

Studio Transportation Drivers Local 399, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America¹ (Hilltop Services, Inc. at Universal City Walk) and Hyo Chol Lim. Case 31–CB–11179

January 26, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER
AND WALSH

On January 6, 2004, Administrative Law Judge Jay R. Pollack issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.²

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Studio Transportation Drivers Local 399, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Los Angeles, California, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

“(a) Recalculate the amount of dues and agency fees owed, based on the percentage ratios between chargeable and nonchargeable expenditures, after excluding the offset for liquidated damages from the total expenditures, and pay to Hyo Chol Lim the difference between the fees he paid under the allocation used by the Union and the allocation as recalculated.”

2. Substitute the attached notice for that of the administrative law judge.

¹ We have amended the caption to reflect the disaffiliation of the International Brotherhood of Teamsters from the AFL–CIO effective July 25, 2005.

² We shall modify the judge's recommended Order to more closely reflect his findings, which we adopt. We shall substitute a new notice in accordance with our decision in *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001), enf. 354 F.3d 534 (6th Cir. 2004).

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a 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 calculate dues and fees charged to objecting financial core members in a manner not reasonably designed to ensure that no portion of their fees and dues are expended for nonrepresentational purposes.

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

WE WILL recalculate the amount of dues and agency fees owed, based on the percentage ratios between chargeable and nonchargeable expenditures, after excluding the offset for liquidated damages from the total expenditures.

WE WILL make whole and pay to Hyo Chol Lim the difference between the fees he paid under the allocation used by the Union and the allocation as recalculated.

STUDIO TRANSPORTATION DRIVERS LOCAL 399,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA (HILLTOP SERVICES, INC.
AT UNIVERSAL CITY WALK)

Christy J. Kwon, for the General Counsel.

Robert A. Cantore, Esq. (Gilbert & Sackman), of Los Angeles, California, for the Respondent.

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

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. I heard this case in trial at Los Angeles, California, on November 3, 2003. On December 26, 2002, Hyo Chol Lim filed the charge in Case 31–CB–11179 alleging that Studio Transportation Drivers Local 399, International Brotherhood of Teamsters, AFL–CIO (Respondent or the Union) committed certain violations of

Section 8(b)(1)(A) of the National Labor Relations Act (the Act). On September 19, 2003, the Acting Regional Director for Region 31 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing against Respondent. Respondent filed a timely answer to the complaint, denying all wrongdoing.

The parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs.

Upon the entire record, from my observation of the demeanor of the witnesses, and having considered the posthearing briefs of the parties, I make the following

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

The complaint alleges jurisdiction based on the operations of Hilltop Services, Inc. The complaint alleges and the answer admits that Hilltop Services, the employer of the Charging Party Hyo Chol Lim, is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The Respondent admits and I find that at all times material, Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background and Issues

Charging Party Hyo Chol Lim, a nonmember of Respondent, pays fees to Respondent pursuant to a union-security clause. The complaint alleges that Respondent violated Section 8(b)(1)(A) by offsetting so-called liquidated damages it received during the relevant period against nonchargeable expenditures prior to determining the respective percentages of chargeable and nonchargeable expenditures.

B. The Facts

Respondent is the exclusive bargaining representative of a bargaining unit at Hilltop Services. Respondent and the Union have a collective-bargaining agreement which includes a union-security provision that requires all bargaining unit employees to either join the Union and pay membership dues or pay an agency fee. Lim, a member of the Hilltop Services bargaining unit, pays agency fees to Respondent pursuant to the union-security clause. Lim notified Respondent, on April 1, 2002, that he objected to the collection and expenditure by the Union of a fee for any purpose other than his prorata share of the cost of collective bargaining, contract administration, and grievance adjustment.

On April 9, 2002, the Union sent Lim a letter that stated that liquidated damage awards that the Union obtained were used to offset all nonchargeable expenses and his fee would therefore equal union dues. These liquidated damages were damages that Respondent obtained from employers other than Hilltop Services due to certain hiring provisions. Respondent's collective-bargaining agreement with Hilltop Services does not contain the hiring hall provisions, which were involved in the arbitrations that resulted in the damage awards to the Union. The Union expends some unidentifiable amounts of money it col-

lects pursuant to the union-security provisions in its contracts to collect the liquidated damages. For example, the Union uses its general fund to pay the fees of attorneys and the salaries of business agents who arbitrate and collect these liquidated damages.

In a letter dated October 15, 2002, the Union's attorney provided Lim with an auditor's report and a breakdown of the agency fee into chargeable and nonchargeable categories. The breakdown used the liquidated damages to offset most, but not all, of the nonchargeable expenditures.¹ The agency fee was calculated to equal 99.63 percent of union dues. Prior to the offset of liquidated damages, representational expenses were 98.81 percent of total expenses. Thus, if the liquidated damages were apportioned, the agency fee would have been 98.81 percent of union dues.

C. Analysis and Conclusions

Section 8(b)(1)(A) of the Act provides that it shall be an unfair labor practice for a labor organization "to restrain or coerce . . . employees in the exercise of the rights guaranteed in Section 7 of the Act." The proviso to Section 8(b)(1)(A) states that the section "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein."

In *Communications Workers v. Beck*, 487 U.S. 735 (1988), the United States Supreme Court held that the financial core membership does not include the obligation to support union activities beyond those germane to collective bargaining, contract administration, and grievance administration. The Court held that Congress authorized compulsory unionism only to the extent necessary to ensure that those who enjoy union-negotiated benefits contribute to their cost. *Id.* at 476. 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.'" *Beck*, 487 U.S. at 762-763, those are only such fees and dues as are "germane to representational activities," those which finance and defray the costs of collective bargaining, and are "necessarily or reasonably incurred for the purpose of performing the duties of an exclusive [bargaining] representative." *Beck*, 487 U.S. at 752, 759, and 763.

In *Ellis v. Railway Clerks*, 466 U.S. 435 (1984), the Court stated "when employees . . . object to being burdened with particular union expenditures, 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." Under this standard, objecting employees may be compelled to pay their fair share of not only the direct costs of negotiating and administering a collective-bargaining contract and settling grievances and disputes, but

¹ Respondent's total expenses for the year ending December 31, 2001, were \$3,231,538. Nonrepresentational expenses were \$36,484. The Union offset \$26,705 in liquidated damages (the entire amount of liquidated damages received) against these nonrepresentational expenses. No liquidated damages were offset against the representational expenses of \$3,193,054.

also the expenses of activities or undertakings normally or reasonably employed to implement or effectuate the duties of the union as exclusive representative of the employees in the bargaining unit.

In *Teachers AFT Local 1 v. Hudson*, 476 U.S. 292 (1986), the Court addressed the question of what information a union must provide, and what procedures it must adopt, to protect the constitutional rights of objecting fee payers (therein, public employees under a State-sanctioned agency shop agreement). The Court held that a union need not provide nonmembers with an exhaustive and detailed list of all its expenditures, but adequate disclosure surely would include the major categories of expenses, as well as verification by an independent auditor. [476 U.S. at 7 fn. 18.]

In *Teamsters Local 618 (Chevron Chemical Co.)*, 326 NLRB 301, 302 (1998), the respondent-union offset interest and dividend income against nonchargeable expenditures prior to determining the respective percentages of chargeable and nonchargeable expenditures. The Board held as follows:

The complaint also alleges that the Respondent violated Section 8(b)(1)(A) by offsetting interest and dividend income it received during the relevant period against nonchargeable expenditures prior to determining the respective percentages of chargeable and nonchargeable expenditures. The General Counsel contends that the Respondent has used this offset to overstate the chargeable percentage that it has assessed objectors. The judge dismissed the allegation, stating that, because the income at issue was derived from assets belonging to the Union (i.e., the members), the Respondent had no obligation to share the benefit of these assets with Reed, a nonmember, in formulating its chargeability allocation. Accordingly, the judge found that the offset did not breach the Respondent's duty of fair representation and recommended dismissal of this complaint allegation. We reverse[.]

Our difference with the judge is essentially a factual one. The judge stated that the interest and dividend income represented "assets belonging to the Union (i.e., its members)." However, there is no evidence in the record to support a finding that the interest and dividend income was generated solely from funds (or assets purchased with funds) other than dues and fees for representational services exacted equally from all unit employees, including objectors, pursuant to the union-security clause. In the absence of such a showing, we are unable to conclude that the methodology used by the Respondent to calculate the fees charged to objectors was reasonably designed to ensure that objectors were required to pay only their "fair share" of the Union's representational expenses, and that no portion of the fees they were charged would be expended for nonrepresentational activities. Accordingly, we find that the Respondent violated Section 8(b)(1)(A).

Applying the above principles to the facts of this case, Respondent incurred chargeable expenses (salaries of business agents and attorney fees) in enforcing its collective-bargaining agreements and obtaining the "liquidated damages" at issue herein. The Charging Party paid a proportionate share of these

expenses. However, under Respondent's allocation of the liquidated damages, Lim, an objector, obtained no benefit from the liquidated damages obtained by the Respondent-Union. The record contains no evidence to permit tracking of the moneys obtained as liquidated damages. It appears unreasonable not to allocate at least some of this revenue to chargeable expenses. Thus, I find, in accordance with *Teamsters Local 618 (Chevron Chemical Co.)*, supra, that the methodology used by the Union was not reasonably designed to ensure that objectors were required to pay only their fair share of representational expenses. Accordingly, I find that Respondent violated Section 8(b)(1)(A) of the Act.

CONCLUSIONS OF LAW

1. Hilltop Services Inc. at Universal City Walk is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent, Studio Transportation Drivers Local 399, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(b)(1)(A) of the Act by calculating dues and fees charged to objecting financial core members in a manner not reasonably calculated to ensure that no portion of their fees and dues are expended for nonrepresentational purposes.

4. Respondent's acts and conduct above constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent engaged in unfair labor practices, I recommend that Respondent be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, and pursuant to Section 10(c) of the Act I issue the following recommended²

ORDER

The Respondent, Studio Transportation Drivers Local 399, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Los Angeles, California, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Calculating dues and fees charged to objecting financial core members in a manner not reasonably designed to ensure that no portion of their fees and dues are expended for nonrepresentational purposes.

(b) In any like or related manner, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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

(a) Recalculate the percentage ratios between chargeable and nonchargeable expenditures, after excluding the offset for liquidated damages, and pay to Hyo Chol Lim the difference between the fees he paid under the allocation used by the Union and the allocation as recalculated.

(b) Preserve and within 14 days of a request, make available to the Board or its agents for examination and copying, all records and reports necessary to analyze the amount of rebated fees due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its union office in Los Angeles, California, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms

³ 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 Na-

provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Within 21 days after service by the Region, file with the Regional Director of Region 31 a sworn certificate attesting to the steps that the Respondent has taken to comply.

tional 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."