United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: September 6, 2000

TO : Philip E. Bloedorn, Regional Director
Region 30

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Teamsters Local Union No. 662 536-6040-8100
(Land O'Lakes-Spencer)
Case 30-CB-4308

This Section 8(b)(1)(A) case was submitted for advice as to various issues raised by CWA v. Beck.[1]

We reach the following conclusions concerning the submitted issues:

1. The Union violates Section 8(b)(1)(A) by failing to include in its disclosure its "fair share" calculation for public sector employees it represents. Absent this information, a Beck objector cannot tell whether the Union is segregating funds received from, and expended for, public and private sector employees. The objector thus lacks enough information to enable him to decide whether to challenge the Union's disclosure and charges.[2] In reaching this conclusion concerning the Union's disclosure, we do not have to decide whether or not it would be permissible for the Union to combine its expenses for public and private sector employees in a disclosure given to private sector employees.[3]

2. The Union does not have to provide a disclosure on behalf of the affiliates to which it makes per capita payments, consistent with the Board's decision in Teamsters Local 166 (Dyncorp Support Services), 327 NLRB No. 176 (1999). While the D.C. Circuit granted a petition for review and remanded the case to the Board for

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[1] 487 U.S. 735 (1988).

[2] See California Saw and 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).

[3] See Teamsters Local 75 (Schreiber Foods), 329 NLRB No. 12, slip op. at 4-5 (1999).

reconsideration of this issue,[4] the Board has not yet issued a new decision in this case. Accordingly, the Board's decision in Dyncorp is applicable to this case.[5]

3. The Union's disclosure does not impermissibly make use of mixed categories by failing to pro rate the Union's expenses for salaries, taxes, legal fees, other fees, building maintenance and depreciation. The Union asserts that 96.58% of its expenses were chargeable. It appears from the Union's properly audited[6] financial report, which had been prepared by certified public accountants, that Union expenditures on behalf of nonchargeable activities were so small that the difference to any individual (less than half a cent a year) is de minimis. In these circumstances, these activities did not have to be pro rated in the disclosure.

4. We also reject the Charging Party's contention that this unfair labor practice charge should be treated as a challenge to the Union's disclosure. Under California Saw, a union that is the Section 9(a) representative of certain employees who are subject to a union security clause is required to give those employees, inter alia, a notice that they can elect to be charged only representational fees and that they can challenge the amount of those fees through a challenge procedure which the union is required to maintain. Under this procedure, the union has the burden to establish that the fees charged are representational.

We conclude that an unfair labor practice charge such as this one cannot be construed as a challenge within the meaning of California Saw to a union's disclosure. Thus, the charge must be dismissed to the extent that the Charging Party has failed to submit evidence, or material pointing to evidence, that the disclosure is defective or that Beck

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[4] See Penrod v. NLRB, 203 F.3d 41 (D.C. Cir. 2000).

[5] See also Schreiber Foods, 329 NLRB No. 12, slip op. at 4 fn. 10.

[6] See AFTRA, Portland Local (KGW Radio), 327 NLRB No. 97 (1999). Asserted discrepancies between the Union's financial disclosure and the LM-2 statements filed by the Local Union, the Joint Council and the International Union with the U.S. Department of Labor do not invalidate the financial disclosure. That document was prepared according to accepted accounting principles, consistent with KGW Radio. The LM-2 statements were prepared by union officers and do not purport to meet the accounting standards required of a Beck disclosure.

objectors have been improperly charged for specific nonchargeable activities. See GC Memorandum 88-14, "Guidelines Concerning Processing of Beck Cases," dated August 17, 1998.

We recognize that in OPEIU Local 29 (Dameron Hospital), 331 NLRB No. 15 (2000), the Board held that the union violated Section 8(b)(1)(A) by, inter alia, requiring objectors to challenge specific expense categories. Thus, the Board held that an objector could make a general challenge to a union's entire disclosure. However, the Board has also held that once an objector notifies a union that the objector questions a disclosure or challenges a charge, either generally or specifically, the burden is on the union to provide sufficient information to justify its disclosure and its charges.[7] A union may provide that information through its arbitration system, even if a charging party does not wish to be bound by an arbitral award. With information obtained through the union's arbitral system, the objector can then file a charge with the Board attacking the disclosure or union treatment of a specified expense as chargeable.

The Board's conclusion in Dameron is the logical outgrowth of its initial decision in California Saw that a union's Beck obligations are part of its duty of fair representation and that a union must provide increasingly detailed information to employees when they decide, first, whether or not to become financial core members, second, Beck objectors, or, third, challengers to the union's disclosure and charges.

However, the General Counsel has the burden of establishing, in an unfair labor practice proceeding, that the union has violated the Act. Since the filing of an unfair labor practice charge by an objector does not trigger any duty of fair representation by a union, the union has no obligation to provide information to the General Counsel. Therefore, the filing of a charge is not the same as the filing of a challenge before a union. Therefore, we reaffirm GC Memorandum 98-11 stressing the obligation of a

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[7] See, e.g., Teamsters Local 75 (Schreiber Foods), 329 NLRB No. 12, slip op. at 4 (1999); Teamsters Local 166 (Dyncorp Support Services), 327 NLRB No. 176, slip op. at 5 (1999); Teamsters Local 443 (Connecticut Limousine Service), 324 NLRB 633, 634 (1997); CWA Local 9043 (Pacific Bell), 322 NLRB 142 (1996), enfd. sub nom. Finerty v. NLRB, 113 F.3d 1288 (D.C. Cir. 1997).

Beck objector who files a Board charge to provide enough evidence, or information pointing to evidence, of a violation to justify the Agency's further investigation of the charge.[8]

While there may be circumstances in which challenging a union's disclosure and participating in its arbitration proceeding may be the best way for an objector to obtain information sufficient to sustain a Section 8(b)(1)(A) charge, we note that a Beck objector does not have to resort to a union's challenge procedure in order to obtain information necessary to sustain a Board charge. An objector may obtain relevant information through other materials, such as newspaper articles.[9]

In summary, complaint is warranted, absent settlement, as to the Union's failure to provide information in its disclosure about its "fair share" expenses. Because the Charging Party has not produced evidence, or information pointing to evidence, that the Union's disclosure otherwise violates the Act, the charge should otherwise be dismissed, absent withdrawal.

B.J.K.

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[8] See also IBT Local 401 (United Parcel Service), Case 4-CB-8310, Appeals letter dated July 14, 2000.

[9] See, e.g., Teamsters Local 332 (Genesys Regional Medical Center), Case 7-CB-12343, Advice Memorandum dated August 31, 2000.