Teamsters Local Union No. 579 affiliated with the International Brotherhood of Teamsters[1] **(Chambers & Owen, Inc.) *and* Brandon M. Jones.** Case 30–CB–4550-1

September 7, 2007

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN, SCHAUMBER, KIRSANOW, AND WALSH

Introduction

This case involves the issue of whether the duty of fair representation requires a union to provide *Beck* objectors with information sufficient to reasonably evaluate the propriety of the union's reduced fee calculation before the objectors decide whether to challenge that calculation. As discussed below, we agree with the D.C. Circuit that relevant Supreme Court precedent establishes that basic considerations of fairness dictate that objectors receive such information before being forced to pursue a challenge. Consequently, we overrule extant Board precedent to the contrary, and find that the Respondent Union breached its duty of fair representation and violated Section 8(b)(1)(A) of the Act by failing to provide the requisite information—here, data relating to union affiliate expenditures—to the objecting charging party.[2]

Background

The Supreme Court ruled in *Communication Workers v. Beck,* 487 U.S. 735 (1988), that Section 8(a)(3) of the National Labor Relations Act does not permit a union to expend funds collected under a union-security provision on activities unrelated to collective bargaining, contract administration, or grievance adjustment over the objection of dues-paying nonmember employees. In *California Saw & Knife Works*,[3] the Board determined that it would assess unions' *Beck* obligations under the duty of fair representation owed by a union to all members of a collective-bargaining unit it represents. 320 NLRB at 229–230 and cases cited therein.[4] A union breaches its duty of fair representation if its actions are arbitrary, discriminatory, or in bad faith. Id.

The Board in *California Saw* emphasized that the touchstone for determining the adequacy of a union's notice to nonmember employees is the Supreme Court's decision in *Chicago Teachers Union Local 1 v. Hudson*, 475 U.S. 292 (1986), quoting the Court's statement 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.'" 320 NLRB at 232–233 (quoting *Hudson*, 475 U.S. at 306). Although *Hudson* involved public sector nonmember employees, the Board recognized that *Hudson* was premised on basic fairness considerations that also clearly applied to a union's statutory obligations under the duty of fair representation. 320 NLRB at 232–233.[5]

Applying the animating principles of *Hudson*, the Board in *California Saw* held that a union acts arbitrarily and in bad faith, in breach of its duty of fair representation and in violation of Section 8(b)(1)(A), when it fails to inform employees of their *Beck* rights before it obligates them to pay union dues. Id. The Board further held that the union's notice obligation includes informing employees that they will be provided sufficient information to enable them to intelligently decide whether to object to paying for union activities not germane to the union's statutory duties. The Board added that the duty

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

[2] Upon a charge filed by Brandon M. Jones on October 29, 2001, the General Counsel of the National Labor Relations Board issued a complaint on August 28, 2003, against Teamsters Local Union No. 579, affiliated with the International Brotherhood of Teamsters (the Union), alleging that it had violated Sec. 8(b)(1)(A) of the National Labor Relations Act. The Union filed an answer admitting in part and denying in part the allegations in the complaint.

On November 24, 2003, the Union filed a Motion for Summary Judgment, asking that the Board dismiss the complaint. On December 22, 2003, Jones filed a Cross-Motion for Summary Judgment, asking that the Board find the violation. On January 21, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motions should not be granted. Thereafter, the Union and Jones filed briefs in support of their motions, and Jones and the General Counsel filed responses. (The General Counsel initially opposed the Union's motion for summary judgment on the ground that the motion was filed later than 28 days prior to the originally scheduled December 1 hearing date. See Sec. 102.24(b) of the Board's Rules and Regulations. The General Counsel now concedes that he waived his timeliness argument when he postponed the hearing indefinitely.)

On Dec. 7, 2006, the Charging Party, pursuant to *Reliant Energy*, 339 NLRB 66 (2003), filed a citation of supplemental authority to *Tomlison v. Kroger Co.*, 2006 WL 2850523 (S.D. Ohio 2006) (not reported in F.Supp.2d).

[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*, 525 U.S. 813 (1998).

[4] The Board in *California Saw* noted that the Board and courts have applied the duty of fair representation "as refined in [*Air Line Pilots v. O'Neill*, 499 U.S. 65, 67 (1991)]" to a variety of circumstances, including *Beck* issues. Id. at 230 fn. 34. In *O'Neill*, the Court described the duty of fair representation as akin to the duty owed by other fiduciaries to their beneficiaries, likening it to the duty a trustee owes to trust beneficiaries, an attorney owes to clients, or a corporate officer and director owes to shareholders. The Court also analogized the union's role to that of a legislature. It cautioned, however, that, although a union's conduct is given wide latitude, like a legislature it is subject to review of the rationality of its actions. 499 U.S. at 74–76 (citations omitted).

[5] See also *Thomas v. NLRB*, 213 F.3d 651, 658 (D.C. Cir. 2000) (citing *Abrams v. Communications Workers of America*, 59 F.3d 1373, 1379 fn. 7 (D.C. Cir. 1995)).

of fair representation compels unions to disclose certain specific information to employees who have exercised their right to object: the percentage of the reduction, the basis for the calculation, and the right to challenge these figures. 320 NLRB at 233.[6]

Subsequently, in *Teamsters Local 166 (Dyncorp Support Services)*, 327 NLRB 950 (1999) (*Dyncorp I*),[7] the Board directly confronted the issue of whether *Hudson* required a union to identify affiliates that received certain designated "per capita" sums from the union, and to provide a breakdown of these entities' expenditures in advance of a challenge to the union's reduced dues and fees calculation. The Board determined that it did not, holding that the union fulfilled its duty of fair representation by providing objectors with information regarding the major categories of its expenditures and the percentages of each category that the union deemed chargeable. 327 NLRB at 954. Conceding that *Hudson* could be read to the contrary, the *Dyncorp I* Board sought to distinguish the facts of that case. Specifically, the Board noted that in *Hudson* the union paid more than half its income to its affiliates but told objectors nothing about how the transferred income was spent or what percentages were chargeable or nonchargeable. In contrast, the union in *Dyncorp I* spent only about 25 percent of its budget on its affiliates. Id.

On appeal, the District of Columbia Circuit reversed, finding *Hudson* to be dispositive without regard to the amount the union paid to its affiliates. As the court explained, "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.'" *Penrod v. NLRB*, 203 F.3d 41, 47 (D.C. Cir. 2000) (quoting *Hudson*, 475 U.S. at 307 fn. 18) (alterations in *Penrod*).

Ruling on Motions for Summary Judgment

I. ADMITTED OR UNDISPUTED FACTS

The undisputed complaint allegations and parties' submissions establish that since October 25, 1973, the Union has been the certified exclusive collective-bargaining representative of the warehouse employees of Chambers & Owen, Inc. The Union and the Employer were parties to a collective-bargaining agreement that was effective from October 1, 2000, through September 30, 2004. The agreement contained the following union-security provision:

> Section 1. All present employees covered by this Agreement who are members of the Union on the effective date of this provision, shall remain members in good standing as a condition of employment. All present employees who are not members of the Union on the effective date of this provision and all employees who are hired hereafter, shall become financial core or full members and remain financial core or full members of the Union in good standing as a condition of employment on and after the 31st day following the beginning of their employment or on and after the 31st day following the effective date of this provision, whichever is the later. Upon receipt of written notice from the Union that an employee has failed to become financial core or full members [sic] or remain financial core or full members [sic] in good standing, the Employer shall discharge said employee within seven (7) days, provided such discharge is not contrary to applicable law.

On March 17, 2001, Charging Party Jones, who was covered by the union-security provision, resigned his membership in the Union and notified it that he objected to paying dues and fees for nonrepresentational activities. On March 30, 2001, the Union, by letter, informed Jones that it was reducing his fee obligation from $24 to $22.96 per month. The Union also notified Jones of its procedure for objecting to nonchargeable expenses and for challenging its calculation of chargeable and nonchargeable expenses, and supplied a copy of its 1999 audit with the report of its independent auditors.

The 1999 audit provided a schedule of the Union's expenditures, $426,063 in total, broken down by major categories and the percentages of each category that the Union considered chargeable and nonchargeable. One of the categories was "per capita taxes" paid to affiliates: the International Brotherhood of Teamsters ($66,541), Joint Council No. 39 ($20,226), and "Others" ($463). The expenditure paid to each affiliate was divided into chargeable and nonchargeable amounts (with the amount paid to "Others" deemed entirely nonchargeable). In an explanatory note, the Union's auditors stated that the allocation of the International's expenditures was determined by percentages provided by the International, "which were 88% chargeable and 12% nonchargeable." As to the payments made to the Joint Council, the audi-

[6] We have used the term "objector" to refer to a nonmember employee who has objected to a union's expenditure of dues for purposes unrelated to bargaining, contract administration, or grievance adjustment. We have used the term "challenger" to refer to those objectors who challenge the union's figures in calculating the reduction in dues. A stage one notice is sent to all unit employees informing them, inter alia, of their right to be nonmembers and to file *Beck* objections. A stage two notice is sent to those nonmembers who have filed objections. A stage three notice is sent to those objectors who challenge a union's figures and percentages calculated at the second stage. The instant case deals with the information to be supplied at stage two.

[7] Enforcement denied sub nom. *Penrod v. NLRB*, 203 F.3d 41 (D.C. Cir. 2000), decision on remand 333 NLRB 1145 (2001) (*Dyncorp II*).

tors noted that "[p]er capita taxes paid to Joint Council No. 39 were based on an allocation of chargeable expenses and nonchargeable expenses."

On March 31, 2001, Jones sent the Union a letter reiterating his *Beck* objection and requesting that the Union charge him only for representational activities. The letter also requested notification, verified by an independent certified public accountant, of how the charges were calculated; the Union's procedure for holding his fees in escrow; and an opportunity to challenge the Union's calculations before an impartial decisionmaker. The Union did not correspond further with Jones on this issue.

II. POSITIONS OF THE PARTIES

The complaint alleges that the Union failed to provide Jones with an adequate explanation as to the breakdown of the chargeable and nonchargeable expenses of the affiliated organizations with which the Union shares income from dues and fees.

The Union contends that the complaint should be dismissed because it fulfilled its duty of fair representation by providing Jones with sufficient information to decide whether to challenge its fee calculation, and, specifically, because it met the requirements of the Board's decision in *Dyncorp I*, supra, by providing Jones with its major categories of expenditures and the portions of each category that the Union considered representational and nonrepresentational. The Union contends that, under *Dyncorp I*, it had no legal duty, absent a challenge to its proffered reduced dues and fees calculation, to provide further information of its affiliates' expenditures.

The General Counsel and Jones assert that the Union's position is foreclosed by the Supreme Court's decision in *Hudson*, supra. They argue that *Hudson* requires unions to provide *Beck* objectors with separate financial disclosures for each affiliate with which they share funds derived from nonmember objectors' dues and fees. The General Counsel and Jones urge the Board to overrule *Dyncorp I* and follow the District of Columbia Circuit's decision in *Penrod*.[8]

Analysis

A. Appropriateness of Summary Judgment

The parties agree that there is no dispute as to the relevant facts concerning the communications between the Union and Jones or the information provided to Jones by the Union. Although the Union initially denied a number of the complaint allegations in its answer, the parties' motions and supporting documents clearly indicate that they do not in fact disagree as to the material facts in this case. See, e.g., *Heritage at Norwood*, 322 NLRB 231, 232 (1996); *Biewer Wisconsin Sawmill, Inc*., 306 NLRB 732 (1992). We therefore find that, in the absence of genuine issues of material fact requiring a hearing before an administrative law judge, summary judgment is appropriate. *Marble Polishers Local 47-T (Grazzini Bros.),* 315 NLRB 520, 522 (1994).

B. Merits

The issue before us, as stated above, is whether the Union was required to provide Jones, a nonmember *Beck* objector, with information concerning its affiliates' activities and the extent to which those activities were chargeable or nonchargeable prior to Jones' filing a challenge to the Union's reduced dues and fees calculation. Under current Board law, a union must provide objectors at the second stage of the *Beck* objection procedure with a list of the major categories of its expenditures, the amount spent in each category, a declaration as to which expenditures are chargeable and which are not, and the percentage figures for chargeable versus nonchargeable expenditures. However, under current Board law, a union that pays per capita taxes to its affiliates is not required at the second stage to provide *Beck* objectors with information pertaining to how its affiliates determined the chargeability to the objectors of the per capita taxes that the affiliates received and spent. The Board's view has been that this information need be provided only after the objector enters the third stage of the *Beck* objection procedure by filing a challenge to the information that he or she received at the second stage. We now hold that this affiliate information must be furnished to a *Beck* objector at the second stage so that he or she can determine *whether* to file a challenge.[9] Thus, for example, if the union's affiliate expended 60 percent of the per-capita tax money on matters that the affiliate deemed chargeable, and 40 percent on matters that the affiliate deemed nonchargeable, the union would be required to disaggregate the affiliate's expenditures into major categories and to break down each category into chargeable and nonchargeable percentages—just as it must do for its own expenditures. It would not be sufficient to simply state that 60 percent of the per-capita tax money was

[8] In its response to the Board's Notice to Show Cause, the Union argues that the Penrod court wrongly applied *Hudson* to private sector unions, reiterating that its disclosure to Jones of the percentage reduction in his dues and fees was sufficient to satisfy its duty of fair representation because it was not arbitrary, discriminatory, or irrational. In the Union's view, its conduct need only be found reasonable to withstand scrutiny under that standard.

[9] Contrary to the dissent's suggestion, we are not dispensing with the three-stage process governing disclosure of information under *California Saw*. See fn. 6, above. We simply hold that the information at issue here must be provided at the second stage.

spent on chargeable matters and 40 percent on nonchargeable matters.

Under extant Board law, duty of fair representation principles govern a union's obligations in the *Beck* context.[10] It is well settled that a union breaches its duty of fair representation if its actions are arbitrary, discriminatory, or taken in bad faith. Though a "wide range of reasonableness" may be accorded to a statutory bargaining representative, that range is not unlimited—a union may not engage in conduct that is irrational or arbitrary.[11] We find that where, as here, a union procedure purporting to implement *Beck* actually impedes a nonmember employee from exercising his *Beck* rights and interferes with the statutory right under Section 7 to refrain from assisting a union, this conduct is unreasonable and arbitrary and, hence, violative of Section 8(b)(1)(A) as well as the union's duty of fair representation.

We recognize that the Supreme Court in *Hudson* did not measure a union's obligations to nonmember employees using duty of fair representation principles. Rather, the Court recognized in the public employment setting that the agency shop was a significant infringement on First Amendment rights. However, as the Board observed in *California Saw*, 320 NLRB at 233, the Court also relied on "[b]asic considerations of fairness" in emphasizing the fundamental importance of providing adequate information regarding dues and fees reductions to nonmember objectors:

> Basic 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. *Leaving the nonunion employees in the dark about the source of the figure for the agency fee—and requiring them to object in order to receive information—does not adequately protect [the nonunion employees' rights]*.[12]

The Court rejected unequivocally the contention that objectors' rights could adequately be protected by requiring them to challenge unions' reduced fee computations in order to receive detailed information concerning the use of their dues and fees. As to affiliate expenditures, the Court specifically held that "either 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*." Id. at 307 fn. 18 (emphasis added).

We agree with the Supreme Court's reasoning in *Hudson*, and find, as the District of Columbia Circuit did in *Penrod*, that *Hudson* is dispositive of the issue before us. The dissent's reasoning that an objecting nonmember can always receive the information he requires by "simply challenging" the union's calculations ignores the *Hudson* decision and misses the mark. The reason for requiring adequate disclosure to *Beck* objectors is so that they can decide whether to challenge the union's fee calculations. As the Supreme Court observed, and contrary to the dissent, that purpose would be thwarted by keeping objectors in the dark and requiring them to challenge the union's figures. Although, as the dissent notes, unions generally enjoy a wide range of reasonableness under the duty of fair representation standard, that range does not extend to conduct that contravenes *Hudson* and denies to nonmember objectors information essential to the exercise of their *Beck* and statutory rights. Nor can we agree, in light of the plain language of *Hudson*, that it is appropriate to engage in the balancing analysis advocated by the dissent. Accordingly, we find that the Union acted arbitrarily in violation of Section 8(b)(1)(A) and its duty of fair representation in failing to provide Jones with the information he requested as to how the Union's affiliates apportioned their funds.[13]

Although we decline to engage in a balancing analysis, there is little reason to believe that the administrative burdens faced by unions in complying with *Beck* and *Hudson* by providing affiliate expenditure data will prove particularly onerous. Private sector unions have long known that they may charge nonmember objectors only for representational activities, and that unions must account to objectors for the way they spend their dues money. In turn, advances in computer and internet technology over the last decade have facilitated compliance with disclosure requirements under the Board's *Beck* decisions, and other regulatory disclosure requirements already require unions to publicly report the sort of information involved here.[14] Consequently, there is little

[10] Member Schaumber applies *California Saw* as extant Board law, though he questions the appropriateness of assessing union conduct that may impinge on fundamental Sec. 7 rights under the duty of fair representation, which has been broadly defined in some contexts.

[11] *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953), quoted in *O'Neill*, 499 U.S. at 78.

[12] 475 U.S. at 306 (emphasis added). As the Board noted in *Dyncorp I*, when the Court in *Hudson* referred to "potential objectors," it evidently meant nonmember employees who were already paying reduced dues and fees and who might "object" to the union's allocations and dues reductions—i.e., individuals whom the Board would call potential *challengers*. 327 NLRB at 952 fn. 10.

[13] The dissent correctly acknowledges that we make no finding that the Union's failure to provide the necessary information is either discriminatory or in bad faith.

[14] For example, in 2003, the U.S. Department of Labor revised Form LM-2 (used by unions to fulfill their reporting requirements under the Labor-Management Reporting and Disclosure Act, 29 U.S.C. Sec. 401

reason to believe that the Union and its affiliates cannot readily assemble information regarding the affiliates' major categories of expenditures and the percentages of each category that are considered chargeable and nonchargeable. Indeed, the Union concedes that its financial core rate was based in part on an actual audit of the International's expenditures.

The dissent would nevertheless adhere to the Board's decision in *Dyncorp I* that the union was not required, at the objection stage, to "disaggregate" per capita expenditures by either identifying the specific recipients or providing a breakdown of those entities' expenditures. As noted above, the Board's decision in *Dyncorp I* is fundamentally inconsistent with Supreme Court precedent. Moreover, the Board in that case failed to recognize that "per capita" is not a specific category of expenditures. It is instead merely an acknowledgment that not insubstantial sums of money from dues and fees (some 20 percent of the Union's income) were transferred to other entities, with no indication as to how those entities spent the money. In this respect, "per capita" is categorically different from categories such as "salaries," which inform *Beck* objectors of the nature of the expenditure. Here, even though the Union disclosed the percentages of affiliates' overall expenditures it deemed to be chargeable and nonchargeable, Jones knew nothing else about those expenditures. Just as the Union's providing Jones with percentage figures reflecting its determinations of its own total chargeable and nonchargeable expenditures would have been insufficient, providing the same general percentage figures for its affiliates, without providing supporting information about the purposes for which the assertedly chargeable amount will be expended, is also inadequate. Cf. *Hudson,* 475 U.S. at 307 ("An acknowledgement that nonmembers would not be required to pay any part of 5% of the [u]nion's total annual expenditures was not an adequate disclosure of the reasons why they were required to pay their share of 95%."). In sum, while we do not dispute that, under *California Saw*, a union fulfills its duty of fair representation by disclosing its major categories of expenditures to objectors, we conclude that this disclosure requirement is not met when a union fails to "explain how its affiliates used the money." *Penrod*, 203 F.3d at 47.

The dissent contends that *Hudson* is not controlling authority because it did not arise in a private sector setting, it was not decided under duty of fair representation principles, and it preceded the Board's view expressed in *California Saw* and *Dyncorp I*. We are unpersuaded by that argument. As noted above, the Court in *Hudson* stressed that its holding was based on *"[b]asic considerations of fairness*, as well as concern for the First Amendment rights at stake[.]" 475 U.S. at 306 (emphasis added). Although *Hudson* itself did not apply duty of fair representation principles, the Board in a number of cases, pertinently *California Saw* and *Dyncorp I,* referenced and relied on the Hudson fairness requirement in assessing whether a union's efforts to comply with *Beck* met its duty of fair representation. Moreover, the District of Columbia Circuit in *Penrod* rejected the Board's attempt to distinguish *Hudson*, finding it dispositive in addressing a union's requirement under duty of fair representation principles to provide information to *Beck* objectors. 203 F.3d at 46–47. Where, as here, we are dealing with an employee's Section 7 right to refrain from union activities, we believe that the concept of "fairness" fits comfortably within the duty of fair representation. We therefore agree with the Supreme Court that *Beck* objectors need information concerning affiliates' expenditures in order to decide intelligently whether to challenge unions' dues reduction computations. Thus, even if *Hudson* does not compel Dyncorp I's overruling, our holding would be the same.[15]

Conclusion

For all the foregoing reasons, we hold that unions must disclose to *Beck* objectors, at the objection stage and prior to receipt of a challenge, the identity of affiliates with which they share income from dues and fees, the amounts of income shared, the expenditures of each affiliate broken down by major categories, the percentages of each such category that the unions allocate to chargeable and nonchargeable expenses, and a detailed explanation of how the affiliates' expense allocations were calculated.[16] We overrule *Dyncorp I*, supra, and *Schreiber*

et seq.) to require unions to disclose the amount of their disbursements for all representational activities (that is, contract negotiations, contract administration, and organizing). In commenting on its expansion of reporting requirements, the Department of Labor found that

> there have been advances in technology (including its availability and application) in the last 10 years, as computers and financial management programs have become much more widely used.
>
> . . . .
>
> These changes make it possible to provide substantially more information to union members and the public with less burden on unions....

68 Fed. Reg. 58,374, 58393 (2003).

[15] Our colleagues speculate that the Supreme Court "might. . . afford *Chevron* deference to the Board's holding [in *Dyncorp I*]." In response, we note that the D.C. Circuit found that "a portion of [*Dyncorp I* was] unsupported by reasoned decisionmaking and the remainder [was] in conflict with Supreme Court and circuit precedent. . . " 203 F.3d at 43. In any event, even assuming arguendo that our colleagues' speculation would prove true, we think that it is at least as likely, if not more so, that the Supreme Court would accord *Chevron* deference to our view expressed herein.

[16] See *Dyncorp II*, 333 NLRB at 1146.

Foods, 329 NLRB 28, 31 fn. 10 (1999), insofar as they hold to the contrary.

By failing to inform Jones of the major categories of expenditures of the affiliates with which it shares income from dues and fees, the percentages of each such category of each affiliate that the Union allocates to chargeable and nonchargeable expenses, and a detailed explanation of how the affiliates' expense allocations were calculated, the Union violated Section 8(b)(1)(A) of the Act. We therefore deny the Union's Motion for Summary Judgment and grant Jones' Cross-Motion for Summary Judgment.

REMEDY

Having found that the Union violated Section 8(b)(1)(A), we shall order it to cease and desist and to provide Brandon M. Jones with the following information regarding its affiliates' expenditures for 1999: the major categories of expenditures of each of the affiliates with which it shared income from dues and fees, the percentages of each such category of each affiliate that it allocated to chargeable and nonchargeable expenses, and a detailed explanation of how the affiliates' expense allocations were calculated.

ORDER

The National Labor Relations Board orders that the Respondent, Teamsters Local Union No. 579, affiliated with the International Brotherhood of Teamsters, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing to inform objecting nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), from whom it seeks to collect dues and fees, of the following at the objection stage: the major categories of expenditures of each of its affiliates with which it shares income from dues and fees, the percentages of each such category of each affiliate that it allocates to chargeable and nonchargeable expenses, and a detailed explanation of how the affiliates' expense allocations were calculated.

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

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

(a) Provide Brandon M. Jones with the following information for 1999: the major categories of expenditures of each of its affiliates with which it shared income from dues and fees, the percentages of each such category of each affiliate that it allocated to chargeable and nonchargeable expenses, and a detailed explanation of how the affiliates' expense allocations were calculated.

(b) Within 14 days after service by the Region, post at its union hall offices copies of the attached notice marked "Appendix."[17] Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Union's authorized representative, shall be posted by the Union and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Union to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Union has taken to comply.

MEMBERS LIEBMAN AND WALSH, dissenting.

In analyzing the duty of fair representation in the *Beck*[1] context, the *California Saw* Board recognized the fine line unions must walk in balancing the interests of individual members against those of the entire bargaining unit and explained the Board's responsibility in cases like this one:

> We view it as our charge to bring the values of reasonableness and practicality into our own considerations of the facts of each case. We are mindful of the tension between individual, collective, and public policy interests that lies at the core of the duty of fair representation. What is required here is a careful balance between the competing interests involved. "Most fair representation cases require great sensitivity to the tradeoffs between the interests of the bargaining unit as a whole and the rights of individuals."

California Saw & Knife Works, 320 NLRB 224, 230 (1995) (footnote omitted; quoting *Breininger v. Sheet Metal Workers*, 493 U.S. 67, 77 (1989)), enfd. sub nom. *Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 525 U.S. 813 (1998). Applying these principles, and consistent with the Board's unanimous holding in the first *Dyncorp Support Services*[2] decision, we would find that a union has no legal duty to inform *Beck* objectors of the activities of its affiliates with which it shares income from dues and fees, or of the percentage of each activity that it considers chargeable and nonchargeable. Rather, we

[17] 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."

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

[2] 327 NLRB 950 (1999) (*Dyncorp I*), review granted sub nom. *Penrod v. NLRB*, 203 F.3d 41 (D.C. Cir. 2000), decision on remand 333 NLRB 1145 (2001) (*Dyncorp II*).

would require such disclosures only after a challenge has been filed to the union's reduced fee calculations. Accordingly, we dissent.

I.

Current Board law reflects the proper balance between the competing interests implicated in this case.

A.

In *California Saw*, supra, the Board reviewed a range of issues concerning the rights and duties under union-security clauses authorized by Section 8(a)(3) that had been left unanswered by the Supreme Court in *Beck*. The Board decided that it would assess unions' *Beck* obligations under the duty of fair representation owed by a union to all members of a collective-bargaining unit it represents. A union breaches this duty only when its conduct is arbitrary, discriminatory, or in bad faith. *Air Line Pilots v. O'Neill*, 499 U.S. 65, 67 (1991); *Vaca v. Sipes*, 386 U.S. 171, 190 (1967); *California Saw*, 320 NLRB at 229. Under that standard, a union is granted "a wide range of reasonableness" in fulfilling its obligations to the employees it represents. *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953).

Applying these principles, the Board in *California Saw* established a three-step sequential procedure for union disclosure of information to employees under *Beck*:

> (1) New employees and financial core payors (i.e., dues-paying nonmembers) are informed of their rights under *Beck* and how to exercise them;
>
> (2) Nonmember employees who object to having their dues pay for the union's nonrepresentational activities (*Beck* objectors) are told the amount of the reduced fee calculation, how it was calculated, and their right to challenge these figures; and
>
> (3) Objectors who challenge the union's calculation receive more information.

California Saw, 320 NLRB at 233, 240.

Thus, the employees' action triggers the unions' duty to provide the information. The *California Saw* regime efficiently balances the competing interests involved here, by relating the union's duty to provide the information against the employees' need for the requested information.

B.

The Board in *Dyncorp I* followed the *California Saw* framework, by reiterating that unions must inform *Beck* objectors only of their major spending categories and the percentages of each category that are chargeable and nonchargeable:

> 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.

327 NLRB at 954.

Relying on this rationale, the Board found that a union, at the objection stage, is not required by its duty of fair representation to identify its affiliates with which it shares income from dues and fees, provide a breakdown of the affiliates' expenditures, or explain how it arrived at its estimates of chargeable and nonchargeable expenditures. Id.

Under *Dyncorp I*, then, unions are not burdened with a duty to disclose detailed information at the objection stage, while *Beck* objectors are given sufficient major spending category information to decide whether to challenge the union's calculations. Objecting employees can always request more detailed information, including the kind at issue here, by simply challenging the union's calculations of chargeability. Indeed, if the *Beck* objector here had simply challenged the Union's figures, he presumably would have already received the information concerning affiliates' expenditures. Once challenged, the union has the burden to justify all of its claimed expenditures, including those of affiliates, and the percentages of each that are chargeable and nonchargeable.[3]

C.

The procedure announced in *California Saw* and applied in *Dyncorp I* appropriately balances unions' interest in administrative economy and efficiency and *Beck* objectors' need for information concerning the expenditures of affiliates with which unions share income from dues and fees. *California Saw* set up an efficient process that reduced unnecessary expense and effort on the part of a union by imposing a minimal burden on an individual.

Although the administrative burden of retrieving this information from affiliates may not be overwhelming, it is still a substantial burden on unions—especially on local unions, which typically have few resources to devote to such tasks.[4] By contrast, the burden on objectors in obtaining this information—writing a brief challenge letter—is exceedingly slight. In our view, then, unions should not be burdened with obtaining and producing the

[3] *California Saw*, 320 NLRB at 240; *Dyncorp I*, 327 NLRB at 954. The *Dyncorp I* analysis also considered whether there was evidence that the union was attempting to conceal nonchargeable expenses among chargeable expenses. Id. There is no such allegation here.

[4] Cf. *California Saw*, 320 NLRB at 250 (local unions are independent entities from affiliated district and international bodies).

information if objectors do not want it badly enough to make the minimal effort of asking for it.

Because a union's interest in administrative economy and efficiency outweighs the interest of *Beck* objectors in obtaining information about union affiliates' expenditures at the objection stage, we would find here that the Union's failure to give that information to objector Jones was not "arbitrary"—it was not "so far outside a 'wide range of reasonableness'. . . that it is wholly irrational"[5] —and thus did not violate the duty of fair representation or Section 8(b)(1)(A).

II.

The majority adopts the view of the District of Columbia Circuit in *Penrod*[6] that the Supreme Court's decision in *Hudson* requires the disclosure of the affiliate information at the objection stage. In our view, the majority commits two major errors.

First, the majority errs in relying so heavily on the Supreme Court's opinion in *Hudson*. *Hudson* was a case involving a public sector union; it was decided under the First Amendment. True, the Supreme Court held that "basic considerations of fairness," as well as First Amendment concerns, required an explanation of how payments to affiliates were used. But the Court did not purport to decide the case under duty of fair representation principles.[7] Nor did it have occasion to interpret the National Labor Relations Act. Accordingly, we are not persuaded that the Court meant for the quoted statement to be an authoritative pronouncement on how the duty of fair representation or the NLRA applies to these kinds of disclosures. We disagree, then, with the majority's conclusion that "*Hudson*'s concept of 'fairness' fits comfortably within the duty of fair representation." The majority simply dispenses with the carefully calibrated three-step process of *California Saw* and *Dyncorp I* in favor of an ad hoc application of one phrase used in *Hudson*.[8]

Second, even if that is what the Supreme Court meant, the majority ignores the strong possibility that the Court might, on considering the Board's contrary view expressed in *Dyncorp I*, afford *Chevron* deference to the Board's holding. *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 844 (1984). For example, in *Machinists v. NLRB*, supra, 133 F.3d 1012, the Seventh Circuit declined to be bound by its own precedents after the Board in *California Saw* had ruled to the contrary on one issue. Observing that its earlier decision had been handed down without input from the Board, the court in *Machinists v. NLRB* upheld the Board's decision under a *Chevron* deferral analysis. Id. at 1019–1020, citing *Chevron*, supra. Indeed, the Seventh Circuit observed that the job of devising rules to implement *Beck* is one for which the Board is uniquely well suited:

> All the details necessary to make the rule of *Beck* operational were left to the Board subject to the very light review authorized by *Chevron.* 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 (more precisely, of the statute as authoritatively construed in *Beck)* into a workable system for determining and collecting agency fees.

Id. at 1015. Accord: *Thomas v. NLRB*, 213 F.3d 651, 657 (D.C. Cir. 2000).

Hudson was decided 2 years before *Beck*. Thus, when the Court decided *Hudson*, it had not even held that unions subject to the NLRA were required to reduce dues and fees for nonmember objectors, let alone ruled on the extent of information that those unions must provide to objectors. Not only did the Court not decide *Hudson* under duty of fair representation principles, it rendered its decision before the Board had even considered the issues presented in that case. Accordingly, as the Seventh Circuit did in *Machinists,* supra, the Court might well alter the view expressed in *Hudson,* after considering the Board's decision in *Dyncorp I.*

III.

In sum, instead of applying *Hudson* mechanically, we would continue to follow Board precedent in *California Saw* and *Dyncorp I*, as establishing a reasonable, workable approach to the disclosure issue. Under that approach, we would dismiss the complaint.

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[5] *Air Line Pilots v. O'Neill*, 499 U.S. at 78, citing *Ford Motor Co. v. Huffman*, supra. There is no contention that the Union's conduct was discriminatory, and the fact that it actually gave Jones more information than it was required to (the names of its affiliates) negates any possible contention that it acted in bad faith.

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

[7] See *Thomas v. NLRB*, supra, 213 F.3d at 662 .

[8] Contrary to the majority's suggestion, we think it unlikely that the Supreme Court would choose to take this step in passing on a case that, unlike *Hudson*, arose in a private sector workplace devoid of any state action implicating the constitutional rights of individual workers. Indeed, since introducing the duty of fair representation more than 60 years ago in *Steele v. Louisville & Nashville Railway Co*., 323 U.S. 192 (1944), the Court has applied the doctrine in subsequent cases only after thorough analysis (see discussion in *California Saw*, 320 NLRB at 228–230). We doubt that the Court in *Hudson* meant to introduce such an important new application of this doctrine in the offhand manner ascribed to it by the majority, without even a passing reference to established duty of fair representation standards.

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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail to inform objecting nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988), from whom we seek to collect dues and fees, of the following at the objection stage: the major categories of expenditures of each of our affiliates with which we share income from dues and fees, the percentages of each such category of each affiliate that we allocate to chargeable and nonchargeable expenses, and a detailed explanation of how the affiliates' expense allocations were calculated.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

WE WILL provide Brandon M. Jones with the following information for 1999: the major categories of expenditures of each of our affiliates with which we share income from dues and fees, the percentages of each such category of each affiliate that we allocated to chargeable and nonchargeable expenses, and a detailed explanation of how the affiliates' expense allocations were calculated.

TEAMSTERS LOCAL UNION NO. 579, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS