BECK RIGHTS 2001:
ARE WORKERS BEING HEARD?

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

OF THE

COMMITTEE ON EDUCATION AND
THE WORKFORCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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HEARING ON BECK RIGHTS 2001:

ARE WORKERS BEING HEARD?

Thursday, May 10, 2001

U.S. House of Representatives,

Subcommittee on Workforce Protections,

Committee on Education and the Workforce,

Washington, D.C.

The Subcommittee met, pursuant to notice, at 10:05 a.m., in Room 2175, Rayburn House Office Building, Honorable Charlie Norwood, Chairman of the Subcommittee presiding.

Present: Representatives Norwood, Biggert, Ballenger, Isakson, Culberson, Owens, Kucinich, Mink, Woolsey, Sanchez, and Solis.

Also present: Representative Andrews.

Staff present: Stephen Settle, Professional Staff Member; Heather Oellermann, Legislative Assistant; Peter Gunas, Director of Workforce Policy; Patrick Lyden, Professional Staff Member; Michael Reynard, Deputy Press Secretary; Deborah L. Samantar, Committee Clerk/Intern Coordinator; Jo-Marie St. Martin, General Counsel; Peter Rutledge, Minority Staff; Maria Cuprill, Minority Staff; Brian Compagnone, Minority Staff.

Chairman Norwood. A quorum being present, the Subcommittee on Workforce Protections of the Committee on Education and the Workforce will come to order.

Good morning to one and all. Under Rule 12(b) of our committee rules, any oral opening statement at this hearing is limited to the chairman and ranking minority members. This allows us to focus on hearings from our fine panel of witnesses much sooner and helps members to keep to their schedules. Therefore, if other members have statements, they will be included in the record upon request.

I would like to make an opening statement, after which I will ask Mr. Owens or

his designee to do the same.

Mr. Owens. Point of order.

Chairman Norwood. The gentleman is recognized.

Mr. Owens. I understand there is a camera recording this hearing, and that is not allowed under the rules. I would like to note that I don't mind your extension and expansion of the rules, as long as you're willing to establish that as a pattern for the committee so that either side may utilize a camera at their discretion.

Chairman Norwood. Mr. Owens, thank you very much for your statement. I recognize your concern. I have been informed that, actually, it is permissible under the rules to have the camera. It's not permissible to have television cameras. But we have a great precedent set in this Congress, and other Congresses, of having cameras in our hearing rooms, but I want you to understand, and in the spirit of good fellowship, I believe either side should be able to have a camera at our hearings any time they're requested. And that means to me, when you request one, I'm certainly not going to object and I would appreciate it if you would withdraw your objection this morning.

Mr. Owens. I agree with the Chairman, and I hope that that's clearly stated on the record.

OPENING STATEMENT OF CHAIRMAN CHARLIE NORWOOD, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

Chairman Norwood. Well, unless he missed it over there, it's memorialized in the transcript.

Once again, good morning, and welcome to you all, especially our fine panel of witnesses who have volunteered their time to help us understand what appears to be a serious problem.

With the objective of investigating the severity of alleged problems, the Subcommittee has assembled today in exercise of its authority to oversee the operation of certain aspects of this nation's labor and employment laws. The potential problems that we will examine today are alleged abuses of our system of laws in the aftermath of the Supreme Court's 1988 holding in the case of Communication Workers v. Beck.

This is not the first time that this Committee has been called upon to examine the alleged abuses in this area of law. Since the Beck case was decided over a dozen years ago, this committee has, on several occasions, found it appropriate to examine issues relating to allegations of a lack of enforcement and/or allegations of organized labor's disregard of the individual rights discussed in the Beck decision. Today we find it necessary to revisit these issues and, hopefully, update and expand our understanding.

To begin our inquiry, I want to outline the subcommittee's intended approach for today. Our oversight objective is very narrow and very clear. Quite simply, it is alleged

that the statutory limitations placed upon labor unions are being disregarded. We want to find out whether these allegations are true, and, if so, whether these abuses are widespread or systemic.

Let me attempt to frame the context of the abuses that we are here to question today. In the 1930s, Congress developed a master plan for the nation's labor laws. Under that master plan, unions were empowered to assess dues to those who would directly benefit from their collective bargaining activities. The scope of that empowerment included levies upon some that found the payment of these dues objectionable.

This master plan was not perfect. The fact that Congress found it necessary to seriously modify the plan on two previous occasions seems to indicate that serious flaws have been uncovered since 1930. And not surprisingly, the debate over legal flaws and abuse of law has been ongoing since the 1930s.

Today we are merely carrying forward this debate with a surgical examination of particular flaws alleged to exist in this system. At issue is whether some union officials have gone over the line and thereby unjustifiably infringed upon the individual rights of workers. Personally, what amazes me about the question of where union power abruptly stops and must defer to inalienable, individual rights is that the complaints of abuse come from the union movements' own rank and file.

Now what are these workers complaining about? Simply, they claim that the unions are over-reaching. They say some unions disregard the limitations placed upon their conduct. The complaints are that the unions are deaf to the demands of workers to remain within the boundaries of the law. I have heard these complaints and in response to them want to add some personal observations about these allegations of abuse.

Based on the evidence I have seen, I am convinced that some union locals do, in fact, regularly trample on the rights of individuals in far excess of the scope of their permissible authority. It is difficult to look at the extensive record that this committee has compiled and conclude otherwise. What I am wondering, however, is whether these practices of deception and misconduct are more than isolated incidents of abuse.

So to kick off our investigation, I just want to share some of the questions in my mind that actually led up to this hearing, and I would like to use the overhead system to help explain why I've come to suspect this abuse of our laws is real and systemic. And if we could go to the first overhead?

Well, I guess we can see that one.

What troubles me most about the inalienable rights discussed by the Supreme Court in the Beck Case is the abstract nature of these rights in contrast to the very practical and actionable nature of the unions' statutory empowerment by Congress.

What so disturbs me is that I perceive as a disconnect between the abstract rights of an individual under natural law and the violation of individuals' rights by union under color of statute. It is this disconnect, I believe, that has seemed to create a system very

ripe for and even tolerant of union abuse.

To be clear, what I am talking about are instances where the unions' exercise of power appears to be clearly outside of the scope of their statutory authority, but nevertheless seems to trump the fundamental rights of individuals. After being trumped, individual rights are placed in a position analogous to David going up against Goliath and individual rights are constructively negated.

And if we could have Overhead 2 now, please?

Mr. Owens. A point of order?

Chairman Norwood. Point of order recognized.

Mr. Owens. Is it possible to position that so I can see it?

Chairman Norwood. Well, I don't know how easily that is moved, and I can't see those on the side, either.

That particular overhead simply says, ``Independent pollster John Zogby reports that 57 percent of all Americans now support President Bush's proposed tax cut. Zogby also reports that 55 percent of all union members support the proposed tax cut, as well."

Mr. Owens, can you see that better?

Mr. Owens. I can see it now.

Chairman Norwood. Okay.

Here is why I think all of this has occurred. The harsh reality of the environment in which Beck rights operate is one where hard, cold cash for unions is of paramount concern. This hard, cold cash translates into very real functional political powers for unions. In fact, what is at stake here is roughly $6 billion each year that unions take in from their rank and file.

Of course, not all of this money is used to support political causes. But what we learned from the Supreme Court in the Beck case is that often more than 70 percent of these moneys are used for purposes not associated with the unions' collective bargaining-related functions. These collective bargaining functions, in general, constitute illegal boundary lines of the union's empowerment to compel payment of union dues over an individual's strong objections. When this line is crossed, inalienable rights originating directly from our God and supposedly guaranteed by our Constitution are then violated.

And, certainly, the intent of the master plan of Congress for our nation's labor laws in terms of statutory limits seems ignored. The fact is we really do not know exactly how much money unions spend on political causes and ideologies. Needless to say, they don't seem willing to volunteer that information. But we do know for sure that it is a very substantial amount of money.

And if we could go to the third overhead, please?

Can everybody see that? I won't read it if you can see it.

Zogby reports that only 33 percent of the American public said that they opposed the President's proposed cuts. Opposition is about the same for all union members. Only 34 percent said that they opposed the President.

Now here is just one example of money being spent in areas potentially outside the union's permissible boundaries. This example is important because it points out an obvious disconnect between the spending habits of some unions and what seems to be the true preferences of the union's rank and file. This example strongly suggests why a worker might want to stop money from being taken and used for a political cause that is contrary to their individual belief.

Specifically, a recent poll conducted by John Zogby's organization caught my attention. Most agree that the Zogby organization has a reputation for independence and accuracy, and I am not suggesting that my use of this poll data be associated with anything other than what the data says on its face. Unmistakably, however, the Zogby poll found that 57 percent of all Americans supported President Bush's proposed tax package, and, specifically, the tax cuts in that package.

Here is what is remarkable about this poll and on point for our discussion today. Fifty-five percent of all union members clearly said they supported the President's proposed tax cuts, as well. Fifty-five percent of the union members polled said they supported the President's proposed tax cuts. It is difficult to misinterpret this fact.

Please go to Overhead Number 4.

The data also suggests that only 33 percent of all Americans oppose the President's plan and that only 34 percent of all union members said that they opposed the tax cut package; 55 percent of the union members supported, 34 percent opposed, and 11 percent were not sure exactly how they felt about these tax cuts.

Even when we factor in the legal small print and all the mumbo jumbo about plus and minuses, clearly, it seems to me, a majority of union members said that they support tax cuts and a small minority said that they opposed them.

Overhead 5, please.

A few weeks ago, however, most of us heard claims that the unions around the nation would mobilize to ensure defeat of the President's tax cut package. Now a mobilization of this magnitude is not going to come cheaply, so I wonder, before promising to make a very significant financial commitment of this size, did anyone in the union movement consider that only a third of their rank and file seemed to be in agreement with such an expensive course of action.

If you'll go to Slide 6, please?

Now, obviously, any massive union mobilization is going to be funded from the paychecks of all union households, ironically, including those who said that they support

the tax cuts.

As an aside, perhaps these rank and file workers who support the tax cuts believe that these cuts will mean more take home pay in their checks. The joke is that instead of adding more money to their paychecks, those waiting for tax relief could find even more taken out of their paychecks, and what is not funny about this joke is that all union dues payers will have no choice but to financially support a cause that only one-third of the rank and file seem to support. There's no wonder we hear some complaints. Something is very wrong with this picture.

Please go to the next overhead.

Let me bring this back into context of our oversight inquiry for today.

At least in theory, our Supreme Court has instructed us that union members have a right to object to the use of their money to support causes that they disagree with and find distasteful. The Supreme Court has said that a union's use of this money over the objections of workers is a clear violation of the authority Congress gave to the unions. So we are then compelled to ask: have the unions taken liberties that they are not entitled to take? Have any of these unions crossed the line, and, in doing so, did they squash the individual rights that we hold so sacred in this country? That is what is at issue, ladies and gentlemen, as is what happens when individuals attempt to exercise the rights that are their own and should never, never be taken from them.

Once again, are individuals who attempt to exercise their rights put in the place of David standing before Goliath?

Slide 8.

If history is a guide, based upon what we are hearing from far too many workers who have tried to exercise their rights, workers who choose to exercise their Beck rights do face a Herculean task. Too many workers seem to get the runaround when they try to exercise their rights. It sounds so easy in concept. The union honestly calculates the amount attributable to a pro rata share of its financial core cost and thereafter stops charging or even trying to charge an objecting member anything more.

But that does not seem to be the way it works, and, instead, we get claims from some workers that they are given false and misleading information by their union, and other workers say even when they know what they are due, they are subjugated to procedural roadblocks and delays that seem to be intentionally crafted to avoid what is a legal right. No wonder these workers turn to Congress and ask, ``Why are unions being liable to or allowed to squash my individual rights?" Today, we will try yet again to learn what answer we should give to these workers.

I would ask that the PowerPoint system be cut off now, please? And, at this time, I now yield to the ranking minority member, Mr. Owens, for whatever statement he might wish to make.

WRITTEN OPENING STATEMENT OF CHAIRMAN CHARLIE NORWOOD, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES – SEE APPENDIX A

OPENING STATEMENT OF THE RANKING MINORITY MEMBER, MAJOR R. OWENS, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

Mr. Owens. Thank you, Chairman Norwood.

As this is the first hearing by this Subcommittee under your leadership, let me congratulate you on your selection as chairman. We also appreciate your innovations with respect to technology, but I think, on behalf of some of the members of my Subcommittee, on our side, we would like to have the technology improved so that all members can clearly see what's being discussed, I don't think we've reached that point yet, it will be corrected for here. The people on the side couldn't see, and maybe we can make some further innovations and improve on that.

Your predecessor, Mr. Ballenger, and I were able to work together to achieve enactment of some important legislation, such as the needlestick bill, which greatly improves the protection afforded to healthcare workers against accidental needlesticks. I am hopeful that you and I will be able to work together as effectively to improve protections for American workers.

Today's hearing, which, you know, at some point I thought maybe it was a ways and means hearing, but I guess all things are germane. Today's hearing concerns the right to refrain from paying union dues, a subject much discussed. We don't talk about the right to refrain from paying church dues or the right to question corporations and how they spend their money, the money of their stockholders, a lot of parallel situations that never get questioned. But we are here again to question the right to refrain from paying union dues.

This is the first time this subcommittee has held a hearing on this issue, but it is hardly a new subject. Another subcommittee held two hearings on the issue in 1996. The Full Committee held an additional hearing in 1997, and also marked up related legislation. Last year, you had another subcommittee held hearing on so-called right to work laws. Numerous other hearings related to union dues and the Beck decision have been held both by Senate committees and by at least one other committee in the House. In addition, legislation related to the Beck decision has been regularly defeated, both as free standing bills and as amendments to campaign finance reform legislation over the last several congresses.

So we are hardly examining an issue for the first time today. Rather, this hearing comes considerably closer to beating a dead horse. I should also add that this is only an oversight hearing. This subcommittee does not have legislative jurisdiction for the National Labor Relations Act, and this is not even a committee that has jurisdiction for

the Railway Labor Act.

In the past, opponents of the labor movement have attempted to distort the nature of unions. It may be useful, at the outset, to summarize the state of the law today.

I have a slight cold and the rises and falls of my voice are not due to anger, I assure you. It's just the cold.

By law, unions are democratic organizations whose officers and policies are determined by the majority will of their members. By law, unions are already under more extensive reporting and disclosure requirements than virtually all other institutions in the country, and are required to report all of the income and expenditures to the government and the public.

No employee, including those who are covered by an agency fee contract, is required to join a union. Unions are required to inform all employees who are subject to an agency fee contract that they are not required to pay full union dues. Unions must inform such employees of the percentage of union dues that are used for purposes other than those directly related to the provision of representational services. Unions must establish procedures to ensure that those employees who choose not to, do not pay any part of the union dues that are not used for purposes reasonably related to the union's role as a bargaining agent. Fair, independent and inexpensive procedures exist by which employees may challenge or contest the union's assessment of its expenditures.

Bargaining unit members may have a statutory right to either nullify the agency fee provision of a contract or decertify the union if a majority feels that the agency fee provision or the union is no longer in their best interest. Union members have a statutory right to inspect their union's books and to vote on the amount of dues the union will charge its members.

Finally, employees who believe that a union is not in compliance with the law may act to protect their rights simply by filing a charge with the National Labor Relations Board. It is the government, not the employee, who undertakes the cost of investigation and prosecution. Alternatively, unlike the worker who has been fired in violation for anti-union animus by an employer, agency fee objectors may also sue their union directly for failure to provide fair representation.

If the concern of my colleagues is that worker rights are not adequately protected by the National Labor Relations Board Act, I fully agree. However, my concern extends to the right to form and join a union. Beck was decided in 1988. Since that decision, there have been less than 100 cases total pending at the NLRB concerning Beck rights. In a single year, the NLRB issues more than 1,000 complaints alleging unlawful discharge of a worker by an employer, yet a worker has more protection to refuse to pay a few dollars a month to a union than the worker gets when he or she is fired for supporting the union, and his or her entire livelihood is at stake.

I think that it is a measure of concern Republicans have for the rights of workers that this is the fifth hearing held in this committee on the right of workers to refuse to join a union since the Republicans have been in control of the Committee, but we have not yet

held a single hearing on the thousands of workers who are unlawfully discharged for trying to join or form a union.

I yield back the balance of my time, Mr. Chairman.

WRITTEN OPENING STATEMENT OF THE RANKING MINORITY MEMBER, MAJOR R. OWENS, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES- SEE APPENDIX B

Chairman Norwood. Thank you very much, Mr. Owens, and I appreciate your kind words and willingness to work together, and I look forward to that.

Before I introduce our panel of witnesses, let me remind each that they have been invited to speak for approximately five minutes. And I'd like to say to the Committee that my view is these people have come a long way, and I'm going to be liberal with all of them in a fair and equal manner. I will be less liberal with us as we ask questions. So everyone may be able to ask their questions, but we need to give these folks as much leeway as we can.

As I mentioned earlier, each of the panelists may submit additional copy or information for the record up to 10 days after this hearing if they see fit to do so.

We have assembled here today a group of individuals who have played a significant role in the development of our nation's labor laws. In my mind, the strength, courage and patience that these individuals displayed in their quest for justice has helped protect the freedom that we enjoy in this country. Accordingly, I believe that each of us owes to these individuals a debt of gratitude for the personal sacrifices that they have made.

Let me begin, ladies and gentlemen, by recognizing each individual on our panel.

First we have Ms. Wendy Fields-Jacobs, and I'm grateful very much for you being here.

Can I have something about each one of them?

Yes. Ms. Jacobs is administrative assistant to Vice President Bob King, International Union, United Auto Workers, and we are thankful for your presence.

We have Mr. Harry Beck from Portland, Oregon. We're delighted you're here. We are grateful for you making that long trip across the country.

We have Ms. Janet Cope from Great Falls, Virginia.

We have Robert Penrod from California. You've come a long way, too. Thank you.

Craig Sickler from Charlotte, North Carolina, thank you so much for being here.

Christopher Corson, who is associate general counsel, International Association of Machinists and Aerospace Workers, from Upper Marlboro, Maryland, thank you so much.

And Ray, let's get your right name right.

Mr. LaJeunesse. LaJeunesse.

Chairman Norwood. Ray LaJeunesse. How did I do? Well, if you'll answer to that, I'll try to get closer next time.

Ray is with the National Right to Work Legal Defense Foundation, from Springfield, Virginia. And, again, just on a personal level, I truly appreciate people like you who are willing to come to Washington and take your time to try to enlighten Congress. It needs all the enlightenment it can get. So thank you very much for that.

And, Ms. Jacobs, if we could, I'd like to recognize you first for five minutes.

STATEMENT OF WENDY FIELDS-JACOBS, ADMINISRATIVE ASSISTANT, INTERNATIONAL UNION, UNITED AUTO WORKERS, DETROIT, MICHIGAN

Ms. Fields-Jacobs. Good morning. I'm happy to be here. I'm Wendy Fields-Jacobs.

Chairman Norwood. Would you pull that microphone just a little closer?

Ms. Fields-Jacobs. I'm Wendy Fields-Jacobs and I work in the organizing department of the United Auto Workers Union. I have about 10 years experience helping working organize in healthcare and industrial workplaces.

For almost 30 years, the UAW's constitution has allowed members who do not agree with the union's political and legislative activities to receive a rebate of the portion of their dues used for these purposes. To receive this rebate, which amounts to only a small percentage of total dues, a member only has to send a letter to the union's secretary treasurer.

Historically, only a tiny number of members have objected to the use of their dues for political purposes and requested the rebate. This is because the vast majority of UAW members strongly support the participation of the union in the political/legislative agenda. Members recognize that what the union is able to achieve through collective bargaining is profoundly affected by decisions made in Washington and in state capitals across the country. Our wages, healthcare and pension benefits, and the very existence of our jobs are directly affected by governmental policies. Thus, to truly protect and advance the well-being of UAW members. The union must be involved in advocating their interests in the legislative and political process.

I note that the question today is: ``Are workers being heard?'' There are workers testifying who represent the tiny minority of union members who do not want the union to speak for them on Capitol Hill. I respectfully submit there are millions more who do, those whose voice at work are silenced, those that Mr. Owens has talked about, the workers who want to form a union, the workers who want to address the concerns in the workplace, the workers who want a pension, the workers who want affordable healthcare, the workers who want to end the scarring and want to address health and safety concerns.

The National Labor Relations Act says that workers have the right to form a union, freedom of harassment, intimidation or termination. But this right has been rendered meaningless by an army of union-busting consultants with an arsenal of union tactics at a cost-benefit analysis that makes it cheaper for employees to risk violating the law rather than complying and risk facing workers at work.

I have witnessed firsthand the tremendous courage it takes for workers to withstand the anti-union assault daily launched by those companies when they want to unionize. And make no mistake, it is an assault. They harass, use surveillance, discipline, and, yes, the ultimate plant closing threat to lose your job.

Among the tactics I see routinely, and I just want to name a few because it's all pretty detailed in my testimony, and it's sad to say, as I sit before you, it didn't take me long to think about all the injustices and what the employers do to break the law.

Discharging of union supporters: ZF Industries, in Tuscaloosa, Alabama, 70 percent of the workers signed up, joined together, and wanted a union. After an anti-union offensive, they fired five key union supporters and threatened to close the plant. These five employees were out of work for more than a year before being reinstated with their back pay. When the workers undertook a subsequent organizing drive, the company decided not to run its anti-union campaign. And last year these employees voted by a two to one margin to form their union.

Singling out of union supporters by management for unfair or unequal application of work rules is an often more commonplace, written disciplines for minor infractions happens daily. Better yet, the promise of economic incentives is equally used, employers using the carrot rather than stick. A recent example, organizing campaign just this very last week at Johnson Controls in Toledo, Ohio. After those workers decided to talk, come together, form their union, the employer held a meeting and gave a four dollar wage increase promised one over a two year period. That was a 40-cent increase in pay clearly designed to undermine the organizing drive.

Psychological terrorism, one on one meetings it is common for employers to take workers in a room, ask them over and over again why they want to make these decisions, make them feel disloyal to their companies.

Again, another very, very powerful one I talked about earlier was this use of plant closings, the job threats. MTD, ``Wall of Shame,'' a very common occurrence we see in organizing campaigns, where the employer will put up on the wall, in Willard, Ohio, plants that closed, moved to Mexico. Do they ever say that some of those plants were not unionized? And the majority were not. Do they ever say, we're just giving you an

example? No, the implication is clear: unionize, this could be you, your plant will close, you will lose your livelihood.

If this subcommittee truly wants to assure that workers' voices are heard, I respectfully suggest that it needs to strengthen the rights of workers' rights to organize instead of posting Beck notices at the workplaces of all federal contractors, as President Bush recently required by executive order. It should also post notices for informing employees of their legal right to organize and make that right have meaning. Congress should amend the NLRA to stiffen penalties for Section 8(a)(1) and (3) violations and to balance the rights of employers with those of unions during organizing campaigns.

The right to organize is a civil right in the United States, just like the right to vote. The freedoms of speech and self-expression are rights honored in this country, except in the workplace. Our nation trusts these workers that I know and see and have to look in the eye daily to make the right decisions to elect you as leaders to run our country. Shouldn't we also trust workers to make meaningful, thoughtful decisions about maintaining and improving the quality of their work life for themselves and their family? We need you to stand by your constituents when they want to have their voice at work being heard.

Thank you.

WRITTEN STATEMENT OF WENDY FIELDS-JACOBS, ADMINISRATIVE ASSISTANT, INTERNATIONAL UNION, UNITED AUTO WORKERS, DETROIT, MICHIGAN – SEE APPENDIX C

Chairman Norwood. Thank you very much, Ms. Jacobs, and we appreciate your advice on what the Committee should do, but I'll remind all the witnesses, this is a surgical hearing and the subject today is about the Beck decision.

Now I'd like to tell my colleagues that we have a rule vote and then we should be free for the next couple of hours. So if everybody will try to go vote and come back immediately, maybe we can begin again in 15 minutes and not be interrupted.

So the Committee is adjourned for 15 minutes. Thank you.

[Recess.]

Chairman Norwood. Would the witnesses please take their seats?

The Committee will now reconvene, and I'm looking for Mr. Beck.

Mr. LaJeunesse. Mr. Chairman, I believe Mr. Beck went to the men's room.

Chairman Norwood. That's a legitimate reason to wait.

The lady on our subcommittee was back on time. The rest of them should have, too, shouldn't they, Patsy?

Mrs. Mink. We're following in your footsteps.

Chairman Norwood. Absolutely.

If I hear no objection, we'll go ahead and ask to hear from Ms. Cope, please, until Mr. Beck gets back.

STATEMENT OF JANET COPE, GREAT FALLS, VIRGINIA

Ms. Cope. Honorable Members of the House of Representatives, good morning, my name is Janet Cope.

Chairman Norwood. Ms. Cope, move that microphone pretty close, please, ma'am. A little more than that, maybe.

Ms. Cope. Pull it?

Chairman Norwood. Yeah, just pull it to you.

Ms. Cope. Honorable Members of the House of Representatives, good morning, my name is Janet Cope. I appreciate very much this opportunity to appear before you today to share my experiences with you.

I'm a sales and reservation agent with United Airlines and I have been employed in this capacity since 1991. My duties require communication with customers to promote, develop, and finalize the sale of our company's worldwide product and services. As you can see, my co-workers and I find ourselves on the front line of dealing with customers and the problems they face. The efficiency with which we work and the attitude we display in our dealings with customers is crucial to the overall perception by the flying public and ultimately to its success or failure.

In 1999, an election was held among the public contacts at United Airlines. The question was whether we wanted to be represented by the International Association of Machinists and Aerospace Workers, also known as the IAM. The IAM narrowly won the election, receiving 51 percent of the votes. I voted against the IAM because I believed it would not materially improve conditions for a group of United workers to which I belonged, but could interfere with the accomplishment of the service mission that we have.

But we are not here today to debate the pros and cons of union representation. Instead, I believe the key issue today is one of individual rights. What are the rights of an individual who, for whatever reasons, opposes union representation? What are the rights of an individual whose political views are not consistent with those so widely and expensively proclaimed by the union? And, finally, what additional safeguards do we need to protect these individual rights, especially in a right to work state?

These are the issues that I can talk about from personal experience. I am not a lawyer, nor an economist or a political scientist, but I do know what my own experience has been and I would like to share some of it with you.

I will first share with you my experience with the issue of compulsory membership. I felt very strongly that I did not want to join the union, but I also felt strongly that I did not want to lose my job. Shortly after the election, the IAM assigned shop stewards to set up a table and have every employee sign two forms, a membership form and an authorization for check-off dues. As can be seen from Attachment 1, the IAM placed a notice and distributed clearly stated that failure to obtain union membership could cause one to lose employment with United Airlines.

At this time, I contacted the National Right to Work Legal Defense Foundation for assistance. Foundation attorney Ray LaJeunesse explained to me that despite what the contract might say, I could not be required to join the union and I could insist on paying less than full dues if I notified the IAM that I objected to paying for more than collective bargaining and contract administration. I know Mr. Owens mentioned something about not wanting to pay dues at all, but that wasn't the case, because, as I mentioned earlier to Mr. Corson, that shop stewards don't pay any dues whatsoever. So that was not my intention of not wanting to join this union.

But neither the IAM or, for that matter, the management of United Airlines, told me that I had those rights, and even though I had addressed inquiries to them through letters and phone calls. And, to this day, this practice is still exercised with all new hires at United Airlines Reservation Center and at Dulles Airport.

In addition, I received notes from the secretary of the local lodge, Mr. John Kennedy, as well as from a shop steward, Mr. Frank Contendo, from United, stating they would not accept the dues check-off form without the membership form being signed. These are my Attachments 2 and 3.

At that time, I became really concerned that I might lose my job. I had received two highly conflicting versions of what I could be required to do. Finally, I had to send my dues check-off form directly to the district lodge by way of Federal Express, because the local lodge refused to process it.

Next, relying on the assurance that I had independently received that I could not be forced to join the union or lose my job because I did not join, I mailed my objection letter to the IAM. I then learned that I would be required to do this, to renew my objection every November. This struck me as unfair since members are not required to affirm their membership each year. It was at this time that I offered to be a plaintiff in a class action lawsuit called Lutz v. Machinists, which eventually resulted in an injunction requiring the IAM to honor continuing objections. So the outcome was favorable, but there remains a question of why individuals must resort to the courts to obtain elementary fairness.

In addition to the issue of membership, I have experienced an ongoing struggle over dues. Before the election, we were never given a satisfactory answer to the most elementary question: what will our dues be? Since the election, our dues have gone up

each year and we have not had any new contract or pay raise to offset or justify the increase. These increases occur without notice. You notice your paycheck is getting smaller and there's no answers.

Another problem I have encountered is that United Airlines refuses to deduct anything less than full dues. I had to choose between paying the full dues by payroll deduction with subsequent refunds by the union or paying the reduced amount directly to the union by personal check. I chose payroll deduction because it is more convenient and also avoids a possibility that I might inadvertently miss payments and be fired for nonpayment. If union dues are missed for two consecutive months, any employee can be fired. However, I have to wait three to four months before I receive my rebate check, and that occurs after several phone calls to the local lodge.

To this day, I have not received my rebate check for four months and I am tired of calling. My rebate check is only $8.27 a month and the monthly dues are $34.67 a month. it is hard to fathom that for only $26.40 for a non-member per month, or basically $700,000 a month the IAM collects, it's spent only for contract negotiations and administration.

Another key issue regarding dues for our purposes today is the issue of that portion of dues that goes to finance political activity. Once I objected, it is true that I've been allowed to reduce my dues payment by the percent that is alleged to have gone to support political activity, or to look at it from the other side, my dues are alleged to consist of only that percent that is necessary for collective bargaining and contract administration.

But who determines what percent is spent for collective bargaining and contract administration and what percent is utilized to support the union's political agenda? The answer is that it is the union itself that does this. The IAM conducts its own audit to determine what portion of the dues is chargeable and what portion is non-chargeable to non-members under the Supreme Court decision.

These two issues, membership and dues, are among the most important ones that I believe you should address, though there are others. Ultimately, I believe that the Railway Labor Act is antiquated and unfair and needs a thorough overhaul.

Once again, I appreciate your attention and the opportunity you have given me to participate in this process.

WRITTEN STATEMENT OF JANET COPE, GREAT FALLS, VIRGINIA – SEE APPENDIX D

Chairman Norwood. Thank you very much, Ms. Cope. We appreciate you, too.

Mr. Beck, you're up for five or so minutes. Pull the microphone close to you so we can hear you well, please, sir.

STATEMENT OF HARRY BECK, PORTLAND, OREGON

Mr. Beck. Thank you, Mr. Chairman, and honored members of this dias.

Ms. Jacobs and I agreed at least on one thing this week. We sat next to each other on the plane from Chicago and never recognized each other. So we've at least agreed upon one thing.

I thank you for the opportunity to give a little history of my case and the efforts that I made to not only get my rights, but also the rights of all workers. I've waited for over 12 years for someone to finally address the inconsistency of having won the war, but continuing to have to fight the battles.

I want to go on record as stating, I believe anyone who wishes to join a labor union should have the unfettered right to do so. I believe union workers must be allowed to give unions political activity dollars as an example of this country's belief in freedom of speech. However, the freedom of speech carries with it the freedom to express speech which it disagrees with and stand against union dogma. Herein lies the problem resulting from Beck v. CWA. A part of this free speech concept must also allow for no speech. I further hold no person should be forced to pay servitude to any organization whose ideology is contrary to their beliefs just in order to feed their family.

In 1966, my free right of choice was taken from me when I was grandfathered into a union contract, forcing me to pay confiscatory dues to a union I no longer wanted to represent me. I was told, as a condition of employment, I must accept their representation, the very least of which meant paying union dues. Finding CWA using my union dues to purchase political favor from politicians to whom I'm opposed, I filed suit to have the courts uphold my right of no speech. Twelve years later, the United States Supreme Court agreed, in part, with this right, stating I did not have to pay for union political speech. The Court determined I must pay for only the part of union representation mandated by the Taft-Hartley Act-bargaining, arbitration, and grievance support. The Court reduced the amount I must pay from 100 percent to only 21 percent of full union dues.

Mr. Owens, Representative Owens, mentioned a list of things that union members have the right for, but another court upheld the union's right to force me from membership in order to get my reduced dues allocation. This laughs in the face of logic. I must pay for bargaining, arbitration, and grievance support, but have no voice in the activities contributing to these events. I have no voice in putting forth my own defense in grievance hearings. I have no vote in the leadership of the union who represents me in issues dealing with my company. Workers are still under this constraint today.

Twenty-one states have dealt with this legal inconsistency and freed workers for making a free choice. The Right to work states saw the incongruity of the federal laws and attempted to set the enslaved worker free. But even in these states, union bosses are openly ignoring and attempting to still force the worker into their union in order to feed their family, which causes the worker to have to, again, file more litigation and the union

hopes to withstand all of that simply because it has the money to outlast most of the workers.

In an attempt to defend my rights, I joined with Governor Pete Wilson and Secretary Chao in winning freedom for California public workers. Prop 226 was heavily fought by big unions to the tune of $14 million, all of those dollars coming from union dues, many taken from hardworking teachers and public workers in California and spent against their will.

In 1992, President George Bush signed into law an executive order demanding all companies receiving government contracts must notify their workers of their Beck rights. But, again, union bosses united to spit in the face of both the executive and judicial branches of the United States government. AFL-CIO president, John Sweeny, on the very weekend that President Bush signed the executive order codifying Beck v. CWA, announced he was immediately raising each worker's union dues by a 25 percent or 25 cent amount in order to raise $25 million to defeat President Bush and Republican Members of congress. Many of those dollars came from Beck supporters.

Seeking help from the Justice Department to defend Supreme Court decisions was a total waste of time. Lacking the courage to take up the cause of the little man against big labor, Justice would defer to the National Labor Relations Board. This is laughable. The NLRB was established to provide a defender for the hard worker being mistreated by big labor. But this group of union cronies locked up over 300 cases--not 100, sir, but over 300 cases are related to Beck. The seats on the board became a haven for union counselors appointed by Presidents trying to pacify union bosses. This becomes the proverbial fox guarding the henhouse. Again, the worker loses. Big labor continues its nose-thumbing at our system of government.

For over 30 years I have watched union thugs ignore the law, union gangsters' tactics of fear and mayhem against those they purportedly represent, union bosses becoming privileged occupants aboard Air Force One, while snubbing their collective noses at the executive and judicial branches of government. How long will it take before the little guy gets an even break in this hard-fought battle?

Honored members of this committee, you can make a difference now. Before the House of Representatives again this year is a bill which can go a long way to freeing us from these abuses. The National Right to Work Act finally will codify Beck. Representative Bob Goodlatte of Virginia and other bold members of the House understand our cause. History shows state law fails. Executive orders fail. The Justice Department has failed us. It is left to this honored body to step forward with legislative integrity to release hard-working men and women from ever again being forced to pay servitude to union bosses in order to feed and clothe their families. We need your protection, and we need it now.

Unions fearing the passage of the National Right to Work Act are already scheming to ignore this bill when passed. Don't let this happen. Don't let this bill be watered down by liberal political correctness. In fact, the only amendment I would suggest to this bill would be one severely punishing anyone who chooses to spit in your

faces. How much longer will we have to wait? It's now up to you.

Thank you.

WRITTEN STATEMENT OF HARRY BECK, PORTLAND, OREGON – SEE APPENDIX E

Chairman Norwood. Thank you very much, Mr. Beck. We appreciate you being here.

Mr. Penrod, we'd like to hear from you now, please.

Pull it up close.

STATEMENT OF ROBERT PENROD, BARTLOW, CALIFORNIA

Mr. Penrod. Okay. Honorable Members of the House of Representatives, my name is Robert Penrod. I want to sincerely thank this committee for giving me the opportunity to appear here and provide a short summary of my 10-year legal battle with the Teamsters Union and the NLRB.

For over 18 years I have worked at Fort Irwin, California, for various military contractors. Throughout my employment, I have been forced to accept representation by Teamsters Local 166, a union that I neither chose nor voted on. I originally became a member of the Teamsters Local 166 because I was told that union membership was a requirement of my employment, and the union gave me no choice in the matter.

Indeed, Local 166 never provided me with any initial Beck notice concerning my right to remain a non-member or pay only reduced dues or my right to object to receive audited financial disclosure concerning the union's activities.

When I learned of my right to be a non-member, under CWA v. Beck, I promptly resigned my membership in the Teamsters' Union and objected to supporting its political and ideological activities. The union's response was one of stonewalling and delay. Months went by with no reduction in dues or acknowledgement of my rights. My fellow employees who had also resigned from union membership and I were stymied in our efforts until we called the National Right to Work Legal Defense Foundation.

In 1990 and 1991, with the help of the National Right to Work Legal Foundation, several of my co-workers and I filed a series of three unfair labor practice charges against Teamsters Local 166, alleging various failures to comply with Beck.

On April 29, 1992, Local 166 entered into a settlement with the regional director of the NLRB, Region 31, promising to provide all non-members with adequate and timely notice of their rights and to provide all objecting employees with adequate and independently audited financial disclosure.

But almost before the ink was dry on the settlement agreement, the union was already violating it. The Teamsters local demanded that my fellow employees and I pay almost 94 percent of dues or be fired, and the union failed to provide adequate and audited financial disclosure for each level of the union hierarchy that received a portion of the employees' dues money. The union gave me what it called a statement of expenses. This document was only a single, handwritten page of numbers, which contained no explanations of the union's activities, nor any explanations of the methodology used by the union to arrive at its 94 percent calculation.

None of the schedules or breakdowns that were mentioned were provided to me and this statement of expenses was not accompanied by any notes or other written explanations of the criteria used by the union to arrive at the chargeable and non-chargeable allocation. Among the unexplained line items were entries such as ``other expenses,'' ``other refunds,'' and ``other professional fees.''

Moreover, the statement of expenses provided no clue as to the identity of any of Local 166's affiliated unions which received part of the dues, even though the payments to these unnamed affiliates, presumably the per capita line item, make up 24.4 percent of Local 166's total expenditures. None of the objecting employees were given an iota of disclosure to explain or justify the expenditures and allocations for the International Brotherhood of Teamsters or any other affiliates of Local 166.

Based only upon this single page of financial disclosure, the union demanded that my fellow employees and I begin immediately paying, as a condition of continued employment, 93.67 percent of its full monthly dues.

In 1992, after receiving these demands, we filed another unfair labor practice charge alleging that new violations of the Beck ruling and also asking that the prior settlement agreement be set aside because the union failed to comply with it. In 1993, the NLRB regional director revoked the prior settlement agreement, and, in 1995, the case was transferred to the full NLRB in Washington for decision.

At this point the case was frozen. For over 4 years, until 1999, no action whatsoever was taken by the 5 member NLRB in Washington. Our case sat, along with dozens of others, while we faced the constant prospect of discharge for failing to pay the dues that the union demanded.

Finally, in 1999, the NLRB ruled. Amazingly, after its inexplicable five year delay, a unanimous NLRB upheld the union's single handwritten page of numbers as adequate financial disclosure. That was under International Brotherhood of Teamsters, Local 166, DynCorp Support Services Operations.

Anyway, that--citing its concern for the union's time and expense, needed to make such disclosures and explaining that the union was entitled to a wide range of reasonableness, the Board concluded that the union had made a proper judgment call within its discretion. Not a single word was said about the plight of us individual employees about our constitutional rights to refrain from supporting political activities we oppose or about the fact that for almost 10 years we were forced to work knowing that

we could face discharge if we failed to pay what the union demanded.

Again, with the help of the National Right to Work Legal Defense Foundation, we filed a petition for review with the U.S. Court of Appeals for the District of Columbia Circuit. It goes without saying that we could have never afforded this battle, nor would we ever have undertaken it, without the help of the National Right to Work Foundation.

In Penrod v. NLRB, the Court of Appeals granted our petition for review and reversed the NLRB decision, finding that ``the Board's decision [was] unsupported by reasoned decision-making and in conflict with Supreme Court and circuit precedent.'' The Court of Appeals found that ``the Board's decision reflects a classic case of lack of reasoned decision-making.''

Indeed, because the NLRB's decision was so lacking in legal support, the NLRB paid $17,016.30 in taxpayers' money under the Equal Access to Justice Act to cover legal fees and expenses that were incurred on my behalf. That the NLRB went to extraordinary limits and lengths to diminish my rights under Beck and refuse to follow that decision is highlighted by the fact that legal fees are rarely awarded under the Equal Access to Justice Act and can only be awarded when the NLRB's position is not substantially justified. Obviously, the NLRB's ruling against me was not substantially justified under any scenario.

Now, after more than a decade in litigation, I have a Court of Appeals victory, but my case is back before the NLRB. After the Court of Appeals decision, it took the NLRB over 15 months just to issue an order accepting that decision as the law of the case and beginning the process of forcing the union to comply.

I now begin a new chapter of monitoring the union's compliance. My co-workers and I have yet to ever see a shred of properly audited financial disclosure about what Teamsters Local 166 and its affiliates do with the dues money that they forcibly extract from employees.

I'm sure I speak for a large group of American workers when I ask you to investigate the information given to you, formulate a solution to correct the injustices and initiate a plan of rapid action to ensure our inalienable right to work without threats, duress or harassment.

Ensure, through your efforts, that thousands of dollars of litigation and years of legal maneuvers are no longer needed for employees to receive the rights that are supposed to be honored on day one.

In conclusion, I say to this honorable House that in a free country like America, employees should not have to run a decade-long legal gauntlet like this in order to protect their cherished right to refrain from supporting causes they oppose. If I was forced to pay money to a specific church or religious group in order to keep my job, this would not for a minute be permitted in this great country. By the same token, no one for a minute should assume that it is fair or proper for me or my fellow employees to support, with our hard-earned money, a Teamsters union that we vehemently oppose. For this reason, I say

that the only solution is full freedom in the workplace via a national right to work law.

Thank you.

WRITTEN STATEMENT OF ROBERT PENROD, BARTLOW, CALIFORNIA – SEE APPENDIX F

Chairman Norwood. Thank you very much, Mr. Penrod.

And I'll remind the members of the Committee that I'm giving the witnesses a great deal of leeway. Mr. Penrod came all the way from California. I won't be so nice to us, but I'd like to give them as much time as is possible.

Mr. Sickler, we'd like to hear from you now. Please pull that mike up close.

STATEMENT OF CRAIG SICKLER, CHARLOTTE, NORTH CAROLINA

Mr. Sickler. Thank you.

I'd like to thank the honorable members of the Committee for inviting me here to tell you how I came to be fired from my job at U.S. Airways at the request of the union.

I started working as an aircraft mechanic in 1978 for a nonunion airline. In 1980, I left that airline and I took a job with Eastern Airlines, in Miami, and when I got there I was told that as a condition of employment, I had to join and pay dues to the International Association of Machinists. I was given a card to sign that would allow them to deduct my dues from my paycheck. I was never told there was any option. I was never told I could become an objector or I could be a non-member agency fee payer. I had to learn that on my own.

It didn't take me long--as a member I started receiving publications and literature from the union and I found out that their political positions were exactly opposite of my own. I also learned that the then international president of the union, one William W. Winpisinger, was an avowed socialist.

In 1988, I left Eastern. I took a job with Piedmont Airlines, in North Carolina, also represented by the IAM. Piedmont ultimately merged with U.S. Airways. Again, I was still represented by the IAM. Since 1980, throughout my employment, I've been forced to accept representation by the IAM, a union that I disagreed with politically, that I neither chose nor voted on.

Over the years I managed to learn about my right to object under the Beck and other Supreme Court decisions, and found out that I didn't need to pay to support political candidates and causes that I opposed. Part of this discovery was through a notice published yearly in the IAM's quarterly International Journal, under the deceptive title of ``Notice to Employees Subject to Union Security Clauses.'' This was deceptive to me.

It's a page of fine print. It appears to apply to employees of the union and no one that I know of, and myself at the time, didn't know what a union security clause was.

After a particularly blatant bit of political activity on U.S. Air property in 1994, I read through the fine print of that page and discovered I could become a dues objector. If filed an objection. My specific objection was to paying for union political activities.

As a result of the objection, I was thrown out of the union. This is the policy of the union. Regardless of your motivation for being an objector or for what part of your dues you object, you're thrown out of the union. You can't vote on shop stewards. You can't vote on the contracts you have work under. You can't vote on union bylaws. You can't vote on the expenditures of money for new union halls. You can't attend social activities. You're thrown out. You're a non-member.

The local that I belonged to in Winston-Salem, North Carolina, basically chose to ignore that IAM policy. They let me continue to vote, continue to go to the union picnics. I went out on strike with them. I walked the picket line. I didn't really know I was a non-member.

In 1998, U.S. Airways closed the maintenance base in Winston-Salem and I moved to Charlotte, North Carolina. My representation with the IAM changed only in I was now under the jurisdiction of a new local. Now this new local did enforce that policy. They didn't let me vote, they didn't let me attend union activities, and they posted my name on the bulletin board.

And I think we have an Exhibit 1 of that. This is prior to my name being posted on here. They still maintain this policy. Each year they post a list of people who are dues objectors, the implication being an objection to paying anything for representation. Many dues objectors object, as I do, only to the political expenditures.

Once I had become an objector, I finally received what they called financial disclosure. It's not financial disclosure. I'm getting a little ahead of myself here. But not really. What they called financial disclosure and what I had seen of the way the union was operating and what they were doing led me to believe that they were not, in fact, telling me how they were spending my money, that there was very little I could tell about what they were doing with my money.

Do we have Exhibit 3?

Chairman Norwood. Leave that up a little longer, please.

Mr. Sickler. Yes, this is a page of what they sent me, and still send out on a yearly basis, called ``financial disclosure.'' And from this, you're supposed to be able to tell how they're spending your money and how much of it is chargeable to you as a non-member agency fee payer and how much of it is not. Not all of the pages they sent me were legible. Very few of them pertained to anything that had anything to do with me. My particular local union never sent out any financial information for that local, the reason being that they had never audited the books of that local, and I don't think anybody knew how that local was spending its money. They claimed to keep books, but they were never

audited.

Because of these problems with this financial disclosure and the continued politicking of the union that I opposed, I, in 1998, filed a challenge to their calculation of my reduced reduction of dues. When I filed this challenged, I requested additional financial information from the union. I requested something that was legible. I requested the notes and schedules. I asked them, in several instances, how they calculated these numbers.

I was notified that they accepted my challenge and that they would schedule arbitration with the American Arbitration Association. I did a little bit of research on the Internet. I found out that the AAA has a Web site. I read through their rules to see how this arbitration would be conducted. Included in these rules was a statement that an escrow account would be established at the request of the union, and I could place the disputed amounts of money into that escrow account until the arbitration was concluded.

I waited. I never got any additional financial disclosure. I never heard anything about any arbitration. I was never informed that an escrow account had been established. Instead, I was notified, after three months, that I was arrears in my union dues and if I didn't pay within 15 days, all of the back dues, plus $125 into a union which I had been thrown out of, that I would be fired. The union would demand that I would be fired from my job.

I replied to that notice. I told them I was waiting for arbitration, I was waiting for the establishment of an escrow account, I was waiting for the financial information I had requested. I was ignored. No one responded to any of those issues.

In 1999, in May of 1999, with no response, no further information, no compliance under Hudson or Beck, the union demanded that I be fired.

I went through a little internal appeals procedure with the company. The company stated that the issues I raised, the constitutional issues under Ellis and Hudson and Beck, were just not germane to this discharge, and I was fired. The dead horse that Mr. Owens spoke of rose up and kicked me pretty hard.

In November of 1999, almost a year after I had filed my challenge, and five months after I had been fired, the American Arbitration Association was finally contacted by the union to schedule arbitration over my challenge--a little too late for me.

Interestingly, the arbitrator chosen for this case that I wouldn't really participate in was one Gladys W. Gruenberg, who teaches social economics at St. Louis University. She's listed, interestingly enough, on Teamsters Union Local 1187's Web site as an ally of that union. So much for the impartial arbitration that I was going to receive.

Needless to say, my discharge had a rather devastating effect on my life. I was 50 years old, I was looking forward to retiring from U.S. Airways, as I had originally looked forward to retiring from Eastern Airlines. I had had to start over. I thought I'd have to start over again.

Starting over in the airline business is basically something you do on your own. No one pays to move you to a new city. No one gives any regard to the fact that you may have 20 years experience in your work field. You start again at the bottom of the seniority list, at the bottom of the pay scale, as if you'd never done it before in your life. This is regardless of whether you moved to an airline represented by the same union or no union or a different union. This is what I faced.

With the help of the National Right to Work Legal Defense Foundation, I didn't have to do that. I filed a lawsuit against U.S. Airways and the Machinists Union. I couldn't have afforded to do this on my own. I would have been lucky to find a lawyer to hire who knew enough about this area of law that he could have helped me at all.

The IAM spared no expense to fight me. They used their own lawyers. They hired lawyers from the Washington, D.C. law firm of Bredhoff & Kaiser. They battled every step of the way to make my discharge stick.

It didn't. On September 14, the District Court in Charlotte, North Carolina, ruled my discharge was unlawful. The Machinists, according to the Court, had failed to meet many of the pre-collection obligations that it owes to non-members. The Court ruled the union had forced my firing on a ``flimsy and indefensible basis.'' The court said that the union had ``untimely and inadequate practices and procedures.'' It called the union's officials ``downright arrogant'' and their procedures ``maddening nonfeasance.'' U.S. Air has rehired me. The union settled. I feel vindicated, but not really compensated for a year-and-a-half that was stolen out of my life.

I have never yet received any financial disclosure from the Machinists Union. I doubt that I ever will, other than something like this. In order to keep my job, I will likely have to continue paying fees to this union, without ever knowing how they really spend my money.

In conclusion, I say to this honorable House, in a free country like America, employees shouldn't have to be fired and face economic and emotional ruin and run a two-year legal gauntlet to protect their right to refrain from supporting causes they oppose.

Thank you very much.

WRITTEN STATEMENT OF CRAIG SICKLER, CHARLOTTE, NORTH CAROLINA – SEE APPENDIX G

Chairman Norwood. Thank you very much, Mr. Sickler.

And, Mr. Corson, we'd love to hear from you now, please.

Mr. Corson. All right.

Chairman Norwood. Pull it close.

STATEMENT OF CHRISTOPHER T. CORSON, ASSOCIATE GENERAL COUNSEL, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, UPPER MARLBORO, MARYLAND

Mr. Corson. My name is Christopher Corson. I'm associate general counsel to the Machinists Union. I would like to thank the Chairman and other members of this subcommittee for the opportunity to address Beck rights on behalf of the Machinists Union.

I will summarize my prepared statement, but I also do want to make sure that all the Subcommittee members know that it is the Machinists Union that represents Ms. Cope and Mr. Sickler and we will be glad to respond to any questions that any Committee members have about their particular situations and our practices.

The rights of fee objectors are based on the freedoms of speech and association in the First and Fourteenth Amendments to the Constitution. These principles are fundamentally important to labor unions, which are America's most vibrant, private mass democratic institutions. That democracy is in the establishment of any collective bargaining relationship, which must be done by the collective will of a majority of employees and appropriate bargaining unit, often through a secret ballot election. Thereafter, unions are required by federal law, the Labor-Management Reporting and Disclosure Act, to continue to operate on voluntary and democratic principles.

Local officers must be elected at least every three years by secret ballot. International officers must be elected at least every five years, either by secret ballot or by a convention of delegates, themselves chosen by secret ballot.

In the Machinists Union, our international level officers, our highest-level officers, are elected by popular referendum among the membership. Member dues may only be increased by the same methods, and all union members have an equal right to nominate candidates, vote in union elections and exercise the freedoms of speech in association within their unions without fear of discrimination. We operate by those values in the Machinists Union.

Turning to objector rights, the specific rights we're talking about today, the first is called the General Motors right. Under the General Motors right, and it's named for a Supreme Court case, all union-membership in the United States must be and is voluntary. Employees covered by a union security clause have the right to remain non-members and they may satisfy the clause by paying a representation fee to the union instead of dues.

The second right is the Beck right. One could also call it after a number of other Supreme Court cases that have upheld this right, Hudson, Ellis, Lehnert, Abrams, Abood. Under the Beck right, fee payers are further protected because unions are required to afford them a notice and a procedure for withholding a percentage of their fees equal to the percentage of union activities that are not germane to collective bargaining.

The Beck compliance program of the Machinists Union, it's one of the areas of responsibility that I have within our legal department was originally developed by a distinguished professor of law from Catholic University of America, Roger C. Hartley, who originally formulated the legal bases of our program, our record-keeping requirements, and our calculation methodologies. Most aspects have proven durable since initiation in 1986, although we have made refinements in response to further direction from the courts and our own efforts to anticipate the development of fee objector law.

For example, we recently responded to the litigation where Mr. Sickler was one of the plaintiffs, it is noted in my testimony, by moving from international level auditors for our subordinate affiliates to independent certified public accountants. Now I do want to note we have used independent certified public accountants for our international level auditing since the beginning. We had used trained auditors from our international to audit our subordinates and we no longer do that.

We also have modified our escrow procedure and we have shortened the time between objection and arbitration. For example, the arbitrator brief that covers this year's fee objectors' challenges was just filed and it is here. This is what we file and give to anyone who challenges our system to fully explain our system, and provide all the documentation.

Let me describe how the program works at the present time.

When we first seek to sign up a bargaining unit employee as a union member or a fee payor, we are now using a preprinted three-part form. The top of the form asks for basic identification information. Next is a membership application that the employee can sign or not, and there is a box which clearly indicates that this is an option. Thus an employee's General Motors right is protected.

The following section is to check off authorization. It is also optional. At the bottom is an important notice that tells the employee to read the detailed explanation of Beck rights and procedures, which is printed on the back of the third sheet. The employee keeps that third sheet, therefore guaranteeing that he or she has notice.

We also, as Mr. Sickler noted, publish our Beck notice each year in the year-end issue of our magazine called the IAM Journal. We use a special computer program to generate the subscription list for that issue to ensure that anyone who was laid off or lapsed during that year receives that issue. This is to make sure that everyone who could possibly have a right and a need to get our Beck notice does, in fact, receive it. And our magazine is sent to anyone who was covered by a union security clause, not just members.

A copy of our Beck notice is attached to my testimony. If you review it, you will see that it explains objector rights. It explains the reductions that objectors will receive the following year, and in our cycle this notice is published in our year-end issue, announcing the reductions that will be available to objectors the following years, and those reductions are set out.

The notice also explains the time periods and the procedures for becoming an objector, the time periods and procedures for challenging our reductions in the arbitration, and the procedures for arbitration. Any employee who requests objector status is sent the audited financial information that we used in calculating the advanced reductions set out in the notice. I do want to note, I do not agree any more than Mr. Sickler that the copy that he received of that financial information was adequate. In fact, I have responded to requests for better copies and, of course, people should have clear copies of the financial information that they deserve, and I've sent them out.

We maintain an escrow account at our international level to protect against any possibility that we may have the improper use of objector moneys pending the arbitrator's award. Currently the amount in that escrow is $180,000, which is far larger than any amount that could possibly be in dispute with all of our objectors combined.

In the arbitration of challenges we receive, we bear the burden of proof and we furnish each challenger with an independent certified public accountant audit of each entity to which that challenger's fees go. That is the International District Lodge, if appropriate, and the local lodge.

As I said, our brief, exceeds 100 pages of detailed explanation about methodologies, our record keeping and our calculations, and we attach about two inches of exhibits.

Now I do want to focus on, obviously, the specific question that, Mr. Chairman, you have posed, and that is: are workers being heard here? The Machinists Union is proud to have about 500,000 members. Our yearly number of objectors is about 500 to 700, or a bit more than 1/10th of 1 percent. This year, 13 of those objectors invoked arbitration. Last year, the number was only eight. In these arbitrations, only one or two challengers will ever actually make a submission to the arbitrator. Given our efforts at notice, this low level of response suggests to us that the vast majority of employees who pay dues or fees do not object to the activities of our union that the courts have deemed nonrepresentational.

When I talk to objectors or potential objectors directly on the telephone, the common complaint is that an employee does not want his or her fees used for campaign contributions, but they are not. Campaign contributions must come from voluntary contributions to a PAC. They cannot come and do not come from dues or fees.

When an objector does withhold a portion of fees from those activities that the courts have said are non-germane to collective bargaining, those activities are mostly nonpolitical. They include organizing new units, providing services to our retired employees, working on our communities to support groups such as little leagues and the Boy Scouts, working with our nonprofit affiliates that furnish health and safety training and dislocated worker retraining, working for the advancement of civil rights and maintaining relations with other labor unions.

Some of these non-chargeable activities are politically oriented, but most of them involve legislation that is important to working families or they are spent on nonpartisan efforts such as voter registration drives or get out the vote drives, which are conducted

without regard to party affiliation. All of these efforts strengthen our ability to negotiate good contracts, and we actually think they could be recognized as germane to collective bargaining, although the courts currently disagree.

If an objector's concerns relate to the small portion of partisan political expenditures that do take place at election time, such as issue ads, the Beck process is truly a bludgeon for that purpose. It is not a scalpel.

It also often appears to us that Beck objections are spurred by concerns other than the freedoms of speech and association that we're talking about here. By filing an objection, employees simply have a way to pay less to the union for the representation they are receiving, while retaining full rights to equal representation. Other employees may be dissatisfied with the union's germane activities.

We did have a challenger last year who submitted to the arbitrator a list of subjects on which he disagreed with the way we were administering the contract and representing his unit. Now, of course, all of those subjects are clearly germane to collective bargaining. He was not a legitimate Beck type objector at all, but we are required to treat as Beck type objectors anyone who invokes our procedures.

Before leaving the freedoms of speech and association, I would like to request the Subcommittee's attention to other important employee rights grounded in these values, namely: the right to organize in a union for mutual protection; the right to engage in protected, concerted activity; and the right to communicate with the public on issues of concern to employees.

Employers violate these rights regularly and systematically. The remedies available under the federal labor laws take too long and are grossly inadequate. When President Bush recently ordered federal contractors to post notices of Beck rights, he omitted any mention of these other rights that concern a far greater number of employees and desperately need protection. A level playing field is called for here.

In closing, I want to emphasize my initial statement: the General Motors right and the Beck rights are important. The freedoms of speech and association are fundamental values for the labor movement. Even though our evidence shows that relatively few employees wish to invoke these rights and our cost of compliance is very high, the Machinists Union will continue to honor these values as they apply to objectors, but we would also ask employers to honor these values as they apply to our members and our potential members.

On behalf of the Machinists Union, I would like to thank the Chairman and the Subcommittee members for this opportunity, and I would be happy to answer any questions.

WRITTEN STATEMENT OF CHRISTOPHER T. CORSON, ASSOCIATE GENERAL COUNSEL, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, UPPER MARLBORO, MARYLAND – SEE APPENDIX H

Chairman Norwood. Thank you very much, Mr. Corson. We appreciate you taking time and your remarks.

Now we will conclude with Mr. Ray LaJeunesse.

Mr. LaJeunesse. LaJeunesse.

Chairman Norwood. LaJeunesse, okay.

Pull that mike close.

STATEMENT OF RAYMOND J. LaJEUNESSE, JR., VICE PRESIDENT AND STAFF ATTORNEY, NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC, SPRINGFIELD, VIRGINIA

Mr. LaJeunesse. Chairman Norwood and distinguished members of the Committee, I am staff attorney with the National Right to Work Legal Defense Foundation. Since the foundation was established in 1968, it has provided free legal aid to the plaintiffs in almost every case litigated about the right of workers not to subsidize union political and other non-bargaining activities. The most famous of these cases is Communications Workers v. Beck.

I have worked for the Foundation for more than 30 years. I have represented tens of thousands of employees in cases like Beck. I was the lead counsel for the plaintiff workers in three such cases that I argued in the United States Supreme Court.

I commend you for investigating the adequacy of this country's labor laws after Beck and related cases. Implementation of Harry Beck's victory in the Supreme Court is a serious problem. Many American workers are forced by virtue of a unique privilege Congress granted unions to contribute their hard-earned dollars to political and ideological causes they oppose.

I am talking about union dues and agency fees collected from workers under threat of loss of job. These moneys, under federal election law, are lawfully used for registration and get out the vote drives, candidate support among union members and their families, administration of union political action committees, and issue advocacy. These in kind political expenditures amount to between 300 to $500 million in a presidential election year. The unions spend many millions more on state and local elections and lobbying at all levels of government.

Under the National Labor Relations and Railway Labor Acts, employees who never requested union representation must accept the bargaining agent selected by the majority in their bargaining unit. Then, if their employer and the union agree, the law forces these employees to pay fees equal to union dues for the unwanted representation or be fired. The evil inherent in compelling workers to subsidize our unions' political and ideological activities is apparent. As Thomas Jefferson eloquently put it, ``to compel a

man to furnish contributions of money for the propagation of opinions which he doesn't believe, is sinful and tyrannical." Preventing that evil, however, is not easy under current law.

In dissenting from the Supreme Court's first ruling on the problem, in Machinists v. Street, the late Justice Hugo Black articulated the difficulty well. To avoid constitutional questions, the Court held that the Railway Labor Act prohibits the use of objecting workers' forced dues and fees for political and ideological purposes. However, the Court majority held that the employees' remedy was merely a reduction or a refund of the part of the dues used for politics. Justice Black exposed that remedy's fatal flaw, and I quote.

``It may be that courts and lawyers with sufficient skill in accounting, algebra, geometry, trigonometry, and calculus will be able to extract the proper microscopic answer from the voluminous and complex accounting records of the local, national, and international unions involved. It seems to me, however, that this formula, with its attendant trial burdens, promises little hope for financial recompense to the individual workers whose First Amendment freedoms have been flagrantly violated."

The Supreme Court's later Beck decision ruled that employees covered by the National Labor Relations Act also cannot lawfully be compelled to subsidize a union's political and ideological activities. That decision should have paved the way for all private sector employees to stop the collection of dues for anything other than bargaining activities.

However, like Street, Beck is not self-enforcing. Experience shows that Justice Black was correct. Without the help of an organization like the Foundation, no employee or group of employees can effectively battle a labor union and ensure that they are not subsidizing its political and ideological agenda. Even with the rulings in Beck and related cases, the deck is stacked against the individual employees. And even with the help of the Foundation, which cannot assist every worker who wants to exercise Beck rights, complicated and protracted litigation often is necessary to vindicate those rights.

Employees must overcome many hurdles to exercise their Beck rights. The first obstacle is the compulsory unionism agreements. The courts have long held that actual union membership cannot lawfully be required. Yet most unions and employers still negotiate contracts that state that ``membership in good standing" or ``membership" is required. In Marquez v. Screen Actors Guild, the Supreme Court sanctioned this misleading practice. The Court reasoned that contracts merely use a legal ``term of art" that ``incorporates all of the [judicial] refinements associated with the language."

The Marquez decision, I respectfully submit, does not consider the realities of the workplace. As the then chairman of the National Labor Relations Board, a Clinton appointee said in 1998, ``even today, many workers and employers do not understand that 'membership' is what the United States Supreme Court has defined it to be," not what it literally and commonly means. Almost every day, the Foundation receives calls and e-mail messages from employees who believe that the contract under which they work requires them to join the union.

Unions have a legal duty to inform workers that they have a right not to join and if they do not join, not to subsidize political activities. However, that duty is honored more in the breach than in the observance, as Justices Kennedy and Thomas recognized in their concurring opinion in Marquez.

``When an employee who is approached regarding union membership expresses reluctance, a union frequently will produce or invoke the collective bargaining agreement. The employee, unschooled in semantic legal fictions, cannot possibly discern his rights from a document that has been designed by the union to conceal them. In such a context, 'member' is not a term of art, but one of deception."

Union officials often tell workers that they must join or be fired as occurred in the cases of the employees' testifying here today and other cases I cite in my written statement. Union officials also often tell members they will be fired if they resign. An example of this practice is Exhibit 1 to my statement, which I understand is in an overhead. Even more commonly, unions simply fail to tell employees about their options, letting them be misled by the contract or by the common understanding in the shop that membership is required.

What about employers? Employers have no legal duty to inform employees that they do not have to join the union. Moreover, many employers believe that the contract requires exactly what it says, membership. Even when employers are aware of the Supreme Court's technical construction of the term, ``member," they do not inform employees that they have the right not to join. Employers do not want legal trouble with the union. If an employer tells employees what their rights are, it might find itself defending an unfair labor practice charge filed by the union alleging that the employer has unlawfully attempted to discourage membership. I cite examples of this in my written statement.

In sum, forced union membership and compelled financial support of union political activities often result from misinformation and misrepresentation engendered by the contract provisions that the federal labor statutes authorize.

A second obstacle to exercising Beck rights is the ``Hobson's Choice" workers face. Under currently law, only non-members have a right to refrain from financially supporting their bargaining agent's politics. Non-members must forego important employment rights that accompany membership such as voting on contracts and participating in selecting the representatives who negotiate contracts. Under the system of exclusive representation the federal labor statutes impose, individual employees cannot negotiate for themselves. Consequently, many workers become or remain members despite their disagreement with the union's politics, because that is the only way to have any say in determining their wages and other terms and conditions that govern their working lives.

Another obstacle to the exercise of Beck rights is the obscure manner in which the courts and National Labor Relations Board permit unions to notify employees of their rights not to join and not to subsidize union political activity. When unions give such notice, they often hide it in fine print inside union propaganda that dissenting workers find offensive and therefore do not read. My written statement describes an egregious

but typical example of that practice.

When employees do learn about their right to resign and object, they often face coercion, threats and abuse. Threats of violence sometimes occur. My statement gives examples of these coercive tactics.

Many unions use more subtle techniques of ostracism and harassment. Unions often publicly identify workers exercising Beck rights as pariahs to be shunned for disloyalty. Unions routinely publicize non-members' names, addresses and other personal information with predictable consequences. My statement documents these practices, too.

Even if they do not face coercion, threats and harassment, workers who object to use of their compulsory dues and fees for political purposes must negotiate technical procedural hurdles. The most significant are the requirements imposed by most unions that Beck objections be submitted during a short window period, typically a month or less, and be renewed every year. The National Labor Relations Board has approved both of these obstacles to the exercise of Beck rights. As a result, many employees are forced to pay for union political activities because their objections are considered untimely under union rules.

Why should constitutional rights be available only once a year? Employees should be free to stop subsidizing union political activity whenever they discover that the union is using their money for purposes they oppose, not just during a short and arbitrary window period.

Workers also should be free to make objections that continue in effect until withdrawn, just as union membership continues until a resignation is submitted. Two federal courts have declined to follow the Board on this issue, however, these courts' rulings that continuing objections must be honored apply only in the Fifth Circuits, three states, and to the Machinists Union nationwide, but only under the Railway Labor Act. And, of course, most employees are under the National Labor Relations Act.

Another procedural hurdle non-members face is finding out how the union spends their dues and fees, so they can intelligently decide whether to object. In Teachers Local 1 v. Hudson, the Supreme Court held that ``potential objectors must be given sufficient information to gauge the propriety of the union's fee.'' Yet the NLRB has ruled that unions need not disclose any financial information to non-members until after they object.

The Supreme Court also specified in Hudson that ``adequate disclosure surely would include the major categories of expenses, as well as verification by an independent auditor,'' and that disclosure must be made not only for the local collection the money, but also ``for its affiliated state and national labor organizations.''

Yet when unions give employees financial disclosure, it often is sketchy, as it was in Mr. Penrod's case. Many unions refuse to disclose expenses of affiliates that receive portions of the dues and fees, and they claim it is too burdensome. Many unions also do

not provide audited financial disclosure. The NLRB has approved all of these practices.

In the Ferriso case, one U.S. Court of Appeals reversed the Board's holding that a union's allocation of chargeable and non-chargeable expenses disclosed to non-members need not be verified by an independent auditor. In Mr. Penrod's case, the same court rejected the Board's position that objectors need not be given a detailed explanation of how the money is spent, a full auditor's report and an explanation of how affiliates use their part of the money, and that only objectors must be given financial disclosure. However, the Board will not necessarily follow Ferriso and Penrod and other cases because it is the Board's standard practice ``to ignore precedent from federal appellate courts in favor of its own interpretations'' of the law.

Disclosure of a union's calculation of its chargeable expenses and an independent audit are necessary because only the unions posses the facts and records from which the proportion of chargeable expenses can be calculated. The problem is that unless an employee undertakes litigation to challenge the fee, the unions themselves determine what the chargeable expenses are. Obviously, it is in the union's self-interest to maximize the fees. So what we have is the fox guarding the hen house.

The independent audit Hudson requires provides some check on the union's calculation of its chargeable expenses. Unfortunately, that constraint is not now what it should be, because the lower federal courts have held that the auditor need not verify that the union correctly allocated its expenses as chargeable or not. That cramped view of the auditor's function in this context is consistent with neither accounting practices in other contexts, nor the Supreme Court's Hudson decision, as I show in my written statement.

Another major obstacle workers face is the National Labor Relations Board's failure to enforce Beck vigorously, both in processing cases and applying judicial precedent. Beck was decided in 1988, by the Supreme Court, the NLRB's general counsel and the Board have failed to process expeditiously unfair labor practice charges of Beck violations. The Board delayed for eight years before it issues its first post-Beck decision. Many other Beck cases languish before the Board for similar lengthy periods of time.

The then NLRB chairman admitted, in Exhibit 2 to my written statement, that at the end of July, 1997, the 65 oldest cases then before the Board included 21 Beck cases, almost a third of the old cases. As my statement explains, the Board later issued decisions in some of those cases, only after the objecting employees petitioned for mandamus from the D.C. Circuit.

Many Beck cases do not even reach the Board. The general counsel has settled many Beck charges with no real relief for the employees. The Board's regional directors have refused to issue complaints and dismiss many other charges at the general counsel's direction.

The number of cases I'm talking about is not the 100 Congressman Owens referred to. Those are just the cases that the Board decided. There are hundreds of other cases that were deep sixed before they got to the Board. Significantly, in 1994, the general counsel's office instructed all regional directors to immediately dismiss Beck charges they found unworthy, but not to issue complaints on worthy Beck charges, but to

submit them to the Division of Advice. This memorandum is Exhibit 5 to my statement. It's also on overhead.

It's circumstantial evidence that the general counsel intended to delay the processing of Beck charges or spike as many as possible.

In 1998, the general counsel set up yet another roadblock. In Exhibit 6 to my statement, which I believe also the relevant portion is in overhead, the then acting general counsel instructed that Beck charges must be dismissed unless the non-member has to do this--``explains why a particular expenditure treated as chargeable in a union's disclosure is not chargeable and presents evidence or give[s] promising leads that would lead to evidence that would support that assertion."

This is impossible at the charge stage because non-members do not have access to the union's financial records. The Board itself has given workers little protection and relief when it finally decides Beck cases. As already discussed, the Board has permitted unions to give notices calculated not to be seen by potential objectors, approve technical requirements that make it more difficult to object, and weaken procedural protections for non-members that the Supreme Court found constitutionally required for public employees.

The Board also has refused to follow Supreme Court precedent as to what activities are lawfully chargeable. In Beck, the Supreme Court concluded ``that Section 8(a)(3) of the NLRA, like its statutory equivalent, Section, Eleventh of the RLA, authorizes the exaction of only those fees and dues necessary to performing the duties of an exclusive representative in dealing with the employer on labor-management issues," quoting from--the Supreme Court was quoting from a Railway Labor Act case, Ellis v. Railway Clerks.

Moreover, Beck ruled that decisions in this area of the law, under the RLA, are ``controlling," under the NLRA. Yet, in Ellis, the Supreme Court held that union organizing is not lawfully chargeable. Despite the Court's clear mandates, the Board has held that organizing is chargeable to objecting non-members under the NLRA.

Workers under the NLRA who wish to vindicate their rights can avoid the Board by suing their bargaining agent in federal court for breach of the duty of fair representation. Workers under the RLA must bring such an action. That brings me back to Justice Black's prediction that the refund or reduction remedy adopted in Street is inherently inadequate. If employees manage to learn their rights, withstand the subtle and no so subtle pressures in the shop, leap the many procedural hurdles and challenge the union's calculation, they encounter the problems just as Black predicted.

They must retain lawyers, accountants and statisticians to rebut the union's claim. Then they must spend years fighting procedural motions by the union and engage in discovery, reviewing the union's books and records, and endure protracted trials and appeals. As I detail in my written statement, these cases typically take a decade or more to litigate.

In conclusion, the experiences of the workers who have testified today are not isolated examples of abuse of law, but part of a systemic problem. The National Labor Relations Act, the Railway Labor Act, as written by Congress and interpreted by the courts and the NLRB, do not adequately protect the constitutional and statutory right of workers not to subsidize union political and ideological activities.

The only federal labor laws that do adequately protect that fundamental right are the Federal Labor Relations Act and the statute that covers postal employees, both of which prohibit agreements that require workers to join or pay dues to a union.

Thank you, Mr. Chairman.

WRITTEN STATEMENT OF RAYMOND J. LaJEUNESSE, JR., VICE PRESIDENT AND STAFF ATTORNEY, NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC, SPRINGFIELD, VIRGINIA – SEE APPENDIX I

Chairman Norwood. I would like to thank each of you for your insightful testimony. The Subcommittee is very grateful to you and your time and energy that you bring to this issue.

I've had numerous requests from members of the Committee and others to take a five-minute recess. Nature calls in various parts and if we will, we will recess for five minutes and come right back to it, so we can get to the questioning.

Thank you.

[Recess.]

Mr. Isakson. [Presiding] We'll call the Subcommittee back to order.

We have various members who have run for a vote and have run to do one thing or another, which probably will happen for the duration of the meeting. But if we wait on everybody to get back, we would wait forever. So I will take the liberty, as temporary chair, to ask a question, and then we'll go to Ms. Sanchez.

Mr. Corson, with regard to facts, not opinions expressed by Mr. Sickler, was his explanation of his experience, in your opinion, accurate?

Mr. Corson. No. Mr. Sickler.

Mr. Isakson. Excuse me for interrupting you.

Mr. Corson. Yes, sir.

Mr. Isakson. But what specific part or parts would you say are inaccurate?

Mr. Corson. Mr. Sickler decided not to pay any fee at all to the union, and so we're not really, in Mr. Sickler's case, talking about the portion, which he would have the right to

withhold under Beck and related cases. He was not paying any fee at all.

I did not personally have any discussions with Mr. Sickler during the development of the case, but I did have a number of phone calls with his co-plaintiff, Mr. Masiello. And Mr. Masiello was very clear on the phone to me that he believed he had the right to a personal, individual escrow account under his reading of the Hudson case, and he does not. Hudson does not say that.

And I was very concerned when I heard that Mr. Masiello was not paying his fee, because I do know what some of the consequences are and I tried very hard to explain to him that he didn't have this right. And, in fact, after about three or four phone calls, Mr. Masiello actually agreed with me. He understood what I was telling him. And, at that point, he still refused, because, at that point, he had gone so long he needed to pay a reinstatement fee.

Now none of those issues came up in the litigation. The litigation turned out to be about something that was really not part of the development of the case at all. It was very frustrating for all parties. But if we had had better communication, we may well have been able to resolve it.

Mr. Isakson. Okay. For the benefit of the testimony, unlike the open microphone on testimony, we're going to have quicker answers on questions. So I appreciate your answer. No need to elaborate.

I'll get to you in just a second, Mr. Sickler.

The question, do you have any questions regarding the time between the arbitration being set up and the time it actually happened?

Mr. Corson. The arbitration in that situation should have been sooner.

Mr. Isakson. That's fine. The reason I asked the question is this, and I'm sure Mr. Sickler would have different opinions than you would have and you would have different opinions than he would have, but in my general experience, it sounds to me like the limited number, you said 5 to 700 in your testimony, out of 50,000, I believe, or 500,000.

Mr. Corson. Five hundred thousand.

Mr. Isakson. The complaints appeared to be a small number and 8 or 13 actually went to arbitration. I understand that. But I'm making an observation that you don't have to defend, because it's just an observation that seemed replete throughout everything. If remedies or the process to a remedy is protracted, it is a deterrent, many times, for somebody to seek a remedy, if you follow what I'm talking about. That's the observation--that's why I wanted to ask, because I read in the testimony, the form that you supplied, which all workers are given, as to their remedies, and I believe Number 3 or 4 specifically outlined the arbitration.

Notwithstanding, Mr. Sickler, that the arbitrator was listed as favorable to one party or another, which I understand is an issue you had, the fact of the matter is, in any

situation where someone has a grievance, it appears to me that an expeditious implementation of the rights of both sides generally gives you a more positive outlook towards people being able to seek their rights or find out that they were wrong. If situations are continuously protracted, then it's a deterrent towards individuals actually seeking those rights. That was my observation.

Mr. Corson. May I speak for just a minute?

Mr. Isakson. Just a minute.

Mr. Corson. I agree with you, and partly as a result of Mr. Sickler's litigation, we set at the union an internal goal to go to arbitration by April of each year for that year, and we accomplished that this year and we fully expect to accomplish it in all years from here on out.

Mr. Isakson. And lastly, I would say that notwithstanding the merits in the opinion of anybody of a case, a request to have someone terminated prior to the time they've had their arbitration doesn't seem to me to be a good facilitator for people to actually seek arbitration.

Mr. Sickler, you wanted to say something, sir?

Mr. Sickler. Yes, I became an objector because I didn't want the union using my money for political purposes. I challenged their calculation of my reduction for the same reason. I thought they were still using some of my money for political purposes.

Mr. Isakson. I understood that.

Mr. Sickler. They had no escrow account. They never established an escrow account. They had an internal account within the union that was accessible to the union to use for whatever they wanted to use it for. As a matter of fact, they wrote a check out of that account that they called an escrow account to the National Right to Work Legal Defense Foundation. Giving them the money to place in this misnamed escrow account would still have given them the use of my money for political purposes to which I objected. I waited for them to establish a real escrow account and they never did.

Mr. Isakson. I understood that from the testimony and I understand Mr. Corson's position and I'm going to abide by the rule I tried to say earlier. The red light is on so I'm going to shut up and recognize a much more attractive member of this committee than I, Ms. Sanchez, from California.

Ms. Sanchez. Thank you, Mr. Chairman.

I have a couple questions, actually. I'm very disturbed about Mr. Sickler's particular case.

Now, Mr. Corson, you are counsel for the Machinists?

Mr. Corson. Yes.

Ms. Sanchez. When Mr. Sickler had his problem with your union, rather than filing a charge with the Labor Board or the Mediation Board, he went directly and sued your union. If he had been fired for trying to form a union at a business, would he have had the same option to directly sue?

Mr. Corson. No, not at all. The rights for objectors with respect to that portion of their fee are much greater than persons who would be fired for union activity or trying to form a union. Those people cannot go to court.

Ms. Sanchez. I don't know if this is under your purview for the entire union, but in your knowledge of Beck-related cases that you've been involved with, how does the number of cases with respect to Beck deal with the number of cases that you're involved with on unlawful discharge by employers, over union activities, let's say?

Mr. Corson. Beck-related cases are a really very small number compared to the number of times we need to go to bat for people who have been either disciplined for union activity or in organizing drives. People have been fired, locked out.

Ms. Sanchez. Mr. Sickler suggested that he paid some dues amount, but he was not really a participant in union activities. If he had been discharged or wrongfully discharged or there was a problem with his employment, even though he wasn't a member of your union, would you have to go in and try to help him?

Mr. Corson. Yes, we would represent him on an equal basis with members. We are required to by law, and we do.

Ms. Sanchez. Okay. Thank you.

I have a couple questions for Ms. Fields-Jacobs.

By the way, I was very impressed, not only moved by some of the testimony you gave, and how articulate you were with respect to that.

When a worker is fired for trying to form a union and the NLRB refuses to bring the complaint in the worker's behalf, does the worker have the option of suing the employer directly?

Ms. Fields-Jacobs. No.

Ms. Sanchez. Not in anything you've seen?

Ms. Fields-Jacobs. No, no.

Ms. Sanchez. Okay. This is with respect to the United Auto Workers in particular. Being a Hispanic and being a woman, I'm well aware of UAW's role in the 1950s and the 1960s as one of the most activist and aggressive, actually, unions with respect to the civil rights movement. Even though this activity didn't, at the time, look directly related to

what a normal union, one might seem would be its bailiwick of activities, it was very instrumental in helping bring about civil rights, which, of course, as a consequence, blacks, other minorities, Hispanics, women, have more employment opportunities today.

In your view, was it appropriate for the UAW to have participated and spent its money to promote equal opportunity employment?

Ms. Fields-Jacobs. Absolutely. And I think that when we look at why I do this work, and many of my colleagues do this work, having a union is about the overall element of social justice and the ability to be fair and equal. Workers are people in their community. They don't just exist inside the workplace. Their lives are impacted from outside, external forces, governmental policies, and it's our responsibility, I would argue, that we are responsible to society as a whole.

Many workers will ask and talk about that or ask me questions of that, you know, how is the union going to be effective? What happens if they change the laws? And we say, ``Listen. Every day we fight, and that's our responsibility," and the conversation to people is that we treat people holistically, our members, and not just about a single issue.

Ms. Sanchez. As an organizer for the unions, have you ever met people who don't expect the union to be politically active?

Ms. Fields-Jacobs. No, they don't expect you not to be. They expect you to be. But they also tell me that sometimes they don't agree, but fully see the benefit. This is a democratic institution. This is a democracy. People have a right to voice their opinion and we often say, ``But let's talk about what issues", we're very issue, I'm a trade unionist. I'm not into parties, and that's what our leadership is charged to do, and we respect everybody and their views.

Ms. Sanchez. I work within an institution, obviously, here, the House of Representatives, that I don't feel is very democratic at all, being in the minority, and I don't get to really say what amendments come forward. I don't get to say ``I'd like my bill to be voted on the floor." I can't even sometimes get a chairman to have my bill heard in committee, let alone get it to the House floor. This is certainly not a democratic institution by any means.

Can you tell me why you believe your union is a democratic institution? What are the privileges of a member? How do they vote? What do they get to review? How is your leadership elected or is it appointed, et cetera, et cetera.

Ms. Fields-Jacobs. There is what we call community action program, CAP councils around the country. In the locals you are elected. For instance, you're a member in your local. You can run for CAP council. You can be on a committee. They elect who's the chair. Many issue surveys are taken in many locals and lots of dialogue, and very focused around concerns and issues. Things are reviewed. Things are put forward. There are internal debates. Again, as you said, Ms. Sanchez, you don't always win, right? I mean we are--it's about the discussion and moving what's the best agenda.

It's important to know in our institution that we do not tell people what to do, that we are providing information and education for each member, and there's lots of discussion about it.

Every year we hold the CAP conference here. Delegates come. None of those people come without a discussion at their local union. So there are lots of opportunities within the union to agree, to disagree on many issues.

And I want to say again, concerns and issues is the point we try to take in, making sure that, and knowing when I came out of my local, that there was an endorsement process, that people could come in and talk to people, candidates.

Ms. Sanchez. Thank you.

Thank you, Mr. Chairman.

Chairman Norwood. Thank you, Ms. Sanchez.

Ms. Cope wanted to respond to one of those questions.

Ms. Cope. I want to respond because I'm thinking I'm in the wrong committee. This is about workers' rights. This isn't about what this union does or what this union doesn't do or what they provide. This is about belonging to a union and as a non-member, not having our rights being respected. I'm respecting the union. I expect the same respect. I chose not to join. I wanted the truth. I asked for it several times. It's not about what the union does or what they promote.

Many of us are females where I work and many of us were led to be afraid of our loss of our jobs. That's what this issue is here today, not of what the union does or the politics, this and that. It's our rights. That's what this, or I've wasted my time. I've wasted your time. If that's what you want to know, that's another committee, but this is about what our rights have been overlooked.

Ms. Sanchez. Well, Ms. Cope, I get to ask the questions. I'm anxious to hear some of the answers. That's why I've asked the questions. The Chairman, when he started out this committee, started talking about Bush's tax cut. That has nothing to do with anything. As far as I'm concerned, that should have been left for the Ways and Means Committee. I thought maybe I had gotten a promotion and moved up here.

Ms. Cope. I think.

Ms. Sanchez. So I'm allowed to ask the questions. I was anxious to hear the answers. I wanted to see how democratic a union is, what a worker can do, if he has any say, and I also asked a question about if they're outside of the union but are paying fees, do they get represented.

Thank you.

Chairman Norwood. Thank you, ladies. The Chair would observe that I skipped the ranking member to go to the ranking lady member, which I thought was very democratic.

Mrs. Biggert?

Mrs. Biggert. Thank you, Mr. Chairman.

I would just like to make a comment and that is that we are here to discuss the Beck decision and what's followed since then. And I know that the right to organize has always been a right that's very important in this country, but that really deals with unions and management and doesn't really deal with the rights of the individuals under the Beck decision.

So I would like to follow up on a point that Mr. Penrod made earlier. He testified that he had received a handwritten note from his union that was termed, at least by the NLRB, as a legally adequate financial disclosure, and the D.C. Circuit Court disagreed, and apparently strongly so.

But I would like to ask Mr. LaJeunesse, how could it possibly have taken the NLRB six years to address what really seemed to be a blatant abuse of our law, according to the D.C. Circuit Court?

Mr. LaJeunesse. Well, I think, Congresswoman, in part, I answered that question during my statement, and that is that the delay on the part of the general counsel in processing cases, the delay of the Board itself in addressing cases that come before it, Chairman Gould, in his letter to Congressman Lantos, which is, I believe, Exhibit 2 to my written statement, pointed out to Congressman Lantos that at least he implied that one of the reasons cases were being held so long before the court was that for political reasons, some members of the Board were not signing off.

Mrs. Biggert. Is there a backlog of cases dealing with this issue before the NLRB or is there a backlog of other cases that hold up a decision such as this?

Mr. LaJeunesse. Well, as I pointed out in my statement, as in 1997, one-third of the oldest cases were Beck cases, and they certainly weren't one-third of all the cases before the Board. So Beck cases were being held up in an inordinate proportion. I don't have exact statistics today.

I do know that the Board got around to issuing decisions in Beck cases only after the Foundation filed on behalf of some of those charging party non-member workers, mandamus petitions with the D.C. Circuit, which issued orders requiring the Board to tell it when they were going to decide the cases. It was only at the point the Board started getting the Beck cases off its docket.

Mrs. Biggert. Well, is it rare for citizens like Mr. Penrod to receive these funds, the EAJA?

Mr. LaJeunesse. EAJA funds are not that often awarded. In fact, in the Mandamus cases we filed, the Board agreed to pay all of the attorneys' fees we requested under

EAJA, in my opinion, for fear of having the D.C. Circuit find that its position was substantially unjustified, which is the standard under the EAJA for an award of such fees.

Mrs. Biggert. Okay. Then, Mr. Corson, it seems like several of these cases, since it's taken so long, were before 1986, when I believe that you put in more procedures for dealing with these cases; is that correct? Was that in 1986?

Mr. Corson. Our compliance program does date from 1986, yes.

Mrs. Biggert. Okay. Did you then take these cases and go through them for procedures to see how you could follow up with those cases?

Mr. Corson. If I understand your question properly, is it, do we learn from experience and do we learn from Board decisions and cases, and, yes, I do this as part of my job.

Mrs. Biggert. Okay.

Mr. Corson. Part of my job is to look at what the courts have told us and we make our changes.

Mrs. Biggert. Were you in contact with the other witnesses that we have here today, on their cases?

Mr. Corson. No.

Mrs. Biggert. Not by written or anything?

Mr. Corson. Well.

Mrs. Biggert. Or with their unions?

Mr. Corson. No, I'm really only able to speak for our procedures, for the Machinists Union procedures.

Mrs. Biggert. I see. So these were not cases that you were involved in?

Mr. Corson. I was not.

Mrs. Biggert. Okay.

Mr. LaJeunesse. Congresswoman, may I comment on that point?

It's not a case of the unions responding to legal decisions, in general. It's a case of the unions do not adopt the procedures that are constitutionally required until someone sues them and gets a judgment. The nice system that the IAM has now is the result of several lawsuits where judgments were entered against them or they agreed to settle the cases because they were afraid of a judgment. And even today, unless Mr. Corson is going to correct me, in the Lutz case, a nationwide injunction was issued requiring them to honor continuing objections. But that case was brought under the Railway Labor Act,

and, to my knowledge, even today, they still require employees, under the National Labor Relations Act, to object each and every year.

Mrs. Biggert. So, in other words, they're not learning by what's happened in really just a case-by-case basis, whether there is any posting of notice.

Mr. LaJeunesse. That's correct, Congresswoman.

Mrs. Biggert. Okay. And, Mr. Beck, you've been still working on this case for years and years and years. Is there going to be any end to it?

Mr. Beck. I probably would guess, as you would, ma'am, that I'll probably see the answer in heaven.

Mrs. Biggert. Or legislation.

Mr. Beck. Yes.

Mrs. Biggert. Thank you.

Chairman Norwood. Thank you very much, Ms. Biggert, for your questions.

And now we'll go to Major Owens, the ranking member, for his questioning time.

Mr. Owens. Mr. Chairman, I yield to the gentleman from New Jersey, Mr. Andrews.

Mr. Andrews. Thank you. I'd like to thank my friend from New York, and I appreciate the indulgence of the Subcommittee Chairman.

I'm privileged to serve as the ranking member of the subcommittee with jurisdiction over the National Labor Relations Act and I listened to the testimony today with great interest.

Mr. LaJeunesse**,** did I pronounce your name correctly?

Mr. LaJeunesse. You did, Congressman.

Mr. Andrews. Oh, that's about the first thing I've done right all day, but thank you.

On page two of your testimony you say that ``individual workers throughout America are forced by virtue of the unique privileged granted to unions by Congress, to contribute their hard-earned dollars to political and ideological causes they oppose."

First of all, I wonder about the uniqueness of that. I live in a state where we still have electric monopolies, utilities, and the utility company to whom I pay my monthly bill joins organizations to promote nuclear power. Many of my neighbors and constituents do not favor nuclear power. I suppose you could take the position it's not compulsory that they have electricity in their house, but most of us feel that it is. So I'm

not sure about the uniqueness point that you make.

But I also wonder a little about the accuracy. I think what you're saying is that because the Beck decision is ineffective, in your opinion, they're forced to do so; is that right?

Mr. LaJeunesse. Well, first of all, unions have two unique privileges, A, exclusive representation, and B, the right to require people to pay money to them as a condition of employment.

Mr. Andrews. I understand that, but is it your statement that if the Beck opinion were effectively enforced, in your opinion, that that statement would not be accurate, that I just read?

Mr. LaJeunesse. If the Beck decision were effectively enforced, then people would not be required to contribute hard-earned dollars to political and ideological causes they oppose.

Mr. Andrews. So the answer is yes?

Mr. LaJeunesse. But the point of my testimony is--

Mr. Andrews. We heard a lot from you today. The answer is yes.

I want to ask you something else. You consistently say that this is a systemic problem, and I agree. The testimony we've heard today is very compelling and I commend the individuals who came to give it. But I wanted some information about how systemic this is. How many complaints a year does your foundation get from citizens about abuse of their rights by a labor union?

Mr. LaJeunesse. How many complaints?

Mr. Andrews. Yes, how many people call you and say, ``My rights have just been violated by my union and I'd like you to do something about it''? How many people call you a year and say that?

Mr. LaJeunesse. It's probably a couple thousand.

Mr. Andrews. A couple thousand? Well, is it three?

Mr. LaJeunesse. And each of them represents other employees in their bargaining unit. And how many of them don't know about the Foundation? How many of them can't find us?

Mr. Andrews. So the answer is a couple thousand.

There are 16 million union members in America; is that right? Is that number accurate?

Mr. LaJeunesse. I don't know.

Mr. Andrews. If it is inaccurate, I would invite you to correct the record.

So there are 16 million people and a couple thousand of them contact your Foundation. How many of those individuals--

Mr. LaJeunesse. That's the ones that call.

Mr. Andrews. Right.

Mr. LaJeunesse. That's the ones that call or write us a letter or send us an e-mail.

Mr. Andrews. Okay.

Mr. LaJeunesse. Approximately a thousand a day go to our Web site to find out what their rights are.

Mr. Andrews. Okay. That's a curious way of measuring it.

But a few thousand a year call you and ask you to help. How many of those do you help? How many lawsuits do you initiate?

Mr. LaJeunesse. We have over 400 cases now pending.

Mr. Andrews. Four hundred now pending. So they were started over a period of how many years?

Mr. LaJeunesse. Some of them have been pending for a decade.

Mr. Andrews. So over.

Mr. LaJeunesse. Because of the delay involved in processing cases both before the courts and before the NLRB they have been pending for a decade.

Mr. Andrews. Okay. So over a period of a decade, you've initiated about 400 actions. Is that accurate?

Mr. LaJeunesse. No, that's how many are pending today. Many others have been settled or resolved.

Mr. Andrews. How many?

Mr. LaJeunesse. Over those years?

Mr. Andrews. How many?

Mr. LaJeunesse. As of March 15, 2001, since the Foundation was established in 1968, we have represented employees in 1,781 cases.

Mr. Andrews. Okay.

Mr. LaJeunesse. And, remember, we only have a legal staff, originally it was one, me, and now we have 10. 10 attorneys to take on the hundreds of labor unions in this country.

Mr. Andrews. All right. Let me ask you another question.

Chairman Norwood. Thank you very much, Mr. Andrews. Your time has expired.

Mr. Andrews. Mr. Chairman, if I may? If I may?

Chairman Norwood. Just as the time expired for Ms. Biggert, it has for you. And we do appreciate your questions.

Mr. Ballenger, you're up.

Mr. Andrews. Mr. Chairman, the witness testified for 45 minutes. We don't get a chance to ask him a few more questions?

Chairman Norwood. You can go the second time around.

Mr. Ballenger, you can go.

Mr. Andrews. Will there be a second time around?

Chairman Norwood. I don't know, but I'm just saying that's the way we used to do it.

Mr. Andrews. Will there be, Mr. Chairman?

Chairman Norwood. There will be, as far as I'm concerned, except for one thing. There is a very serious vote going over in the Commerce Committee, and that could interfere with it. But other than that, yes, because I'd like a turn at questioning, too.

Mr. Andrews. Okay. I would ask a unanimous consent to submit some written questions for the witnesses as well.

Chairman Norwood. Absolutely, without objection.

Mr. Ballenger. Mr. Chairman, if I may help a little bit on this? Mr. Sickler, according to your testimony and according to, I happened to be the Chairman of the Committee when Mr. Masiello, I hope I'm pronouncing that properly, came up and testified in 1998.

My understanding is that according to your testimony, you found out about this whole situation, and as I remember it, it was more right-to-life people that were upset in Charlotte. I don't know whether you were one of them at that particular time, but in our testimony at that time, it proves that issues, that you disagree with the union about, don't

have to be working issues or political issues, they can be social issues, as well. You don't think the money should be spent that way.

Is that not correct?

Mr. Sickler. That's correct.

Mr. Ballenger. And you first noticed this in 1994, according to your testimony.

Mr. Sickler. That's about the time.

Mr. Ballenger. You didn't start doing anything until 1995, but in 1994 is when you started.

Mr. Sickler. Yes, in 1994, is about the time I became aware and that I read the disclosure.

Mr. Ballenger. Right.

Mr. Sickler. The notice to the employees.

Mr. Ballenger. And what I would like to, I'm not a lawyer, but we've had several lawyers discussing this and the last two were pure lawyers discussing things. And I know they're free. Everything they do for you doesn't cost you a nickel, but here's a man who has gone, what, six or seven years in an effort to straighten up what you thought was right, and what the law says is right.

And, let's see, the final settlement by the courts on your case, with Mr. Masiello, was in April of this year, right?

Mr. Sickler. That's correct.

Mr. Ballenger. So it took you, what, six or seven years of working as best you could and having, I know one of the things where they gave you an arbitrator who was nonpartisan except listed as an ally of the Teamsters Union. Everybody was working for you all the way through this, is the way I understand it.

Mr. Sickler. Well, I.

Mr. Ballenger. And since all these lawyers that we deal with are so cheap and free, all you've got to do is figure six years at 40 hours a week. What is it, at $60 an hour, $70 an hour? Why would anybody think they had a chance of winning a case in a situation like this? And I'm sure Mr. Corson is free also, and I don't know how many other people he's got in his legal department that are up there fighting against you as an individual trying to carry your own case.

In other words, I hate to say it, but it operates pretty much like our Social Security system, disability works. If we turn you down every time you come up and, you know, after five or six years you finally say, ``Well, I can't win this thing. I give up.'' And the

unions have got you whooped in the fact that you're a lone individual, and I thank whoever helped you finance your effort, because it takes a hell of a lot of guts to do what you did for as long as you did. Most everybody I know would have quit. But the unions have got all kinds of money and they--I was wondering. Now do you think they were using your money, your own dues money? You didn't get fired until 1999, were they using your dues money to work against you in this particular case?

Mr. Sickler. Well, I still don't know how they're using my dues money, because they still haven't provided me with the financial disclosure that they're supposed to. I suspect they are misusing my dues money, yes.

Mr. Ballenger. Sure. I mean there's no reason it couldn't have been your money, because it was put into the big pot. So if ever in my life I've ever heard of a one-sided situation, the union has got you locked out. There's no way you can do anything about them, unless you're willing to fight for six years and spend whatever amount of money it costs.

I hate to say it, no, I don't hate to say it. I think it's completely unfair, the situation that you poor guys have been in, and Ms. Cope, to be in the situation where the court system don't do you any favors because they make you hire a lawyer. And since they're not free, I think the unions ought to supply the money so you could have a lawyer so you'd be equal. That way, you could be using your dues on both sides of the argument.

Mr. Sickler. That would be democratic and fair.

Mr. Ballenger. Well, like I say, as you can tell, I'm completely unbiased in this whole idea. But I would like to say that when I read the opening statement that Mr. Masiello made two years ago, it said that he said he began asking about his Beck rights.

When he started asking, ``The local lodge president immediately started a campaign to discredit me. He did this with slanderous lies and character assassination. Letters were hung all over the workplace claiming that I objected to paying any dues. Months had gone by and the harassment had not let up one bit. And to make matters worse, I was still paying what they had considered full dues. Not one penny of the overpayment was refunded to me, and I was forced to take the local lodge president to small claims court."

Now when the day somebody says that you have rights, but this is what you have to do to find out what you-to really get your rights enforced, this is completely unfair and I think-I've always heard about Mr. Beck and I told him earlier-to say ``Thank God there are people around like you that are willing to stick your neck out as long as you have," and also, the other three of you that have done the same thing. And I hope someday we can do something for you here.

Chairman Norwood. Thank you, Mr. Ballenger. I appreciate it. Your time is up. I'd now like to yield to Mr. Owens for five minutes.

Mr. Ballenger. Completely unbiased.

Mr. Owens. Mr. Chairman, I think from the very beginning, it's been pretty clear that this hearing is about more than just the Beck decision. This hearing is about issues that you raised in the PowerPoint, the opinions of unions versus the opinions of the rest of us, which you are very concerned about.

We have not heard the last of the subject under discussion here, mainly, that unions ought to be harassed in a way that no other institution in a democratic society is harassed. We have people who pay into pension funds. Do you have a right to decide how they invest your pension funds?

You have all kinds of situations, which exist in our society where we decide that everybody will deposit some money into a bank, up to $100,000, federal deposit insurance on that. It's insured. And we had a situation where many of those banks collapsed and we had to go and pay off, as citizens--most citizens don't know it--but we had to pay off, as citizens, the money that was lost by those banks.

But we participate all the time in situations in a very complex society where individuals surrender their rights to, from day to day, decision to decision, participate. When you vote as a member of a body, whether it's your church or your lodge or any other body, and the union likewise, you vote to have confidence in the people who are going to run that operation. Just as we are a republic, the United States is a republic and you vote for members of Congress and other elected officials. They run the operation.

So we have larger issues that are going to be involved here and I think this is the opening scenario for what this committee is going to be forced to deal with, and that is the role of labor unions in our society and how they can be dealt with in terms of, in my opinion, unequal treatment with respect to their right to represent their members. Nobody here has asked any questions or had any hearings about corporations and the corporations' rights to spend enormous amounts of money on issues, candidates, to finance campaigns. So we are singling out labor unions in a very special way. The harassment of unions is very much an item on the agenda here, and we are going to hear more about it as we go on. The Beck decision has been discussed before. As I said in my opening testimony, there's something called the Paycheck Protection Act that's going to come down the pike. We've already had an opening onslaught on ergonomics, where in one day the Congress and the President combined wiped out ergonomics, a blow to working people all over the country, whether they belong to unions or not.

So we can look forward to more of this and it's about the unequal protection of unions and union members in this society, an attempt to make them different, an attempt to hold them up to some kind of different standard and harass them in some way.

We've been here for quite a bit of time now and I prefer to yield the remainder of my time to Mr. Andrews, if he would like.

Mr. Andrews. I thank my friend for yielding.

Another question, again for Mr. LaJeunesse. It's accurate, isn't it, that under the law a member of a union who is aggrieved by the union's practices can sue the union in

federal court; is that correct?

Mr. LaJeunesse. For breach of duty of fair representation.

Mr. Andrews. Yes. And by the same token, an individual who claims that his or her employer has violated their labor rights must go to the NLRB; is that correct?

Mr. LaJeunesse. If they're under the National Labor Relations Act. But there is no duty of fair representation with regard to employers.

Mr. Andrews. Right.

Mr. LaJeunesse. The duty of fair representation was created by the Supreme Court in order to protect employees.

Mr. Andrews. Right.

Mr. LaJeunesse. From the fact that unions have this unique privilege of exclusive representation.

Mr. Andrews. Right.

Mr. LaJeunesse. Which can be and has been abused in many cases.

Mr. Andrews. I want to come back to your assertion that there is a systemic problem. And I don't assume you know this off the top of your head, but I would invite you to submit for the record the number of complaints that have been filed against unions in federal courts by aggrieved members of unions. And if you're unable or unwilling to do that, I'd ask the Committee to supplement the record that way.

What happens if?

Mr. LaJeunesse. Congressman, I can tell you how many complaints, in fact, I have told you how many complaints have been filed.

Mr. Andrews. Please tell me.

Mr. LaJeunesse. With representation by Foundation attorneys? I have no way of knowing how many are filed outside that realm.

Mr. Andrews. But you did draw the conclusion there was a systemic problem. I'm just curious as to what data you used? Since you don't know that answer, what data did you use to draw your conclusion that there is a systemic problem?

Mr. LaJeunesse. Well, I'd say the almost 2,000 cases that the Foundation has had to file indicates a systemic problem.

Mr. Andrews. In 10 years? In over a 10 year period?

Mr. LaJeunesse. I think that a systemic problem is indicated when, and I want to, for the record tell you the number of calls and e-mails that we received requesting assistance in the year 2000 was 2,718, and that doesn't count the number of people who went to our Web site for assistance. And, of course, in each of these cases, we weren't talking about one person or one complaint is filed.

For example, in the case of Hohe v. Casey, which was brought by Foundation attorneys for state employees in Pennsylvania, the judgment in that case was $8.3 million for approximately 50,000 state employees who had their constitutional rights violated by the state, county, and municipal employees unions.

Mr. Andrews. I just want to reiterate my understanding and then I realize that Mr. Owens' time is up. But it is my understanding that your testimony is that based upon 2,700 calls and e-mails in a typical year, based upon several thousand complaints that you filed over 10 years, in a universe of 16 million unionized workers, where you do not know the number of workers who themselves have initiated a complaint through the federal courts, that you're drawing the conclusion there is a systemic problem; is that right?

Mr. LaJeunesse. I draw the conclusion that there is a systemic problem because I've observed a systemic problem over the years and, quite frankly, Mr. Andrews, if only one person were having their fundamental constitutional First Amendment rights violated, we should have a legislative solution.

Mr. Andrews. I don't disagree with that, but you are the one who said it was systemic and, of course, the word ``systemic'' implies that it's something that affects many, many people. I'm just curious as to who they are.

Mr. LaJeunesse. I would repeat, 50,000 state employees is a lot of people who were having their rights violated. We just had a settlement in the Abrams case, which was brought against the Communications Workers of America, which was a follow-up to enforce Beck.

And, in 1985, the United States Court of Appeals, I'm sorry 1995, the United States Court of Appeals, seven years after the Supreme Court Beck decision, the D.C. Circuit found that CWA was still violating workers' rights. That case was certified as a class action. The class in that case was 125,000 non-members nationwide, 71,000 of whom are now going to have a right under the settlement in that case to obtain a refund of the non-chargeable portion of their moneys over a nine-year period, when CWA reportedly gave what the courts have held were statutorily inadequate notices.

Mr. Andrews. I'm just interested in the difference between anecdotal.

Chairman Norwood. Thank you very much, Mr. Andrews. You've been very helpful as a non-member of the Subcommittee in your questioning. I appreciate it. Your time is now up.

And, finally, the Chairman gets some time, and I yield to myself five minutes.

But, however, to help Mr. Andrews, I'd like to have Ms. Cope respond to his question, because she was asking to, and then Mr. Sickler.

Ms. Cope. Okay. What I would like to mention is, this goes on every day. When you're looking for numbers, you wouldn't believe how many people are not being told the truth. That's what we're after today, is to be told the truth. To this day, this practice is still going on at two places I work at, the airport, as well as in reservations. All new hires are told they must join. They must. I've asked Mr. Corson to appear. I've had to take down notices that tell us to have our employment, to maintain our employment. So, Mr. Andrews, I think you're kind of missing the boat, because there are so many people like me out there, and we're so afraid to come forward, and everyone is afraid that they're going to lose their jobs. But we're told inaccurate information, and that's why I'm here, to get the facts straight.

Mr. Andrews. The reason I'm here is to--

Chairman Norwood. Mr. Andrews, you don't have the time. I'm sorry.

Mr. Andrews. Well, Mr. Chairman, the witness addressed a point to me.

Chairman Norwood. No, you do not have the time. It's my time, and I'm letting them help you.

Mr. Andrews. Mr. Chairman, don't you think that common courtesy would suggest that I can respond to the lady's question?

Chairman Norwood. Mr. Sickler, it's your turn.

Mr. Sickler. Yes, Congressman Owens tried to characterize this as a unique attack on unions, and I think what's really unique about this situation is federal law requires that I give money to an organization that I wouldn't otherwise support and that uses my money to support politics and politicians that I disagree with.

Now if my company that I work with, or any other corporation, gives money for politics and politicians, if U.S. Airways wants to lobby or support political candidates, they're not using my money. They're using their own money. And that's the unique situation here.

Chairman Norwood. Well, let me ask a general question of all of you. Is there any one of you who believes that men and women do not have the right to determine how their money is being spent on political issues? Is there anyone in any union that shouldn't have that right, and does the Supreme Court ensure us that you have that right? Does anybody disagree with that?

Well, I tend to disagree with my friend, Mr. Owens, about this being a hearing that is designed for union bashing. The best I can tell, most of you out there have been a member of a union. I mean, this is about certain parts of a union, certain people in a union, that they, too, have inalienable rights, and this is one of them in my view, one of

the very strong ones.

I defend the right of any person to join a union. I feel very strongly about that. That is not, however, what this particular hearing is about. But I defend the right for any American to become a member of a union. But I also defend the right of any American who doesn't want to be a member of the union. And that's sort of what we're trying to get at here, is people that perhaps are being coerced.

Let me get to my first question. Ms. Fields-Jacobs, after reading your testimony, I asked my staff to go through some of our files, and we found a few documents that I'd like to share with you. And I will have the staff deliver a copy of the letter to the witness table for your review, and we'll use the overhead to display the documents.

Unmistakably, at least one UAW local seems to be providing misleading information to their rank and file, their members, as the letters dated January 14, 2000 and April 13, 2000 read, ``A worker is being told quite directly and'', ``that he will be fired for not joining the union and paying full dues.''

Now you say, Ms. Fields-Jacobs, in your testimony, that only a very small number of workers object and that each of these workers only have to write a letter to the union secretary-treasurer to receive a rebate or stop improper dues from being assessed. Obviously, it isn't that easy, from what I've been hearing today. The system doesn't sound, to me, like it's working properly. I would be willing to bet that given a week's time, I cannot obtain another three or four similar letters on UAW stationery to other workers.

Now, in my mind, one letter like this, just one, it doesn't matter how many complaints you get, one is enough to justify action to ensure that the rank and file workers are not given false and misleading information. We don't wait for a crime wave to take steps to prevent armed robbery, do we? Now let's be honest with each other. How can the UAW defend this kind of action, even if it's just one?

And I hope you have the letters in front of you now?

Ms. Fields-Jacobs. I do have the letters in front of me.

Let me just say I'm not a Beck specialist. I don't work in the president's office, so I don't know what the facts of this case are, but members are able to appeal directly. And so I don't know what the facts of this case are, so I'm not going to sit here and respond to it. But we agree on something. One case of injustice is not acceptable, and I wish it was applied equally in every forum.

Let me say this to be clear, 1972, 16 years before the Supreme Court issued the Beck decision, the UAW added a constitutional provision that any member who wanted a rebate of that portion of their dues that goes to political and legislative activities could do it by submitting it. Here's how the process works.

Every person who is organized is given a new member magazine, Solidarity magazine.

Chairman Norwood. Ms. Jacobs.

Ms. Fields-Jacobs. No, you asked, respectfully, Mr. Norwood, you asked me a question. I'm outlining what happens.

Chairman Norwood. Ms. Jacobs, it is my time and you don't get to do that.

Ms. Fields-Jacobs. Factually, sir.

Chairman Norwood. You don't get to do that here.

Ms. Fields-Jacobs. I have sat here and been called a thug, I have been called a thug, a tyrannical, evil.

Chairman Norwood. I'm just calling, you're talking too much.

Ms. Fields-Jacobs. I'm just giving you.

Chairman Norwood. I'm not calling you any of that.

Ms. Fields-Jacobs. I just want the opportunity to be factual to you, respectfully, sir, that in the UAW, I don't know any of these people and I'm not going to make a whole society and say that there are no problems, but we give the members an ability to appeal when there is a problem and if there's something we're doing wrong, then it should be addressed, like everything else.

Chairman Norwood. Well, my question is pretty simple. Can you respond to that letter?

Ms. Fields-Jacobs. Sir, as you know, in any forum.

Chairman Norwood. It's on UAW stationery.

Ms. Fields-Jacobs. The UAW represents 1 million members. I cannot today, on Thursday, May 9th, sit down and tell you that I can factually respond to that. If you would like to do that with us.

Chairman Norwood. Do you think that letter is correct?

Ms. Fields-Jacobs. Sir, sir.

Chairman Norwood. Is that letter correct?

Ms. Fields-Jacobs. Sir, I do not know the facts of the case.

Chairman Norwood. If you would just simply respond for the record?

Ms. Fields-Jacobs. Sir, I do not know the facts of the case. I don't know where you got these, where these were obtained. I can sit here and be more than happy to talk to you about any injustice, and we believe, in the UAW, Chairman Norwood, that if there is something going on that is not what is in line with the Constitution, before Beck, we didn't need Beck to respect the members' rights.

Chairman Norwood. So these letters are correct?

Ms. Fields-Jacobs. Sir, I do not know the facts of this case.

Chairman Norwood. If these letters are correct, would you say that they're wrong?

Ms. Fields-Jacobs. Would I say what?

Chairman Norwood. If these letters--

Ms. Fields-Jacobs. They would be in violation of the constitutional provision.

Chairman Norwood. Thank you very much.

Do you want to go again, Ms. Sanchez? You are recognized for five minutes.

Ms. Sanchez. Thank you, Mr. Chairman.

I would just like to make a comment that my Web page gets about 100,000 hits a month. If I multiply that by 24 months for every election, that's 2.4 million people or hits, and I never expect that 2.4 million people are going to come and vote in my election. So I think numbers and the way they are used are very important. And because of that reason, I would like to give my time to Mr. Andrews.

Mr. Andrews. I appreciate my friend.

I just wanted to respond, respectfully, to what Ms. Cope, said. I don't think we're missing the boat. We want the law enforced the way it ought to be. And you told us some stories today that say that it isn't being enforced the way it ought to be, and we're interested in that. We're interested in trying to fix it.

I understand that in your situation you've had a difficult time getting a refund or a rebate that you were entitled to, and I think that that's a problem and it ought to be fixed.

My point was simply that there's an expression in law that hard cases make bad law. And we've heard some very hard cases here today, some very unfortunate ones from the point of view of the witnesses. Our job is to find out what the overall systemic situation is and try to fix the individual problems, but also understand what the systemic situation is. The Chairman and I agree very strongly on one systemic situation. We think that HMOs are routinely disregarding the rights of patients and the public, and we think they're--

Chairman Norwood. Now you can talk as long as you want to.

[Laughter.]

Mr. Andrews. I knew I'd get you that way.

And we think there needs to be a systemic solution. The issue in this hearing today is whether or not a systemic solution, to use our friend, the witness', testimony, is necessary, and I think the burden is on those who would say that it is. And I'll just come back to this point, that we've heard powerful anecdotal evidence from the witnesses and we've heard a recitation of cases from counsel, but I think that the challenge for those who claim there is a systemic problem is to generate the facts to demonstrate it. And I've heard nothing that indicates that, but the record is still open.

I yield back to my friend from California.

Ms. Sanchez. No questions, Mr. Chairman. Thank you for the time.

Chairman Norwood. You yield back the balance of your time. Thank you very much.

So everybody can note how fair the Chairman has been, I'm the only one without two rounds of questioning. So I simply want to ask for a couple of responses before we close down the hearing. And I think it would be probably correct, Mr. Sickler, you respond to that and then, Mr. Beck, I'm going to ask you to respond to my earlier question to Ms. Jacobs that I asked earlier, and I'll review it with you when we get to it.

Mr. Sickler?

Mr. Sickler. Yes. I'm just curious, if we were talking about a non-systemic violation where someone was denied a job because of their sex or their race or their religion, and it wasn't a systemic problem, it was just a problem that happened here and there across the country, would it be something that would be ignored? Does it need to be a systemic problem when someone's individual rights are violated? I think not.

I think if it was a matter where somebody was denied a job because of their sex, that this entire panel would be saying ``There's something that should be done about it. If there's no law in place that will enforce this and prevent this, we should do something about it.'' This is the same situation.

Chairman Norwood. Mr. Beck, what I was trying to get at and what I had hoped was Ms. Jacobs would tell me that the UAW would respond to these officials who have written union members basically saying that if you don't pay your dues, if you don't do this, we're going to get you fired or we're going to have you terminated. And we handed out to you the two letters from the locals that wrote these types of letters to union members. And I wondered if you had any thoughts, as we close this hearing?

And these are obviously real. I don't know if there's 10 million of these going on or just these two. I have no idea. I just know if it's one, it's too many.

Any comments, sir?

Mr. Beck. Mr. Norwood, the union conveniently has set up a hierarchy of ignorance. The locals often submit documents that the hierarchy in the international refuses to respond to, saying they don't control the locals, and that is until a local makes a decision that the hierarchy doesn't like. That's a convenient way of not having to face the issues that most of us at the local level face. That's a convenience that the worker has to fight through in order to be heard. And in many cases, as you've heard today, it either costs someone their job, or their families can be intimidated.

My use of the word ``thug'' had nothing to do with Ms. Jacobs. I don't know her. But I do know that thugs from the union came to my house to intimidate my family in the middle of the night while I was working, and when I went to the hierarchy of the union, they conveniently said, ``That must be a local issue.''

I think the same thing exists when it comes to these kinds of letters. The local puts them out, there is no rejection of this from the international, and therefore the worker is left to wonder who has the power?

In one case, we find that a man is fired. Reasonable people like Mr. Corson, and I believe he is, had he known about the firing prior, would probably have stepped in and said, ``This doesn't make sense. How can you fire someone before they have the opportunity to have been heard in arbitration?'' But it happens.

I don't know what the solution is as far as the union is concerned. I just know that the Labor Relations Act, the National Labor Relations Act that's presently before Congress, needs to be addressed seriously so that every individual in this country has the right to choose or not to choose representation from people that it either agrees with or does not agree with.

Thank you.

Chairman Norwood. Thank you, and thank you all. And I want to say again to all of you that we're very grateful for the time that you've taken. It has taken longer than usual, as I've tried to let each of you say whatever you wanted to say and have whatever amount of time that you wanted, and I, for one Member of Congress, do appreciate all seven of you and your participation in this. This is a learning experience for us all.

I don't remember which one of you quoted Thomas Jefferson, but I truly believe that if there is only one member in this entire country, out of the 160 million members of the unions, that are having their rights superseded, it is particularly onerous. Thomas Jefferson, I believe, said ``sinful'', if he didn't, I am. To tell a man or a woman that you must pay me dues so I can use those dues to have something politically done in this country against your political beliefs. And that's what we're trying to get at in this hearing.

This is a surgical hearing. We're trying to figure out why is it so difficult for members of the union to simply say, ``I don't want to pay for that particular political

process. Return my money." It is clear to me that it is not easy.

Those of you who have experienced it, those cases that we've read about and have on file, it is unconscionable to me that they make it difficult. It can't be that much money to start with, and I don't understand why a man or a woman who's a member of a union can't simply say to their local, not necessarily all the way to the top, but to their local, ``Hey, look, I'm not into that. I don't want to pay for that. Send me my money back." And it ought not to be as hard as it is being made to be.

And I hope Congress really will do something about this, and I simply don't view this as union bashing. It may be getting after union officers. It may be getting at those at the head, but it is for the members, and that's what this really is all about.

I thank you all, I thank the members, and this hearing is now adjourned.

[Whereupon, at 1:25 p.m., the Subcommittee was adjourned.]

APPENDIX A - WRITTEN OPENING STATEMENT OF CHAIRMAN CHARLIE NORWOOD, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
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Opening Statement of
Congressman Charlie Norwood (GA-10)
Chairman, Subcommittee on Workforce Protections
House Education and the Workforce Committee
Thursday, May 10, 2001

"Beck Rights 2001: Are Workers Being Heard?"

Once again, good morning and welcome to all -- especially our fine panel of witnesses who have volunteered their time to help us understand, what appears to be, a very serious problem.

With the objective of investigating the severity of alleged problems, the Subcommittee is assembled today in exercise of its authority to oversee the operation of certain aspects of this nation's labor and employment laws.

The potential problems that we will examine today are alleged abuses of our system of laws in the aftermath of the Supreme Court's 1988 holding in the case of *Communication Workers v. Beck.*

This is not the first time that this Committee has been called upon to examine alleged abuses in this area of law.

Since the *Beck* case was decided over a dozen years ago, this Committee has on several occasions found it appropriate to examine issues relating to allegations of a lack of enforcement –

And/or, allegations of organized labor's disregard of the individual rights discussed in *Beck* decision.

Today, we find it necessary to revisit these issues and hopefully, update and expand our understanding.

To begin our inquiry, I want to outline the Subcommittee's intended approach today.

Our oversight objective is very narrow and clear.

Quite simply, it is alleged that the statutory limitations placed upon labor unions are being disregarded.

We want to find out whether these allegations are true, and if so, whether these abuses are widespread or systemic.

Let me attempt to frame the context of the abuses that we are here to question.

In the 1930's, Congress developed a master plan for this nation's labor laws.

Under that master plan, unions were empowered to assess dues to those who would directly benefit from their collective bargaining activities. The scope of that empowerment included levies upon some that found the payment of these dues objectionable.

This master plan was not perfect – the fact that Congress found it necessary to seriously modify this plan on two previous occasions seems to indicate that serious flaws were uncovered.

And, not surprisingly, this debate over legal flaws and abuse of law has been ongoing since the 1930's.

Today, we are merely carrying forward this debate with a surgically examination of particular flaws alleged to exists in this system.

At issue, is whether some union officials have gone over the line and thereby unjustifiably, infringed upon the individual rights of workers.

Personally, what amazes me about the question of where union power abruptly stops and must defer to inalienable individual rights is that the complaints of abuse come from the union movement's own rank and file.

What are these workers complaining about?

Simply, they claim that their unions are "overreaching."

They say some unions disregard the limitations placed upon their conduct.

The complaints are that the unions are deaf to the demands of workers to remain within the boundaries of the law.

I have heard these complaints and in response to them, want to add some personal observations about these allegations of abuse.

Based on the evidence I have seen, I am convinced that some union locals do, in fact, regularly trample on the rights of individuals in far excess of the scope of their permissible authority.

It is difficult to look at the extensive record that this Committee has compiled and conclude otherwise.

What I am wondering, however, is whether these practices of deception and misconduct are more than isolated incidents of abuse.

So, to kick off our investigation, I just want to share some of the questions in my mind that have led to this hearing.

And, I would like to use the overhead system to help explain why I have come to suspect that this abuse of our laws is real and systemic.

Please go to **OVERHEAD 1**

Beck Rights 2001:
Are Workers Being Heard?

OVERHEAD 1

What troubles me most about the inalienable rights discussed by the Supreme Court in the *Beck* case is the abstract nature of these rights -- in contrast to the very practical and actionable nature of the union's statutory empowerment by Congress.

What so disturbs me is what I perceive as a disconnect between the abstract rights of an individual under natural law and the violations of individual rights by a union under color of statute.

It is this disconnect, I believe, that has seemed to create a system very ripe for and even tolerant of union abuse.

To be clear, what I am talking about are instances where the union's exercise of power appears to be clearly outside of the scope of their statutory authority, but nevertheless, seems to trump the fundamental rights of individuals.

After being trumped, individual rights are placed in a position analogous to David going up against the Goliath and individual rights are constructively negated.

Please GO TO OVERHEAD 2

"Blocking Beck": What is at Stake?
Unions collect roughly $6 billion in dues from rank and file members each year.
The Supreme Court, in the case of Communications Workers v. Beck, instructs us that more than 70% of this money is often used for functions other than collective bargaining related functions.
2

OVERHEAD 2

Here is why I think this has occurred.

The harsh reality of the environment in which "Beck" rights operate is one where hard, cold cash for unions is of paramount concern.

This hard, cold cash translates into very real, functional political power for unions.

In fact, what is at stake here is roughly 6 billion dollars each year that unions take-in from their rank-and-file.

Of course, not all of this money is used to support political causes.

But, what we learned from the Supreme Court in the *Beck* case is that often, more than 70% of these monies are used for purposes not associated with the union's collective bargaining-related functions.

These collective bargaining functions, in general, constitute the legal boundary lines of the union's empowerment to compel payment of union dues over an individual's strong objections.

When this line is crossed, inalienable rights originating directly from our God and supposedly guaranteed by our Constitution are violated.

And, certainly, the intent of the master plan of Congress for our nation's labor laws, in terms of statutory limits, seems ignored.

Fact is, we really do not know exactly how much money unions spend on political causes and ideologies.

Needless to say, they don't seem willing to volunteer that information.

But, we do know for sure that it is a very substantial amount.

Please go to OVERHEAD 3

A Case Study: Union Member Support for the President's Tax Cut
• Independent pollster John Zogby reports that 57% of all Americans now support President Bush's proposed tax cut.
• Zogby also reports that 55% of all union members support the proposed tax cut as well.
3

OVERHEAD 3

Here is just one example of money being spent in areas potentially outside of the union's permissible boundaries.

This example is important because it points out an obvious disconnect between the spending habits of some unions and what seems to be the true preferences of the union's rank and file.

This example strongly suggests why a worker might want to stop money from being taken and used for a political cause that is contrary to individual beliefs.

Specifically, a recent poll conducted by the John Zogby organization caught my attention.

Most agree that the Zogby organization has a reputation for independence and accuracy. And, I am not suggesting that my use of this poll data be associated with anything other than what the data says on its face.

Unmistakably, however, this Zogby poll found that 57% of all Americans supported President Bush's proposed tax package, and specifically, the tax cuts in that package.

Here is what is remarkable about this poll and on point for our discussions today: 55% of all union members clearly said they supported the President's proposed tax cuts as well.

55% of the union members polled said they supported the president's proposed tax cuts. It is difficult to misinterpret this fact. Please go to Overhead 4

Union Member Opposition About the Same as General Public
Zogby reports that only 33% of the American public said that they oppose the President's proposed cuts.
Opposition is about the same for all union members: only 34% said that they oppose the President.
4

OVERHEAD 4

The data also suggests that only 33% of all Americans opposed the President's plan, and that only 34% of all union members said that they opposed the tax cut package.

55% of union members supported, 34% opposed and 11% were not sure how they felt about these tax cuts.

Even when we factor in the legal small print and mumbo jumbo -- about plus and minuses, clearly a majority of union members said that they support tax cuts and a small minority said they opposed them.

Please go to OVERHEAD 5

An Apparent Disconnect Between Members and Union Officials
Union officials have said that in communities all around the country, they will mobilize to ensure the defeat of this tax cut.
Where will the unions get the money to stage this promised massive mobilization?
5

OVERHEAD 5

A few weeks ago, however, most of us heard claims that unions around the nation would "mobilize...to ensure defeat" of the President's tax-cut package.

Now, a mobilization of this magnitude is not going to come cheaply.

So, I wonder before promising to make a very significant financial commitment of this size –

--did anyone in the union movement considered that only 1/3 of their rank and file seem to be in agreement with such an expensive course of action.

Please go to Overhead 6

Using Union Funds for Disagreeable Political Causes
• The money to fund these massive mobilizations often comes out of the paychecks of all union households, including the majority (55%) that support the cutl
• As a result, all union dues payers wind up financially supporting a massive appropriation of funds that only 1/3 of the rank and file actually seem to support.
6

OVERHEAD 6

Now, obviously, any massive union mobilization is going to be funded from the paychecks of all union households, ironically including those who said they support the tax cuts.

As an aside, perhaps these rank and file workers who support the tax cuts believe that these cuts will mean more take home pay in their checks.

The joke is that instead of adding more money to their paychecks, those waiting for tax relief could find even more taken out of their checks.

And, what is not funny about this joke is that all union dues payers will have no choice but to financially support a cause that only 1/3 of the rank and file seem to support.

No wonder we hear complaints.

Something is wrong with this picture!

Please go to OVERHEAD 7

The True Meaning of "Beck" Rights
Union members have rights to object to the use of their money being taken to support political causes which they disagree with.
7

OVERHEAD 7

Let me bring this back into the context of our oversight inquiry for today.

At least in theory, our Supreme Court has instructed us that union members have a right to object to the use of their money to support causes that they disagree with and find distasteful.

The Supreme Court has said that a union's use of this money over the objections of workers is a clear violation of the authority Congress gave to unions.

So, we are compelled to ask: have the unions taken liberties that they are not entitled to take?

Have any of these unions crossed the line and in doing so, did they squash the individual rights that we hold so sacred in this country?

That is what is at issue -- as is what happens when individuals attempt to exercise the rights that are their own and should never be taken from them.

Once again, are individuals who attempt to exercise their rights put in the place of David standing before the Goliath?

Please go to OVERHEAD 8

An Illusionary Right?
The debate over "Beck" rights is about reality, not an abstract concept.
Exercising freedom requires tangible information – what political causes are my union supporting and how much of my money is being spent toward these costs?
And more than an illusionary ability to choose to prevent one's money from being spent this way?

OVERHEAD 8

If history is a guide, based upon what we are hearing from far too many workers who have tried to exercise their rights—

--workers who choose to exercise their "Beck" rights do face a "Herculean" task.

Too many workers seem to get the run-around when they try to exercise their rights.

It sounds so easy in concept – the union honestly calculates the amount attributable to a pro-rata share of its "financial core" costs, and thereafter, stops charging or even trying to charge an "objecting" member anything more.

But that does not seem to be the way it works, and instead we get claims from some workers that they are given false and misleading information by their union.

And, other workers say, even when they know what they are due, they are subjugated to procedural roadblocks and delays that seem to be intentionally crafted to avoid what is legally right.

No wonder these workers turn to Congress and ask: why are unions being allowed to quash my individual rights?

Today, we will try yet again to learn what answer we should give these workers.

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APPENDIX B - WRITTEN OPENING STATEMENT OF THE RANKING MINORITY MEMBER, MAJOR R. OWENS, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES

Statement of the Hon. Major R. Owens
Hearing on Beck Rights 2001: Are Workers Being Heard
Subcommittee on Workforce Protections
May 10, 2001

THANK YOU CHAIRMAN NORWOOD FOR YIELDING TO ME. AS THIS IS THE FIRST HEARING BY THIS SUBCOMMITTEE UNDER YOUR LEADERSHIP, LET ME COMMEND YOU FOR YOUR SELECTION AS CHAIRMAN. YOUR PREDECESSOR, MR. BALLENGER, AND I WERE ABLE TO WORK TOGETHER TO ACHIEVE ENACTMENT OF IMPORTANT LEGISLATION, SUCH AS THE NEEDLESTICK BILL WHICH GREATLY IMPROVES THE PROTECTION AFFORDED TO HEALTHCARE WORKERS AGAINST ACCIDENTAL NEEDLESTICKS. I AM HOPEFUL THAT WE WILL BE ABLE TO WORK TOGETHER AS EFFECTIVELY TO IMPROVE PROTECTIONS FOR AMERICAN WORKERS.

TODAY'S HEARING CONCERNS THE RIGHT TO REFRAIN FROM PAYING UNION DUES. THIS IS THE FIRST TIME THIS SUBCOMMITTEE HAS HELD A HEARING ON THIS ISSUE, BUT IT IS HARDLY A NEW SUBJECT. ANOTHER SUBCOMMITTEE HELD TWO HEARINGS ON THIS ISSUE IN 1996. THE FULL COMMITTEE HELD AN ADDITIONAL HEARING IN 1997 AND ALSO MARKED UP RELATED LEGISLATION. LAST YEAR, YET ANOTHER SUBCOMMITTEE HELD A HEARING ON SO CALLED RIGHT TO WORK LAWS. NUMEROUS OTHER HEARINGS RELATED TO UNION DUES AND THE BECK DECISION HAVE BEEN HELD BOTH BY SENATE COMMITTEES AND BY AT LEAST ONE OTHER COMMITTEE IN THE HOUSE. IN ADDITION, LEGISLATION RELATED TO THE BECK DECISION HAS BEEN REGULARLY DEFEATED, BOTH AS FREE STANDING BILLS AND AS AMENDMENTS CAMPAIGN FINANCE REFORM LEGISLATION OVER THE LAST SEVERAL CONGRESSES. SO WE ARE HARDLY EXAMINING AN ISSUE FOR THE FIRST TIME TODAY. RATHER, THIS HEARING COMES CONSIDERABLE CLOSER TO BEATING A DEAD HORSE. I SHOULD ALSO ADD THAT THIS IS ONLY AN OVERSIGHT HEARING. THIS SUBCOMMITTEE DOES NOT HAVE LEGISLATIVE JURISDICTION FOR THE NATIONAL LABOR RELATIONS ACT AND THIS IS NOT EVEN THE COMMITTEE THAT HAS JURISDICTION FOR THE RAILWAY LABOR ACT.

IN THE PAST, OPPONENTS OF THE LABOR MOVEMENT HAVE ATTEMPTED TO DISTORT THE NATURE OF UNIONS. IT MAY BE USEFUL AT THE OUTSET TO SUMMARIZE THE STATE OF THE LAW TODAY.

BY LAW, UNIONS ARE DEMOCRATIC ORGANIZATIONS WHOSE OFFICERS AND POLICIES ARE DETERMINED BY THE MAJORITY WILL

OF THEIR MEMBERS. BY LAW, UNIONS ARE ALREADY UNDER MORE EXTENSIVE REPORTING AND DISCLOSURE REQUIREMENTS THAN VIRTUALLY ALL OTHER INSTITUTIONS IN THE COUNTRY AND ARE REQUIRED TO REPORT ALL OF THE INCOME AND EXPENDITURES TO THE GOVERNMENT AND THE PUBLIC.

NO EMPLOYEE, INCLUDING THOSE WHO ARE COVERED BY AN AGENCY FEE CONTRACT, IS REQUIRED TO JOIN A UNION. UNIONS ARE REQUIRED TO INFORM ALL EMPLOYEES WHO ARE SUBJECT TO AN AGENCY FEE CONTRACT THAT THEY ARE NOT REQUIRED TO PAY FULL UNION DUES. UNIONS MUST INFORM SUCH EMPLOYEES OF THE PERCENTAGE OF UNION DUES THAT ARE USED FOR PURPOSES OTHER THAN THOSE DIRECTLY RELATED TO THE PROVISION OF REPRESENTATIONAL SERVICES. UNIONS MUST ESTABLISH PROCEDURES TO ENSURE THAT THOSE EMPLOYEES WHO CHOOSE NOT TO, DO NOT PAY ANY PART OF THE UNION DUES THAT ARE NOT USED FOR PURPOSES REASONABLY RELATED TO THE UNION'S ROLE AS BARGAINING AGENT. FAIR, INDEPENDENT, AND INEXPENSIVE PROCEDURES EXIST BY WHICH EMPLOYEES MAY CHALLENGE OR CONTEST THE UNION'S ASSESSMENT OF ITS EXPENDITURES.

BARGAINING UNIT MEMBERS HAVE A STATUTORY RIGHT TO EITHER NULLIFY THE AGENCY FEE PROVISION OF A CONTRACT OR DECERTIFY THE UNION IF A MAJORITY FEELS THAT THE AGENCY FEE PROVISION OR THE UNION IS NO LONGER IN THEIR BEST INTEREST. UNION MEMBERS HAVE A STATUTORY RIGHT TO INSPECT THEIR UNION'S BOOKS AND TO VOTE ON THE AMOUNT OF DUES THE UNION WILL CHARGE ITS MEMBERS.

FINALLY, EMPLOYEES WHO BELIEVE THAT A UNION IS NOT IN COMPLIANCE WITH THE LAW MAY ACT TO PROTECT THEIR RIGHTS SIMPLY BY FILING A CHARGE WITH THE NATIONAL LABOR RELATIONS BOARD. IT IS THE GOVERNMENT, NOT THE EMPLOYEE, WHO UNDERTAKES THE COST OF INVESTIGATION AND PROSECUTION. ALTERNATIVELY, UNLIKE THE WORKER WHO HAS BEEN FIRED IN VIOLATION FOR ANTI-UNION ANIMUS BY AN EMPLOYER, AGENCY FEE OBJECTORS MAY ALSO SUE THEIR UNION DIRECTLY FOR FAILURE TO PROVIDE FAIR REPRESENTATION.

IF THE CONCERN OF MY COLLEAGUES IS THAT WORKER RIGHTS ARE NOT ADEQUATELY PROTECTED BY THE NATIONAL LABOR RELATIONS ACT, I FULLY AGREE. HOWEVER, MY CONCERN EXTENDS TO THE RIGHT TO FORM AND JOIN A UNION. BECK WAS DECIDED IN 1988. SINCE THAT DECISION, THERE HAVE BEEN LESS THAN 100 CASES TOTAL PENDING AT THE NLRB CONCERNING BECK RIGHTS. IN A

SINGLE YEAR, THE NLRB ISSUES MORE THAN 1,000 COMPLAINTS ALLEGING UNLAWFUL DISCHARGE OF A WORKER BY AN EMPLOYER. YET, A WORKER HAS MORE PROTECTION TO REFUSE TO PAY A FEW DOLLARS A MONTH TO A UNION THAN THE WORKER GETS WHEN HE OR SHE IS FIRED FOR SUPPORTING THE UNION AND HIS OR HER ENTIRE LIVELIHOOD IS AT STAKE. I THINK THAT IT IS A MEASURE OF THE CONCERN REPUBLICANS HAVE FOR THE RIGHTS OF WORKERS THAT THIS IS THE FIFTH HEARING HELD IN THIS COMMITTEE ON THE RIGHT OF WORKERS TO REFUSE TO JOIN A UNION SINCE THE REPUBLICANS HAVE BEEN IN CONTROL OF THE COMMITTEE, BUT WE HAVE YET TO HOLD A SINGLE HEARING ON THE THOUSANDS OF WORKERS WHO ARE UNLAWFULLY DISCHARGED FOR TRYING TO FORM A UNION.

I YIELD BACK TO THE CHAIRMAN.

APPENDIX C - WRITTEN STATEMENT OF WENDY FIELDS-JACOBS, ADMINISRATIVE ASSISTANT, INTERNATIONAL UNION, UNITED AUTO WORKERS, DETROIT, MICHIGAN

Testimony
on

Beck Rights 2001: Are Workers Being Heard?

by

Wendy Fields-Jacobs

International Union, UAW

Before the

House Committee on Education and the Workforce
Subcommittee on Workforce Protections

Washington, DC

May 10, 2001

Good morning, I am Wendy Fields-Jacobs and I work in the organizing department of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW. I have about ten years experience helping workers organize in health care and industrial workplaces.

For almost thirty years the UAW's constitution has allowed members who do not agree with the Union's political and legislative activities to receive a rebate of the portion of their dues used for these purposes. To receive this rebate, which amounts to only a small percentage of total dues, a member only has to send a letter to the Union's Secretary Treasurer.

Historically, only a tiny number of members have objected to the use of their dues for political purposes and requested the rebate. This is because the vast majority of UAW members strongly support the participation of the Union in political and legislative activities. UAW members recognize that what the Union is able to achieve through collective bargaining is profoundly affected by decisions made in Washington and in state capitals across the country. Our wages, health care and pension benefits, and the very existence of our jobs are directly affected by governmental policies. Thus, to truly protect and advance the well being of UAW members, the Union must be involved in advocating their interests in the legislative and political process.

I note that the question posed at today's hearing is: "Are Workers Being Heard?"

There are workers testifying who represent the tiny minority of union members who don't want their union to speak for them on Capitol Hill. I respectfully submit that there are millions of other workers who are not being heard -- those whose voice at work is silenced because their employers are undermining their right to organize.

The National Labor Relations Act says that workers have the right to form a union and that they can't be fired, disciplined, intimated or threatened by their employer for doing so. But this right to organize has been rendered almost meaningless by an army of union-busting consultants with an arsenal of anti-union tactics, and by a cost-benefit analysis that makes it far cheaper for employers to risk violating the law to defeat unionization than to comply and risk facing employees with a voice at work.

It takes tremendous courage and dogged persistence for workers today to withstand the anti-union assault that is launched by companies whose employees seek to unionize. And make no mistake -- it is an assault! Pro-union workers face a gauntlet of surveillance, intimidation, harassment, discipline and discharge, as well as the ubiquitous plant closing threats.

Among the many tactics I see routinely in helping workers join the UAW:

1. **The discharge of key union supporters**. In an organizing drive at ZF Industries in Tuscaloosa Alabama, during the initial organizing drive, 70% of the employees signed representation cards. The company then embarked on an anti-union offensive that included threats of plant closure and the discharge of five key union supporters. These five employees were out of work for more than a year before being reinstated with back pay. When the workers undertook a subsequent organizing drive, the company decided not to continue its anti-union campaign. Without interference by their employer, the employees voted for a union by a two to one margin.

2. **The singling out of union supporters by management for unfair or unequal application of work rules**. Even more common than firing union supporters is the practice of closely watching union supporters on the job and disciplining them for infractions -- infractions that were often previously tolerated by the employer. I saw this, for example, during an organizing effort at Walbro Corp. in Connecticut, when an employee was given a written discipline for being late to work immediately following his comments in a local newspaper in support of the union.

3. **The promise of economic incentives**. Sometimes employers take a different tact, using the carrot rather than the stick, to discourage unionization. For example, after workers began an organizing campaign at Johnson Controls in Toledo, Ohio, company managers held a meeting where they promised a $4

wage increase over the next two year, a 40% increase in pay! This was clearly designed to undermine the organizing drive.

4. **"Psychological terrorism"** against employees through such tactics as:

Surveillance of employees' union activities. Imagine what a chilling effect it has on workers to know that their employer is watching them engage in activities as benign as taking a union leaflet at the plant gate. In a UAW campaign this past April at Deka Battery in Lyons, Pennsylvania, management staff was videotaping workers exiting the plant gate when union literature was being distributed. And this was after the company settled NLRB charges and promised, among other things, not to continue to engage in surveillance of employees' union activities!

One-on-one meetings with individual employees are commonplace. Management representatives question the employee about why they want a union; give the employee false information about the Union; and lead the employee to believe that if they vote for a union the plant will move outside the U.S. It is not uncommon for employer representatives to have two, three, or even four separate one-on-one meetings with the same employee.

Captive audience meetings with groups of employees, where workers are required to listen to anti-union presentations, usually by union-busting consultants. Union representatives are not allowed to be present. Employees are given misinformation about unions and are led to believe that plant closings are the inevitable result of unionization.

The "Wall of Shame" was used to great effect by MTD, a company in Willard, Ohio where 800 workers were trying to join the UAW. The "Wall of Shame" is a list of plants that have closed and moved outside the United State. The list of closed plants doesn't indicate whether the plants were unionized, and most of them probably weren't. But the "Wall of Shame" makes its point: unionize and this plant, too, will shut down and move outside the U.S.

If this Subcommittee truly wants to assure that workers' voices are heard, I respectfully suggest that it needs to strengthen the rights of workers to organize. Instead of posting *Beck* notices at the workplaces of all federal contractors, as President Bush recently required by Executive Order, the federal government should require all employers to post notices informing employees of their legal right to organize. And to make that right have meaning, Congress should amend the NLRA to stiffen penalties for Section 8(a) (1) and (3) violations and to balance the rights of employers with those of unions during organizing campaigns.

The right to organize is a civil right in the United States just like the right to vote. The freedoms of speech and self-expression are rights honored in this country,

except in the workplace. Our nation trusts workers to make the right decisions to elect you as leaders to run our country. Shouldn't we also trust workers to make thoughtful decisions about maintaining and improving the quality of their work lives? We need you to stand by your constituents when they want to have their voice heard at work.

Committee on Education and the Workforce
Witness Disclosure Requirement -- "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name:		
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the Committee).	Yes	No X
2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1998: N/A		
3. Will you be representing an entity other than a government entity?	Yes X	No
4. Other than yourself, please list what entity or entities you will be representing: International Union, United Automobile Aerospace and Agricultural Implement Workers of America, UAW		
5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4: Staff		
6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1998, including the source and amount of each grant or contract:		
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list:	Yes	No X

Signature: by Barbara L Jonson Date: May 9, 2001
Deputy Legislative Director
International Union, UAW

Attachment to testimony of Wendy Fields-Jacobs, May 10, 2001

Answer to Question #6 from "Truth in Testimony" form:

In FY 1999, the International Union, UAW received a $125,000 Susan Harwood grant from the Occupational Health and Safety Administration (OSHA).

In FY 2000, the International Union, UAW received a $165,000 Harwood grant from OSHA and a $725,000 National Institute of Environmental Health Sciences (NIEHS) grant from the National Institutes of Health (NIH).

In FY 2001, the International Union, UAW received two Harwood grants from OSHA, one in the amount of $307,000 and one in the amount of $123,000 as well as a $723,000 NIEHS grant from NIH.

Labor Organization Adjustment Assistance Job Training Partnership Act III Grant Awarded to UAW Region 5. Grant No. N-6562-8-00-87-60, Grant period 9/15/99 through 4/30/00, Award $500,000.00. Grant No. AM 107660060, Grant period 6/1/00 through 6/30/02, Award $1,050,000.00.

Subcontract from American Center for International Labor Solidarity (ACILS) to perform services funded by grant from National Endowment for Democracy to the ACIRS, AEP-G-00-99-00035-00. Grant No. 2000 UAW, Fiscal Years 1/1/00 through 3/31/01, Award $153,130.00

NEWS FROM THE UAW®

FOR RELEASE: Immediate, Friday, March 12, 1999

UAW VICE PRESIDENT BOB KING APPOINTS WENDY FIELDS-JACOBS ADMINISTRATIVE ASSISTANT FOR ORGANIZING AND CORPORATE CAMPAIGNS

UAW Vice President Bob King has announced the appointment of Wendy Fields-Jacobs, UAW National Organizing staff assigned to Region 9A, as administrative assistant to assist him in the UAW vice president's responsibilities for organizing and corporate campaigns across the United States, Canada, and Puerto Rico.

Fields-Jacob is a member of UAW Local 376. She joined the local after organizing her workplace, NECARC into the UAW. At NECARC, Fields-Jacobs was responsible for the development of a training and internship program for organizers of color. She also developed and conducted diversity training for non-profit organizations and rank and file members of coalition groups in the Northeast. In this capacity, Fields-Jacobs worked with UAW Region 9A and many UAW local unions. She served on Local 376 Women's Committee and is a staff advisor for the Connecticut Women's Committee.

In 1994, Fields-Jacobs became an organizer of UAW Local 376. She successfully worked on numerous campaigns prior to joining the staff of the International Union. Fields-Jacobs serves as vice president of the Connecticut State AFL-CIO and chairs the AFL-CIO State Organizing Committee.

Fields-Jacobs' first job was a health care worker, working with the mentally ill, in a facility organized by New England Healthcare Workers Union District 1199. She held the position of Steward for four years and then went on staff for 1199 organizing nursing home and group home workers from 1987 to 1991.

INTERNATIONAL UNION,
UNITED AUTOMOBILE,
AEROSPACE AND
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA

PUBLIC RELATIONS
AND PUBLICATIONS
DEPARTMENT
8000 E. JEFFERSON AVE.
DETROIT, MI 48214

FRANK JOYCE
DIRECTOR
313 • 926 • 5131

In 1991, she joined the staff of Congressman Sam Gejdenson as the Labor Liaison when the district was facing drastic job loss in the defense industry. She worked primarily with the Metal Trades Council at Electric Boat and with the Machinists at Pratt and Whitney, coordinating and organizing hearings, rallies and community support. She also assisted on job retraining and conversion legislative efforts.

Over the years, Fields-Jacobs has been active within the community by serving as co-chairperson of the African-American/Latino Coalition of New London, and as Board Member of the Women's Center, CLUW, United Way, Secretary of the State, Citizenship Award Committee, APRI/CBTU Connecticut Chapter and Connecticut Citizen Action Group.

Fields-Jacobs is married to Morris Jacobs and has two children, Charissa and Maya.

# # #

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APPENDIX D - WRITTEN STATEMENT OF JANET COPE, GREAT FALLS, VIRGINIA

STATEMENT OF JANET COPE

Honorable Members of the House of Representatives:

Good Morning. My name is Janet Cope. I appreciate very much this opportunity to appear before you today to share my experiences with you.

I am a sales and reservation agent with United Airlines. I have been employed in this capacity by United Airlines since 1991. My duties include communication with customers to promote, develop and finalize the sale of our company's worldwide product and service. As you can see, my co-workers and I find ourselves on the front line of dealing with customers and the problems they face. The efficiency with which we work, and the attitude we display in our dealings with customers, is crucial to the overall perception of the company by the flying public and ultimately to its success or failure.

In 1999 an election was held among the public contact employees at United Airlines. The question was whether we wanted to be represented by the International Association of Machinists, also know as the IAM. The IAM narrowly won the election, receiving 51% of the votes. I voted against the IAM because I believed it would not materially improve conditions for our group of United workers to which I belonged but could interfere with the accomplishment of the service mission that we have.

But we are not here today to debate the pros and cons of union representation. Instead, I believe the key issue today is one of individual rights. What are the rights of an individual who, for whatever reasons, opposes union representation? What are the rights of an individual whose political views are not consistent with those so widely and expensively proclaimed by the union? And, finally, what additional safeguards do we need to protect these individual rights?

These are issues that I can talk about from personal experience. I am not a lawyer, nor an economist or political scientist, but I do know what my own experience has been and I would like to briefly share some of it with you.

I will first share with you my experience with the issue of compulsory membership. I felt very strongly that I did not want to join the union, but I also felt strongly that I did not want to lose my job. Shortly after the election the IAM assigned shop stewards to set up a table and have every employee sign two forms, a membership form and an authorization for check-off of union dues. As can be seen from Attachment I, the IAM notice that was posted and distributed clearly stated that failure to obtain Union membership could cause one to lose employment with United Airlines.

At this time I contacted the National Right to Work Legal Defense Foundation for assistance. Foundation attorney Ray LaJeunesse explained to me that, despite what the contract might say, I could not be required to join the union and could insist on paying less that full dues if I notified the IAM that I objected to paying for more than collective bargaining and contract administration. Neither the IAM, or for that matter the management of United Airlines, told me that I had those rights, even though I had addressed inquiries to them through letters and phone calls. And to this day this practice is still exercised with all new hires at United Airlines.

In addition, I received notes from the Secretary of the Local Lodge, Mr. John Kennedy, as well as from a shop steward, Mr. Frank Contendo, from United stating that they would not accept the dues check-off form without the membership form being signed. Attachments II and III. At that time I became really concerned that I might lose my job. I had received two highly conflicting versions of what I could be required to do. Finally, I had to send my dues check-off form directly to the District Lodge by way of Federal Express because the Local Lodge refused to process it.

Next, relying on the assurance that I had independently received that I could not be forced to join the union or lose my job because I did not join, I mailed my objection letter to the IAM. I then learned that I would be required to renew my objection every November. This struck me as unfair since members were not required to affirm their membership each year. It was at this time that I offered to be a plaintiff in a class action lawsuit called Lutz v. Machinists which eventually resulted in an injunction requiring the IAM to honor continuing objections. So the outcome here was favorable but there remains the question of why individuals must resort to the courts to obtain elementary fairness.

In addition to the issue of membership, I have experienced an ongoing struggle over dues. Before the election we were never given a satisfactory answer to that most elementary question, "What will our dues be?" Since the election our dues have gone up each year and we have not had a new contract or pay raise to offset or justify the increase. These increases occur without notice. One notices that one's paycheck is smaller.

Another problem I have encountered is that since United Airlines refuses to deduct anything less that full dues, I had to choose between paying the full dues by payroll deduction with subsequent refunds by the union, or paying the reduced amount directly to the union by personal check. I chose payroll deduction, because it is more convenient and avoids the possibility that I might inadvertently miss payments and be fired for nonpayment. If union dues are missed for two consecutive months any employee can be fired. However, I have to wait three to four months before I receive my rebate check and that occurs after several phone calls to the Local Lodge. To this day I have not received my rebate check for 4 months and I am tired of calling. My rebate check is only $8.27 a month and the monthly dues are $34.67 a month.

Another key issue regarding dues for our purposes today is the issue of that portion of the dues that goes to finance political activity. Once I objected it is true that I have been allowed to reduce my dues payments by the percentage that is alleged to have gone to support political activity. Or, to look at it from the other side, my dues are alleged to consist of only that percentage that is necessary for collective bargaining and contract administration. But who determines what percentage is spent for collective bargaining and contract administration and what percentage is utilized to support the union's political agenda. The answer is that it is the union itself that does this. The IAM conducts its own audit to determine what portion of the dues is chargeable to and what portion is non-chargeable to non-members under the Supreme Court decisions.

These two issues, membership and dues, are among the most important ones that I believe you should address, though there are others. Ultimately, I believe that the Railway Labor Act is antiquated and needs a thorough overhaul. Once again, I appreciate your attention and the opportunity that you have given me to participate in this process.

Union Notice

AIRLINE EMPLOYEES DISTRICT LODGE 141 IAMAW – AFFILIATED WITH A.F. of L.- C.I.O.
P. O. BOX 3141 - SOUTH SAN FRANCISCO, CALIFORNIA 94083-3141 - PHONE (650) 873-0662 - FAX (650) 873-1675

PLEASE POST June 17, 1999 PLEASE POST

TO: PUBLIC CONTACT MEMBERS EMPLOYED BY UNITED AIRLINES

Dear Sisters and Brothers:

Members should be in the process of receiving the forms necessary for full Union membership in the International Association of Machinists and Aerospace Workers (IAMAW), AFL-CIO. These forms must be completed by July 15, 1999, to avoid paying the customary new member initiation or reinstatement fee. Our International President Buffenbarger waived the initiation fee (or reinstatement fee) during the United Public Contact organizing campaign in 1998. That promise still holds true, but for a limited time. The new Contract provides sixty days in which to join the Union. However, to take advantage of the waiver, you must "sign-up" by July 15, 1999. Members will receive the following forms:

Membership Applications: This form must be completed and returned to establish IAM Membership and maintain your employment with United Airlines.

Dues Check-Off Form: This form authorizes United Airlines to deduct union dues from employees' paychecks each month.

MNPL Forms: (Machinists Non-Partisan Political League) This optional form provides a means for employees to support political candidates who support working family issues regardless of party affiliation, at the local, state or national levels of government.

The completed forms must be returned by **July 15, 1999**, directly to the Financial Secretary of your Local Lodge. Applications received after July 15, 1999, will be liable for customary initiation fees. Please be aware that failure to obtain Union membership in a timely manner could cause you to loose employment with United Airlines.

Congratulations once again on achieving this historic first Public Contact Agreement. By completing the forms, you will be taking the first step toward full Union membership and enjoying the benefits it provides.

Sincerely and fraternally,

S. R. Canale

S.R. (Randy) Canale
President and General Chairman
District Lodge 141

SRC:pp:dk

cc: Buffenbarger, Roach, Sprang
UAL Pres, RS, FS, LCC
DL-141 Executive Board

I CANNOT ACCEPT
THIS FORM, YOU
MUST COMPLETE
THIS WITH THE DUES
AND COMPLETE AN
APPLICATION.
John Kenny 7.13.99
SECTREAS

MEMBERSHIP APPLICATION

(PRINT ALL INFORMATION)

Name ..... (First, M. Initial, Last)

Date of Application ..... Card No ..... (To be filled in by Secretary)

Employed by ..... Shift 1 ☐ 2 ☐ 3 ☐

Class of Work ..... I am receiving .....per hour

I have had ..... years of experience, being proficient at .....

If a former member of the International Association of Machinists and Aerospace Workers, supply following information:

Card No.....Lodge No..... Location..... Last Dues Paid.....

Date of birth..... (Month-Day-Year) Place of birth..... E-Mail No..... Telephone No.....

Present Address..... (Street)

..... (City) (State or Province) (Zip Code) S.S. No .....

To the Officers and Members of Lodge No.....I hereby tender my application for membership in the International Association of Machinists and Aerospace Workers with initiation or reinstatement fee of $..... If accepted I will obey the laws of the International Association of Machinists and Aerospace Workers, and promote its interests, and further its principles. You are hereby authorized to act as my representative for collective bargaining.

Signed.....

RECEIPT

Lodge No. ..... Date .....

Received of .....

Initiation ☐ Reinstatement ☐ Fee for .....

Signed ..... (Financial Secretary or Secretary Treasurer)

RECEIPT

Lodge No. ..... Date .....

Received of ..... Shop .....

Amount $ ..... To apply on: Initiation ☐ Reinstatement ☐

FORM MR01 REV 4/99 PRINTED IN U.S.A. Signed ..... (Committeeman, Steward or Organizer)

7/7/99 - turned in to Ross

7/8

Jan

I'm enclosing a new set of forms. The form that you submitted was to have the fees (dues) deducted from your paycheck on a monthly basis. This form is sent on to United Payroll to facilitate this action. Otherwise you would be responsible for making payment personally to the local committee person on a monthly basis.

The second (smaller) form is to show you as a member of this local

but most importantly gets the
initiation fee waived. The initiation
fee is ten times your hourly
rate. This form is more
significant than the fact in lieu
of the fact you have declared yourself
a "Doer Doctor"

Frank

APPENDIX E - WRITTEN STATEMENT OF HARRY BECK, PORTLAND, OREGON

BECK vs. CWA

Final Decision June 15,1988

FORWARD

It seems to me we are a people of absolutes. Either Democratic or Republican, Christian or heathen, fat needing to diet or slim needing to put on weight, educated or uneducated, beautiful or ugly and in my case either for unionism or anti-union. We either want reduced government or blame government when something goes wrong and we perceive we have had our civil rights stepped upon and government must do more to protect ME. We go to a doctor to repair an imperfect body and then want to sue his pants off when he either has no answer to our problems, or just in his human abilities (inability's) makes a mistake and causes us discomfort.

We want the airlines deregulated so competition can thrive and bring us lower fares, but we scream for tariffs to be placed on Japan when free trade puts pressure upon OUR industry, and in the long run will cause us higher prices.

There seems to be no credence given to the eclectic thinker who sees a problem and searches many arenas for a solution. " Y'er either fer us or a'gin us." In my case against Communications Workers of America, I saw a problem of arrogance and if you will, a "taxation without representation" being applied to most Bell Telephone workers. I tried, unsuccessfully, to get change within the system and was thwarted at every juncture, not by the rank and file, but by leadership that refused to address the issues. As a last resort, I turned to the National Right to Work Committee and Legal Defense Foundation for assistance. The courts became our only avenue for justice.

In the 35 years I have been fighting this cause, I have been misrepresented as totally anti-labor, a communist, only after a big bucks settlement and many other things best described under the heading, "a parasite to society". It needs to be said up front neither I nor any of my family received ANY cash settlement as a result of this suit. And further more, even if the union were to try and offer us some settlement, no amount of money can repay the dirt and harassment my wife and children faced in the privacy of our own home as a result of some union hooligan's. The only adequate repayment was made in June of 1988 when the United State Supreme Court finding 5-3 upheld my cause.

Since this case began in 1972, I have been on nationwide and local television shows. I have been on talk radio in Detroit Michigan. I have been interviewed by hundreds of newspaper and media journalists. While not all agreed with my position, without exception two common elements prevailed. **First**, my case was totally misrepresented by the unions and when I provided documentation proving my statements, media representatives clearly stated they could understand my position and were appalled at the unions actions. **Secondly**, EVERY media interviewer related similar injustices they were either facing themselves or knew were going on within some union with which they were familiar.. Many have contacted me since for advice as on how Beck vs. CWA could be used to assist them. Today, there are 300 plus cases before the NLRB (which they refuse to make a decision upon) from California to Boston and Washington to Florida, where the rank and file of powerful self-serving unions are regaining control of their unions by asserting their rights regained under this suit. That's my repayment.

The winning of the suit is not the end. Now we must get information to the rank and file and let them know they have a way to insist unions be responsive to their needs. For we cannot expect unions to report to the worker their newly restored rights. And while the findings of The Court makes implementation of the "fairness" element of the Taft-Hartly Act easier, we give little hope of big business bucking big labor to inform the worker of his/her rights under *Beck*. Therefore plans for a major news conference on June 21,1989 in Sacramento California are set to begin informing indentured workers of how to become freemen again. The work goes on.....

ACKNOWLEDGMENTS

I wish to acknowledge Reed Larson and The National Right to Work Committee. They remain the only beacon of hope for the working man against the unbridled power structure of unions today. Needless to say without them and the rank and file worker who donates to their work, I would not have prevailed. To Hugh Rielly, who handled most of the phases of this case over the years, goes sincere thanks. Edward Vieira who represented the respondents before the Supreme Court must also be recognized for the convincing arguments of law placed before the Court. His dissertation and rebuttals to the union lawyers show he, not the union, really represented the rights of the worker. And to all the secretaries, clerks, typists, consulting lawyers, and promotional people who got this case in the media, goes my sincere thanks. It can truly be said this was a team effort. Thank You All.

In 1960, at the ripe old age of 18, I began my career with the Bell System, which has lasted now for some 41 years. As a youth just entering the adult world of self survival, I was presented with an insurance policy protecting me against unfair bosses that would pick on me, and attempt to unfairly pay me and reduce my benefits package and insure my work place remained a safe place. Oh yes, and once a month we had a blast of a beer party with all you could drink - free -. That's the way unionism was presented to me. Now while I was happy with the pay and really cared less about benefits and would take any boss harassing me behind the building and let my knuckles represent me, the free beer party once a month really got my attention. So I became a member of the Communications Workers of America, local 2350, Washington DC and for $7.00 a month look at all the benefits I received. Wow...

For a year, I attended union meetings and even became a recruiter and assistant shop steward. Then the Cuban missile crisis forced me to make a couple of decision. Stay with AT&T and take a chance on being drafted or enlist in the Air Force and get electronics training which would help me in my job. Advice from my manager led me to joining the Air Force. Three years and nine months later, I rejoined the real world.

I now was an old hand at 24. Veteran, experienced, trained, married and a father. Now all of a sudden pay was important, benefits very important and with the experience of 4 years of seeing how poorly my knuckles represented me with people who harassed me, protection too was very important. So I immediately rejoined CWA and became an avid union man.. I traded my M-1 carbine for a picket sign and parades for picket lines.

A little history is needed here. CWA is a union started by one time Bell System under managers and bosses. Its structure was predominantly in five major cities; New York, Philadelphia, Washington DC Detroit and Chicago. Since then a couple of others were added Denver, Atlanta and Pittsburgh There were a few strong HUB cities but for the most part the cities mentioned were the backbone which always controlled the national elections. In order to control the rank and file, CWA refused to allow any large locals to be formed outside these major cities. For example, I worked in a microwave complex of 25 men 30 mile south of Washington DC and was assigned to the Baltimore local some 60 mile away. We did petition to be moved to the Washington DC local for distance sake and was granted the move, but forming our own local was vetoed. As late as 1984, after my move to Portland, I found the same trend existing. Boise Idaho membership of CWA was a part of the Denver local.

To understand why this was (is) done must be viewed in light of contract settlements and in light of where the major work force population resided. CWA did not represent all telephone company employees at this time. Local companies (now called BOAC's) often had different representation and the operators almost always refused CWA representation. The largest remaining work force of AT&T employees were what was called 'outlying' meaning they worked mostly suburban areas. The needs of these outlying forces were generally different than the city workers and most generally disagreed with the radical element of the union hierarchy. Therefore, if we had been allowed to form our own locals, we could have swayed national elections. So at contract time each of these cities received exceptional pay increases, while 'outlying' workers doing the same work received many dollars less. By bringing us under the control of a big city local and dispersing our voting power, we always lost attempts at the local level for changes in pay structure called 'upgrading', because the majority of the local members were big city members who were happy with the pay structure.

In 1966, after one such attempt at getting pay parity, the men of our office decided we needed a representative on the locals executive committee in order to have a minor voice in decisions and to get a better idea of what was going on within the organization. We attended the election meeting in force and could have elected our men to EVERY position of the local. You see, it was generally understood by the city local members, elections were cut and dried before hand so there was no need to attend the meetings. In an attempt to keep control of the local within the city membership, the union officials called off the election with assurances we would be notified of the next election night. Three weeks later we were notified who OUR new officers were. They had been elected at a **secret** union meeting held the night after the regularly scheduled meeting, which we had attended.

I then formed a coalition of AT&T, Chesapeake and Potomac (local company) and Western Electric workers residing in the outlying areas of Maryland's western and eastern shores. We organized and planned to form our own local. We contacted the NLRB and was informed we needed to go through CWA's International organization as we would be under their certification. We made appeal to CWA for permission to form. The first request was lost. CWA never responded to the second request and when we hand carried the third request to the International office, we were informed by a secretary it was no use to file because the decision had already been made to deny our application. A memo to that affect was shown to the three of us. It might be interesting to note here the other two men who saw the memo are now dead. One supposedly committed suicide and the other died in an automobile accident. The secretary has married and I haven't heard from her since. All this happened within 3 months of our visiting the International office. An appeal was made to the NLRB, but again we were denied.

After the death of my two co-organizers, many of the workers withdrew from our attempts to organize. Some confided they had been contacted by union officials and ASKED to withdraw and others just said they were too scared to continue. As a result the movement died. But I decided right then to quit the union.

The union tried several forms of intimidation to keep me from quitting and beginning a chain of withdrawals. One of the most underhanded was what was called ` the escape clause '. All of CWA's contract prior to 1967 had an escape clause that was slated for 30 days prior to the final date of the existing contract. In order to quit the union, one must file within this 30-day period requesting to be removed from union roles. To evade this date, every contract bargaining from 1950 forward was always ***extended*** beyond the contract expirations date(whenever a delay in contract settlement existed) and with extensions, the contract would be carried forward in tact. Then a settlement would be reached and finalized and the 30-day escape period was over. When I threatened to take them to court over this they withdrew the escape clause from the final printing of the 1967 contract and allowed me out of the union after previously stating I would have to wait for the 1970 contract before I could exit the union.

Union abuse and flaunting of power continued. Some 1000 members up and down the eastern seaboard quit the union as a result of the publicizing my success. This angered CWA and it's leadership. All of us faced varying degrees of harassment and one Dale Richardson, even had his house burned down while he and his family were asleep. Union officials paid dearly in a monetary settlement as well as some serving jail time.

In 1970, CWA struck AT&T supposedly for wages. Joe Berne, then National president, brought us back to work for $.50 less per hour than what was initially offered by AT&T, but the CWA received a 'modified agency fee' contract. Under this contract there is a clause called 'Maintenance of Dues' which stated all new hired employees were given 30 days in which to join the union, or they must tender an amount equal to the union dues to the union, or quit the company or be fired. The union could not get the company to grandfather this clause. So once again the underhandedness of CWA was working its way back into controlling us while not representing us.

In 1974, CWA again struck AT&T. But this time for a reduced money settlement the union received 'Full Agency Shop'. Now all workers were forced to either join or tender an amount equal to union dues to the union. This was the final straw and while I had been considered to be a rebel without a cause, many now saw my cause and joined me.

In 1967, I began searching for ways to eliminate or at the very least reduce, the control CWA had over its workers. I spent hours in law libraries searching the Maryland Annotated Code in hopes of finding a law to stop this madness. A professor friend of mine informed me about an organization founded in 1956 to help workers fight union injustices. The National Right to Work Committee and Legal Defense Foundation (NRTWC) is a nonprofit organization drawing private donations from rank and file workers and foundations who are concerned about the unchecked power unions brandish. The NRTWC is blessed with a battery of legal minds second to none in the nation. They come from all facets of the legal profession including the Justice Department, the Department of Labor and experience as counsels for labor unions themselves. One afternoon in July of 1967, Duke Cadwaller, one of the founders of the Committee, met with myself and John Hurley, a co-complainant in *Beck* and listened to our story. Somewhat unbelieving, he decided the Committee would look further into the problem.

After several unsuccessful attempts to bring legal action against CWA, in June of 1976, we finally filed *Beck vs. CWA*. During our research, we found CWA was supporting political candidates with dues dollars. Upon receiving documents from within CWA headquarters itself, we discovered that while CWA purported giving only PAC moneys to candidates through their Congress on Political Education (COPE), they were indeed spending dues dollars also. (Ask yourself why you haven't heard anything about COPE over the last 15 years. Could it be because they no longer need an underhanded way to spend dues dollars and buy politicians and judges.?) When confronted CWA bosses arrogantly acknowledged the fact and in essence dared us to try and do something about it. The basis for our suit was that according to the National Labor Relations Act of 1947, dues payments were to be used for only three purposes; Bargaining, Grievance Handling and Arbitration. Therefore as these 'agency fee' payments were being taken from nonunion members, the law said the union could not spend these dollars on political activity supported by the union. They were in essence forcing us to support with my dues dollars political candidates , which went against my political and ethical viewpoint. I was being forced to vote against my own dollars.

In 1980, after many unscrupulous attempts by all of organized labor to keep this suit from coming to trial, District Judge James R. Miller found in my favor. He also found upon forced inspection of CWA's books, indeed 81% of all union dues was being spent for non bargaining activities. After impassioned pleas of 'foul' by CWA, AFL/CIO, Teamsters, UAW, IBEW, the unions attempt to establish a 'New Accounting System' and after compassionately allowing some questionable expenditures to be considered as union expenses, the judge finally agreed with the union that 81% was indeed too much and the figure was actually only 79%. We hand won but this was only the first step.

In November of 1984, CWA appealed the case to United States Court of Appeal for the 4th District. By in large the case was upheld although some elements were remanded to the lower court for further action. But after all was said and done, the Court of Appeals said that it was indeed illegal to spend ` agency fee' dollars for anything other than 'core administration costs' and 79% was an accurate picture of the misspent amount by CWA. CWA immediately appealed to the United States Supreme Court even though some of it's brother unions believed it unwise to push this case to the Supreme Court for a loss their would be disastrous for all unions because a landmark case of this magnitude would provide a tool which could ultimately be used against all unions.

On January 11,1988 the United States Supreme Court heard arguments from attorneys representing both sides. By June of 1988 the Supreme had spoken. In a 5-3 decision (because the 9th judge was not seated on the Court when the case was heard) found in total to my claims. They further supported the percentages and 20 long years of fighting one of the most powerful unions in America had come to an end...

Post Script

In 1978 my family and I moved to Portland Oregon to continue my career with the telephone company. People out here knew nothing of my case and that was OK with me. The toll group was represented by ORTT (IBEW) local. I was please with what I saw and supported ORTT with my 'agency fees' without protest. It wasn't long however, before I began seeing CWA moving into areas represented by ORTT. I tried to warn regional representative Larry Corderman of my fears of CWA begining a move to take over all Telco employees in the Oregon area (in fact of matter all the west) and he assured me "papers were in hand to prevent this from happening". ORTT lost representation of the 4E machine in Portland. ORTT lost representation for T carrier based systems although T based carrier is generally considered 'local' carrier and CWA had not been in this environment before. I met secretly on Swan Island three times with Ken Springer and Gene Gulliuame showing them documents from CWA headquarters of plans for CWA to begin moving strongly into the west. He too ignored my impassioned plea to protect ORTT's certification. (Ken never returned these papers).

I contacted Jack Beale, Gordy Neilson, Russ Cook and many others within ORTT to warn them and help them save ORTT's certification but to no avail. ORTT's certification rested on two job titles - Toll Testboardmen and Repeatermen - two fields CWA had no title for at the time. As CWA moved into the area more aggressively and began swapping work groups and having job titles changed, ORTT found itself representing people who were now also represented by CWA. Federal law allows for certification challenges within companies, where similar work groups performing the same job function and are represented by competing unions, to be able to petition the NLRB to 'accrete' those employee's from the least represented group into the larger group. Sound familiar.!!!! In 1992 US West made such a petition to the NLRB. Remember this was the contract year where Mountain Bell received a much improved contract and PNB received a total of 3% over the life of the contract (the last year saw only a raise of ½ of 1%)..

In April of 1992, President Bush signed and 'Executive Order' mandating all companies receiving federal contracts must notify their employees of their rights recovered under *Beck vs. CWA*. Were any of you notified.?? NO. US West drug it's feet at the bequest of the union who hoped Bill Clinton would be elected and who had already promised to set aside the 'Order' as a pay back to AFL - CIO for it's support. Remember AFL - CIO would not endorse the democratic candidate for President in 1988 against Mr. Bush. Still to this day most of you reading this paper have not been notified of your 'Beck Rights'.

It is my belief, if any of the ORTT officials I spoke with and tried to warn about CWA's advances, had listened and taken three simple steps, we could have saved ORTT's certification. If ORTT officials had;

A. Moved the headquarters into PNB's service area placing it within a larger BOC;
B. Broken ties and relations with IBEW International;
C. Removed 'agency fee' from it's contract;

ORTT's contract would have been significantly different from CWA';s and possibly the NLRB would have granted elections instead of just decertifying ORTT. My next direction is along these lines.

Union people have two directions to go to be free from CWA domination and lack of representation.

1. Join a movement to get your state to become a 'Right To Work State.' Right To Work allows workers the choice either to join or not to join unions. No 'agency fees', no mandatory membership - ONLY CHOICE. Or

2. Become a part of my efforts to organize discontented CWA members and agency fee payers.

I am presently working in both of these directions. To date (1992) I have 50 contact's from Port Angeles Washington to Kalamath Falls Oregon. These contact people represent up to 200 more workers who want out of CWA. If we can get other discontented CWA workers to join us, I am birthing a idea which not only will give us representation but a voice in our own union.

It is my plan to get enough people who will sign a petition of 'Vote of No Confidence in Representation' on the part of CWA. Petition in hand, I will try and organize these people into local organizations which will become the basis of our NEW organization. Each local organization will represent the employee's within it's area and each local organization will appoint members to the regional organization. Each region in the country will have a similar organization. This new organizations format (in order to be unique from CWA) will not associate with any International Union. We will discard 'agency fee' clauses from our contracts and will operate with the BOC within the region of the country in which the organization is formed. Our certification would be based upon the local and regional format never forming a larger entity. This provides for each area of the country representing their own specific needs and never being held bondage to 'Unified Bargaining' and other decisions outside their boundaries. When all this is in place, we will petition the NLRB to be recognized as a workers union in direct competition with CWA. None of the BOC's will have any input to these organizational plans and would be forced to bargain with us should the NLRB grant us certification. Sound tough.??? But unless we move forcibly to defend ourselves, we will always have to take what little protection and stipends CWA International wants the worker to have in any contract year based upon what deals it can strike with the company for it's own good. Whenever anyone asks "where would we be without CWA", ask them if they are one of those ready to be laid off or forced to move to another state to keep their jobs. REGARDLESS OF SENIORITY.

Beck vs. CWA reaches far and wide. Workers from California to New York are challenging unions (not just CWA) right to collect and use union dues with accountability. Workers from Montana to Florida are standing up an demanding worker rights no longer being provided by the International unions who have become large PAC's with only a political agenda. Workers throughout America are demanding representation but wanting more voice in a system which no longer speaks for the rank and file.

It took 22 years to get Beck vs. CWA decision from the court.s. This battle is not going to be easy. But if you ever want to have pertinent representation again within the phone company, it's going to take you and me to FORCE the change.

Are you up to the battle.???

Harry E. Beck Jr.
215-38-7292
1499 SE Anthony St.
Hillsboro, OR 97123
503-640-3132 Home
503-648-8086 FAX
E-Mail: hbeckjr@hevanet.com

Objective:

Seeking technical engineering or management position, where I may bring my technical skills into a leadership position with a company understanding the need to be a leader in digital communications.

Summary of Qualifications:

Last 2 years managed 3 workgroups. The 1st Team consists of 18 people engineering, installing and maintaining Emergency Power for Qwest Central Office and Switch environment for the State of Oregon. The second is Qwest's 3 man Alarm Team for the State of Oregon and the 3rd workgroup of 8 people maintains testability and remote testing for over 700 neighborhood Remote Terminal Digital Loop Carriers.

39 years within the Bell System performing technical functions dealing with AT&T Long Lines and local telephone transmission; Analog radio and carrier installation and maintenance; Digital radio and carrier installation and maintenance; Exposure to wireless and mobile communications; Management of installation and maintenance on central office power plants and emergency engines; Cooperative experience with the installation and alignment of antenna systems; Experience with digital and fiber optic networks and digital loop scriber carrier maintenance. Completed courses in ATM, and DSL with emphasis on the OSI platforms architecture.

Wrote changes and cooperated with Bell Labs engineers in writing technical changes to Bell System Practices dealing with TH Radio, TD-2 Radio and 152 volt inverters.

Special Skills:

1994-1999	Taught Alcatel (formerly DSC) Litespan DLC SONET fiber optic management including Test and Turn Up..
1982:	Taught analog radio systems and multiplexing for Clark County Community College in Vancouver.
1974-1977:	Tutored in mathematics for Charles County Community College in LaPlata, Md..

1976: Tutored elementary and junior high school students in mathematics and science for the State of Maryland.

1972-1976: Trained Bell employees on alignment and bench testing procedures of analog radio equipment.

Education: Formal

Qwest Certificates of Competency in leadership and management. Advanced courses in Power Management and Engineering.

BA. Degree - Mathematics
Warner Pacific College, Portland, Or.

BA Degree Business Management
Warner Pacific College, Portland, Or.

AA Degree - Engineering
Charles County Community College, LaPlata, Md.

AA Degree - Electronics and Computer Technology
Charles County Community College, LaPlata, Md.

United States Air Force
Complete extensive training in heavy ground radar.
Supervisors & Officers Training course

High School Diploma
LaPlata High School LaPlata, Md.

Education : Field Related

1994 - Present: Formal training on the Tellabs Digital Access Crossconnect System (DACS). Formal training on Northern Telcoms fiber optic OC-48 system and WDM fiber transmission. Experienced with NEC, Nortel, Fujitsu and Alcatel fiber transmission systems; Completed Advanced Telecommunications course with University of Phoenix; Completed Data Communications and Protocols with Aims college in Denver Colorado; LAN/WAN course with Aims college in Denver Colorado

1979 - 1984: Training in Collins Digital Radio and Multiplexing systems. Course study and installation on NEC wideband radio.

1961-1978: AT&T's basic electricity and electronics courses. AT&T training in Western Electric TD-2 and TH-2 radio maintenance. NEC, GE and Lenkurt training in short haul and SSB radio systems. Schooling from Harris Corporation in Air to Ground radio systems for military secure communications for Nightwatch and Presidential aircraft.

Experience:

1999 – Present: Manage 28 people in the Oregon Power Team, Oregon Alarm Team and the Oregon Test System Support Team. Managed over 300 jobs in power and alarming. Received Vice Presidential recognition for the Oregon Disaster Plan in preparation for Y2K. Presently credited with preparing and administrating a plan to save a million dollars worth of batteries.

1993 - 1999: Working in the Network Communications Department, performing maintenance and trouble clearance on all forms of multiplexing systems. Presently maintaining 3 Portland West Side offices and all facilities based equipment within these offices. Also performed technical training for new members in the work group.

1984-1993: Assigned toll alarm center. Monitored toll alarms for Washington and Oregon and eastern Idaho while continuing duties in the toll department. After divestiture assigned exclusively to the alarm center to help develop TASC alarm database.

1978-1984: Transferred to PNB in Portland from AT&T in Maryland into the toll department performing radio maintenance and carrier alignment, installation and repair. Was introduced to the first generation of Improved Mobile Telephone System in the State of Oregon. Turned up the first digital radio system in Oregon.

1960-1978: Worked for AT&T in a microwave relay central office doing maintenance and repair of all on site equipment. Maintained L-3 and L-4 underground cable. Performed antenna testing and alignment. Installed and maintained assorted Western Electric power plants, battery strings and emergency engines and turbines. Included design and rewiring plants to meet specific design requirements.

Military:

August 1965: Honorable Discharge. US Air Force

Nov. 1962 to August 65: Stationed Hebo AFS Air Defense Command in Hebo, Oregon. maintained several types of search and height finder radar's.

Oct. 1961 to Nov. 1962: Stationed Keesler AFB in Bilioxi, Mississippi for technical training in Heavy Ground Radar school..

Professional Affiliations and Licenses:

State of Oregon Electrical Journey's License - Limited Energy
2nd. Class FCC Radio Telephone License
NABER Technician Certification
Gideon's International
The American Legion
Board Member, Hillsboro Nazarene Church
Trustee and Board Member - Heritage Evangelical Christian School in Hillsboro.

Member of the National Right To Work Committee and Legal Defense Foundation , Springfield , VA.

Honors and Awards:

National Junior College All American Hall of Fame (Baseball) 1984

Everett M. Dirkson Award from National Right to Work Foundation, Springfield, Va.

Honorary recognition by American Institute of Economic Education in North Barrington, Mass.

US Supreme Court decision *Beck vs. CWA* in 1988

FACTS RE THE *BECK* 21%

In the *Beck* case, the United States District Court for the District of Maryland found that only 21% of the Communications Workers of America's dues was lawfully chargeable.[1] While it is technically true that the Court of Appeals "reversed" this finding, that is misleading.

In *Beck*, the Supreme Court did not review the lower courts' rulings about what percentage of CWA's spending was lawfully nonchargeable to Mr. Beck and other objecting nonmembers compelled to pay it dues to keep their jobs. The Court addressed only whether the National Labor Relations Act prohibits the use of compulsory dues for political, ideological and other nonbargaining activities. The Court answered that question affirmatively.[2]

The District Court's decision in *Beck* that CWA's lawfully chargeable percentage was a mere 21% was "reversed," but only in part, by the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit instructed the District Court to reconsider that ruling, because the District Court had used a standard of proof stricter than a preponderance of the evidence.[3] However, the Fourth Circuit also found that for certain categories of expenditures, such as politics, lobbying, organizing, and community services, the error was irrelevant, because the activities were not chargeable as a matter of law.[4] The court directed the District Court to reconsider only the remaining expenditures.[5] As to the latter, the Fourth Circuit recognized that, if the District Court's conclusion "was based on an absence of *any* evidence," use of the wrong standard of proof was "harmless" error.[5] The Court of Appeals suggested that was probably true for most, if not all, remaining expenditures.[7]

In the District Court on remand, CWA returned to Mr. Beck and his fellow nonmember Plaintiffs 100% of their dues, with interest, and released them from paying any dues for the rest of their employment with C & P Telephone.[8] CWA thus tacitly admitted that it could not meet even a mere preponderance of the evidence standard.

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[1] *Communications Workers v. Beck*, 487 U.S. 735, 740 (1988).

[2] *Id.* at 762-63.

[3] *Id.* at 740; *see Beck v. Communications Workers*, 776 F.2d 1187, 1209-10, 1212 (4th Cir. 1985), *aff'd en banc*, 800 F.2d 1280 (4th Cir. 1986), *aff'd*, 487 U.S. 735 (1988).

[4] *Beck*, 487 U.S. at 740-41; *see Beck*, 776 F.2d at 1210-12.

[5] *Beck* 487 U.S. at 741; *see Beck*, 776 F.2d at 1212-13.

[6] *Beck*, 776 F.2d at 1210.

[7] *See id.* at 1212-13.

[8] *See* Consent Order, *Beck v. Communications Workers*, No. M-76-839 (D. Md. Nov. 8, 1988); Letter from Defendants' Counsel to Smalkin, J., of 9/2/88 (copies attached for the record).

Additional Beck info
4 Pages

NOV 21 1980

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

HARRY E. BECK, JR., et al.,	:	
Plaintiffs,	:	
v.	:	Civil Action No. M-76-839
COMMUNICATIONS WORKERS OF AMERICA, et al.,	:	
Defendants.	:	

CONSENT ORDER

Upon agreement of the parties, it is hereby

ORDERED that this action be dismissed with prejudice on the following terms:

1. The defendant shall pay each plaintiff the following amount:

Doris Ambrose	$ 1,122.00
J. Brandon	658.00
Rue Downey	468.00
Kathleen Heil	319.00
Clay Lutz	468.00
Roland Merkle	567.00
Doris Morrow	263.00
Francis Phillips	1,145.00
Lois Stallings	4,218.00
Harry Swartz	3,394.00
John Hurley	5,731.00
H. Lipschultz	2,761.00
B. McGaughey	220.00
Marion Northrop	3,844.00
Mary Ana Cox	2,011.00
Ethel Merryman	2,042.00
Vivian Reedy	717.00
Barbara Russell	1,624.00

2. Those plaintiffs continuing in the employment of the Chesapeake and Potomac Telephone Company or any of its successors are relieved of any agency fee obligation for the duration of such employment.

3. Defendant shall pay plaintiffs $37,279.64 as reimbursement for the amount paid by plaintiffs as compensation to the Special Master as awarded in the Court's judgment of August 9, 1983, plus statutory interest on the aforesaid amount, computed from August 9, 1983.

4. The defendant shall pay plaintiffs $11,728.87 in costs as awarded in the Clerk's letter of November 21, 1983, plus statutory interest on the aforesaid amount, computed from November 21, 1983.

5. The defendant shall pay plaintiffs any costs actually awarded in this case by the Court of Appeals for the Fourth Circuit or the United States Supreme Court.

6. This is complete and final resolution of all claims made by plaintiffs against defendants in this case.

DATED: November 18, 1988

United States District Judge

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ABRAHAM L. ZWERDLING (1914-1987)

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VIRGINIA OFFICE
3315 WEBLEY COURT
ANNANDALE, VIRGINIA 22003

MARYLAND OFFICE
5207 BALTIMORE AVENUE
BETHESDA, MARYLAND 20816

September 2, 1988

Honorable Frederic N. Smalkin
United States District Court
101 West Lombard Street
Baltimore, MD 21201-2691

Re: **Beck, et al v. Communications Workers Of America, AFL-CIO (CWA) et al. Civil No. M76-839**

Dear Judge Smalkin:

This is to report that the parties have reached an agreement to settle this case on the following terms:

1. The Communications Workers will return to each plaintiff the agency fees paid under the agreement with C&P Telephone plus interest at ten percent per year;
2. Those plaintiffs still employed at C&P Telephone or any of its successors will be held harmless from any agency fee obligation for the duration of their employment;
3. The Communications Workers will pay to the plaintiffs the costs awarded in the Court's judgment of August 9, 1983, in the clerk's letter of November 21, 1983, and any costs award by the Court of Appeals or the Supreme Court.

We anticipate that the calculation of the fees paid by the plaintiffs can be completed by October 3, 1988. Once that

calculation is made, the parties will submit a final settlement agreement and a joint motion for voluntary dismissal incorporating that agreement.

In view of this agreement, the parties suggest that there is no need for the status conference scheduled for September 9, 1988, and request that it be cancelled.

Respectfully submitted,

Michael T. Leibig

James Coppess

Defendants' Counsel

SEEN AND AGREED TO:

HUGH L. REILLY

EDWIN VIEIRA

PLAINTIFFS' COUNSEL

APPENDIX F - WRITTEN STATEMENT OF ROBERT PENROD, BARTLOW, CALIFORNIA

Statement of Robert Penrod

Honorable Members of the House of Representatives:

My name is Robert Penrod. I want to sincerely thank this Committee for giving me the opportunity to appear here and provide a short summary of my ten-year legal battle with the Teamsters union and the NLRB.

For over 18 years I have worked at Fort Irwin, California, for various military contractors. Throughout my employment, I have been forced to accept representation by Teamsters Local 166, a union that I neither chose nor voted for. I originally became a member of Teamsters Local 166 because I was told that union membership was a requirement of my employment, and the union gave me no choice in the matter.

Indeed, Local 166 never provided me with any "initial Beck notice" concerning my right to remain a nonmember or pay only reduced dues, or of my right to object and receive audited financial disclosure concerning the union's activities.

When I learned of my right to be a nonmember under CWA v. Beck, 487 U.S. 735 (1988), I promptly resigned my membership in the Teamsters union and objected to supporting its political and ideological activities. The union's response was one of stonewalling and delay. Months went by with no reduction in dues or acknowledgment of my rights. My fellow employees who had also resigned from union membership and I were stymied in our efforts, until we called the National Right to Work Legal Defense Foundation.

In 1990 and 1991, with the help of the National Right to Work Legal Foundation,

several of my co-workers and I filed a series of three unfair labor practice charges against Teamsters Local 166, alleging various failures to comply with Beck.

On April 29, 1992, Local 166 entered into a settlement with the Regional Director of NLRB Region 31, promising to provide all nonmembers with adequate and timely notice of their rights, and to provide all objecting employees with adequate and independently audited financial disclosure. (Copy attached as Exhibit 1).

But almost before the ink was dry on the settlement agreement, the union was already violating it. The Teamsters local demanded that my fellow employees and I pay almost 94% of dues or be fired, and the union failed to provide adequate and audited financial disclosure for each level of the union hierarchy that received a portion of employees' dues money. The union gave me what it called a "statement of expenses." But this document was only a single, handwritten page of numbers, which contained no explanations of the union's activities, nor any explanations of the methodology used by the union to arrive at its 94% calculation. (Copy attached as Exhibit 2). None of the "schedules" or "breakdowns" that were mentioned were provided to me, and this "statement of expenses" was not accompanied by any notes or other written explanations of the criteria used by the union to arrive at the chargeable and nonchargeable allocation. Among the unexplained line items were entries such as "other expenses," "other refunds" and "other professional fees." Moreover, the "statement of expenses" provided no clue as to the identity of any of Local 166's affiliated unions which receive part of the dues, even

though the payments to these unnamed affiliates (presumably the "per capita" line item) make up 24.4% of Local 166's total expenditures. None of the objecting employees were given an iota of disclosure to explain or justify the expenditures and allocations for the International Brotherhood of Teamsters or any other affiliates of Local 166.

Based only upon this single page of "financial disclosure," the union demanded that my fellow employees and I begin immediately paying, as a condition of continued employment, 93.67% of its full monthly dues.

In 1992, after receiving these demands, we filed another unfair labor practice charge, alleging the new violations of the Beck ruling, and also asking that the prior settlement agreement be set aside because the union failed to comply with it. In 1993, the NLRB Regional Director revoked the prior settlement agreement, and in 1995 the case was transferred to the full NLRB in Washington for a decision.

At this point the case was frozen. For over 4 years, until 1999, no action whatsoever was taken by the five member NLRB in Washington. Our case sat, along with dozens of others, while we faced the constant prospect of discharge for failing to pay the dues that the union demanded.

Finally, in 1999, the NLRB ruled. Amazingly, after its inexplicable five year delay, a unanimous NLRB upheld the union's single handwritten page of numbers as adequate financial disclosure! International Brotherhood of Teamsters, Local 166 (DynCorp Support Services Operations), 327 N.L.R.B. No. 176 (1999). (Copy attached as

Exhibit 3). Citing its concern for the union's "time and expense" needed to make such disclosures, and explaining that the union was entitled to a "wide range of reasonableness," the Board concluded that the union had made a proper "judgment call" within its discretion. Not a single word was said about the plight of us individual employees, about our constitutional rights to refrain from supporting political activities we oppose, or about the fact that for almost ten years we were forced to work knowing that we could face discharge if we failed to pay what the union demanded.

Again with the help of the National Right to Work Legal Defense Foundation, we filed a petition for review with the U.S. Court of Appeals for the District of Columbia Circuit. It goes without saying that we could have never afforded this battle, nor would we ever have undertaken it, without the help of the National Right to Work Foundation.

In Penrod v. NLRB, 203 F.3d 41 (D.C. Cir. 2000) (Copy attached as Exhibit 4), the Court of Appeals granted our petition for review and reversed the NLRB decision, finding that "the Board's decision [was] unsupported by reasoned decision making and . . . in conflict with Supreme Court and circuit precedent." The Court of Appeals found that "the Board's decision reflects a classic case of lack of reasoned decision making."

Indeed, because the NLRB's decision was so lacking in legal support, the NLRB paid $17,016.30 in taxpayer money under the Equal Access to Justice Act to cover legal fees and expenses that were incurred on my behalf. That the NLRB went to extraordinary lengths to diminish my rights under Beck, and refuse to follow that decision, is

highlighted by the fact that legal fees are rarely awarded under the Equal Access to Justice Act, and can only be awarded when the NLRB's position is "not substantially justified." Obviously the NLRB's ruling against me was "not substantially justified" under any scenario.

Now, after more than a decade in litigation, I have a Court of Appeals victory, but my case is back before the NLRB. Virtually nothing has happened since the Court of Appeals remand in 2000. My co-workers and I have yet to ever see a shred of properly audited financial disclosure about what Teamsters Local 166 and its affiliates do with the dues money that they forcibly extracts from employees.

I'm sure I speak for a large group of the American workforce when I say, as your employer, I , we, them, would direct you to investigate the information given to you, formulate a solution to correct the injustices, and initiate a plan of rapid enforcement for the solution to insure our inalienable right to work without threat, duress, or harassment.

Ensure thru your efforts, that thousands of dollars of litigation and years of legal maneuvers are no longer needed to receive our rights that are supposed to be honored upon day one.

In conclusion, I say to this Honorable House, that in a free country like America, employees should not have to run a decade-long legal gauntlet like this in order to protect their cherished right to refrain from supporting causes they oppose. If I were forced to pay money to a specific church or religious group in order to keep my job, this would not for a minute be permitted in our great country. By the same token, no one for a minute should assume that it is fair or proper for me and my fellow employees to have to support with our hard earned money a Teamsters union that we just as vehemently oppose.

Committee on Education and the Workforce
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name: ROBERT PENROD

	Yes	No
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the Committee).		X

2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1998:

NONE

	Yes	No
3. Will you be representing an entity other than a government entity?		X

4. Other than yourself, please list what entity or entities you will be representing:

N/A

5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4:

NONE

6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1998, including the source and amount of each grant or contract:

NONE

	Yes	No
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list:		X

Signature: Robert Penrod Date: 4 May 2001

RESUME

NAME: Robert "Butch" Penrod

D.O.B. 17 October 1953

P.O.B. Buffalo, New York

EDUCATION: Ged Certificate, Wheel Vehicle Maint. Course, Tank Vehicle Maint. Course,Small Arms Maint. Course, M60A3TTS Tank Turret Maint Course, M2/M3 Bradley Fighting Vehicle Maint. Course,M1/M1IP Automotive and Turret Maint. Course, M901 Turret Maint. Course, M109 Series Turret Maint. Course, OTHERS LISTED ON SUPPLIMENTAL SHEETS..

HOME OF RECORD:

1350 East Flamingo Road
Apartment 1019
Las Vegas, Nevada
89119

MAILING ADDRESS:

Paradise Valley # 7
Barstow
California
92311

PHONE: 760-256-2907 760-963-1226

FROM 1 OCT 1996 TO PRESENT

During this time I have been employed by ITT Services Corp., P.O. Box 10339, NTC-Fort Irwin, California, 92310, 760-380-3789, as an Armorer..

I made initial diagnosis and located mechanical deficiencies and malfunctions on all equipment assigned to the small arms facility to include but not limited to: M2, M48, M85 , fifty caliber machine guns, M240 and M240C series 7.62 caliber machine guns, 4.2 inch mortars, 120mm mortars, and all other duties as assigned.

I have been tasked with the training of less experienced workers in repair and maintenance techniques and have also trained National Guard, Army Reserves, and Regular Army personnel in a small arms shop environment, to include but not limited to crew, organizational and Direct Support Maintenance.

FROM 4 NOV. 1988 TO 10 OCT. 1996

During this time I was employed by DynCorp Services Corp., National Training Center, Fort Irwin, California, 92310.

I began my employment as a track vehicle automotive specialist. My duties and responsibilities were to perform organizational and some limited DS,GS maintenance to all types of assigned military equipment such as but not limited to, M901TUA,M113, M548, M577, carrier class equipment and the M2-M3 Bradley Fighting Vehicles.

On or about 10 Feb 1989, I applied and was excepted, and transferred to the Heavy Track Maint. Facility, under DynCorp, and was given the duties and responsibilities of a tank turret maint. Tech.

RESUME CONTINUATION

I performed organizational, DS/GS, armament maint. on but not limited to M901TUV, M60A1RP, M60A3TTS, M1/M1IP and M109A2/A3/A5 Turret systems.

I was also required to perform technical inspections and maint. Verification before, during, and after Brigade Task Force Issues and Turn Ins.

FROM JAN. 1981 TO JAN. 1986

During this time I was employed by Boeing Services Int. at the National Training Center, Fort Irwin, California as a mechanical technician/turret technician. My duties and responsibilities were to perform organizational and limited DS/GS armament repairs to all types of military equipment such as, but not limited to, M48A5, M60A1, M109, M109A2/A3 howitzers and M901ITV/TUV vehicles.

While employed at Boeing, I was required to set up and train employees with no experience, in the operation of a Small Arms Shop. I was required to train other employees in the proper ways of receiving, issuing, turn in, repair, and proper paperwork, for but not limited to, M-2, M48, M85, fifty caliber machine guns, and M219, M60, M60D, M240, and M240C machine guns. We also were respocible for Tow Missile Guidance Systems, tripods, launch tubes, traversing units, and IR Trackers. I was required to instruct employees in the setting up of a corporate small arms shop to include records keeping, inventories, and accountability procedures.

In March of 1982 I applied and was accepted for the position of Armament Technical Leader. I was required to account for 7-17 employees to include, but not limited to, leave states, work assignments, quality control of employees work load, and health and welfare materials.

I was involved in and worked on issue and turn in of Brigade Task Force equipment, to include technical inspections, on the spot repairs, field support, inspection verification, turn in inspections, parts ordering, research and verification, and moral support of those employees under me.

THIS INFORMATION IS TRUE AND ACCURATE AS OF THIS DATE

ROBERT PENROD_____ DATE_____

FORM NLRB-4775
(8-461)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

In the Matter of *International Brotherhood of Teamsters, Local 166, AFL-CIO (Dyncorp Support Services Operations, Ft. Irwin Division)*
Cases 31-CB-8333 and 31-CB-8683

The undersigned Charged Party and the undersigned Charging Party, in settlement of the above matter, and subject to the approval of the Regional Director for the National Labor Relations Board, HEREBY AGREE AS FOLLOWS:

POSTING OF NOTICE—Upon approval of this Agreement, the Charged Party will post immediately in conspicuous places in and about its plant/office, including all places where notices to employees/members are customarily posted, and maintain for 60 consecutive days from the date of posting, copies of the attached Notice made a part hereof, said Notices to be signed by a responsible official of the Charged Party and the date of actual posting to be shown thereon. In the event this Agreement is in settlement of a charge against a union, the union will submit forthwith signed copies of said Notice to the Regional Director who will forward them to the employer whose employees are involved herein, for posting, the employer willing, in conspicuous places in and about the employer's plant where they shall be maintained for 60 consecutive days from the date of posting.

COMPLIANCE WITH NOTICE—The Charged Party will comply with all the terms and provisions of said Notice.

BACKPAY—The Charged Party will make whole the employees named below by payment to each of them of the amount opposite each name.

All union dues and fees collected from the following employees, with interest, from the time each became a non-member employee in the Dyncorp bargaining unit: Nadine Penrod, Robert Penrod, Clement Wierzbicki, John P. Burnham and Dennis Finley.

By entering into this Settlement Agreement, the Charged Party does not admit the commission of any unfair labor practices within the meaning of the Act.

This Settlement Agreement resolves all issues raised in Cases 31-CB-8333 and 31-CB-8683 except for the issue whether the Respondent has violated the Act by failing to give objecting nonmembers a breakdown of expenses for representational activities on a unit-by-unit basis. It is further understood that this Settlement Agreement resolves only issues raised in Cases 31-CB-8333 and 31-CB-8683, except the unit-by-unit issue, and in no other case that may be pending, or filed, in this or any other Regional office of the NLRB.

REFUSAL TO ISSUE COMPLAINT—In the event the Charging Party fails or refuses to become a party to this Agreement, and if in the Regional Director's discretion it will effectuate the policies of the National Labor Relations Act, the Regional Director shall decline to issue a Complaint herein *(or a new Complaint if one has been withdrawn pursuant to the terms of this Agreement)*, and this Agreement shall be between the Charged Party and the undersigned Regional Director. A review of such action may be obtained pursuant to Section 102.19 of the Rules and Regulations of the Board if a request for same is filed within 14 days thereof. This Agreement is contingent upon the General Counsel sustaining the Regional Director's action in the event of a review. Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in this case, as well as any answer(s) filed in response.

PERFORMANCE—Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of advice that no review has been requested or that the General Counsel has sustained the Regional Director.

NOTIFICATION OF COMPLIANCE—The undersigned parties to this Agreement will each notify the Regional Director in writing what steps the Charged Party has taken to comply herewith. Such notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. In the event the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that no review has been requested or that the General Counsel has sustained the Regional Director. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken in this case.

Charged Party: International Brotherhood of Teamsters, Local 166, AFL-CIO	
By: Name and Title	Date
[signature]	9/27/92
Recommended By:	Date
[signature]	10/2/92
Board Agent	

Charging Party: Nadine Penrod, Robert Penrod, Clement Wierzbicki, John P. Burnham, and Dennis Finley	
By: Name and Title	Date
Approved By:	Date
[signature]	APR 29 1993
Regional Director	

Exhibit

NOTICE TO EMPLOYEES AND MEMBERS

POSTED PURSUANT TO A SETTLEMENT AGREEMENT APPROVED BY A REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

The National Labor Relations Act gives all employees the right to join a union, to refrain from joining a union, and to resign from a union at any time. WE WILL NOT restrain or coerce employees in the exercise of any of these rights.

WE WILL NOT collect any dues or fees from nonunion-member employees employed in a bargaining unit or units we represent for collective-bargaining purposes, herein called the bargaining unit, at Dyncorp Support Services Operations, Ft. Irwin Division, herein called Dyncorp, without first providing said employees effective and timely notice of their rights, and appropriate information, pursuant to *CWA v. Beck*, 108 S. Ct. 2641 (1988).

WE WILL NOT collect any dues or fees from nonunion-member employees employed in the bargaining unit we represent at Dyncorp, who have objected to our expenditure of funds for non-representational purposes, without first providing to such objecting employees sufficient information, as described below, to enable them to enter an intelligent and informed challenge to our breakdown of expenditures.

Prior to collecting any dues or fees from any nonunion-member unit employee of Dyncorp, as described above, as well as from any new employee who is not a member, or from any member who resigns, WE WILL give each such employees the following Notice at least once a year, as soon as practicable after the close of our prior accounting year:

That a stated percentage of funds was spent by us in our last accounting year for non-representational activities;
That nonmembers can object to having their union-security payments spent on such activities;
That those who object will be charged only for representational activities;
That if they object, we will provide detailed information concerning the breakdown between representational and non-representational expenditures; and
If we have a "time window" for filing objections, our notice will set forth that information and the time period will be reasonable.

Upon receipt of any nonunion-member's objection to the expenditure of funds for non-representational purposes, WE WILL:

Refrain from charging such employee for those non-representational functions;
Provide that objector with information setting forth our major expenditures during our previous accounting year, verified by an independent accounting firm, distinguishing between representational and non-representational functions, informing the objector of the major categories of our expenses, whether we consider each expense to be representational or non-representational, the total sum of expenditures, and the percentages thereof that were representational and non-representational;
Provide that any such objector who disagrees with our determination of the appropriate percentage be given an opportunity to challenge that determination or the use of monies for particular purposes.
Place the full amount from any expenditure challenged by an objector into an interest-bearing escrow account while the matter is being resolved.

WE WILL insure that, with respect to any expenditure category reflecting payment to the International Brotherhood of Teamsters, or to any other Union affiliate, none of such funds was used to subsidize activities for which nonmembers may not be charge, or WE WILL provide an explanation of the share that was so used.

WE WILL reimburse the following unit employees for all dues and fees each has paid to us, with interest, from the time each became a non-member employee in a Dyncorp bargaining unit, to date: Nadine Penrod, Robert Penrod, Clement Wierzbicki, John P. Burnham, and Dennis Finley.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 166, AFL-CIO
(Union)

Dated_____ By:_____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office.

Region 31, Federal Building, Suite 10100, 11000 Wilshire Boulevard, Los Angeles, CA 90024-3634. Telephone: (310) 575-7137.

International Brotherhood of Teamsters, Local 166, AFL–CIO *and* Nadine and Robert Penrod and John P. Burnham, and Clement Wierzbicki and Dyncorp Support Services Operations, Fort Irwin Division, Party to the Contract. Cases 31–CB–8333, 31–CB–8683, and 31–CB–8938

March 23, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On November 21, 1994, the General Counsel of the National Labor Relations Board issued a fourth consolidated amended complaint alleging that the Respondent had violated Section 8(b)(1)(A) of the Act. The Respondent filed a second amended answer admitting in part and denying in part the allegations of the complaint, and raising certain affirmative defenses.

On May 9, 1995, the General Counsel filed a Motion for Summary Judgment with the Board, with exhibits attached. On May 11, 1995, the Board issued an order transferring proceedings to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response and opposition to the motion, and the General Counsel and the Charging Parties filed briefs in support of the motion.

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

Ruling on Motion for Summary Judgment

The pertinent facts are alleged in the complaint and, with one exception, have been admitted by the Respondent. That is, the Respondent admits the jurisdictional allegations, its status as the Charging Parties' collective-bargaining representative, and its having engaged in the conduct alleged to be unlawful.

The complaint also alleges, and the Respondent admits, that in disposition of Cases 31–CB–8333 and 31–CB–8683, the Respondent entered into an informal settlement agreement that was approved by the Acting Regional Director on April 29, 1992. The complaint further alleges that the Respondent violated the terms of the settlement agreement and vacates and sets aside the agreement. These latter allegations are denied in the Respondent's answer. In its response to the Notice to Show Cause, however, the Respondent does not pursue this argument. Accordingly, we find that the Respondent violated the terms of the settlement agreement, that the agreement was properly set aside, that there is no remaining dispute over the material facts as alleged in the complaint, and that this case therefore is appropriate for summary judgment. For the reasons set forth below, we find that the Respondent has violated Section 8(b)(1)(A) in several respects as alleged, but not in others, and we shall grant the Motion for Summary Judgment in part.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Dyncorp Support Services Operations, Fort Irwin Division, is a Delaware corporation with an office and place of business in Ft. Irwin, California, where it provides base operations services for the Department of Defense. In the course of those operations, Dyncorp annually purchases and receives goods valued in excess of $50,000 directly from suppliers located outside of California, and annually derives gross revenues in excess of $1 million. We find that Dyncorp is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The complaint alleges, and the Respondent has admitted, the following facts. The Respondent and Dyncorp have been parties to a series of collective-bargaining agreements covering production and maintenance employees, including an agreement which was effective from July 2, 1990, through September 30, 1992, and extended through January 31, 1993, and a successor agreement which was effective by its terms from February 1, 1993, through September 30, 1997. Both the 1990 agreement and the 1993 agreement contain a union-security clause that applies to the Charging Parties, who are employees of Dyncorp represented by the Respondent. The union-security clause requires employees represented by the Respondent to become and remain members of the Respondent as a condition of continued employment. The clause also states, however, that no employee shall be considered as having failed to maintain his membership as long as he pays uniform union dues and uniform initiation fees.[1]

Charging Parties Robert Penrod, Nadine Penrod, and Clement Wierzbicki have been employed by Dyncorp in the bargaining unit covered by the union-security clause since the 1980s. All three were at one time members of the Union. On or about July 1, 1990, Robert and Nadine Penrod advised the Respondent that they were resigning from the Union and exercising their right to become "objectors" within the meaning of *Communications Workers v. Beck*, 487 U.S. 735 (1988). On or about June 30, 1991, Wierzbicki notified the Respondent that he too was resigning from membership and exercising his right to be a *Beck* objector.

Charging Party John P. Burnham became an employee of Dyncorp in the bargaining unit covered by the union-

[1] There is no allegation that the union-security clause is unlawful.

security clause on about March 12, 1991. On about May 21, 1991, he informed the Respondent that he did not intend to become a member of the Union but was willing to be a "financial core" status employee within the meaning of *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963).

The complaint alleges, and the Respondent has admitted, that since February 20, 1990, the Respondent has spent part of the dues and fees collected from unit employees pursuant to the union-security clause on nonrepresentational activities—i.e., activities not germane to collective bargaining, grievance adjustment, and contract administration (representational activities)—within the meaning of *Beck*. The Respondent has further admitted that from the dates the Charging Parties resigned from or declined to join the Union through about October 9, 1992, it did not inform them that it spent a stated percentage of funds in its last accounting year for nonrepresentational activities; that they could object to having their dues spent on such activities; that, if they objected, they would be charged only for representational activities and would be given detailed information concerning the breakdown of expenses for representational and nonrepresentational purposes; and that if the Respondent has a "time window" for filing objections, it would provide them that information. The Respondent also admits that during the same period, it did not inform the Penrods and Wierzbicki, as objecting nonmembers, that it would not charge them for nonrepresentational functions; that it would provide them with information setting forth its major categories of expenditures during the previous year, verified by an independent accounting firm, distinguishing between expenses for representational and nonrepresentational functions, and informing them of its total expenditures and the percentages of the total that were representational and nonrepresentational; that they could challenge its determinations if they disagreed with them; and that it would place in escrow the amount of any expenditure that was challenged while the matter was being resolved.

It is also undisputed that, notwithstanding its failure to provide the above information, for various time periods set forth in the complaint, the Respondent collected approximately 93 percent of full union dues and fees from the Penrods and 100 percent of full dues and fees from Wierzbicki, and charged but did not collect from Burnham approximately 93 percent of full dues and fees. On about October 7, 1992, the Respondent reimbursed with interest all the above dues and fees.

On about October 9, 1992, the Respondent sent the Charging Parties letters concerning the above matters. In the letters, the Respondent informed the Penrods and Wierzbicki that their dues payments were being refunded. The letters stated that an independent auditor had rendered an opinion regarding the Respondent's expenditures for representational and nonrepresentational purposes in 1991, that a copy of the auditor's opinion was enclosed, along with a worksheet containing a statement of expenditures showing how the allocation of expenditures had been arrived at, and that the Charging Parties were expected to pay 93.67 percent of the full monthly dues for representational functions. The letters also set forth the provisions under which the Charging Parties could challenge the Respondent's calculations, and stated that any challenged amounts would be placed in escrow pending resolution of the challenge. Some of the information described as being enclosed in the letter was not, however, actually provided. Thus, the letter sent to Nadine Penrod did not include the statement of expenses. The letters to the other three Charging Parties included the auditor's report and statement of expenses, but did not include certain schedules referred to in the statement of expenses as accompanying items described as "benefits paid" and "other expenses" or a "breakdown" of an item designated as "per capita," nor did they contain explanations of "other refunds" and "other professional fees."

The complaint alleges that the Respondent violated Section 8(b)(1)(A) by failing and refusing to provide the information described above. The complaint also alleges that the information ultimately provided by the Respondent was impermissibly vague and inadequate and therefore violated Section 8(b)(1)(A).

In its answer, the Respondent denies that any of its actions were unlawful. In its response to the Notice to Show Cause, however, the Respondent argues only that it should not have to notify nonobjecting employees of any statutory rights they may have related to *Beck*.

B. Discussion

The Supreme Court in *Beck* ruled that a union may not, over the objection of dues paying nonmember employees, expend funds collected from such employees under a union-security provision on activities unrelated to collective bargaining, contract administration, or grievance adjustment.[2] In *California Saw & Knife Works*,[3] the Board held that a union that represents employees subject to a union-security clause violates its duty of fair representation if it fails to inform employees of their *Beck* rights before or at the time it first seeks to obligate them to pay dues.[4] We therefore reject the Respondent's con-

[2] 487 U.S. at 752–754.

[3] 320 NLRB 224 (1995), enfd. sub nom. *Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 119 S.Ct. 47 (1998).

[4] 320 NLRB at 233.

The Board based its holdings in *California Saw* solely on its assessment of the requirements of the duty of fair representation. It explicitly found that constitutional principles do not apply under the NLRA, where state action in the union-security context is absent. Id. at 226–228. To the extent that the parties' arguments are based on public sector cases involving state action and constitutional principles, then, those arguments have already been rejected for the reasons discussed in *California Saw*.

tention that it should not have to notify nonobjectors of their statutory rights as they relate to *Beck*.

The Board held that the duty of fair representation requires unions to give additional information to nonmember employees who object to having any portion of their dues and fees spent for nonrepresentational purposes. Thus, the Board found that

> when or before a union seeks to obligate an employee to pay fees and dues under a union-security clause, the union should inform the employee that he has the right to be or remain a nonmember and that nonmembers have the right (1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to intelligently decide whether to object; and (3) to be apprised of any internal union procedures for filing objections. If the employee chooses to object, he must be apprised of the percentage of the reduction, the basis for the calculation, and the right to challenge these figures.[5]

Applying the above principles, we first find that the Respondent has failed to provide Burnham the initial notice required under *California Saw*. Thus, even though it attempted (unsuccessfully) to collect dues and fees from Burnham after he expressed his intention not to join the Union, the Respondent admittedly failed to inform him that he had the right to object to having his dues and fees spent on nonrepresentational activities and that, if he objected, he would be charged only for representational activities. Accordingly, we find that the Respondent failed to comply with its duty of fair representation, and therefore violated Section 8(b)(1)(A), by failing to provide Burnham the above information.

We reject, however, the General Counsel's contention that the requisite initial *Beck* notice to nonmembers must include the percentage of union funds that was spent on nonrepresentational activities in the last accounting year. The Board in *California Saw* held that a union is required to inform only objectors, not nonmembers in general, of the percentage by which dues and fees are reduced for objectors.[6] That is because, to calculate the percentage reduction in dues and fees for objectors, a union must break down all of its expenditures into chargeable and nonchargeable categories and have its expenditure information independently verified.[7] This can be an expensive and timeconsuming undertaking. It is required of unions that are attempting to collect dues and fees from *Beck* objectors. If, unlike here, there are no objectors in the unit, however, we do not think that the duty of fair representation nevertheless requires the union to go to the trouble and expense of preparing this information in case some employee might object in the future.

In reaching this conclusion, we emphasize that we are analyzing the Respondent's conduct under the duty of fair representation, and consequently are required to allow it a "wide range of reasonableness" in serving the employees it represents.[8] A union violates its duty of fair representation if its actions are "arbitrary, discriminatory, or in bad faith."[9] Although some unions may decide to notify nonobjectors of the percentage of dues spent for nonrepresentational purposes, the decision whether or not to do so strikes us as a judgment call. We therefore find no basis for concluding that the Respondent acted "arbitrarily, discriminatorily, or in bad faith" simply by failing to provide that notice, or that its conduct fell outside the "wide range of reasonableness" afforded bargaining representatives. Accordingly, the Respondent's failure to provide that information to Burnham, who is not alleged to be an objector, was not unlawful.[10] As we

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[5] 320 NLRB at 233 (fn. omitted). *California Saw* addressed only the rights of nonmembers under *Beck* and *General Motors*, because the complaint in that case did not allege an unlawful failure to inform union *members* that they have the right to resign their membership and that, if they do resign, they will have rights under *Beck*. In a companion case, however, the Board held that all employees, including union members, must be informed of their *General Motors* and *Beck* rights. *Paperworkers Local 1033 (Weyerhaeuser Paper Co.)*, 320 NLRB 349 (1995), reversed on other grounds sub nom. *Buzenius v. NLRB*, 124 F.3d 788 (6th Cir. 1997), vacated 119 S.Ct. 442 (1998). There is no allegation in this case that employees have not been notified of their *General Motors* rights. We therefore find no violation in that respect.

[6] Id.

[7] *AFTRA (KGW Radio)*, 327 NLRB No. 97 (Jan. 28, 1999).

[8] See *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953).

[9] *Air Line Pilots v. O'Neill*, 499 U.S. 65, 67 (1991), citing *Vaca v. Sipes*, 386 U.S. 171, 190 (1967).

[10] Some courts have found that such information must be provided to *potential* as well as to actual objectors. We do not find those decisions controlling. As we have noted, public sector cases decided solely on constitutional grounds are not controlling under the NLRA, where state action is not involved. *California Saw*, 320 NLRB at 226–228. Thus, cases such as *Damiano v. Matish*, 830 F.2d 1363 (6th Cir. 1987), which find that such notice to nonobjecting public sector employees is constitutionally mandated, do not require the same result under the NLRA. The Supreme Court's decision in *Chicago Teachers Union Local I v. Hudson*, 475 U.S. 292 (1986), also states that information concerning the source of agency fees must be given to "potential objectors." In referring to "objectors," however, the Court clearly meant nonmember employees who already were paying reduced dues and fees and who might object to the union's allocations and dues reductions—i.e., employees we would call potential "challengers." It was not referring to employees who may, in the future, object to the use of their dues and fees for nonrepresentational purposes—i.e., employees whom we would term potential *Beck* objectors. Thus, although *Hudson* was decided under "basic considerations of fairness" as well as under constitutional principles, and therefore is applicable under the NLRA, it does not require unions to notify potential *Beck* objectors of the percentage reduction in dues and fees for nonmember objectors. The panel majority in *Abrams v. Communications Workers*, 59 F.3d 1373 (D.C. Cir. 1995), found *Hudson* applicable to the notice required for potential *Beck* objectors, but that decision was not concerned with the issue of whether those employees must be apprised of the percentage dues reduction for objectors. To the extent that the majority's decision may be read as extending to that issue, we agree with the dissenting judge that *Hudson* is not persuasive authority for that proposition, and we respectfully decline to follow the majority in this regard.

find below, the Respondent unlawfully failed to provide that information to the other Charging Parties, but only because they were objectors.

The Respondent also admits that it failed to inform the Charging Parties of any "time window" for filing objections. However, because there is no showing that any such "window" existed, we are unable to find that the Respondent acted unlawfully in this respect.

We next find that the Respondent unlawfully failed to provide to the Penrods and Wierzbicki the information to which they were entitled as objectors under *California Saw* as long as they were being required to pay dues. Thus, the Respondent admits that, from the dates they became objectors through October 9, 1992, it failed to inform them that it would not charge them for nonrepresentational activities,[11] of the percentage by which their dues and fees would be reduced, the basis for the calculation,[12] and that they would have an opportunity to challenge the Respondent's determination. We find that the Respondent violated its duty of fair representation, and hence Section 8(b)(1)(A), by failing to provide this information in a timely fashion.[13]

We also find that, even when the Respondent belatedly furnished information to the Charging Parties, it continued to violate its duty of fair representation by failing to provide Nadine Penrod with the statement of expenses accompanying the auditor's letter. As a result of that failure, the Respondent never informed her of the basis for its calculation of dues and fees reductions for objectors, as required by *California Saw*. We agree with the General Counsel that, without the statement of expenses, she lacked a basis for deciding whether to challenge the Respondent's dues reduction calculations and that, as a result, the disclosure to her was insufficient to that extent.

However, we reject the General Counsel's and the Charging Parties' contention that the information which the Respondent belatedly furnished the other objectors was inadequate. In *California Saw*, the Board held that the duty of fair representation requires that objectors be informed of the percentage reduction in dues and fees for nonchargeable expenditures, the basis for the calculation, and the right to challenge the figures.[14] The Respondent provided that information, and we find no merit to the argument that the form in which it was provided was unacceptable. In this regard, the Board in *California Saw* observed 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."[15] That purpose, the Board found, is achieved when the union discloses its major categories of expenditures.[16] The Board approved the limited use of mixed category expenditures (that is, categories that may include both chargeable and nonchargeable items), provided that the major categories of expenditures are disclosed and that there is no allegation that the mixed categories are so unreasonably large as to suggest that the union is using them in an attempt to hide nonchargeable expenses.[17]

We find that the Respondent has satisfied the *California Saw* requirements in this respect. Thus, the Respondent furnished Robert Penrod and Wierzbicki with the auditor's worksheets, which disclosed the major categories of its expenditures, together with its calculations of the amounts and percentages of each category and of its total spending that were attributable to representational and nonrepresentational activities.[18] There is no allegation that the Union was attempting to manipulate its mixed expense categories in order to conceal nonchargeable expenses. Accordingly, although the Respondent unlawfully delayed in furnishing the notice to objectors, we find that it did not violate its duty of fair representation by presenting the information in the form described above.[19]

In reaching this conclusion, we reject certain arguments raised by the General Counsel and the Charging Parties. First, we do not agree that the Respondent was required to furnish the "breakdown" accompanying the "per capita" item, or the schedules accompanying "benefits paid" and "other expenses." The Board in *California Saw* explicitly rejected any such requirement.[20]

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[11] Although the Board in *California Saw* did not specifically state that a union must inform objectors that it will refrain from charging them for nonrepresentational functions, such a communication is implicit in the requirement that the union divulge the percentage by which dues and fees will be reduced.

[12] The Respondent admits that it failed to inform the objectors of its major categories of expenditures, the percentages of each item that were representational and nonrepresentational, and the total of the expenditures.

[13] There is no merit, however, in the allegation that the Respondent unlawfully failed during this period to *tell* the objectors that the information it would provide them would be verified by an independent accounting firm. *California Saw* imposes no such requirement; see 320 NLRB at 233. We note that the information belatedly furnished to the Charging Parties (except for Nadine Penrod) included statements that the expense breakdown provided had been audited by a certified public accountant in accordance with generally accepted auditing standards. There is no contention that this verification was insufficient. Thus, the verification issues presented in *Ferriso v. NLRB*, 125 F.3d 865 (D.C. Cir. 1997), denying enf. and remanding *Electronic Workers IUE (Paramax Systems Corp.)*, 322 NLRB 1 (1996), and *AFTRA (KGW Radio)*, supra, are not before us.

[14] 320 NLRB at 233.

[15] Id. at 240 (citations omitted).

[16] Id. at 239.

[17] Id. at 240.

[18] The Respondent provided the same information to Burnham. As Burnham was not an objector, the sufficiency of the objector notice provided to him is irrelevant, as the General Counsel implicitly recognizes in his brief.

[19] See *Teamsters Local 443 (Connecticut Limousine Service)*, 324 NLRB 633, 635 (1997).

[20] 320 NLRB at 239.

Second, we disagree with the contention that the items "per capita," "benefits paid," "other professional fees," "other refunds," and "other expenses"—either with or without supporting schedules—are so vague and imprecise that objectors would be unable to make an intelligent decision about whether to challenge the Respondent's determinations. *California Saw* requires only that unions disclose their major spending categories, and those will often, as here, be somewhat general in character. While unions should not aggregate information in general categories to such an extent that it would be unhelpful to objectors who are trying to decide whether to challenge a union's calculations, at the same time it is obvious that unions must be able to aggregate their expenses to some degree if they are to keep their disclosures to a manageable length. Under these circumstances, we think that unions must be allowed considerable discretion in deciding how many subcategories of spending to group together for purposes of objector notice, and must be afforded a "wide range of reasonableness" in exercising that discretion.[21] We therefore reaffirm the Board's holding in *California Saw* that when a union has informed objectors of the major categories of its spending and the percentages of each category that it considers chargeable and nonchargeable, and there is no allegation that it is attempting to conceal nonchargeable expenses among chargeable expenses, it has complied with its duty of fair representation.[22]

We also find no merit to the Charging Parties' argument that the Respondent unlawfully failed to identify its affiliates which received the sums designated "per capita" and to provide a breakdown of those entities' expenditures.[23] We do not find that the Respondent was required to disaggregate this category at this stage by identifying the specific recipients for the reasons already discussed.

Contrary to the Charging Parties' contention, we do not think that *Hudson* requires a different result. In that case, the union paid more than half its income to affiliated organizations, but informed nonmembers only that they were required to pay 95 percent of full dues. It did not inform them of the basis on which it was charging them that amount or, apparently, anything regarding how the amounts transferred to affiliates were spent or what percentages were chargeable and nonchargeable. In that context, the Court remarked in a footnote that "either a showing that none of [the amount paid to affiliates] was used to subsidize activities for which nonmembers may not be charged, or an explanation of the share that was so used was surely required."[24] Here, by contrast, the Respondent broke down its expenditures into 19 categories, 1 of which was "per capita," and informed the objectors of the percentages of each category that it considered chargeable and nonchargeable. Thus, the objectors have been apprised of the chargeable and nonchargeable portions of those payments in the aggregate. We do not read *Hudson* as requiring at this stage a detailed breakdown of the payments to each separate affiliate.[25]

Finally, we reject the Charging Parties' contention that the Respondent's disclosure was inadequate because it did not explain *how* the Respondent arrived at its estimates of chargeable and nonchargeable expenditures and its fee reductions. As the Seventh Circuit Court of Appeals has remarked in response to the same kind of argument, "if it did, the notice would be as long and complicated as an SEC prospectus."[26] The court discerned no reason for imposing such a requirement, and neither do we.

With regard to all the foregoing arguments, we repeat the Board's observation in *California Saw* that the burden of challenging a union's disclosures concerning its spending categories is relatively light. In a challenge procedure before an impartial arbitrator, the union ultimately bears the burden of justifying any challenged expenditures.[27] Accordingly, we find that the Respondent did not violate its duty of fair representation by providing notice to the objectors in the form described above; should the objectors desire further information or explanation, they can avail themselves of the challenge procedure.[28]

CONCLUSIONS OF LAW

1. Dyncorp Support Services Operations, Fort Irwin Division,is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(b)(1)(A) of the Act by failing to inform John P. Burnham of his *Beck* rights before seeking dues and fees from him under the union-security clause, by failing to provide the notice to

[21] See *Ford Motor Co. v. Huffman*, supra.

[22] See *California Saw*, 320 NLRB at 239–240.

[23] With respect to the "per capita" item, the complaint alleges, and the General Counsel argues, only that the term is ambiguous and that the "breakdown" referred to on the worksheet should have been provided. Although the Board in *Connecticut Limousine*, supra, found that the union's disclosures respecting the per capita tax, which included a schedule showing the specific organizational unit of the International union to which the tax was paid, were adequate, see 324 NLRB at 635, it did not purport to overrule the holding in *California Saw* that unions are not required to furnish supporting schedules. See 320 NLRB at 239.

[24] 475 U.S. at 307 fn. 18.

[25] The Charging Parties also rely on *Tierney v. City of Toledo*, 917 F.2d 927, 937 (6th Cir. 1990), and *Weaver v. University of Cincinnati*, 942 F.2d 1039, 1046 (6th Cir. 1991), as requiring more detailed disclosures. Those cases, however, were decided on constitutional grounds. For the reasons already discussed, we do not find them dispositive under a duty of fair representation analysis.

[26] *Gilpin v. American Federation of State, County & Municipal Employees, AFL–CIO*, 875 F.2d 1310, 1316 (1989).

[27] 320 NLRB at 240.

[28] There is no contention that the Respondent's procedures for challenging its disclosures are unlawful.

the objecting Charging Parties required under *California Saw* while continuing to collect dues and fees from them, and by failing thereafter to provide Nadine Penrod a copy of its 1991 statement of expenses.

REMEDY

Having found that the Respondent has violated Section 8(b)(1)(A) of the Act, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to notify Burnham in writing of his initial *Beck* rights, to notify the other Charging Parties in writing of their right as objectors not to be charged for nonrepresentational activities, and to furnish Nadine Penrod a copy of its 1991 statement of expenses.[29]

We find no merit in the argument that the Respondent should refund all dues and fees collected from the Charging Parties and from other nonmembers and that make-whole relief should be awarded to employees other than nonmember objectors. With regard to the Charging Parties, the record establishes that Burnham paid no dues or fees between July 1991 and January 1992 (and there is no evidence that he paid dues or fees at other times covered by the complaint). The record also establishes that the Respondent has already refunded, with interest, the dues and fees it collected from the Penrods and Wierzbicki since they objected. Thus, no make-whole relief is owed to the Charging Parties.[30]

As for other employees, the complaint does not allege, and the record does not establish, that the Respondent failed to inform any unit employees besides the Charging Parties of their rights under either *General Motors* or *Beck*. We therefore find no basis for extending relief to any other employees.[31]

ORDER

The National Labor Relations Board orders that the Respondent, International Brotherhood of Teamsters, Local 166, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing to inform nonmember unit employees, when it first seeks to obligate them to pay dues and fees under a union-security clause, of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to the Respondent's duties as bargaining agent, and to obtain a reduction in dues and fees for such activities.

(b) Failing to inform objecting nonmembers from whom its seeks to collect dues and fees of the percentage reduction in dues and fees for union activities that are not germane to the Respondent's duties as bargaining agent, the basis for the calculation, and their right to challenge the figures.

(c) Charging nonmember unit employees for nonrepresentational activities after they have filed *Beck* objections.

(d) 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. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify John P. Burnham, in writing, of his right to be and remain a nonmember and of the rights of nonmembers under *Communications Workers v. Beck*, to object to paying for union activities not germane to the Respondent's duties as bargaining agent, and to obtain a reduction in dues and fees for such activities. In addition, this notice must include sufficient information to enable Burnham intelligently to decide whether to object, as well as a description of any internal union procedures for filing objections.

(b) Notify Robert Penrod, Nadine Penrod, and Clement Wierzbicki, in writing, of their rights as objectors under *Communications Workers v. Beck* not to be charged for nonrepresentational activities.

(c) Provide Nadine Penrod with its 1991 statement of expenses.

(d) Within 14 days after service by the Region, post at its union hall offices copies of the attached notice marked "Appendix."[32] Copies of the notice, on forms 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 employees and members are customarily placed. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a re-

[29] Although the Respondent initially failed to provide the Penrods and Wierzbicki with the objector notice required by *California Saw*, it ultimately did provide that notice in what we have found to be an acceptable fashion, except for its failure to furnish Nadine Penrod with the 1991 statement of expenses. Accordingly, except as stated above, we shall not require any further notice to the objectors.

[30] Although the Respondent's October 9, 1992 letter informed Nadine Penrod that she would be required to pay 93.67 percent of full union dues, there is no evidence that she paid any dues after she received that letter.

[31] *Monson Trucking*, 324 NLRB 933, 936 and fn. 9 (1997); and *Production Workers Local 707 (Mavo Leasing)*, 322 NLRB 35, 36 fn. 2 (1996).

[32] 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."

sponsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 23, 1999

Sarah M. Fox, Member

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND 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 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 fail to inform nonmember unit employees, when we first seek to obligate them to pay dues and fees under a union-security clause, of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), to object to paying for union activities not germane to our duties as bargaining agent, and to obtain a reduction in dues and fees for such activities.

WE WILL NOT fail to inform objecting nonmembers from whom we seek to collect dues and fees of the percentage reduction in dues and fees for union activities that are not germane to our duties as bargaining agent, the basis for the calculation, and their right to challenge the figures.

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

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 notify John P. Burnham, in writing, of his right to be and remain a nonmember and of the rights of nonmembers under *Communications Workers v. Beck* to object to paying for union activities not germane to our duties as bargaining agent, and to obtain a reduction in fees for such activities. In addition, this notice will include sufficient information to enable Burnham intelligently to decide whether to object, as well as a description of any internal union procedures for filing objections.

WE WILL notify Robert Penrod, Nadine Penrod, and Clement Wierzbicki, in writing, of their rights as objectors under *Communications Workers v. Beck* not to be charged for nonrepresentational activities.

WE WILL provide Nadine Penrod with our 1991 statement of expenses.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 166, AFL–CIO

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H

United States Court of Appeals,
District of Columbia Circuit.

Robert PENROD, et al., Petitioners,
v.
NATIONAL LABOR RELATIONS BOARD, Respondent.
International Brotherhood of Teamsters, Local 166, Intervenor.

No. 99-1121.

Argued Jan. 7, 2000.
Decided Feb. 22, 2000.

Employees petitioned for review of an order of the National Labor Relations Board (NLRB), 1999 WL 170689, ruling that union provided employees with adequate information regarding their right under Communications Workers of America v. Beck to pay only that portion of union dues attributable to collective bargaining, contract administration, and grievance adjustment. The Court of Appeals, Tatel, Circuit Judge, held that: (1) NLRB did not engage in reasoned decisionmaking in determining that list of general expenditure categories provided by union, in response to Beck objection, was sufficient to allow employees to determine whether to challenge reduced fee calculation; (2) union was required to explain how its affiliated unions used money that union considered chargeable to Beck objectors; and (3) initial Beck notice given by union to new employees and financial core payors, i.e., those employees who are not full union members, must identify percentage reduction in dues that would result from a Beck objection.

Review granted.

Tatel, Circuit Judge, filed concurring opinion.

West Headnotes

[1] **Labor Relations ⇦104**
232Ak104 Most Cited Cases

Under NLRA, unions may negotiate union security provisions allowing them to collect dues from all members of a bargaining unit, including those who decline full union membership, and employees who choose not to become full union members are called "financial core payors." National Labor Relations Act, § 8(a)(3), as amended, 29 U.S.C.A. § 158(a)(3).

[2] **Labor Relations ⇦104**
232Ak104 Most Cited Cases

Unlike full union members and non-member financial core payors, employees who object to funding union's nonrepresentational activities, called "Beck objectors," pay reduced dues, and Beck objectors are also known as "potential challengers" because they have a right to challenge union's calculation of the reduced dues. National Labor Relations Act, § 8(a)(3), as amended, 29 U.S.C.A. § 158(a)(3).

[3] **Labor Relations ⇦104**
232Ak104 Most Cited Cases

Union bears the burden of justifying its calculation of reduced dues in response to Beck objector's challenge to union's calculation, reflecting reduction for nonrepresentational activities. National Labor

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Relations Act, § 8(a)(3), as amended, 29 U.S.C.A. § 158(a)(3).

[4] **Labor Relations ⇨219**
232Ak219 Most Cited Cases

The judicially created duty of fair representation reflects the principle that a union's status as exclusive representative of employees in a bargaining unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct. National Labor Relations Act, § 9(a), as amended, 29 U.S.C.A. § 159(a).

[5] **Labor Relations ⇨219**
232Ak219 Most Cited Cases

Unions breach their duty of fair representation when their conduct toward members of a bargaining unit is arbitrary, discriminatory, or in bad faith. National Labor Relations Act, § 9(a), as amended, 29 U.S.C.A. § 159(a).

[6] **Labor Relations ⇨598**
232Ak598 Most Cited Cases

National Labor Relations Board (NLRB) did not engage in reasoned decisionmaking in determining that list of 19 general expenditure categories provided by union, in response to Beck objectors' request for reduced union dues to avoid any spending on nonrepresentational activities, was sufficient to allow objectors to determine whether to challenge reduced fee calculation, where Board simply cited to Seventh Circuit case that was factually distinguishable. National Labor Relations Act, §§ 8(a)(3), 9(a), as amended, 29 U.S.C.A. §§ 158(a)(3), 159(a).

[7] **Labor Relations ⇨104**
232Ak104 Most Cited Cases

In its response to Beck objectors' request for reduced union dues to avoid any spending on nonrepresentational activities, union was required to explain how its affiliated unions used money that union considered chargeable to objectors, where union disclosed that over 90% of the amount paid to its affiliates, representing almost 25% of union's total expenditures, was chargeable to Beck objectors. National Labor Relations Act, §§ 8(a)(3), 9(a), as amended, 29 U.S.C.A. §§ 158(a)(3), 159(a).

[8] **Labor Relations ⇨104**
232Ak104 Most Cited Cases

Initial Beck notice given by union to new employees and financial core payors, i.e., those employees who choose not to become full union members, must identify the percentage reduction in dues that would result from a Beck objection, by which objectors would assert their right to pay only that portion of union dues attributable to collective bargaining, contract administration, and grievance adjustment. National Labor Relations Act, §§ 8(a)(3), 9(a), as amended, 29 U.S.C.A. §§ 158(a)(3), 159(a).

[9] **Labor Relations ⇨104**
232Ak104 Most Cited Cases

New employees and financial core payors, i.e., those employees who choose not to become full union members, must be given the same information as Beck objectors who assert their right to pay only that portion of union dues

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attributable to collective bargaining, contract administration, and grievance adjustment. National Labor Relations Act, §§ 8(a)(3), 9(a), as amended, 29 U.S.C.A. §§ 158(a)(3), 159(a).

[10] **Labor Relations ⇐104**
232Ak104 Most Cited Cases

Particular challenge to initial Beck notice provided by union regarding nonmembers' right to pay only that portion of union dues attributable to collective bargaining, contract administration, and grievance adjustment, by which petitioners challenged method used to calculate reduced fee, could not be raised on petition for review in Court of Appeals, since petitioners failed to raise method of calculation issue in proceedings before National Labor Relations Board (NLRB), where unfair labor practice charge and General Counsel's complaint referred only to financial information designed for Beck objectors, not to initial Beck notice given to new employees and financial core payors. National Labor Relations Act, §§ 8(a)(3), 9(a), as amended, 29 U.S.C.A. §§ 158(a)(3), 159(a).

***43** **173 On Petition for Review of an Order of the National Labor Relations Board.

Glenn M. Taubman argued the cause and filed the briefs for petitioners.

Jill A. Griffin, Attorney, National Labor Relations Board, argued the cause for respondent. With her on the brief were Linda Sher, Associate General Counsel, Aileen A. Armstrong, Deputy Associate General Counsel, and Peter D. Winkler, Supervisory Attorney. John D. Burgoyne, Deputy Associate General Counsel, entered an appearance.

James B. Coppess argued the cause for intervenor. With him on the brief was Gary S. Witlen.

Before: WILLIAMS, RANDOLPH and TATEL, Circuit Judges.

Opinion for the Court filed by Circuit Judge TATEL.

Concurring opinion filed by Circuit Judge TATEL.

TATEL, Circuit Judge:

This petition to review a decision of the National Labor Relations Board requires us to consider what information a union's duty of fair representation requires it to give employees about their right under Communications Workers of America v. Beck, 487 U.S. 735, 108 S.Ct. 2641, 101 L.Ed.2d 634 (1988), to pay only that portion of union dues attributable to "collective bargaining, contract administration, and grievance adjustment." Id. at 745, 108 S.Ct. 2641. The Board held that unions have no obligation to tell employees who have not yet exercised their Beck rights what percentage of dues are spent on nonrepresentational activities. The Board also ruled that the union in this case had given employees who had chosen to exercise their Beck rights sufficient information to satisfy its duty of fair representation. Finding a portion of the

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Board's decision unsupported by reasoned decisionmaking and the remainder in conflict with Supreme Court and circuit precedent, we grant the petition for review.

***44 **174 I**

[1][2][3] Section 8(a)(3) of the National Labor Relations Act gives unions the right to negotiate union security provisions allowing them to collect dues from all members of a bargaining unit, including those who decline full union membership. 29 U.S.C. § 158(a)(3); Marquez v. Screen Actors Guild, Inc., 525 U.S. 33, 119 S.Ct. 292, 296, 142 L.Ed.2d 242 (1998). Employees who choose not to become full union members are called "financial core" payors. *See* NLRB v. General Motors Corp., 373 U.S. 734, 742, 83 S.Ct. 1453, 10 L.Ed.2d 670 (1963). In Beck, the Supreme Court held that section 8(a)(3) does not obligate employees "to support union activities beyond those germane to collective bargaining, contract administration, and grievance adjustment." 487 U.S. at 745, 108 S.Ct. 2641. Unlike full union members and financial core payors, employees who object to funding nonrepresentational activities, called "Beck objectors," pay reduced dues. Beck objectors are also known as "potential challengers" because they have a right to challenge the union's calculation of the reduced dues; in response to such challenges, the union bears the burden of justifying its calculation. *See* California Saw & Knife Works, 320 NLRB 224, 240, 1995 WL 791959 (1995).

Petitioners Robert Penrod, Nadine Penrod, and Clement Wierzbicki, long-time employees of DynCorp Support Services Operations, resigned from their union, International Brotherhood of Teamsters, Local 166, and exercised their Beck rights. Petitioner John Burnham never became a full member of the union, instead informing Local 166 shortly after being hired that he wished to be a financial core payor.

Having received no information from Local 166 about their Beck rights, all four petitioners filed unfair labor practice charges against the union. Pursuant to an agreement settling these charges, Local 166 promised to give all new employees and financial core payors initial Beck notices outlining their Beck rights and describing how to exercise them. The union also sent letters to the Beck objectors informing them that they must pay 93.6 percent of union dues and describing procedures for challenging that calculation. Attached was a letter from an independent auditor confirming the accuracy of the reduced fee calculation. The auditor in turn attached a handwritten worksheet listing nineteen categories of expenditures, such as "salaries," "benefits paid," "legal expenses," and "auto expenses." For each expenditure category, the auditor identified the amount and percentage "chargeable" and "nonchargeable" to Beck objectors. The worksheet referred to a "breakdown" and to "schedules," but they were not attached. The auditor's worksheet is attached to this opinion as Appendix A.

Complaining that the information furnished by Local 166 and its auditor was inadequate, petitioners renewed their unfair labor practice charges. In response, the NLRB's General Counsel filed a formal complaint charging Local 166 with failing to include in the initial Beck notice the percentage by which dues would be reduced for new employees and

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financial core payors who exercise their Beck rights. The General Counsel also charged that the financial information given to Beck objectors was "too vague to permit each of these employees to decide whether to challenge any of the expenditures listed in the Statement of Expenses."

The Board rejected the General Counsel's charges. International Bhd. of Teamsters, Local 166, AFL-CIO, 327 NLRB No. 176, 1999 WL 170689 (1999). Although agreeing that the duty of fair representation required Local 166 to provide initial Beck notices to new employees and financial core payors, the Board determined that the union had not violated its duty by failing to include the percentage by which dues would be reduced. Citing the time and expense needed to make such calculations, and explaining that the duty of fair representation affords unions a **175 *45 "wide range of reasonableness," the Board concluded that the decision to furnish the percentage was a "judgment call" within the union's discretion. *Id.*, slip op. at 3. With respect to employees who had exercised their Beck rights, the Board found that the auditor's information was sufficient for them to determine whether to challenge the reduced fee calculation. *Id.*, slip op. at 4-5.

Petitioners challenge the Board's decision on three grounds. The first two concern the information given Beck objectors. The one-page handwritten list of expenditures, they say, neither explained nor justified the union's determination that Beck objectors would be required to pay 93.6 percent of dues. Their second challenge focuses on the approximately twenty-five percent of total expenditures that Local 166 paid to its affiliates. *See* Appendix A. The third challenge relates to new employees and financial core payors; according to petitioners, such employees are entitled to know the precise amount by which their dues would be reduced were they to exercise their Beck rights. Local 166, defending the Board's conclusion that it satisfied its duty of fair representation, has intervened.

II

[4][5] Grounded in section 9(a) of the NLRA, 29 U.S.C. § 159(a), the judicially created duty of fair representation reflects the principle that a union's status as exclusive representative of employees in a bargaining unit "includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." Vaca v. Sipes, 386 U.S. 171, 177, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967). Unions breach their duty of fair representation when their conduct toward members of a bargaining unit is "arbitrary, discriminatory, or in bad faith." Id. at 190, 87 S.Ct. 903.

The Supreme Court fleshed out the duty of fair representation in the Beck context in Chicago Teachers Union, Local No. 1, AFT, AFL-CIO v. Hudson, 475 U.S. 292, 106 S.Ct. 1066, 89 L.Ed.2d 232 (1986). In that case, the Court established procedures that unions must follow to protect objectors and described the financial information that unions must give to potential objectors. "Basic considerations of fairness, as well as concern for the First Amendment rights at stake," the Court held, "dictate that the potential objectors be given sufficient information to gauge the propriety of the union's fee." Id. at 306, 106

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S.Ct. 1066. While Hudson involved public employees and arose under the First Amendment, this circuit has applied its requirements to nonpublic unions such as Local 166. *See, e.g.,* Abrams v. Communications Workers of America, 59 F.3d 1373, 1379 n. 7 (D.C.Cir.1995). With this framework in mind, we turn to petitioners' three challenges.

General Disclosure to Beck *Objectors*

[6] With respect to their first claim--that the list of nineteen expenditure categories was insufficient to allow them to determine whether to challenge the reduced fee calculation--petitioners complain that the single sheet "contains no notes or other written explanation concerning *how* that union's overall 93.6% chargeable, 6.4% nonchargeable calculation was made." That lack of explanation, petitioners contend, was compounded by the "vague and unexplained" line items and the absence of referenced schedules and breakdowns.

The Board ruled that the Beck objectors had no need for schedules, breakdowns, or better-defined categories of expenses to determine whether to challenge the reduced dues calculation. Addressing the Beck objectors' most fundamental argument--that the single page of financial information failed to explain *how* the union arrived at its 93.6 percent chargeable figure--the Board relied entirely on a decision of the Seventh Circuit, *46Gilpin v. American Fed'n of State, County, and Mun. Employees, AFL-CIO, 875 F.2d 1310, 1316 (7th Cir.1989):**176 "As the Seventh Circuit Court of Appeals has remarked in response to the same kind of argument, 'if it did [include the disclosure petitioners requested], the notice would be as long and complicated as an SEC prospectus.' The court discerned no reason for imposing such a requirement, and neither do we." 327 NLRB No. 176, slip. op. at 5 (citing Gilpin, 875 F.2d at 1316).

The union's disclosure in Gilpin was more extensive than Local 166's. In addition to listing thirty-five different types of expenditures (comparable to the nineteen categories provided by Local 166), the notice in Gilpin identified thirty-five specific union activities, indicating for each whether the union considered it "wholly chargeable," "wholly unchargeable," or "mixed." Gilpin, 875 F.2d at 1316. For example, the notice identified publishing a union newsletter as "mixed" and adjusting grievances as "wholly chargeable." Id. For a payment of $1.50, each employee could also obtain an arbitrator's "detailed ruling" said to sustain the union's expense allocations. Id. According to the Seventh Circuit, this information "should be enough ... to allow the employee to decide whether there is any reason to mount a challenge." Id.

By comparison, the Beck objectors in this case were given only general categories of expenditures. *See* Appendix A. To be sure, two of these categories--"contributions" and "organizing"--were quite specific, but both were totally "nonchargeable." The union offered no separate list of activities and provided no opportunity to obtain a detailed explanation of how the union calculated the allocation of expenses. In addition, the Beck objectors never received the "schedules" and "breakdown" said to be attached to the auditor's report.

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The information provided in Gilpin, as the Seventh Circuit found, gave objectors a basis for objecting to the union's calculation of reduced dues. For example, they could have reviewed the newsletter and made their own judgment about whether to challenge the union's determination that newsletter costs were partially chargeable. Could Beck objectors in this case have made a similar judgment about the general categories of expenditures supplied by the auditor? For example, how could they have evaluated the union's determination that "salaries" were partially chargeable to Beck objectors in view of the fact that the only other information they were given about salaries was the gross amount? Instead of answering this question, the Board simply cited Gilpin as though the case dealt with the same type of disclosure. Because it did not, we think the Board's decision reflects a classic case of lack of reasoned decisionmaking. *See* Macmillan Publishing Co. v. NLRB, 194 F.3d 165, 168 (D.C.Cir.1999) (The Regional Director's "rationale was the antithesis of reasoned decisionmaking, and as such was arbitrary and capricious.") (citing Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983)).

Information about Payments to Affiliates

[7] Petitioners' second complaint about the union's financial disclosure focuses on the information about Local 166's payments to affiliated unions. Representing almost twenty-five percent of the union's total expenditures, payments to affiliates were 90.8 percent chargeable to Beck objectors. *See* Appendix A. In addition to arguing that Local 166 should have explained this calculation, petitioners claim that they are entitled to know which affiliates received funds and how those affiliates used those funds. They rely on the following language from Hudson: "[E]ither a showing that none of [the money paid to affiliates] was used to subsidize activities for which nonmembers may not be charged, or an explanation of the share that was so used was surely required." 475 U.S. at 307 n. 18, 106 S.Ct. 1066.

In concluding that Local 166's disclosure was adequate, the Board distinguished ***47 **177** Hudson: "In that case, the union paid more than half its income to affiliated organizations, but informed nonmembers only that they were required to pay 95 percent of full dues. It did not inform them of the basis on which it was charging them that amount or, apparently, anything regarding how the amounts transferred to affiliates were spent or what percentages were chargeable and nonchargeable." 327 NLRB No. 176, slip. op. at 5.

The Board's basis for distinguishing Hudson is curious. To begin with, two of the deficiencies in the Hudson notice that the Board said made Hudson different from this case were also deficiencies in Local 166's disclosure. The union in Hudson, the Board said, "did not inform [the employees] of the basis on which it was charging them that amount or, apparently, anything regarding how the amounts transferred to affiliates were spent." Id. Yet this is precisely the information that Local 166 failed to provide and that petitioners seek in this case.

So the Board's conclusion that Hudson differs from this case boils down to two distinctions. In Hudson, the union spent fifty percent of its

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budget on affiliates; here, it spent twenty-five percent. In Hudson, the union failed to identify the percentage of payments to affiliates chargeable to Beck objectors; here, the union said such payments were ninety percent chargeable. Nothing in Hudson suggests that the level of required disclosure turns on such factors. Hudson's directive is quite simple: unless a union demonstrates that "none of [the amount paid to affiliates] was used to subsidize activities for which nonmembers may not be charged," then "an explanation of the share that was so used [is] surely required." 475 U.S. at 307 n. 18, 106 S.Ct. 1066. Because Local 166 disclosed that over ninety percent of the amount paid to its affiliates was chargeable to Beck objectors, Hudson requires that the union explain how its affiliates used the money.

Initial Notice to New Employees and Financial Core Payors

[8] This brings us to petitioners' challenge to the Board's ruling that the initial Beck notice given to new employees and financial core payors need not identify the percentage reduction in dues that would result from a Beck objection. Explaining its decision, the Board observed that calculating the reduced fee "can be an expensive and timeconsuming undertaking" and emphasized the "wide range of reasonableness" afforded unions in serving the employees they represent. 327 NLRB No. 176, slip op. at 3. We need not consider whether to defer to such reasoning, for this issue is squarely controlled by Hudson as interpreted by this court in Abrams.

In Hudson, the Supreme Court held that "[b]asic considerations of fairness, as well as concern for the First Amendment rights at stake, also dictate that the potential objectors be given sufficient information to gauge the propriety of the union's fee." 475 U.S. at 306, 106 S.Ct. 1066. Abrams expressly applies Hudson's requirements to new employees and financial core payors. 59 F.3d at 1379. Since Hudson requires that potential objectors be told the percentage of union dues chargeable to them--for how else could they "gauge the propriety of the union's fee"--and since Abrams applies Hudson to new employees and financial core payors, they too must be told the percentage of union dues that would be chargeable were they to become Beck objectors.

The Board and Local 166 nevertheless insist that Hudson applies only to employees who have elected to exercise their Beck rights, not to new employees and financial core payors. But Abrams could not have been clearer. Like the Board and Local 166, the dissent in Abrams argued that Hudson's requirements do not apply to new employees and financial core payors. Abrams, 59 F.3d at 1383-84 (Tatel, J., concurring in part and dissenting in part). Abrams ruled to the contrary: "The dissent***48 **178** takes issue with our interpretation of Hudson but the quoted language makes clear that *potential* objectors must be given adequate notice. Although the Supreme Court addressed the issue in the context of 'information about the basis for the proportionate share' of financial core expenses, the same 'basic considerations of fairness' necessarily extend to a union's notice to workers of their *right* to object to payment of any expenses beyond the financial core." Abrams, 59 F.3d at 1379 n. 6 (internal citation omitted).

[9] The Board and Local 166 point out that

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Abrams concerned the wording of the initial Beck notice, not whether the union must disclose the percentage reduction. In order to conclude that the wording was inadequate, however, Abrams had to hold that Hudson applies to new employees and financial core payors, and Hudson carries with it the requirement that unions give employees "sufficient information to gauge the propriety of the union's fee"--*i.e.*, the percentage reduction (*see* supra at 47). 475 U.S. at 306, 106 S.Ct. 1066. We recognize that this means that new employees and financial core payors must be given the same information as Beck objectors, but Abrams is the law of this circuit.

[10] Petitioners challenge the initial Beck notice for a second reason. They contend that the initial notice must not only identify the amount of the reduced fee but also explain the method used to calculate the fee. According to the Board, petitioners failed to raise this issue before the Board and so cannot raise it for the first time on appeal. We agree with the Board.

The two record excerpts petitioners point to--a paragraph in the petitioners' final unfair labor practice charge and three paragraphs in the General Counsel's fourth amended complaint--cannot fairly be read to raise the issue. Both refer only to the financial information designed for Beck objectors, not to the initial Beck notice given to new employees and financial core payors. Rejecting petitioners' contention that the method of calculation is "implicit" in the issue of disclosure of the fee itself, we conclude that we may not consider petitioners' claim that the initial Beck notice must include an explanation of the method used to calculate the fee. *See* 29 U.S.C. § 160(e) ("No objection that has not been urged before the Board ... shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances."); Harter Tomato Prods. Co. v. NLRB, 133 F.3d 934, 939 (D.C.Cir.1998).

III

The petition for review is granted, and this case is remanded to the Board for proceedings consistent with this opinion.

So ordered.

***49 **179** APPENDIX A
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TATEL, Circuit Judge, concurring:

I dissented in Abrams because I saw nothing in Hudson that required its application to new employees and financial core payors. Abrams, 59 F.3d at 1383-84 (Tatel, J., concurring in part and dissenting in part). This case demonstrates the consequences of Abrams: judicial usurpation of the Board's traditional authority to determine national labor policy.

To protect employees' Beck rights, the Board has crafted a three-step process, calibrating the nature and amount of information that unions must give employees to ***50 **180** the decision they must make at each stage. New employees and financial core payors receive

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an initial Beck notice informing them of their Beck rights and how to exercise them. *See* California Saw & Knife Works, 320 NLRB at 233. Beck objectors are told the amount of the reduced dues as well as how that amount was calculated. *See* id. Beck objectors who challenge the union's calculation receive still more information, with the union bearing the burden of proving the accuracy of its calculation. *See* id. at 240. Balancing employees' need for information against the burden on unions of providing the information, this process reflects the Board's application of the duty of fair representation in the Beck context.

Consistent with this approach, the Board held in this case that unions were not required to disclose to new employees and financial core payors the percentage by which their dues would be reduced were they to exercise their Beck rights. Not only does the Board believe that new employees and financial core payors have no need for this information to decide whether to exercise their Beck rights, but it concluded that providing the information would be an "expensive and timeconsuming undertaking." International Bhd. of Teamsters, Local 166, 327 NLRB No. 176, slip. op. at 3. Whether to disclose the percentage is a "judgment call," within the "wide range of reasonableness" afforded unions in carrying out their duty of fair representation, the Board found. Local 166's failure to disclose the percentage was not "arbitrary, discriminatory, or in bad faith." Id.

Absent Abrams, we would evaluate the Board's reasoning pursuant to a highly deferential standard. *See* Ferriso v. NLRB, 125 F.3d 865, 869 (D.C.Cir.1997). Yet as our opinion in this case demonstrates, Abrams' extension of Hudson to new employees and financial core payors has foreclosed us from considering the Board's rationale at all, requiring that we ignore not just our traditional deference to the Board, but also the "wide range of reasonableness" afforded unions in satisfying their duty of fair representation. *See* Marquez, 119 S.Ct. at 300. "It is hard to think of a task more suitable for an administrative agency that specializes in labor relations, and less suitable for a court of general jurisdiction, than crafting the rules for translating the generalities of the Beck decision ... into a workable system for determining and collecting agency fees." International Ass'n of Machinists & Aerospace Workers v. NLRB, 133 F.3d 1012, 1015 (7th Cir.1998). By commandeering a judgment that should have been left to the Board's expertise, Abrams has produced a result that I doubt Hudson intended.

END OF DOCUMENT

ERTIFIED PUBLIC ACCOUNTANT

7365 Carnelian, Suite 232
Rancho Cucamonga, CA 91730
(714) 989-0788

March 23, 1992

Pete Espudo, Secretary Treasurer
Teamsters, Local 166
18597 Valley Blvd.
Bloomington, CA 92316-0899

I have audited the Calculations for Financial Core Fees based on the Teamsters Local 166's audited financial statements for the twelve months ending December 31, 1991. The Calculation for Fair Share Fees is the responsibility of Teamsters Local 166. My responsibility is to express an opinion on the Calculation based on my audit.

I conducted the audit in accordance with generally accepted auditing standards. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the Calculation was made consistent with decisions handed down by various courts as well as those guidelines made available from the International Brotherhood of Teamsters, which was made available to me through the legal representation of Local 166. The audit also included assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall Calculation. I believe the audit provides a reasonable basis for my opinion.

In my opinion, the Calculation of Financial Core Fees based on the Teamsters Local 166's audited financial statements for the twelve months ending December 31, 1991, resulting in an overall rate of 93.67% to be applied to the Union's dues structure to determine Financial Core Fees, was made consistent with decisions handed down by various courts as well as those guidelines made available from the International Brotherhood of Teamsters based on directives from the National Labor Relations Board which were made available to me through legal council of Local 166.

V. Allen Monahan
Certified Public Accountant

Exhibit

Code	Item	Total	Charge	Non Charge	% Charge	% Non C
2	Salaries - Per hours Summary	70592092	66874458	3517634	95.0028	4.99
2	Expense Allowance	282201-	267908	14092	95.0028	4.997
3	Per Capita Per Breakdown	42401216	38515816	3885388	90.8366	9.163
4	Contributions	1149244	—	1149244	—	100
2/8	Benefits Paid (Schedule 1)	22112714	21220473	992241	95.5339	4.4661
8	Refund Dues	1093953	1093953	—	100	—
8	Refund Init & Reinst	145346	145346	—	100	—
8	Other Refunds	116383	116383	—	100	—
	Office Exp. (Schedule 2)	9976938	9617185	359753	96.3934	3.6066
9	Legal Exp.	1263546	1074014	189532	85%	15%
8	Arbitrator Fees	1247850	1247850	—	100	—
8	Other Professional Fees	7675-	7675-	—	100	—
8	Taxes (Per Audit)	6167500	61675-	—	100	—
4	Organizing Exp.	216362	—	216362		
2	Mtg. & Committee Exp.	1047487	995142	52345	95.0028	4.9972
8	Strike Exp.	—	—	—	—	—
2	Auto Exp.	4043438	3841379	202059	95.0028	4.9972
2	Out of Town Travel Exp.	3818604	3627784	190825	95.0028	4.9972
	Other Exp. (Schedule 3)	7405987	7091203	314784	95.7496	4.2504
	Total	175448588	163540129	11086059	93.6169	6.3831

APPENDIX G - WRITTEN STATEMENT OF CRAIG SICKLER, CHARLOTTE, NORTH CAROLINA

Statement of Craig Sickler

Honorable Members of the House of Representatives:

My name is Craig Sickler. I want to sincerely thank this Committee for giving me the opportunity to appear here and provide a short summary of my illegal firing by US Airways and the International Association of Machinists & Aerospace Workers ("Machinists union").

I began working as a skilled aircraft mechanic in 1978 at a non-union freight airline called Zantop International. In 1980 I left Zantop to work for Eastern Airlines, where I was told that membership in the Machinists union was a condition of employment. I was given a card to sign that would allow union dues to be deducted automatically from my paycheck. At no point was I told that there was any option other than membership in the union and the payment of full union dues.

It didn't take me long to discover, through the Machinists union's publications and literature, that the politics and positions of the Machinists union were radically partisan in nature and the opposite of my own. I also learned that the then-President of the Machinists International union, William W. Winpisinger, was an avowed Socialist.

In 1988, I left Eastern to take a job with Piedmont Airlines, which also had its mechanics organized and represented by the Machinists union. Piedmont ultimately merged with USAir, also an airline with Machinists union representation, and I have worked at US Airways since 1988. Throughout my employment, I have been forced to accept representation by the Machinists union, a union that I neither chose nor voted on.

Over the years I managed to learn about my right to object to supporting political candidates and causes I oppose. I discovered this option by my own research and by reading between the lines of the deceptively named "Notice to Employees Subject to Union Security Clauses" buried in fine print within the Machinists union's quarterly magazine. Particularly blatant political activity in 1994, on USAir property, motivated me to become a "dues objector" and try to stop funding political and ideological activities I abhorred.

When I filed my first objection to the use of my dues for political purposes, the result was that I was thrown out of the Machinists union. This is Machinists union policy -- that any objector, regardless of the reason for his objection, is required to be a non-member. In order to stop funding political candidates and causes I oppose, I lost the right to vote on contracts and other issues which directly effect my day-to-day employment. Even though I am forced by federal labor law to pay the Machinists union a "fee" for their negotiation and administration of the contract, I can no longer vote for the Shop Steward who will represent me, and I can no longer attend union meetings, conventions and social activities related to my terms and conditions of employment. In essence, an employee who files an objection to supporting the Machinists union's political activities is treated by the union like a pariah or convicted felon. (See Exhibit 1). (It should be noted that the Machinists union local in Winston-Salem, NC, where I worked at the time of my first objection, chose not to enforce this policy, and I continued

to vote, attend union meetings when I needed to and attend union social activities.)

In 1998, USAirways closed its maintenance base in Winston-Salem, and I moved to Charlotte, NC, where I fell under the jurisdiction of a different Machinists union local. This new local vigorously enforced Machinists union policy pertaining to "dues objectors." Not only did I lose all the rights that I was paying for -- such as the right to vote on my own contract -- but this local union posted my name prominently on the union bulletin boards around the base along with others, identifying us as "dues objectors," presumably unworthy and unsavory characters simply because we chose not to support the union's politics. (See, e.g., Exhibit 1).

At the same time that I opposed the Machinists union's political activities, I also became increasingly certain that the union was overcharging me and failing to provide me with all of the procedural protections to which I was due under the Supreme Court decisions in Ellis v. BRAC, 466 U.S. 435 (1984), CWA v. Beck, 487 U.S. 735 (1988) and Chicago Teachers Union v. Hudson, 475 U. S. 292 (1986).

In October 1998, I submitted to the Machinists union my annual letter objecting to supporting its political activities. (See Exhibit 2). You should know that the Machinists union requires most non-members to annually re-submit their objections, year after year, even though two federal courts have condemned this practice as harassing and burdensome. Shea v. International Ass'n of Machinists and Aerospace Workers, 154 F.3d 508 (5th Cir.1998); Lutz v. International Ass'n of Machinists and Aerospace Workers,

121 F. Supp.2d 498 (E.D.VA. 2000).

Only after I filed this annual objection did the union send me a "financial disclosure" package that purported to explain what it did with my money. This financial disclosure was largely unaudited, and it later turned out that most of it had been prepared by high school educated union officials who were given the misleading title "Grand Lodge Auditors." To make bad matters even worse, many of the pages of the "financial disclosure" package were illegible and poorly xeroxed, with whole columns of number cut off. (See, e.g., Exhibit 3).

In December 1998, in accordance with the Machinists policy, I filed a timely "challenge," and requested impartial arbitration. At the same time, I also requested legible and audited financial information, which was never provided to me. (See Exhibit 4).

I was notified by the Machinists union that my challenge had been accepted, and that arbitration would be scheduled with the American Arbitration Association. I found the AAA website on the internet, and read their Rules for the Impartial Determination of Agency Fees. These rules included a statement that an escrow account would be established, at the request of the union, to hold the disputed amounts until the arbitration was completed.

Then I waited.

Three months later, having heard nothing from the union about the status of my

arbitration, additional audited financial disclosure or escrow accounts, I was notified by the Machinists union that I was in arrears in my dues payments and must within 15 days pay all back dues plus a $125.00 "re-instatement" fee, or the union officials would demand that US Airways fire me. I replied to the Machinists union that I was awaiting arbitration, awaiting the financial information I had requested, and awaiting the establishment of an escrow account into which I would gladly and immediately place the full disputed amount. (See Exhibit 5, covering a series of communications). These were my absolute rights, under the unanimous Supreme Court decision in Chicago Teachers Union v. Hudson, 475 U. S. 292 (1986). Nevertheless, my requests were again ignored. (During the federal court litigation that ensured over my discharge, a top official of the Machinists union admitted that the Machinists union does not respond to inquiries from objectors seeking additional financial disclosure.)

On May 14, 1999, without any further warning or compliance with its obligations under the Hudson decision, the Machinists union demanded that US Airways discharge me. (See Exhibit 6). After over a decade as a dedicated employee with a good work record, US Airways promptly complied and fired me, although it conducted no investigation whatsoever to determine if the Machinists union provided me with adequate (or indeed, any) procedural protections under the Ellis, Hudson or Beck decisions. I filed an internal appeal to US Airways management (see Exhibit 7) pointing out these violations of my constitutional rights, but their final discharge letter stated that the

constitutional issues raised in my appeal -- the procedures guaranteed to me by the Supreme Court in Ellis, Hudson and Beck -- were "not germane" to the standards of discharge under the US Airways - Machinists union collective bargaining contract. (See Exhibit 8). I was fired.

In November 1999, eleven months after I filed my "challenge" and request for arbitration (and five months **after** my discharge), the Machinists union contacted the American Arbitration Association to invoke the arbitration procedure over my "challenge." (See Exhibit 9). (Interestingly, I received notification that the American Arbitration Association had selected Gladys W. Gruenberg, a teacher of "Social Economics" at Saint Louis University as the arbitrator. My own research disclosed that she is listed on the website of Teamsters Union Local 1187 as an "ally" of that union. So much for "impartial" arbitration.)

My discharge from US Airways had a devastating impact on my life. My termination by the Machinists union and US Airways put me through significant emotional distress. I did not know if I would have to uproot myself and move from Charlotte at my own expense to support myself. At no point after my discharge was I able to earn the same amounts as I had done with US Airways, and I had to pay for expensive COBRA coverage to maintain my health insurance. Because I did not have the same income level, or any security in the income I did have, I greatly reduced the level of my accustomed lifestyle.

As a result of my discharge, I lost the ability to plan for my future. At the time of my termination I was 50 years old, only 5 years away from being eligible to retire from US Airways. I was extremely distressed at the thought that I might have to relocate to another city to start at the bottom of the pay scale and seniority at another major carrier.

With the pro bono legal help of the National Right to Work Legal Defense Foundation, I filed a lawsuit against US Airways and the Machinists union. As an unemployed former mechanic, I could have never afforded what was to become a two year legal battle without the help of the National Right to Work Legal Defense Foundation. Indeed, the IAM spared no expense to fight me, bringing in several lawyers from the Washington, D.C. law firm of Bredhoff & Kaiser to battle me at every step of the way.

After numerous depositions, and file cabinets filled with discovery, my attorneys filed for summary judgment against the Machinists union and US Airways. On September 14, 2000, the U.S. District Court in Charlotte, N.C. ruled that my discharge was unlawful because the Machinists union had failed to meet many of the pre-collection obligations that it owes to nonmembers under the U.S. Constitution and the Hudson decision. Masiello and Sickler v. US Airways and the International Association of Machinists, 113 F. Supp.2d 870 (WDNC 2000). (See Exhibit 10). In holding US Airways and the Machinists union liable for my illegal discharge, the court ruled that the union had forced my firing on a "flimsy and indefensible basis." The Court excoriated

the union for its "untimely and inadequate practices and procedures," and noted the "downright arrogance" of the union's officials, which he also described as "maddening nonfeasance."

In the face of this judicial tongue-lashing, US Airways rehired me with seniority after a 1 1/2 year absence, and the union finally settled by paying me $82,500. This money can never compensate me for the damage done to my life and my career, and for the violation of my constitutional rights by arrogant union officials bent on nothing but their own power, and determined to keep their finances a secret.

I have never yet received adequate financial disclosure from the Machinists union, and doubt that I ever will. In order to keep my job, I will have to continue to pay fees to the Machinists union, without ever being able to discover the real truth of how they spend my money.

In conclusion, I say to this Honorable House, that in a free country like America, employees should not have to be fired, face economic and emotional ruin, and run a two year legal gauntlet to protect their right to refrain from supporting causes they oppose. If I was forced to pay money to a church or religious group in order to keep my job, this would not for a minute be permitted. By the same token, no one for a minute should assume that it is fair or proper for me and my fellow employees to have to support a union that we oppose.

INTERNATIONAL ASSOCIATION of MACHINISTS
and AEROSPACE WORKERS
CHARTERED JULY 21, 1943 -- VICTORY LODGE NO. 1725
3100-C Piper Lane • Charlotte, North Carolina 28208 • Phone: 704-357-0027
357-0028
FAX: 357-0029

DUES OBJECTORS

Feb. 1, 1996

Dear Membership

This year, twenty four previous members have exercised their right under the Union Security Clause to become non-member agency fee payers. After consulting numerous objectors prior to January 1st I found out that most objectors were only recognizing certain language of the security clause and over looking other language. None the less, these objectors have canceled their union membership without understanding what they have lost. IAM Local Lodge 1725 has never allowed non-members to participate in Union activities and will not allow non-members the rights of members in good standing. These non-members use to have the right to exercise their voice, their vote, and their issues. Objectors (non-members) believe they can be heard best by taking away their own union rights. These objectors will also try to persuade you into canceling your Union membership. Don't give up your rights!

I William Cashion, President of Local Lodge 1725 ask each previous member to reconsider your objection to Union Membership in writing to the Treasurer of the IAM, Donald E. Wharton. Your voice can only be heard through the forum that is provided in Union Membership. To those of you who will not reconsider, and continue to be non-members(objectors) "Fair Well".

PS A copy of the notice to employees subject to union security clauses is printed on page 31, of the Fall 1995 IAM JOURNAL

Sincerely

William B Cashion Jr.
President, IAM Local 1725

Exhibit 1

INTERNATIONAL ASSOCIATION of MACHINISTS
and AEROSPACE WORKERS
CHARTERED JULY 21, 1943 -- VICTORY LODGE NO. 1725
3100-C Piper Lane • Charlotte, North Carolina 28208 • Phone: 704-357-0027
357-0028
FAX: 357-0029

March 1, 1996

Dues Objectors

The following USAir employees have requested to become non-member agency fee payers to the IAM for the fiscal year of 1996. These employees have resigned their union membership and become dues objectors. These employees have lost their say in all union activities except the right to be represented in accordance with their grievance procedures and strike benefits if they choose not to become a scab and cross our picket line.

1. Charles Barth
2. David Billow
3. Jose Cantu
4. Andy Cochran
5. Paul Colvin
6. George Curry
7. Alexander Dasilua
8. Mark Englert
9. Kerry Gipe
10. John Masiello
11. Mike Masterson
12. Robert Mccane
13. William Pyle
14. Larry Randolph
15. Lawrence Stone
16. Gary Van Duyn
17. Adrian Wintsch

Sincerely & Fraternally

William B Cashion Jr.

William B. Cashion Jr.
President, IAM Local 1725

23 Oct. 1998

Craig Sickler
1506 Mint St.
Charlotte, NC 28214

OCT 28 1998

General Secretary-Treasurer
IAMAW
AFL-CIO
9000 Machinists Place
Upper Marlboro, MD 20772-2687

Dear Sir or Madam,

As in years past, I object to the political positions and candidates supported by the IAM. I also object to the use of my dues money for uses not directly related to the collective bargaining process without my permission.

I wish to support only those union activities which are actually chargeable to the collective bargaining process.

Please, once again, take note of my election of nonmember agency fee payer status.

I ask that you examine the philosophy and candidates of the Libertarian Party. I feel they are worthy of support and that they truely represent the interests of working people and all citizens in general.

Thank you

Craig Sickler

Exhibit 2

International Association of Machinists and Aerospace Workers

Fee Reduction Audit

Local/District Lodge # 128 Date of Audit Januar

*Note: All figures are rounded off to the nearest dollar am

SUMMARY OF EXPENDITURES

Year ended December 31, 19[illegible]

	SUMMARY OF UNION EX	
	CHARGEABLE (a)	
Officer and employee expenses:		
1. Salaries (Schedule 1)	95,845	84
2. Reimbursed Expenses (Schedule 1)	10,951	11
3. Fringe Benefits (Schedule 1)	24,311	25
Operational expenses:		
4. Official publications	-0-	
5. Professional services (Schedule 2)	-0-	
6. Local or District meetings	840	
7. Social activities (Schedule 3)	-0-	
8. Affiliation fees	-0-	
9. Organizing and nonchargeable contributions	-0-	
10. Services for represented employees (Schedule 4)	-0-	
11. Bonding premiums	-0-	
12. Miscellaneous (Schedule 5)	-0-	
Overhead expenses:		
13. Rent and/or building depreciation	5,939	7
14. Maintenance, utilities, taxes	-0-	
15. General insurance	1,006	1
16. Office expenses	7,341	7
17. Automobile expenses	-0-	
Total	117,217 (a)	123

CHARGEABLE PER CENT OF EXPENSES FOR THE PERIOD

Total column (a) / Total column (b) = 95.08 %

Audit Prepared by [signature] - Ala
Grand Lodge Au

E
C

Exhibit 3

International Association of Machinists and Aerospace Workers

Per Reduction Audit

District Lodge #508 Date of Audit May 2, 199

*Note: All figures are rounded off to the nearest dollar amount

SUMMARY OF EXPENDITURES

Year ended December 31, 1992

	SUMMARY OF UNION EXPEN	
	CHARGEABLE (a)	TOTA (b)
Officer and employee expenses:		
1. Salaries (Schedule 1)	603,962	634,22
2. Reimbursed Expenses (Schedule 1)	19,452	20,44
3. Fringe Benefits (Schedule 1)	100,966	105,96
Operational expenses:		
4. Official publications	12,363	15,09
5. Professional services (Schedule 2)	104,646	106,84
6. Local or District meetings	2,644	2,64
7. Social activities (Schedule 3)	-0-	-0-
8. Affiliation fees	-0-	10,845
9. Organizing and membership publications	-0-	3,264
10. Services for represented employees (Schedule 4)	67	67
11. Bonding premiums	-0-	-0-
12. Miscellaneous (Schedule 5)	-0-	-0-
Overhead expenses:		
13. Rent and/or building depreciation	4,571	4,756
14. Maintenance, utilities, taxes	33,795	35,151
15. General insurance	3,175	3,345
16. Office expenses	36,428	37,885
17. Automobile expenses	-0-	-0-
Total	926,289	967,654
	a	b

CHARGEABLE PER CENT OF EXPENSES FOR THE PERIOD

Total column (a) Total column (b) x 95.8 %

Audit Prepared by William T. Sears
District Lodge Auditor

IAM
EXHIBIT
HUNGERFORD

International Association of Machinists
and Aerospace Workers

For Reduction Audit

LACAM/District Lodge # 720 Date of Audit Decem

*Note: All figures are rounded off to the nearest dollar as

SUMMARY OF EXPENDITURES

Year ended December 31, 19 8

	SUMMARY OF UNION FI	
	CHARGEABLE (a)	
Officer and employee expenses:		
1. Salaries (Schedule 1)	544,830	9
2. Reimbursed Expenses (Schedule 1)	21,890	2
3. Fringe Benefits (Schedule 1)	130,287	13
Operational expenses:		
4. Official publications	14,069	1
5. Professional services (Schedule 2)	38,862	4
6. Local or District meetings	8,516	8
7. Social activities (Schedule 3)	-0-	
8. Affiliation fees	-0-	25
9. Organizing and nonchargeable contributions	-0-	10,
10. Services for represented employees (Schedule 4)	-0-	-
11. Bonding premiums	-0-	-
12. Miscellaneous (Schedule 5)	-0-	-
Overhead expenses		
13. Rent and or building depreciation	[illegible]	[illegible]
14. Maintenance, utilities, taxes	2[illegible]	22.
15. General insurance	13,907	14.
16. Office expenses	33,857	35.
17. Automobile expenses	-0-	-0
Total	948,806 (a)	1,022.5 (b)

CHARGEABLE PER CENT OF EXPENSES FOR THE PERIOD

Total column (a) / Total column (b) = 92.77 %

Audit Prepared by [signature] - Jim Pi
Grand Lodge Audit

IAM
EXHIBIT
DELTORO

International Association of Machinists
and Aerospace Workers

Tax Deduction Audit

~~FINANCIAL~~ District Lodge # 11 Date of Audit June

*Note: All figures are rounded off to the nearest dollar as

SUMMARY OF EXPENDITURES

Year ended December 31, 1992

	CHARGEABLE (a)	SUMMARY OF NOTICE TO
Officer and employee compensation:		
1. Salaries (Schedule 1)	245,236	
2. Reimbursed Expenses (Schedule 1)	8,284	
3. Fringe Benefits (Schedule 1)	33,502	
Operational expenses:		
4. Official publications	-0-	
5. Professional services (Schedule 2)	-0-	
6. Local or District meetings	-0-	
7. Social activities (Schedule 3)	-0-	
8. Affiliation fees	-0-	
9. Organizing and noncharyeable contributions	-0-	
10. Services for represented employees (Schedule 4)	3,144	
11. Bonding premiums	17	
12. Miscellaneous (Schedule 5)	[illegible]	
Overhead expenses:		
13. Rent and/or building depreciation	17,600	
14. Maintenance, utilities, taxes	-0-	
15. General insurance	171	
16. Office expenses	33,977	
17. Automobile expenses	-0-	
Total	344,531 (a)	

CHARGEABLE PER CENT OF EXPENSES FOR THE PERIOD

Total column (a) / Total column (b) = 91.2 %

Audit Prepared by [signature]
Grand Lodge

International Association of Machinists and Aerospace Workers

Per Reduction Audit

Local/District Lodge # 93 Date of Audit 8-23-93

Note: All figures are rounded off to the nearest dollar amount

SUMMARY OF EXPENDITURES

Year ended December 31, 1992

	SUMMARY OF UNION EXPEN	
	CHARGEABLE (a)	TOT (b
Officer and employee expenses:		
1. Salaries (Schedule 1)	400862	473994
2. Reimbursed Expenses (Schedule 1)	6281	6481
3. Fringe Benefits (Schedule 1)	142138	149981
Operational expenses:		
4. Official publications	6975	16077
5. Professional services (Schedule 2)	15964	15964
6. Local or District meetings	-0-	-0-
7. Social activities (Schedule 3)	2230	223(
8. Affiliation fees	-0-	139(
9. Organizing and nonchargeable contributions	-0-	764
10. Services for represented employees (Schedule 4)	-0-	-0-
11. Bonding premiums	17	1
12. Miscellaneous (Schedule 5)	-0-	-0
Overhead expenses:		
13. Rent and/or Building depreciation	44725	4458
14. Maintenance, utilities, taxes	1554	161
15. General insurance	1287	134
16. Office expenses	40594	4228
17. Automobile expenses	27971	2913
Total	745740	79320
	(a)	(1

CHARGEABLE PER CENT OF EXPENSES FOR THE PERIOD

Total column (a) Total column (b) = 94.02 %

Audit Prepared by John C. Straw

Grand Lodge A

International Association of Machinists
and Aerospace Workers

Fee Reduction Audit

AWAY District Lodge # 170 Date of Audit May - 19[illegible]

*Note: All figures are rounded off to the nearest dollar amount

SUMMARY OF EXPENDITURES

Year ended December 31, 19[illegible]

	SUMMARY OF UNION EXPENS	
	CHARGEABLE (a)	TOTA (b)
Officer and employee expenses:		
1. Salaries (Schedule 1)	201,270	229,77
2. Reimbursed Expenses (Schedule 1)	29,872	37,14
3. Fringe Benefits (Schedule 1)	34,564	39,45
Operational expenses:		
4. Official publications	-0-	-0-
5. Professional services (Schedule 2)	4,485	4,48
6. Local or District meetings	-0-	-0-
7. Social activities (Schedule 3)	-0-	-0-
8. Affiliation fees	-0-	17
9. Organizing and nonchargeable contributions	-0-	3,32
10. Services for represented employees (Schedule 4)	-0-	-0-
11. Bonding premiums	32	3
12. Miscellaneous (Schedule 5)	-0-	-0-
Overhead expenses:		
13. Rent and/or building depreciation	6,307	7,20
14. Maintenance, utilities, taxes	1,823	2,08
15. General insurance	6,049	6,90
16. Office expenses	11,882	12,93
17. Automobile expenses	-0-	-0-
Total	296,036 (a)	344,08 (b)

CHARGEABLE PER CENT OF EXPENSES FOR THE PERIOD

Total column (a) / Total column (b) = 86.03 %

Audit Prepared by [signature] - Jim Pichle
Grand Lodge Audito

International Association of Machinists
and Aerospace Workers

Fee Reduction Audit

~~Lodge~~ District Lodge # 199 Date of Audit August -

*Note: All figures are rounded off to the nearest dollar amount

SUMMARY OF EXPENDITURES

Year ended December 31, 1992

	SUMMARY OF UNION EXPENS	
	CHARGEABLE (a)	TOTA (b)
Officer and employee expenses:		
1. Salaries (Schedule 1)	$ 200,220	$ 204,9
2. Reimbursed Expenses (Schedule 1)	$ 16,129	$ 16,8
3. Fringe Benefits (Schedule 1)	$ 43,942	$ 45,7
Operational expenses:		
4. Official publications	-0-	-0-
5. Professional services (Schedule 2)	$ 600	$ 6
6. Local or District meetings	-0-	-0-
7. Social activities (Schedule 3)	-0-	-0-
8. Affiliation fees	-0-	$ 1,1
9. Organizing and nonchargeable contributions	-0-	$ 4
10. Services for represented employees (Schedule 4)	-0-	-0-
11. Bonding premiums	-0-	-0-
12. Miscellaneous (Schedule 5)	-0-	-0-
Overhead expenses:		
13. Rent and/or building depreciation	$ 9,132	$ 9,5
14. Maintenance, utilities, taxes	$ 3,019	$ 3,1
15. General insurance	$ 411	$ 4
16. Office expenses	$ 5,745	$ 5,9
17. Automobile expenses	$ 9,788	$ 10,1
Total	$ 289,006 (a)	$ 302,6 (b)

CHARGEABLE PER CENT OF EXPENSES FOR THE PERIOD

Total column (a) / Total column (b) = 95.5%

Audit Prepared by Jim Pick - Jim Pick
Grand Lodge Auditc

DEC 11 1998

8 Dec. 1998

Craig Sickler
1506 Mint St.
Charlotte, NC 28214

DEC 11 1998

Mr. Donald E. Wharton
General Secretary-Treasurer, IAMAW
9000 Machinists Place
Upper Marlboro, Maryland, 20772

Dear Mr. Wharton,

I received your letter dated 9 Nov. 1998, perfecting my objection to the use of my Union dues for political, or other, purposes not germane to collective bargaining, contract administration or grievance adjustment. Thank you.

Unfortunately, no Audit information for my Local Lodge 1725 was included with your letter. Please provide me with this information.

Additionally, the Audit information provided for District Lodge 141 was not adequate to determine the accuracy of claims as to the District's chargeable expenses. At minimum, Schedules 1 through 5 inclusive, would be required, and I must ask you to provide these Schedules to me.

Also, the Audit information provided for the Grand Lodge is likewise inadequate. Please provide, at minimum, Notes to the Audit 3b through 3r, inclusive.

Because of the incomplete and inadequate nature ~~nature~~ of the Audit information provided to me, I feel compelled to challenge the calculations of chargeable expenditures. In addition to the lack of provided information, information I do possess leads me to question the accuracy of expenditures in several areas of the provided Audits.

Again, please register my request for complete Audit information, and also my challenge to the Audits.

Sincerely,

Craig Sickler

Exhibit 4

INTERNATIONAL ASSOCIATION of MACHINISTS
and AEROSPACE WORKERS
CHARTERED JULY 21, 1943 – VICTORY LODGE NO. 1725
3100-C Piper Lane • Charlotte, North Carolina 28208 • Phone: 704-357-0027
357-0028
FAX: 357-0029

Craig J. Sickler
1506 Mint Street
Charlotte, NC 28214
ZZ002544

April 7, 1999

Mr. Sickler,

This letter is to inform you that we have not received your monthly dues equivalency fee payments for January through March 1999. You are liable to lapse. If an Objector lapses he must pay an $125.00 equivalency reinstatement fee in addition to the delinquent fees. Therefore, I encourage you to remit full payment as soon as possible.

January		$ 37.28
February		$ 37.28
March		$ 37.28
	total	$ 111.84

If we do not receive full payment by April 16, 1999 I will lapse you and take all necessary further actions in this matter.

Sincerely,

Todd L. Vandervelde
Secretary-Treasurer L.L. 1725

Exhibit <

9 Apr. 1999

Craig Sickler
1506 Mint St.
Charlotte, NC 28214

Mr. Todd L. Vandervelde
Secretary-Treasurer L.L. 1725
I.A.M.A.W.
3100-C Piper Lane
Charlotte, NC 28208

Dear Mr. Vandervelde,

RE: Your letter to me dated Apr.7,1999.

I wish to inform you, directly and emphatically, that my objection to the IAM's expenditure of any of my dues money for political purposes arises from deeply held political convictions.

I hope you will consider that the Union's responses to my objection are not due to any generous or charitable impulse, but are performed solely because of the Decision of the United States Supreme Court in the case of COMMUNICATIONS WORKERS OF AMERICA v. BECK, 487 U.S. 735. This decision obligates the Union to acknowledge and respond to objectors and to refund appropriate amounts of dues to them.

The I.A.M. does not publish procedures for objectors to follow in it's Journal each year because it wants to encourage objection, but because it is required to by law. The published procedures, including the provision of adequate financial information to objectors and the right to request, and receive, arbitration when a dispute arises regarding that financial information, also arises from the Supreme Court's BECK decision.

I strongly suggest that you encourage the I.A.M. to fulfill it's obligations to me, and that you consult an attorney before you take any action which could make you personally liable for the violation of my rights.

Sincerely,

Craig Sickler

cc: John Masiello
File

DISTRICT LODGE 141

MACHINISTS UNION

Home Office
P. O. Box 3141
So. San Francisco, CA 94083-3141
(650) 873-0662

170

April 17, 1999

Craig J. Sickler
1506 Mint Street
Charlotte, NC 28214

Mr. Sickler

Our records indicate that your required monthly payment to the Union has not been made for the months shown below:

January, 1999	$37.28
February, 1999	$37.28
March, 1999	$37.28

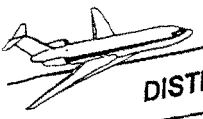
Our records show that you are now in arrears for three (3) months. In addition, you are required to pay a fee of $125.00 which is equivalent to the reinstatement fee for members of Local Lodge 1725.

Therefore, you now owe the sum of $199.56 payable within fifteen days of your receipt of this letter to the Local at the above address. This sum represents:

2 months' payments at $37.28 a month =	$ 74.56
Plus a fee equivalent to a reinstatement fee =	$125.00
(1 month's dues included in fee)	
For a total due of	$199.56

Assistant General Chairman Tony Giammarco
23 Battles Road
Williamstown, NJ 08094

Home (609) 728-1577
Office (704) 357-0027
Fax Office (704) 357-0029
Fax Home (609) 875-7710



DISTRICT LODGE 141

MACHINISTS UNION

Home Office
P. O. Box 3141
So. San Francisco, CA 94083-3141
(650) 873-0662

170

IAMAW District Lodge 141
3100-C Piper Lane
Charlotte, NC 28208

Page 2

Please understand that failure to pay all required monthly payments owed to the Union **will result in a demand to your employer that you be discharged from your employment pursuant to the collective bargaining agreement**, Article 19, paragraph C.

Sincerely,

Anthony Giammarco

Anthony Giammarco
Assistant General Chairman
IAMAW District Lodge 141

AG:tv

Assistant General Chairman Tony Giammarco
23 Battles Road
Williamstown, NJ 08094

Home (609) 728-1577
Office (704) 357-0027
Fax Office (704) 357-0029
Fax Home (609) 875-7710

21 Apr.1999

Craig Sickler
1506 Mint St.
Charlotte, NC 28214

Mr. Ken Thiede
President and General Chairman
District 141, IAMAW
P. O. Box 3141
South San Francisco, CA 94083-3141

Dear Mr. Thiede,

In reference to your letter to me dated 16 Apr.1999.

My objection to the IAM's use of my dues for political purposes was filed on 9 Nov.1998 with General Secretary-Treasurer Wharton, and I was notified by Mr. Wharton of the perfection of my objection, which was to be effective 1 Jan.1999.

The enclosures to Mr. Wharton's letter did not contain adequate financial information. In fact I was provided with no information at all regarding the expenditures of Local Lodge 1725.

By my Certified letter to Mr. Wharton dated 8 Dec.1998, I requested additional financial information and asked that this matter be arbitrated.

I have to date received no additional financial information, have not been notified of scheduled arbitration, and have not been notified that the Union has requested that an Escrow Account be established by the American Arbitration Association into which I could deposit disputed amounts of Dues.

On 7 Apr.1999 I was told by the Secretary-Treasurer of LL 1725, Mr. Todd Vandervelde, that Local Lodge financial information had not been provided to me because an Audit had not been performed.

Your current letter informs me that I must pay specified amounts, or face your requested dismissal from my job at USAirways/United Airlines (sic).

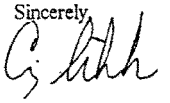
How was the amount of my Local Lodge dues reduction determined if no audit has been performed?

Are you, by this letter, refusing my request for Arbitration of this matter?

If you are in some doubt that I will pay any and all amounts determined to be owing after arbitration, why have you not requested that the AAA set up an Escrow account into which I will gladly place the full amount that could possibly be owed?

I look forward to hearing from you, expeditiously, about the scheduling of Arbitration,and the establishment of an Escrow Account into which I can deposit all disputed amounts.

Sincerely,



Craig Sickler

c. Financial Secretary, LL 1725
Committee Chairman, LL 1725

AIRLINE MACHINISTS DISTRICT 141 IAMAW
P. O. BOX 3141 • SO. SAN FRANCISCO, CA 94083-3141 • PHONE (650) 873-0662 • FAX (650) 873-1676
REPRESENTING 35,000 AIRLINE AND AIRLINE SERVICE COMPANY EMPLOYEES

April 27, 1999

CERTIFIED MAIL
and
HAND DELIVER

CORRECTION

File #66766

Mr. Craig Sickler
1506 Mint Street
Charlotte, NC 28214

Subject: Joining the I.A.M.A.W.

Dear Mr. Sickler:

Please recall that at the time of your employment at US Airways you did sign a "Union Representation Notice" with which you acknowledged and accepted the obligation and responsibility to maintain Union membership as a condition of continued employment. The signed notice further indicates your understanding that the continuation of Union membership is your sole responsibility.

I have been notified by the Financial Officer of Local Lodge 1725 that an application for Union membership has not been received from you. Our records indicate you owe an initiation/reinstatement fee of $125.00, plus dues in the amount of $111.84, total $236.84.

In accordance with the provisions of the US Airways/International Association of Machinists Agreement, you are subject to discharge unless you remit the above amount to Local Lodge 1725 within fifteen (15) days of receipt of this notice.

Your job with US Airways is now seriously endangered. In order to continue working and avoid being discharged, you must contact Local Lodge 1725 immediately and comply with this obligation.

Very truly yours,

Ken Thiede

Ken Thiede
President and General Chairman

KT:gh

cc: Senior Vice President Maintenance Operations
Financial Secretary, Local Lodge 1725
Local Committee Chairman, Local Lodge 1725

nternational
ssociation of
achinists and
erospace Workers

9000 Machinists Place
Upper Marlboro, Maryland 20772-2687

Area Code 301
967-4500

OFFICE OF THE INTERNATIONAL PRESIDENT

CO - USAirways

May 14, 1999

REC'D MAY 17 1999

Subj: Request for Clearance of Discharge Action Under IAMAW/USAirways Agreement

Mr. Kenneth Thiede
President/Directing General Chairman
IAMAW District Lodge 141-M
P. O. Box 3141
So. San Francisco, CA 94083-3141

Dear Sir and Brother:

This will acknowledge receipt of a letter dated May 12, 1999, advising that the following employee has failed to comply with the Union Shop Provisions of the IAM/USAirways Agreement by failure to pay appropriate union dues:

Craig Sickler

Based on the information contained in the letter, it appears that the Union Shop Provisions of the Agreement and the policy of our Organization in this matter have been complied with by the union and the listed employee has failed to respond accordingly. Therefore, approval of the request to proceed with notification of the Carrier for discharge is granted, providing that the applicable provisions of our Agreement with the Carrier have been uniformly applied without exception to all employees covered thereby.

Sincerely,

R. Thomas Buffenbarger

R. Thomas Buffenbarger
INTERNATIONAL PRESIDENT

RTB/jew

cc: Scheri
Sprang

Exhibit 6

21 May 1999

Craig Sickler
1506 Mint St.
Charlotte, NC 28214

Mr. Fred A. Poole
Vice President, Base Maintenance
USAirways, Inc.
P.O.Box 12346
Pgh. PA 15231-0346

Subject: Appeal of Termination

Dear Mr. Poole,

I wish to appeal my termination of employment.

This is a First Amendment issue concerning Political Speech, currently a matter of disagreement between myself and the IAM.

I am a Dues Objector (agency fee payer) on political grounds. I have objected to the union, had my objection perfected and chosen to challenge the calculation of my dues reduction.

The IAM seems to be taking a position that I am required to pay the challenged amounts to them before they have fulfilled their obligations to provide me with an expeditious hearing where I can review the financial information and have the calculation of the reduction verified by an independent auditor.

I have expressed to the union my willingness to place the challenged amounts into an independently controlled escrow account. They have not responded to this offer.

Because there is such a high possibility of the First Amendment Rights of agency fee payers in closed union shops being violated, The United States Supreme Court has required that the union take careful steps to prevent this. An approach where the challenged amounts were held in escrow by the union was flatly rejected by the Court in ELLIS v. RAILWAY CLERKS, 466 U.S. at 443 [475 U.S. 292,304], ABOOD, 431 U.S. at 244 (concurring opinion).

In TEACHERS v.HUDSON, 475 U.S. 292 (1986) the Court held that the union has no right to even the temporary use of even small amounts of my money. I agree, and deny them such use.

I do not believe a labor contract can be interpreted or enforced in such a way that it acts to violate a clearly established constitutional Right.

For USAirways to terminate me because I have refused to give legitimately challenged amounts to the union, would have just such an effect, and would make the Company a party to the violation

Exhibit 7

of my First Amendment Rights. I have tendered the challenged amounts to the union in a manner prescribed by law. They have not accepted my offer.

I am certain you will render an honorable decision to this appeal, based on the facts and the law.

Thank you.

Sincerely,

Craig Sickler

Enclosures: Notice to Employees Subject to Union Security Clauses IAM Journal; Fall 1998
Letter from Donald E. Wharton, 9 Nov. 1998
Challenge to amount of Reduction, 8 Dec. 1998
'15 day Notice' of Dues in arrears, 16 April 1999
Offer of Payment to Escrow Account, 21 April 1999
Rules for Impartial Determination of Union Fees, page 1, 1 Jan. 1988

copy: file

U·S AIRWAYS

John M. Hedblom
Vice President
Labor Relations

June 1, 1999

Craig Sickler
1506 Mint Street
Charlotte, North Carolina 28214

Dear Mr. Sickler:

In a letter dated May 18, 1999, Vice President-Base Maintenance Fred A. Poole notified you that your employment with the Company would be terminated effective May 22, 1999, due to your failure to pay union dues and initiation/reinstatement fees. You submitted a timely appeal of Mr. Poole's decision on May 21, and I am the officer of the Company designated to handle such appeals. This will serve as the Company's decision on your appeal.

I have carefully reviewed the arguments in your May 21, 1999 appeal of Mr. Poole's decision. Unfortunately, those arguments are not germane to the standards for discharge set forth in Article 19 of the collective bargaining agreement. Under Article 19(C)(3)(b), the Company "shall" discharge an employee upon receipt of notification from the IAM that the employee has failed to satisfy his financial obligations within the contractual 15-day grace period. In your case, the IAM provided the required certification in a May 14, 1999 letter from the General Chairman, and, on the basis of that certification, the Company is under a contractual obligation to terminate your employment.

Accordingly, your appeal is denied. Your employment with the Company will be terminated effective June 4, 1999.

Sincerely,

John M. Hedblom

cc: Fred A. Poole
Larry Montford
Anthony Giammarco

2345 Crystal Drive Arlington, VA 22227 (703) 872-7483 Fax (703) 872-7821

Exhibit 8

nternational
ssociation of
achinists and
rospace Workers

9000 Machinists Place
Upper Marlboro, Maryland 20772-2687

Area Code 301
967-4500

OFFICE OF THE GENERAL VICE PRESIDENT

GL Legal Department

November 12, 1999

Subj: Fee Objector Arbitration

Ms. Patricia A. Velasco, Supervisor
American Arbitration Association
225 N. Michigan, Suite 2527
Chicago, IL 60601-7601

Dear Ms. Velasco:

Thank you for shepherding our recent fee objector arbitration covering the fee reductions that the IAM gave to objectors in 1996 and 1997 (Case No. 51 673 00369 98).

By this letter, we are requesting the AAA to schedule the next fee objector arbitration, which will cover our reductions for the years 1998 and 1999. This arbitration will bring us fully up to date, and we will resume arbitrations on a yearly basis.

Attached are the names and addresses of our fee objectors who requested arbitration for the 1998 and 1999 years.

We are anxious to proceed quickly on this matter. Our opening brief and materials should be ready in a matter of weeks. Thank you for your assistance.

In Solidarity,

IAM LEGAL DEPARTMENT

By: _____
Christopher T. Corson
ASSOCIATE GENERAL COUNSEL

CTC/rt

Attachment

Exhibit 9

1998 Challengers

Harold M. Jones
152 Jewett Hill Road
Canton, ME 04221

Gregory J. Goularte
P.O. Box 912
Merrill, OR 97633

Randolph Laatsch
11888 Wexford Place
Hazelwood, MO 63043

Robert E. Koshar
54021 56th Street
Lawrence, MI 49064

Junior R. Monk
178 Milam Road
Fairburn, GA 30213

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(Cite as: 113 F.Supp.2d 870)

United States District Court,
W.D. North Carolina,
Charlotte Division.

John MASIELLO and Craig Sickler,
Plaintiffs,
v.
US AIRWAYS, INC., the International Association of Machinists and Aerospace Workers, Airline Machinists District Lodge 141-M, and Local Lodge 1725,
Defendants.

No. 3:99CV319-H.

Sept. 14, 2000.

Former nonunion employees brought action against employer and union under Railway Labor Act to challenge their discharge under union security clause after they refused to pay union dues. On plaintiffs' motion for summary judgment, the District Court, Horn, Chief United States Magistrate Judge, held that union violated its duty to provide pre-collection procedures to safeguard nonmembers' rights to refrain from funding union's nonrepresentational activities.

Motion granted.

West Headnotes

[1] **Labor Relations ⇦104**
232Ak104 Most Cited Cases

Union security clauses are not enforceable under Railway Labor Act in absence of pre-collection procedures which safeguard nonmembers' rights to refrain from funding union political, ideological, and nonrepresentational activities they oppose. U.S.C.A. Const.Amend. 1; Railway Labor Act, § 2, as amended, 45 U.S.C.A. § 152.

[2] **Labor Relations ⇦104**
232Ak104 Most Cited Cases

Unions and employers cannot enforce union security agreement under Railway Labor act unless they provide all objecting nonmembers with following procedural protection: (1) pre-collection notice and audited financial disclosure that adequately explains basis of chargeability and non- chargeability calculations and is made in advance of any collections, so that employees have sufficient time prior to collections to intelligently review financial disclosure and determine whether to object; (2) fairly calculated advance reduction in amount of fee calculation, based upon independently audited financial disclosure; (3) escrow of all collections reasonably in dispute; and (4) expeditious hearing before impartial decisionmaker to evaluate agency fee calculations. U.S.C.A. Const.Amend. 1; Railway Labor Act, § 2, as amended, 45 U.S.C.A. § 152.

[3] **Labor Relations ⇦104**
232Ak104 Most Cited Cases

Non-union employees could not be terminated pursuant to union security clause in collective bargaining agreement for failure to pay dues after protesting amount union stated was used for nonrepresentational activities, where union failed to give required pre-collection notice, audited financial disclosure, or fairly calculated advance reduction in dues, and union did not maintain independent escrow account for disputed fees, or schedule

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expeditious hearing before arbitrator to evaluate its fee calculations. U.S.C.A. Const.Amend. 1; Railway Labor Act, § 2, as amended, 45 U.S.C.A. § 152.

[4] **Labor Relations ⇨104**
232Ak104 Most Cited Cases

Financial disclosure package provided by union to non-union employees after they objected to amount of dues reduction for nonrepresentational activities was inadequate under Railway Labor Act, where what was provided was illegible in part, had whole columns of numbers missing, and was prepared by high school educated, untrained local union "auditor" only after employees were threatened and discharged. Railway Labor Act, § 23, as amended, 45 U.S.C.A. § 152.

[5] **Labor Relations ⇨104**
232Ak104 Most Cited Cases

Union violated duty under Railway Labor Act to adequately explain basis of its calculation of union dues reduction attributable to nonrepresentational activities and method used to arrive at reduction, by knowingly refusing to provide non-union employees with readily available notes and schedules, and providing instead only single page "fee reduction audits." Railway Labor Act, §§ 1-208, as amended, 45 U.S.C.A. §§ 151-188.

[6] **Labor Relations ⇨104**
232Ak104 Most Cited Cases

Escrow account established by union for disputed dues and fees was insufficiently independent to comply with union's duty under Railway Labor Act to provide pre-collection procedures to safeguard nonmembers' rights to refrain from funding union's nonrepresentational activities, where union had full control over payment of funds from account. Railway Labor Act, §§ 1-208, as amended, 45 U.S.C.A. §§ 151-188.

[7] **Labor Relations ⇨104**
232Ak104 Most Cited Cases

Union's failure to submit to arbitration dispute with nonmembers regarding amount of dues attributable to union's nonrepresentational activities until nearly one year after request for arbitration and five months after union procured nonmembers' discharge under union security clause violated union's duty under Railway Labor Act to provide expeditious pre-collection procedures to safeguard nonmembers' rights to refrain from funding union's nonrepresentational activities. U.S.C.A. Const.Amend. 1; Railway Labor Act, §§ 1-208, as amended, 45 U.S.C.A. §§ 151-188.

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USAirways, Inc., defendant.

MEMORANDUM AND ORDER

HORN, Chief United States Magistrate Judge.

THIS MATTER is before the Court on the following motions, memoranda, and responsive pleadings:

1. "Plaintiffs' Motion for Summary Judgment" (document # 27) and "Plaintiffs' Memorandum in Support.," (document # 28), both filed July 18, 2000;
2. "Defendant U.S. Airways, Inc.'s Memorandum in Opposition..." (document # 36) and "Memorandum of Defendants International Association of Machinists ... in Opposition..." (document # 37), both filed September 1, 2000; and
3. "Plaintiffs' Reply Memorandum in Support..." (document # 38) filed September 12, 2000.

The parties have consented to Magistrate Judge jurisdiction under 28 U.S.C. § 636(c), and this motion is now ripe for disposition. Having carefully considered the parties' arguments, the record, and the applicable authority, the undersigned will *grant* the Plaintiffs' motion.

I. *FACTUAL AND PROCEDURAL BACKGROUND*

Plaintiffs John Masiello and Craig Sickler were hired by Defendant U.S. Airways, Inc. ("Employer" or "Airline" or "US Airways") in August 1988 and May 1988, respectively, to work in the craft or class of "mechanical and related personnel." Both became members of the Defendant International Association of Machinists and Aerospace Workers ("IAM" or "IAM International").

Defendant U.S. Airways is a corporation organized and existing under the laws of the State of Delaware which maintains its principal place of business in Arlington, Virginia. US Airways operates an airline in interstate commerce and is a "carrier by air" within the meaning of Section 201 of the Railway Labor Act ("RLA"), 45 U.S.C. § 181.

IAM International is an unincorporated association, with its principal offices in Maryland, existing in part to represent employees with respect to rates of pay, hours, and working conditions, and is a labor organization subject to the provisions of the Railway Labor Act, 45 U.S.C. §§ 151-88 (1982). Pursuant to RLA § 2 *Ninth*, 45 U.S.C. § 152 *Ninth*, the IAM has been certified as the exclusive bargaining representative of the craft or class of mechanical and related personnel at U.S. Airways. The IAM carries out its representational functions at U.S. Airways through the services of affiliated labor organizations, namely Defendant Airline Machinists District 141-M ("DL 141-M") and Defendant Local Lodge 1725 ("LL 1725"). [FN1] Along with and through these affiliates, Defendant IAM serves as the exclusive bargaining representative of U.S. Airways' mechanical and related personnel at Charlotte, North Carolina, which included representation of the Plaintiffs while they were U.S. Airways employees.

FN1. Defendants DL 141-M and LL

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1725 are unincorporated associations, with their principal offices in California and Charlotte, North Carolina, respectively.

In 1995, both Masiello and Sickler resigned their memberships in the IAM unions and began annually informing the IAM, in writing, that each objected to *873 supporting the nonrepresentational activities of the IAM and its affiliates. On July 8, 1996, and October 28, 1996, respectively, Masiello and Sickler each revoked the dues check-off authorization they had signed.

In the Fall of 1998 and pursuant to its own internal policy and procedures, the IAM published in the *IAM Journal* the then-current version of a "Notice to Employees Subject to Union Security Clauses" ("Notice to Employees") concerning the procedure for nonmembers to file objections and pay reduced dues. The Notice to Employees provided that nonmembers of the IAM who filed timely written objections to supporting the IAM's political and nonrepresentational agenda would pay reduced fees for the 1999 calendar year, to be calculated as "the percentage reduction in monthly Grand Lodge per capita payments ... 26.62 percent, plus a 12.71 percent reduction in district lodge per capita and an [sic] 17.83 percent reduction in local lodge fees." The Notice to Employees was not accompanied by any financial information or explanations about how the IAM or its affiliates arrived at their reduced fee calculations for the 1999 calendar year. [FN2]

FN2. The IAM's policy and practices is to send additional financial disclosure information about the reduced fee calculations only after an employee files timely objections.

Despite the lack of financial information, in November 1998, Plaintiffs each responded to the IAM's "Notice to Employees" by sending letters of objection. Later that month, the IAM's General Secretary-Treasurer, Donald E. Wharton ("Secretary Wharton"), wrote each Plaintiff that their objections had been properly "perfected" in accordance with the IAM's "Notice to Employees" and that they had thirty days to file a "challenge" to the IAM's reduced fee calculation before an "impartial arbitrator chosen by the American Arbitration Association ('AAA')."

Also included with Secretary Wharton's letter to each Plaintiff was a "financial disclosure package" containing single-page "fee reduction audit" summary sheets for the IAM and several of its local lodge and district lodge affiliates, most of which had nothing to do with DL 141-M or LL 1725. Certain of the information dated back to 1993, some was illegible, and whole sections and columns of information were cut off the copies received by the Plaintiffs.

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Significantly, the "financial disclosure package" nowhere mentioned the expenditures of Plaintiffs' local union, LL 1725, nor were any of the IAM affiliates' one page "fee reduction audits" prepared by independent certified public accountants. [FN3]

FN3. In fact, the record clearly reflects that at no time since at least 1989 have the financial books and records of LL 1725 or DL 141-M been audited by an independent certified public accountant.

This "financial disclosure package," along with the earlier "Notice to Employees," was the only financial disclosure material ever sent to Plaintiffs by the Defendants prior to their discharge.

In his deposition, the IAM's Assistant Secretary-Treasurer, William Engler ("Assistant Secretary-Treasurer Engler"), conceded that a non-member objector would not be able to use the limited information provided to compute the percentage of dues used for political and other nonrepresentational purposes and thus to determine what reduction in dues was indicated.

Despite the IAM's failure to meet its disclosure obligation, the Plaintiffs both notified the IAM by letter sent in December 1998, that they "challenged" the IAM's reduced fee calculations, and requested arbitration. Both also requested an independent escrow account in which disputed fees could be deposited, and specifically asked for the financial disclosure to which they were clearly entitled. These letters were received by the IAM and accepted as timely "challenges" under the "Notice to Employees" and the IAM's internal procedures.

***874** At no time prior to procuring Plaintiffs' discharge (in June 1999) did the IAM send either Plaintiff a copy of the notes or supporting schedules they requested or otherwise respond to the Plaintiffs' request for financial disclosure. Nor was this deficiency a mere oversight. When asked if the IAM would ever respond to an employee who asked for additional information, such as the notes to the financial statements, Assistant Secretary-Treasurer Engler, the man in charge of the IAM's objection program, bluntly answered: "I would not respond."

At no time after their challenges were submitted (in December 1998) did Plaintiffs receive any acknowledgment from the IAM unions that their correspondence had been received; that an arbitration had been scheduled; that any additional "fee reduction audits" would be conducted; or that an escrow account for disputed fees had been established with an independent third party. Accordingly, the Plaintiffs did not pay any dues that allegedly accrued after January 1, 1999.

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Rather than providing the requested financial information--as clearly required by law--beginning April 7, 1999, LL 1725 and DL 141-M compounded their error by threatening Plaintiffs' employment if they failed to pay both the arrearage *and* a "reinstatement fee." None of the demand letters from the union acknowledged the Plaintiffs' pending "challenges," responded to their requests for arbitration, reported on any "fee reduction audit," or advised that an escrow account had been established.

Still having failed to afford Plaintiffs the required procedural protections, on May 14, 1999, Defendants IAM and DL 141-M requested that U.S. Airways discharge them both, citing their "noncompliance" with Article 19 (entitled "Union Shop and Dues Check-Off Agreement") of the collective bargaining agreement. In late May 1999, the Plaintiffs appealed to U.S. Airways, noting the complete lack of procedural protections required by law. US Airways brushed aside the argument as "not germane" to the standards of the U.S. Airways-IAM collective bargaining agreement, [FN4] discharging the Plaintiffs on June 1, 1999. At the time of their termination, both Plaintiffs had good work records.

FN4. There is an "indemnification clause" in the collective bargaining agreement providing that the IAM will "indemnify [US Airways for] ... liabilities which arise out of ... any action taken [by U.S. Airways in] ... complying with ... [the collective bargaining agreement.]" US Airways concedes that the clause does not in any way absolve it of liability to the Plaintiffs. *See* "Defendant U.S. Airways, Inc.'s Memorandum in Opposition..." (document # 36) at 2.

The record is replete with examples of the union's untimely, inadequate practices and procedures. For example, despite receiving the December 1998 letters and accepting them as valid challenges under its "Notice to Employees," the IAM did not contact the AAA to initiate arbitration until November 1999, almost one year after the challenges were received and five months *after the Plaintiffs were discharged.* Apparently such delays were not uncommon and, indeed, in other cases the delayed responses were even longer. On January 8, 1998, for example, the IAM contacted the AAA to invoke arbitration over nonmembers' challenges to *1996* fee collections.

Similarly, the IAM affiliates' "fee reduction audits" (for LL1725 and DL 141- M) were not completed until August 1999--two months *after the Plaintiffs were discharged.* Furthermore, these tardy "audits" were not really audits. Rather, they were self-serving reports prepared by union members--with high school educations and no training in accounting--whom

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the Secretary-Treasurer had the singular power to dub "Grand Lodge Auditors."

Mr. Jim Pichler, the "Grand Lodge Auditor" who conducted the "fee reduction audit" of LL 1725, testified that he was unfamiliar with the "standards of field *875 work" applicable to audits. Nevertheless, Mr. Pichler--a high school graduate with no background in accounting--testified that "99-100%" of LL 1725's officer's salaries were properly chargeable to objecting nonmembers; that he had not even interviewed the Vice-President or Secretary prior to reaching this conclusion; and that the President and Treasurer kept no time records, but could recall how their time was allocated a year-and-a-half earlier. Nevertheless, even on this flimsy and indefensible basis, Grand Lodge Auditor Pickler determined that the dues reduction (for LL 1725) for objecting nonmembers should have been almost twice that which was allowed.

Finally, the record is clear that at no time prior to May 1, 1999 did the Defendants establish an *independent* escrow account in which the dues or fees demanded from the Plaintiffs could be deposited. The IAM has established two accounts, which it calls "escrow" accounts, but these accounts are controlled solely by IAM officers and employees. Indeed, again showing the arrogance of too much unchecked power, the record reflects that the IAM made withdrawals from these accounts whenever it believed--unilaterally--that the amounts in the "escrow" accounts were excessive.

In January 1999, for example, the IAM used the "escrow" accounts to pay certain fees and expenses after it lost a case in federal court. Although Assistant Secretary-Treasurer Engler had "no idea" who authorized this payment, he conceded that "there's no written policy which prevents the union from paying such bills or fees or costs from out of the ... escrow account."

II. *DISCUSSION OF CLAIMS*

A. *The Summary Judgment Standard*

Pursuant to Federal Rule of Civil Procedure 56(c), summary judgment should be granted when the pleadings, responses to discovery, and the record reveal that "there is no genuine issue as to any material fact and... the moving party is entitled to a judgment as a matter of law." *See also* Charbonnages de France v. Smith, 597 F.2d 406 (4th Cir.1979). Once the movant has met its burden, the non-moving party must come forward with specific facts demonstrating a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

A genuine issue exists "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106

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S.Ct. 2505, 91 L.Ed.2d 202 (1986). However, the party opposing summary judgment may not rest upon mere allegations or denials and, in any event, a "mere scintilla of evidence" is insufficient to overcome summary judgment. Id. at 249-50, 106 S.Ct. 2505.

When considering summary judgment motions, courts must view the facts and the inferences therefrom in the light most favorable to the party opposing the motion. Id. at 255, 106 S.Ct. 2505; Miltier v. Beorn, 896 F.2d 848 (4th Cir.1990); Cole v. Cole, 633 F.2d 1083 (4th Cir.1980). Indeed, summary judgment is only proper "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there [being] no genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (internal quotations omitted).

B. *Procedural Requirements in Enforcement of Union Security Clauses*

The enforcement of a "union security agreement" under the Railway Labor Act, Section 2 *Eleventh*, 45 U.S.C. § 152 *Eleventh*, is governed not only by the RLA, but also by the United States Constitution, since it is considered to be governmental action. *See, e.g.*, Railway Employes' Dep't. v. Hanson, 351 U.S. 225, 234-38, 76 S.Ct. 714, 100 L.Ed. 1112 (1956); *and *876*Ellis v. BRAC, 466 U.S. 435, 455-57, 104 S.Ct. 1883, 80 L.Ed.2d 428 (1984) (nonmember employees working under the RLA are entitled to constitutional safeguards to ensure that they are not forced to pay for union political and nonrepresentational activities).

[11] The Supreme Court has held that "union security clauses" are not enforceable in the absence of *pre-collection* procedures which safeguard the nonmembers' rights to refrain from funding union political, ideological, and nonrepresentational activities they oppose. Chicago Teachers Union v. Hudson, 475 U.S. 292, 301-303, 106 S.Ct. 1066, 89 L.Ed.2d 232 (1986). *Accord* Tierney v. City of Toledo, 824 F.2d 1497, 1504 (6th Cir.1987), *further proceedings*, 917 F.2d 927 (6th Cir.1990) ("[N]o union or employer may take any action to enforce a non-union member's duty to pay any dues, whether through a deduction from wages or payment from wages already paid, until a plan with procedures meeting the commands of ... Hudson is established and operating.")

Under Hudson, collection of compulsory union dues is contingent upon fair and adequate procedural protections for nonmember employees. "[B]y allowing the agency shop at all, we have already countenanced a significant infringement on [nonunion employees'] First Amendment rights." Hudson, 475 U.S. at 301, n. 8, 106 S.Ct. 1066 (emphasis added), *citing* Ellis, 466 U.S. at 455-56, 104 S.Ct.

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1883. *Accord* Hudson, 475 U.S. at 303, n. 11, 106 S.Ct. 1066; *and* Shea v. International Ass'n of Machinists, 154 F.3d 508, 514-15 (5th Cir.1998) (Hudson 's "requirement that 'the procedure be carefully tailored to minimize the infringement' [on nonunion employees' constitutional rights] is the standard by which the union shop procedures must be evaluated under the RLA").

[2] In practical terms, Hudson imposes on unions and employers the duty to provide all objecting nonmembers with the following procedural protection:

1) pre-collection notice and audited financial disclosure which adequately explains the basis of the chargeability and the non-chargeability calculations and is made in advance of any collections, so that the employees have sufficient time prior to collections to intelligently review the financial disclosure and determine whether to object;
2) a fairly calculated "advance reduction" in the amount of the fee calculation, based upon the independently audited financial disclosure;
3) an escrow of all collections reasonably in dispute; and
4) an expeditious hearing before an impartial decisionmaker to evaluate the agency fee calculations.

Id. at 301-303, 106 S.Ct. 1066.

Simply stated, the right to valid, pre-collection Hudson procedural protections trumps any contractual claim the IAM has to collect dues under the Railway Labor Act or the U.S. Airways-IAM union security clause. Id. *Accord* CWA v. Beck, 487 U.S. 735, 745, 108 S.Ct. 2641, 101 L.Ed.2d 634 (1988); Tavernor v. Illinois Federation of Teachers, 226 F.3d 842 (7th Cir.2000); Penrod v. NLRB, 203 F.3d 41, 45-46 (D.C.Cir.2000) (union financial disclosure inadequate where the union refuses to provide the supporting notes and schedules); Production Workers Union, Local 707 (Mavo Leasing), 322 N.L.R.B. 35, 1996 WL 511835 (1996), *enforced,* 161 F.3d 1047, 1053 (7th Cir.1998) (employees' discharges invalid in the absence of a valid notice, even though the employees had refused to pay any dues); Ferriso v. NLRB, 125 F.3d 865, 870 (D.C.Cir.1997) (Hudson 's mandate of "verification by an independent auditor" requires financial audits performed by independent certified public accountants for each level of the union hierarchy); Lancaster v. ALPA, 76 F.3d 1509, 1517 (10th Cir.1996) (summary judgment in favor of discharged employee, even though he had refused to pay any of the disputed assessment); *877Weaver v. University of Cincinnati, 942 F.2d 1039, 1045 (6th Cir.1991) (courts must issue injunctions against all agency fee collections when the Hudson compliance is inadequate); Dean v. TWA 924 F.2d 805, 809 (9th Cir.1991) (employee's discharge invalid, since a nonmember incurs "no duty to pay dues until [union] complies with Hudson "); Dashiell v. Montgomery County, 925 F.2d 750, 752 (4th Cir.1991) (same); Lowary v. Lexington Local Board of Education, 854 F.2d 131, 134 (6th Cir.1988) (granting injunction against all dues collections in the absence of a valid Hudson plan); and Tierney, 824 F.2d at 1504, *further proceedings,* 917 F.2d at 933-39.

C. ***The IAM Unions' Pre-Collection Procedures Were Woefully Inadequate***

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1. Requirements of a Pre-Collection Notice, an Audited Financial Disclosure, and a Fairly Calculated "Advance Reduction" in Dues

[3] It is self-evident from the facts set forth in Section I (Factual and Procedural Background) that the IAM failed to give the required pre- collection notice, an audited financial disclosure, or a fairly calculated "advance reduction" in dues.

At the time that the Plaintiffs were first required to object under the IAM's "Notice to Employees" (in November 1998), they were given *no* financial disclosure about the expenditures of the IAM, DL 141, or LL 1725. All they were given was the "Notice" itself, which stated that "the percentage reduction in monthly Grand Lodge per capita payments is 26.62 percent, plus a 12.71 percent reduction in district lodge per capita and an [sic] 17.83 percent reduction in local lodge fees." Not an iota of financial documentation was provided to them at that critical time, when they and other employees were required to either object or waive their rights, in direct contravention of clear law to the contrary. *See* Hudson, 475 U.S. at 305-06, 106 S.Ct. 1066 (condemning this precise practice); and Dashiell, 925 F.2d at 752-56 (same).

[4] The "financial disclosure package," which was given to Plaintiffs *after* they objected, was hardly an improvement on no disclosure at all. As previously stated, what was provided was illegible in part; had whole columns of numbers missing; was not prepared by an independent auditor or, indeed, even by a real "dependent auditor"; and, in fact, was prepared by a high school educated, untrained "Grand Lodge Auditor" only *after the Plaintiffs were threatened and discharged.* Again, the union's practices were in direct contravention of clear law to the contrary. *See, e.g.*, Dashiell, 925 F.2d at 753-54; Ferriso v. NLRB, 125 F.3d 865, 867-70 (D.C.Cir.1997) (reversing NLRB ruling that "audits" by in-house union employees were adequate under Hudson); and Tierney, 824 F.2d at 1506, *further proceedings*, 917 F.2d at 935-36 ("Hudson require[s] that detailed financial information concerning all major categories of union expenses, including those for payments made to affiliated unions, be audited by a certified public accountant independent of the union and provided to all non-members before any fees may be collected from them").

[5] The union also knowingly refused to provide the Plaintiffs with readily available notes and schedules, providing instead only single page "fee reduction audits." This, too, was in direct contravention of clearly applicable law. *See* Penrod v. NLRB, 203 F.3d 41, 43-47 (D.C.Cir.2000) (unions must adequately explain the basis of their calculations and the method used to arrive at them); Damiano v. Matish, 830 F.2d 1363, 1370 (6th Cir.1987) (union must provide nonmembers with "the method" of calculation); *and* Dashiell, 925 F.2d at 752-56 (same).

Finally, even given the woeful inadequacy and downright arrogance of the union's practices and procedures, the union conceded--after it repeatedly threatened and ultimately terminated the Plaintiffs--as to LL 1725, that the dues reduction for objecting *878 nonmembers should have been almost twice that which was allowed.

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2. Requirement of an Escrow Account for Disputed Fees

"Escrow"--as used by Hudson--requires an escrow account be established with independent, third-party control over the withdrawals. *See* Romany v. Colegio de Abogados, 742 F.2d 32, 44 (1st Cir.1984) (interim remedy is to place the disputed dues in an interest bearing escrow account "managed by a bank or other neurral entity"); *and* Lehnert v. Ferris Faculty Ass'n, 643 F.Supp. 1306, 1333 (W.D.Mich.1986) (funds must be placed in an "independently controlled" escrow account), *aff'd,* 881 F.2d 1388 (6th Cir.1989), *aff'd in part, rev'd in part,* 500 U.S. 507, 111 S.Ct. 1950, 114 L.Ed.2d 572 (1991). At no time did the Defendants establish such an account in this case.

[6] The IAM's so-called "escrow account," which simply moves money from one IAM pocket to another, cannot possibly pass muster under Hudson. The IAM coyly claims to have more than enough money tucked away to cover any claim by objecting employees, but, even if true, such accounts do not constitute real escrow accounts. Indeed, in Romero v. Colegio De Abogados, 204 F.3d 291 (1st Cir.2000), the First Circuit struck down an almost identical non-escrow arrangement utilized by a state bar association, stating:

> The Colegio claims that sufficient funds exist in the escrow account to cover any disputed amounts. This argument misses the mark. Romero's complaint is that *his* dues are being used for a purpose to which he objects, and this is exactly the issue to which the Supreme Court was responding in Hudson when it held the disputed funds must be placed in escrow.

Id. at 304 (emphasis in original).

3. Requirement of Expeditious Hearing Before an Impartial Decisionmaker

[7] Nor, finally, did the Defendants comply with the Hudson requirement that an expeditious hearing be scheduled before an impartial decisionmaker to evaluate the union's fee calculations.

It is true that an "expeditious arbitration might satisfy the requirement of a reasonably prompt decision by an impartial decisionmaker." Hudson, 475 U.S. at 308, n. 21, 106 S.Ct. 1066. *Accord* Dashiell, 925 F.2d at 752-54; and Dean, 924 F.2d at 808 ("[B]efore collecting fees through an agency shop agreement, a union must adequately explain the basis for the fee, and provide a reasonably prompt opportunity to challenge it before an impartial decisionmaker").

What occurred here, however, was the antithesis of expeditiousness. Plaintiffs filed for arbitration under the IAM's "Notice to Employees" in December 1998. The IAM stonewalled the Plaintiffs for half a year, threatened them and ultimately procured their discharge in May 1999--then waited until November 1999, *five months after their discharge,* to initiate arbitration. There is no way that the union's maddening nonfeasance could be reasonably regarded as "expeditious."

D. *Conclusion*

There is only one conclusion a reasonable fact finder could make on this record: the Plaintiffs were systematically denied procedural protections to which they were

113 F.Supp.2d 870
165 L.R.R.M. (BNA) 2481, 141 Lab.Cas. P 10,794
(Cite as: 113 F.Supp.2d 870)

clearly entitled. Therefore, the Plaintiffs' Motion For Summary Judgment, at least as to liability, must and shall be granted.

III. *ORDER*

NOW, THEREFORE, IT IS ORDERED:

1. "Plaintiffs' Motion for Summary Judgment" (document # 27) is GRANTED as to the liability of all Defendants. Provided, however, the Court will address the validity of the indemnification clause in the collective bargaining agreement, if at all, at a later date.

***879** 2. Counsel for the parties shall confer, *in person,* on or before October 31, 2000, and shall diligently seek to resolve the issues remaining in this case. If the remaining issues cannot be resolved by counsel, a murually acceptable mediator and proposed dates for a mediation shall be discussed. Thereafter, *on or before November 30, 2000,* counsel shall submit to the undersigned either a Consent Judgment for signature *or* the name, address, and telephone number of a proposed mediator (or mediators) and dates when counsel are available for a mediation to be scheduled.

3. The Clerk is directed to send copies of this Memorandum and Order to counsel for the parties.

END OF DOCUMENT

Committee on Education and the Workforce
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name: CRAIG J. SICKLER

	Yes	No
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the Committee).		X
2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1998: N/A		
3. Will you be representing an entity other than a government entity?	Yes	No X
4. Other than yourself, please list what entity or entities you will be representing:		
5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4: N/A		
6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1998, including the source and amount of each grant or contract: N/A		
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list:	Yes	No X

Signature: C Sickler Date: 5/4/01

PERSONAL INFORMATION: Please provide the committee with a copy of your resume (or a curriculum vitae). If none is available, please answer the following questions:

a. Please list any employment, occupation, or work related experiences, and education or training which relate to your qualifications to testify on or knowledge of the subject matter of the hearing:

I HAVE BEEN EMPLOYED AS A MECHANIC AT AIRLINES REPRESENTED BY THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS SINCE 1980.

b. Please provide any other information you wish to convey to the Committee which might aid the members of the Committee to understand better the context of your testimony:

I WAS FIRED BY USAIRWAYS, INC. AT THE REQUEST OF THE IAM BECAUSE I ATTEMPTED TO EXERCISE MY RECK RIGHTS.

Please attach to your written testimony.

APPENDIX H - WRITTEN STATEMENT OF CHRISTOPHER T. CORSON, ASSOCIATE GENERAL COUNSEL, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, UPPER MARLBORO, MARYLAND

Testimony of
Christopher T. Corson, Associate General Counsel
International Association of Machinists & Aerospace Workers, AFL-CIO
Before the
Subcommittee on Workforce Protections, Committee on Education and the Workforce
United States House of Representatives

"Beck Rights 2001: Are Workers Being Heard?"

May 10, 2001

I would like to thank the Chairman and other members of this Subcommittee for the opportunity to address the topic of Beck rights on behalf of the Machinists Union.

The Importance of Union Democracy and Democratic Principles

The rights of fee objectors are based on the freedoms of speech and association in the First and Fourteenth Amendments to the U.S. Constitution. These principles are fundamentally important to labor unions, which are America's most vibrant private mass democratic institutions. The inception of a union is in the voluntary and democratic selection of a collective bargaining representative by employees in an appropriate bargaining unit, often through the secret ballot process. Thereafter, unions are required by the Labor-Management Reporting and Disclosure Act (LMRDA) to continue operating on voluntary and democratic principles. Local officers must be elected at least every three years by secret ballot, and national officers must be elected at least every five years by secret ballot or at a convention of delegates themselves chosen by secret ballot. Member dues may be increased only by the same methods. And all union members have an equal right to nominate candidates, vote in union elections, and exercise the freedoms of speech and association within their unions without fear of discrimination or retaliation. We operate by these values in the Machinists Union.

Objector Rights

Turning to objector rights, the first is called the General Motors right,[1] which requires all union membership in the United States to be voluntary. Thus, employees covered by a union security clause have the right to remain non-members, and they may satisfy the clause by paying a representation fee instead of dues. The second right is the Beck right,[2] which further protects fee payers by requiring unions to afford them notice and a procedure for withholding a percentage of their fees equal to the percentage of union activities that are not germane to collective bargaining.

The Machinists Union's Beck Compliance Program

The Beck compliance program of the Machinists Union was developed by a distinguished professor of law from the Catholic University of America, Roger C. Hartley, who formulated the legal bases, record keeping requirements, and calculation methodologies that underlie our program. Most aspects have proven durable since initiation in 1986, although we have made refinements in response to further direction from the courts and our own efforts to anticipate the development of fee objector law. For example, we recently responded to litigation against certain aspects of our program that relate to Railway Labor Act employees[3] by: (1) moving from International-level auditing of our subordinate affiliates to independent certified public accountants, (2) modifying our escrow procedure, and (3) shortening the time between objection and arbitration. In fact, we applied those changes to National Labor Relations Act employees as well. Let me describe how our program works at the present time.

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[1] NLRB v. General Motors Corp., 373 U.S. 734 (1963).
[2] Communications Workers v. Beck, 487 U.S. 735 (1988) (NLRA employees). *See also* Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986) (public employees), Ellis v. Railway Clerks, 466 U.S. 435 (1984) (RLA employees), and other cases.
[3] Masiello v. IAMAW, Civil Action No. 3:99 cv 319H (W.D.N.C., settled 4/6/01).

When we first seek to sign up a bargaining unit employee as a union member or fee payer, we use a pre-printed three-part form. The top of the form asks for basic identification information. Next is a membership application that the employee can sign or not, thus protecting the General Motors right. The following section is a check-off authorization, which is also optional. At the bottom is an "Important Notice" that tells the employee to read the detailed explanation of Beck rights and procedures on the back of the third sheet.[4] The employee will keep this third sheet, ensuring full notice of rights.

We also publish our Beck notice each year in the year-end issue of the Machinists Union's magazine, the IAM Journal. This issue is sent to every member and fee payer, and we use a special computer program for the subscription list, which adds anyone who was laid off or lapsed that year. Thus, each member and fee payer should receive multiple copies of our notice.

A copy of our Beck notice is attached to this testimony. It explains: (1) objector rights; (2) the reductions that objectors will receive in the following year; (3) the time periods and procedures for becoming an objector; (4) the time periods and procedures for challenging our reductions before an independent arbitrator; and (5) the arbitration procedures. Any employee who requests objector status is sent the audited financial information that we used in calculating the advance reductions set out in the notice. We maintain an escrow account at our International level to protect against any possibility that we may have the improper use of objector monies pending the arbitrator's award. And in the arbitration of the challenges we receive, where the Union bears the burden of proof, we furnish each challenger with an independent audit prepared by a certified

[4] Employees are also told how to obtain copies of the Machinists Constitution and the Labor Management Reporting and Disclosure Act (LMRDA).

public accounting firm of each lodge that receives a portion of the challenger's fee. Our brief exceeds 100 pages of detailed explanation of our methodologies, record keeping, and calculations, and we attach about two inches of exhibits.

Our Experience with Actual Objectors

With this explanation of our notices and procedures, I would like to focus on the specific question that this Subcommittee has posed: "Are Workers Being Heard?". The Machinists Union is proud to have approximately 500,000 members. Our yearly number of objectors ranges from 500 to 700, or a bit more than $1/10^{th}$ of one percent. This year, 13 of those objectors invoked the arbitration procedure. Last year, the number was eight. In these arbitrations, only one or two challengers will make any kind of submission to the arbitrator at all. Given our efforts at notice, this low level of response suggests that the vast majority of employees who pay dues or fees to us do not object to the activities of our Union that the courts have deemed non-representational.

When I talk to objectors or potential objectors on the phone – and I am the lawyer in our Legal Department who often receives those calls – I usually hear that the employee does not want his or her fees spent on campaign contributions. But they are not. Campaign contributions must come from voluntary money in a PAC, not dues or fees. When an objector does withhold a portion of fees from "non-germane" Machinists Union activities, those activities are mostly non-political: organizing new units; providing services to retired employees; working in our communities to support groups such as Little Leagues and the Boy Scouts; supporting our non-profit affiliates that furnish health and safety training and dislocated worker retraining; working for the advancement of civil rights; and maintaining relations with other labor organizations. While some non-

chargeable activities are politically oriented, most involve work on legislation that is important to working families or on non-partisan efforts such as voter registration drives or get-out-the-vote drives. All of these efforts strengthen our ability to negotiate good contracts, and we think that they could be recognized as germane to collective bargaining. If an objector's concerns relate to the small portion of partisan political expenditures at election time, such as on issue ads, the Beck process is truly a bludgeon, not a scalpel.

It often appears to us that Beck objections are spurred by concerns other than the freedoms of speech and association that the rights we are talking about are intended to protect. By filing an objection, employees have a way to pay less to the Union for the benefits of collective bargaining while retaining full rights to equal representation. Other employees may be dissatisfied with the Union's germane activities, such as the challenger last year who complained in the arbitration about the nature and quality of the representation that he was getting from his local lodge. That challenger had not raised a legitimate Beck-type objection, because his complaint was not about non-germane activities at all. We are required, however, to treat as a Beck objector anyone who invokes our procedures.

The Need for Protecting Other Free Speech and Association Rights

Before leaving the freedoms of speech and association, I would also like to request the Subcommittee's attention to other important employee rights grounded in those values, namely: the right to organize in a union for mutual protection; the right to engage in protected, concerted activity; and the right to communicate with the public on issues of concern to employees. Employers violate these rights regularly and

systematically, and the remedies available under the Federal labor laws take too long and are grossly inadequate. When President Bush recently ordered Federal contractors to post notices of Beck rights, he omitted any mention of these other rights that concern a far greater number of employees and desperately need protection. A level playing field is called for.

Conclusion

In closing, I want to emphasize my initial statement that the General Motors and Beck rights are important. The freedoms of speech and association are fundamental values for the Labor Movement. Even though our evidence shows that relatively few employees wish to invoke these rights, and our cost of compliance is very high, the Machinists Union will continue to honor these values as they apply to objectors. But we would also ask employers to honor these values as they apply to our members and potential members.

On behalf of the Machinists Union, I would like to thank the Chairman and other Subcommittee members again for this opportunity to explain our notices and procedures. I would be happy to answer any questions.

Notice to Employees Subject to Union Security Clauses

Employees working under collective bargaining agreements containing union security clauses are required, as a condition of employment, to pay an amount equal to the union's initiation fee, if applicable, and monthly dues. This is their sole obligation to the union, regardless of the wording of the clauses. Individuals who are members of our organization pay initiation, if applicable, and monthly union dues. Nonmembers, or "agency fee payors," meet their obligation by the payment of "agency fees" for representation that are equal to initiation, if applicable, and the union's monthly dues. Nonmembers have a legal right to file objections to funding expenditures that are "nongermane to the collective bargaining process." Nonmembers who chose to file such objections should follow the procedures set forth below.

When considering these matters, individuals should be aware that the union security clause contained in their collective bargaining agreement was negotiated and ratified by their fellow employees so that everyone who benefits from the collective bargaining process shares in its cost. The working conditions of all bargaining unit employees are improved immeasurably when the union gains higher wages, better health care and pensions, fairness in the disciplinary system, overtime pay, vacations, and many other improvements in working conditions at the bargaining table. And while individuals may choose to meet their financial obligations as nonmember agency fee payors, before electing agency fee payor status individuals should be aware of the additional benefits of union membership they are giving up.

Among the many opportunities available to IAM members are the right to attend and participate in union meetings; the right to nominate and vote for candidates for union office and the right to run for union office; the right to participate in contract ratification and strike votes; the right to participate in the formulation of IAM collective bargaining demands; the right to participate as a delegate to the International Union convention; the right to participate in the development and formulation of IAM policies; and the right to enjoy the many benefits of the Union Privilege Benefits Program, including low-interest union credit cards, prescription drug cards, life insurance, legal and travel services.

Individuals who nevertheless elect to be nonmember agency fee payors may object to funding expenditures nongermane to the collective bargaining process and support only chargeable activities. Examples of expenditures germane to the collective bargaining process for which objectors may be charged are those made for the negotiation, enforcement and administration of collective bargaining agreements; meetings with employer and union representatives; proceedings on behalf of workers under the grievance procedure, including arbitration; internal union administration; and litigation related to the above activities. Contributions to the union's strike fund are chargeable, because nonmembers have the same right to strike benefits as members if they meet the applicable requirements. Expenditures nongermane to the collective bargaining process and, thus, nonchargeable to objectors, are those which are not strictly related to collective bargaining. Examples of such expenditures are those made for political purposes; for general community service and legislative activities; for certain affiliation costs; and for general organizing activities.

Objectors must file objections in accordance with the following procedures:

1. Beginning on November 1, 2000, and ending on November 30, 2000, or during the first 30 days in which an objector is required to pay fees to the union, that objector may request that his/her initiation fee, if applicable, and monthly agency fee payment be reduced so that he/she is only bearing the costs of representation activities. Fee reductions will be based on prior audited figures of the Grand Lodge and on an average of prior audited figures from the District and Local Lodge levels. For the calendar year 2001, the percentage reduction in monthly Grand Lodge per capita payments is 30.29 percent, plus a 12.64 percent reduction in district lodge per capita and a 26.30 percent reduction in local lodge fees.
2. A request must be in the form of a letter, signed by the objector and sent to the General Secretary-Treasurer of the International Association of Machinists and Aerospace Workers, AFL-CIO, 9000 Machinists Place, Upper Marlboro, MD 20772-2687, postmarked during the period described in paragraph 1 above. The request shall contain the objector's home address and local lodge number, if known.
3. Upon receiving a proper request from an objector, the General Secretary-Treasurer shall notify such objector in sufficient detail of the amount by which his or her payments shall be reduced and provide a summary of major categories of expenditures showing how it was calculated. The Grand Lodge maintains an escrow account that contains sufficient monies to cover any challenges to expenditures that may reasonably be in dispute.
4. Upon receiving the General Secretary-Treasurer's notice of the calculation of chargeable expenditures, an objector shall have 30 days to file a challenge with the General Secretary-Treasurer if he or she has reason to believe that the calculation of chargeable activities is incorrect.
5. If an objector chooses to challenge the calculation of the advance reduction, there shall be an expeditious appeal before an impartial arbitrator chosen through the American Arbitration Association's (AAA) Rules for Impartial Determination of Union Fees.
   a. Any and all appeals shall be consolidated and submitted to the AAA by the IAM at the end of the 30 day challenge period. The arbitration will take place after the District and Local Lodges of challengers have been audited for this purpose. Presentations to the arbitrator will be either in writing or at a hearing, as determined by the arbitrator. If a hearing is held, any objector who does not wish to attend may submit his/her views in writing by the date of the hearing, or may participate by telephone. If a hearing is not held, the arbitrator will set the dates by which all written submissions will be received and will decide the case based on the evidence submitted.
   b. The union shall pay the costs of the arbitration. Challengers shall bear all other costs in connection with presenting their appeal (travel, witness fees, lost time, etc.). Challengers may, at their expense, be represented by counsel or other representative of choice.
   c. A court reporter shall make a transcript of all proceedings before the arbitrator if a hearing is held. The transcript shall then be the official record of the proceedings.
   d. The union shall bear the burden of justifying its calculations.
   e. The union shall be bound by the decision of the arbitrator.
6. An objector who chooses to renew his or her request for an advance reduction must do so annually in compliance with the above-described procedures.*
7. A person who was a member of the IAM at the time set forth in paragraph 1, but who subsequently resigns from membership, may request objector status for the remainder of the year. Said former member may, within the first thirty days after the effective date of resignation, write to the General Secretary-Treasurer, as set forth in paragraph 2.

* Renewal is not currently required for nonmembers subject to the jurisdiction of the United Court of Appeals for the Fifth Circuit (Louisiana, Mississippi, and Texas).

R. Thomas Buffenbarger
International President

Donald E. Wharton
General Secretary-Treasurer

PERSONAL INFORMATION: Please provide the committee with a copy of your resume (or a curriculum vitae). If none is available, please answer the following questions:

a. Please list any employment, occupation, or work related experiences, and education or training which relate to your qualifications to testify on or knowledge of the subject matter of the hearing:

I am currently Associate General Counsel for the International Association of Machinists and Aerospace Workers, AFL-CIO, with responsibility for handling fee objector matters.

Previously, I was a supervising attorney in the office of the court-appointed Election Officer for the International Brotherhood of Teamsters, pursuant to the Teamsters consent decree.

I graduated from the Columbia University School of Law in 1981 and clerked from 1981 to 1982 for the Honorable Marion T. Bennett of the U.S. Court of Claims (now the U.S. Court of Appeals for the Federal Circuit).

b. Please provide any other information you wish to convey to the Committee which might aid the members of the Committee to understand better the context of your testimony:

Please attach to your written testimony.

Committee on Education and the Workforce
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name:		
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the Committee).	Yes	No X
2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1998: None.		
3. Will you be representing an entity other than a government entity?	Yes X	No
4. Other than yourself, please list what entity or entities you will be representing: International Association of Machinists and Aerospace Workers, AFL-CIO		
5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4: Associate General Counsel		
6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1998, including the source and amount of each grant or contract: None.		
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list:	Yes	No X

Signature: _____ Date: May 9, 2001
Christopher T. Corson

APPENDIX I - WRITTEN STATEMENT OF RAYMOND J. LaJEUNESSE, JR., VICE PRESIDENT AND STAFF ATTORNEY, NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC, SPRINGFIELD, VIRGINIA

STATEMENT OF RAYMOND J. LAJEUNESSE, JR.,
VICE PRESIDENT & STAFF ATTORNEY,
NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.,
ON
Workers' Experiences in Attempting to Exercise Their Rights under *Communications Workers v. Beck* and Related Cases

House Committee on Education and the Workforce
Subcommittee on Workforce Protections
Thursday, May 10, 2001

Chairman Norwood and distinguished Members of the Committee:

Thank you for the opportunity to participate in these hearings.

My name is Raymond J. LaJeunesse, Jr. I am a Staff Attorney with the National Right to Work Legal Defense Foundation, in Springfield, Virginia. Since the Foundation was founded in 1968, it has provided free legal aid to the plaintiffs in almost every case litigated concerning the rights of workers not to subsidize union political and other nonbargaining activities. The most famous of these cases is *Communications Workers of America v. Beck*.[1]

I have worked for the Foundation for more than thirty years. In that time, I have provided free legal representation to tens of thousands of individual employees nationwide, seeking through litigation to vindicate their fundamental constitutional and civil rights against compulsory unionism abuses perpetrated by both unions and employers. I was the lead counsel for the plaintiff workers

[1] 487 U.S. 735 (1988). Other leading cases on this subject in which Foundation attorneys represented the plaintiff workers include *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), *Ellis v. Railway Clerks*, 466 U.S. 435 (1984), *Teachers Local 1 v. Hudson*, 475 U.S. 292 (1986), *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507 (1991), *Air Line Pilots Ass'n v. Miller*, 523 U.S. 866 (1998), and *Marquez v. Screen Actors Guild*, 525 U.S. 33 (1998). The Foundation currently is helping workers in more than 400 cases, the majority of which involve enforcement of employees' rights under *Beck* and these related cases.

in three such cases that I ultimately argued in the United States Supreme Court, *Lehnert v. Ferris Faculty Ass'n*,[2] *Air Line Pilots Ass'n v. Miller*,[3] and *Marquez v. Screen Actors Guild*.[4]

I commend you for investigating the adequacy of this country's system of labor laws after *Beck* and related cases. Implementation of Harry Beck's victory in the United States Supreme Court is a serious problem. Individual workers throughout America are forced—by virtue of a unique privilege granted to unions by Congress—to contribute their hard-earned dollars to political and ideological causes they oppose.

I am not talking about contributions to candidates by union political action committees. I am talking about union dues and agency fees, collected from workers under threat of loss of job—a threat that current federal labor law authorizes. These are compulsory dues and fees that under federal election law can lawfully be used for registration and get-out-the-vote drives, candidate-support among union members and their families, administration of union political action committees, and issue advocacy. In testimony before a House committee in 1996, Leo Troy, Rutgers University Professor of Economics, conservatively estimated that these in-kind union political expenditures amount to between 300 to 500 million dollars in a presidential election year.[5] That, of course, is in addition to the uncountable millions, perhaps billions, more that labor organizations spend on state and local elections and lobbying at all levels of government.

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[2] 500 U.S. 507 (1991).

[3] 523 U.S. 866 (1998).

[4] 525 U.S. 33 (1998).

[5] Leo Troy, Ph. D., Rutgers University, Prepared Statement before U.S. House of Representatives Committee on Government Reform and Oversight, Mar. 21, 1996.

Under the National Labor Relations and Railway Labor Acts ("NLRA" and "RLA"), employees who never requested union representation must accept as their monopoly bargaining agent the union that the majority of the employees in their bargaining unit selects. Then, if their employer and that bargaining agent agree, the law forces these employees to pay fees equal to union dues for that unwanted representation or lose their jobs.

The evil inherent in compelling objecting employees to subsidize a union's political and ideological activities is apparent. As President Thomas Jefferson put it so eloquently, "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical."[6] Preventing that evil, however, is not an easy matter, under current law.

In his dissent from the Supreme Court's first ruling on the problem, in 1961 in *Machinists v. Street*,[7] the late Justice Hugo Black articulated well the difficulty in preventing the use of compulsory union dues and fees for politics and ideological purposes. To avoid constitutional questions, the Court held that the Railway Labor Act prohibits the use of objecting workers' forced dues for political purposes, including lobbying. However, the Court's majority held that the employees' remedy was merely a reduction or refund of the part of the dues used for politics. Justice Black exposed the fatal flaw in that remedy:

> It may be that courts and lawyers with sufficient skill in accounting, algebra, geometry, trigonometry and calculus will be able to extract the proper microscopic answer from the voluminous and complex accounting records of the local, national, and international unions involved. It seems to me . . . however, that . . . this formula with its attendant trial burdens promises little hope for financial recompense

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[6] I. Brant, *James Madison: The Nationalist* 354 (1948) (quoted in *Abood*, 431 U.S. at 235 n.31).

[7] 367 U.S. 740 (1961).

> to the individual workers whose First Amendment freedoms have been flagrantly violated.[8]

Justice Black then said that, given the importance of the "constitutional right to be wholly free from any sort of governmental compulsion in the expression of opinions," the Court should relieve protesting workers of all dues payments and require the unions to return all they had collected from those workers, with interest.[9]

The Supreme Court's landmark 1988 *Beck* decision ruled that employees covered by the National Labor Relations Act also cannot lawfully be compelled to subsidize unions' political and ideological activities. That decision should have paved the way for all private-sector employees to stop the collection of dues for anything beyond the union's bargaining activities.

However, like *Street*, *Beck* is not self-enforcing. Experience shows that Justice Black was correct. Without the assistance of an organization like the Foundation, it is impossible for any employee or group of employees effectively to battle a labor union and ensure that they are not subsidizing its political and ideological agenda. Even with the Supreme Court's rulings in *Beck* and related cases, the deck is stacked against individual employees. And, even with the help of the Foundation, which cannot assist every worker who wants to exercise his or her *Beck* rights, complicated and protracted litigation often is necessary to vindicate those rights.

There are many hurdles that employees must overcome before they can reach the point discussed by Justice Black—the actual challenge to unions' fee calculations.

The first obstacle that employees face is the compulsory unionism agreements themselves. The courts have long held that actual union membership cannot be required under the NLRA and

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[8] *Id.* at 795-96.

[9] *Id.* at 796.

RLA.[10] Yet, most unions and employers still negotiate contracts that state that "membership in good standing" or "membership" is required as a condition of employment. In *Marquez v. Screen Actors Guild*, the Supreme Court sanctioned this misleading practice. The Court reasoned that the contracts merely use a "shorthand," legal "term of art" that "incorporates all of the [judicial] refinements associated with the language."[11]

The *Marquez* decision, I respectfully submit, does not consider the realities of the workplace. As the then Chairman of the National Labor Relations Board ("NLRB"), William Gould, said in 1998, "even today, many workers and employers do not understand that 'membership' is what the United States Supreme Court has defined it to be," not what it literally and commonly means.[12] Almost every day, we at the National Right to Work Legal Defense Foundation receive calls and e-mail messages from employees who believe that the contract under which they work requires them to join the union.

The courts and the NLRB have ruled that unions have a duty to inform workers that they have a right not to join and, if they do not join, a right not to subsidize the union's political activities.[13] However, that duty is honored more in the breach than in the observance, as Justices Kennedy and Thomas recognized in their concurring opinion in *Marquez*:

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[10] *See NLRB v. General Motors Corp.*, 373 U.S. 734, 742 (1963) (NLRA); *Railway Employes' Dep't v. Hanson*, 351 U.S. 225, 235 (1956) (RLA).

[11] 525 U.S. 33, 47 (1998).

[12] *Group Health, Inc.*, 325 N.L.R.B. 342, 346 (1998) (Gould, Chairman, concurring), *petition for review denied sub nom. Bloom v. NLRB*, 209 F.3d 1060 (8th Cir. 2000). Chairman Gould recognized in an earlier speech that ***even labor lawyers*** are often mistaken about employees' obligations under these agreements. NLRB Release, Mar. 20, 1997, Speech by William B. Gould IV to Stetson University College of Law Center for Dispute Resolution's Twelfth Annual National Conference on Labor & Employment Law.

[13] *See Marquez*, 525 U.S. at 43.

> "when an employee who is approached regarding union membership expresses reluctance, a union frequently will produce or invoke the collective bargaining agreement. . . . The employee, unschooled in semantic legal fictions, cannot possibly discern his rights from a document that has been designed by the union to conceal them. In such a context, 'member' is not a term of 'art,' . . . but one of deception."[14]

Whether out of ignorance or deliberate deception, union officials often tell workers that they must join or be fired, as occurred in the case cited by Justices Kennedy and Thomas,[15] and in the cases of the employees testifying here today. Union officials also often tell members that they will be fired if they resign.[16] Even more commonly, the union simply fails to tell employees about their options, allowing them to be misled by the contract's language or by the common understanding in the shop that membership is required. As one respected scholar has said, "few workers are apt to realize that they need not assume the burdens of full membership in order to work. Nor are they likely to be so advised by fellow workers or union officials interpreting an over-inclusive union security clause."[17]

What about employers? Employers have no legal duty to inform employees that they do not have to join the union. Moreover, many employers believe that the contract requires exactly what

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[14] 525 U.S. at 53 (Kennedy, J., concurring) (quoting *Bloom v. NLRB*, 153 F.3d 844, 850-51 (8th Cir. 1998), *vacated*, 525 U.S. 1133 (1999)).

[15] *See Bloom*, 153 F.3d at 846. Other reported cases in which union officials attempted to mislead workers about their rights include, *e.g.*, *Wegscheid v. Auto Workers Local 2911*, 117 F.3d 986, 988 (7th Cir. 1997), and *Schreier v. Beverly Cal. Corp.*, 892 F. Supp. 225, 226 (D. Minn. 1995).

[16] A graphic example of this practice is attached as Exhibit 1.

[17] Harry H. Wellington, *Union Fines and Workers' Rights*, 85 Yale L.J. 1022, 1058 (1976). Reported cases in which union officials failed to inform employees of their options include, *e.g.*, *Rochester Mfg. Co.*, 323 N.L.R.B. 260, 271-72 (1997), *aff'd sub nom. Cecil v. NLRB*, 194 F.3d 1311 (table), 1999 WL 970312 (6th Cir. 1999); *Paper Workers Local 1033*, 320 N.L.R.B. 349, 353 (1995).

it says, *i.e.*, "membership." Indeed, in *Marquez*, the Supreme Court overlooked testimony that, when Naomi Marquez's talent agent suggested to the employer's casting director that the law overrode the "union shop" contract's wording, the casting director replied that she was "obligated to work with that contract," which "by its terms had limitations and restrictions on . . . employing people that were not [union] members."[18] When Marquez did not join the union, because she could not afford to pay dues until after she performed the part for which she was booked and the employer paid her, the employer replaced her with another actress.[19]

Even when employers are aware of the Supreme Court's technical construction of the term "membership," they do not inform their employees that they have the right not to join the union, because they do not want legal trouble with the union. If an employer tells employees what their rights are, it might find itself defending an unfair labor practice charge filed by the union alleging that the employer has unlawfully attempted to discourage membership in the union. In one case, the NLRB's General Counsel prosecuted a complaint against an employer for giving its employees information about their rights under *Beck*.[20] In another, the NLRB found an employer liable when it would not agree to a compulsory unionism provision without prior union financial disclosure to ensure compliance with *Beck*.[21]

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[18] Joint Appendix at 34-35, *Marquez* (No. 97-1056).

[19] *Marquez*, 525 U.S. at 39.

[20] *Beverly Health & Rehabilitation Servs.*, NLRB Case 6-CA-27453, Compl. at 4-6 (Mar. 14, 1996).

[21] *Service Employees Local 534*, 287 N.L.R.B. 1223 (1988), *petition for review denied sub nom. North Bay Dev. Disabilities Servs., Inc. v. NLRB*, 905 F.2d 476 (D.C. Cir. 1990).

In sum, forced union membership, and thus compelled financial support of union political activity, often results from misinformation and misrepresentation engendered by the compulsory unionism contract provisions authorized by the federal labor statutes.

The second obstacle to exercising *Beck* rights is the "Hobson's choice" workers who wish to do so face. Under current law, only nonmembers have a right to refrain from financially supporting their exclusive bargaining agent's political activity. Nonmembers must forgo important employment rights that accompany union membership, such as the rights to vote on ratification of contracts and participate in selecting the union representatives who negotiate their terms and conditions of employment.[22] Under the system of exclusive representation that the federal labor statutes impose, individual employees cannot negotiate their own terms and conditions of employment.[23] Consequently, many workers are compelled to become or remain members, despite their disagreement with the union's politics, because that is the only way that they can have any say in determining their wages and other terms and conditions that govern their working lives.

Another obstacle to the exercise of *Beck* rights is the obscure manner in which the courts and NLRB have permitted unions to give employees notice of their rights not to join and not to subsidize union political activity. When unions give such notice, they often hide it in fine print inside union propaganda. A particularly egregious, but typical, example of that practice occurred in *California Saw & Knife Works*.[24] In that case, the Machinists union published its *Beck* notice of nonmembers' right to object to subsidizing union political activity "on the sixth page of [an] eight-page

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[22] *See Kidwell v. Transportation Communications Int'l Union*, 946 F.2d 283, 294-97 (4th Cir. 1991); *Farrell v. Fire Fighters*, 781 F. Supp. 647, 649 (N.D. Ca. 1992).

[23] *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180 (1967).

[24] 320 N.L.R.B. 224, 234-35 (1998), *enforced sub nom. Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998).

newsletter." The first page of that newsletter was "largely occupied by an article about Democratic Presidential hopefuls," and the newsletter also contained "a number of other political articles . . . , all with a strong Democratic bias."[25] That is hardly notice designed to come to the attention of employees who oppose the union's political activities.

I am not speculating when I assert that many employees do not know that they have a right not to subsidize union political activities. In April 1996, Luntz Research & Strategic Services released the results of a nationwide survey of union members' political attitudes. Seventy-eight percent of the members polled were unaware of their "right to get a refund for the portion of your mandatory monthly union dues that is spent on political election activities." An October 1997 poll by John McLaughlin and Associates similarly found that 67.1% of union members were unaware of the Supreme Court's rulings that "union members do not have to pay that portion of their dues which are used for political purposes if they request, in writing, that they do not want to pay that portion."

When employees do learn about their right to resign and object to union political activities, they often face coercion, threats, and abuse. For example, McDonnell Douglas employees in St. Louis who resigned from the Machinists union and declared themselves objectors during a strike found themselves subjected to hundreds of dollars in fines and demands that they pay $400 "reinstatement fees." Union officials withdrew these demands only after employees like Steve Jecha and Thomas Cozad, Jr., contacted the National Right to Work Legal Defense Foundation, and unfair labor practice charges were filed.[26] When Joshua Schleiger, an employee of Janesville Products in

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[25] *Machinists*, 133 F.3d at 1018.

[26] Charges, *Machinists District 837*, NLRB Cases 14-CB-8703-6 and -7 (filed Nov. 18, 1996).

Wisconsin who was "grandfathered" out of the "union shop" agreement, attempted to revoke his dues deduction authorization so that he did not have to continue supporting the Teamsters' political activities, union officials threatened him with discharge, police complaint, and possible arrest.[27]

Threats of physical confrontation and violence are not unknown. Jim Cecil was faced with what an NLRB Administrative Law Judge referred to as a "confrontation" with a union official after he objected to supporting the Teamsters union in Michigan.[28] So was Pat Thomas of California, an employee of Rockwell, after he resigned from the UAW.[29] When Steve Payne, an employee of Koch Industries in Minnesota, attempted to resign from membership in the Oil, Chemical and Atomic Workers union and assert his rights, a union official threatened to "break the legs" of any employees who became delinquent in paying dues.[30]

Many unions use more subtle tactics of ostracism and harassment. Craig Sickler is only one of many workers exercising *Beck* rights that unions have publicly identified as pariahs to be shunned for disloyalty. United Auto Workers officials at General Motors' Saturn division published the names of nonmember employees on monthly "dishonorable" lists and distributed them to all workers in the plant.[31] Saturn employees confided to Foundation attorneys that, after they resigned from membership, they purchased locking gas caps in fear that distribution of these lists would result in vandalism. Another union published the home phone numbers, health provider information, and

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[27] Complaint, *Teamsters Local 579*, NLRB Case 30-CB-4440-1 (issued Mar. 6, 2001).

[28] *Rochester Mfg. Co.*, 323 N.L.R.B. 260, 267 & n.3 (1997). A Teamsters Business Agent threatened "that the full force of the Union, the UAW and the other Unions would join with him to come down on" Cecil. *Id.* at 267.

[29] Information provided by Thomas to his attorney.

[30] Charge, *Chemical Workers Local 6-662*, NLRB Case 18-CB-3384 (filed Dec. 27, 1993).

[31] *Auto Workers Local 1853*, 333 N.L.R.B. No. 43, slip op. at 1-2 (Feb. 13, 2001).

social security numbers of nonmembers.[32] An Amtrack employee I represented was the target of obscene cartoons and banned from writing for the employee newspaper, because he dared to resign from membership in the International Brotherhood of Electrical Workers and ask for a reduction in his dues so that he did not have to pay for its politics. An actress in New York who exercised her *Beck* rights recently told me that she was unable to audition for a part, because an actors union official present at the audition convinced the other performers present, all of whom were members, not to read with her.

Even if they do not face coercion, threats, and abuse, workers who object to use of their compulsory dues and fees for political purposes must negotiate technical procedural hurdles. The most significant of these are the requirements, imposed by most unions, that *Beck* objections be submitted during a short "window period"—typically a month or less—and be renewed every year. In *California Saw*, the NLRB approved both of these obstacles to the exercise of the right not to subsidize union politics.[33] As a consequence, many employees are forced to pay for union political activities, because their objections are considered untimely under union rules.

Why should constitutional rights be available only once a year? Employees should be free to stop their support of union political activity whenever they discover that the union is using their monies for purposes they oppose, not just during a single, short and arbitrary "window period."

Union officials do not require employees to renew their memberships or dues deduction authorizations every year. Employees should similarly be free to make objections that continue in

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[32] Charge, *Postal Workers Local 986*, NLRB Case 22-CB-9158 (filed Sept. 25, 2000).

[33] 320 N.L.R.B. at 235-36.

effect until withdrawn. Two federal courts have declined to follow *California Saw* on this issue.[34] As the United States Court of Appeals for the Fifth Circuit explained in one of those cases, "the unduly cumbersome annual objection requirement is designed to prevent employees from exercising their constitutionally-based right of objection, and serves only to further the illegitimate interest of the [union] in collecting full dues from nonmembers who would not willingly pay more than the portion allocable to activities germane to collective bargaining."[35] Unfortunately, continuing objections must be honored only in the Fifth Circuit (Louisiana, Mississippi, and Texas), and by the Machinists union nationwide, but only under the Railway Labor Act.[36]

Another procedural hurdle that nonmembers face is finding out how the union spends their dues and fees so that they can intelligently decide whether to object. In *Teachers Local 1 v. Hudson*, the Supreme Court held that "***potential*** objectors [must] be given sufficient information to gauge the propriety of the union's fee," including "the major categories of expenses, as well as verification by an independent auditor."[37] Despite this Supreme Court mandate, the NLRB has ruled that unions need not disclose ***any*** financial information to nonmembers until ***after*** they object.[38]

When unions give employees financial disclosure, it often is sketchy, as it was in Mr. Penrod's case. Many unions also refuse to disclose any expenses of some of their affiliates that

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[34] *Shea v. Machinists*, 154 F.3d 508 (5th Cir. 1998); *Lutz v. Machinists*, 121 F. Supp. 2d 498 (E.D. Va. 2000).

[35] *Shea*, 154 F.3d at 515.

[36] *Shea* and *Lutz* were both RLA cases. *Lutz* was certified as a class action for "all non-IAM members who are represented by the IAM under the RLA." 121 F. Supp. 2d at 501.

[37] 475 U.S. 292, 306-07 & n.18 (1986) (emphasis added).

[38] *Teamsters Local 166*, 327 N.L.R.B. 950, 952 (1999), *petition for review granted sub nom. Penrod v. NLRB*, 203 F.3d 41 (D.C. Cir. 2000); *see California Saw*, 320 N.L.R.B. at 233.

receive portions of the dues and fees, claiming it is "too burdensome" to provide information for all levels of the union hierarchy. Many unions do not provide audited financial disclosure. The NLRB has approved all these practices, too.[39]

In *Ferriso v. NLRB*, the United States Court of Appeals for the District of Columbia Circuit reversed the Board's holding that a union's allocation of chargeable and nonchargeable expenses disclosed to nonmembers need not be verified by an independent auditor, that it is sufficient if a union employee "verifies" the allocation.[40] In Mr. Penrod's case, the same court rejected the Board's positions that objectors need not be given a detailed explanation of how the union allocated its own expenses, a full auditor's report, and an explanation of how the union's affiliates used their part of the money, and that only objectors must be given financial disclosure.[41] The court held that all nonmembers at least "must be told the percentage of union dues that would be chargeable were they to become *Beck* objectors."[42] However, the court did not decide whether the major categories of expenses and audit must be disclosed to all nonmembers.[43] Moreover, there is no guarantee that the

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[39] *See, e.g., California Saw*, 320 N.L.R.B. at 240-42 (verification by an independent auditor is unnecessary; it is sufficient if the union's disclosure is "verified" by a union employee); *Electronic Workers Local 444*, 322 N.L.R.B. 1, 2 (1996) (same), *petition for review granted sub nom. Ferriso v. NLRB*, 125 F.3d 865 (D.C. Cir. 1997); *Teamsters Local 166*, 327 N.L.R.B. at 953-54 (local not required to disclose how payments to affiliates are used); *Television & Radio Artists Portland Local*, 327 N.L.R.B. 474, 477-78 & n.15 (1999) (local not need disclose its own expenditures if it discloses its national affiliate's and presumes that its own chargeable percentage is the same) (2-1 decision).

[40] *Ferriso v. NLRB*, 125 F.3d 865, 869-73 (D.C. Cir. 1997).

[41] *Penrod v. NLRB*, 203 F.3d 41, 45-48 (D.C. Cir. 2000).

[42] *Id.* at 47.

[43] *See id.* at 48.

Board will follow *Ferriso* and *Penrod* in other cases, because it is the Board's practice "to ignore precedent from federal appellate courts in favor of its own interpretations" of the law.[44]

Disclosure of a union's allocation of its chargeable and nonchargeable expenses, and an independent audit of that allocation, are necessary, because, as the Supreme Court has recognized, only "the unions possess the facts and records from which the proportion of political to total union expenditures can reasonably be calculated."[45] The problem is that, unless an employee undertakes litigation to challenge the amount of the fee charged, the unions themselves determine what expenses are lawfully chargeable or not. Obviously, it is in a union's self-interest to maximize the amount of the fees it collects, so what we have is the proverbial "fox guarding the hen house."

The independent audit *Hudson* requires provides some check on the union's discretion in calculating its lawfully chargeable expenses. Unfortunately, that constraint is not now what it should be, because the lower federal courts have held that the independent auditor's only "role is to verify the expenditures made by the union so as to ensure that the expenditures that the union claims it made for particular expenses were actually made for those expenses."[46] These courts have ruled that the auditor need not verify that the union has correctly allocated its expenses as chargeable or not, because, they say, that "would have the auditor making a legal, not an accounting, decision."[47]

The courts' rationale ignores the fact that, while accountants do not ***make*** legal decisions, they often review statutes and case law to ***evaluate*** clients' legal positions in accounting matters,

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[44] *Mary Thompson Hosp. v. NLRB*, 621 F.2d 858, 864 (7th Cir. 1980). *See, e.g., Sandusky Mall Co.*, 329 N.L.R.B. No. 62, slip op. at 4 & n.10 (1999), *rev'd*, 242 F.3d 682 (6th Cir. 2001).

[45] *Railway Clerks v. Allen*, 373 U.S. 113, 122 (1963); *accord, e.g., Hudson*, 475 U.S. at 306.

[46] *Gwirtz v. Ohio Educ. Ass'n*, 887 F.2d 678, 682 n.3 (6th Cir. 1989); *accord, e.g., Andrews v. Education Ass'n of Cheshire*, 829 F.2d 335, 340 (2d Cir. 1987).

[47] *Andrews*, 829 F.2d at 340; *accord, e.g., Gwirtz*, 887 F.2d at 682 n.3.

particularly where, as in this context, the client's self-interest is adverse to the interests of others who must rely on the accounting.[48] The courts' cramped view of the independent auditor's function in the union fee context also ignores the Supreme Court's assumption in *Hudson* that accountants can audit chargeability allocations. *Hudson* held that a union need not escrow all the fees of a nonmember who challenges its calculations, if there is ***"a certified public accountant's verified breakdown*** of expenditures, including some categories that no dissenter could reasonably challenge."[49]

Unions are not the only source of the obstacles workers face in attempting to exercise their *Beck* rights. One of the biggest obstacles is the NLRB's failure to enforce *Beck* vigorously, both in the way it processes cases and in its application of judicial precedent.

Since the Supreme Court decided *Beck* in 1988, the NLRB's General Counsel and the Board itself, no matter which President appointed them, have failed to process expeditiously unfair labor practice charges of *Beck* violations. The Board delayed for eight years before it issued its first post-*Beck* decision, *California Saw*. Many other *Beck* cases, like Mr. Penrod's, languished before the Board for similar lengthy periods of time. A letter from the then NLRB Chairman to a member of the Subcommittee on Human Resources of the House Committee on Government Reform and Oversight, responding to questions the Congressman raised after the Subcommittee's July 24, 1997, hearing on "Oversight of the National Labor Relations Board," admitted that at the end of July 1997 the sixty-five cases then before the Board that were "two years or older" included ***twenty-one Beck*** cases. In that letter, the Chairman implied that "a single Board member" was holding up decisions

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[48] *See, e.g., United States v. Arthur Young & Co.*, 465 U.S. 805, 817-19 (1984); *Thor Power Tool Co. v. Commissioner*, 439 U.S. 522, 544 (1979).

[49] 475 U.S. at 310 (emphasis added).

in most of the old pending cases for "political considerations."[50] One of those old *Beck* cases was not decided until after it had been pending for seven years.[51] Moreover, it was issued only after the objecting worker, whom I represented, petitioned for mandamus and obtained an order from the District of Columbia Circuit requiring the Board to set a date by which it would decide the case.[52]

Many *Beck* cases do not even make it to the Board, because the NLRB's General Counsel does not prosecute them vigorously. National Right to Work Legal Defense Foundation Staff Attorneys have represented most employees who have filed *Beck* charges with the Board. The General Counsel has settled many of these *Beck* charges with no real relief for the charging employees, often merely requiring the offending unions to post for sixty days notices promising not to violate *Beck* rights in the future. The Board's Regional Directors have refused to issue complaints on and dismissed many other charges at the General Counsel's direction.[53]

Significantly, the Office of the General Counsel issued a memorandum in 1994 instructing all Regional Directors to dismiss immediately *Beck* charges they found unworthy, and not to issue

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[50] Letter from Chairman Gould to Rep. Tom Lantos of 10/15/97, at 3, 7-8 (Exhibit 2).

[51] *Television & Radio Artists Portland Local*, 327 N.L.R.B. 474 (1999).

[52] *In re Weissbach*, No. 98-1301 (D.C. Cir. Nov. 24, 1998) (Exhibit 3). In granting charging party Peter Weissbach costs under the Equal Access to Justice Act ("EAJA"), the court ruled that the mandamus petition "was a catalytic, necessary or substantial factor in obtaining" the Board's decision. Order, *In re Weissbach* (Apr. 29, 1999) (Exhibit 4). Foundation attorneys had to file petitions for mandamus against the Board for charging employees in three other *Beck* cases to force it to decide those cases, too. *Local 795 Elec. & Mach. Workers*, 329 N.L.R.B. No. 7 (Sept. 1, 1999) (D.C. Cir. Case No. 99-1234); *Teamsters Local 75*, 329 N.L.R.B. No. 12 (Sept. 1, 1999) (D.C. Cir. Case No. 99-1207); *Carlon*, 328 N.L.R.B. No. 154 (July 26, 1999) (D.C. Cir. Case No. 99-1254).

[53] No appeal from a dismissal of a charge is possible, because the General Counsel has "unreviewable discretion to refuse to institute unfair labor practice proceedings." *Breininger v. Sheet Metal Workers Local 6*, 493 U.S. 67, 74 (1989).

complaints on worthy *Beck* charges, but to submit them to the Division of Advice.[54] This memorandum is circumstantial evidence that, as a matter of policy, the General Counsel intended, at best, to delay the processing of *Beck* charges or, at worst, to spike as many as possible.

Even worse, another memorandum the General Counsel issued in 1998 set up yet another roadblock to enforcement of *Beck* in the NLRB. In this memorandum, the then Acting General Counsel instructed all Regional Directors, Officers-in-Charge, and Resident Officers that *Beck*-type unfair labor practice charges must be dismissed unless the charging party nonmember "explain[s] why a particular expenditure treated as chargeable in a union's disclosure is not chargeable . . . and present[s] evidence or . . . give[s] promising leads that would lead to evidence that would support that assertion."[55] This is an impossible burden at the charge stage, because, as already noted, only "the unions possess the facts and records from which the proportion of political to total union expenditures can reasonably be calculated."[56] The Acting General Counsel's instruction is based on a clear misreading, if not a deliberate perversion, of dicta in *Air Line Pilots Ass'n v. Miller* that indicated that, ***after reasonable discovery***, an objector can be expected to point to the expenditures or classes of expenditures he or she finds questionable."[57] At the charge stage, an objecting employee has had no discovery, and has no right to take any under the NLRB's procedural rules.

In addition to failing to prosecute *Beck* cases expeditiously and vigorously, the Board has given workers little in the way of protection and relief when, and if, it finally decides *Beck* cases. As I have already discussed, the NLRB has permitted unions to satisfy their notice obligations with

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[54] NLRB Mem. OM 94-50 (June 13, 1994) (Exhibit 5).

[55] NLRB Mem. GC 98-11, at 5 (Aug. 17, 1998) (Exhibit 6).

[56] *Railway Clerks v. Allen*, 373 U.S. 113, 122 (1963); *accord, e.g., Hudson*, 475 U.S. at 306.

[57] 523 U.S. 866, 878 (1998) (emphasis added).

"notices" that are calculated not to be seen by potential objectors, and approved technical objection requirements that make it more difficult for workers to exercise their right to object. In addition, the NLRB has weakened, if not gutted, the procedural protections provided to nonmembers that courts have found constitutionally required in cases involving public employees. It has also repudiated Supreme Court precedent as to what activities objecting nonmembers can be required to subsidize.

As mentioned above, in *Hudson* the Supreme Court held that "[b]asic considerations of fairness, as well as concern for the First Amendment rights at stake, . . . dictate that the ***potential*** objectors be given sufficient information to gauge the propriety of the union's fee."[58] The Court specified that "adequate disclosure surely would include the major categories of expenses, as well as verification ***by an independent auditor***," and that disclosure must be made not only for the local union collecting compulsory fees, but also for "its affiliated state and national labor organizations."[59]

The NLRB has callously and irrationally eviscerated these procedural safeguards for workers' *Beck* rights. In *California Saw*, the Board held that a union's calculation of its lawfully nonchargeable expenditures need not be independently audited.[60] The United States Court of Appeals for the District of Columbia Circuit later held that this ruling "was not rational."[61] In Mr. Penrod's case, the Board ruled that the Teamsters local provided employees with adequate information about their *Beck* rights when it merely gave objecting nonmembers a single handwritten worksheet listing nineteen broad and vague expenditure categories with no explanation of how the union calculated its allocation of chargeable and nonchargeable expenses, disclosed no information about the

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[58] 475 U.S. at 306 (emphasis added).

[59] *Id.* at 307 n.18 (emphasis added).

[60] *See* 320 N.L.R.B. at 240-42.

[61] *Ferriso v. NLRB*, 125 F.3d 865, 869 (D.C. Cir. 1997).

expenditure of the 25% of its budget that it transferred to its affiliates, and did not tell employees who had not yet objected the percentage of reduction they would receive if they made a *Beck* objection.[62] The D.C. Circuit again reversed the Board, finding that "the Board's decision reflects a classic case of lack of reasoned decisionmaking."[63]

The Board also has refused to follow Supreme Court precedent as to what activities are lawfully chargeable to objecting nonmembers. In *Beck*, the Court concluded "that § 8(a)(3) [of the NLRA], like its statutory equivalent, § 2, Eleventh of the RLA, 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,'" quoting from the Court's earlier decision in *Ellis v. Railway Clerks*.[64] Moreover, *Beck* specifically ruled that decisions in this area of the law under the RLA are "***controlling***" under the NLRA, "for § 8(a)(3) and § 2, Eleventh are in all material respects ***identical***," and "Congress intended the same language to have the same meaning in both statutes."[65] In *Ellis*, the Court held that union organizing expenses are not lawfully chargeable to objecting workers under the RLA, because organizing has only an "attenuated connection with collective bargaining" and "only in the most distant way works to the benefit of those already paying

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[62] *See Teamsters Local 166*, 327 N.L.R.B. 950, 952-54 (1999), *petition for review granted sub nom. Penrod v. NLRB*, 203 F.3d 41 (D.C. Cir. 2000).

[63] *Penrod v. NLRB*, 203 F.3d 41, 46 (D.C. Cir. 2000).

[64] 487 U.S. at 762-63 (quoting *Ellis v. Railway Clerks*, 466 U.S. 435, 448 (1984)).

[65] *Id.* at 745, 747 (emphasis added).

dues."[66] Despite these clear directives of the Supreme Court, the Board has held that organizing is chargeable to objecting nonmembers under the NLRA.[67]

Workers under the NLRA who wish to vindicate their right not to subsidize union politics and other nonbargaining activities can circumvent the Board by suing their exclusive bargaining representative in federal court for breach of the duty of fair representation.[68] Workers under the RLA must bring such an action, because there is no administrative agency that has jurisdiction over claims by railroad and airline employees against their bargaining agent. That brings me full circle to Justice Black's prediction that the judicial refund and reduction remedy adopted by the Supreme Court in *Machinists v. Street*[69] is an inherently ineffective remedy.

If employees manage to learn their rights, withstand the subtle and not so subtle pressures on dissenters, leap the many procedural hurdles unions throw up, and challenge their union's calculation of the amount charged them, they encounter the problems Justice Black recognized in *Street*.[70] Employees must hire lawyers, accountants, and statisticians to rebut the union's claims—or be lucky enough to have the National Right to Work Legal Defense Foundation's help. Then, they must spend years fighting procedural motions by the union and engaging in discovery, reviewing its books and records, and endure protracted trials and appeals. For example, *Beck* was in litigation for eleven years, including a 28-day hearing before a special master, before it was decided by the

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[66] 466 U.S. at 451-53.

[67] *Food & Commercial Workers Locals 951, 7 and 1036*, 329 N.L.R.B. No. 69, slip op. at 4-9 (Sept. 30, 1999) (4-1 decision), *petition for review pending sub nom. Mulder v. NLRB*, No. 99-71442 (9th Cir., argued Mar. 12, 2001).

[68] *See Beck*, 487 U.S. at 742-44.

[69] 367 U.S. 740 (1961).

[70] *See* 367 U.S. at 795-96 (Black, J., dissenting).

Supreme Court, and even then the case was remanded for further proceedings.[71] *Lehnert v. Ferris Faculty Ass'n* was filed in 1978, required a 12-day trial, and was not decided by the Supreme Court until 1991, and it too was remanded for further proceedings.[72] *Miller v. Air Line Pilots Ass'n* was filed in 1991, was not decided by the Supreme Court until 1998, and is still pending on remand.[73] *Bromley v. Michigan Education Ass'n* was not settled until after eight years of litigation in the district court and court of appeals.[74] A case against the Massachusetts affiliates of the National Education Association has taken more than eleven years to litigate, including a fifty-three day trial over the state affiliate's expenses and two trips to the Massachusetts Supreme Judicial Court; it is still pending, and no trial has yet been held concerning the local affiliates.[75]

In sum, the experiences of the individual workers who have testified today are not isolated examples of abuse of the law, but part of a systemic problem. The National Labor Relations Act and Railway Labor Act, as written by Congress and interpreted by the courts and the National Labor

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[71] *Beck v. Communications Workers*, 468 F. Supp. 87 (motion to dismiss or stay denied), 468 F. Supp. 93 (D. Md. 1979) (motion to dismiss denied, declaratory judgment granted), 1980 Daily Lab. Rep. No. 166, D-1 (Aug. 18, 1980) (special master's report), 106 L.R.R.M. (BNA) 2323 (1981) (motion to recommit to special master granted), 112 L.R.R.M. (BNA) 3069 (judgment for plaintiffs), 114 L.R.R.M. (BNA) 2523 (D. Md.1983) (judgment modified), *aff'd in part, rev'd in part*, 776 F.2d 1187 (1985), *aff'd en banc*, 800 F.2d 1280 (4th Cir. 1986), *aff'd*, 487 U.S. 735 (1988).

[72] 556 F. Supp. 309 (1982), (abstention denied), 556 F. Supp. 316 (1983) (protective order denied), 643 F. Supp. 1306 (1986) (judgment entered), 685 F. Supp. 164 (W.D. Mich. 1987) (new trial denied), *aff'd*, 881 F.2d 1388 (6th Cir. 1989), *aff'd in part, rev'd in part*, 500 U.S. 507 (1991).

[73] 108 F.3d 1415 (D.C. Cir. 1997), *aff'd*, 523 U.S. 866 (1998), *on remand*, 164 L.R.R.M. (BNA) 2145 (D.D.C. 2000) (motion for leave to amend granted).

[74] 815 F. Supp. 221 (1993) (motion for judgment on pleadings denied), 843 F. Supp. 1147 (E.D. Mich. 1994) (summary judgment for defendants), *rev'd*, 82 F.3d 686 (6th Cir. 1996), *on remand*, 178 F.R.D. 148 (E.D. Mich. 1998) (class action certified).

[75] *Belhumeur v. Labor Rels. Comm'n*, 580 N.E.2d 746 (1991), *on remand*, 735 N.E.2d 860 (Mass. 2000).

Relations Board, do not adequately protect the constitutional and statutory right of workers, unequivocally recognized by the Supreme Court in *Beck* and related cases, not to subsidize union political, ideological, and other nonbargaining activities. The only federal labor laws that do adequately protect that fundamental right of workers are the Federal Labor Relations Act and the statute that governs the labor relations of postal employees, both of which prohibit agreements that require workers to join or pay dues to a union as a condition of employment.[76]

[76] *See* 5 U.S.C. § 7102 (guaranteeing federal employees the right to refrain from "form[ing], join[ing], or assist[ing] any labor organization"); 39 U.S.C. § 1206(c) (same for postal employees).

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
Local Union No. 715 (414) 479-0580 (414) 479-0582 fax

September 5, 1996

DANIEL A KLOSOWSKI
9015 W ROCHELLE AVE
MILWAUKEE, WI 53224

Dear Dan:

On August 26th you expressed a desire to terminate you active BA membership from I.B.E.W. Local 715.

I have presented your verbal request to the Executive Board on September 5, 1996. Your request is denied.

In accordance with the negotiated contract between Gillett Communications of Milwaukee, WITI-TV and Radio and Television Broadcasting Engineers', Local 715 effective August 18, 1993 through May 31, 1997...

SECTION 29: MAINTENANCE OF MEMBERSHIP

All Engineers who on August 16, 1993 are members of the Union shall be considered Union members. Union members, including Engineers who become members after August 16, 1993, must, as a condition of continued employment, retain their membership in the Union for the duration of this Agreement. The Company will terminate an Engineer with two weeks notice after being notified by the Union that the employee is delinquent in dues payment.

I am very troubled that you, as an active supporting member since February, 1980, informed former Steward and Audit Committee member, would become so disenchanted with the democratic process and Solidarity of Local 715.

If you wish to challenge the decision of the Executive Board, please do so in a written response.

Fraternally,

Christopher J. Albrecht
President, Business Manager
& Financial Secretary

633 S. Hawley Rd., Suite 107
Milwaukee, WI 53214-1948

EXHIBIT
1

IBEW

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

HAND DELIVERY VIA MESSENGER

October 15, 1997

Honorable Tom Lantos
ATTN: R. Jared Carpenter, Subcommittee Clerk
U.S. House of Representatives
Subcommittee on Human Resources
Room B-372 Rayburn Building
Washington, DC 20515

Dear Congressman Lantos:

Following are my responses to the series of questions raised in your August 26 letter as a result of the July 24, 1997 hearing "Oversight of the National Labor Relations Board:"

1. **How many Board members does the NLRB have when it has a full complement?**

Answer: Five.

2. **How many members does it have presently?**

Answer: Three, two of whom are recess appointees who have not been confirmed by the Senate.

3. **Why, in your view, has the Board not been brought up to full strength?**

Answer: The Clinton Administration has followed a policy of consulting with key members of Congress on NLRB nominations as well as others. This policy includes contacts with the Republican leadership to obtain their recommendations on possible Republican appointees. It was pursued throughout 1996 and 1997. There apparently is now tentative agreement on four candidates to fill the four current vacancies at the Board. The FBI checks are underway. The hope is that the Senate will confirm all four nominations before adjourning.

Attachment

EXHIBIT 2

4. During the early years of your Chairmanship, enormous strides were made in dealing with the Board's backlog of cases, yet the Board continues to have a large number of old cases pending. Can you explain why?

Answer: In November 1995 we brought the backlog at the Board in Washington to its lowest level since 1974. Since then case backlogs have increased at the Board in part because of unfilled seats on the Board. The Board has operated with less than a full complement of five members since August 27, 1995, 25 out of the 43 months (60 percent) since the Clinton appointees to the Board took office. It has been operating with three members since the death of Member Margaret Browning in February of this year. Also, there has been a reluctance on the part of my colleagues to issue lead cases,[1] i.e., cases with policy implications because of both: (1) unexplained inaction to which I have never been able to obtain a satisfactory answer as well as; (2) the Board's current composition of two recess appointees and myself as the only confirmed member. With regard to the latter, Board members are also taking the position that they are unable to reverse precedent as the Board is presently constituted. Indeed, one member has expressed opposition to any reversal of precedent absent an emergency or critical situation, while the Board is at three members, two of whom are recess appointees. In fact, there is no policy, precedent or case law that supports their view. As Board members we have a legal duty to decide all cases before us.

---

[1] However, *some* lead cases have issued in '96 and '97. See, e.g., most recent, *London's Farm Dairy, Inc.*, 323 NLRB No. 166 (June 20, 1997); *Reynolds Wheels International, A Division of Reynolds Aluminum of Deutschland, Inc.*, 323 NLRB No. 187 (June 20, 1997); *Technology Service Solutions*, 324 NLRB No. 49 (August 22, 1997); *Rochester Mfg. Co.*, 323 NLRB No. 36 (March 12, 1997); *Q-1 Motor Express, Inc.*, 323 NLRB No. 142 (May 23, 1997); *Shore Health Care Center, Inc., t/a Fountainview Care Center*, 323 NLRB No. 172 (June 16, 1997); *Federal Express Corporation*, 323 NLRB No. 157 (May 30, 1997); *Coastal Stevedoring Company, et al., d/b/a Port Canaveral Stevedoring Limited*, 323 NLRB No. 178 (June 18, 1997); *Mod Interiors, Inc.*, 324 NLRB No. 33 (August 7, 1997) and *Connecticut Limousine Service*, 324 NLRB No. 105 (October 2, 1997). However, as can be seen from the text, *most* policy decisions have *not* issued. The fact that the cases discussed in the text are "old" cases – some *very* "old" cases – is particularly alarming.

5. Can you tell us how old these cases are? What are the issues presented in these cases?

Answer: As of the end of July, the Board's inventory included 65 cases two years or older. Of these, 28 were at least three years old; 19 at least four years old; seven at least five years old; and two at least six years old. A number of important issues are presented in these cases some of which are lead cases. Twenty-one are *Beck* cases involving the alleged use of union dues for political or other activities not related to collective bargaining or contract administration. Many of the remainder involve other important issues such as union access to employer property, the rights of temporary or contingent employees under the National Labor Relations Act, a secondary boycott case, the employee status of professional employees and other issues.

6. **Are the issues which need to be addressed in these pending cases present in several cases? Is it the Board's practice to use one case as a lead case setting forth the Board's holdings with respect to the issue or issues?**

Answer: Yes. It is the Board's practice to select a lead case or representative case that presents new and important issues also present in a significant number of pending cases. The Board's decision on the "lead case" provides a basis for resolving the other cases that present the same or similar issues. Many of the pending cases are lead cases which would facilitate decisions on similar cases awaiting the issuance of rulings on the lead cases.

7. Would you characterize some of these cases as lead cases?

Answer: Yes. As stated above, many or most of the oldest cases are lead cases which will provide a key to the resolution of other cases awaiting their issuance.

8. Has the Board had meetings to discuss these cases? What were the issues you discussed?

Answer: Yes. I have scheduled a number of meetings on these cases in recent months, most recently, May 7, in an effort to tackle the oldest cases awaiting Board decision. I have tried very hard, but unsuccessfully, in repeated meetings, numerous memoranda and many one-on-one conversations, to persuade my colleagues to focus upon and resolve the issues presented in the oldest cases, despite agreed-upon deadlines and commitments for resolving them and proposed deadlines which were rejected. For example, at the May 7 Board Agenda meeting the oldest cases were discussed and deadlines agreed

upon. At the May 7 meeting in three of the old cases action was promised by May 16 and another by May 9. None of the promises were met although two of the cases affected by the promise subsequently issued (none of those cases are discussed in my answers to your questions.) In some instances, there was a refusal to accept *any* deadline for completing work. (I have no statutory authority to *require* a deadline let alone case issuance.)

> On July 17, I wrote to my colleagues, as follows, in relevant part:
>
> As you know, we suspended Superpanel so that Board members could finish work on outstanding cases discussed at the "Old Dog" Board Agenda on May 7. *The deadlines, where they were set, have come and gone.* Nonetheless, it is my judgment that the Board members can finish their work on these cases by next month. (Emphasis added.)

There was no response to my memo. No action of any type was taken.

I tried again on July 23 in another memo to the Board, in relevant part, as follows:

> Today's GAO testimony which criticizes us for old cases and a record that is worsening in that regard, highlights anew the needless cloud that hangs over our head due to the *Beck* cases and others which have been here for years.
>
> There is nothing more that needs to be done on [case at the Board since 1994][2] and other cases that present that issue. (Indeed, I don't believe that there is anything that needs to be done in [case at the Board since 1995]. It can issue immediately. I urge Board Members *again* to allow it to issue.)
>
> Meanwhile, there is no reason why we cannot get whatever memos or opinions that are different than those in existence on [case at the Board since 1992] and the cases that will follow it. *Again,* I ask that that be done.

Again, there was no response – and, again, no action of any type was taken.

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[2] Throughout this letter the names of active cases before the Board have been omitted. Similarly, except for the One Member Only Reports, the names of Board members have been omitted.

And on July 25, I wrote again to my colleagues, in relevant part, as follows:

> Attached herewith is a July 24 letter from Congressmen Hoekstra and Fawell on our activities.
>
> Again, please note the reference to *Beck* cases on page 4. Again, I want to emphasis (sic) that [case at Board since 1994] could have and should have issued last Christmas and that the [case at Board since 1992] cases should now be out the door. On [case at Board since 1994] all that is required is a signature.

Again, there was no response – and, again, no action of any type was taken.

Finally, on September 10, subsequent to Congressman Lantos' August 26, 1997 inquiry through the Subcommittee, I sent the Board members a draft of this response – one which is virtually identical, except for necessary updates as a result of a few subsequent events, to the response that I submit today – and attached a memorandum in which I stated the following:

> Attached are my answers to Congressman Lantos' questions. For a variety of reasons, I would prefer not to answer the questions as I have answered them. This necessity can be obviated if action in taken on cases where very little, if any action is needed, i.e., [cases at the Board since October 24, 1995; April 7, 1993 and October 6, 1994]. My judgment is that this action could possibly take seconds or minutes so that they issue by September 22. Even if I am wrong in my estimate of seconds or minutes, we all know that these cases can issue very quickly because complete drafts were written long ago.
>
> Another group of cases, i.e., [cases at the Board since May 26, 1993 and June 2, 1991] might possibly require a bit more work. Similarly – although I have no basis for making an estimation because I have no idea about what is planned or what will be provided – [case at the Board since July 2, 1992] would require more work than the first group of cases.
>
> If [cases at the Board since October 24, 1995; April 7, 1993 and October 6, 1994] are acted upon so as to allow issuance, or the reasonable prospect of issuance, prior to 5:00 p.m. on Monday, September 22 and if action is taken in

the other cases mentioned by that date, I shall revise my response to Congressman Lantos and send a different response to his questions. If these things do not happen by September 22, the attached response will be sent as written as of that date. If, on the other hand, no consideration will be given to my request for action for whatever reason, I would be grateful if I could be advised of this immediately so that I can send my response immediately.

On September 22 I did receive a response from one Board Member in the form of a note which was marked "Personal and Confidential." Because of its nature I am not disclosing the content of the note. I did meet with the Board Member that day. We agreed to meet on September 24, with our respective staff members present, to see if we could aid the Board Member in dealing with these cases. I also requested an extension of time for my response to your questions to October 15 in the hope that I could report that significant progress had been made in disposing of these cases.

On September 24 the Board Member and I and our respective staff members did meet and discuss, in varying detail, the cases in question. I circulated a memo on September 25 urging a schedule for dealing with the cases on this old case list. I promised that I would modify a draft in one of the cases to address a concern raised at the September 24 meeting. I have done that. Thereafter, the Board Member did act on two of the cases. One of the cases, *Connecticut Limousine Service*, 324 NLRB No. 105 did issue on October 2. As to the other, we were able to reach agreement on a draft which is now awaiting further action by the third Board Member.

Despite my urgings – reflected in numerous "one-on-one" meetings and in an informal October 5 memo to the Board Member with whom I had the September 24 meeting – there has been no action on the remaining cases. This is typical of what has happened during the past few months and, indeed, for more than a year! A great deal of effort must be expended to achieve a limited amount of progress. Following that limited progress there are additional periods of inaction. The result is that the Board is very slow to act on the many significant cases pending before the Board.

9. What is the current status of these cases?

Answer. Except for *Connecticut Limousine Service*, cited above, the cases are pending decision by the Board. Draft decisions have been prepared in virtually all of them. In practically all instances, these cases are awaiting action by one Board member to be issued.

10. Are there cases awaiting the action of only one Board member? If so, have these cases been in this posture for some time?

Answer: Practically all of them are awaiting action by a single Board member. Some have been in this posture for several months. As of the most recent "One Member Only Reports" dated August 5, 1997 and September 15, 1997, (copies attached) more than two-thirds of the "member only" cases were being held up by one Board member.

One case, at the Board since October 24, 1995, involving an allegation of unlawful secondary union picketing, has been awaiting action by one member since May 13, 1997.[3] Another, at the Board since October 6, 1994, involving an objection under *Beck* by union members over the expenditure of their dues for union organizing has been awaiting action by one member since December 30, 1996, and on March 13, 1997, action by the one member was promised "tomorrow." Finally, that case was acted on and, as noted above, that case, *Connecticut Limousine Service*, issued on October 2. Another case, at the Board since April 7, 1993, involving access by union organizers to indoor private property has been held up by one member since April 30, 1997. Another *Beck* issue case that came to the Board July 2, 1992, has been awaiting action by one member since December 9, 1996. Another case, at the Board since June 2, 1991, and awaiting action by one Board member since July 7, 1997, involves the rights under the Act of professional employees who supervise non-unit clerical employees. Another case, at the Board since May 26, 1993, although then not technically "one member only," had been acted on by two members and had been awaiting action by the third member since November 14, 1996. In late September the remaining member acted with some revisions which I have acted on. The case is now awaiting one member. It involves the issue of the enforceability, in the absence of a union security clause, of an employee's agreement to pay dues to the union as long as he remains in the unit.

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[3] Indeed, at the May 7 meeting the sole objection articulated to the draft opinions as written, by the member who is One Member Only, was that the majority opinion – to which the member in question was not a signatory – should be divided into a majority and concurring opinion. While I did not think that this was necessary, because of my desire to issue the decision promptly, I immediately acceded to this request on May 8 and the other member did so on May 12. Then, the articulated objection having been met, no action was ever taken by the objecting member and, like all the cases discussed above, because of this conduct, the case has never issued.

As noted above, of these cases only *Connecticut Limousine Service*, has issued.

11. **Is there some reason why the same cases have been pending for three, four or five years?**

Answer: In my opinion, there is no valid or acceptable reason for cases to be delayed at the Board for so long. Board vacancies and turnover have contributed to the delays in case processing as has the inherent difficulty in deciding close, difficult and controversial issues. My colleagues have repeatedly assured me that their activities are not motivated by political considerations. That having been said, in my own personal judgment, the political environment and situation cannot be divorced from the above-described delays in processing cases and filling Board seats.

In my opinion, as a result, the Board is less effective than it should be and Board decisions have been delayed. In a minority of instances, these cases involve reversal of precedent. In most instances the drafts are completed, but a member prevents it from being issued by refusing to sign off. In two cases drafts of separate positions, or other appropriate action, were promised by May 16, but the promises have not been kept to this very date.

Although I am unaware of refusals of this type by Board members to allow completed decisions to issue prior to 1996 and 1997, delays in Board decisions and in the nomination and confirmation process are not new problems. You may recall GAO testimony at an October 3, 1990 hearing before the House Government Operations Subcommittee on Employment and Housing when you were Chairman. The GAO study attributed delays primarily to three factors: (1) Lack of standards and procedures to prevent excessive delays; (2) Lack of timely decisions on "lead" cases; and (3) Board member turnover and vacancies. The GAO report concluded that:

> Turnover contributes to delayed decisions in several ways. The Board must add departing members' cases to remaining members' caseloads, and new members require time to hire senior staff and become familiar with the issues in cases they inherit. In addition, some cases get sent back to earlier decision stages because new Board members disagree with the previous decision.

12. **Currently, the Board does not have a full complement of five members. Do you think the failure to issue cases is related to the fact that the Board has only three members, and two Board members who have not been confirmed? Is there a connection between a Board that is at less than full strength and the failure to issue decisions in these**

cases? Has the current political environment in which Board members have not been confirmed contributed to a reluctance or reticence on the part of Board members to decide or issue cases?

Answer: The answer to all of these questions is "Yes." The fact that the current Board is composed of two recess appointees and only one confirmed Member has contributed to the delay in issuing a number of decisions for several reasons. When the Board has only three members instead of five, that means that each member must consider and vote on 100 percent instead of 60 percent of the decisions issued. That factor alone, which results in a 2/3 increase in each Board member's caseload contributes to delays in decision-making. *All* Board members must participate nearly every day in representation cases which must be resolved in a matter of hours in some instances. Moreover, and more importantly, although there is no basis for it in the National Labor Relations Act or in administrative law, as noted above, an unwillingness has been exhibited by Board members to issue decisions in cases with policy implications or to reverse precedent. In my opinion, the current political environment in which nominations are pending or being awaited and subject to highly partisan scrutiny may have also contributed to delays and reluctance on the part of Board members to issue decisions in lead or controversial policy making cases.

13. Is there a policy against deciding cases when the Board consists of less than five members? Is there a similar policy when the Board consists of only three members?

Answer: No. There is nothing whatsoever in Board policy or the law against deciding cases when the Board consists of less than five or with three members. The law empowers the Board to decide cases when the Board has four or three members; however, as noted, there is a reluctance on the part of some Board members to decide precedent-setting or controversial cases or reverse precedent with a three-member Board. [We continue to decide and issue some routine, non-controversial cases.] The Board is not only empowered by law but duty-bound to continue to decide cases when there are only three members. And there has never been a Board policy or rule against decisions by a three-member Board. My position is that the Board is empowered and obligated to continue to decide *all* cases, even with only three members. There is no distinction in the Act or administrative law among cases based on whether or not they are routine, precedent setting or controversial. We have taken an oath of office and are paid what most Americans would regard as handsome salaries to do this work. It can and should be done. However, despite my repeated urging, I have been unable to convince my colleagues to accept this position.

14. Is the *Beck* issue involved in any of the cases over two years old?

Answer: Yes. The *Beck* issue is involved in nearly half of the cases two or more years old. The Supreme Court's decision in *Beck* was issued in 1988. For several years the Board, under the Bush administration, considered engaging in rulemaking to implement the *Beck* decision. The rulemaking effort was eventually dropped but no decisions were issued.[4] At the time the Clinton Board took office in March 1994, 21 *Beck* cases were awaiting decision. Since then we have issued 14 *Beck* issue decisions including the lead case, *California Saw and Knife*, 321 NLRB 731 (1995). As noted above, most recently the Board issued *Connecticut Limousine Service* on October 2. However, 19 additional cases have been received at the Board since March 1994, and 26 remain undecided.

At the time I took office[5] and on several occasions since, I have promised my best efforts to issue decisions on the *Beck* cases at the Board. For example, at a July 12, 1995 hearing before the Subcommittee on Oversight and Investigation of the Committee on Economic and Educational Opportunities, House of Representatives, I responded as follows to questions from Congressman Ballenger and Committee Chairman Goodling:

---

[4] The Board did decide *Paramax Systems*, 311 NLRB 1031 (1993). That case involved the question of whether the Union had met its duty under a union security clause to inform employees that, as a condition of employment, they need not be members of the Union but were only required to pay initiation fees and dues. That case directly involved only *NLRB v. General Motors Corp.*, 373 U.S. 734(1963) and, therefore, is not listed as a *Beck* case. It was, however, connected to *Beck* in that an employee cannot exercise *Beck* rights without first exercising the right under *General Motors* to remain a non-member.

[5] When asked whether the Agency would resume its rulemaking effort to secure compliance with the U.S. Supreme Court's 1988 holding in Communications Workers v. Beck (128 LRRM 2729), the Chairman said:

> I plan to bring the Beck issue to the full board for consideration at some point this month. And I've established a special team of lawyers who represent all the board members to pull all the cases together that are pending before us involving the Beck issue and to report to the full board for prompt consideration.

Reported in BNA Daily Labor Report, No. 67, page AA-1, (Apr. 9, 1994)

> Mr. Ballenger: From my understanding it *[Beck]* has been in your body for four years now.
>
> Chairman Gould: Yes, sir.
>
> Mr. Ballenger: Is that standard operating procedure?
>
> Chairman Gould: It is not, in my view good operating procedure . . . I do not think what happened in the *Beck* cases is good practice.
>
> . . . .
>
> I have tried to, Congressman, since I have come to the Board in March 1994 to pry these doggone cases loose and get them out . . . I will tell you that I will on the *Beck* cases and on all cases before me, particularly those that have been pending for some period of time, do my level best I can to pry them loose in the shortest period of time, Congressman. I give you that pledge . . . .

15. **In your view, is there a relationship between the failure to issue cases and the great interest demonstrated by Congress in certain issues like *Beck*?**

Answer: In my judgment, the great interest in the Congress and controversy over the issue of use of union dues for political activities dealt with in the *Beck* ruling undoubtedly has contributed to the delay in the issuance of *Beck* decisions by the Board.

16. **Is there some danger of a long delay in processing this backlog of lead cases if they don't issue during the terms of the current Board members?**

Answer: Yes. If the cases are not issued by the current Board further delay is inevitable for successor Board members to familiarize themselves with and decide the cases. Much of the considerable work that has been done on the cases will be lost and substantial additional delay would result. This was one of the points made in the GAO report referred to above.

17. **Do you have any proposals for legislation which would better enable the Board to deal with the backlog of cases?**

Answer: Yes. I have proposed that Board Member appointments be limited to single terms. The terms could be seven or eight years rather than the current five years. This would both allow the Agency to obtain the benefit from

the incumbent's experience and also eliminate the possibility of a Board member who desired reappointment to be subjected to political pressure through the appointment and confirmation process and thus delay or influence his or her decisions. The same bar to reappointment should apply to recess appointees. Another helpful change, would be to allow a confirmed incumbent Board member to continue to serve until a replacement has been nominated and confirmed. And, equally important, the Chairman should be given explicit statutory authority to issues cases which are "One Member Only" and which have been before the Board, in the Chairman's view, for an excessive period of time. Under such circumstances, the One Member would have an opportunity to file his or her dissenting or concurring opinion at a later date.[6]

In providing for staggered 5-year terms for Board members, the Act contemplated stability, continuity, independence and balance between the interests of labor and management in decision making, free from political influence. Instead, the Board in recent years has been staffed to an undesirable extent by recess and short-term regular appointees whose nominations and confirmations have been marked by delay and controversy and consequent political pressure.

We have a duty to enforce the law as written. This is what we pledged when we took our oath of office. This duty is now eroded through the above-described inaction.

I ask the Congress to give us the tools to do our work. The issue is nonpartisan and my proposals should be supported by all parties.

---

[6] In November 1994 the Board, at my request, discussed a proposal to revive Board Rule 76-1 which was designed to prevent delays in the issuance of Board decisions for the purposes of awaiting a draft dissent or other separate opinion which has not been circulated in a timely fashion. The rule provided that in full Board cases, if a circulating draft has been approved by at least three Board Members for a period of two weeks, and no dissent or concurrence has been circulated, the Executive Secretary will advise the Board that the case will issue absent a dissent within a two week period. If a timely dissent or separate opinion is circulated, the majority would have two weeks to respond. Following circulation of a revised majority, the dissenter would have one week to respond. A similar procedure was proposed for panel cases. Unfortunately, the proposal which would have prevented a single minority member from interminably delaying or stopping the issuance of a majority opinion, was voted down 4 to 1. I cast the one dissenting vote. Of course, under present circumstances, rule 76-1 would not be adequate for the reasons outlined in these responses.

As Chairman, and one who has acted as an impartial arbiter for three decades, I want *all* our cases to issue expeditiously – particularly the old cases identified here in this response. I seek to implement the rule of law in the workplace regardless of whether charges or petitions are filed against employers or unions. This is what we should be here to do. Again, I seek the assistance of the Congress to do this work more effectively.

Thank you for your interest in my views on the above important issues.

Sincerely,

William B. Gould IV
Chairman

Enclosures:
-"One Member Only Reports" dated August 5, 1997 and September 15, 1997

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 98-1301 **September Term, 1998**

In re: Peter Weissbach,
Petitioner

BEFORE: Williams, Ginsburg, and Rogers, Circuit Judges

ORDER

Upon consideration of the petition for a writ of mandamus, the opposition thereto, and the reply, it is

ORDERED, on the court's own motion, that respondent the National Labor Relations Board file, within 14 days of the date of this order, a supplemental response to the petition for writ of mandamus. The response shall inform the court of a date by which respondent expects to issue a decision in this matter.

Per Curiam

SFL
DHG
JWR

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED NOV 24 1998
CLERK

EXHIBIT
3

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 98-1301 September Term, 1998

In re: Peter Weissbach,
Petitioner

BEFORE: Williams, Sentelle, and Tatel, Circuit Judges

ORDER

Upon consideration of the motion to dismiss the petition as moot, and the motion for an award of costs, the response thereto, and the reply, it is

ORDERED that the motion to dismiss be granted. It is

FURTHER ORDERED that such costs as are authorized under Federal Rule of Appellate Procedure 39 and D.C. Cir. Rule 39 be taxed against the National Labor Relations Board (NLRB) provided petitioner complies with the procedures stated therein. Even though he has not procured a final judgment on the merits, petitioner is a "prevailing party" entitled to compensation for costs under the Equal Access to Justice Act. 28 U.S.C. § 2412(a)(1); see Public Citizen Health Research Group v. Young, 909 F.2d 546, 549-50 (D.C. Cir. 1990). The petition for a writ of mandamus was a catalytic, necessary or substantial factor in obtaining the result petitioner sought. The petition followed by the Board's action provided strong evidence of causation, and the NLRB has offered no alternative explanation to suggest that its action was driven by forces other than the petition. See Public Citizen, 909 F.2d at 551.

Per Curiam

SFd

EXHIBIT
4

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 94-50 June 13, 1994

TO: All Regional Directors, Officers-in-Charge, and Resident Officers

FROM: William G. Stack, Associate General Counsel

SUBJECT: Pre-Complaint Beck Cases

Effective immediately, all pre-complaint cases raising issues under the Supreme Court decision in Beck, in which complaint would have issued under extant guidelines, are to be submitted to the Division of Advice. If, however, it is appropriate to dismiss the Beck allegation under existing guidelines, the Region may do so without submitting the case to the Division of Advice.

W. G. S.

EXHIBIT
5

OFFICE OF THE GENERAL COUNSEL

Memorandum GC 98-11 August 17, 1998

TO: All Regional Directors, Officers-in-Charge, and Resident Officers

FROM: Fred Feinstein
Acting General Counsel

SUBJECT: Guidelines Concerning Processing of Beck Cases

In Communications Workers v. Beck, 487 U.S. 735 (1988), the Supreme Court held that a collective-bargaining representative under the NLRA may not charge an objecting nonmember covered by a contractual union-security clause for union activities unrelated to collective bargaining, contract administration or grievance adjustment. In ALPA v. Miller, -- U.S. --, 158 LRRM 2321 (May 26, 1998), the Supreme Court recently held that agency fee objectors under the Railway Labor Act could not be required to exhaust union-established arbitration procedures before bringing their fee disputes to federal court. This Memorandum is intended to provide guidance on the processing of unfair labor practice charges alleging that unions have improperly charged objectors for nonrepresentational activities, in light of ALPA v. Miller.

In California Saw, 320 NLRB 224, 233 (1995), enf'd 133 F.3d 1012 (7th Cir. 1998), the Board held that, "when or before a union seeks to obligate an employee to pay fees and dues under a union-security clause, the union should inform the employee that he has the right to be or remain a nonmember and that nonmembers have the right (1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to intelligently decide whether to object; and (3) to be apprised of any internal union procedures for filing objections. If the employee chooses to object, he must be apprised of the percentage of the reduction, the basis for the calculation, and the right to challenge these figures." Thereafter, in United Brotherhood of Carpenters and Joiners of America, Local Union No. 943 (Oklahoma Fixture Co.),[1] the Board "made it clear that when a union seeks to require an objecting employee to pay dues under a union security clause, reasonable procedures must be available for filing challenges to the amounts charged."

[1] 322 NLRB 825 (1997).

EXHIBIT
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While the above requirement to have a challenge procedure is based upon the union's duty of fair representation obligation, this requirement has as its genesis the Supreme Court decision in Chicago Teachers Union Local 1 v. Hudson, 475 U.S. 292 (1986). In Hudson, the Court held that first amendment considerations required, inter alia, that a union must give objectors "a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision maker." 475 U.S. at 310. The Court in Hudson, however, did not answer the question of whether agency fee objectors would be required to utilize or exhaust this arbitration remedy before commencing a federal-court action.

In ALPA, the Supreme Court answered the above question and held that agency fee objectors cannot be required to exhaust union arbitration procedures to challenge a union's allocation of its expenditures despite the requirement in Hudson that the union make such an arbitration available to agency fee objectors. The Court found no basis for forcing into arbitration a party who never agreed to submit his claim arising under federal law to such a process.

The Court, however, acknowledged ALPA's argument that arbitration was an efficient way to identify facts and issues in dispute and avoid multiple litigation. The Court also noted the union's argument that "it is difficult to conceive how a court could fairly try an agency fee dispute ab initio, given that the plaintiffs who challenge an agency fee calculation are not required to state any grounds whatsoever for their challenge." (158 LRRM at 2325).

In responding to the above union contentions, the Court viewed ALPA as overstating the difficulties of holding a federal-court hearing without a preparatory arbitration. Thus, in responding to ALPA's assertions, the Court held that while prior court decisions found that an objector's burden is only to make any objection known[2] and that the union retains the burden of proof,[3] this does not mean that a plaintiff can file a generally phrased complaint and then require the union to prove the germaneness of all of its expenditures without any specificity from the objector. Specifically the Court held that,

> Agency fee challengers, like all other civil litigants, must make their objections known with the degree of specificity appropriate at each stage of litigation their case reaches:

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[2] Abood v. Detroit Board of Education, 431 U.S. 209, 241 (1977).

[3] Hudson, 475 U.S. at 306 n.16.

motion to dismiss; motion for summary judgment; pretrial conference (158 LRRM at 2325).

The Court stated:

> The very purpose of Hudson's notice requirement is to provide employees sufficient information to enable them to identify the expenditures that, in their view, the union has improperly classified as germane. See 475 U.S. at 306-307. With the Hudson notice, plus any additional information developed through reasonable discovery, an objector can be expected to point to the expenditures or classes of expenditures he or she finds questionable. Although the union must establish that those expenditures were in fact germane, the shifted burden of proof provides no warrant for blocking dissenting employees from bringing their claim in federal court in the first instance, if that is their preference. (158 LRRM at 2326).

The Court's holding in ALPA is equally applicable to agency fee objector cases arising under the NLRA. In this regard, the Court made clear that the exhaustion of remedies doctrine has no application to any agency fee arbitration since such private unilaterally established arbitration is not encompassed within the normal application of exhaustion of remedies principles (158 LRRM at 2325). Thus, any requirement to arbitrate agency fee disputes must be based on the agreement of the agency fee objector. Absent such an agreement, the Court would not impede access to federal courts. (158 LRRM at 2324-25)

The same concern of the Court not to impede agency fee objectors' access to federal courts "for adjudication of their federal rights" (id. at 2326) is also shared by the Board and the Court concerning impeding access to Board processes. See NLRB v. Industrial Union of Marine and Shipbuilding Workers, 391 U.S. 418 (1968), where the Supreme Court agreed with the Board's conclusion, 159 NLRB 1065 (1966), that a union violated Section 8(b)(1)(A) by expelling from membership a member who had filed an unfair labor practice charge against the union without first exhausting internal union procedures to resolve his dispute with the union, which he had accused of causing his discharge by his employer.

Consistent with Marine & Shipbuilding Workers, the Board has not required an employee to exhaust internal union procedures before filing an unfair labor practice charge alleging a breach of the duty of fair representation. See, e.g., IBEW Local 581, 287 NLRB 940, 948 fn. 25 (1987); IBEW Local 367, 230 NLRB 86, 94-95 (1977), aff'd 578 F.2d 1375

(3d Cir. 1978), cert. denied 439 U.S. 1070 (1979); IBEW Local 592, 223 NLRB 899, 902 fn. 10 (1976). In these cases, the unions had internal procedures for dealing with complaints about the operations of their hiring halls and argued that the Board should dismiss unfair labor practice charges relating to those operations because the disgruntled employees had failed to exhaust the internal union grievance procedures before filing their unfair labor practice charges. The Board rejected these arguments, holding that the employees had not forfeited their statutory rights even though they had failed to exhaust the internal union procedures. These conclusions reflected Board concern with preserving free and open access to the Board and its processes.

Finally, while the Board held in California Saw that RLA precedents premised on constitutional principles are not controlling in the context of the NLRA (320 NLRB at 226), the Board will look for guidance in Supreme Court RLA cases, particularly when the Court appears to be resting its analysis on the duty of fair representation (320 NLRB at 227 n.25). Further, in California Saw (320 NLRB at 232-233), the Board found that cases arising out of the NLRA share the same concern about fairness as public sector and RLA cases and that this fairness equated to a union's duty of fair representation. Therefore, in California Saw, 320 NLRB at 224 fn. 1, the Board agreed with the ALJ, who had held at 276-77, that deferral of the objectors' challenges to the union's internal dispute resolution procedure, including AAA arbitration, was not appropriate, relying on IBEW Local 581, supra. The Board specifically noted its agreement with the ALJ, even though no party had filed exceptions, as to this holding. The Board similarly found deferral inappropriate in Electronic Workers IUE (Paramax Corp.), 322 NLRB 1 n. 5 (1996), remanded on other grounds sub nom. Ferriso v. NLRB, 125 F.3d 865 (D.C. Cir. 1997).

In summary, based upon duty of fair representation considerations alone, the weight of authority under the NLRA is that employees raising duty of fair representation claims cannot be required to exhaust internal union dispute resolution procedures before filing unfair practice charges. Since, as noted above, a union's Beck obligations flow from its duty of fair representation, it follows that Beck objectors similarly cannot be required to use internal union dispute resolution procedures to resolve their Beck disputes with a union.[4] Instead, objectors have the right to present

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[4] Of course, objectors may choose to use a union's nonexclusive arbitration system instead of Board proceedings to challenge a union's charges. See ALPA, 158 LRRM at 2026. All cases raising questions concerning ULP charges attacking

their fee disputes with unions directly to the Board.[5] At the same time, however, agency fee objectors have the burden of making known their objections with the required degree of specificity.

Applying these principles to the investigation and litigation of unfair labor charges alleging the charging of agency fees prohibited by Beck, it is initially noted that historically the Agency has required more than a generalized allegation of an unfair labor practice before proceeding with an investigation and merit determination. Thus, Casehandling Manual Section 10056.1 requires the charging party to file a statement outlining and be ready to submit proof concerning the basis for the charge, including dates, documents, and a list of witnesses. Failure to submit such evidence may result in dismissal. Also, CHM Section 10056.5 provides that only when the investigation of the charging party's evidence and pertinent leads points to a prima facie case should the charged party be contacted to provide evidence. This approach to the investigation of ULP charges, which includes allegations of improper charging of agency fees, is consistent with the Supreme Court's view in ALPA that the agency fee objector cannot meet his burden in litigation by merely filing a generalized challenge.

Accordingly, pursuant to the Manual and historical Agency practice, in charges filed with the Agency, the charging party agency fee objector is required to explain why a particular expenditure treated as chargeable in a union's disclosure is not chargeable and to present evidence or to give promising leads that would lead to evidence that would support that assertion. Therefore, an unfair labor charge alleging improper agency fee charges should be dismissed if the objecting party generally asserts that he has been improperly charged and contends merely that it is the union's burden to prove the germaneness of all of its charges. Such a dismissal would be consistent with the Casehandling Manual and the Supreme Court decision in ALPA as discussed above. All cases raising questions as to whether the charging party has met this burden should be submitted to the Division of Advice.

Once the charging party has met his burden of presenting sufficient evidence which points to a violation, the burden is then on the union to establish that the

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resulting arbitral awards should be submitted to the Division of Advice.

[5] This is the same conclusion the D.C. Circuit Court reached in Abrams v. CWA, 59 F.3d 1373 (1995), where it held that a union violated its duty of fair representation when it required an objector to go through arbitration.

expenditures were in fact germane." ALPA, 158 LRRM at 2326. In this regard, during the investigation the union should be informed of the specific expenditures that are claimed to be non-chargeable and the specific evidence which raises doubt as to the validity of these union charges to objectors. If the union is unable to meet its burden of demonstrating that the expenditures were germane, complaint should issue. All cases raising questions as to whether the charged party has met this burden should be submitted to the Division of Advice.[6]

Once complaint has issued, the General Counsel has the burden of specifying the expenditures for which the union improperly charged objectors and why there is reason to believe that contention. The burden is then on the union to establish that the expenditures were in fact germane or properly allocated. This burden of proof was initially placed on the union in Railway Clerks v. Allen, 473 U.S. 113, 122 (1963) (the burden of proving the proportion of political to total union expenditures). The Court expanded this burden in Hudson by requiring the union to have an arbitration proceeding and then placing the burden on the union during arbitration to demonstrate the validity of the expenditure (475 U.S. at 316-308). Finally, in ALPA the Court placed the same burden on the union in federal court litigation which it has in the arbitration proceeding (158 LRRM at 2326).

This allocation of burden in unfair labor practice litigation is not inconsistent with NLRB v. Transportation Management Corp., 462 U.S. 393 (1983), or with the General Counsel's obligation under Section 10(c) of the Act. It is clear that a union has a duty of fair representation obligation to charge an agency fee objector only those expenses germane to the union's representational role. We would also contend, based on Allen, Hudson, and ALPA, that since the union is in possession of all the facts and records, a union also has a duty of fair representation obligation to demonstrate the validity of the expenditures. Thus, once the General Counsel has presented evidence to establish a prima facie case that there is reason to believe that an objector was improperly charged, the union can defend against the General Counsel's case by showing that the charge was consistent with the union's duty of fair representation obligation of charging only for germane expenditures. The General Counsel ultimately prevails in his complaint that the union violated its duty of fair representation obligation if the union cannot finally demonstrate the validity of the expenditure.

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[6] Whether the union relies on an audit performed by an outside independent auditor is relevant to the question of whether the union has met its burden of proper allocation.

All questions not addressed by this memorandum should be submitted to the Division of Advice.

Fred Feinstein
Acting General Counsel

To Be Released to the Public

cc: NLRBU

Committee on Education and the Workforce
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name: Raymond J. LaJeunesse, Jr.

	Yes	No
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the Committee).		X

2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1998:

None

	Yes	No
3. Will you be representing an entity other than a government entity?	X	

4. Other than yourself, please list what entity or entities you will be representing:

National Right to Work Legal Defense Foundation, Inc.

5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4:

Vice President (since April 21, 2001)
Staff Attorney (since April 19, 1971)

6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1998, including the source and amount of each grant or contract:

None

	Yes	No
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list:		X

Signature: Raymond J. LaJeunesse, Jr. Date: May 8, 2001

LaJEUNESSE, RAYMOND J., JR.

Office Address

National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, VA 22160
(703) 321-8510/(800) 336-3600
Fax: (703) 321-9319

Professional Employment

Staff Attorney, National Right to Work Legal Defense Foundation (1971 - present): senior Staff Attorney with non-profit legal aid organization providing legal assistance to individual employees in cases involving abuses of compulsory unionism; responsible for all aspects of constitutional and labor litigation before federal and state courts and administrative boards; Vice President (April 21, 2001 - present)

Legislative Assistant to Member of Virginia House of Delegates (1972 - 1973): part-time legislative research, analysis, and drafting

Self-employed, Political Research & Analysis, Washington D.C. (1969 - 1971): political research and election law consultant to candidates and political organizations; issues and opposition research, field surveys, election statistics analysis

Research Director, United Republicans of America, Washington, D.C. (1967 - 1968): research director for political action committee

Admissions to Practice

Supreme Court of the United States (1982)
United States District Courts for the District of Columbia (1972), Eastern & Western Districts of Virginia (1982), and Eastern District of Michigan (1993)
United States Courts of Appeals for the D.C. (1994), Third (1988), Fourth (1986), Sixth (1987), Ninth (1974), and Eleventh (1996) Circuits
Supreme Court of Appeals, Commonwealth of Virginia (1967)
District of Columbia Court of Appeals and Superior Court (1972)

Professional Organizations

Virginia State Bar (1967 to date); District of Columbia Bar (1972 to date); Federalist Society, Lawyers Division (1989 to date), Labor & Employment Practice Group Executive Committee (1999 to date)

Professional Honors

Martindale-Hubbell Law Directory "AV" Rating

Education

Washington & Lee University School of Law, Lexington, Va.: LL.B. (1967); Law Review; Robert E. Lee Legal Research Scholar
Providence College, Providence, R.I.: B.A. in Humanities, *cum laude* (1964); Arts Honors Program
Burnt Hills-Ballston Lake High School, Burnt Hills, N.Y.: Salutatorian (1960)

Published Legal Articles

Case Comment, *A Struck Carrier's Right to Attempt to Operate*, 24 Washington & Lee Law Review 80 (1967)
Employees' Freedom from Ideological Conformity: A Right Without a Remedy?, 5 Journal of Labor Research 265 (1984)
Comment on Thomas R. Haggard, *Union Security in the Context of Labor Arbitration*, 1994 Proceedings of National Academy of Arbitrators 124
The Future of Unions, Federalist Society Labor & Employment Law News, Spring 1999, at 1

Major Cases Litigated (partial listing)

Abood v. Detroit Board of Education, 431 U.S. 209 (1977)

Ellis v. Railway Clerks, 466 U.S. 435 (1984)

Pattern Makers v. NLRB, 473 U.S. 95 (1985) (amicus curiae)

Lehnert v. Ferris Faculty Association, 500 U.S. 507 (1991) (argued)

Air Line Pilots Ass'n v. Miller, 523 U.S. 866 (1998) (argued)

Marquez v. Screen Actors Guild, 525 U.S. 33 (1998) (argued)

Hohe v. Casey, 956 F.2d 399 (3d Cir. 1992)

Bromley v. Michigan Education Association, 82 F.3d 686 (6th Cir. 1996)

Ferriso v. NLRB, 125 F.3d 865 (D.C. Cir. 1997)

Browne v. Wisconsin Employment Relations Commission, 485 N.W.2d 376 (Wis. 1992)

Civic Activities (partial listing)

Member, Arlington County (Va.) Manpower Planning Council (1976 - 1982)

Advisor, Transition Team for Labor-Related Agencies, Office of the President-Elect (1980)

APPENDIX J – LETTER FROM ANNE BRADBURY, WASHINGTON REPRESENTATIVE, ASSOCIATED BUILDERS AND CONTRACTORS, INC., ROSSLYN, VIRGINIA

May 10, 2001

The Honorable Charles Norwood
Chairman, Subcommittee on Workforce Protections
Education and Workforce Committee
2181 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Norwood:

On behalf of Associated Builders and Contractors (ABC) and its more than 23,000 construction and construction-related firms in a network of 83 Chapters across the United States, I would like to respectfully submit the following comments for the record regarding the May 10 hearing on the 1988 Supreme Court *Communications Workers of America vs. Beck* decision.

With the *Beck* decision, the Supreme Court ruled that non-union employees who work under a union security agreement, and therefore, are required to pay union dues, are not required to contribute through those dues to union-supported political causes with which they disagree. They concluded that the National Labor Relations Act (NLRA) does not permit a union to collect and expend dues beyond those necessary to finance collective bargaining, contract administration, and grievance adjustment if a non-union member objects to the use of dues for political, legislative, social, or charitable purposes.

ABC strongly supports requiring unions to obtain permission from workers before using union dues for political activity. Current law can be confusing and reactionary. Many workers have money taken from them without their consent and they must petition for refunds. If unions want to spend dues money on activities unrelated to union functions, they should ask workers for their permission and tell them how they spend members' money. Employees may be able to reduce their union payments by several hundred dollars. Proper procedures must be followed to avoid overpayment by objecting employees.

ABC is committed to protecting workers' rights, including providing information on those rights established by the *Beck* decision and reporting of union expenditures under functional categories such as organizing, safety, and political campaigns. ABC members, both union and non-union, are greatly concerned that the rights of their employees to freely choose with regard to unions must be preserved. Workers have a right to know how their union dues are spent and have a right to stop money from being taken out of their pockets that is not used for legitimate collective bargaining purposes.

Thank you for your consideration of this important matter.

Respectfully submitted,

Anne Bradbury
Washington Representative

1300 North Seventeenth Street ■ Rosslyn, Virginia 22209 ■ (703) 812-2000

APPENDIX K – SUPPLEMENTAL WRITTEN STATEMENT OF ROBERT PENROD, BARTLOW, CALIFORNIA

Committee on Education and the Workforce
Mr. Chairman,

The following is additional information I would like to have included in my statement made to the Subcommittee on Workforce protections, given on May 10, 2001.

Honorable Members of the House of Representatives:

My name is Robert Penrod. After some time of long thought I need to expand on the Beck Rights issue. It seems that many of the committee members,such as Ms. Sanchez, Mr. Andrews, and Mr. Owens, seemed to be more concerned with the unions right to violate the requirements of Beck, than to acknowledge the rights of individuals to utilize Beck in their personal carrers. I have seen at my place of employment many postings on the Teamsters Union Local 166's agenda and their right to organize and represent the employees in their capacity as a union. What I fail to understand is why can't I, even if I'm the only one, get what has already been decided as my right to being a non-member of the union without living under threats, duress, and harrasment. This union has put in writing that "as a cordition of employement" we are to remain in good standing with the union or face the consequences. I, even if I am only one person, should not have to live like this.

I applied for employment with my own resume, with my own application and was given my job on my own abilities, accomplishments, and experience. The union had no imput to this project. Only after I was employed do they come and say "as a condition of employment you must join the union" This is wrong and there is no reason for it to take years of litigation and thousands of dollors to get the rights that where already established and due me as an individual.

Mr. Andrews said that that there is only a small amount of people complaining about their Beck rights. I can tell you, sir, that is because no one is being informed that they have those rights. Empoyees are told on day one that they are employed into a union position and that union membership is mandatory. I have asked new employees everytime I see a new one if they where informed of their right not to join the union and repeatedly they tell me "no". Out of 600 employees that work for the same company I do, I would saythat only 15 have ever heard of these rights and thats because I told them. There is no notification system set up.

Mr. Andrews: there are only a small amount of people protesting in favor of their Beck rights for one reason: their lackof knowledge and lack of notification of those rights. There is written word all over the shop concerning the "requiremen t" (the union's term, not mine) of being a Union member, but nothing said or posted as to an individual's right to not join and/or be a member.

This is how I feel about my right and and the rights of my fellow workers. Untill they are informed of their rights, they will continue to be abused because they don't know any better and are under duress, threats, and harrassment to keep them uninformed.

There must be legislation passed that would make it mandatory for employers to tell new employees of their right to join a union AND their right not to join. There should also be laws passed that would require a union to be re-elected at the end of every contract with any other union or local givie the chance to compete for the right to represent those under that contract. The way it is ri ght now employees must decertify a union andbe punished for one year with no union in order to change. Even our political leaders don't punish American voters for wanting to chose and vote in a new leader, why should the unions be any different.

I would hope that all the Representatives, Senate, and the President will legislate, with a viable enforcement system, a National Right to Work law within my lifetime.

Thank you.

APPENDIX L – LETTERS FROM VARIOUS UNIONS CONCERNING OBLIGATORY MEMBERSHIP AND PAYMENT OF DUES

UNITED PAPERWORKERS INTERNATIONAL UNION
OFFICE OF THE FINANCIAL SECRETARY, LOCAL # 80

Michael St. Peter
820 So. Main St.
Old Town, Maine 04468
Tel. 827-6438

Philip J. Veilleux
President

Date:

To:

Dear Fellow Employees:

As officers of Local 80, we wish to welcome you to the work force of Diamond Occidental, Inc. here in Passadumkeag.

In accordance with our Local's By-Laws and our Labor Agreement with the Management of Diamond Occidental, Inc. you are required to join Local 80 after a probationary period of 30 days from your date of employment. According to records furnished to us by the Company, your date of hire was 8-19-91. Thus you must join our Local no later than 9-19-91. Failure to do so, also in accordance with our Labor Agreement, could mean the termination of your employment with this Company.

To join our Local simply do the following:

1. Sign the white card enclosed in spots indicated by an "X".
2. Enclose your personal check or bank money order for $15.00 payable to "The Financial Secretary of Local 80 U.P.I.U."

   (If you are a former member of any United Paperworkers Internationa Union, enclose your withdrawal card from that Local and do not send any money.)

3. Enclose all of the above in the self-addressed stamped envelope.

Shortly the Company will begin deducting your Union dues from your payroll check. Dues are $6.00/week and $.25 to the Local's Health and Welfare fund.

Thank you and welcome to Local 80 membership.

Michael St. Peter
Financial Secretary

cc: President #80

International Brotherhood of Electrical Workers
7812 Warwick Blvd., Newport News, VA 23607
Phone: (757) 245-7691 Fax:(757) 245-4336

August 23, 2000

Mr. Wil Richard, Human Relations Director
Johnson Controls World Services, Inc.
2 E. Ames St., Mail Stop 485
Hampton, VA 23681-2199

Dear Wil:

According to the current Agreement, Article IV states in part the following: "It is agreed that all employees coming under the terms of this Agreement shall be required to make application to joining the Union within thirty (30) days of employment or Agreement, whichever is later, and as a condition of continued employment, must maintain membership for the life of this Agreement and any renewal thereof."

Therefore, I ask that you notify any employees who have been employed for thirty days or more and who have not joined IBEW Local 1340 to make application immediately. I further request that you make arrangements with these employees to have the necessary deductions made for membership and working dues, retroactive to December 31, 1999, and forward same to our office at the above address.

If you have any questions or concerns about this issue, please feel free to call me.

Sincerely,

James W. Avery

James W. Avery
Business Manager

LOCAL 65

INTERNATIONAL UNION UNITED GOVERNMENT
SECURITY OFFICERS OF AMERICA
"UNITED WE BARGAIN - DIVIDED WE BEG"
DON CONNER , PRESIDENT
3125 NE 56TH Ave., Portland, OR 97213 503-282-3669 Fax 282-3861 cell/voice message 503-515-9494
cops3@ibm.net

To: Local 65
From: Don Conner
Date: May 19,1999
Subject: Union Contract

Here is the new Working Agreement between UIIS and Local 65. The contract, if ratified, starts Sep.30,1999 and ends Sep.30,2004. Negotiations will reopen each June for renegotiations on wages and other Articles either side wishes to reconsider.

There are several provisions of the contract that are new. All Local 65 members and those eligible to be members (including Leads) should read the offer carefully. Local 65 E Board has voted to provide the contract to all non-members including Leads because it does contain a requirement that union membership is a condition of employment.

Non-members will be allowed to vote on this contract providing a union enrollment card is signed and returned to an E-Board member or Shop Steward. Consider your decision carefully. Wlliam Guidice, Owner/CEO UIIS has stated that anyone who does not join the union will be terminated.

All ballots returned postmarked by June 1st,1999 will be counted. A simple majority of votes cast will suffice.

Main Office
2212 NE Andresen Road
Vancouver, Washington 98661
(360) 693-5841
Fax (360) 695-0768

811 Washington Way
Longview, Washington 98632
(360) 423-5700
Fax (360) 423-3630

934 Duane
Astoria, Oregon 97103
(503) 325-2561
Fax (503) 325-3021

REGISTERED EMBLEM

CHAUFFEURS, TEAMSTERS & HELPERS, LOCAL 58

AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS

VANCOUVER, LONGVIEW, KELSO, ASTORIA, TILLAMOOK AND VICINITY

September 24, 1999

Karen Bisson
13704 N.E. 72nd Aveneu
Vancouver, WA 98686

Dear Karen:

Our records show that you are an employee of Laidlaw Transit. In accordance with Article 14 of the current labor agreement it is necessary that you become a member of Teamsters Local 58.

Our Executive Board has waived the initiation fee but monthly dues of $24.00 per month are owing from November 1998. The amount owing at this time is $216.00. This will pay your dues thru September 1999. Enclosed you will find an application for membership, please fill out and return. If you want the company to deduct your monthly dues please fill out the checkoff authorization form and return also. If you wish to pay on your own the amount owing must be paid in full by October 15, 1999.

Failure to make this payment in the time specified could result in our informing the employer to remove you from the job under the Union Security provisions of the current labor agreement.

Yours very truly,

TEAMSTERS LOCAL 58

Terry L. Nelson
Secretary-Treasurer

TLN/bas

enclosurers

certified mail #P 391 548 162

UNITED INTERNATIONAL INVESTIGATIVE SERVICES

180 N. Riverview Drive, Suite 100
Anaheim, CA 92808 U.S.A.

Telephone 714 974 2311
Telefax 714 974 1066

e-mail
uiis@aol.com

22 October 1999

Mr. Robert Wilson, CSO
211 East 7th St
Eugene, Oregon 97401

RE: **Obligatory Union Membership**

Dear Mr. Wilson,

We make reference to the Collective Bargaining Agreement that your site is subject to, specifically Local 65 CBA, Article #24 on Union Security and Membership.

Upon joining the ranks of Court Security Officer, it is a condition of employment that you must become a member of the Union.

Effective immediately, you will submit your application for membership to Local 65, or we will have no recourse but to terminate your employment.

If any questions should arise, please do not hesitate to contact us at the corporate offices.

Sincerely,

Elias A. Parra
Assistant Director of Operations

UNITED INTERNATIONAL INVESTIGATIVE SERVICES

180 N. Riverview Drive, Suite 100
Anaheim, CA 92808 U.S.A.

Telephone 714 974 2311
Telefax 714 974 1056

e-mail
uiis@aol.com

December 23, 1999

Mr. Robert Wilson
211 East 7th St
Eugene, Oregon 97401

Subject: Union Membership

Mr. Wilson,

On April 27, 1999, United International Investigative Services (UIIS) entered into a Collective Bargaining Agreement (CBA) with United Government Security Officers of America (UGSOA), Local 65. The union is the sole and exclusive bargaining representative for Court Security Officers in Oregon.

Article #24 of the CBA states "Any employee who is not a member of the Union at the time this Agreement becomes effective shall become a member of the Union within ten (10) days after the thirtieth (30) day following the effective date of this Agreement or within (30) days following employment, whichever is later, and shall remain a member of the Union". This article also states "In the event the Union requests the discharge of an employee for failure to comply with the provisions of this article, it shall serve notice on the Company requesting that an employee be discharged effective no sooner than two (2) weeks of the date of the notice (See attached copy of article 24).

On October 22, 1999, as a result of notification from the union of your refusal to become a member, UIIS sent you a letter advising you of the provisions of article #24 of the CBA. The state of Oregon recognizes unions as "Closed Shops", which require all employees to become members. UIIS is bound by the provisions of article #24 of the CBA. As of this date you still have not complied with the membership provisions of the CBA.

This letter is formal notification that you must become a member of local 65 immediately or you will be terminated effective January 1, 2000.

Attachment C

Further information regarding this matter may be addressed to Mr. James Fraser, Director of Human Resources.

Floyd Dawson
Director of Operations

cc: Site Supervisor, Carl Olson
Circuit Mgr, Don Arnett
Union President, Don Conner

Forsyth Township
MEMBER MICHIGAN TOWNSHIP ASSOCIATION
P.O. BOX 1360
GWINN, MICHIGAN 49841
PHONE: (906) 346-9217 FAX: (906) 346-3267

May 11, 2000

Dear

At its May 3, 2000 Special Meeting, the Forsyth Township Board resolved that you become a member of the United Steelworkers Union.

Please sign the enclosed Union cards within 10 days of receipt or we will have no alternative but to terminate your position.

Sincerely,

Susan Fowler
Forsyth Township Clerk

SF/cmu

Cc: Kevin Koch, Twp. Attorney
Don Mattson, USWA Business Rep.

UNITED INTERNATIONAL INVESTIGATIVE SERVICES
180 N. Riverview Drive, Suite 100
Anaheim, CA 92808 U.S.A.
Telephone 714 974 2311
Telefax 714 974 1066
e-mail
uiis@aol.com

May 12, 2000

Mr. Salvatore Murante
11 Clark Street
Glen Ridge, NJ 07028

Subject: Union Membership

Mr. Murante,

On May 12, 1999, United International Investigative Services (UIIS) entered into a Collective Bargaining Agreement (CBA) with Court Security Officers, Police & Guards Union, Local 1536. The union is the sole and exclusive bargaining representative for Court Security Officers in New Jersey.

Article #24 of the CBA states "It shall be a condition of employment that all employees covered by this Agreement who are members of the Union in good standing on the effective date of this Agreement shall remain members in good standing and those who are not members on the effective day of this Agreement shall, on the thirtieth (30th) day following the date of signing this Agreement, or its effective date, whichever is later, become and remain members in good standing in the Union.

"The failure of any employee to become a member of the Union at the required time shall obligate the Company, upon written notice from the Union to such effect and to the further effect that Union membership was available to such employees on the same terms and conditions generally available to other members, to forthwith discharge such employee".

Mr. Murante, local 1536 have contacted you on numerous occasions about paying administrative fees or becoming a member in good standing. You have refused to join the union and on March 22, 2000, wrote a letter to your fellow CSO's stating as much.

The state of New Jersey recognizes unions as "Closed Shops", which require all employees to become members. UIIS is bound by the provisions of article #24 of

the CBA. As of this date you still have not complied with the membership provisions of the CBA.

This letter is formal notification that you must become a member of local 1536 immediately or you will be terminated from employment with UIIS at the end of your shift on May 16, 2000.

Further information regarding this matter may be addressed to Mr. Edward Rubinstein, Vice President of Legal Affairs.

Floyd Dawson
Director of Operations

cc: Site Supervisor, Carl Piro
Circuit Mgr, James McCarthy
Union President, James Lassiter, Jr

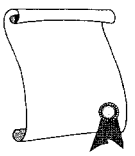
Fly Paper

Volume VIII, Issue 10 March - April, 2000

Fly Paper
Capital Air Lodge 1759
International Association
of Machinists
& Aerospace Workers

Fly Paper is the official bi-monthly publication of Capital Air Lodge 1759.
Notice of any election complies with Sec. 11, Article III of the IAM Constitution. Members are encouraged to contribute letters or articles. The editor reserves the right to accept, reject or edit material. Opinions expressed herein are those of the writer and not necessarily the views of the editor or of the executive board.

Al Abromitis, Editor
e-mail:



Veteran Awards Slated for April 4 Meeting

Local 1759 will present certificates and veteran badges to members celebrating IAM membership anniversaries at the 4:00 p.m. business meeting on Tuesday, April 4, 2000 at the Local Lodge.
Refreshments will follow the meeting.

The awards are based on the report received from IAM Headquarters for the Month of December 1999. A list of awardees appears on page 3.

Local Members to Elect Convention Delegates

Calls for nominations and election of Grand Lodge, District 141 and District 141-M Convention delegates appear inside this issue. All Local 1759 active, retired and exempt members in good standing are eligible to vote for these representatives.

The Grand Lodge Convention will be held September 10-16, 2000 in San Francisco, California. The District 141 Convention will be held October 10-12 in Honolulu, Hawaii and the District 141-M Convention will be held BW018714 September 26-28, 2000 in Cleveland, Ohio.

To be eligible for nomination, the candidate must be a member of this Lodge and the IAM for one year or longer and have attended at least one of the regular meetings of the Lodge during the twelve month period ending the close of nominations.

FlyPaper
Capital Air Lodge 1759
International Association of
Machinists & Aerospace Workers

"Life would be infinitely happier if we could be born at eighty and gradually approach eighteen!"
Anonymous

NON PROFIT ORG
U.S. POSTAGE
PAID
PERMIT NO. 482
MERRIFIELD, VA

Address Service Requested

1037 Sterling Road, Suite 104
Herndon, VA 20170-3839

Phone: 703-318-0914
Fax: 703-318-9204
Email: abro@iam1759.org

We're On the Web!
www.iam1759.org

ZZ003352
Janet Cope
9118 Sterling Montague Dr
Great Falls, VA 22066-4004

Members are Responsible to Keep Dues up to Date

By John H. Kennedy, Secretary-Treasurer

We have been experiencing problems with members not making their monthly union dues payments.

Union dues are to be paid on a monthly basis, either by payroll deduction or by mailing a check, payable to Capital Air Lodge 1759. If your paycheck does not have enough money to pay your union dues, you are responsible for that month's union dues except in cases of extended illness, out-of-work, or leave of absence. In those cases, you should notify Local Lodge 1759 immediately so we can place your membership on what is called U-Stamp until you return to work.

Your IAM membership will lapse after non-payment of two month's union dues. Local Lodge 1759 will mail, via certified mail, return receipt requested, a letter advising that your IAM membership has lapsed and that you need to reinstate your membership at $125.00 plus past due union dues. Local Lodge 1759 will give you 15 days from the date you receive that letter to make payment. If after that a lapsed member has not made payment, Local Lodge 1759 will forward the matter to the District Lodge for processing. Failure to maintain your membership with the IAMAW can result in termination of your employment.

It is the responsibility of all IAM union members to make their monthly union dues payment. Keep in mind that as a condition of employment, employees are required to maintain membership with the IAM and be in good standing with the IAM. If you have any questions concerning your union membership, please do not hesitate to contact the office at (703) 318-8487.

Game Prize Worth $10

V. Simonin, AP003433, TWA-DCA claimed the $25 prize after finding his book number in last issue.
Match your IAM book number with the number hidden somewhere inside this issue and win $10.
! (703) 318-0914 before April 7, 2000 to claim the prize.
prize increases by $5 increments to a maximum of $100.
ı don't know your IAM book number, call 703-318-8487.

UFCW LOCAL 536

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION • AFL-CIO-CL(

1426 N.E. Rock Island Drive
Peoria, Illinois 61603

Office — (309) 686-0304
Fax — (309) 686-1725
Toll Free — (800) 832-9536

April 16, 1996

Dear New Member:

Welcome to the United Food & Commercial Workers Local 536. My name is Sharon Riley, I will be your Union Business Representative. As you have been informed. The Kroger Company is a union company. Enclosed you will find a membership application. Please sign and return it in the pre-addressed envelope by April 30, 1996.

ARTICLE 4. UNION SHOP

Section 4.1 The following shop conditions shall be effective:

It shall be a condition of employment that all employees of the Company covered by this Agreement who are members of the Union in good standing on the execution date of this Agreement shall remain members in good standing, and those who are not members on the execution date of this Agreement shall, on the thirty-first (31st) day following the execution date of this Agreement become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its execution date shall, on the thirty-first (31st) day following the beginning of such employment become and remain members in good standing in the Union. The Company may secure new employees from any source whatsoever. During the first thirty (30) days of employment, a new employee shall be on a trail basis and may be discharged at the discretion of the Company provided, however, that the aforementioned thirty (30) day period may be extended up to sixty (60) days by mutual agreement between the Employer and the Union. Any extensions of the probationary period will be in writing signed by the Employer, the Union and the affected employee.

If you have already signed and returned your application, please disregard this notice.

Sincerely,

Sharon D. Riley
Business Representative

SDR:am

EXHIBIT

UFCW LOCAL 536

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION • AFL-CIO-CLC

1428 N.E. Rock Island Drive
Peoria, Illinois 61603

Office — (309) 686-0304
Fax — (309) 686-1725
Toll Free — (800) 832-9536

Mr. Joseph McCullough
20915 Stephanie Ct.
Chillicothe, Illinois 61523

RE: Membership

Dear Mr. McCullough:

Thank you for responding to our letter. In the enclosed package you will find a copy of U.F.C.W. Local 536 contract with the Kroger Company as you will read, it is a requirement of your employment that you become a member of U.F.C.W. Local 536 by filling out, signing and returning part I and II of the membership application. Part III, the active Ballot Club is voluntary. These conditions are required according to the signed Agreement between The Kroger Company and the Union (page #37). *

If you have any questions please feel free to call me.

Sincerely,

Sharon Riley

Sharon Riley
Business Representative
1-800-832-9536

SR:cf
enclosure

UFCW LOCAL 536

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION • AFL-CIO-CLC

1426 N.E. Rock Island Drive
Peoria, Illinois 61603

Office — (309) 686-0324
Fax — (309) 686-1725
Toll Free — (800) 832-9536

May 1, 1996

Joseph McCullough
20915 Stephanie Ct.
Chillicothe, IL 61523

Dear Joseph:

As you have been informed it is a condition of your employment according to the Labor Agreement between United Food & Commercial Workers Local 536 and The Kroger Company according to Article 1 Section 1.2,

> *"The Company recognizes the Union as the sole collective bargaining agency for all of the employees, as hereinafter set forth in the stores located in the counties listed below..."*

and Article 4, Section 4.1,

> *"It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its execution date shall, on the thirty-first (31st) day following the beginning of such employment become and remain members in good standing in the Union."*

On May 12, 1996 a request for you to be removed from the schedule until United Food & Commercial Workers Local 536 receives your membership application will be made and your name turned over to our Legal Counsel, Karmel & Gilden.

If you have returned your application please disregard this letter.

Sincerely,

Sharon D. Riley
Business Representative

SDR:am

[redacted]

UNITED FOOD AND COMMERCIAL WORKERS UNION 324
8330 STANTON AVENUE, BOX 5004 BUENA PARK CA. 90622
OFFICE HOURS ( ) AM TO 5:00 PM - MONDAY THRU FRIDAY
(714) 995-4601 (562) 594-4641 LIMITED AREAS (1-800) 244-UFCW
BRANCH OFFICE:25431 BIRTCHER STE 1-LAKE FOREST(714)367-7831
OFFICE HOURS:8:30-11:30 AM / 12:30-4:30 PM MONDAY THRU FRIDAY

OBER 15, 1997

NE J VEGA
219 BLUE FIN DR
A POINT CA 92629-1416

0914-5751 007-390
CC: THRIFTY PAYLESS
30261 GOLDEN LANTERN
LAGUNA NIGUEL CA 92677

),

THE WORK FORCE IN THESE EXPANDING INDUSTRY. IN ORDER TO BE INFORMED OF YOUR BENEFITS, JOBS YOU SHOULD REPORT, IN PERSON, TO THE UNION OFFICE NO LATER THAN OCTOBER 29, 1997, LOCATION TO BE IN GOOD STANDING WITH THIS LOCAL UNION.

F BETWEEN UFCW LOCAL 324 AND YOUR EMPLOYER REQUIRES YOU TO BE IN GOOD STANDING WITH FAILURE TO COMPLY WITH THE PROVISIONS OF THIS CONTRACT BY NOT MAKING APPLICATION WITHIN YOUR DATE OF HIRE COULD RESULT IN YOUR NOT BEING ELIGIBLE FOR CONTINUED EMPLOYMENT.

MPLY WITH THE ABOVE WILL RESULT IN A TERMINATION NOTICE BEING SENT TO YOUR EMPLOYER.

N INFORMATION MADE AVAILABLE BY YOUR EMPLOYER, IN ORDER TO BE IN GOOD STANDING, YOU UE FOR THE MONTHS OF SEP 97, $20.81, OCT 97, $38.66, NOV 97, $38.66, DEC 97, $38.66 $6.79, AND YOUR INITIATION/REINSTATEMENT FEE OF $450.00 FOR A TOTAL OF $586.79.

TO THE DUES AND INITIATION/REINSTATEMENT FEES $2.00 WILL HAVE TO BE PAID IN ORDER FOR LIGIBLE FOR THE DEATH BENEFIT PROGRAM PROVIDED BY THIS LOCAL UNION, EQUALING A SUM OF AGED.

N CAN BE MADE AT THE TIME OF MAKING APPLICATION FOR THE PAYMENT OF THESE FEES. IF YOU DRAWAL/TRANSFER CARD FROM ANY UNITED FOOD AND COMMERCIAL WORKERS LOCAL UNION, YOUR FEE MAY BE PARTIALLY OR COMPLETELY WAIVED.

OFFICE DRUG/GS MAIL APPLICATION

DUES AND/OR FEES PAID TO UFCW UNION LOCAL 324 ARE NOT DEDUCTIBLE AS CHARITABLE CONTRIBUTIONS FOR FEDERAL TAX PURPOSES.

INDUSTRIAL REL. DEPT.
CC: THRIFTY-PAYLESS INC
8275 SW BEYTON LN
WILSONVILLE OR 97070

UNITED FOO[illegible] AND COMMERCIAL WORKERS UNI[illegible]
8530 STAN[illegible] [illegible]ENUE, BOX 5004 BUENA PARK CA. 9062[illegible]
OFFICE HOURS: 8:30 AM TO 5:00 PM - MONDAY THRU FRIDAY
(714) 995-4601 (1-800) 244-UFCW
BRANCH OFFICE:2368[illegible] BIRTCHER STE [illegible]LAKE FOREST(714)587-9881
OFFICE HOURS:8:30-11:30 AM / 12:30-4:30 PM MONDAY THRU FRIDAY

NOVEMBER 7, 1997 TERMINATION

INDUSTRIAL REL. DEPT.
THRIFTY-PAYL
9275 SW PEYTON LN
WILSONVILLE OR 97070

-5752 007-390
[illegible]IFTY PAYLESS
[illegible]261 GOLDEN LANTERN
[illegible]AGUNA NIGUEL CA 92677

THIS IS TO ADVISE YOU THAT MAYNE J VEGA, SOCIAL SECURITY NO. 157-50-9622, HAS FAILED TO COMPLY WITH THE EXISTING AGREEMENT UNDER ARTICLE 3, AS STATED IN THE LETTER TO THE EMPLOYEE DATED OCTOBER 15, 1997.

REGARDING THIS EMPLOYEE, PLEASE BE ADVISED THAT UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 324 IS IN COMPLIANCE WITH ALL APPLICABLE LAWS, THE DECISION OF THE NATIONAL LABOR RELATIONS BOARD, THE APPLICABLE PROVISIONS OF ITS OFFICIAL BYLAWS AND WITH THE RELEVANT SECTIONS OF THE CONSTITUTION AND BYLAWS OF THE UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION.

THE EMPLOYEE MUST SHOW PROOF OF MEMBERSHIP BY THE END OF THE CURRENT WEEK'S SCHEDULE, OR BE REMOVED FROM THE FOLLOWING WEEK'S SCHEDULE AND THEN BE TERMINATED IF THE ABOVE DOES NOT COMPLY WITHIN SEVEN (7) DAYS.

/ GENERAL OFFICE DRUG DELINQUENT OCTOBER 15, 1997

DUES AND/OR FEES PAID TO UFCW UNION LOCAL 324 ARE NOT DEDUCTIBLE AS CHARITABLE CONTRIBUTIONS FOR FEDERAL TAX PURPOSES.

MAYNE J VEGA
33815 BLUE FIN DR
[illegible] CA 92629-2426

TERMINATION SUMMARY

Associate's Name WAYNE VEUTA SSN 157-50-9882

33215 BLUE FIN DRIVE

Dist. No. 52 Full Time ☐ Part Time ☐ Temporary

Hire Date 6-9-92 1992 Rate Of Pay 38.00

Effective Date Of Separation 3-19-92 Termination Code

If last date of suspension is different than last day worked, please explain: DUE TO NOT

PLEASE INDICATE RESIGNATION OR INVOLUNTARY TERMINATION: NEVER BOTH

A.☐ I hereby submit my resignation of employment for the following reason(s):

B.☐ I have accepted employment with _____ Date _____

C.☐ The associate gave notice by telephone/in writing on _____ 19 ___. Reason given by associate for resignation is .

D.☐ EMPLOYEE FAILED TO REPORT TO WORK "NO SHOW" AND GAVE NO NOTICE.

Involuntary Termination

E. ☐ Release of associate during probationary period
F. ☐ Failure to comply with company standards
G. ☐ Job performance has become sub-standard
H. ☐ Falsification of employment information
I. ☐ Excessive absence/tardiness
J. ☐ Reduction in workforce
K. ☐ Release of temporary associate
L. ☐ Other

Please explain reason in detail: _____

This data is for the sole use of Thrifty PayLess and is confidential.

Recommendation (if rehire)? ☐ Yes ☐ No ☐ Conditional Explain _____

All persons recommended for rehire will be subject to the same screening and interviewing procedures as all other applicants.

Note

Personal Leave Of Absence — An associate may be granted up to 60 days unpaid personal leave with manager approval.

Medical Leave Of Absence — An associate is eligible from date of hire if he/she is unable to work due to an illness or injury.

Military Leave Of Absence — An associate is eligible from the date of hire when he/she enlists or is drafted in a branch of the Armed Forces.

I understand the leave described above may be available to me if I meet the eligibility requirements, and all other conditions are met and approved by management.

3-24-92 Date — Manager/Assistant's Signature — 3-19-92 Date

COMPLETE WITHIN 24 HOURS AND SEND COPIES TO:

Form #1845 Code 740585

COMMUNICATIONS WORKERS OF AMERICA
PASSENGER SERVICE PROFESSIONALS ASSN.

Become a member...
join with your co-workers to:

...*Show* your support for your bargaining team
...*Participate* in mobilization for a good contract
...*Serve* in a union position
...*Vote* for your representatives and leadership
...*Vote* on contract ratification

Please remember:

1. No one will pay union dues until **after** a contract is ratified.
2. Participation in future union nominations, elections, and ratifications will be based on membership.
3. Membership is open to **all** US Airways Passenger Service Employees.

Yes, I want to be a member!

I hereby request and accept membership in the Communications Workers of America, and authorize US Airways to deduct from my salary an amount equal to regular monthly union dues. This authorization shall remain in effect unless cancelled by me in writing.

Name ..... Phone .....
Work Location ..... Job Title .....
Street .....
City ..... State ..... Zip .....
Signature ..... Date .....
Employee Number .....

COMMUNICATIONS WORKERS OF AMERICA
PASSENGER SERVICE PROFESSIONALS ASSN.

Communications Workers of America
AFL-CIO, CLC

501 Third Street, N.W.
Washington, D.C. 20001-2797
202/434-1110 Fax 202/434-1139

Morton Bahr
President

February 18, 2000

Dear Colleague:

It is CWA's privilege to represent you and your co-workers at US Airways. Communications Workers of America is working hard every day on your behalf to ensure the best terms and conditions of employment possible. If you have not already signed your membership card, I invite you to take a moment to add your name to the long list of US Airways employees who have already joined CWA.

We are proud of the good salaries and working conditions established by the Union contract covering your position. These achievements were possible only because of the efforts of your fellow workers, who joined in the organizing effort and became active in CWA. We encourage you to follow in their footsteps and join the Union. Our records indicate that you are not yet a member, so I have enclosed a postage-paid mail-back card for your convenience.

The value of CWA membership is great:

* Membership entitles you to a vote and a voice in all your union affairs - election of officers and representatives, establishing your local bylaws, input to future bargaining issues, ratification of future contracts and any future referendum on issues of concern to your group.

* Membership gives you the opportunity to serve in a union position - steward, chief steward, bargaining council/team, elected local office (president, vice president, etc.).

* CWA members are now protected by a strong passenger service contract - unquestionably the best passenger service contract in the airline industry.

* Membership strength gives you peace of mind and job security; membership strength will allow CWA to monitor and enforce the provisions of the contract in the future.

Please take a moment to fill out the enclosed card and drop it in the mail. Joining CWA is a positive move to insure your career and those of your co-workers. On behalf of the Communications Workers of America, I would like to welcome you to the Union.

Sincerely,

Morton Bahr

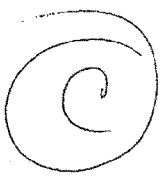
Morton Bahr
President

Enclosures: a) membership mail-back card,
b) relevant contract provision

B

Article 33 - Union Security and Maintenance of Membership

A. Each employee now or hereafter employed in any classification covered by this Agreement shall, as a condition of continued employment, within sixty (60) days following the beginning of such employment or the effective date of this Agreement, whichever is later, become a member of, and thereafter maintain membership in good standing in the Union except as provided otherwise herein. Such condition will not apply with respect to any employee to whom such membership is not available upon the same terms and conditions as are generally applicable to any other member of the employee's classification, or with respect to any employee to whom membership is denied or terminated for any reason other than the failure of the employee to tender dues uniformly required of other members of the classification, as a condition of acquiring or retaining membership.



April 13, 2000

Dear Greg Fox,

Please be advised that your agreement with the employer to stop payment of dues is in violation of our agreement with Lear. As all employees are aware and yourself included, the officers and representatives of local 2401 spend considerable time and resources representing all workers. All employees are required per the agreement to retain their membership with our local union in order to retain their employment. As a result of the above it is our intention to request the employer to enforce the current agreement. Your refusal to have the employer render dues to our local creates an undo hardship.

Thank you,

Wayne Newman Pres.

Wayne Newman

Gary Hampton V.P.

Gary Hampton

c.c: Greg, Von, Max Jeffrey

APPENDIX M – LETTER OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS: DEAR SCAB

Dear SCAB,

Your decision to cross a Teamster picket line, not to mention betraying your fellow employees, was a poor one indeed. I certainly hope you have another job lined-up for when we win the strike. As you probably know, you will not be welcomed by other employees. You better request a management job in another city, because I don't think you'll want to be in the Kalamazoo Center. If you decide to stay, you will be facing the following obstacles:

- *You will dismissed from the Teamsters Union.*
- *You will have to pay the $300 initiation fee to get back into the union.*
- *You will be fined the amount of money you made during the strike.*
- *Just remember, you must be a Teamster to work at UPS and to keep your job you will have to submit to the above penalties or YOU WILL HAVE NO JOB TO COME BACK TO.*
- *You will be treated like slime by fellow employees.*
- *Management doesn't care about you and won't protect you.*
- *You will need to have someone drop you off and pick you up so no one sees your car. You could buy a beater to drive.*

I'm sure there will be plenty more for you to deal with but these are the highlights. I imagine you'll be donating your raise to charity, since we stuck together and fought UPS to give us a fair contract and you SCABBED your way through the whole strike.

It has come to my attention that God told one of you to work. If this is the case it seems strange that he told you to work and not do something more monumental. Sounds to me that this person is just a "BIBLE THUMPING FREAK". Maybe Dave Garland's next feat will be parting the Red Sea.

As for Kruissel, Webber, and White you are just plain back

LETTER RECIEVED DURING

stabbers and rest assured that you have NO friends at UPS, now and in the future. At least Garland has big enough "balls" to drive in and out everyday. The rest of you are cowards. You may as well drive in, we already know who you are.

The only chance to save your job at UPS is to join us NOW. We will forgive you if you join us today in our fight.

If you decide to SCAB for UPS then I wish you all the luck in the world, because your going to need it. You better have Garland say a prayer for you, and your well being.

With great animosity,

Your FORMER Brothers in the Teamster Union

APPENDIX N – LETTER FROM INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT OF WORKERS OF AMERICA – UAW: NLRB SETTLEMENT AGREEMENT

Legal Department Phone (313) 926-5216
Legal Department Fax (313) 822-4844

Solidarity House
8000 EAST JEFFERSON AVE.
DETROIT, MICHIGAN 48214
PHONE (313) 926-5000

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW

STEPHEN P. YOKICH, *PRESIDENT* RUBEN BURKS, *SECRETARY-TREASURER*

VICE-PRESIDENTS: ELIZABETH BUNN • RON GETTELFINGER • BOB KING • JACK LASKOWSKI • RICHARD SHOEMAKER

Daniel W. Sherrick
General Counsel
Nancy Schiffer
Deputy General Counsel

Georgi-Ann Bargamian
Laura J. Campbell
Thomas C. Carey
Betsey A. Engel

Associate General Counsel
Phillip L. Gilliam
Connye Y. Harper
Ralph O. Jones
Michael B. Nicholson

Leonard R. Page
M. Jay Whitman

TO: ALL EMPLOYEES OF BUDD COMPANY REPRESENTED BY INTERNATIONAL UNION, UAW AND UAW LOCAL 2383

FROM: MICHAEL NICHOLSON, UAW ASSOCIATE GENERAL COUNSEL

DATE: AUGUST 17, 1999

Dear UAW-Represented Budd Employee:

Enclosed herewith is a copy of UAW's Welcome to the UAW issue. Many of you previously received a copy of this issue, but due to a mistake here in Detroit, our mailing service did not complete a general mailing until now. At page 22 of that issue, you will find the UAW notice (applicable to all employees covered by union security clauses) of the right of employees to become or remain non-members of the Union, and the further right of non-members to object to paying for union activities not germane to collective bargaining matters and to obtain a reduction in their payments to the Union corresponding with that objection.

We have also enclosed with this letter a copy of the NLRB Settlement Agreement which we voluntarily entered into in order to settle without litigation the unfair labor practice charges filed by employee Lee Earls. Earls previously invoked his right to be a non-member objector, and the UAW has honored that right. The NLRB Notice we have agreed to post ***and to fully honor*** is part of that Settlement Agreement and is also enclosed.

While we in no way intend to detract from our obligations under the Settlement Agreement, you will note that the Settlement Agreement signed by the UAW and Earls' attorneys (as well as the NLRB) states that "it is expressly understood that by execution of this Settlement Agreement, the Charged Parties do not admit that they have violated" the law. I want to take this opportunity to state our view that the Local Union did not intend in any way to violate the law. While the

International Union's mailing mistake referred to above did occur, it has been the Local Union's intention (and the International Union's) to at all times act properly towards Budd employees. Further, it has at all times been our intention to fully honor the right of any UAW-represented Budd employees to become or remain a non-members of the UAW, or to become non-member objectors if they wish. In fact, five (5) members of the bargaining unit have invoked their non-member objector rights, and -- as set forth in the enclosed Solidarity notice and in the attached NLRB notice -- you may also choose to become or remain a non-member and/or a non-member objector. That has been the UAW's policy nationally for at least ten years, and it remains our policy today. Thus, Article 6, Section 17 of the UAW Constitution provides that persons may resign from membership in the UAW at any time. While Charging Party Earls might disagree with regard to the intentions of the Union, we decided that the best course for those we represent was to settle these charges, given our mailing mistake and given the fact that the Settlement Agreement calls for the Union to take actions which are entirely consistent with employee rights that we intend to honor, without regard to whether we would win or lose any litigation.

We also want to stress how important we believe it is for you to remain a member of the Union. The more members we have at Budd, the stronger your Union will be in dealing with Budd in the negotiation and administration of our collective bargaining agreement. Moreover, if you choose non-membership, you lose your membership right to elect union officers, vote on ratification of union contract, vote for strike authorization, and all other political rights in your union. While the NLRB notice -- which we will honor -- tells you of your right to resign from union membership at any time (a right that is confirmed in the UAW Constitution), it does not tell you of the internal political rights of Union membership that you will lose if you are not a UAW member. We believe it is important for you to know all the facts. (Non-member fee payers retain their right to enjoy other material benefits of membership, as spelled out in Article 6, Section 20 of the UAW Constitution.)

We also believe that it is important for you to know how much the UAW values your membership in the Union. Together, we have worked together to get an enforceable contract giving you employment rights at Budd. And with the solidarity that is built by your union membership, we will work in the future for a stronger union and an even stronger contract. We believe that non-membership in the UAW does nothing to further the unity of Budd workers, and to accomplish such goals. In fact, we believe that non-membership -- even though it is your right -- damages the solidarity that is necessary to accomplish such goals.

Finally, we must comment on the misleading article which recently appeared in Sentinel-News on July 30, 1999. This article wrongly states that the UAW entered into a settlement agreement with an employee who chose to resign from the Union after an internal union charge was filed by a fellow employee against her. There was no such settlement agreement. Instead, consistent with the

UAW Constitution, once the employee invoked her right to resign from the Union, the charges against her were dismissed, consistent with the fact of her resignation. That action was not taken pursuant to any settlement agreement, as the newspaper article wrongly asserts. If the newspaper reporter had checked with the Union, rather than choosing to write a one-sided story, it might have gotten the facts right.

In closing, we want to let you know how much we value all of our Budd-UAW members. We are family, and with your solidarity we will continue to work for fairness for all Budd workers.

Fraternally,

Michael Nicholson
Associate General Counsel, UAW

P.S. The Settlement Agreement recites that you may – if you wish -- make your required payments to the UAW under the Budd-UAW union security clause by a means other than check-off authorization. Any such union security payments paid other than by check-off should be mailed each month to UAW Local 2383, c/o Bob Miles, Financial Secretary, 573 Mink Run Road, Frankfort, KY 40601. To be timely and to avoid any delinquency on your part if you pay by mail each month, such payments for any such month must be postmarked by the last day of that month.

opeiu494

Form NLRB–4781
(10–70)

NOTICE TO EMPLOYEES AND MEMBERS

POSTED PURSUANT TO A SETTLEMENT AGREEMENT APPROVED BY A REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL GIVE the employees that we represent at The Budd Company's (herein called the Employer) Shelbyville, Kentucky facility the following assurances:

WE WILL NOT fail to notify bargaining unit employees, when we first seek to obligate them to pay dues and fees under a union-security clause, of their right to be and remain nonmembers; and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988): (1) to object to paying for union activities not germane to the Union's duties as bargaining agent, and to obtain a reduction in fees for such activities; (2) to receive sufficient information to enable them to intelligently decide whether to object; (3) to be apprised of any internal union procedures for filing objections; and (4) if the employee chooses to object, to be apprised of the percentage of the reduction, the basis for the calculation and the right to challenge these figures.

WE WILL NOT notify employees that they are required to become members of the Union, or threaten them with loss of employment because of their failure to become full members of the Union, or attempt to have nonmember employees pay initiation fees and membership dues without providing them with notice of their rights as nonmembers under *Communications Workers v. Beck*, supra.

WE WILL NOT present union authorization cards to employees which serve as both a union membership application and as a dues checkoff authorization, unless such employees are clearly and unequivocally offered an alternative means of paying their required fees other than through checkoff.

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

WE WILL notify all bargaining unit employees in writing that they have the right to be or remain nonmembers, and that nonmembers have the right: (1) to object to paying for union activities not germane to our duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to receive sufficient information to enable them to intelligently decide whether to object; (3) to be apprised of any internal procedures for filing objections; and (4) if the employee chooses to object, to be apprised of the percentage of the reduction, the basis for the calculation and the right to challenge these figures.

WE WILL process the objections of nonmember bargaining unit employees which are submitted to the Union during the official posting period of this Notice, and reimburse, with interest, nonmember bargaining unit employees for any dues and fees exacted from them for nonrepresentational activities for each accounting period since September 22, 1998, for which they file an objection in exercise of their rights as nonmembers under *Communications Workers v. Beck*, supra.

WE WILL, upon written requests from bargaining unit employees which are submitted to the Union during the official posting period of this Notice, cease giving effect to their dues checkoff authorization.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W.
(Labor Organization)

Dated: 8/12/99 By: _____ Attorney
(Responsible Official) (Title)

LOCAL UNION 2383, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W.

Dated: 8/17/99 By: _____ Attorney
(Responsible Official) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office,

Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, OH 45202-3271 TEL: (513) 684-3686

★U.S. GOVERNMENT PRINTING OFFICE: 1991-312-471/51355

APPENDIX O – NOTICE OF DELINQUENCY: INTERNATIONAL UNION, UNITED GOVERNMENT SECURITY OFFICERS OF AMERICA

International Union
United Government Security Officers of America
UGSOA
7290 Samuel Dr. • Suite 110 • Denver, Colorado 80221
Phone (303) 650-8515 1-800-572-6103
Fax: (303) 650-8510

August 10, 1999

CERTIFIED MAIL
Z 379 953 317

RE: Notice of Delinquency

Dear Mr. Todd,

Pursuant to the terms of the collective bargaining agreement in effect with your employer governing their terms and conditions of your employment, employees are required to become members of the Union, or pay an agency fee equivalent to the amount of Union Dues, not later than the thirtieth (30th) day following the beginning of their employment or the execution date of the contract, whichever is later.

Our records indicate that the collective bargaining agreement went into effect on May 1, 1998. You have been employed by your employer for more than the contractually required period without becoming a member, although membership was and is available to you on the same terms and conditions generally available to other members, nor have you paid any agency fee.

Our initiation fee is **$ 25.00.** Our monthly dues and/or agency fee is **$ 26.50** per month (equivalent to 2-hours pay). Dues, payable at **UGSOA Local #55, 4049 Owster Way, Indianapolis, IN 46239,** are due on the first day of the month, and an employee is subject to suspension unless the dues or agency fee are paid on or before the last day of the following month.

You currently must pay the initiation fee of **$ 25.00** plus **$ 392.40** owed in monthly dues for the entire time of the contract through **July 1999.** Thus, the total amount you owe is **$ 417.40.**

This is to notify you that you must pay the total amount due of **$ 417.40** within five (5) days of the receipt of this notice. The amount must be paid in cash, check, or money order by the close of the regular business day at the Unions address indicated on this letter. Also, if you wish you may pay the money owed directly to the Union's

Secretary/Treasurer (Larry Price) on the job site if the representative is present. Be sure to receive a receipt if you pay in this manner. However, please understand that if no representative is present for you to make the payment directly, it is your obligation to make sure that the payment is made at the Union's address indicated on this letter on time.

If you do not pay the amounts owed within the required time period, the Union will refer your matter to an attorney for collection, and you will be responsible for the costs of such collection actions as required by the collective bargaining agreement.

If you believe that there is any mistake as to any of the facts stated in this letter, or if there are any other matters which you think we should consider before referring your matter to an attorney, please contact me immediately. Please understand that contacting the Union about this matter will not relieve you of your obligation to pay the amounts indicated above within the required time limit unless the Union notifies you in writing that it is withholding action pending further consideration.

The Union would much rather have you as a member rather than having to take legal action against you. Therefore, we hope that you will take the steps outlined above so that no further action on our part will be necessary.

Sincerely,

Burton Drumright
Secretary/Treasurer UGSOA International

APPENDIX P – SEVEN-DAY TERMINATION NOTICE: UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 1036

UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 1036
816 CAMARILLO SPRINGS ROAD, SUITE H
PO BOX 2878
CAMARILLO, CA 93011 (805)383-3300

SEVEN DAY TERMINATION NOTICE
July 16, 1998

RE:
551-82-1156
DEENA D CHACANACA
MEMBER TYPE 41

RITE AID #6238 /4226
TERRY RICHARDSON-MGR
9482 CA BLVD
CALIFORNIA CITY CA 93505

Dear Store Manager:

According to our membership records, DEENA D CHACANACA has failed to acquire or maintain his/her union membership with UFCW Local 1036. In accordance with the terms of our current collective bargaining agreement, this Local Union is demanding that said employee be notified by the Company that they will no longer be scheduled for hours of work on the next weekly work schedule.

The employee must show proof of membership by the end of the current week's schedule , or be removed from the following week's schedule. After removal from the schedule the member has seven (7) days to **SHOW PROOF OF COMPLIANCE** with Union membership obligations. **Failure to do so within this seven (7) days, will result in termination.**

If you should have any questions regarding this individual, please contact the Union office in your area.

*****Payment is due by JULY 22, 1998, to avoid being pulled off the schedule.**

*****If your payment is not received by JULY 22, 1998, you will be suspended for one week and must pay by JULY 29, 1998, to avoid termination.**

Please use the enclosed envelope when mailing in your payment. Postmarks will not be used in determining compliance, payment must be received in your Union office.

Sincerely,
MEMBERSHIP SERVICES
UFCW Local 1036

CC: Labor Relations
Employee
Business Agent, Local 1036 - J. MENDEZ
Area Office

APPENDIX Q – LETTER REGARDING DISCHARGE FOR FAILURE TO BECOME MEMBER OF UNION AND RESPONSE

NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.
8001 BRADDOCK ROAD • SPRINGFIELD, VIRGINIA 22160 • (703) 321-8510

GLENN M. TAUBMAN
Staff Attorney

Certified Mail
Return Receipt Requested

May 6, 1996

Ms. Mary Zambreni
Laurel Park Race Course, Inc.
P.O. Box 130
Laurel, MD 20810

Mr. Carvel Mays, Jr.
United Food & Commercial Workers Local 27
21 West Road
Baltimore, MD. 21204

Dear Madam and Sir:

We have been retained to represent Mr. John Tsilis with regard to his March 8, 1996 discharge from employment with Laurel Park Race Course, Inc.

As we understand it, Mr. Tsilis was summarily discharged, at the behest of UFCW Local 27, solely because he did not become a formal member of the union. Moreover, the facts indicate that prior to his discharge, Mr. Tsilis received no written notice whatsoever regarding the union security obligations, if any, that he owed as a lawful condition of his employment.

We are interested in listening to your explanation of these facts. We are also amenable to promptly settling this matter with Mr. Tsilis' reinstatement and backpay.

In the absence of such a response from you, please be on notice that we will be filing a lawsuit in federal court no later than June 6, 1996.

Ms. Mary Zambreni
Mr. Carvel Mays, Jr.

We look forward to hearing from you or your attorneys before then.

Sincerely,

Glenn M. Taubman

Milton L. Chappell
Attorneys for John Tsilis

GMT:tlb
cc: John Tsilis

THE MARYLAND JOCKEY CLUB
P.O. Box 130
Laurel, Maryland 20725

May 16, 1996

Glenn M. Taubman, Esq.
Milton L. Chappell, Esq.
National Right to Work Legal
Defense Foundation, Inc.
8001 Braddock Road
Springfield, VA 22160

Gentlemen:

This acknowledges receipt of your May 6, 1996 letter regarding Mr. John Tsilis. Your client's dispute is essentially with the United Food & Commercial Workers, Local 27, and not with the Maryland Jockey Club ("MJC"). Under the Collective Bargaining Agreement between MJC and the Union, we are required to discontinue the employment of a mutuel teller who does not join the Union after 30 days of employment. A copy of Article II of our contract with the UFCW is attached.

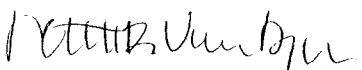
MJC is awaiting a response from the UFCW regarding your May 6 letter. We have discussed the letter with the Union and were advised that the Union's attorney, Joel Smith, is in contact with Mr. Tsilis' representatives.

Regardless of whether Mr. Tsilis received written notice of his Union obligations, he certainly knew that he accepted a job that was covered by Union contract. Union membership is discussed during new employee interview and training and is an integral part of every work day. Moreover, Mr. Tsilis is surrounded by Union employees and it is not conceivable that he was unaware that his job was a unionized position. Matters related to Union membership and the Collective Bargaining Agreement, which your client must have known about, include: pay scale, pay increases, pension, seniority rights, seniority lists, assignment lists, and the health and welfare benefits available to your client through a plan sponsored by the UFCW.

You raised an issue of back pay. Please let me know the legal authority, if any, supporting your request. As you know, Mr. Tsilis' personal choice to decline joining the Union caused his unemployment.

We expect your client and the UFCW will resolve this matter. Consequently, MJC is taking no action at this time other than to offer to implement the solution Mr. Tsilis and the UFCW reach.

Very truly yours,



Robert B. Van Dyke
Assistant General Counsel

cc: Mr. Carvel Mays
Joel A. Smith, Esq.

APPENDIX R - NATIONAL LABOR RELATIONS BOARD SETTLEMENT AGREEMENT

FORM NLRB-4775

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF

GENERAL TRUCKDRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 957 a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS (Central Soya Company, Inc.), 8-CB-8643

The undersigned Charged Party and the undersigned Charging Party, in settlement of the above matter, and subject to the approval of the Regional Director for the National Labor Relations Board, **HEREBY AGREE AS FOLLOWS:**

POSTING OF NOTICE — Upon approval of this Agreement, the Charged Party will post immediately in conspicuous places in and about its plant/office, including all places where notices to employees/members are customarily posted, and maintain for 60 consecutive days from the date of posting, copies of the attached Notice made a part hereof, said Notices to be signed by a responsible official of the Charged Party and the date of actual posting to be shown thereon. In the event this Agreement is in settlement of a charge against a union, the union will submit forthwith signed copies of said Notice to the Regional Director who will forward them to the employer whose employees are involved herein, for posting, the employer willing, in conspicuous places in and about the employer's plant where they shall be maintained for 60 consecutive days from the date of posting.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

BACKPAY — The Charged Party will make whole Jesse Bierce, Raymond Gilbert and Robert Finch.

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above captioned case(s), and does not constitute a settlement of any other case(s) or matters. It does not preclude persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters which precede the date of the approval of this Agreement regardless of whether such matters are known to the General Counsel or are readily discoverable. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

REFUSAL TO ISSUE COMPLAINT — In the event the Charging Party fails or refuses to become a party to this Agreement, and if in the Regional Director's discretion it will effectuate the policies of the National Labor Relations Act, the Regional Director shall decline to issue a Complaint herein (*or a new Complaint if one has been withdrawn pursuant to the terms of this agreement*), and this Agreement shall be between the Charged Party and the undersigned Regional Director. A review of such action may be obtained pursuant to Section 102.19 of the Rules and Regulations of the Board if a request for same is filed within 14 days thereof. This Agreement is contingent upon the General Counsel sustaining the Regional Director's action in the even of a review. Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in this case, as well as any answer(s) filed in response.

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt of the Charged Party of advice that no review has been requested or that the General Counsel has sustained the Regional Director.

NOTIFICATION OF COMPLIANCE — The undersigned parties to this Agreement will each notify the Regional Director in writing what steps the Charged Party has taken to comply herewith. Such notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. In the event the Charging party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that no review has been requested or that the General Counsel has sustained the Regional Director. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken in this case.

Charged Party GENERAL TRUCKDRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 957 a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS (Central Soya Company, Inc.)		Charging Party JESSE BIERCE, AN INDIVIDUAL	
By: Name and Title John R. Doll	Date 1/14/00	By Name and Title	Date
Recommended By: Catherine A. Modin Board Agent	Date 5-26-00	Approved By: Regional Director, Region 8	Date 5-31-00

FORM NLRB-4782
(10-70)

NOTI
EMPLOYEES

POSTED PURSUANT TO
APPROVED BY A RI
NATIONAL LABOR RELATIONS BOARD

Under the National Labor Relations Act employees have the right to:

Self organization;
Form, join or assist any labor organization;
Bargain collectively through representatives of their own choosing;
Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; or
Refrain from any and all such activity.

WE WILL NOT refuse to give effect to the resignation from union membership by Jesse Bierce, Raymond Gilbert, Robert Finch and any other objector under Communication Workers v. Beck, 487 U. S. 735 (1988).

WE WILL NOT collect union membership dues from Bierce, Gilbert, Finch or any other Beck objector unless and until such time as an appropriate service fee for financial core members is established.

WE WILL NOT fail to provide Bierce, Gilbert and Finch, or any other employee who has filed Beck objections with information pertaining to the percentage of funds the Union spent in its last accounting year for non-representational activities.

WE WILL NOT fail to establish a procedure governing the reduction in dues and fees for nonmember employees covered by the Union Security Provision who object to the payment of dues and fees for nonrepresentational activities.

WE WILL NOT fail to provide Bierce, Gilbert and Finch or any other employee who has filed Beck objections with a detailed apportionment of our expenditures for representational activities and nonrepresentational activities.

WE WILL refund with interest all membership dues and fees withheld and collected from Bierce, Gilbert and Finch and any other Beck objectors which cover nonrepresentational activities and WE WILL provide the NLRB with information confirming that this has been done.

WE WILL provide employees who have filed a Beck objection with information pertaining to the percentage of funds the Union spent in its last accounting year for nonrepresentational activities and WE WILL provide the NLRB with information confirming that this has been done.

THIS IS AN OFFICIAL NOTICE AN

This notice must remain posted for 60 consecutive days from the da
Any questions concerning this notice or compliai

;E TO
,ND MEMBERS

SETTLEMENT AGREEMENT
NAL DIRECTOR OF THE
GENCY OF THE UNITED STATES GOVERNMENT

WE WILL establish a procedure governing the reduction in dues and fees for nonmember employees covered by the Union Security Provision who object to the payment of dues and fees for nonrepresentational activities and **WE WILL** provide the NLRB with information confirming that this has been done.

WE WILL provide employees who have filed Beck objections with a detailed apportionment of our expenditures for representational activities and nonrepresentational activities and **WE WILL** provide the NLRB with information confirming that this has been done.

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

General Truck Drivers, Chauffeurs, Warehousemen & Helpers
Local Union No. 957 a/w International Brotherhood of Teamsters

Dated: _____ By: _____
(Representative) (Title)

IUST NOT BE DEFACED BY ANYONE

iting and must not be altered, defaced, or covered by any other material.
its provisions may be directed to the Board's Office,

APPENDIX S – NATIONAL LABOR RELATIONS BOARD ORDER WITH ALLEGATIONS LISTED

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

HURON CASTINGS, INC.

and CASE NO. 7-CA-41059

LOCAL 6222, UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC and UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC

and CASE NO. 7-CB-11765

GARY BRADLEY, an individual
DONALD BRUCE, an individual
RALPH BRAKENBERRY, an individual
DAVID McBRIDE, an individual

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Gary Bradley, Donald Bruce, Ralph Brakenberry and David McBride, herein collectively called the Charging Parties, in Case No. 7-CA-41059 have charged that Huron Castings, Inc., herein called Respondent Castings, and in Case No. 7-CB-11765 have charged that Local 6222, United Steelworkers of America AFL-CIO-CLC and United Steelworkers of America AFL-CIO-CLC , herein individually called Respondent Local 6222 and Respondent Steelworkers, respectively, and collectively called Respondent Unions, have been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 et seq., herein called the Act. Based thereon, and in order to avoid unnecessary costs or delay, the Acting General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, ORDERS that these cases are consolidated.

These cases having been consolidated, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Order Consolidating Cases, Consolidated Complaint and Notice of Hearing and alleges as follows:

1. The charge in Case No. 7-CA-41059 was filed by the Charging Parties on June 10, 1998, and a copy was served by regular mail on Respondent Castings on June 11, 1998.

2. The charge in Case No. 7-CB-11765 was filed by the Charging Parties on June 10, 1998, and a copy was served by regular mail on Respondent Unions on June 11, 1998.

3. At all material times, Respondent Castings, a corporation, with an office and place of business in Pigeon, Michigan, herein called Respondent Castings' facility, has been engaged in the manufacture of steel castings.

4. During the year ending on December 31, 1997, Respondent Castings, in conducting its business operations described above in paragraph 3, purchased and received at Respondents Castings' facility, goods valued in excess of $50,000 directly from points outside the State of Michigan.

5. At all material times Respondent Castings has been engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

6. At all material times, each of Respondent Unions has been a labor organization within the meaning of Section 2(5) of the Act.

7. At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Castings within the meaning of Section 2(11) of the Act and agents of Respondent Castings within the meaning of Sections 2(13) of the Act:

Reggie Vargo	1st shift Foreman
Dale Kozlowski	2nd shift Foreman

8. At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of the respective Respondent Unions, acting on their behalf, within the meaning of Sections 2(13) of the Act:

Rich Dietrich	Respondent Steelworkers representative
Ken Heiden	Respondent Local 6222 representative
Jim Neschultz	Respondent Local 6222 representative

9. The following employees, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full time and regular part time production and maintenance employees, including truck drivers, employed by Respondent Castings at its facility located at 7050 Hartley Street, Pigeon, Michigan; but excluding all office and plant clerical, professionals, guards, and supervisors as defined in the Act.

10. On August 11, 1997, Respondent Steelworkers was certified in Case No. 7-RC-21108 as the exclusive collective bargaining representative of the Unit.

11. At all material times since August 11, 1997, based on Section 9(a) of the Act, Respondent Steelworkers has been the exclusive collective bargaining representative of the Unit.

12. About February 23, 1998, Respondent Castings entered into a collective bargaining agreement with Respondent Steelworkers on behalf of Respondent Local 6222.

13. At all material times since at least February 23, 1998, Respondent Local 6222 has been the servicing agent for Respondent Steelworkers as the exclusive collective bargaining representative of the unit.

14. About February 18, 1998, Respondent Unions, at a union hall in Elkton, Michigan, by their agents Ken Heiden, Jim Neschultz and Rich Dietrich, conditioned Unit employees right to vote for contract ratification on the signing of a dues checkoff authorization card.

15. About February 18, 1998, Respondent Unions, at a union hall in Elkton, Michigan, by their agent Rich Dietrich, threatened an employee wit discharge if the employee did not sign a union membership and dues checkoff authorization card.

16. About February 18, 1998, Respondent Castings, at Respondent Casting's facility, by its agent Reggie Vargo, told an employee that the employee needed to sign a union membership and dues checkoff authorization card.

17. About February 26, 1998, Respondent Castings, at Respondent Casting's facility, by its agent Dale Kozlowski, threatened employees with discharge if they did not sign a union membership and dues checkoff authorization card.

18. The collective bargaining agreement referred to above in paragraph 12, contains the following conditions of employment here in called the Union Security Provision:

> "It shall be a condition of employment that all present full time and part time employees, and all future full time and part time employees at such time as they have successfully passed their ninety (90) working day (actual days worked) probationary period, become and remain members in good standing in the Union."

19. At all material times, Respondent Unions have maintained the Union Security Provision referred to above in paragraph 18 without informing the Unit that their sole obligation under the Union Security Provision was to pay uniformly required initiation fees and periodic dues.

20. Respondent Unions expend the monies collected pursuant to the Union Security Provision on activities germane to collective bargaining, contract administration and grievance adjustments, herein called representational activities, and on activities not germane to collective bargaining, contract administration and grievance adjustment, herein called nonrepresentational activities.

21. Since about February 23, 1998, Respondent Unions have failed to inform the Unit:

(a) that employees do not have to become members of Respondent Union;
(b) that, as nonmembers, said employees can object to having their dues and fees spent on nonrepresentational activities,
(c) of the percentage of funds Respondent Unions spent in their last accounting year for nonrepresentational activities;
(d) that, if employees object to being charged for nonrepresentational activities, Respondent Union will charge said employees only for representational activities;
(e) that, if employees object to being charged for nonrepresentational activities, Respondent Unions will provide said employees with detailed information concerning their expenditures for representational activities and nonrepresentational activities.

22. About April 7, 1998, Charging Party Gary Bradley resigned his membership from Respondent Unions and objected to being charged for nonrepresentational activities.

23. Since about April 7, 1998, Respondent Unions have accepted full dues from Charging Party Gary Bradley pursuant to a dues checkoff authorization and thereafter refunded to Charging Party Gary Bradley the portion of the dues germane to nonrepresentational activities.

24. By the conduct described above in paragraphs 16 and 17, Respondent Castings has been interfering with, restraining, and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

25. By the conduct described above in paragraph 18, Respondent Castings has been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby encouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

26. By the conduct described above in paragraphs 14, 15, 18, 19, 21 and 23, Respondent Unions have been restraining and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act.

27. By the conduct described above in paragraphs 18, 19 and 23, Respondent Unions have been attempting to cause and causing an employer to discriminate against employees to encourage membership in and activities on behalf of Respondent Unions.

28. The unfair labor practices of Respondent Castings and Respondent Unions described above affect within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, it is prayed that Respondent Castings be ordered to:

1. Cease and desist from

(a) Engaging in the conduct described above in paragraphs 16 and 17 or in any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

(b) Engaging in the conduct described above in paragraph 18 or in any like or related manner discriminating against employees to encourage membership in a labor organization.

2. Take the following affirmative action:

(a) Cease maintaining and giving effect to the Union Security Provision referred to above in paragraph 18.

(b) Jointly and severally with Respondent Unions make whole Unit employees for all dues and fees paid by Unit employees to Respondent Unions, with interest thereon computed in accordance with Board policy.

(c) Post appropriate notices.

WHEREFORE, it is prayed that Respondent Unions be ordered to:

1. Cease and desist from:

(a) Engaging in the conduct described above in paragraphs 14, 15, 18, 19, 21 and 23 or in any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

(b) Engaging in the conduct described above in paragraphs 18, 19 and 23 or in any like or related manner causing or attempting to cause Respondent Castings to discriminate against employees to encourage membership in or activities on behalf of Respondent Unions in violation of Section 8(b)(2) of the Act.

2. Take the following affirmative action:

(a) Cease maintaining and giving effect to the Union Security Provision referred to above in paragraph 18.

(b) Notify all Unit employees, in writing, of their right to be or remain nonmembers and to rescind their dues checkoff authorization; and of the rights of nonmembers to object to paying for union activities not germane to the Respondent Union's duties as bargaining agent, and to obtain a reduction in fees for such activities.

(c) Jointly and severally with Respondent Coatings make whole Unit employees for all dues and fees paid by the Unit employees to Respondent Unions, with interest thereon computed in accordance with Board policy.

(d) Posting appropriate notices, and provide signed copies for posting by Respondent Castings, if it is willing.

The Acting General Counsel further prays for such other relief as may be just and proper to remedy the unfair labor practices herein alleged.

PLEASE TAKE NOTICE that commencing at 10:00 a.m., on the 23rd day of February, 1999, and on consecutive days thereafter a hearing will be conducted at a location to be designated at a later date before an administrative law judge of the Board on the allegations in this consolidated complaint, at which time and place any party within the meaning of Section 102.8 of the Board's Rules and Regulations will have the right to appear and present testimony.

Respondent Castings and Respondent Unions are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, they shall file with the undersigned an original and four (4) copies of an answer to this consolidated complaint within 14 days from service of it, and that, unless they do so, all the allegations in the consolidated complaint shall be considered to be admitted to be true and shall be so found by the Board. Respondent Castings and Respondent Unions are also notified that pursuant to the Board's Rules and Regulations, they shall serve a copy of their answers on each of the other parties.

Form NLRB-4338, Notice, and Form NLRB-4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, are attached.

Dated at Detroit, Michigan, this 28th day of August, 1998 .

(SEAL)

/s/ William C. Schaub, Jr.
William C. Schaub, Jr.
Regional Director
National Labor Relations Board, Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226

APPENDIX T – UAW PUBLISHED LIST OF "DISHONORABLE" UNION WITHDRAWLS

1853
Spring Hill, TN

The Wheel

Rolling with Local 1853 and Saturn...Keeping the membership informed!

The UAW endorses the Clinton/Gore team in the November 5, elections because of their support for labor and working families.

It's Your Choice

Get out the vote
Parson

As UAW President Stephen Yokich says, we are trade unionists and we're going to vote — not on the basis of labels — for politicians who vote for us.

We don't oppose Bob Dole because he is a Republican but because he works against union working men and women.

Once, Republicans like Theodore Roosevelt stood up for the rights of working people to join unions. So did Abraham Lincoln.

But there are few pro-union Republican officials left. No one is going to force any American to vote one way or the other.

If UAW members vote for Dole or other anti-union politicians, that is their right.

But they will be hurting the ability of unions to organize and defend their jobs, their pensions and their safety on those jobs.

The choice is yours.

What's Inside:

Also, election-related articles, UAW endorsements, and other features inside!

APPENDIX A

Bobby Sands

STATE REPRESENTATIVE (endorsement)

HE WILL LISTEN TO US!

HE WILL WORK FOR US!

Maury County needs a state representative in Nashville working for the people, someone who will listen, who cares about Maury County today and tomorrow, as well as, someone who will work hard to get the job done.

That person is Bobby Sands! He's committed, concerned and capable! Put Bobby Sands on the job for the people of Maury County!

Honorable vs. Dishonorable Withdrawal from the UAW

By Nancy Chisolm

The Wheel has occasionally published the names of those team members who have chosen to withdraw from the Union for various personal reasons when they have not been happy with membership actions. Occasionally team members have asked why only those team members who have withdrawn while still performing bargaining unit work have their names published and not those who have gone to non-represented (non-rep) positions.

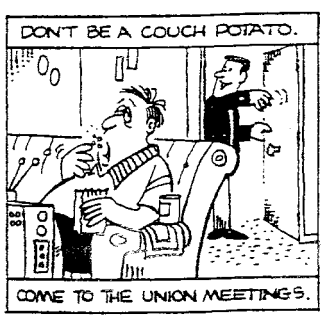
There are two ways to leave the union: one being an honorable withdrawal, the other being a dishonorable withdrawal. When a team member becomes a non-rep at Saturn, they cease to perform work which belongs to the UAW. They are no longer entitled to representation by the UAW. They receive a card from the union which states that they have honorably withdrawn and have left in good standing with all dues paid up to the point of their leaving the bargaining unit.

On the other hand, when a team member quits the union while still performing work that the UAW has negotiated, they withdraw dishonorably and are no longer in good standing. If a team member who has honorably withdrawn subsequently returns to the bargaining unit, they began paying dues only upon their re-entry, those who have withdrawn dishonorably must pay all back dues in order to return to a status of good standing.

From this edition on, the names of those who are not in good standing will be published in every edition of ***The Wheel***. Hopefully that list will soon be non-existent, and we will have a local where every person works to build the union from within instead of destroying it by leaving.

UAW Local 1853 Withdrawal List

NAME	WITHDREW
Bagley, Margaret A.	9/20/96
Bendo, Ronald A.	1/31/96
Brown, Louis Leonard	8/24/95
Cisco, James M.	2/15/96
Crockett, David	12/08/95
Francis, Alan J.	2/24/94
Haase, William R.	2/16/96
Halter, Judith	10/3/96
Janci, Stephen R.	7/19/94
Jenkins, William A.	9/22/95
LaPorte, Mark	3/1/95
LaRue, Carl E.	8/19/92
Lee, Earl R.	2/1/95
Stonebraker, Keith G.	3/14/95
Welch, Michael P.	4/2/96
Waitman, William J.	5/7/96



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