to collective bargaining and properly chargeable as was the conduct of contract arbitration with Flagship Airlines, Inc.

I find that the expenses incurred by the International in audit year 1991, for the following were germane to collective bargaining and properly chargeable as follows:

(a) Representation of 30 FAA licensed mechanics and dispatchers, who were unit employees, during FAA investigations of work performance, including assistance in responding to inquiries and informal conferences scheduled with FAA attorneys.

(b) Preparation and presentation of position papers in response to proposed drug testing regulations governing unit transit providers and safety sensitive aviation personnel.

(c) Conduct of seminars with unit mechanics to explain the parameters of the License Protection Program.

(d) Providing legal representation before the NMB in the *US Air* case regarding the scope and composition of a petitioned-for unit of employees who had not been previously represented by Respondent International.

(e) Providing legal representation before the NMB in the Northwest Airlines Foremen's Association case wherein the International sought a recertification of representation to recognize the affiliation of Northwest Airlines Foreman's Association with the International in order to require Northwest to bargain with it, and the drafting of a termination agreement for the Northwest Airline's Foreman's Association as a result of the elimination of this craft by Northwest Airlines.

(f) Supplying legal representation in *TWU v. Alaska Airlines*, wherein the International sought an injunction to enjoin the employer's unilateral changes in working conditions after certification.

(g) Providing legal advice and drafting a brief in relation to a major contract arbitration over the chain of custody of urine samples with American Airlines.

(h) Providing day-to-day legal counsel to the air transport division officials on an as-needed basis pertaining to matters involving negotiation and administration of collective-bargaining agreements.

With respect to the litigation costs incurred by the International listed above, I find they were all incurred as a normal incident of furthering the collective-bargaining process and were not of a political or expressive nature such as those envisioned by Justice Blackman in his opinion in *Lehnert*. With respect to lobbying expenses incurred by Respondents I am persuaded by the Respondent's argument that lobbying is not per se nonchargeable, and that the test is whether they are "germane to collective bargaining," *Beck*, 487 U.S. at 745, or supports "activities or undertakings normally or reasonably employed to implement or effectuate the duties of the union as the exclusive representative," *Ellis*, 466 U.S. at 448. I find that all of the foregoing expenses which might be characterized as lobbying expenses meet the tests set out in *Beck* and *Ellis*. I find also in agreement with Respondents' position that position papers filed by the International relating to drug testing were germane to its collective-bargaining obligations to employees represented by it who are subject to the drug testing in assuring that mandatory drug tests are fair and I reject the General

Counsel's argument that they are too attenuated to be properly chargeable. I am also persuaded by the Respondent's argument that the various representational matters pertained to reconfiguration of carriers in the airline industry which is technical regulatory work and standard fare for any union representing RLA covered employees and did not involve persuading employees to join or support unions and the expressive or ideological content that the *Lehnert* Court was concerned with.

The alleged refusal to honor Mitchell Sohm's objection

The complaint alleges and Respondent admits that on May 7, 1992, Sohm, an employee in the unit of Johnson Controls employed by Local 525, mailed by certified mail a letter of resignation from union membership and his *Beck* objection to Respondent, Local 525 and that since May 15, 1992, Respondent Local 525 has been in receipt of Sohm's letter of resignation and *Beck* objection. The complaint also alleges and Respondent Local 525 admits that since May 15, 1992, Respondent refused to accept Sohm's *Beck* objection as perfected, failed to provide Sohm with the Union's agency fee policy, failed to provide Sohm financial information concerning the breakdown between representational and nonrepresentational activities for Respondent Local 525 and its agent, Respondent International, failed to refund to Sohm the nonrepresentational portion of dues received and retained by Respondent since receipt of his resignation and *Beck* objection. The complaint also alleges and Respondent's deny in their answer that Respondent Local 525 has failed and refused to provide Sohm a breakdown of representational and nonrepresentational expenditures on a unit-by-unit basis, charged Sohm for amounts which, in part, pertain to representational activities not attributable to bargaining unit and has charged Sohm for amounts which, in part, pertain to nonrepresentational activities, including, legislative, executive branch and administrative representation on legislative, executive branch, and administrative representation on legislative and regulatory matters closely related to the negotiation or administration of contracts and working conditions.

The Charging Parties contend that since Respondents admit they received Charging Party Sohm's resignation and *Beck* objection, there is no legitimate defense for the continuing refusal to provide Sohm with the information required by *Beck* and for the ongoing practice of charging Sohm for these nonrepresentational activities after his resignation from the Union and his objection to the Respondent's agency fee.

The Charging Parties point to the Respondents' 1991 and 1992 agency fee procedures which require that nonmembers must file objections in January of each year and that employees who desire to object but who were unable to make a timely objection because they were not subject to a TWU union-security clause in January, must make an objection within 30 days after they become subject to the union-security obligations and receive notice of these procedures. The Charging Parties contend that Sohm could not have filed during the January window period because he was ineligible to do so at that time since he did not resign from the Union until May 1992 and that this was thus his first opportunity to object as a nonmember. Since Sohm filed his objection simultaneously with his resignation, it was within the Unions' window period. It would not be unduly burdensome on the Union to permit employees to file objections throughout the year. The Unions' refusal to accord Sohm his rights under *Beck* violates the Act in two ways. Initially nothing in *Beck* makes nonmembers' rights contingent on an arbitrary date selected by a union as a window period. Sec-

only, since one of the central premises of the Act is the concept of voluntary unionism, there can be no question that once Sohm submitted his resignation, he was no longer a member of the Unions, citing *Pattern Makers (Michigan Model Mfgs.)*, 310 NLRB 920 (1993). The limitation of the filing of objections to 1 month of the year restrains and coerces employees and forces them to pay fees equal to dues when they have no obligation to financially support the union for anything other than representational activities.

With respect to employee Sohm, Respondents contend that Local 525 has accepted his withdrawal from union membership and the moneys received from Sohm since his resignation are referred to as a "sum equivalent to union dues." They contend that Local 525 lawfully rejected his "*Beck* objection" and continued to receive moneys from Sohm pursuant to his checkoff authorization as his request to pay a reduced fee (his *Beck* objection) was untimely received by Local 525 on May 15, 1992. Consequently, Local 525 accepted his resignation, but refused to permit him to pay a reduced fee in 1992. Sohm was obligated to submit his *Beck* objection in January of 1992 and is bound to continue to pay a sum equivalent to union dues until he timely revokes his checkoff authorization. Sohm did not submit his objection in January 1992 in accordance with Local 525's fee objection Procedure which provides for a window period in January of each year during which objections must be filed by employees in the bargaining unit. The fee objection Procedure was communicated to employees in the December issue of the TWU Express newspaper. There is no allegation or record evidence that Sohm was not on notice of the January 1992 window period. There is no rational basis for the General Counsel's position that an employee can ignore the window period and file an objection any time he pleases. Rather, the Respondents contend that the instant case is no different than the case of a member's revocation of a union authorization card for deducting union dues in a right-to-work State. In those cases the Board has recognized the legitimate restriction of the revocation to a reasonable window period. In *Shen-Mar Food Products*, 221 NLRB 1329 (1976), enf'd. as modified 557 F.2d 396 (4th Cir. 1977), the Board rejected the argument that requiring nonmember employees to continue honoring a dues-checkoff authorization is per se unlawful. In *Frito-Lay*, 243 NLRB 137 (1979), the Board dismissed an 8(b)(1)(A) allegation where there was no language in the checkoff authorization making union membership the consideration of the employee's agreement to have dues withheld from his wages. Thus in the instant case if Sohm's authorization card does not contain language making union membership the quid pro quo for the payment of dues, then under *Frito-Lay*, Sohm is obligated to pay a sum equivalent to union dues until he exercises his rights during the window period. However in the instant case the card is not part of the record and there has been a failure of proof on this issue and the allegation that Local 525 unlawfully refused to accept Sohm's *Beck* objection and continued to require him to abide by his checkoff authorization should be dismissed. Dismissal of the remaining allegations involving Sohm follows.

Analysis

I find that Respondent Local 525 violated Section 8(b)(1)(A) and (2) of the Act by refusing to accept Sohm's *Beck* objection by failing to provide him with the Union's agency fee policy and by refusing to give him a breakdown of representational and nonrepresentational expenses charged to him and by failing to refund to Sohm the nonrepresentational portion of dues re-

ceived and retained by Respondent since receipt of his objection. In *Beck* the Supreme Court held that its prior cases decided under the RLA were applicable to *Beck* issues under the Act. In *Ellis*, supra, the Court found a “charge and rebate” system unlawful. See also Hudson, supra, and *Tierney v. City of Toledo*, 917 F.2d 927 (6th Cir. 1990). Accordingly, any procedure or policy implemented by a union which, as in the instant case, impermissibly interferes with the Section 7 rights of objecting nonmembers whose rights to a reduction in fees for nonrepresentational activities are delayed or denied thereby, violates the Act.

CONCLUSIONS OF LAW

1. The Employer, Johnson Controls World Services, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondents, Transport Workers of America, AFL-CIO and its Local 525, are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondents did not violate the Act by failing to break down expenses into representational and nonrepresentational categories on a unit-by-unit basis in its disclosure statements to objecting nonmembers and by charging objecting nonmembers for representational expenses not attributable to the bargaining unit in which the objectors are employed.

4. Respondents did not violate the Act by charging objecting nonmembers for expenses incurred on “legislative, executive branch and administrative agency representation on legislative and regulatory matters closely related to the negotiation or administration of contracts and working conditions.”

5. Respondents violated Section 8(b)(1)(a) and (2) of the Act by refusing to accept employee Mitchell Sohm’s *Beck* objection, by failing to provide him with the Union’s agency fee policy, by refusing to give him a breakdown of representational and nonrepresentational expenses charged to him and by failing to refund the nonrepresentational portion of dues received and retained by Respondents since receipt of his objection and by maintaining and enforcing a policy concerning employee rights to object to nonrepresentational portions of their agency fees

which does not immediately reduce the agency fees for nonrepresentational activities.

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

THE REMEDY

Having found that Respondents have engaged in certain unfair labor practices, I shall order that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

With respect to the failure to accept Sohm’s objections, the subsequent failure to provide the Respondents’ agency fee policy and financial disclosure information and the failure to refund the nonrepresentational portion of dues received and retained by Respondent Unions since receipt of Sohm’s objection, Respondent Unions should be ordered to accept Sohm’s objection, provide him their agency fee policy and financial disclosure information and make him whole with interest for any excess dues and fees paid to Respondent Unions for nonchargeable expenditures through a refund with interest of such excess amounts commencing with the filing of Sohm’s objection and thereafter. Preserve and on request make available to the Board or its agents all records necessary to calculate the amount of the refund due Sohm. Respondents shall also be ordered to post notices to its members employees in its bargaining unit as set out in the attached notice advising them that it has been found to have committed certain unfair labor practices and has been ordered to cease and desist therefrom and to make the affected employee Mitchell Sohm whole for excess fees and dues charged to him as a result of the aforesaid unfair labor practices, with interest. Notices should be placed at places where notices to employees and members are normally placed at the offices of Respondent International and Respondent Local 525 and sufficient notices should be also made available for posting, the employer willing, at the locations of the employer involved in this proceeding.

[Recommended Order omitted from publication.]