International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and its Local Lodges Nos. 95 (Unit #9), 148, 376, 509, 699, 723, 887, 1609, and 172 (Various Employers) *and* Various Individuals.

Marine Draftsmen Association (MDA) UAW Local 571 (Electric Boat Division, General Dynamics Corporation) *and* Various Individuals. Cases 31–CB–7841, 31–CB–8183, 31–CB–8259, 31–CB–8641–(1-8), 31–CB–8641–(12, 13, 15–18, 21, 24, 25) and 31–CB–8641–(26-28)

August 16, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND HURTGEN

Upon a series of charges filed by various individuals on various dates, the General Counsel of the National Labor Relations Board issued an order consolidating cases, consolidated complaint and notice of hearing dated October 26, 1992. The consolidated complaint alleges that the Respondents, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, and various of its Local Unions, have engaged in and are engaging in certain unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the National Labor Relations Act. On November 9, 1992, the Respondents filed an answer, admitting in part and denying in part the allegations of the complaint, and requesting that the complaint be dismissed.

The complaint alleges that the Respondent International Union has been the Section 9(a) representative of appropriate units of employees of various employers engaged in commerce within the meaning of the Act, and that the various Respondent Locals have acted as the International's agents. The named Charging Parties in this case have been employed in these units, and at various specified dates each of them was, or became, a nonmember of the Respondent International. The complaint further alleges that the Respondent International and the various employers have maintained and enforced collective-bargaining agreements containing union-security clauses. The complaint additionally alleges that each of the Local Unions has collected dues and fees from its respective bargaining unit employees pursuant to the applicable union-security clause. The complaint also alleges that both the Respondent Local Unions and the Respondent International spend a certain percentage of their dues-based income on representational activities and a certain percentage on non-representational activities. These allegations are not in dispute.

The complaint further alleges that beginning in June, 1992, the Respondent International distributed a 1991 Expenditure Report to all nonmember unit employees of the various employers who, at the time, had on file with the International a current objection to the payment of dues or fees for nonrepresentational activities, and that the report contained no information regarding the expenditures of the locals other than a discussion of the application of the International's allocation between chargeable and nonchargeable expenditures to that portion of dues and fees retained by the various locals involved. The Respondents admit these allegations, but deny the further allegation that the failure to provide objecting nonmembers any other information regarding the expenditures of the various locals constitutes a factually unsupported "local presumption" in violation of Section 8(b)(1)(A) of the Act.

The complaint also alleges that on about April 9, 1991, Respondent Local Union 376 caused Colt, in West Hartford, Connecticut, one of the above-described employers, to discharge Charging Party George Gally, a nonmember employee. The complaint alleges in this regard that, other than providing Gally with notices in the Respondent International's magazine in August 1989 and June 1990, neither the Respondent International nor Respondent Local 376 provided Gally with information related to matters such as the percentage of union funds spent for nonrepresentational purposes in the International's last accounting year, and the process by which nonmembers can object to having their payments pursuant to the contractual union-security clause spent on such activities. Although admitting these allegations, the Respondents deny the conclusionary allegations that, by engaging in this conduct, the International and Local Respondents engaged in unfair labor practices within Section 8(b)(1)(A) and (2) of the Act.

On June 10, 1993, the General Counsel filed with the Board a Motion to Transfer Case to and Continue Proceedings Before the Board and for Summary Judgment, with exhibits attached. On June 16, 1993, the Board issued an Order Transferring Proceeding to the Board and Notice to Show Cause why the Motion for Summary Judgment should not be granted. The General Counsel and various Charging Parties filed briefs in response to the Notice to Show Cause. The Respondents filed a brief in response to the Board's notice, a Cross-Motion for Summary Judgment, and a reply brief.

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

Ruling on Motions for Summary Judgment

1. Admitted or undisputed facts

The undisputed complaint allegations establish that the Respondent International's 1991 Report of Expenditures Incurred in Providing Collective Bargaining Related Services did not attempt separately to analyze the expenditures of each of the Respondent Locals in which union-represented employees participate, but stated that each local affiliate retains a portion of dues and fees collected by that local affiliate. Because of the accounting and re-

porting difficulties in attempting to separately analyze the expenditures of the locals, the report analyzed only the expenditures of the Respondent International, and then applied the same pro rata allocation between chargeable and remaining expenses determined for the International's expenditures to that portion of fees and dues retained by the various locals. The report justified use of this procedure by noting that the vast majority of nonchargeable activities (referred to in the Report as "Remaining Expenditures") are conducted by the Respondent International. Thus, the report stated that by applying the same allocation to the local unions as applied to the International, nonmember objectors would be required to pay a smaller amount than if each local's expenditures were separately analyzed.

It is undisputed that this 1991 Expenditure Report was distributed in June 1992, to all nonmember unit employees who had filed an objection to expending fees and dues collected from them under a union-security agreement for activities unrelated to collective bargaining, contract administration, or grievance adjustment within the meaning of *Communication Workers v. Beck*, 487 U.S. 735 (1988).[1] The report was accompanied by a cover letter from the Respondent International notifying the nonmember objectors of the charged amount to be payable by them calculated pursuant to the report.

The undisputed complaint allegations further establish that George Gally, an employee in a unit of all employees (with certain exceptions) employed by Colt, at its facility in Hartford, Connecticut, and covered by a union-security agreement, was a member of the Respondent International and Respondent Local 376 from about 1963 until July, 1985, when he resigned his memberships. At all material times since then, Gally has been a nonmember. There is no complaint allegation, nor is it asserted, that Gally had at any time exercised his right under *Beck* to object to the payment of his dues and fees on nonrepresentational activities. In letters dated February 7 and March 18, 1991, Local 376 notified Gally regarding the extent of his dues arrearages, representing amounts equivalent to full union dues. The letters further stated that, if the amount were not paid, the Local would request that Gally be discharged pursuant to the union-security clause of the current collective-bargaining agreement between Colt and the Respondent Local. On April 1, 1991, the Respondent Local notified Colt that Gally had failed to pay his dues and that the parties' agreement required Gally's discharge under those circumstances. Colt terminated Gally on April 10, 1991, pursuant to the Respondent Local's demand.

2. Positions of the parties

The General Counsel argues that the Respondent International breached its duty of fair representation within the meaning of *Beck* by using in its 1991 report "a factually unsupported 'local presumption'" in determining the chargeable amount of dues for objecting nonmember employees. The General Counsel further asserts that the Respondent International and Local 376 unlawfully demanded that Colt discharge Gally for nonpayment of full union dues because they had failed to provide Gally with sufficient *Beck* information, particularly including the percentage of the prior year's funds spent for nonrepresentational expenses, as well as explicit notification that nonmembers can object to having dues and fees spent on such activities, that if they object they will be charged only for representational activities, and that if they object they will be provided with a detailed breakdown between chargeable and nonchargeable expenditures. The General Counsel thus asserts that because Gally was never given the accurate amounts of dues and fees he would be required to pay as a nonmember objector, and was not afforded an opportunity to make a reasoned decision whether to object, the actions taken against him breached the duty of fair representation and violated Section 8(b)(1)(A) and (2).

The Respondents argue that the Respondent International's objection procedures are consistent with its duty of fair representation. They further assert that the International's Report, in all respects specifically including its use of a "local presumption," fulfills its obligation to nonmember objectors under *Beck*. The Respondents also argue that both the Respondent International and Respondent Local 376 provided Gally with sufficient notice of his statutory rights and contractual obligations under the union-security agreement prior to seeking his discharge. They thus contend that neither of the Respondents violated the Act by causing Gally's discharge.

3. Analysis

The first issue presented by this case is whether the Respondent International's use of the "local presumption" in its 1991 Report provided to nonmember objectors satisfied its duty of fair representation. In *Beck*, the Court held that expenditures of nonmembers' dues and fees, over their objection, on activities outside a union's role as collective-bargaining representative violates the union's duty of fair representation. In *California Saw & Knife Works,* 320 NLRB 224 (1995), enfd. sub nom. *International Association of Machinists & Aerospace Workers v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 119 S.Ct. 47 (1998), the Board addressed the ramifications of the *Beck* decision, specifically including a union's duty to notify nonmember employees of their *Beck* rights and the information a union must provide nonmembers who had exercised their right under that lead Supreme Court decision to object to the use of their fees and dues for nonrepresentational activities. The Board held that a union that represents employees subject to a union-security clause

[1] The complaint does not identify any Charging Party or other individual as an objecting nonmember.

violates its duty of fair representation if it fails to inform nonmembers of their *Beck* rights when or before the union seeks to obligate those employees to pay fees and dues under the union-security clause.[2]

In the context of discussing information to be provided to objectors, *California Saw* and a subsequently decided case, *American Federation of Television & Recording Artists (KGW Radio)*, 327 NLRB 474 (1999), approved the use of the "local presumption" in providing objecting nonmembers with sufficient information to calculate the fees related to representational activities they must pay.[3] Both *California Saw* and *KGW* relied on *Price v. International Union UAW*, 927 F.2d 88, 93 (1991), cert. denied 502 U.S. 905 (1991), in which the Second Circuit endorsed the use of the local presumption by the same Respondent International and one of its local unions that are involved here. In *KGW*, the Board specifically held that information supported by a local presumption, rather than audited expenditure information concerning a local union's expenditures, could be provided by an exclusive representative to nonmember objectors without violating the exclusive representative's duty of fair representation if the parent organization's major categories of expenditures, verified supporting expenditure information, and allocation between chargeable and nonchargeable expenditures is provided to the objectors.[4] In so holding, the Board in *KGW* emphasized that an objector who doubted the accuracy of the information provided was not without recourse. Quoting *California Saw*, which relied on *Price*, the Board in *KGW* concluded that, to the extent a nonmember at the objecting stage has doubts as to the accuracy of the financial information on which the locally presumed allocation of chargeable dues and fees is based, the objector may at a later stage challenge the figures used in computing the dues reduction, and the union bears the burden of proving that expenditures of the challenger's specific local are chargeable to the degree asserted. *KGW*, supra at 477 fn. 15, citing *California Saw*, 320 NLRB at 242, relying on *Price*, 927 F.2d at 93.

The General Counsel acknowledges that absolute precision in the calculation of the dues reduction is not required at the objector stage, and does not assert that the use of the local presumption is per se violative of the duty of fair representation. Instead, the General Counsel argues that the local presumption is unlawful in the absence of factual support justifying its use. The General Counsel argues that there is insufficient support in the Respondent International's report here. We disagree.

The Board's discussion of the "local presumption" in *California Saw* and *KGW* did not address the degree of support necessary for a union to use locally presumed figures without violating the duty of fair representation. In *California Saw*, however, the Board held that "[t]he fundamental purpose of providing objectors with information regarding the allocation of chargeable and nonchargeable union expenditures is to allow an employee to decide whether there is any reason to mount a challenge to the union's dues reduction calculations."[5] We agree with the General Counsel that the use of a totally unreasoned or unsupported local presumption would not meet a union's duty of fair representation, because it would not provide objectors with sufficient information to enable them to decide whether or not to challenge the union's figures.

Contrary to the General Counsel, however, we find that the Respondents provided adequate support for their use of the local presumption in this case. As noted above, the Respondent International's report detailing its accounting methodology explains why the use of the local presumption is justified under the circumstances, i.e., because the vast majority of nonchargeable activities are conducted by the International and thus, invariably, the local unions expend a greater portion of their resources performing chargeable activities. The report concludes that the application of the same allocation between chargeable and nonchargeable expenditures to the portion of dues and fees retained by the locals as determined applicable to the International would result in objectors being required to pay a smaller amount than if local expenditures were separately analyzed. Phrased differently, because the Local bases its computation on the International's allocation of chargeable and nonchargeable expenditures, rather than the Local's basing its computation on its own allocation, the objecting employees will likely pay less in dues and fees. If the employees think otherwise, they can lodge a challenge, and the Local will be put to its proof. Simply put, the report states that the use of the presumption is supported by the particular facts concerning how the International and its locals spend

[2] *California Saw*, supra, 320 NLRB at 233.

[3] Id. at 242 and *KGW*, supra at 477 fn. 15.

[4] A "local presumption" presumes that the percentage of the local's expenditures that are chargeable is at least as great as the percentage of the parent union's chargeable expenditures. When a union utilizes such a presumption, it provides no separate information concerning the allocation of the local union's expenditures, but instead bases its computation of the amount of dues owed by an objector on the parent union's expenditure information, which is provided to the objector. *KGW*, supra at 477 fn. 15. The Board in *KGW* discussed the use of the local presumption in the context of the facts of that case, i.e., where the local union was the exclusive representative and the information provided objectors was that of the parent organization. In this case, in contrast, the Respondent International Union is the designated exclusive representative and thus the information provided concerning the International's expenditures satisfies the exclusive representative's duty to provide expenditure information without resort to any presumption except with respect to that portion of dues collected, retained and used by the various locals. Thus, it is analogous to *Finerty v. NLRB*, 113 F.3d 1288 (D.C. Cir. 1997), cert. denied 118 S.Ct. 558 (1997), enfg. *Communications Workers Local 9403 (Pacific Bell),* 322 NLRB 142 (1996), in which the circuit court endorsed the use of the local presumption under similar facts.

[5] 320 NLRB at 240 (citations omitted).

their funds. The Report also provides a reason for the adoption of this procedure, i.e., the reduction of accounting and reporting tasks, which we recognize can be expensive and time-consuming undertakings. *Teamsters Local 166 (Dyncorp Support Services),* 327 NLRB 950, 952 (1999). Under these circumstances, we conclude that the use of the local presumption in the instant case was not arbitrary, discriminatory, or in bad faith, and therefore does not violate the Respondent International's duty of fair representation.[6] Accordingly, we deny the General Counsel's Motion for Summary Judgment on this issue and grant the Respondents' cross-motion in this respect.

The second issue concerning the sufficiency of the Respondents' initial *Beck* notice is also addressed in and resolved by the Board's decision in *California Saw*, although in that case the General Counsel did not allege that the content of the international union's *Beck* notice was unlawful or otherwise deficient.[7] As stated above, the General Counsel contends that the Respondent International and Respondent Local 376 did not provide Gally, as a nonmember employee under a union-security clause, with sufficient notice of his *Beck* rights before seeking his discharge. Specifically, the General Counsel asserts that Gally was not provided with the following information: (1) that a stated percentage of Respondents' prior year's funds were spent for nonrepresentational activities, (2) that nonmembers can object to having their union-security payments spent on such activities, (3) that those who object will be charged only for representational activities, and (4) that if a unit employee objects, the International will provide detailed information concerning the breakdown between representational and nonrepresentational expenditures.[8] The General Counsel asserts that the Respondents admitted that Gally was provided with none of this information.

The General Counsel's representation of the Respondents' position is clearly in error. The Respondents admit the complaint allegation at paragraph E. 18, which states that "other than by providing Gally with the notices attached hereto . . . as part of the International's magazine *Solidarity* in August, 1989 and June, 1990 respectively," neither Respondent provided Gally with the above-described information prior to his discharge. Thus, contrary to the General Counsel, the Respondents did not admit that they failed to provide the information described. Moreover, as to the latter three items of information allegedly not provided, contrary to the General Counsel's assertions, the initial *Beck* notices referenced in the above-described complaint allegation clearly provided the subject information. Specifically, with respect to item 2 regarding the information that nonmembers can object to having their dues and fees spent on nonrepresentational activities, the notices stated that under *Beck*, nonunion members who pay money to unions under a union-security clause may file objections to certain union expenditures and that objecting nonmembers' money so collected can be expended only for activities concerning collective bargaining and related matters. With respect to item 3, in addition to the above information concerning the restricted use of an objecting nonmember's fees and dues, the notices state that to comply with *Beck*, the Respondent International will honor objections and provide specific information concerning the time and place for filing objections. Finally, as to item 4, concerning the information to be provided objectors, the *Solidarity* notices state that all objectors will receive the Report of Expenditures that provided the basis for the amount charged for the relevant period, with a detailed analysis that distinguishes expenditures related to representational activities from those which are not.

With regard to item 1, the Respondents concede that information that a stated percentage of funds was spent in the last accounting year for nonrepresentational activities was not contained in the Respondent International's initial *Beck* notices contained in the August 1989 and June 1990 issues of *Solidarity*. However, the Respondents assert that the absence of such information in the initial *Beck* notice does not violate their duty of fair representation.

In agreement with the Respondent, we conclude that the duty of fair representation does not require that initial *Beck* notice must contain the percentage of union funds spent in the last accounting year on nonrepresentational activities. In *California Saw*, the Board held that a union is required to provide such information only to nonmembers who choose to object to paying for union activities not germane to the union's duties as bargaining agent, i.e., after an objection has been filed. At that stage, the objector must be apprised of the percentage of the reduction, as well as the basis for the calculation, and the right to challenge these figures.[9] Specifically, in *Dyncorp Support Services*, the Board held that a union's duty of fair representation does not require it to inform nonmembers, prior to objection, of the percentage by which dues and fees are reduced for objectors.[10] The record is clear

[6] See *Air Line Pilots v. O'Neill*, 499 U.S. 65, 67 (1991); *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). The Board has held that when (as in this case) a union's conduct is being evaluated under the duty of fair representation standard, the union must be allowed a "wide range of reasonableness" in serving the employees it represents. *Dyncorp*, supra at 952, citing *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953). See also *Price*, supra at 92, in which the circuit court explained the distinction between a duty of fair representation analysis and that employed in public sector cases, such as are relied on by the General Counsel and the Charging Parties in this case.

[7] 320 NLRB at 234 fn. 53 and accompanying text.

[8] In *California Saw*, the Respondent International's notice contained this information. Id. at 234.

[9] Id. at 233, cited in *Paperworkers Local 987 (Sun Chemical Corp. of Michigan),* 327 NLRB 1011 fn. 1 (1999).

[10] *Dyncorp*, supra at 952. In that case, the Board found not controlling public sector cases holding that such information is to be provided to potential as well as actual objectors. Id. at fn. 10.

that Gally had resigned his union membership but had not exercised his right under *Beck* to object to the payment of his dues and fees on nonrepresentational activities.[11] Thus, the failure to provide Gally with this information did not violate the Respondents' duty of fair representation as embodied in Section 8(b)(1)(A) of the Act.

Accordingly, we deny the General Counsel's Motion for Summary Judgment and grant the Respondents' cross-motion on this issue as well.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the various Employers here, Ford Motor Company, General Motors, Douglas Aircraft Company (a component of McDonnell Douglas Corporation), Eaton, Janesville Medical Center, Rockwell, ITT Gilfillan (a component of ITT Corporation), Colt, Electric Boat Division of General Dynamics Corporation, and Schweitzer Aircraft Corp., have offices and places of business in various cities, and, in the course and conduct of their business operations more fully described in the complaint, annually sell and receive or ship products, goods, and/or materials valued in excess of $50,000 directly to points located outside the states in which their offices and places of business are located. We find that the Employers are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Respondents International and Local Unions are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the Respondent International has been the Section 9(a) representative of employees of the various employers set forth above in appropriate units, the various Respondent Locals have acted as the Respondent International's agents, the Respondent International has maintained and enforced collective-bargaining agreements containing union-security clauses covering the respective employers' employees, and the Charging Parties are employees covered under these agreements, who have either resigned from, or chosen not to become members of, the Respondents.

In about June 1992, the Respondent International issued a Report on Expenditures Incurred in Providing Collective Bargaining Related Services for Fiscal Year 1991. That report was distributed to all bargaining unit employees of the various employers described above who were not members of the Respondents and who had on file with the International at that time a current objection to the payment of dues or fees for nonrepresentational activities within the meaning of *Beck*. That report contained no information regarding the expenditures of the specific Respondent Locals other than a statement that the report applied the Respondent International's allocation between chargeable and nonchargeable expenditures to that portion of dues and fees retained by the Respondent Locals, as detailed above. Based on the precedent discussed above, we find that the Respondent International's failure to provide objecting nonmembers with further information concerning the expenditures of the Respondent Locals and its use of this "local presumption" in its report did not breach its duty of fair representation.

In August 1989 and June 1990, the Respondent International provided George Gally, a nonmember employee of Colt, with *Beck* notices included in its *Solidarity* magazine containing certain information. Subsequently, the Respondent requested Gally to pay monetary amounts equivalent to full union dues. When Gally did not comply, the Respondents requested that Colt discharge him under the terms of the union-security clause in the parties' collective-bargaining agreement. For the reasons discussed above, we find that Respondent International's initial *Beck* notices satisfy its duty of fair representation, and that the Respondent International and Respondent Local 376 did not act unlawfully by failing to provide Gally with additional information concerning dues and fees before seeking his discharge.

CONCLUSIONS OF LAW

The Respondents' conduct with respect to the 1991 Expenditure Report did not breach their duty of fair representation or otherwise restrain or coerce employees in violation of Section 8(b)(1)(A) of the Act. The Respondent International and Respondent Local 376 did not act in violation of Section 8(b)(1)(A) and(2) or breach their duty of fair representation in providing George Gally with notice regarding his *Beck* rights prior to seeking his discharge.

ORDER

The consolidated complaint is dismissed in its entirety.

[11] The nonmember's affirmative burden of raising his objection is not disputed. See *Chicago Teachers Local 1 v. Hudson*, 475 U.S. 292, 306 fn. 16 (1986), and cases cited therein.