

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

United Food and Commercial Workers Locals 951, 7 and 1036 (Meijer, Inc.) and Various Individuals.
Case 16-CB-3850 (2-6, 9-25, 27, 33, 35-36)

May 25, 2004

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND WALSH

On September 30, 1999, the National Labor Relations Board issued a decision in this case,¹ finding, inter alia, that United Food and Commercial Workers Local 1036 violated Section 8(b)(1)(A) of the Act by notifying new employees in its “welcoming” letter that they were required to become full members of Local 1036 as a condition of employment.² The Board also found that Local 1036 violated Section 8(b)(1)(A) by failing to notify such employees of their *General Motors*³ right to remain nonmembers of the Union and of nonmembers’ *Beck*⁴ rights, including the right to object to paying for nonrepresentational activities and to obtain a reduction in fees for such activities.⁵

To remedy these violations, the Board ordered Local 1036 to notify all current bargaining unit employees of their rights under *Beck* and *General Motors* and to notify those employees whom Local 1036 initially sought to obligate to pay dues or fees under the union-security clause on or after September 3, 1988, of their right to elect nonmember status and to make *Beck* objections with respect to one or more of the accounting periods covered by the complaint. The Board further ordered Local 1036 to process the objections of any such employees who reasonably promptly elected nonmember status and filed objections with respect to any such accounting periods and to reimburse the objecting nonmember employees for the reduction in dues and fees, if any, for nonrepresentational activities that occurred during the accounting periods as to which they objected.

¹ 329 NLRB 730.

² The Board found that Local 1036 sent the welcoming letter to employees hired from September 21, 1988, until after July 11, 1990. The Board’s decision afforded Local 1036 an opportunity to demonstrate in compliance proceedings the point at which it ceased sending the letter to newly hired employees. *Id.* at 738 fn. 45.

³ *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963).

⁴ *Communications Workers v. Beck*, 487 U.S. 735 (1988).

⁵ The Board’s decision also addressed certain alleged violations regarding Respondent United Food and Commercial Workers Local 7 and Respondent United Food and Commercial Workers Local 951. Those alleged violations are not presently before us.

Subsequently, Local 1036 filed a petition for review, and the Board cross-petitioned for enforcement.⁶ On May 17, 2001, the United States Court of Appeals for the Ninth Circuit issued a panel decision that, with respect to Local 1036, upheld the 8(b)(1)(A) violations but found that the Board’s remedy was overbroad.⁷ Regarding the remedy, the court stated:

[T]he Board’s remedial order goes too far. The offending letter was not sent to all employees. Reimbursement is due only those employees who received the letter and object. The remedy designed by the Board must be modified.⁸

The United States Court of Appeals for the Ninth Circuit thereafter reconsidered the case en banc. In its en banc decision, the court found that the panel opinion was correct with respect to the allegations concerning Local 1036 and it reinstated that part of the opinion. The court remanded the Board’s Order with respect to Local 1036 “to modify [the] remedy as it was overbroad.”⁹

On August 1, 2002, the Board advised the parties that the Board had accepted the remand and invited the parties to submit statements of position. Local 1036, the General Counsel, and the Charging Parties each filed a statement of position.

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

The Board has considered the parties’ statements of position in light of the court’s remand and will revise the remedy in accord with the court’s order. As noted above, the court found that Local 1036’s offending letter was not sent to all employees and that reimbursement is due only to those employees who received the letter and object. Accordingly, pursuant to the court’s direction, we shall revise the remedy to make clear that the reimbursement remedy in this case is limited to employees who received Local 1036’s welcoming letter.

ORDER

The National Labor Relations Board reaffirms its original Order, reported at 329 NLRB 730 (1999), as modified below, and orders that Respondent United Food and Commercial Workers Local 1036, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph B,2(c).

⁶ Certain Charging Parties also petitioned for review regarding issues concerning solely Respondents Locals 7 and 951.

⁷ 249 F.3d 1115, 1120.

⁸ *Ibid.*

⁹ 307 F.3d 760, 774 fn. 21 (2002).

“(c) Notify in writing those employees who received Respondent Local 1036’s welcoming letter on or after September 21, 1988, of their right to elect nonmember status and to make *Beck* objections with respect to one or more of the accounting periods covered by the complaint.”

2. Substitute the attached notice for the notice marked “Appendix B.”

Dated, Washington, D.C. May 25, 2004

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX B

NOTICE TO MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail to notify unit employees, when we first seek to obligate them to pay dues and fees under a union-security clause, of their right under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), to be and remain nonmembers, and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for our nonrepresentational activities and to obtain a reduction in dues and fees for such activities.

WE WILL NOT fail to provide unit employees who have resigned their union memberships and filed *Beck* objections with information about the percentage reduction in dues and fees charged *Beck* objectors, the basis for that calculation, and the right to challenge those figures.

WE WILL NOT charge nonmember bargaining unit employees for nonrepresentational activities after they file *Beck* objections.

WE WILL NOT threaten to have discharged, or otherwise to interfere with the employment of, Glenn T. Hilton, John B. Nosek, or any other nonmember who objects, or has objected, to paying for activities not germane to our bargaining agent duties unless such employee continues to pay full membership dues.

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

WE WILL notify all bargaining unit employees in writing of their right under *General Motors* to be and remain nonmembers and of the rights of nonmembers under *Beck* to object to paying for our nonrepresentational activities and to obtain a reduction in dues and fees for such activities. In addition, the notice will include sufficient information to enable the employees to intelligently decide whether to object, as well as a description of any internal union procedures for filing objections.

WE WILL, for each accounting period since September 3, 1988, provide Hilton and Nosek with information setting forth our major categories of expenditures for the previous accounting year and distinguishing between representational and nonrepresentational functions.

WE WILL notify in writing those employees who received our welcoming letter on or after September 21, 1988, of their right to elect nonmember status and to make *Beck* objections with respect to one or more of the accounting periods covered by the complaint.

WE WILL process the *Beck* objections of any employees who received our welcoming letter on or after September 21, 1988, and who elect nonmember status and file objections with reasonable promptness after receiving notice of their right to so object.

WE WILL reimburse, with interest, Hilton and Nosek and any other nonmember bargaining unit employees who file *Beck* objections with us for any dues and fees exacted from them for nonrepresentational activities, for each accounting period since September 3, 1988.

UNITED FOOD AND COMMERCIAL WORKERS
LOCAL 1036