BECK RIGHTS 2001: ARE WORKERS' RIGHTS BEING ADEQUATELY ENFORCED?

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

OF THE

COMMITTEE ON EDUCATION AND THE WORKFORCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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BECK RIGHTS 2001: ARE WORKERS' RIGHTS BEING ADEQUATELY ENFORCED?

Wednesday, November 14, 2001

Subcommittee on Workforce Protections

Committee on Education and the Workforce

U.S. House of Representatives

Washington, D.C.

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

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

Also Present: Representatives Tancredo and Hoekstra.

Staff Present: Stephen Settle, Professional Staff Member; John Cline, Professional Staff Member; Travis McCoy, Legislative Assistant; Ed Gilroy, Director of Workforce Policy; Jo-Marie St. Martin, General Counsel; Patrick Lyden, Professional Staff Member; Scott Galupo, Communications Specialist; Deborah L. Samantar, Committee Clerk/Intern Coordinator; Peter Rutledge, Senior Legislative Associate/Labor: Maria Cuprill, Legislative Associate/Labor; and, Brian Compagnone, Staff Assistant/Labor.

Chairman Norwood. With a quorum being present, the Workforce Protection Subcommittee, 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 the Ranking Minority Member. This allows us to focus on hearing from our fine panel of witnesses 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, and then we will refer to Mr. Owens who will be here. Good morning. Welcome to all of you. We are grateful for you being here. This is a fine panel of witnesses who have volunteered their time to help us understand what this Subcommittee found in previous hearings on Beck rights, and we found it to be a very serious problem.

OPENING STATEMENT OF CHAIRMAN CHARLIE NORWOOD, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Since enactment of the National Labor Relations Act, NLRA, and other related labor laws, progress has been made in framing the permissible scope of the authority given to the unions by Congress under the labor laws; for example, the union's ability to force members of a collective bargaining unit to pay dues as a condition of continued employment even from employees who object. The law limiting a union's authority in this area is vague, however, and as such has required a series of legal clarifications.

In light of reports of widespread abuse of the union's permissible scope of authority, at issue is whether further clarification remains necessary and appropriate; for example, whether the law is adequately being enforced, and, if so, whether this is attributable to a defect in law or simply a failure to use existing authority.

A review of this issue reveals that there are many possible incentives for unions to skirt or abuse the rights extended to them in this area of the law. The main incentive for such abuse of law, however, is certainly financial. In general, unions collect approximately 6.3 billion from their 9.3 million members, an average of $688 per member annually. Because union members are a diverse group, many people argue that a significant portion of these union members would object to the unions about their dues money if they were fully aware of their right to do so. In theory as much as 80 percent of the dues money extracted from unions is spent for purposes not related to the collective functions.

In sum, because of the political diversity of union memberships, it is estimated that even if a small portion of the union dues-paying base objected to the union's spending habits, that union might be forced to refund and therefore cease collection of billions of dollars in dues.

One group, the National Institute for Labor Relations Research, and I emphasize one group, estimates that this number would be about 1.43 billion. With the strong financial incentive in place for unions to resist refunds of this magnitude, complaints from workers concerning their union's refusal to provide reliable financial information about spending have been frequent and they have been regular. Many complaints have detailed what appear to be

intentional efforts made by local unions to misinform their members regarding the law and their spending.

Lastly, even when armed with accurate information, workers have reported a number of requirements being put in place by unions in practice, forcing workers to undertake an agonizing struggle to force their unions to recognize their rights.

The subcommittee will seek to determine whether these alleged abuses are accurate, and, if so, whether there is a systematic problem requiring government intervention. The subcommittee's inquiry will be exercised under its oversight authority and therefore will focus on addressing alleged abuse of our laws rather than legislation to correct these abuses.

Last May, this subcommittee heard from four individuals who had provided testimonial evidence concerning their attempts and failures to exercise their most fundamental legal rights. The individuals I refer to were not lawyers or paid union organizers, but rank and file workers concerned only with making a living. The stories we heard were deeply moving from a personal standpoint. From a legal standpoint, however, what the subcommittee heard from these workers strongly suggests a systemic problem that today largely has been ignored. The testimony we received was compelling because it came from men and women who, as I said, were interested in just making a living. The last thing they wanted in their lives was trouble. These individuals, however, refused to abandon their rights, and instead stood up and battled for what they were legally entitled to.

Testifying under oath, this subcommittee learned from these men and women that in their attempts to exercise their rights, a seemingly endless sequence of obstacles was encountered. Much like a steeplechase, once one hurdle was overcome, another then seemed to appear. The subcommittee learned that the process was so grueling that many individuals chose to abandon their sacred rights rather than endure what appeared to be an endless fight. The hurdles they faced ranged from refusal to provide basic information needed to exercise these rights, to incidents of personal and social intimidation, to a range of procedural delays and legal runarounds. What we heard from these individual workers led some of us on the subcommittee to suspect that the hurdles had been intentionally placed before these people and were calculated to basically deprive the workers of their rights.

Unmistakably, the testimonial evidence received by this subcommittee last May suggests a problem, because if just one individual is being intentionally deprived of his or her legal rights, that is too many.

How can this subcommittee make judgments of this type based on evidence gathered from one hearing? The answer is we are not going to. In fact, what we heard last May was totally consistent with evidence of disregard that has been taken by the Committee on Education and the Workforce during the 104th, 105th and 106th Congresses.

In sum, the House Education and Workforce Committee has conducted seven hearings in which individual workers presented similar or even more egregious evidence. In total, I am now personally convinced that the problems we have heard about from the rank and file are not

isolated instances of legal breakdown, but rather a systematic problem that will be repeated over and over again if not fixed.

That brings me, then, to the purpose of today. Today we want to explore what the Federal Government has been doing to help these workers with their legal rights. Has the government been placing obstacles in the way of workers who are trying to exercise their Beck rights, question mark? Or, has the government been vigorous in making sure that the Beck rights of workers are indeed honored? These are the questions that we are here to explore today.

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

Chairman Norwood. Now with what I said, I yield now to the Ranking Minority Member, Mr. Owens, for whatever statement he may wish to make.

OPENING STATEMENT OF RANKING MEMBER MAJOR OWENS, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Thank you, Mr. Chairman. Today's hearing is the sixth 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. We have yet to hold a single hearing on the thousands of workers who are unlawfully discharged for trying to exercise their rights, since we have used the word "sacred" several times, their sacred right to form the union.

As I stated at the last Beck hearing, 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 a worker gets when he or she is fired for supporting the union and his or her entire livelihood is at stake. In my view, the priorities of the committee are clearly distorted.

That said, I want to welcome today's witnesses. I look forward to your testimony. I especially want to welcome the general counsel, Mr. Rosenfeld, who is appearing before this committee for the first time. As a former labor counsel for the Senate Committee on Health, Education, Labor and Pensions, Mr. Rosenfeld has had extensive experience participating in hearings from this side of the desk. Over the next 4 years he will gain extensive experience in what it is like to participate from that side of the desk. While I suspect it is somewhat more fun to be on this side, my hope, Mr. Rosenfeld, is that you do not find the other side to be too uncomfortable.

Finally, I want to thank Mr. Coppess for his time and especially his patience for once again undertaking, this time single-handedly, the role of explaining and defending union practices.

I yield back to the Chairman. Mr. Chairman, I would like to ask unanimous consent to enter into the record the opening statement of our colleague Representative Kucinich from Ohio.

WRITTEN STATEMENT OF REPRESENTATIVE
DENNIS KUCINICH -SEE APPENDIX B

Chairman Norwood. So ordered. Thank you, Mr. Owens.

Today we have an excellent panel of witnesses who collectively are quite capable of helping us understand how we can better protect individual rights. In fact, I can think of no group of experts better qualified to try to begin the process of repairing this system.

I have one housekeeping item, however. As I mentioned earlier, each of our panelists may submit additional copy or information for the record up to 10 days after this hearing if they see fit.

With that said, I would like to welcome the Honorable Arthur Rosenfeld, general counsel, National Labor Relations Board. Mr. Rosenfeld was nominated to serve as the NLRB's general counsel by President Bush and was confirmed to serve in this post in May of 2001. While Mr. Rosenfeld is obviously still getting his feet wet at NLRB, it can certainly be said that he is not new to the issues that now face the Board.

Many of us in Congress know Mr. Rosenfeld because of his previous experience as senior labor counsel for the Senate Committee on Health, Education, Labor and Pensions. His qualifications also include service in the private sector as a practicing attorney, a tenure with the U.S. Chamber of Commerce, and time with the U.S. Department of Labor, where he served in the Solicitor's office.

Mr. Rosenfeld, we are delighted to have you here. Thank you for being here. I would like to now yield to my good friend, Chairman Hoekstra, who would take this opportunity to introduce the Honorable Robert Hunter.

Mr. Hoekstra. Thank you, Mr. Chairman. I would like to introduce the Honorable Robert Hunter, who is currently the director of labor policy for the Mackinac Center for Public Policy in Midland, Michigan, a nonpartisan research and educational institution. Some of us would describe the Mackinac Center as the leading State-based think tank in the Nation. Mr. Hunter earned his title as Honorable through his service as a member of the National Labor Relations Board, a position to which he was appointed in 1981 by President Ronald Reagan. So, Bob, welcome and thank you for being here this morning. Thank you, Mr. Chairman.

Chairman Norwood. Thank you, Chairman Hoekstra. And Mr. Hunter, we welcome you to the panel today.

Appearing with these gentlemen is Mr. Kenneth Boehm, currently chairman of the National League and Policy Center located in McLean, Virginia. Like Mr. Hunter, Mr. Boehm has an extensive mix of policy and practice background that leads to his understanding of these issues that we seek to be educated upon.

Joining them is Mr. James Young, representing the National Right to Work Legal Foundation. Mr. Young is experienced and has handled cases before the Board of the nature we are here to discuss, and we look forward to his testimony.

Next we have Mr. James Coppess. Mr. James Coppess currently serves as associate general counsel to the AFL-CIO. Like each of these gentlemen I previously introduced, Mr. Coppess has direct experience in handling Beck-related litigation.

Next, we have Mark Simpson from New Wilmington, Pennsylvania, who is here representing himself. Mr. Simpson will share his personal experiences in the area we are interested in investigating.

And finally, we have Michael Butcher, from Seattle, Washington; is that correct?

Mr. Butcher. Yes.

Chairman Norwood. Like Mr. Simpson, Mr. Butcher is representing himself as one who has direct experience in this area.

Before I ask the panelists to begin, I would like to remind each that they have been invited to speak for approximately 5 minutes and we will hold off on questions until all of our panelists have had the opportunity to speak. I will ask Mr. Butcher to go first, followed by Mr. Simpson, Mr. Coppess, Mr. Young, Mr. Boehm, Mr. Hunter and finally Mr. Rosenfeld.

Chairman Norwood. Mr. Butcher, you are now recognized for 5 minutes. Please proceed.

STATEMENT OF MICHAEL BUTCHER, SEATTLE, WASHINGTON

Thank you, Mr. Chairman, Honorable Members of the House of Representatives. My name is Michael Butcher. I appreciate the opportunity to share with the members of this committee my experiences as a professional employee that have recently required me to start paying an agency fee to a union as a condition of my employment. I am an engineer with the Boeing Company in Seattle, Washington, where I have been continuously employed since shortly after receiving a bachelor of science in aeronautical and astronautical engineering from Purdue University in 1986. Presently I am the lead engineer, responsible for structural analysis of the engine installations in the Boeing triple 7.

In August of 2000, Boeing made an agreement with the Society of Professional Engineering Employees Association requiring, for the first time in the 85-year history of the company, that its professional employees pay dues or an agency fee to a union as a condition of employment. The agency fee agreement, which was secured by SPEEA as part of the settlement of a strike that occurred earlier in the year, affects approximately 19,000 engineering and technical employees that work in two separate Puget Sound-based SPEEA bargaining units. More importantly, the agreement imposed agency fees upon approximately 6,700 Boeing employees who were not dues-paying members at the time of the agreement.

Four months after SPEEA signed the agency agreement with my employer, I became the primary charging party in a complaint filed with the National Labor Relations Board against SPEEA for failing to provide the information and procedural protections required under CWA v. Beck. The purpose of this statement is to describe the SPEEA actions that led me and dozens of my colleagues to pursue Federal charges against the union and to describe the union's response to those charges. Additionally, I will discuss the NLRB's handling of our case, as well as the current status of our charges.

Before I begin discussion of my legal complaints against SPEEA, I think it is important to briefly discuss my reasons for objecting to union membership. Like many engineers at Boeing, I was recruited from outside the State of Washington. I did not learn that the engineering community had a union until my first day on the job. It was never part of my professional expectations to be part of a union; therefore, I quickly declined the opportunity to join SPEEA. Nothing has happened during my career to change my initial impressions concerning the benefits of union membership. In fact, it has been my experience that the union has only been a detriment to my career and that the services they provide are of no value to me. Furthermore, I find the nonrepresentational activities of the union and its AFL-CIO affiliates to be inconsistent with my values and beliefs. Therefore, I have no interest in funding those activities.

Last December, with the assistance of the National Right to Work Defense Foundation, we filed the first of two charges against SPEEA. The facts supporting the first of our charges against SPEEA are fairly straightforward, as I will now discuss.

During the implementation phase of the agency agreements, SPEEA distributed a series of notices that clearly explained the right by law to belong to a union and participate in its affairs. However, several of these notices were also very misleading with respect to explaining the rights of those who wished to remain nonmembers. Here is a summary of these notices:

On two separate occasions, SPEEA distributed informational bulletins that unlawfully indicated that Beck objections were subject to approval by the union. It should also be noted that the second of these two notices was published after I personally notified a member of the union's executive staff that the original notice was not right.

The union mailed a letter to thousands of nonmembers' homes that unlawfully established an objection procedure that required Beck objectors to state the reasons for their objections. I was also informed of this when I called the union to inquire about to whom I should send the

letter. They informed me to state my reasons for objection.

The union unlawfully notified bargaining unit employees that non-membership constitutes a full waiver of the rights and benefits of SPEEA membership, which, according to the union's notice, included staff assistance with contract questions, job classification appeals, clearance issues and other items covered by the collective bargaining agreement.

SPEEA further discourages non-membership and violates the rights of objecting nonmembers by refusing to allow Beck fees to be paid by payroll deduction, although that option is available for full dues paying members.

Finally, the breakdown of expenses that SPEEA originally provided to Beck objectors in November 2000 was not verified by an independent audit as required by law. I learned that the union's original breakdown was not verified by an audit when I spoke to the accountant that the union claimed had calculated the fee. He informed me that he would not verify the union's expenses because he had not done an audit.

The original breakdown that was prepared by SPEEA was incomplete and inaccurate. In addition, the SPEEA breakdown charged 100 percent for a number of activities that were either non-chargeable, such as legislative and public affairs activities, or were so vague in the description that a potential challenger could not tell what the expense was for.

The issues I have just discussed form the basis of the first of the two charges that we have filed against SPEEA within the past year. Shortly after I met with, and presented these facts to, the NLRB, the investigating Board agent informed us that SPEEA had notified him that they were going to fix the problems identified in our charge. I want to discuss now these "fixes."

SPEEA's first action to address our charges was to send a notice to the company e-mail accounts of all bargaining unit members, explaining that it had come to their attention that there may be some confusion among bargaining unit members regarding the newly negotiated agency fee clause and your right to object for paying of expenditures not related to collective bargaining under Beck. Without admitting their responsibility for the confusion, the note further explained that it was not necessary for Beck objectors to state the reasons for their objections nor was there an approval process.

Next, the union distributed a second note to bargaining union members that explained that any letter they may have received from the union indicating that nonmembers would not be eligible to receive basic services from the union was in error.

WRITTEN STATEMENT OF MICHAEL BUTCHER, SEATTLE, WASHINGTON – SEE APPENDIX C

Chairman Norwood. Sorry, Your time has expired. Your written statement, however, is available to all of us in the record and I encourage all of you to read it.

Gentlemen, your testimony is very, very important to us. We want you to understand the 5-minute rule is in effect and try to summarize your testimony, but we do have your written statements. The other thing is that it is important that you pull that little microphone close to you because what you have to say today is vital to this subcommittee and we want to hear every word of it.

With that, Mr. Simpson, you are recognized for 5 minutes.

STATEMENT OF MARK SIMPSON, NEW WILMINGTON, PENNSYLVANIA

Mr. Simpson. Chairman Norwood and members of the committee, thank you for the opportunity to tell my story today. When I finish, I think you will understand the plight of American union workers across the country maybe just a little more than before you saw me today.

I am a very simple man. I am not outspoken, nor am I one to tell tales or to embellish. I go to work every day at my job at Shenango Presbyterian Seniorcare. It is a nursing home in New Wilmington, Pennsylvania. Working there are about 60 other men and women. Our exclusive bargaining agent is the International Brotherhood of Teamsters, Local 250.

I consider myself a typical American. I work hard for my money and when I have to spend it, especially when I am forced to spend it, I believe it is my right to know what it is being used for. It is particularly important to me that it not be used for purposes with which I thoroughly disagree. Now the last thing I wanted to do was cause any problems at my job. But when the Teamsters Union Local 250 treated me the way they did, I felt obligated to act. And now I feel obligated to speak to you about it, so that hopefully you will be able to take some steps to fix this problem.

You see I used to be a union loyalist. I began working at this job in 1993. I joined the Teamsters, of course, not knowing there was a choice, and loyally paid my dues for over 6 years. In fact, I was a union shop steward. But it was this inside view of the union operation that drew my first concerns about the union spending and exactly where my hard-earned money was going.

After I looked, I discovered that the Teamsters Union and others across the country were using my dues and those of many like-minded workers to win elections for candidates and promote causes I completely disagree with, with my money. I knew this was wrong and I couldn't believe our laws would allow this to take place, so I decided to check for myself. I remembered having heard once about the National Right to Work Legal Defense Foundation,

from whom you have already heard today. I heard a vague recollection that they had something to do with protecting union workers' rights, so I decided that that would be a good place to start.

Not owning a computer, I went to the library to research the Foundation and what my rights were in my situation. I discovered the landmark Supreme Court's Beck decision, won by the Foundation's attorneys in 1988. As I understood it, the Beck decision means that unions can only force workers who object, to pay certain costs directly related to their role as an exclusive bargaining agent. That means all of that money they spend on candidates I don't like or causes I disagree with is due back to me.

I was thrilled. The highest Court in the land had agreed that it was just plain wrong for my union to force me to have to pay my dues to causes and candidates I disagreed with. In fact, as I now know, the Court even looked at the finances involved with the unions, and their audit showed that only 21 percent of union dues were being used for collective bargaining costs. Therefore, up to nearly 80 percent of my money should have been refunded to me by resigning my membership and asserting my Beck rights.

This right was an individual right I was not aware of, probably because my union never bothered to tell me. It was one of those moments when you find your way out of being lost in the dark. The unions cannot use my money for political purposes if I object. At least that is what is supposed to happen, ideally.

I gave my notice to my union in June 2000, assuming that they would promptly comply with my wishes and would act to remove me from their membership. Was I in for a surprise? By October I still had not heard a single word from the union. That is when I filed an unfair labor practice charge with the NLRB, hoping to force my local to act on my letter and release me from my union dues. This was the beginning of why I am here today.

It wasn't until November of last year, nearly 6 months after I first contacted my union and attempted to exercise my Beck rights that I finally belatedly heard from my union. Their answer was insulting to me, my fellow workers, and to the intent of the Supreme Court's Beck decision. After my many years of paying dues to them, you would think they would owe me a complete and thorough explanation of my dues in justification for the collective bargaining costs they intended to continue forcing me to pay. But when I looked at the list of expenditures, I was shocked to say the least.

Their response said that only 1.3 percent of their spending was eligible to be rebated. The other 98.7 percent were bargaining expenses chargeable to me as agency shop fees, even after exercising my Beck rights, and if I didn't pay them I was fired. 1.3 percent. So they took 19 cents off my dues.

This, ladies and gentlemen, is an insult. And I am sure that if it were you in this position, you would not stand for it either. Do any of you sitting here today believe that a typical Teamsters local spends 98.7 percent of my dues on bargaining? I have read reports that the unions as a whole spent nearly $1 billion on politics alone in the last election cycle. Where did this money come from? From me and other workers. Yet they claim with a straight face that

they are obligated to only send back 19 cents of my dues each month. I can hardly believe it.

I should also note when the union finally answered my letter after 6 months in an unfair labor charge against them, they also resorted to their usual strong-arm tactics. They threatened my job. So first they insisted their agency fee was 98.7 percent of the full dues. Then they threatened to have me fired if I don't comply with their unsubstantiated claims for payment. Not once, but three times they threatened my job, all this in a four-paragraph letter.

Chairman Norwood. Mr. Simpson, you have done a great job, and your written testimony will be in the record and is available to all of us. Your time has expired. And I know 5 minutes passes fast and I apologize to all of you. I hate it, but we have to move on. Thank you. You did a great job.

WRITTEN STATEMENT OF MARK SIMPSON, NEW WILMINGTON, PA– SEE APPENDIX D

Chairman Norwood. Mr. Coppess, I think you are recognized next for 5 minutes.

STATEMENT OF JAMES B. COPPESS, ASSOCIATE GENERAL COUNSEL, AFL-CIO, WASHINGTON, D.C.

Mr. Coppess. I will attempt to be very brief. I submitted written testimony and I will summarize the points that I would like to make.

As Mr. Owens noted in his opening remarks, the NLRB enforces many rights that are of crucial importance to employees and employers alike. The NLRB seeks to remedy unlawful discharges, workers who have lost their livelihood entirely and been thrown out of work in violation of the act. It seeks to protect innocent employers who are being swept into labor disputes that are of no concern to them by unions attempting to exert secondary pressure.

The Beck right is not of that nature. No one is losing his or her job. No one is going out of business. No one is being materially hurt in any economic way at all. What we are talking about are disputes over, at most, one-half of 1 percent of income.

Nevertheless, I think it is worth considering the NLRB'S enforcement actions with respect to this right because I think important lessons can be drawn from what the NLRB has done in this area for enforcing other rights under the act. First of all, the NLRB has announced and enforces vigorously a requirement that unions notify all employees of their rights under

Beck. This right and requirement of the notice could well be extended into other areas of the act.

More than half of the workers, I would say well over three-quarters of the workers are in unorganized workplaces where they have no way of learning about their rights under the act at all. The NLRB could quite well extend the notice requirement into those workplaces, for example, by requiring employers who encounter employee complaints to inform those employees they have a right under Federal law to get together and engage in group protest or to organize a union to redress those complaints through collective bargaining.

Likewise, employees in all workplaces, union or not, have the right to be accompanied by a representative of their choosing into any investigative interview that could lead to discipline. It is a virtual certainty that employees don't know of that right and that when they are called into such an interview by their employer, they wouldn't feel they have a right to resist and ask for a representative.

The employers, in much the same fashion as unions have been, could well be required to notify those employees that they do not have to go into that investigative interview alone; that they could ask for a representative to accompany them. That would certainly assist in enforcing that right and making it more widely known.

Moving on from the notice requirement that the NLRB has adopted and enforced, the NLRB requires unions to provide detailed, audited, financial information to support the union's assertion about the amount of agency fee that has been charged. And keep in mind, these fees are equal to dues and they are set by membership votes, so they are a very small percent of income. And the area of dispute we are talking about is just fractions of that 1 or 2 percent of income. Nevertheless, unions are required to support their assertions on the chargeable amount by providing detailed, audited, financial information.

Employers make similar assertions all the time. They tell employees who are organizing that they face competitive pressures and that the business is in dire straits. And they do the same thing once the workers are organized in collective bargaining. If the NLRB were to extend the back rolls into this area, they would require employers to generate financial reports that they already wouldn't have on hand, have them audited by a certified accountant, and provide them to all the workers. That would be very helpful in effectuating some very important rights affecting a much larger portion of the income than is involved in the Beck disputes, and it should be seriously considered in terms of enforcing these other rights.

Finally, the NLRB requires unions to provide a prompt neutral method of resolving disputes over the amount of the fee. The workers aren't required to go to this method of resolving the dispute but the union is required to provide it. Such disputes often arise in organizing campaigns with respect to discharges, which are assuredly in retaliation for organizing. And it would be equally helpful if employers were to be required prompt, neutral arbitration in that context to put workers back to work who claim they have been unlawfully discharged.

And with that, I will give whatever seconds I have left back to the committee.

Chairman Norwood. Thank you very, Mr. Coppess.

WRITTEN STATEMENT OF JAMES B. COPPESS, ASSOCIATE GENERAL COUNSEL, AFL-CIO, WASHINGTON, D.C. –SEE APPENDIX E

Chairman Norwood. Mr. Young, you are now recognized for 5 minutes.

STATEMENT OF W. JAMES YOUNG, STAFF ATTORNEY, NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC., SPRINGFIELD, VIRGINIA

Mr. Young. Thank you, Mr. Chairman. Chairman Norwood and members of the committee, thank you for the opportunity to participate in these important hearings. My name is James Young and I am a staff attorney with the National Right to Work Legal Defense Foundation just beyond the Beltway 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 to refrain from subsidizing union political and other non-bargaining activities.

The most famous of these cases, and the subject of these hearings obviously, is Communication Workers of America v. Beck. I have worked as a Foundation staff attorney for 12 years, and in that time I have provided free legal representation to literally 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. In addition to representing public sector employees and a wide variety of Federal civil rights cases dealing with the abuses of compulsory unionism arrangements, I have spent a considerable portion of my professional life litigating cases under the National Labor Relations Act.

Today is not the first time Mr. Coppess and I have appeared together. I commend you for investigating the NLRB'S inadequate stewardship of this country's labor laws, particularly as it regards Beck. The failure to implement Harry Beck's victory in the United States Supreme Court is a serious problem. Individual workers throughout America are forced, by virtue of the unique privilege granted to unions by Congress, to contribute their hard-earned dollars to political and ideological causes, which they oppose. And when they seek to exercise the rights that they have won under the Supreme Court's decisions to stop the misuse of their money for partisan, political, and ideological activities and other nonrepresentational activities, they are often

stymied by both the unions and the National Labor Relations Board itself.

Let me make clear that I am not talking about contributions to candidates from union political action committees. That is often used to change the subject away from the Beck issue. I am talking about union dues and fees collected from workers under the threat of the loss of their job or under the actual loss of their job, a threat that is authorized by current labor law.

There have been some suggestions already that people don't lose their jobs. That simply is not the case. Bob LaFrance in Denali Park, Alaska lost his job 2 months ago because he refused to knuckle under to a threat by Teamsters Local 959 to pay dues or else. And this was a union that did nothing to comply with the requirements Mr. Coppess discussed that are purportedly imposed by the Board.

In testimony before a House committee 1996, Leo Troy from Rutgers University conservatively estimated that the in-kind union political expenditures amount to between 300 and $500 million in a Presidential election year. That is, of course, in addition to the uncountable millions, and perhaps over a billion dollars more that labor organizations spend on State and local elections and lobbying at all levels of government.

Under the National Labor Relations Act and Railway Labor Act, employees who have never requested union representation must accept as their monopoly bargaining agent the union that the majority of the employees of their bargaining unit select. Then, if their employer and that union agree, and in 80 percent of the cases they do, the law forces these employees to pay dues or fees for fear of loss of their job for representation they may have never wanted.

The evil inherent in compelling objecting employees to subsidize a union's political and ideological activities is self-evident. As 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."

Preventing that evil is not an easy task under current law. In his dissent from the Supreme Court's first ruling on the problem in 1961 in Machinists v. Street, the late Justice Hugo Black articulated well the difficulty in preventing use of compulsory dues and fees for political 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 immediately recognized that this remedy was fatally flawed. As Justice Black stated:

"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 situation has gotten no better under current Board law. And here I depart somewhat from my prepared remarks. The Beck notice that Mr. Coppess touts in his testimony is a notice published in a union political magazine in general. And the case he refers to is California Saw. I would respectfully suggest that the readership of such a magazine by an objecting nonmember is no more likely than William F. Buckley's regular perusal of The Nation or Mr. Novotny's regular perusal of The National Review.

The independent audit to which Mr. Coppess has referred is an audit by union members, not certified public accountants, in patronage positions for the international Secretary-Treasurer. That was California Saw. So let us not overstate the Board's activity in this area. In many cases they have merely rubber-stamped unions to put a patina of responsibility on their efforts to force employees to support the propagation of opinions which they disbelieve.

I respectfully submit the balance of my statement and thank the committee for its attention.

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

WRITTEN STATEMENT OF W. JAMES YOUNG, STAFF ATTORNEY, NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, SPRINGFIELD, VIRGINIA-SEE APPENDIX F

Chairman Norwood. Mr. Boehm, you are now recognized for 5 minutes.

STATEMENT OF KENNETH F. BOEHM, CHAIRMAN, NATIONAL LEGAL AND POLICY CENTER, FALLS CHURCH, VIRGINIA

Mr. Boehm. Thank you. Mr. Chairman, members of the subcommittee, I am pleased to be invited here today as you discuss the current status of workers' rights under the Beck decision. My name is Ken Boehm and I am chairman of the National Legal and Policy Center Response to the Organized Labor Accountability Project. And one of our activities under that is the publishing of a fortnightly publication, a union corruption update that goes into news and cases of union corruption that took place in the ensuing 2 weeks.

In 1988, the Supreme Court decided Beck. But Supreme Court decisions are not self-enforcing. The history of Beck since 1988 is of two sides. On the one hand, you have very little government enforcement of the Beck decision. On the other hand, you have a history of very creative attempts to frustrate Beck by unions.

Taking first what government has done to enforce it, or what it has not done to enforce it, would be more accurate. Congress has not passed any law codifying the Beck rights. President George H.W. Bush did issue an Executive order in 1992 requiring Federal contractors to post Beck rights. However, in the opening days of the Clinton administration, that Executive order was canceled.

Similarly, there was a Department of Labor proposed rule stipulating how to report expenditure of funds, and that proposed rule did not survive the opening days of the Clinton administration.

Then, fast-forward to February of this year, President George W. Bush also issued an Executive order similar to his father's, saying that Federal contractors must post workplace notice informing employees of their rights under Beck. And that is now being challenged in the court by three unions and a union-established corporation.

In the absence of congressional codification of Beck, the National Labor Relations Board has had the authority to enforce Beck rights. But any examination of the NLRB's action shows that on the one hand their first ruling, California Saw and Knife, already referred to in this hearing, didn't even take place until 1995, some years after the 1988 decision.

The problems that have faced workers wishing to enforce their Beck rights are of several types:

First, there are accounting schemes. Workers are not able to get accurate accounting information as to how much they are owed, thus frustrating their ability to get a proper refund. There has been much documentation of that.

Secondly, there has been a lack of information on workers' Beck rights. There have been two national polls. Both show the overwhelming majority of workers are not informed of their Beck rights. That is not a surprise. Unions have no incentive to inform them of their rights. To the extent that they do, and they exercise them, unions have less money to work with.

Then there is intimidation. This committee has held hearings in the past on intimidation, and Congressman Goodling went on to state after the testimony of many workers that these workers often describe stonewalling, harassment, coercion, intimidation of workers who try to recover what is rightfully theirs.

Then there are the procedural hurdles. These are various schemes that have been set up by unions to frustrate those who want to enforce their Beck rights. Among those tactics employed are one-sided arbitration requirements, limited windows of time each year for workers to enforce their rights, delays, and outright refusals of union officials to respond appropriately to requests by workers. There are many NLRB complaints where people, often in handwriting, describe how they have been misled, harassed, intimidated, misinformed.

Enforcing the Beck rights I think would also serve a collateral good purpose, and that is help stem the tide of union corruption.

The New York Times recently said there is a tidal wave of union corruption. A lot of it deals with the fact that workers don't have the right to accurately find out how their own funds are being spent. I think both problems have the greatest impact on workers. Those problems involve millions of dollars. Both problems persist despite poor decisions underscoring the rights of workers.

What are the meaningful remedies? Four principles I think must be followed to ensure them. I think workers have to have reliable information about their Beck rights. Workers must have easy access to independently audited union financial information. Workers must have readily available legal protections against intimidation of any type. And, finally, the burden of proof shouldn't be on somebody trying to exercise their Beck rights. The burden of proof should be on those who wish to frustrate those rights.

There are a number of proposals. One of our staff members has done a Law Review article in depth, analyzing what should go into some of these reforms. Here are several annual audits and quarterly reports. This is similar to what shareholders face. They require improved enforcement; civil money penalties; prior approval of workers; and civil action and remedial relief.

If first amendment rights of workers are not worth protecting by legislation, what is? Thank you.

Chairman Norwood. Thank you. Your full statement is available to us and it will be in the record and I encourage everyone to read it.

WRITTEN STATEMENT OFKENNETH F. BOEHM, CHAIRMAN, NATIONALLEGAL AND POLICY CENTER, FALLS CHURCH, VIRGINIA-SEE APPENDIX G

Chairman Norwood. Mr. Hunter, you are now recognized for 5 minutes.

STATEMENT OF HON. ROBERT HUNTER, MACKINAC CENTER FOR PUBLIC POLICY

Mr. Hunter. Thank you very much, Mr. Chairman and members of the subcommittee. It is indeed an honor to appear before you this morning to discuss, I think, one of the most significant labor law cases in the history of the Supreme Court's adjudication, Communication Workers v. Beck. Despite the importance of this case to the freedom and liberty of individual workers, I believe the National Labor Relations Board, which is the primary enforcing agency of the government on Beck-type matters has misapplied the Supreme Court's Beck doctrine to the

detriment of those workers who rely on the Board for the protection of their rights. I think it is high time now for the new Board coming into being and the general counsel, recognizing that he is newly appointed, to now rethink their Beck enforcement responsibilities and to guarantee the full promise of the Beck doctrine as the Supreme Court has envisioned.

About 4 years ago, I appeared before this full committee on this general subject of Beck, but I must report to you that not much has changed in Michigan concerning worker knowledge of Beck rights or the exercise of those rights. At that time, I told the committee that Beck rights were not having much impact, for many reasons; the prime of which is worker lack of knowledge that these rights even exist, or how to take advantage of them when they do learn of them.

While there are several problems related to Beck enforcement, chief among them are inadequate notice and communication to eligible union employees, as Mr. Young has just indicated. If a worker never learns of a Beck right in the first instance, all the other Beck protections talked about by all the other witnesses on this panel really are meaningless as to him or her. We are aware that many unions will not divulge the rights of their union members to the Beck process for fear of losing union income, membership, and political clout in the process.

Because of these considerations, I have to give large applause to President Bush in the issuance of Executive order 13201, which is going to require some notice posting in the workplaces of employees who are employed by Federal contractors doing business with the Federal Government. This is certainly a step in the right direction, providing maximum notice to people of these rights. But again, even when fully implemented by the Labor Department, it will have very limited significance because of the numbers of employees employed by Federal contractors versus all the employees employed by other private sector business.

While other colleagues on the panel have suggested ways to enforce Beck, I will address my comments to the NLRB itself. And I am often circumspect about commenting about the Board and its decisional process, because I have been in the seat of contentious labor issues, in fact before this very committee, from time to time. And it is not an easy job to decide these cases, nor is it easy to appear on this side of the desk. And yet, the Board is the primary enforcer of Beck, rather, is the primary enforcer of the Beck doctrine, so they cannot escape scrutiny.

In the area of Beck rights, in my humble opinion, the Board has completely dropped the ball and let workers down in the process. Again, when you look at the tortured issuance of Beck cases, three observations occur to me:

One, the Board's seminal decision explaining its Beck doctrine was slow in issuing some 7 years after the Supreme Court's decision in Beck. And related cases explaining other facets of Beck doctrine have been trickling out of the Board ever since.

Two, the body of case law in Beck seems to have spawned ambiguous flexible union rules, which have established a policy, but not necessarily clearly established comprehensive employee rights. Previous committee witnesses in the past, and those today, have correctly testified that the Board itself has given workers inadequate protection and relief when it finally

does decide Beck cases.

And number three, I think in the process the Board has created an incorrect balance in our labor laws versus the statutory rights of union members exercising the Beck rights from the derivative interest of a labor organization in demanding financial support from its nonmembers for its services.

I believe the Board has erred in Beck cases by distancing itself from the Court's controlling Railway Labor Act precedent as announced in the Beck case by applying a rationale which distinguishes the NLRA Beck cases from the substantial, unified, and broader body of Federal law involved in other union objector cases. In my mind, there is simply no compelling reason, either analytically or grounded in policy, to treat NLRA private sector workers substantially different than workers working in other industries under other statutes and/or the U.S. and/or State constitutions.

Again, what can the Board do about it at this point? Well, it can continue to muddle along and issue these cases at a rather slow pace, or it could engage at this point in informal rulemaking. That option is my choice, because I believe the policy revisions called for in the Beck doctrine can be more quickly resolved through rulemaking than through the a judicatory process.

Chairman Norwood. Thank you very much, Mr. Hunter, for your insightful testimony.

WRITTEN STATEMENT OF THE HONORABLE ROBERT B. HUNTER, MACKINAC CENTER FOR PUBLIC POLICY, MIDLAND, MICHIGAN- SEE APPENDIX H

Chairman Norwood. Mr. Rosenfeld, you are now recognized, sir.

STATEMENT OF ARTHUR F. ROSENFELD, GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD, WASHINGTON, D.C.

Mr. Rosenfeld. Mr. Chairman, members of the subcommittee, I am honored to appear before you as general counsel of the National Labor Relations Board. I am also grateful to President Bush for the confidence that he demonstrated in nominating me to this important position. I would like to briefly summarize my testimony but ask that the entire statement be made a part of the record.

Chairman Norwood. So ordered, Mr. Rosenfeld.

Mr. Rosenfeld. As you know, the Office of General Counsel is involved in a great number of labor disputes each year, a few high-profile, most low-profile, but all of extreme importance to the involved parties. The general counsel supervises the regional offices, and the staffs of those offices do an excellent job of investigating and deciding unfair labor practice charges on behalf of the general counsel. Year in and year out, whether the general counsel is a Republican or Democrat, acting or permanent, he or she has done the job efficiently and with a commitment to quality and fairness that I don't believe can be matched anywhere in the executive branch.

The regions find merit; that is, they find probable cause in about one-third of the charges filed. And they either dismiss or obtain withdrawals in the other two-thirds. The significance of this statistic is that it means that parties to NLRB cases get an answer in their cases very early on. If it is a dismissal, it is a final answer subject only to the internal appeals process in the Office of the General Counsel. All of this is done in a brief period of time. In fact, over 90 percent of Board cases are investigated, dismissed, or settled in about 100 days.

This is an extraordinary record. We receive about 30,000 cases a year, not to mention approximately 170,000 inquiries to our information officers. And about two-thirds or 20,000 of the cases fall in the dismissal or withdrawn category. For some, it is easy to discount as insignificant what these dismissals mean, but it is not insignificant. What they mean is that we resolve 20,000 labor disputes a year, quickly and finally. In other words, a neutral agency, the Office of the General Counsel conducts an independent investigation and analysis and concludes that there has been no violation of the NLRA. Of course, the charging party may not like that answer, but the important thing is that it is an answer and a final answer. It settles the dispute between the parties over whether what went on or is going on violates Federal law. And best of all, they find out very early on. They don't have endless and expensive litigation, only to find out years later that there is no case in the first place.

In my short term as general counsel, I have had confirmed what I believed to be true before coming to the agency, that is, the NLRB is one of, if not the finest agency in the Federal Government in the executive branch. It is and should serve as a model for other Federal agencies. Its employees are true public servants. They are not pro-union and they are not anti-union. They are not pro-employer. They are not anti-employer. They are pro-section 7 rights. I am proud to be part of this agency.

And I will be happy to try to answer any questions that you may have. Thank you.

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

WRITTEN STATEMENT OF ARTHUR F. ROSENFELD, GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD, WASHINGTON, D.C.- SEE APPENDIX I

Chairman Norwood. I would like to thank each of our fine witnesses for their insightful testimony. The subcommittee is grateful for all of your time and energy. We will now begin our questions and proceed in 5-minute rounds disbursed in order according to our committee rules. I will start with myself.

"To compel a man to furnish contributions of money for the propagation of opinions in which he disbelieves is sinful and tyrannical." Thomas Jefferson. That is why we are meeting. That is what this hearing is all about.

Mr. Coppess, I want to add that I do agree with you that there are other labor laws that need to be looked at. There are other union rights that need to be looked at. But as you know, in this town it is very, very difficult to get everybody focused. And today for this hearing, we want to be focused on Beck.

Mr. Rosenfeld, I have some hard questions to ask, but they are easy to answer. Yes or no, really. And the reason I am going to ask you some of these questions is that in your new job, you have a tremendous responsibility and a great deal of power in making certain that the rights of union members are taken care of.

So with that in mind, I am just sort of curious where you are going to be coming from. Do you believe that it is the right of unions to coerce dues from workers in unions in which there are collective bargaining representatives, do the unions have the right to coerce dues from union members?

Mr. Rosenfeld. I believe the statute prohibits that.

Chairman Norwood. Is a union authorized to spend an objecting employee's money to support political causes?

Mr. Rosenfeld. I am not sure that the Board has decided that, but I would again say no.

Chairman Norwood. What about the law?

Mr. Rosenfeld. The law would prohibit that.

Chairman Norwood. The Court has stated that only expenditures that were germane to collective bargaining could be charged to objecting employees. Do you agree with that?

Mr. Rosenfeld. Yes.

Chairman Norwood. The Court has held that expenditures germane to collective bargaining did not include organizing expenses. Do you agree with that?

Mr. Rosenfeld. I agree that has been so held.

Chairman Norwood. The answer is yes?

Mr. Rosenfeld. The Board has a different opinion.

Chairman Norwood. Do you believe that language concerning these particular issues, the relevant language in the NLRA, is nearly identical to the language in the Railroad Labor Act?

Mr. Rosenfeld. I would have to take a look at the comparative language, but I believe they are at least very similar.

Chairman Norwood. Do you believe that Congress intended that these laws have the same meaning on these points?

Mr. Rosenfeld. No. I believe that Congress and the courts have found that the same policies underlie both of the laws. But, again, the Board has found that some of the railway_.

Chairman Norwood. The language is nearly the same, and you don't think Congress meant or intended that these laws have the same meaning?

Mr. Rosenfeld. Let me clarify my position. I am not sure what Congress intended, nor would I opine on that. I would opine on the fact that the Labor Board itself has found the underlying approaches to be the same, but the cases in the Railway Labor Act area and in the public sector are not precedent.

Chairman Norwood. In view of your new position, I think it would be helpful if you would think about that and give us your opinion.

Mr. Rosenfeld. I would rather not opine on that, because my job is to enforce the Board's decisions and the Board has opined on that in California Saw, if I am not mistaken. Now whether or not I agree to that is something that I shouldn't publicly state.

Chairman Norwood. In view of our agreement on the questions that I have asked, for which you do agree, why do you suppose the Board has refused to apply Supreme Court rulings in NLRA cases to National Labor Relations Act cases? Why has the Board looked at that different than the Supreme Court? And to be specific, the Board has refused to apply court rulings on the non-chargeability of organizing expenses and the illegality of requiring Beck objectors to renew annually their objections in order to recover the part of their dues to which they are legally entitled. What is going on?

Mr. Rosenfeld. Mr. Chairman, I cannot answer that question. You have to ask the members of the Board.

Chairman Norwood. Okay.

Mr. Rosenfeld. And, of course, I am not sure who the members of the Board are going to be.

Chairman Norwood. I guess I am probably more interested in your opinion than theirs right now, because we don't know who they are.

Mr. Rosenfeld. I would refrain from offering my opinion, because as a public prosecutor I think it might create some conflicts if I am called on to rule on or enforce or attempt to prosecute in these areas.

Chairman Norwood. Do you agree that the NLRA, the Act, assigns the duty of enforcing the rights provided to workers under the act to the Board?

Mr. Rosenfeld. Yes.

Chairman Norwood. That makes you a player, doesn't it?

Mr. Rosenfeld. Yes. I like these simple questions with the yes or no answer.

Chairman Norwood. The Congress, I think, and I hope you will agree, created the NLRB to support workers' exercise of rights that Congress has given them.

Mr. Rosenfeld. Yes, sir.

Chairman Norwood. Then, from your experience, would you agree that the Board and the general counsel basically have been undermining these rights over the last few years?

Mr. Rosenfeld. I honestly don't have an opinion on that because, again, I am the Board's lawyer, not only the prosecutor but also the Board's lawyer, and it would be best directed to the Board members.

Chairman Norwood. Do you have an opinion about what the different courts have been saying about it?

Mr. Rosenfeld. I think there are conflicts in the different courts on these issues. The law is still under development even though the Supreme Court case was decided in 1988. And I will play a role in the development of the law, and I will not be shy in issuing complaints, which is the way that these problems get to the Board so that we can see what the Board thinks, and then of course to the courts.

Chairman Norwood. Does it help you to believe that the Board and the general counsel has been undermining these workers' rights when I talk to you about the Ninth Circuit case that reversed an NLRB decision that allowed unions to charge Beck objectors for organizing expenses? Judge Noonan in there quoted "this is just amazing to me, the Board does not have the power to reverse the Supreme Court." Is that a bad judge?

Mr. Rosenfeld. I think that is a true statement.

Chairman Norwood. What about the case with Penrod where the D.C. Circuit reversed, again, an NLRB decision that held that a union had met its obligations under Beck when it provided a dues objector a one-page summary of his expenditures which contained no notes or other written explanations concerning how that union's overall 93.6 chargeable, 6.4 non-chargeable, calculation was made? Now again, the judge in this case, and this judge was appointed by President Clinton, stated that he found a portion of the Board's decision-making unsupported by reasoned decision-making, and the remainder in conflict with the Supreme Court and Circuit precedent. The Board's decision reflects a classic case of lack of reasoned decision-making.

That is strong language.

And again in another case, the D.C. Circuit reversed an NLRB decision that held that "a union had met its obligations under Beck if it provided a dues objector with a calculation that was only explained by a breakdown of his expenditures that was not independently audited. The Board's rejection of the independent auditor requirement was not rational because any rational interpretation of the NLRB's duty of fair representation will necessarily include an independent audit requirement," end quote.

What is wrong with these judges? How are you going to treat these kinds of findings?

Mr. Rosenfeld. I would suppose that the Board would at least take note of these decisions and the approaches of the various circuit courts. As to what the Board would ultimately decide, I couldn't even speculate.

Chairman Norwood. All of this is one-third of a question that I will get to other two-thirds in the next round. Keep this line of thinking in mind.

Mr. Owens, you are recognized for whatever time you might consume.

Mr. Owens. Whatever time, sir, or just 10 minutes like you?

Chairman Norwood. That is fair.

Mr. Owens. Mr. Rosenfeld, I congratulate you on your professionalism. I hate for you to be in a position to have to recuse yourself on certain cases because of things you might say here. Do you have information as to how many Beck cases are pending before the NLRB today?

Mr. Rosenfeld. I believe so, sir. And by the way, it is more fun on that side.

Chairman Norwood. 38.

Mr. Owens. How many?

Chairman Norwood. If the gentleman would yield, there are 32 cases that are older than 5 years old and six cases that are between 3 to 5 years old.

Mr. Rosenfeld. Okay. I was looking for the answer in the letter.

Mr. Owens. Is that your answer, sir?

Mr. Rosenfeld. Yes.

Mr. Owens. How many total are pending?

Mr. Rosenfeld. I'm sorry?

Mr. Owens. What is the total pending?

Mr. Rosenfeld. There are 71 pending cases.

Mr. Owens. How many cases?

Mr. Rosenfeld. I apologize, Member Owens. I just want to verify exactly what this is, to be careful about what my answer is because I am being questioned here. It is a total of 169 cases. I am sorry. I was reading the wrong paragraph.

Mr. Owens. How many?

Mr. Rosenfeld. 169 cases. There are currently pending in the Office of the General Counsel in Washington and in the field a total of 169 cases raising issues under Beck.

Mr. Owens. Could you tell us how many cases are pending in which a worker is alleging that he or she has been discharged by the employer due to anti-union animus?

Mr. Rosenfeld. I do not have that figure.

Mr. Owens. Do you have any estimate on that?

Mr. Rosenfeld. I do not.

Mr. Owens. You don't keep those statistics?

Mr. Rosenfeld. We do.

Mr. Owens. Can you get it for me, sir?

Mr. Rosenfeld. I can get that for you, yes, sir. At least I hope we keep those statistics.

Mr. Owens. Somebody has them here?

Mr. Rosenfeld. No, they are not here. I can get those for you.

Mr. Owens. Isn't it true, Mr. Rosenfeld, that it is more than 1,000?

Mr. Rosenfeld. I would venture to say it is more than 169, sir.

Mr. Owens. Is it true that if you dismiss a Beck case, the worker still has the option of suing the union directly for breach of a duty of fair representation?

Mr. Rosenfeld. Yes, sir.

Mr. Owens. So you said before that you made final decisions on this. They are not so final in the case of a Beck decision, right?

Mr. Rosenfeld. The final decision under the National Labor Relations Act; yes, sir.

Mr. Owens. Does an employee who has been fired for trying to form a union have an equal ability to sue his employer or the general counsel, which dismisses his or her case?

Mr. Rosenfeld. No sir. There is no private right of action, if that is your question.

Mr. Owens. They are final. Your decision is final.

Mr. Rosenfeld. Right. Subject to an appeal process to the general counsel.

Mr. Owens. Mr. Coppess, do bargaining units' employees have any rights with regard to the settling of union dues?

Mr. Coppess. Yes. The Langham-Griffin Act requires that union dues be set by a vote of the membership.

Mr. Owens. The vote of the membership is a majority vote at least.

Mr. Coppess. That is right. They can't be increased without approval of the membership.

Mr. Owens. Can an agency fee be imposed against the will of a majority of the bargaining unit employees?

Mr. Coppess. The statute gives employees the right to vote to de-authorize the union security agreement while still maintaining union representation. Also, these union security obligations arise in the contract, and most of those are subject to ratification by the members.

Mr. Owens. It must pass by a majority vote.

Mr. Coppess. A majority vote again.

Mr. Owens. Mr. Young, you use the term "evil" and you quoted Thomas Jefferson.

Mr. Young. It was Jefferson's words.

Mr. Owens. Are you against the principle of majority rule in general, or only in the case where unions are concerned?

Mr. Young. Well, I am against the principle of tyranny of the majority, Member Owens.

Mr. Owens. Tyranny of the majority, whether it is a church congregation voting in the majority or a union. Any group that has a majority vote might be guilty of tyranny?

Mr. Young. My church doesn't have the authority, Congressman Owens, to force me to put money in the collection plate. Labor unions do, by an act of Congress. And I believe, in fact, that what Mr. Jefferson and Mr. Madison were corresponding about in the correspondence in which the quotation appears was about forced coerced monies for churches in Virginia, and that was the root of their discussion. But I think it is equally applicable, sir.

Mr. Owens. So you suggest you are against principle majority rule in any matter related to dues.

Mr. Young. Related to union dues, yes, I am.

Mr. Owens. Bar Association dues, any dues?

Mr. Young. As a principle of keeping or holding a job, I am against the principle that people should be forced, as a matter of personal opinion, should be forced to support ideas which they disbelieve, or a bargaining agent that the majority imposes.

Mr. Owens. Mr. Boehm, in your statement, you state that the Justice Department alleged that the Chicago mob controlled the Hotel Workers Employees Union, while Mr. Hanley was present. Isn't it true that the same Federal monitor later who said that, you said, forced Mr. Hanley to resign, the same Federal monitor later found no evidence of mob control of that international union?

Mr. Boehm. I don't know what he said subsequently, sir.

Mr. Owens. You don't know that they found later that there was no mob control?

Mr. Boehm. I don't know that for a fact. No, I don't.

Mr. Owens. Mr. Butcher, for the record, is it not true that the majority of workers who are represented by SPEEA supported and support implementation of an agency fee?

Mr. Butcher. It is true that the majority of the workers who voted did agree to improve the arrangement that my employer made with the union.

Mr. Owens. You said the union had been of no value to you.

Mr. Butcher. Correct.

Mr. Owens. Is it not true that the majority of your fellow employees disagreed with you?

Mr. Butcher. I don't know the majority of my fellow employees.

Mr. Owens. They continue to vote for the union and they continue to support the dues structure.

Mr. Butcher. At this point they have no choice.

Mr. Owens. You stated that you have been employed for 13 years, and during that time you never joined or supported the union. Over those 13 years, how many contracts have been negotiated? And do you know how many grievances the union handled over that period? Do you know what changes have been made in negotiating wages and fringe benefits over that 13 years? Is that of any interest to you?

Mr. Butcher. There have been roughly half a dozen agreements. Typically in the past, all the union would negotiate would be to document the same benefits and raise pool that non-represented employees got. Typically I would receive raises based on merit. Since we now have compulsory dues, I no longer receive raises on merit. I receive the same dues as everyone else in the bargaining unit, and I typically received above average raises prior to the last agreement.

Mr. Owens. Do you support the principle of majority rule in every other aspect of life, but not in the case of the union?

Mr. Butcher. Majority rule is okay for some things, but for other things, when it pertains to the rights as set forth in the Bill of Rights, the very purpose of that is to put beyond the reach of any majority the rights of any individual. And I support that and believe I could quote a Supreme Court justice on that, but I don't happen to remember the name.

Mr. Owens. So the people who want to stop the bombing in Afghanistan should be able to deduct a portion of their taxes that finance the bombing in Afghanistan. Do you support that?

Mr. Butcher. I am sorry. I don't understand the relationship to Afghanistan.

Mr. Owens. People pay taxes.

Mr. Butcher. Right. These aren’t taxes.

Mr. Owens. Should they be able to deduct the portion of their taxes that goes to activities that they disagree with?

Mr. Butcher. I don't see the relationship to taxes and union dues.

Mr. Owens. Thank you. No further questions.

Chairman Norwood. Thank you, Mr. Owens. I am now pleased to recognize Ms. Biggert for 5 minutes.

Mrs. Biggert. Thank you Mr. Chairman.

Question for Mr. Simpson. According to your testimony, the Teamsters stated that 1.3 percent, or 19 cents per month, is owed back to union nonmembers after all the collective bargaining expenses. That is a whopping $2.28 a year. And you stated that during your tenure as shop steward for the union, you learned that the union had financed political campaigns with union dues. So how much do you think that it was more than 19 cents that you paid a year that would be going to political campaigns, or how much do you really think went to those campaigns?

Mr. Simpson. Well, I understand there was a study done by the National Right to Work Foundation, I believe, back in the late eighties that indicated, on the average, about 80 percent of workers dues go to, you know_.

Mrs. Biggert. Collective bargaining.

Mr. Simpson. Is that correct?

Mr. Young. If I may, Congresswoman, in the Beck case itself, the Court found that 21 percent of union dues went toward collective bargaining purposes, where 79 percent went to political, ideological, and other non-chargeable activities.

Mr. Coppess. If I may, as one of the lawyers in Beck, the finding was not that 79 percent went for non-collective bargaining but, rather, that because the union hadn't maintained timekeeping records, it couldn't prove what it spent with respect to that amount of money. Those findings were later vacated and the union implemented a timekeeping system that passed with the very same judge who had implemented the first findings on which they are relying. And those records show that upwards of 75 percent is spent on collective bargaining, very narrowly defined. That excludes charitable activities.

Mrs. Biggert. I would like to go back to Mr. Simpson. Why weren't you able to find out exactly how much of your dues went to collective bargaining versus other such as political campaigns?

Mr. Simpson. The information that was finally after a long wait and a long effort provided to me from the union, I found very vague and confusing, and it really was not something that I was able to verify and it really provided me more or less nothing, really, to verify the figures they gave me. I believe it did not even include the money that went to the International Brotherhood of Teamsters. So there wasn't really anywhere I could go with that.

Mrs. Biggert. Well, it seems that since the Beck decision has been around quite a while, most unions would keep track of this in case they needed to know. Did the NLRB do anything to help

you, or did they dismiss your case? What happened after you?

Mr. Simpson. My case is still in the works. There have been several appeals necessary. I am not really acquainted with the language, the legal language involved in these matters, but they did dismiss it and it is before the general counsel at the moment, I guess.

Mrs. Biggert. The NLRB dismissed it?

Mr. Simpson. Yes.

Mrs. Biggert. Okay. And then it is before the general counsel, Mr. Rosenfeld?

Mr. Simpson. Yes.

Mrs. Biggert. How about you, Mr. Butcher? Did the NLRB do anything to help you, or did they dismiss your case also?

Mr. Butcher. The case is dismissed. It is currently on appeal to the general counsel.

Mrs. Biggert. And then what happens when it goes there? I suppose we can ask Mr. Rosenfeld, but what do you believe happens once it has been dismissed?

Mr. Butcher. I believe we file an appeal with the general counsel at some point who will respond to our appeal. I don't know what happens at that point.

Mrs. Biggert. Okay. Well, I certainly have heard from scores of my constituents who are union members also, and they certainly oppose paying dues to their unions as well; those dues that do support parties or candidates. And they certainly have similar stories to you. So I thank you for your testimony at this time. Thank you, and thank you, Mr. Chairman.

Chairman Norwood. Thank you, Ms. Biggert. Ms. Woolsey you are recognized for 5 minutes.

Ms. Woolsey. Thank you, Mr. Chairman. Mr. Butcher, is it Butcher or Boucher?

Mr. Butcher. It is Butcher.

Ms. Woolsey. Butcher. Thank you. Do you own any corporate stock, part of anything for Boeing, or do you know anybody that does?

Mr. Butcher. I own stock in the company through my company's 401(k) plan.

Ms. Woolsey. Well have they ever asked you if it is okay for their political arm to contribute to a party or a political candidate? Have you gotten to vote on that?

Mr. Butcher. I choose to purchase stock in the company at my own discretion, and as a shareholder I am allowed to vote on shareholder matters on an annual basis.

Ms. Woolsey. But they have never asked you whether you would support a candidate or a party that they may?

Mr. Butcher. No. But if I disagreed, I would sell my stock and not invest in the company.

Ms. Woolsey. But you also get to choose whether or not you are a full member of the union, right?

Mr. Butcher. Yes.

Ms. Woolsey. Yes. Mr. Coppess, once a union is ratified, the workers that didn't vote for the ratification or the members who aren't paying full dues, how are they affected by collective bargaining, their wages, their conditions, working conditions, and their ability to be covered for grievances? Are they treated any different than the people who pay full dues?

Mr. Coppess. No, ma'am. They have to be treated equally under the law. The union has a duty to represent them and to listen to their views, just as it does to represent and listen to the members.

Ms. Woolsey. Okay. And even if they paid no dues, I mean?

Mr. Coppess. That's right. If there is no union security agreement, the union has to represent them even if they pay nothing.

Ms. Woolsey. Uh-huh. Uh-huh. And do you have any idea, or not, of course, you do. Tell us how these same people could nullify the union agreement if they chose. What would they do?

Mr. Coppess. Well, the bargaining unit members could vote the union out. They could file a de-certification petition and vote the union out if they decided the union wasn't doing an adequate job.

Ms. Woolsey. And what would be the percentage of membership would that be and they would be considered members whether or not they paid full dues, right?

Mr. Coppess. In that election they would have voting rights, yes.

Ms. Woolsey. Yes. Voting rights. So would it be 50 plus 1.

Mr. Coppess. It would be a majority among the voters would determine whether the union was in or out.

Ms. Woolsey. Is that a very common happening?

Mr. Coppess. It happens that people petition for de-certification elections. I think, by and large, people realize that they benefit by having a union representative, and don't want to get rid of the union. But it does happen on occasion if the union is not doing its job adequately.

Ms. Woolsey. Well, thank you. Mr. Young.

Mr. Young. Yes, ma'am.

Ms. Woolsey. I want to continue to take what Congressman Owens was talking about. And that is, we live in a democracy; we elect people to represent us, or we vote locally for local taxes, say, for a school, to support our school, a school bond or a school district. If you voted against that, you still have to pay for it if it was passed. What, I mean, what is the good of all.

Mr. Young. Congresswoman, I would first say, in our Republican form of government, we protect the rights of individuals. I would also echo Mr. Butcher's statement that unions aren't government. However, they have been granted a special privilege by government to provide representation for an entire bargaining unit and individuals, whether or not those individuals want or need that representation.

Ms. Woolsey. Well, wait a minute now. Let me take some of my time back here and take that question further. You are here talking to the representatives of government, asking us to do something that the majority of the people have supported, to undo something that the majority of workers like, for a union. Would you ask us up here to nullify the union agreement that at least 50 plus 1 percent of the people voted for?

Mr. Young. To correct the record, ma'am, I don't think I am here advocating any particular repeal of either the monopoly or bargaining privilege, although I would lend my support to the proposal of a national right to work act. What I am asking this panel to do, and what I would advocate strongly, is seeing the enforcement of existing rights as found by the Supreme Court in Beck. The NLRB processes as they are currently constituted do not adequately protect those rights.

Ms. Woolsey. Well, could I take back my time.

Chairman Norwood. Your time has expired, Ms. Woolsey, but we will have another round.

Ms. Woolsey. Oh, thank you.

Chairman Norwood. I would like to recognize Chairman Ballenger now for 5 minutes.

Mr. Ballenger. Thank you, Mr. Chairman. Mr. Butcher, in your testimony I was reading and trying to figure out, were you employed by Boeing in this deal that they made with the union; did you ever have a chance to vote on that?

Mr. Butcher. Yes, we did.

Mr. Ballenger. And you ended up in the minority, I guess?

Mr. Butcher. Correct.

Mr. Ballenger. And that, therefore, it appears to be that maybe you ended up in a union shop where you have to belong or you can't be employed there.

Mr. Butcher. We have to pay dues or an agency fee to the union.

Mr. Ballenger. In other words, it is a closed shop. You don't have any right to not pay dues.

Mr. Butcher. Correct. There were four people fired for refusing to pay dues to the union.

Mr. Ballenger. I am just questioning in my own mind, you are located in Washington State.

Mr. Butcher. Yes.

Mr. Ballenger. I am just curious. Are they moving to Illinois to get away from the union?

Mr. Butcher. No.

Mr. Ballenger. Please pardon my needle. I am sorry about that.
Mr. Rosenfeld, Congressman Owens mentioned that there are only little over 100 cases were brought to the NLRB. I guess he was talking about Beck cases. But do you have any idea how many actual Beck cases were submitted but never accepted by the Board, whether they decided to hear them or not to hear them?

Mr. Rosenfeld. Well, if a complaint issues, they would have to hear that complaint. It would go through litigation. If you are asking how many cases that were dismissed by the regional directors of the general counsel, I am not sure if I have that figure.

Mr. Ballenger. Mr. Young may even know that; I don't know.

Mr. Young. Mr. Chairman, I would not.

Mr. Ballenger. It would be a large majority, let's put it that way, a substantial majority.

Mr. Young. I would say a substantial majority. I cannot probably even remember at this point in my career how many of what I thought were meritorious Beck charges were simply dismissed.

However, I would also point out on the record the issue of the outstanding general counsel memorandum 9450 that could be revoked today if Mr. Rosenfeld had a mind to do so, it was put in place in 1994 by a general counsel appointed by the former President, that gives regional directors the authority to dismiss all charges that they don't find meritorious, but demands that even charges found meritorious by a regional director be submitted to Washington

for advice, which is further delay.

It is one of the issues that came up that individuals who are trying to exercise their Beck rights have an opportunity to file a DFR case if the general counsel dismissed their charge. A lot of these charges that survive go into a black hole.

Mr. Ballenger. Let me interrupt you because you are going to blow my 5 minutes real quickly here.

Mr. Young. Certainly.

Mr. Ballenger. How much it would cost an employee to get his Beck rights and go forward when he sees that he is going to have to fight it.

Mr. Young. In a Federal district court under a DFR, duty failure representation suit, many orders of magnitude more than the money that would be involved. A few years back, we had a case in circuit court in Virginia in which we represented some members of the Redskins who had to pay $5,000 in union dues; 16 players, $80,000 annually. I think I sat down and figured out the lawyer time we put in to win that case, and it was approaching $200,000.

Mr. Ballenger. The point I am bringing up, and you are backing me up on it, is that it is so damned expensive that no individual member is going to try to go to the NLRB and try to win his case. If not for the existence of your organization and Mr. Boehm's organization, nobody would go to the Supreme Court.

Mr. Young. Thank you for not forcing me to point that out Mr. Ballenger.

Mr. Ballenger. And, Mr. Boehm, one question, sir, I would like to ask is you recommended some things that would be worthwhile. And I am a business man myself and I have fiduciary duties as an officer of the company, and unless I am mistaken, if I get caught stealing or not having a proper audit, my company, the stock would disappear, all my rights and would be shrunk. Does the union not have to keep books?

Mr. Boehm. They keep books, but the requirements are far short of what you find, for example, with companies covered by the Securities and Exchange Commission.

Mr. Ballenger. The 10(k), who enforces the 10(k)?

Mr. Boehm. That is the Securities and Exchange Commission for listed companies, and it is a night and day difference. The records that unions keep are hodgepodge. The LM-2 forms, for example; you can look at that and not be able to tell basic things like how much travel a particular union officer undertook, because if he used the union credit card, it wouldn't be listed next to his name. There are lots and lots of things.

Mr. Ballenger. Let me interrupt one more time before he cuts me off completely. I can't see that anybody would even complain about forcing people to keep books that would guarantee they

were doing their fiduciary duties and would have civil penalties and could be taken to court for that. I can't see anything wrong with that, can you?

Mr. Boehm. Not only nothing wrong with that, I think that is the single most important reform that can be done.

Chairman Norwood. Thank you very much, Mr. Chairman, for your insightful questions. Ms. Solis, you are now recognized for 5 minutes.

Ms. Solis. Thank you, Mr. Chair. My question is to Jim Coppess. My question is, as I understand it, those who support the Beck rights generally hold that union dues should not support union-organizing activities. And the AFL-CIO counters by saying that unions' organizing ability greatly enhances their power to improve working conditions. My natural assumption is that the promise of the continued existence of a certain union would indeed strengthen labor's position in collective bargaining. I also imagine that the AFL-CIO would not take such an argument without having first done some statistical research.

Could you tell the committee and me if in fact the AFL-CIO has indeed initiated a survey of this kind; and, second, could you tell me what the results of the study were?

Mr. Coppess. Yes. And this goes to the point that the Chairman was making earlier in talking to Mr. Rosenfeld. There are numerous academic studies, not ones that we have commissioned but ones that industrial relations professors have undertaken on their own, demonstrating that there is a positive relationship between organizing and achievement and collective bargaining. And the Board so found in the case the Chairman was talking about. Judge Noonan in his opinion agreed with that finding. He said there was substantial evidence supporting the Board's finding.

The area of dispute in the case was over what Congress intended, and that is where you got into the point that the Chairman was talking about, about the Ellis decision. And I think that is a point that really goes to something this committee would understand, that the Supreme Court in all of the cases has said that the same germane to collective bargaining standard applies. But then the question is what sort of collective bargaining system did Congress enact? And in 1947, Congress addressed the issue of the relationship between organizing and collective bargaining and defeated a proposal that would have outlawed unions representing employees at competing employers. And the argument that Congress accepted was that you can't effectively represent employees at one employer if the nearby competitor is allowed to pay substantially lower wages.

There is nobody who doubts that as an empirical fact. The dispute is over the legal issues and what Congress intended, and there is very strong indication supporting the Board's decision. Judge Noonan's decision on the legal issue about whether Ellis controlled was vacated, so it is no longer the law in the Ninth Circuit. The case is on rehearing en banc, and that will be the center of debate, you know, what Congress intended in 1947. And I think the Board's position will be sustained.

Ms. Solis. Okay. My next question is for Mr. Rosenfeld. President Bush recently issued the Executive order forcing businesses to post notices informing employees of their right not to join a union and not to pay for union activities. Is there a similar law requiring employers to inform workers of their right to join a union?

Mr. Rosenfeld. That was an Executive order I believe was directed at Federal contractors if I am not mistaken. Is that what you are asking?

Ms. Solis. Yes.

Mr. Rosenfeld. No.

Ms. Solis. And so are you saying we are informing individuals of their rights not to do something, when they were never even informed of their right to do something?

Mr. Rosenfeld. Well, there is no Executive order extant that I am aware of, with the exception of the recent Executive order of President Bush regarding, again, Federal contractors and their employees.

Ms. Solis. And don't unions have a role to play in today's workplace?

Mr. Rosenfeld. I believe they do.

Ms. Solis. And haven't they done a tremendous amount to improve the working conditions of men and women in the workplace?

Mr. Rosenfeld. I think you would have to ask those men and women.

Ms. Solis. Pardon me?

Mr. Rosenfeld. I think you would have to ask those men and women.

Ms. Solis. Thank you.

Chairman Norwood. Thank you, Ms. Solis. Mr. Hunter, I noticed you wanted to make a comment to Mr. Coppess, and we have the time to do so.

Mr. Hunter. Just briefly, on the question that the Congresswoman raised initially which concerns organizing, I would point out to the committee that the Supreme Court has already decided that organizing expenses are not properly chargeable to an objecting nonmember in the Leonard case. That is a public employee case, but yet the rationale should be clearly applicable to private sector work. There is really no difference in terms of rationale of that as to the chargeability of those expenses.

So the Supreme Court has already spoken to that issue, and here we are debating this under the National Labor Relations Act, which demonstrates the point that this fragmentary

approach that the Board is taking, and contrary to what the Supreme Court has already dictated, seems to be the delay and frustration of Beck rights for individual workers.

Chairman Norwood. Mr. Rosenfeld, do you have any thoughts on that?

Mr. Rosenfeld. Well, my first thought would be that if Mr. Hunter ever gets back on the Board, we would have a pretty sure understanding of where he might want to go on that. But I think it is probably definitely inappropriate for me to comment on that because of my role of public prosecutor, and also the agency administrator might be conflicted by me commenting on that.

Chairman Norwood. Oh, I understand that difficulty. But it makes it pretty hard for us to know where you are coming from, and you have a very powerful position.

Mr. Rosenfeld. I would suggest, sir, that months from now the world will know where I am coming from, because I will be either issuing or deciding to dismiss complaints in this area. But, again the bottom line from my perspective is to give the Board a chance to consider these developments of the law. But ultimately it is going to be the Board.

Chairman Norwood. I don't think we would take disagreement with what the Board does if a normal person had any opportunity to appeal that. But because of the expenses related to appeal to a Federal court, you end up with in fact extraordinary power.

Thank you, Ms. Solis, for your questions. I now recognize Mr. Isakson from Georgia.

Mr. Isakson. Thank you, Mr. Chairman. If you will be brief, I think Mr. Coppess wanted to make a comment, so if you make it brief.

Mr. Coppess. Thank you, that is very considerate. I just wanted to point out that in light of what Mr. Hunter was saying about Leonard and Ellis, that what we are in that area is the meaning of the Supreme Court decisions, and that is best left to the judicial process, which is where the case is. Mr. Rosenfeld has to deal with the Board, has to defend the Board's decision on that posture. He is their lawyer in court, and the courts will decide what the Supreme Court meant. Thank you.

Mr. Isakson. Okay, reclaiming my time. I apologize that I was unable to hear everybody's testimony, and yours was one, but I read it and I wanted to ask a couple of questions. You go into a good deal of detail to explain how CWA notifies their members of their rights both in terms of membership as well as the use of their dues. And, further, that annual March notice which is attached to their constitution that is handed out. In the next paragraph you say this requirement that a private party personally notify employees of their rights under the NLRA is extraordinary.

Would you tell me what notice you are talking about?

Mr. Coppess. The notice of the NLRB requires that unions inform people of their rights not to be members and to object to paying full fees.

Mr. Isakson. And you think it is extraordinary that it requires that?

Mr. Coppess. It is extraordinary in the sense, in the literal sense that it is not ordinary. There is no other requirement in the law like that that I am aware of.

Mr. Isakson. What about Miranda rights?

Mr. Coppess. Well, yeah. I mean that is not under the NLRA. That is a constitutional right.

Mr. Isakson. Well, yeah. But my point is I do understand the redundancy of the twice providing written notice. But I also understand how, although that may appear comprehensive, it sometimes can slip through the cracks in terms of the actual awareness of the employees. And I was just wondering why personal notification to an employee of their rights was egregious.

Mr. Coppess. Well no, I didn't mean egregious. I meant extraordinary. And I actually think your Miranda point is very well taken, because if you were to bring Miranda over under NLRA, what you would require is that when employers call people in to the investigative interviews that they warn them that they have the right not to speak without a representative present. That would be exactly like Miranda. And there is an NLRB right to have such representatives, but the employers are not required to warn the employees, in either a union or nonunion setting, before they call them into those interviews.

So my point was that if we are going to start doing this under the NLRA, it should go across the board. I didn't mean it was egregious. In fact, I guess it didn't come through in my written testimony as much as I hope it did in my oral testimony. What I was advocating was use of these enforcement mechanisms as models. Let's start doing this in other areas. Let's have notice of rights in all the nonunion workplaces. Let's have employer accountability let's have employer-mandated arbitration of disputes. So I wasn't trying to denigrate what they are doing.

Mr. Isakson. Well, on that point I am not by any means an expert on this and the business that I ran for two decades did not deal with union versus management issues so I am not an expert, but I would tell you, American employers are required about everywhere they turn around to provide notice, and if they don't, it is usually an escape for whoever might have an issue with them.

And further, I guess this is an opinion and not a question, so you certainly don't have to comment on it. But I think the statement made earlier about the cost of redress to an employee through the legal system is a valid one; and, I assume from reading your statement, about what CWA does by immediately reducing or refunding dues when a question is raised by the amount that is set aside for political activities. Did I read it right?

Mr. Coppess. Yeah. It is more than political activity, but that is right.

Mr. Isakson. Does it include the cost of the legal counsel to the union?

Mr. Coppess. It includes legal counsel for the union advising the union on political matters.

Mr. Isakson. Well, my point being, that burden of cost and that threshold for an individual employer is high, and I don't think it is extraordinary to ensure that employees are fully advised of their rights in a satisfactory way. That was my point.

Mr. Coppess. Well, on the legal cause point, the thing that I think should be pointed out is that Mr. Rosenfeld's staff very energetically represents employees for free who come to them. They don't have to have their own outside counsel to represent them. It is only if they choose to take the alternative route that Mr. Owens talked about of going into court, which they are free to do, that they have to hire their own lawyers. And attorneys' fees are recoverable in DFR cases in certain circumstances, and that is just the way, you know, court enforceable rights are under Title 7 of the Fair Labor Standards Act.

Mr. Isakson. My time has expired.

Chairman Norwood. Thank you, Mr. Isakson.

Mr. Tancredo is visiting from the full committee, and with the permission of the Minority, will now be recognized for 5 minutes.

Mr. Tancredo. I thank the Chairman. Thank you very much for allowing me to sit in here today and observe and listen to the comments. It is sometimes difficult to do so, but it is important to do so. Most of the questions that I had have been asked. I only now think to myself of a problem that may be there that I had not anticipated before, and that was one that was referenced by Mr. Young. Specifically, when he talked about the situation that evidently exists with the regional directors of NLRB and what their responsibilities are or are not, vis-à-vis a complaint that arises, and then they are given two options. One, as I understand it, if they dismiss it, that is the end of it. If they do not, then it then goes on to the national. Is that correct?

Mr. Young. What happens under G.C. Memorandum 9450 is that a regional director can determine that a Beck charge has no merit and dismiss it by himself. However, if under existing precedent, the regional director determines that in fact a Beck charge does have merit, it is sent to Washington so that the general counsel or his office can deal with it.

Mr. Tancredo. I understand. And, Mr. Rosenfeld, please if you could help me then understand the logic here. It was not your directive, as I understand it?

Mr. Rosenfeld. Well it is not only not my directive, but it also has been superseded.

Mr. Tancredo. Who superseded it?

Mr. Rosenfeld. It was superseded by a later mandatory submissions list. And it was also pre-California Saw, so it is not correct. What is expected now to be submitted to Washington, to the

Division of Advice, are Beck issues regarding the chargeability of expenses and this is subject to change, also, because I am reviewing the mandatory submission list Beck issues regarding the chargeability of expenses for organizing employees beyond the competitive market of union employees or implicating the type and level of audits unions must give Beck objectors. So just because the memorandum was not withdrawn does not mean it was not superseded.

Mr. Tancredo. Well, to the extent that it superseded the most significant aspect, I am still kind of confused. First of all, let me ask you something about these regional directors. Who is their supervisor? Who appoints them?

Mr. Rosenfeld. They appointed by the Board upon the recommendation of the general counsel. I supervise the regional offices. It is an interesting system, which I don't fully appreciate yet, but in effect they report to the Board on our case matters, representation matters.

Mr. Tancredo. I see.

Mr. Rosenfeld. Election matters.

Mr. Tancredo. Well, let me then be as specific as I possibly can in my question, and if you would help me by being as specific as you possibly can in your answer, as you have been very candid here up to this point in time with one word responses.

Today, as the Board is operated under your leadership, in whatever role that you play, if a regional director dismissed a Beck complaint, what happens? Does that mean that dismissal will come to your attention?

Mr. Rosenfeld. There are two alternatives. One is there may be, because of the national implications of the matter, a desire on the part of the regional director to inform the general counsel. But the way it gets to me after a dismissal is that the charging party appeals that dismissal and then it comes up, and ultimately we have the final say in Washington.

Mr. Tancredo. And the same question if it is approved.

Mr. Rosenfeld. If it is approved, either you settle it or it goes to litigation. If a charge goes to complaint, then you have an ongoing complaint.

Mr. Tancredo. Well, I thank you very much. It does seem like an extraordinary set of hoops one has to go through here, that have been established for the purpose of trying to adjudicate this process. It is very complex and very costly. And so you can understand, then, why it would be difficult for the average citizen to understand the process clearly and be willing to undertake the expense that would be necessary to go through that entire process. And that is another problem, I guess, with which we must deal. And I would just end this because, as I say, most of the questions I had originally have been asked.

But there is an interesting situation to observe here. Sometimes we should call it, these hearings, really, and this place, a torture chamber because you are witnessing the torture of logic

to such a magnificent extent here. The idea that anybody could actually argue with the concept that a person should never be forced to support any political activity in order to keep their job, that is the bottom line. That is the end of it. And all of the support and all the opposition to that concept is tortured logic, and it has been certainly an experience observing it.

Thank you, Mr. Chairman.

Chairman Norwood. Thank you, Mr. Tancredo. Back to me, and we will go around again.

Mr. Rosenfeld now, let's go back to where we were. We were talking about the number of cases that have been reversed by the courts and the unusual statements by some of the judges, such as the Board does not have the power to reverse the Supreme Court. Now, in addition to those difficulties, I submitted in our questionings to you, that there are currently 32 Beck cases that are more than 5 years old.

Mr. Rosenfeld. Yes, sir.

Chairman Norwood. And there are an additional six cases that are between 3 to 5 years old.

Mr. Rosenfeld. Yes.

Chairman Norwood. I find that astounding. I don't know that we want to call that a roadblock, but something's not correct. And it wasn't on your watch. I just want to point out to you that that is simply not acceptable.

In addition, and I am going to get to my question in a minute, other roadblocks that seem to be put up in order to keep union members from having their rights. In 1994,and again not on your watch, the Office of General Counsel issued a memorandum instructing all regional directors to dismiss immediately Beck charges that they found unworthy, and not to issue complaints on worthy Beck charges but to submit them to the Division of Advice.

Now, there have been many pieces of questions sort of thrown out about this and the problems that occur with this. Then, in 1998, the general counsel issued another memorandum that sets up another roadblock to enforcement of Beck, the G.C. 9811. The general counsel instructed the employees of his office to “dismiss all Beck-type cases unless the worker explains why a particular expenditure is not chargeable and presents evidence of giving promising leads that would lead to evidence to support that assertion,” end quote. This directive was issued, even though at the complaint stage the worker usually does not have a breakdown of the union's expenditures that can provide this real evidence. Is that a roadblock?

In 2000, the general counsel issued another memorandum which included in the list of cases that must be submitted to the Division of Advice all Beck cases that involve the chargeability of organizing expenses, or the type and level of audit unions must give Beck objectors.

Here's my question. Not under your watch. Has the Board and the general counsel been undermining the rights of these workers in your opinion?

Mr. Rosenfeld. I mean, I cannot offer my opinion on that, sir. As much as I might have things to say, I cannot offer my opinion on that. I am now the prosecutor for the Board, and no matter what I say, it would be perhaps undermining my position.

I would suggest one thing to you, and you said a number of times, not on my watch, which is true. On my watch, as an example of what we do, I am holding in abeyance determinations on some Beck matters. As an example, the Board law is that organizing expenses are chargeable. And based upon that, if I get a charge from an individual saying the union is charging me for organizing expenses, I could dismiss that case. Because of what is going on in the Ninth Circuit, I am holding those in abeyance. And very often some of these cases, I am not defending what happened before necessarily, but some of these cases sit waiting for an ultimate decision out of the Supreme Court or a circuit court or whatever court they may be in, or even on remand from the circuit court back to the Board.

Chairman Norwood. Well, a lot of us that aren't lawyers have an opinion on this, and it seems like somebody is slowing down something when you say various policy decisions that are contrary to the various court cases are up to the Board, not to you.

My last question is, will you issue complaints on these issues so the Board can revisit the issues?

Mr. Rosenfeld. It would be difficult for me to answer that. First of all, I could answer that if I had a specific matter in front of me; but it would be difficult for me to answer that without a specific matter.

Chairman Norwood. Well, I am referring to all the court cases that I referred to earlier that were overturned by the courts.

Mr. Rosenfeld. Normally what we do, my guidelines are Board decisions and Board law. If there is a signal given, if there is a series of dissents by the Board or a series of court cases or some indication that the Board would like to revisit these matters, given a new Board, a different Board, then there may be ways in which to get a complaint on these charges so the Board can revisit it, because ultimately the Board and the courts have the final say on these matters.

Chairman Norwood. Is basically your guideline your mission to protect the workers or to make the Board happy?

Mr. Rosenfeld. My guideline is to enforce section 7 rights. But I do that by looking at Board law. And where Board law is clear, I am not going to go forward and issue a complaint.

Chairman Norwood. Do you agree Board law does not supersede the law of the Supreme Court?

Mr. Rosenfeld. I agree with that completely.

Chairman Norwood. Okay. That will give me an indication of where we have got to go.

Mr. Owens, you are recognized for 5 minutes.

Mr. Owens. Mr. Chairman, I ask unanimous consent that the full statement of our colleague, Hilda Solis, be entered into the record.

Chairman Norwood. So ordered. And all member's statements can be submitted for the record.

WRITTEN STATEMENT OF REPRESENTATIVE
HILDA L. SOLIS – SEE APPENDIX J

Mr. Owens. Mr. Chairman, I would like to also let the record show that my original opening statement complained about the fact that this is the sixth hearing held in this committee on the right of workers who refuse to join the union since the Republicans have been in control of the committee.

On the other hand, we have not held a single hearing on the thousands of workers who are unlawfully discharged for trying to form a union. I and the taxpayers and everybody else involved should ask the question: Are we using our resources in a way that deals with the concerns of workers? If we have more than 1,500 cases of workers who feel that they have been denied the right to form a union, or have complaints related to that, then surely we ought to have such a hearing.

I would like to respectfully request that the committee hold a hearing on this issue, workers who are unlawfully discharged for trying to form a union. We have a precedent set this afternoon, I think, on the stimulus package. The Minority requested a hearing where witnesses have a point of view related to the Minority point of view, and we have been granted that hearing. So I would like, in the spirit of our present leadership on the committee, to request that we have a hearing on the subject of workers who are unlawfully discharged for trying to form a union.

And I yield to the gentleman, if he would like to make a response to that.

Chairman Norwood. Denied. However, Mr. Owens if you want to ask that at another time, in another place, when we are meeting, I will turn to my Board and see if everybody wants to do that. But this is not the place to commit to that.

Mr. Owens. Well, I appreciate the fact that the Chairman is willing to give it some consideration. And we can use his influence in the process of trying to get the committee to respond to the Minority point of view.

Mr. Rosenfeld, without reference to Beck per se, why would a general counsel ask for regional directors to forward cases to Washington? In your view, is the intent typically to frustrate rights of workers?

Mr. Rosenfeld. No. It is to have some uniformity on matters of either national importance or difficult legal matters. It is not a roadblock.

Mr. Owens. Would you say that the NLRB has an overload and a lot of backlog of cases in general?

Mr. Rosenfeld. Any backlog, and we are now using the term "inventory"? But any backlog is too much, because again what we are dealing with here are individual rights. And every individual feels and has the right to have his rights vindicated or resolved as quickly as possible. The Board itself, I will say, has done a very good job in the past year in reducing its backlog. But, again, any backlog is too much of a backlog.

Mr. Owens. Would you please submit to the committee a record of types of cases that you have and what the numbers are?

Mr. Rosenfeld. You would like me to submit a record of cases pending at the Board?

Mr. Owens. Yes.

Mr. Rosenfeld. Okay.

Mr. Owens. Thank you, Mr. Chairman.

Chairman Norwood. Thank you, Mr. Owens. Ms. Biggert, you are recognized for 5 minutes.

Mrs. Biggert. Thank you, Mr. Chairman. I have a question for Mr. Boehm. You commented in a speech last year that the real issue in Beck is not money, but compelled political speech. Could you explain that statement a little bit? I think really that, at least what I think you are saying, is that this distinction is really important to understanding Beck rights.

Mr. Boehm. Yes, I think the overriding issue is compelled speech. Compelled speech is a first amendment right. Under the first amendment it essentially goes from and is best illustrated by the Thomas Jefferson quote. If you compel somebody to support a belief that they wholeheartedly disagree with, it is sinful and tyrannical.

Well, that view has been upheld in any number of Supreme Court cases. The Beck case itself wasn't decided and didn't need to be decided on the constitutional grounds, but it is certainly consistent with that first amendment right. And beyond that, there is a common-sense right that goes beyond legalisms or even constitutional law. And that is, workers are the ones who give the money to the union; if they don't have the right to know how the money is spent, if they don't have the right to disagree with political uses of that money, that is a fundamental right

above and beyond the legal argument.

Mrs. Biggert. Thank you. I have a question for Mr. Hunter. In your testimony you applaud President Bush's Executive order on nonexempt employers who are posting the notices. Could you suggest to us some idea that you would have to improve the notice and communication to eligible union employees? Not just the Federal employees, but also other employees so that they are aware of the Beck rights?

Mr. Hunter. Yes. Well, again, the National Labor Relations board could, by decision, improve the quality and the effectiveness of notification to employees. In other words, that would be the ideal way to handle that. One of the other things that I have recommended my Governor do in the State of Michigan, what other Governors have actually done, is issue Executive orders in their own States requiring that those State contractors doing business with the State government also post similar type employee notices in their workplaces as a condition of the contract.

In addition, Governor Wilson, a couple of years ago, and as far as I know, this Executive order has not been revoked by the current California Governor, ordered that, through Executive order, that workers be notified in their workplaces concerning comparable Beck rights for State and local public employees, including teachers, by the way, in the State of California.

So other things can be done to get this information into the hands of people who need to see it. And, again, being part of the private sector movement on this score, many of my fellow think thanks and organizations throughout the country are doing what they can do to get these notices or get this information in the hands of people who are_who need to see it.

Mrs. Biggert. Do you think that Congress should take action?

Mr. Hunter. Yes, I do. As a matter of fact, I do. I recognize that Congresses over many years now have considered taking action both in terms of concepts known as paycheck protection and better enforcement of Beck rights as a part of that. Campaign finance reform also contained a portion dealing with Beck rights. So, yes, I think Congress needs to ultimately act here to settle all these unresolved questions and the squabbling that is going on in the agency as well as the roadblocks that I think do exist in some areas.

Mrs. Biggert. Would such action be codifying the Beck decision or_.

Mr. Hunter. It could. It could be codifying Beck. It could go farther. In my view, it needs to go farther than just codifying Beck, to include the notion of paycheck protection, which would allow each individual worker at the start of a year to decide in writing whether or not they wanted that portion of their dues money used for non-workplace-related activities to be in essence spent by the union for that year.

So I think that kind of notification to workers in advance, so that they don't have to fight to get their money back after the union has taken it, perhaps unlawfully, would be a very positive thing to do to protect employees.

Mrs. Biggert. Thank you. Would you agree with that Mr. Young?

Mr. Young. I would to a certain extent. Ideally, of course, the goal would be to remove the coercion in the National Labor Relations Act by passing a national right to work act, and then employees would have a free choice as to whether or not to support the monopoly bargaining representative. I realize the AFL-CIO might oppose that, but obviously they could avoid the burden, so called, of free riders by surrendering the monopoly bargaining privilege that they jealously protect. Short of that, obviously, it would be good for the Board, through decisional law, or for the Congress, through legislative action, to unbury, to dig up notices on individual rights that are buried in union political magazines and other magazines.

It would be appropriate to look at the requirements under the LM-2s to require functional reporting which was under the Executive order issued by the first President Bush in 1992. It would be appropriate to require that nonmembers not have to even object, since they have already indicated they don't support the union and shouldn't be required to support it beyond the activities they can lawfully be forced to.

There are many actions that could be taken short of a National Labor Relations Act. But I must associate myself with Justice Black's comments that, as it ends up, the individual employee's rights are subject to massively expensive enforcement actions, and the average employee simply does not have the resources that labor unions marshal in these cases, in every one of these cases, against an individual simply trying to avoid paying for the propagation of ideas that he disbelieves.

Mrs. Biggert. Thank you. Thank you, Mr. Chairman.

Chairman Norwood. Thank you, Ms. Biggert.

I will go back to myself for a minute. Mr. Rosenfeld, I know you don't believe I have any questions for anybody else, but I really do. But I need to get through a couple of things for you. I truly appreciate your testimony and your coming here. I realize you are in an awkward situation in that you have just taken over, but I want to make sure that your testimony reflects an understanding of the obstacles that workers have been getting in your office now to uphold their rights. And I am not sure I am convinced of that yet, which leads me to being rather specific.

Now, you heard Mr. Simpson's testimony. His complaint challenges his union's 1.3 percent calculation was summarily dismissed by a regional director, based on an un-audited 1-1/2 page list of expenditures that were largely unexplained. Now, that didn't happen on your watch, but it did happen in your agency. I don't expect you to decide what you are going to do about a case like that right here and now. However, you and I know, and I believe everybody in this room knows, that 1.3 percent basically is a phony figure; is just not real. In Beck, the Court found that Mr. Beck was entitled to a 79 percent rebate. Maybe that is wrong, too. Maybe it was only 50. But I guarantee you it wasn't 1.3.

Please tell me how the NLRB regional director, who is a senior person now under your authority, and I assume remotely aware of the law, can summarily dismiss a case challenging this

calculation. How can that happen?

Mr. Rosenfeld. You may not want to hear this answer, but I can't discuss that because that matter is on appeal before me.

Chairman Norwood. Well, that is not an answer. That is what I want to hear.

Mr. Rosenfeld. I just can't discuss it. It is going to be up before me. In fact, both matters are on appeal before the general counsel.

Chairman Norwood. Well, one of the good things about this is you are getting all my questions from a year from now, because I am going to ask them again. I want to know how that kind of thing can happen, and I want to be sure that you put a stop to that kind of nonsense.

I am not an attorney, I am just a dentist, but I do know something about professional standards. And I can tell you that the Pittsburgh regional director is either grossly negligent in the performance of his duties or he is extremely biased. In either case, I want you to know that I sort of just want to hear from you that you are going to make that kind of outrageous behavior come to an end.

Mr. Rosenfeld. I will guarantee that I will take my oath of office very seriously and we will investigate these matters very seriously.

Chairman Norwood. I believe that and I am going to be right there with you asking about it every day. I think we have all probably had enough. I have got four or five other questions for you, and I am sure you will be happy to answer them. I really have some questions for Mr. Butcher, too. And I have got a number of questions, and, ladies and gentlemen, if you will answer those for me, please, as the committee sends them to you, I would be very grateful.

Chairman Norwood. I am really interested in your comment that you made earlier when you said you had no choice. And I think that is what disturbs me so. As an American citizen, if you had a choice, that puts a whole different cover on this. And I want to say to my friend, Mr. Owens, it isn't necessarily just a Minority view that the rights of workers should be protected in all areas. I want you to understand that. I am very interested in that. But this hearing, this subject is focused on one thing: that you shouldn't compel a man to furnish contributions of money for the propagation of opinions which he disbelieves. I believe that in the bottom of my soul. Thomas Jefferson had it exactly right. It is sinful and it is tyrannical. And that is what this subject is, and that is what this hearing is, and until we get this solved it is very hard to go to the next subject. We have had seven hearings. We are going to have 70 more until we get this one issue solved.

I appreciate the fact that many of you there can help in the end resolve this problem, because it is tyrannical. It is absolutely wrong. You know it is going on. There is not one of you there that doesn't know it, and I know it is going on. Now, we are going to solve this issue if

it is the last thing I do on this Earth.

I just got a new district, Major Owens, and I can be here another 10 years for sure. And if it takes 10 years, we are going to follow the doctrine of Thomas Jefferson, and we are going to work on some of those other rights that I think you and I both are very interested in.

And I will yield to Mr. Owens.

Mr. Owens. In the meantime, Mr. Chairman, I hope we all pay our taxes. Even though there is probably no one here who at sometime or another doesn't disagree with the government and what it is doing with our taxes, pay your taxes.

Chairman Norwood. Well, I will close the hearing with one last observation. I personally find it outrageous, then, that when workers try to exercise their God-given and constitutional rights to try to stop the misuse of their money for partisan political purposes, that they are blocked from doing so. Blocked not just by the unions, though I guess in some ways I can understand that a little better, but by the National Labor Relations Board itself, which I have absolutely no tolerance or understanding for.

It seems to me that the best way to describe the support the National Labor Relations Board gives to workers attempting to uphold their constitutional rights is that it is sort of like the support a rope gives to a hanging man. Now, this has got to stop. And if I have any influence in this area, if I have anything to say about this in the next 10 years, this is going to stop, and I can say to Thomas Jefferson, you were right and we changed this government to reflect your views on that.

I thank all of you for being here. You have been very gracious, and I hope that some of you will be back when we continue to explore this, because until we solve it, it is not going away. Thank you all. Meeting adjourned.

Whereupon, at 12:12 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

Opening Statement of
Congressman Charlie Norwood (GA-10)
Chairman, Subcommittee on Workforce Protections
House Education and the Workforce Committee
Wednesday, November 14, 2001

"Beck Rights 2001: Are Worker Rights Being Enforced?"

Once again, good morning and welcome to all -- especially our fine panel of witnesses who have volunteered their time to help us understand what this Subcommittee found, in a previous hearing on *Beck* rights, to be a very serious problem.

Last May this Subcommittee heard from four individuals who provided testimonial evidence concerning their attempts, and failures, to exercise their most fundamental legal rights.

The individuals I refer to were not lawyers, or paid union organizers, but rank and file workers – concerned only with making a living.

The stories we heard were deeply moving from a personal standpoint.

From a legal standpoint, however, what the Subcommittee heard from these workers strongly suggests a systemic problem that, to date, has largely been ignored.

The testimony we received was compelling because it came from men and women who, as I said, were interested in just making a living. The last thing they wanted in their lives was trouble.

These individuals, however, refused to abandon their rights, and instead, stood-up and battled for what they were legally entitled to.

Testifying under oath, this Subcommittee learned from these men and women that in their attempts to exercise their rights, a seemingly endless sequence of obstacles were encountered –

Much like a steeplechase, once one hurdle was overcome, another then another seemed to appear.

The Subcommittee learned that the process was so grueling, that many individuals choose to abandon their sacred rights rather than endure what appeared to be an endless fight.

The hurdles they faced ranged from refusals to provide basic information needed to exercise these rights,

to incidents of personal and social intimidation...

to a range of procedural delays and legal run-arounds.

What we heard from these individual workers led some of us on the Subcommittee to suspect that the hurdles had been intentionally placed before these people –

And were calculated to deprive workers of their rights.

Unmistakably, the testimonial evidence received by this Subcommittee last May suggests a problem – because if just one individual is being intentionally deprived of his or her rights – that is too many!

How can this Subcommittee make judgments of this type based on evidence gathered from one hearing?

The answer is – we are not –

In fact, what we heard last May was totally consistent with evidence of disregard that has been taken by the Committee on Education and Workforce during the 104th, 105th and 106th Congress.

In sum, the House Education and Workforce Committee has conducted seven hearings during which similar, or even more egregious evidence was presented by individual workers.

In total, I am now personally convinced that the problems we have heard about from rank and file are not isolated instances of a legal

breakdown,

But, rather a systemic problem that will be repeated over and over again if not fixed.

That brings me to our purpose today --

Today, we want to explore what the federal government has been doing to help these workers.

Has the government been placing obstacles in the way of workers who are trying to exercise their *Beck* rights?

Or, has the government been vigorous in making sure that the Beck rights of workers are indeed honored?

These are the questions that we will explore at this hearing.

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APPENDIX B- WRITTEN STATEMENT OF REPRESENTATIVE DENNIS KUCINICH, SUBCOMMITTTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Opening Statement
Rep. Dennis Kucinich
November 14, 2001 Subcommittee on Workforce Protections Hearing:
"*Beck* Rights 2001: Are Workers Rights Being Adequately Enforced?"

Thank you, Mr. Chairman, and let me welcome all of our witnesses.

Mr. Chairman, the right of workers to organize themselves into a union and bargain collectively are fundamental rights protected by various international conventions. Among them is the Universal Declaration of Human Rights, one of the first major achievements of the United Nations. Article 23 of the UDHR states that "everyone has the right to form and to join trade unions for the protection of his interests."

United States law also codifies these basic labor rights. The National Labor Relations Act, signed in 1935, guarantees employees the right to organize and chose their bargaining representative. The Act also protects employees from retaliation by their employer for exercising their rights under the NLRA. Section 8 of the Act makes it an Unfair Labor Practice for an employer to "interfere with, restrain, or coerce employees" in the exercise of their rights to organize and bargain collectively. Specifically, employers are barred from discharging or otherwise discriminating against an employee because he or she has engaged in union activity or has filed charges or given testimony under the NLRA.

Unfortunately, Mr. Chairman, there remains in this country a large gap between theory, in which these basic rights are protected, and practice, in which these rights scarcely exist. According to Human Rights Watch, "workers' freedom of association is under sustained attack in the United States, and the government is

often failing its responsibility under international human rights standards to deter such attacks and protect workers' rights." It is widely recognized that: 1) certain employers will utilize any means, legal or otherwise, to prevent their workers from forming a union; and 2) in current form American labor law provides little recourse to those whose rights are violated, and imposes little penalty on those who choose to ignore the law.

By contrast, Mr. Chairman, the rights being discussed before this committee today, the rights *not* to join a union and *not* to pay fees to a union for activities unrelated to collective bargaining, are extremely well-protected. By order of the President, every employer doing business with the federal government must post notice of these rights, though no employer is required to announce a worker's right to organize. Whereas an unfair labor practice complaint can only be taken up with the aid of the NLRB General counsel, and a decision may not be handed down for years, a worker paying agency fees to a union for collective bargaining purposes may sue the union directly for failure to provide fair representation.

So it continues to baffle me why the issue of *Beck* rights holds such fascination for this committee. Why aren't we holding hearings on the illegal and virulently anti-union activity of major corporations like WalMart and Marriott and countless others? Why aren't we holding hearings on the lack of adequate penalties for labor law violators? Why aren't we holding hearings on the NLRB's inability to protect workers' basic right to organize?

Instead of these issues, today we will explore ways to make it even easier for employees to avoid paying fees to a union for the vital work it is required to perform on behalf of those very workers. Today we will consider the notion that

organizing costs are an expense unrelated to collective bargaining – even though it defies all logic how workers in an unorganized industry can possibly collectively bargain successfully.

What I'm forced to conclude, Mr. Chairman, is that these ideas are simply thinly veiled attempts at fighting unionization in this country. In economics, a "free rider" is an individual entity that, by virtue of its inextricable link to the group, receives the benefits of what the group accomplishes without sharing in the cost of that accomplishment. Here, we have an instance of business-friendly groups creating free riders of workers – helping them to receive the benefits of unionization without paying for them – *solely in order to undermine the work of unions in this country*. As if emasculating this country's labor laws weren't enough.

And who loses in the end? All American working people lose. History has long since demonstrated that where labor laws are enforced and unions are strong, all workers get paid more, receive improved benefits, and live better lives.

Mr. Chairman, it seems to me that *this* is what our subcommittee should be working tirelessly towards – not the parochial interests of certain groups looking to make greater profits on the backs of workers.

Thank you.

APPENDIX C- WRITTEN STATEMENT OF MICHAEL BUTCHER, SEATTLE, WASHINGTON

STATEMENT OF MICHAEL BUTCHER

Honorable Members of the House of Representatives:

My name is Michael Butcher. I appreciate the opportunity to share with the Members of this Committee my experiences as a professional employee that have recently required me to start paying an agency fee to a union as a condition of my employment.

I am an engineer with The Boeing Company in Seattle, Washington, where I have been continuously employed since shortly after receiving a Bachelors of Science in Aeronautical and Astronautical Engineering from Purdue University in 1986. Presently, I am a Lead Engineer responsible for structural analysis of the engine installations on the Boeing 777. I've been on the 777 program since its inception in 1988, and during the past 13-years I have been fortunate to have had the opportunity to be involved in all phases of the program, including product development, design, testing, certification, and in-service fleet support.

In August of 2000, Boeing made an agreement with the Society of Professional Engineering Employees in Aerospace (SPEEA) - requiring for the first time in the 85-year history of the Company - that its professional employees pay dues or an agency fee to a union as a condition of employment. The agency fee agreement, which was secured by SPEEA as part of the settlement of a strike that occurred earlier in the year, affects approximately 19,000 engineering and technical employees that work in two separate Puget Sound based SPEEA bargaining units. More importantly, the agreement imposed agency fees upon approximately 6,700 Boeing employees who were not dues paying members at the time of the agreement.

Four months after SPEEA signed the agency fee agreement with my employer I became the primary charging party in a complaint, filed with the National Labor Relations Board (NLRB), against SPEEA for failing to provide the information and procedural protections required under *CWA v. Beck* and its progeny. The purpose of this statement is to describe the SPEEA actions that lead me and dozens of my colleagues

to pursue federal charges against the union, and to describe the union's response to those charges. Additionally, I will discuss the NLRB's handling of our case, as well as the current status of our charges.

Before I begin a discussion of my legal complaints against SPEEA, I think that it is important to briefly discuss my reasons for objecting to union membership. Like many engineers at Boeing, I was recruited from outside the State of Washington, and I did not learn that the engineering community had a union until my first day on the job. It was never part of my professional expectations to be part of a union; therefore, I quickly declined the opportunity to join SPEEA. Nothing has happened during my career to change my initial impression concerning the "benefits" of union membership. In fact, it's been my experience that the Union has only been a detriment to my career, and that the services they provide are of no value to me. Furthermore, I find the nonrepresentational activities of the union and its AFL-CIO affiliates to be inconsistent with my beliefs and values; therefore, I have no interest in funding those activities.

I first learned about the rights and protections established by The Supreme Court for union nonmembers several months before my employer made the agreement with SPEEA that required me to chose some form of union membership if I wanted to remain employed at Boeing. During the SPEEA strike, I stumbled across the web site for the National Right to Work Legal Defense Foundation while conducting a web search for strike related information. This was a fortunate discovery because it was becoming clear to me as the strike progressed that agency fee was becoming a very high priority for SPEEA leadership. I book marked the web site for future reference. The link to the Foundation was a valuable resource when I started observing problems with the way in which SPEEA was implementing its agency fee agreement.

The facts supporting our charges against SPEEA are fairly straightforward, as I will now discuss.

During the implementation phase of the agency agreement, SPEEA distributed a series of notices that clearly explained "the right, by law, to belong to the Union and to participate in its affairs ..." However, several of these notices were also very misleading with respect to explaining the rights of those who wished to remain nonmembers. A

summary of these notices is as follows:

> On two separate occasions, SPEEA distributed informational bulletins that unlawfully indicated that *Beck* objections were subject to approval by the Union (Attachments 1.1 & 1.2). It should also be noted that the second of these two notices was published after I had personally notified a member of the Union's Executive Staff that the original notice was not right.
>
> The Union mailed a letter (Attachment 2) to thousands of nonmember's homes that unlawfully established an objection procedure that required *Beck* objectors to "state your reasons for objection" (Attachments 2.2 & 2.3). In addition, I was personally informed by a SPEEA staff member that I needed to state my reasons for objection when I called the Union office to inquire about who I should address an objection letter to.
>
> The Union unlawfully notified bargaining unit employees that "...nonmembership constitutes a full waiver of the rights and benefits of SPEEA membership", which according to the union's notice included staff assistance with contract questions, job classification appeals, Clearance issues, training programs, transfers and other items covered by the collective bargaining agreement (Attachment 2.4).

SPEEA further discourages nonmembership and violates the rights of objecting nonmembers by refusing to allow *Beck* fees to be paid by payroll deduction, although that option is available to full dues paying members.

Finally, the breakdown of expenses that SPEEA originally provided to *Beck* Objectors in November 2000 was not verified by an independent audit, as required by law. I learned that the Union's original breakdown was not verified by an audit when I spoke to the accountant that the Union claimed had calculated the fee. He informed me that he would

not verify the Union's expenses because he had not done an audit.

The original breakdown that was prepared by SPEEA was incomplete and inaccurate. In addition, SPEEA's breakdown charged 100% for a number of activities that were either non-chargeable, such as legislative and public affairs activities, or were so vague in their description that a potential challenger could not tell what the expense was for.

The issues that I have just discussed form the basis for the first of two charges that we have filed against SPEEA within the past year. Shortly after I met with and presented these facts to the NLRB, the investigating Board agent informed us that SPEEA had notified him that they were going to "fix" the problems identified in our charge. I will now discuss those "fixes."

SPEEA's first action to address our charges was to send a notice to the Company email accounts of all bargaining unit members explaining that it had "... come to their attention that there may be some confusion among bargaining unit members regarding the newly-negotiated Agency Fee clause and your right to object to paying for expenditures not related to collective bargaining under *Beck*..." Without admitting responsibility for the "confusion", the note further explained that it was not necessary for *Beck* objectors to "... state the reasons for their objection nor is there an approval process."

Next, the union distributed a second email note to bargaining unit members explaining that any letter they may have received from the Union indicating that nonmembers would not be eligible to receive basic services from the Union was in error.

In March 2001, SPEEA issued a revised breakdown of expenses to all *Beck* objectors. SPEEA's explanation for the new breakdown was that the *Beck* fee was being revised consistent with the Union's procedures for challenging the fee. Compared to the original breakdown, SPEEA did change some items from chargeable to nonchargeable; however, the revised breakdown actually increased the *Beck* fee slightly because SPEEA added a new expense that offset the reductions we had forced them to accept. Additionally, the revised breakdown was still not verified by an independent audit. This was a fact I confirmed by again speaking with the accountant that the Union claimed had calculated the fee.

In June 2001, we filed a second charge against SPEEA. The basis for this charge was the fact that the revised breakdown of expenses from SPEEA was not verified by an independent audit. In addition, we identified several more problems with the revised breakdown related to items the Union was claiming to be chargeable. These problems included such things as proper allocation of overhead expenses, the fact that SPEEA is subsidizing a non-chargeable affiliate, and the fact that the fee was based on lower per capita dues rates as they existed prior to the agency fee agreement.

A few weeks after the second charge was filed, SPEEA finally provided *Beck* objectors with a completely new breakdown of expenses that was in fact verified by an independent audit. For the first time, there was an attached statement from an accounting firm verifying the expenses.

Although the new breakdown covered a period of seven additional months compared to the original breakdown, it was apparent from a careful comparison of the two breakdowns how incomplete and inaccurate the original breakdown was. The audited breakdown has over $400,000 of new line item expenses that were not reported in the original breakdown, most of which should have been. Many expense items changed significantly, and others decreased or disappeared. As we had claimed in our second charge, the audited breakdown clearly revealed that per capita dues to SPEEA's affiliates had increased dramatically from what was reported in the original breakdown.

At this point, the Committee now knows more about our charges against SPEEA than the NLRB does. In August 2001, the Acting Regional Director notified us that further proceedings were not warranted at this time. The summary report acknowledged that "the union made several mistakes when it first attempted to establish the Beck rules", but according to the Director the union corrected them. With respect to ongoing violations, the Director simply stated we have not shown sufficient evidence to merit further proceedings. This is an interesting conclusion given the fact the Board never gave us to the opportunity to present our evidence supporting the second charge.

It may be true that SPEEA has now come much closer to satisfying the Union's *Beck* obligations, but it took two sets of unfair labor practice charges and seven months to get them there. Furthermore, the Regional Director's conclusion that SPEEA's actions constitute "mistakes" is not

supported by the fact that the Union's so-called "mistakes" were widespread and repetitive.

At a minimum, the Union must acknowledge responsibility for their "mistakes" to the membership. Additionally, the Union must agree to discontinue the discriminatory practice of not allowing *Beck* fees to be paid by payroll deduction. These are the main outstanding issues that are currently on appeal with the NLRB General Counsel.

I would like to conclude this Statement by sharing a few of my own thoughts on the issues the Committee should consider addressing. In *Beck*, The Supreme Court determined in part that there were Constitutional problems with The National Labor Relations Act, primarily related to First Amendment free speech rights. The Court then found it necessary to establish a set of procedural protections designed to protect the rights of union nonmembers. These protections may work well in theory, but the reality is they don't work very well at all. I think that my experiences show that The Court's protections have failed to overcome the financial incentives that many unions have to encourage full membership by discouraging Objectors in any way they think they can get away with. This problem is only exacerbated by the NLRB's apparent lack of enthusiasm for enforcing the law, as defined by The Court. Given these issues, I submit to this Committee that it is now time for Congress to accept responsibility for fixing the Constitutional problems inherent in The National Labor Relations Act.

APPENDIX D- WRITTEN STATEMENT OF MARK SIMPSON, NEW WILMINGTON, PA

STATEMENT OF MARK SIMPSON
EMPLOYEE
SHENANGO PRESBYTERIAN SENIORCARE
ON
Experience in Attempting to Exercise Rights under *Communications Workers v. Beck* and Related Cases

House Committee on Education and the Workforce
Subcommittee on Workforce Protections
Wednesday, 14 November 2001

Chairman Norwood and members of the Committee:

Thank you for the opportunity to tell my story today. When I finish, I think you will understand the plight of American union workers across the country maybe just a little more than before you saw me today.

I'm a very simple man. I am not outspoken, nor am I one to tell tales out of school or to embellish.

I go to work everyday at my job in Shenango Presbyterian Seniorcare. It is a nursing home in New Wilmington, Pennsylvania. Working there are about 60 other men and women. Our exclusive bargaining agent is the International Brotherhood of Teamsters, Local 250.

I consider myself a typical American. I work hard for my money, and when I have to spend it, especially when I am forced to spend it, I believe it is my right to know what it is being used for. It is particularly important to me that it not be used for purposes with which I thoroughly disagree.

Now, the last thing I wanted to do was cause any problems at my job.

But when the Teamsters union, Local 250, treated me the way they did, I felt obligated to act. And now, I feel obligated to speak to you about it, so that, hopefully, you'll be able to take some steps to fix this problem.

You see, I used to be a union loyalist. I began working at this job in 1994. I joined the Teamsters, of course, not knowing there was a choice, and loyally paid my dues for over six years. In fact, I was a union shop steward.

But it was this inside view of the union operation that drew my first concerns about the union's spending, and exactly where my hard-earned money was going.

After I looked, I discovered that the Teamsters union, and others across the country, were using my dues and those of many like-minded workers, to win elections for candidates and promote causes I completely disagreed with. With MY money!

I knew this was wrong, and I couldn't believe that our laws would allow this to take place, so I decided to check for myself.

I remembered hearing once about the National Right to Work Legal Defense Foundation, from whom you have already heard today.

I had a vague recollection that they had something to do with protecting union workers' rights, so I decided that would be a good place to start.

Not owning a computer, I went to the library to research the Foundation and what my rights were in my situation.

I discovered the landmark Supreme Court's Beck decision, won by the Foundation's attorneys in 1988.

As I understood it, the Beck decision means that unions can only force workers, who object, to pay only certain costs directly related to their role as an exclusive bargaining agent. That means all of that money they spend on candidates I don't like or causes I disagree with is due back to me.

I was thrilled. The highest court in the land had agreed that it was just plain wrong for my union to force me to have my dues go to causes and candidates I disagreed with. In fact, as I now know, the Court even looked at the finances involved with the unions and their audit showed that only 21% of union dues were being used for collective bargaining costs. Therefore, up to nearly 80% of my money should have been refunded to me by resigning my membership and asserting my Beck rights.

This right was an individual right I was not aware of, probably because my union never bothered to tell me. It was one of those moments when you find your way out after being lost in the dark. The unions cannot use my money for political purposes if I object, at least that's what is supposed to happen, ideally.

I gave my notice to my union in June 2000, assuming that they would promptly comply with my wishes and would act to remove me from their membership.

Was I in for a surprise.

By October, I still had not heard a single word from the union.

That is when I filed an unfair labor practice charge with the NLRB, hoping to force my local to act on my letter and release me from my forced union dues.

This was the beginning of why I'm here today.

It wasn't until January of this year – six months after I first contacted my union and attempted to exercise my Beck rights – that I finally, belatedly heard from my union.

Their answer was insulting to me, my fellow workers, and to the intent of the Supreme Court's Beck decision. After my many years of paying dues to them, you would think they would owe me a complete and thorough explanation of my dues and justification for the collective bargaining costs they intended to continue forcing me to pay.

But when I looked at the list of expenditures, I was shocked to say the least.

Their response said that only 1.3% of their spending was eligible to be rebated. The other 98.7% were bargaining expenses, chargeable to me as agency shop fees even after my exercising my Beck rights. And if I didn't pay them, I was fired.

1.3%? So they took off 19 cents off my dues. This ladies and gentlemen, is an insult, and I'm sure that if it were you in this position, you would not stand for this either.

Do any of you sitting here today believe that a typical Teamsters local spends 98.7% of my dues on bargaining? I have read reports that the unions as a whole spent nearly one billion dollars on politics alone in the last election cycle. Where did this money come from? From me and other workers. Yet, they claim with a straight face that they are obligated to only send back 19 cents of my dues each month. I could hardly believe it.

I should also note that when the union finally answered my letter – after six months and an unfair labor charge against them – they also resorted to their usual strong arm tactics. They threatened my job.

So first, they insist that their agency fee was 98.7% of the full dues. Then, they threaten to have me fired if I don't comply with their unsubstantiated claims for payment. Not once, but THREE times they threatened my job – all this in a four-paragraph letter. Of course, in between the threats, they could not find the time to explain how they came up with their clearly bogus agency fee percentage.

Since 79 percent of dues were refundable in the Beck case, it should follow that I would have a simple legal remedy to require my union to do the right thing and refund more of my money. Unfortunately, that is not the case.

I have found that the burden is on me to prove the union is using my money for things I disagree with, and not the other way around. And I have also found that that burden is nearly insurmountable because of an NLRB that does not seem capable of enforcing the Beck decision as it was intended.

I am here today for several reasons. First, I believe action by Congress is needed now to make sure workers like me are allowed to exercise the rights we have already won, like the rights I have talked about from the Beck case.

I believe your action is needed at a minimum to force the unions to comply and to shift the burden of proof from the workers to the union bosses. The lack of accounting on the part of the union is wrong, as were their direct threats to my employment. I thought when I joined a union that their job was to represent me and to protect my job, not to throw my money at politicians, trample my rights and threaten my job.

I also believe that your action is necessary for another reason. I don't think the folks who are supposed to enforce labor law – the National Labor Relations Board – are the unbiased people they'd like you to think they are. If they were, how could there be so many vivid examples of good strong cases like mine that were simply dismissed out of hand by the NLRB? And that is to say nothing of some other cases I have heard about that the NLRB simply ignored for up to eight or nine years. Obviously, this is not how the Supreme Court expected their decision to be enforced, and it would be a great shame to our country and its working men and women if Congress does not act to remedy the situation.

Once again, I want to make clear my beliefs.

The agenda and political involvement of my union is completely contrary to what I believe. Because of that, I don't believe that my hard-earned money should be taken away from me by force and given to the union bosses. Funding political campaigns and causes should be a voluntary activity, free from compulsion or even pressure to give. It should stay separate from my continued employment.

Ladies and Gentlemen, I'm being frank with you. I'm here to make a difference, to show you, from someone affected by this disgraceful act of extortion, that things need to be changed.

My objections to union membership and forced dues are not entirely because of the union's politics, however. Allow me a minute to explain before I go.

In my experience as a longtime member of this union, I have seen the difference the union has made, and take my word for it, it is NOT for the better.

I believe this is because of forced unionism. Forcing workers into a union allows union bosses to take control, and this creates a hate-the-boss mentality, pitting the workers against management. In my case, it even managed to pit the workers against their own union! I believe this union is completely unnecessary at this nursing home. They provide no service that is deserving of the dues they charge. This is the second reason I looked into their spending.

If I don't want their representation, why should I have to accept it? And worse yet,

why should I have to pay even one dime for it?

At my job, there are no problems with management, no services rendered by my union for my dues, so I wanted to know where my money was going. Unfortunately, the union doesn't think I need to know. "Just shut up and pay," is the impression I've received from them. Why is that? Don't I have rights? Why am I being subjected to such ill treatment when I simply wanted to know where my money is being spent?

Ladies and Gentlemen, I stand before you today to ask why. Why are American workers subjected to this kind of treatment? Is it not Congress that always has said we are the backbone of this country? If you believe that, I strongly urge you to act to enforce the Supreme Court's Beck decision to make it easy for objecting workers to have their rights protected. I also urge you to think about what the real underlying problem is, in my opinion. That is that the unions, threatening my job, can force me to pay any dues at all. Simply allowing people to be free from forced unionism entirely would be a simple and direct solution to the problem of how to enforce Beck. I know, for example, that there is a National Right to Work Act in Congress right now that would do just that – make all union membership and dues-paying voluntary. Period. Seems pretty simple, and very right, to me.

Distinguished members, I ask you to do what's right. I am one man before you today, one of millions of men and women who face this situation every single day. I ask you to acknowledge that the problem exists and there needs to be a change.

Thank you for your time today, and I hope you can help this situation we working Americans face. Thank you.

APPENDIX E- WRITTEN STATEMENT OF JAMES B. COPPESS, ASSOCIATE GENERAL COUNSEL, AFL-CIO, WASHINGTON, D.C

TESTIMONY OF JAMES B. COPPESS
ON BEHALF OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
BEFORE
THE HOUSE COMMITTEE ON EDUCATION AND THE WORKFORCE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS

My name is James Coppess, and I am here today as a representative of the AFL-CIO. I have advised various unions, in particular the Communications Workers of America, on how to comply with the Supreme Court's decision in *Communications Workers v. Beck,* 487 U.S. 735 (1988). And, I have represented the CWA and other unions in a number of cases before the National Labor Relations Board concerning compliance with that decision. On behalf of myself and the AFL-CIO, I would like to thank you for this opportunity to discuss the NLRB's enforcement of the *Beck* decision.

The NLRB's enforcement of the *Beck* decision is guided by two the basic documents. The first is a comprehensive memo issued by the NLRB General Counsel in 1988, shortly after *Beck* was decided. The second is a comprehensive fifty page decision issued by the Board in 1995. *California Saw & Knife Works*, 320 NLRB No. 11 (1995).

The CWA *Beck* procedure complies with the NLRB General Counsel guidelines issued in 1988, as well as with the comprehensive NLRB decision issued in 1995. A brief review of the procedures adopted by this one union in compliance with the NLRB's rules will concretely demonstrate that the Board has been vigorously enforcing the *Beck* decision.

Before describing CWA's procedures, I should note that, as is true of businesses, labor unions vary in size, structure, and circumstance. CWA has adopted a method of handling objections that works for this particular organization and the workers it represents. But others unions may well find different ways of meeting their obligations.

CWA is a large industrial union representing more than half a million workers throughout the United States, primarily in the telecommunications industry. CWA has chartered more than one thousand locals to assist it in representing these workers.

In states where union security agreements are allowed, CWA collective bargaining agreements typically contain what is known as an "agency fee" clause. The contractually required agency fee is set in an amount equal to normal Union dues. As part of implementing its union security provision, CWA has instituted a Policy on Agency Fee Objections.

CWA sends each new employee a notice explaining his or her rights to be fairly represented, to join or refrain from joining the union, and to object to the payment of full agency fees. A copy of this notice is attached to this statement as Exhibit A. The Union also publishes a notice in March of each year advising employees of the right to file an agency fee objection and of the method for so doing. A copy of that notice is attached as Exhibit B. This notice is sent annually to the homes of all represented employees, both members and nonmembers. The members receive an additional copy of the notice as part of the booklet containing the CWA constitution.

This requirement that a private party personally notify employees of their rights under the National Labor Relations Act is extraordinary. To understand just how extraordinary, it might help to consider what it would mean for the Board to impose an analogous requirement on employers. Employees have the right to be accompanied by a union representative or, where there is no union, by a co-worker to any investigatory interview that might result in discipline by their employer. For the Board to impose a like notice requirement on employers, it would have to require employers to inform employees before they go into such an interview that they can refuse to take part in unless a representative is allowed to accompany them.

The period for filing objections is the month of May. CWA holds objections that come in after publication of the notice in March and treats them as filed in May. Late objections are accepted if the employee provides a reasonable excuse. One such excuse noted in the CWA notice is failure to receive the notice explaining when and how to object.

Each agency fee payer who files an objection under the CWA Policy receives an advance reduction payment from CWA representing the portion of his or her anticipated fee payments that it is projected would otherwise be used for purposes unrelated to collective bargaining in the coming July through fee year. The Unions use this method, with its attendant risks of underpayment by fee payers who leave the bargaining unit before the year is out, because it has found the alternative of adjusting each objector's monthly payments to be burdensome.

The advance reduction payment is based on the percentage of national union expenditures going for non-collective bargaining activities in the most recently completed fiscal year. Calculations by CWA Locals with objectors have shown the chargeable percentage for Locals to be approximately ten percent higher than the percentage for the national union. CWA uses the national figure, even though this results in a greater reduction in the objectors' payments, in order to facilitate processing the objections.

Along with the advance reduction payment, each objecting fee payer receives an explanation of the reduction's calculation. A copy of the material sent to objectors is attached to this statement as Exhibit C.

The explanation sent to objectors includes a detailed report by a firm of independent certified public accountants describing the allocation of national union expenditures between those that are related to collective bargaining and those that are not. Among the allocation techniques employed by the CWA national union is a time-recording system monitored by an outside organization that specializes in such studies. The explanation sent to objectors also includes a detailed list of examples showing the activities that are classified as related to collective bargaining ("chargeable") and those that are classified as unrelated to collective bargaining ("non-chargeable").

Again consideration of an analogous situation involving employers shows just how extraordinary this financial disclosure requirement is. Employers frequently counter employee efforts to organize with dire predictions about the competitive position of the company. If the NLRB imposed a disclosure requirement on employers of the sort it imposes on unions in enforcing *Beck*, the employers would have to back up these claims with detailed accounting reports.

The letter accompanying the advance reduction check further explains that an objecting fee payer is entitled to challenge the calculation of the advance reduction payment before a neutral arbitrator and that CWA will escrow a portion of any challenger's fee payments pending the arbitrator's decision.

Once again, transferring the requirement that the union provide a speedy, neutral resolution of any fee dispute to the employer context shows how extraordinary the requirement is. Frequently, employee efforts to organize are met with retaliatory discharges. An analogous requirement for employers would be to require that they provide a neutral arbitrator to rule on any employee claim that they have been discharged or disciplined because of their protected activity.

In sum, the Board has imposed a thorough-going set of procedural requirements on unions to ensure that employees may effectively exercise their rights under *Beck*. And, the General Counsel vigorously enforces those requirements. The question for this body then should be, not whether the NLRB is adequately enforcing *Beck*, but why it has not extended the same sort of potent enforcement rules to the other provisions of the National Labor Relations Act.

APPENDIX F- WRITTEN STATEMENT OF W. JAMES YOUNG, STAFF ATTORNEY, NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, SPRINGFIELD, VIRGINIA

STATEMENT OF W. JAMES YOUNG
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
Wednesday, 14 November 2001

Chairman Norwood and Members of the Committee:

Thank you for the opportunity to participate in these important hearings.

My name is William James Young. 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.*

I have worked as a Foundation staff attorney for twelve years today. 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. In addition to representing public sector employees in a wide variety of federal civil rights cases dealing with the abuses of compulsory unionism, I have spent a considerable portion of my professional life litigating cases under the National Labor Relations Act.

I commend you for investigating the NLRB's inadequate stewardship of this country's labor laws. The failure to implement 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. And when they seek to exercise the rights that they have won under the Supreme Court decisions — to stop the misuse of their money for partisan political and ideological activities and other nonrepresentational activities – they are often stymied by both unions and the National Labor Relations Board itself.

Let me make clear that I am not talking about contributions to candidates by union political action committees, which are so often referenced by union representatives trying to change the subject from forced union dues for politics. I am talking about

union dues and fees, collected from workers under threat of loss of job—a threat authorized by current federal labor law. 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. 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.

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 labor union agree, the law forces these employees to pay dues or fees 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 self-evident. As 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.'" 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*, 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 immediately recognized that the remedy was fatally flawed:

> 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.

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.

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 union 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 absolutely correct. Even with the assistance of an organization like the National Right to Work foundation, it is extraordinarily difficult 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.

Employees must overcome many hurdles before they can reach the point discussed by Justice Black — the actual challenge to unions' fee calculations.

A major 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." Despite this Supreme Court mandate, the NLRB has ruled that unions need not disclose **any** financial information to nonmembers until **after** they object.

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." 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. But there is no such thing as a self-butchering hog. 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 — but the Board **refuses** to require — provides at least some independent check on the union's discretion and self-interest in calculating its lawfully chargeable expenses.

When unions give employees financial disclosure, it often is sketchy, as it was in the case of Mr. Robert Penrod. **See** *Penrod v. NLRB*, 203 F.3d 41 (D.C.CIR. 2000). (A copy of the sketchy and unaudited "financial disclosure" given to Mr. Penrod — and approved as adequate by the NLRB — is attached hereto as Exhibit 1). Many unions also refuse to disclose any expenses of their affiliates that 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 at all. The NLRB has approved all these practices, too, oblivious to the obvious rejoinder that such a "burden" is a small price to pay for the unique privilege granted to labor unions to extract forced dues from unwilling employees.

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, and that it is sufficient if a union employee "verifies" the allocation. 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. The U.S. Court of Appeals for the D.C. Circuit held that all nonmembers at least "must be told the percentage of union dues that would be chargeable were they to become *Beck* objectors."

Indeed, 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. The United States Court of Appeals for the District of Columbia Circuit later held that this ruling "was not rational." 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 expenditure of the 25% of its budget that it transferred to its politically-active affiliates, and did not tell employees who had not yet objected the percentage of reduction they would receive if they made a *Beck* objection. The D.C. Circuit again reversed the Board, finding that "the Board's decision reflects a classic case of lack of reasoned decisionmaking."

Despite the clarity of the *Ferriso* and *Penrod* opinions, the recent past has shown that the General Counsel still refuses to issue complaints in cases identical to *Ferriso* and *Penrod*. There also is no guarantee that the 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.

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 own failure to enforce *Beck* vigorously, both in the way it processes cases and in its application (or non-application) of judicial precedent. This policy doubtlessly arises from what one federal circuit court of appeals has described as the Board's "pro-union bent," leading to "unconscionable result[s]" in cases in which the Board "reject[s] evidence that does not support the Board's preferred result" through a "warped interpretation of the facts."

Many *Beck* cases do not even make it to the full Board in Washington, 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 party 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. And while this makes for compelling statistical evidence of Board "efficiency," it is efficiency which evidences an almost complete disregard for individual employee rights.

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 complaints on worthy *Beck* charges, but to submit them to the Division of Advice. 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, a memorandum the General Counsel issued in 1998 set up yet another roadblock to NLRB enforcement of *Beck*. 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." 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." The Acting General Counsel's instruction is based on a clear misreading, if not a deliberate perversion, of *dicta* — non-binding legal commentary — 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." At the charge stage, an objecting employee has had no discovery, and has no right to take any under the NLRB's procedural rules.

SPECIFIC CASES: Having provided this general overview of some of the difficulties faced by individual employees challenging union misspending of their money, I will now highlight three specific NLRB cases, two very old but still pending, and one very recent. They are typical of the NLRB's treatment of *Beck* charges, and amply demonstrate the disappointments, frustrations, and obstructions which employees face when utilizing its processes to pursue and protect their *Beck* rights.

The first case — an old one — is the case of Sherry and David Pirlott of Green Bay, Wisconsin. The second case — also an old one — is the case of Robert Mohat, of Cincinnati, Ohio. The third — the recent one — is the case of Mark Simpson in

western Pennsylvania.

The Pirlott case. In 1989, Sherry and David Pirlott were employed by Schreiber Foods, Inc., in Green Bay, Wisconsin. (David is still an employee of Schreiber Foods; his wife, Sherry, is not). Schreiber Foods had a collective bargaining agreement with Teamsters Local 75 which covered the Pirlotts' employment. That agreement contained a union security clause with standard language that purported to require all employees to "become and remain union members in good standing." In September 1989, the Pirlotts resigned their memberships in Teamsters Local 75, and informed the union that they wished to pay only reduced "financial core" fees under *CWA v. Beck.* In response, the union sent them a single page of non-audited "financial disclosure," asserting that only 1.1% of total Teamsters union dues was non-chargeable, and 98.8 % was chargeable (the missing 0.1% was unexplained) (Exhibit 4).

On November 8, 1989, the Pirlotts filed an unfair labor practice charge against the Teamsters with the NLRB's Regional Office in Milwaukee (Exhibit 5). Among other things, they alleged that the union had failed to inform employees of their right to become or remain nonmembers and *Beck* objectors, that the union's "financial disclosure" was inadequate to properly inform them about the expenditures of Local 75 and its politically active affiliates, including the International Brotherhood of Teamsters, and that the union was illegally charging them for organizing activities and extra-unit activities outside of their bargaining unit (for example, money spent on public sector units like school crossing guards). The NLRB Regional Director issued a Complaint and Notice of Hearing on September 30, 1991.

A trial was held before Administrative Law Judge Joel Biblowitz on March 5, 1992. At the trial, evidence was introduced to show, among other things, that the union forced all employees to become formal union members, and never informed any of them about their right to refrain from union membership under *Beck* and *NLRB v. General Motors Corp.*, 373 U. S. 734 (1963).

ALJ Biblowitz issued his Decision and Order on September 4, 1992. He found that the union had provided the Pirlotts with inadequate financial information about its own expenditures and those of its affiliates, and that the union had unlawfully charged them for certain organizing and other expenditures outside of their bargaining unit. He upheld certain other union practices. The General Counsel and the Pirlotts filed timely Exceptions to that Decision and Order in October 1992; the Teamsters filed Cross-Exceptions. The last briefs on these Exceptions and Cross-Exceptions were filed that same month.

It was at this point that the NLRB's "big stall" began. **For more than six (6) years, the Board failed to rule on this case.** On June 3, 1998, my colleague, Glenn Taubman, complained to the Board about this delay, and threatened to file a *mandamus* petition to force a decision. He received a response from then-NLRB Chairman Gould dated June 4, 1998, in which Chairman Gould pointed the finger at

his colleagues, saying that a prompt decision was unlikely because "all Board members must give their consent" before a decision can be issued.

On or about June 3, 1999, the Pirlotts filed an action for *mandamus* against the NLRB. Only after the U.S. Court of Appeals for the District of Columbia issued an order requiring the Board to respond to the mandamus petition did the Board decide this case. On September 1, 1999, more than six years after the ALJ's decision, the Board issued its ruling, a 4-1 decision, largely in favor of the union. *Teamsters Local 75 (Schreiber Foods, Inc.)*, 329 NLRB No. 12 (1999).

By and large, that ruling continued the Board's practice of diminishing employees' *Beck* rights, and supinely bowing to whatever rationale the unions use to block employees' rights. For example, the NLRB held that the union's single page of "financial disclosure" (Exhibit 4) showing a 1.1% nonchargeability figure was adequate, even though the ALJ had held it to be inadequate and "implausible" on its face.

Thus, it took the Board over six years to issue a decision which did little but diminish and deprecate employees' *Beck* rights. But that was not even close to the end of the Pirlott's litigation odyssey.

Despite the fact that the case was already ten years old, the Board remanded it to the Administrative Law Judge, for the development of a record upon which the Board will someday hopefully be able to decide whether organizing and extra-unit expenditures are chargeable to objecting nonmembers. (It should be noted that the Supreme Court has already held in 1984 in *Ellis v. Brotherhood of Railway Clerks* that organizing expenses are not chargeable under the Railway Labor Act, but the Board refuses to treat that decision (and *Beck* itself) as binding precedent).

What happened next was even more unbelievable. Rather than promptly scheduling the case for a trial on remand as the Board had ordered, then-General Counsel Fred Feinstein tried to scuttle the entire case. Through the Milwaukee regional office, then-General Counsel Feinstein asked the ALJ to refuse to re-open the case, and to dismiss the remaining portions of the complaint — the very issues which the Board had remanded for further fact-finding (Exhibit 6). On April 24, 2000, the ALJ refused to do so, holding that it was his duty under the Board's remand order to re-open the case for further evidence (Exhibit 7). Not satisfied with this result, then-General Counsel Feinstein continued to stall. He filed a "Request for Special Permission to Appeal Directly to the Board the ALJ's Denial of the General Counsel's Motion to Close the record and Dismiss the Remaining portions of the Complaint" (Exhibit 8). On February 5, 2001, the NLRB unanimously rejected this request, and ordered the case to go forward as originally ordered (Exhibit 9).

Only last month was the remanded trial finally held in Milwaukee. Thus, even though the Board decided in September 1999 that a remand was necessary, bureaucratic infighting between the NLRB and its General Counsel caused an additional two-year delay.

And that is still not the end of the Pirlott's litigation odyssey. Now the Pirlotts must wait for another ALJ decision, another NLRB decision, and finally, probably, an appeal to a U.S. Court of Appeals and perhaps the U.S. Supreme Court. In all likelihood, this litigation by the Pirlotts, who filed a *Beck* unfair labor charge with the NLRB in 1989 to vindicate their rights with respect to a few hundred dollars that the Teamsters unions demand from their wages, will take **at least** 15 years, if not longer.

When clients like the Pirlotts and Bob Mohat ask me, in disbelief, if this is normal practice before the NLRB, I am constrained to tell them that the NLRB is one of the most bureaucratic, inefficient and institutionally pro-union organizations in our entire government.

The Robert Mohat case: The second typical NLRB case that I would like to highlight is also very old, arising in Cincinnati, Ohio.

Robert Mohat works in print shop, employed by Polymark Corporation in Cincinnati, Ohio. Mr. Mohat's bargaining unit is represented by the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers (IUE) and its Local 795. His litigation gauntlet has been only slightly less onerous than that of the Pirlotts.

In 1990, when Mr. Mohat's odyssey started, Polymark had a collective bargaining agreement with IUE Local 795 which covered Mr. Mohat's employment. The agreement contained a forced-unionism clause with the standard language purporting to require employees to become and remain union members in good standing. The collective bargaining agreement also contained a dues checkoff provision permitting Mr. Mohat to sign a wage assignment authorizing the deduction of union dues from his wages. He signed the dues checkoff authorization in 1986.

Although the unions had never notified Mr. Mohat of his *Beck* rights, Mr. Mohat learned of them independently, from a newspaper article. In September 1990, Mr. Mohat requested a refund of the dues used for non-bargaining purposes. Since he failed to use the "magic words" "I resign," the International's Secretary-Treasurer responded by saying that Mr. Mohat had perhaps ignored the notice of *Beck* rights buried in its internal union magazine, because he was a union member and it didn't apply to him. The Secretary-Treasurer never explained that Mr. Mohat must resign from the union "membership" required by the collective bargaining agreement in order to object and prevent forced subsidization of the union's political, ideological, and other non-bargaining activities.

Mr. Mohat then used the "magic words" in November 1990, resigning from membership, objecting to the use of his fees for political purposes, and revoking his dues checkoff authorization. While Local 795 refused to honor his resignation and told Mr. Mohat that he could not resign until its arbitrary "window period" in April 1991, Polymark refused to honor his dues checkoff revocation, and continued to

deduct full union dues from his wages. In December 1990, Mr. Mohat filed unfair labor practice charges against both with the NLRB's Regional Office in Cincinnati (Exhibits 10 and 11). Among other things, these charges alleged that the forced-unionism clause was illegal on its face, that the continued deduction of full union dues was unlawful, and that IUE and its Local 795 had failed to comply with *Beck*'s requirements for notice and financial disclosure. The NLRB Regional Director issued Complaints and Notice of Hearing in July 1991.

A trial was held before Administrative Law Judge Karl Buschmann in December 1991. At the trial, the evidence demonstrated that the unions and Polymark forced all employees to become formal union members, and never informed them about their right to refrain from union membership under *Beck* and *General Motors.*

ALJ Buschmann issued his Decision and Order on September 30, 1992. He found that Polymark had violated the Act by failing to honor Mr. Mohat's dues checkoff revocation, and that the unions — who defended their refusal to honor immediately his resignation from union membership — failed to comply with *Beck*'s notice requirements. ALJ Buschmann refused to find the forced-unionism clause unlawful on its face. All parties filed timely exceptions from the decisions, and briefing on those exceptions was completed on 23 November 1992.

Like the Pirlotts' case, it was at this point that the Board's "big stall" of Mr. Mohat's case began. **Here, as there, for more than six (6) years, the Board refused to rule on this case.** As it was one of several cases involving a challenge to the legality of forced-unionism language which — while it tracks the language of the Act — misleads employees (and all but labor lawyers trained in the pilpulism of this area of the law) into believing that formal union membership can lawfully be required, cynics might wonder whether the Board was simply delaying a strong factual case until other, less compelling factual cases could be decided by the courts nd foreclose Mr. Mohat's opportunities for relief.

In light of the Board's failure to issue decision, and based in part upon Chairman Gould's response to Foundation attorney Taubman's entreaties with regard to the Pirlotts, Mr. Mohat filed an action for *mandamus* against the NLRB in June 1999. As with the Pirlotts, it took an order of the United States Court of Appeals for the District of Columbia Circuit to prompt the Board to issue a decision in this case. On 1 September 1999, nearly seven years after the ALJ's decision, the Board ruled largely for the union. The Board's protracted delay is amazing, since the four issues its decision addressed had all been addressed in prior decisions.

The first issue was the legality of the forced-unionism clause itself. Even though the Board had addressed this issue (unfavorably to employees) in no less than two other cases, the Board continued sitting on Mr. Mohat's case for four years after it had dealt with the issue a second time.

The second issue was the adequacy of the unions' *Beck* notice. Here, the Board continued its practice of avoiding questions of the adequacy of union disclosure

under *Beck*. Thus, while the ALJ had addressed the adequacy of the unions' *Beck* notice (which they proffered as a defense against Mr. Mohat's charges), the Board would not decide the issue because its inadequacy was not alleged in the Complaint. Here, too, the Board declared that it was relying upon well-settled law, but provided no explanation as to why it did not apply this rule to Mr. Mohat's case for four years after the rule was created.

The third issue was the Board's affirmance of the ALJ's determination that Mr. Mohat could not "take control of his relationship with his bargaining representative" by revoking his dues checkoff authorization (authorizing only the deduction of "membership dues") pending the unions' compliance with *Beck*. Member Brame dissented from this determination, which was consistent with the Board's earlier decisionmaking, expressed in 1995. Again, it inexplicably took the Board nearly four more years to apply that reasoning to Mr. Mohat's case.

The fourth issue, concerning the only violation found by the ALJ that was affirmed by Board, was the unions' attempt to limit resignation and objection to the exaction of full union dues to a one-month "window period." Even that was a proposition supported by a bare majority of the Members, with Members Fox and Hurtgen dissenting as to that part. This portion of the decision was also consistent with a prior Board decision, yet the Board offered no explanation for its nearly four-year delay in merely applying its reasoning to Mr. Mohat's case.

In short, then, the Board took over six years to issue a decision that did little but apply what it would doubtless characterize as established law issued while Mr. Mohat's case languished. To give credit where credit is due, Mr. Mohat has not been subjected to the machinations from which the Pirlotts have suffered on remand, though getting his money back — he received it just in the last two weeks — took nearly a year after the Sixth Circuit issued its decision.

The Mark Simpson case: The final typical NLRB case that I would like to highlight is a very recent one.

Mark Simpson is a nursing home worker, employed by Shenango Presbyterian Seniorcare in New Wilmington, Pennsylvania. Mr. Simpson's bargaining unit is represented by Teamsters Local 250, based in Pittsburgh. Although the union had never notified him of his *Beck* rights, Mr. Simpson learned of them independently (from the Foundation's web site, www.nrtw.org), and in June, 2000, resigned from union membership and claimed his rights. (Exhibit 12).

Despite Mr. Simpson's resignation and *Beck* objection letter, Local 250 union officials continued to take full union dues from his paycheck, and provided him with not a shred of financial information to explain or justify any agency fee calculation.

In October 2000, Mr. Simpson filed an unfair labor practice charge with the NLRB's Pittsburgh regional office (Exhibit 13). In January 2001, six months after

Mr. Simpson's resignation, and 2 months after the filing of the ULP charge, Teamsters Local 250 finally acknowledged his right to resign and object (Exhibit 14) (it should be noted that the union continued deducting full union dues during this entire period).

The union's January 2001 letter to Mr. Simpson claimed that only 1.3% of total Teamsters dues was nonchargeable under *Beck*, and that 98.7% was chargeable. The union still provided not a shred of financial disclosure to explain or justify this mystifying and patently implausible calculation (in *Beck*, only 21% of full union dues was found to be chargeable, *see* 487 U.S. at 742).

On February 6, 2001, Mr. Simpson filed a second unfair labor practice charge with the NLRB, reiterating the fact that Teamsters Local 250 had provided him with no financial disclosure whatsoever to explain or justify its 98.7% chargeability calculation. (Exhibit 15).

On March 29, 2001, the NLRB Regional Director in Pittsburgh **dismissed** Mr. Simpson's first ULP charge, holding that the union had provided adequate financial information simply by tardily disclosing — without any substantiation whatsoever — its 98.7% chargeable/1.3% nonchargeable calculation (Exhibit 16, stating that "the information provided to the Charging Party was deemed adequate to fulfill the union's obligations to a *Beck* objector"). This farcical dismissal is now pending on appeal to the current NLRB General Counsel (Exhibit 17).

On the same day that his first ULP charge was dismissed, Teamsters Local 250 provided Mr. Simpson with an unaudited allocation of its expenses, purporting to explain and justify its 98.7% chargeable/1.3% nonchargeable calculation (Exhibit 18). This "financial disclosure" is not audited, contains no information about the expenditures of the International Brotherhood of Teamsters and Local 250's other affiliates, and contains no notes or other explanations of the union's expenditure categories. This "financial disclosure" would clearly be inadequate under the Court of Appeals decisions in *Penrod v. NLRB*, 203 F.3d 41 (D.C. Cir. 2000), and *Ferriso v. NLRB*, 125 F.3d 865 (D.C. Cir. 1997). Nevertheless, on July 27, 2001, the NLRB Regional Director in Pittsburgh **dismissed** Mr. Simpson's second ULP charge, holding that the union had provided adequate financial information. In this dismissal letter, the NLRB Regional Director explicitly refused to follow the Court of Appeals' ruling in *Penrod*, and instead relied upon the NLRB's reversed ruling in that case (Exhibit 19).

Thus, the General Counsel's office refuses to follow the Court of Appeals' law, and continues to dismiss employees' challenges wherever possible, on the flimsiest of rationales.

CONCLUSION: This 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* is inherently ineffective, especially so when the NLRB is asked to oversee that remedy *via* an individual employee's unfair labor practice charge.

The experiences of the individual workers I have described — the Pirlotts, Bob Mohat, and Mark Simpson — 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 Relations Board, do not adequately protect the constitutional and statutory right of workers — unequivocally recognized by the Supreme Court in *Beck* and related cases — to refuse to subsidize union political, ideological, and other non-bargaining activities. Indeed, the record of law on the issues that the NLRB has decided are case studies in administrative non-acquiescence to the mandates of the federal courts, the bureaucratic creation of impediments to protection of individual employee rights by a federal agency which, in the *Beck* case, opposed recognition of the very rights that are now its responsibility to uphold and enforce. And this is to say nothing of the issues the General Counsel has prevented the Board from addressing, such as imposition of an objection requirement for nonmembers, who have never manifested any *indicia* of support for union 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 prohibit agreements requiring workers to join or pay dues to a union as a condition of employment.

Likewise, the only practical and effective solution to ending the compulsion and in protecting to the maximum extent employee free choice in the private sector is through passage of the National Right to Work Act, which would put responsibility for protecting individual employee rights back into the hands of the men and women who can most effectively protect them: America's workers. Any other response is a half-measure following series of half-measures that have consistently impeded the ability of America's workers to protect their rights.

Respectfully submitted,

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APPENDIX G- WRITTEN STATEMENT OF KENNETH F. BOEHM, CHAIRMAN, NATIONAL LEGAL AND POLICY CENTER, FALLS CHURCH, VIRGINIA

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Wednesday, November 14, 2001

Mr. Chairman and Members of the Subcommittee, I am pleased to be invited here today as you discuss the current status of workers' rights under the Supreme Court's Beck decision.

I am Ken Boehm, Chairman of the National Legal and Policy Center. My organization sponsors the Organized Labor Accountability Project which publishes the Union Corruption Update, a fortnightly summary of union corruption news and cases. Our web page, http://www.nlpc.org, provides an archive of union corruption cases, searchable by state and union, as a resource for policy makers, the media, the public, and union members fighting corruption within their own unions.

Beck Rights After the Beck Decision

In 1988, the Supreme Court of the United States held in Communications Workers of America v. Beck that workers covered by the National Labor Relations Act can withhold compulsory dues from a union with the exception of the documented costs of collective bargaining. A special master assigned by the Court in the Beck case determined that the Communications Workers of America could only document that twenty-one percent of Harry Beck's dues went for collective bargaining purposes, resulting in a seventy-nine percent refund.

Despite a strong decision for workers' First Amendment rights against compelled speech in Beck, Supreme Court decisions are not self-enforcing. Just as the landmark decision of Brown v. Board of Education in 1954 on school desegregation did not stop the Alabama Governor from standing in the doorway at the University of Alabama nine years later to thwart the integration of that school, all too often Supreme Court decisions require laws, regulations, and administrative actions to ensure that individual rights are fully protected.

In the thirteen years since the Beck decision, the government has done very little to protect Beck rights recognized by the Supreme Court and much has been done by unions to thwart them.

Congress has not passed any law codifying Beck rights.

President George H. W. Bush issued Executive Order 12800 in April 1992 requiring

federal contractors to inform workers of their Beck rights by posting notices in the workplace. President Clinton rescinded the executive order in 1993 within days of taking office. President Clinton's Secretary of Labor labeled the executive order "a burden without a benefit," apparently with the view that informing workers of a constitutional right is of no benefit to the workers.

Similarly, under President George H. W. Bush, the Department of Labor issued a proposed rule requiring unions to report expenditures according to how the funds were spent. More specific reporting would make it easier for workers to determine how much money was spent for collective bargaining as compared to political activities, lobbying, organizing, and other activities which workers exercising their Beck rights cannot be compelled to fund. As with the executive order, the proposed rule did not survive the opening days of the Clinton Administration.

On February 17, 2001, President George W. Bush issued Executive Order 13201 requiring federal contractors to post a workplace notice informing employees of their rights under the Beck decision. The order affects only a relatively small number of the approximately twelve million American workers forced to pay union dues as a condition of employment. Three unions and a union-established corporation filed suit in response to the executive order. Their complaint alleged that requiring notice of workers' Beck rights would impose "substantial administrative burdens" on businesses.

In the absence of congressional codification of Beck, the National Labor Relations Board (NLRB) has the authority to enforce Beck rights. However, the NLRB has done much to thwart the exercise of Beck rights. The NLRB did not even issue its first ruling purporting to implement the Beck decision until more than seven years after the decision when it ruled in 1995 in California Saw & Knife Works, Inc. In the ruling, the NLRB held that, contrary to the Supreme Court's 9-0 decision in 1986 in Chicago Teachers Union v. Hudson, workers are entitled only to a union's "self-audit" of its non-bargaining expenditures. Essentially, this decision allows unions to define their political expenditures virtually any way they like and does not require anything remotely resembling substantiation. The decision also allowed the union in the case to comply with the Beck requirement of notice to workers of their rights to be satisfied with an annual notice in a union magazine. Put simply, the NLRB used California Saw more
to eviscerate Beck than enforce it.

At the same time very little was being done at any level of government to enforce workers' constitutional rights under Beck, much was being done by unions to undermine the ability of workers to learn about or exercise their rights:

Accounting Schemes

While workers may not be forced to finance political activities of unions, there is no independent accounting information available to workers showing what percentage of fees goes for such activities. Unions have exploited this flaw by misrepresenting

political expenditures in order to limit the amount due to workers who do not want to pay for their union's political activities.

Example: In the 1991 Supreme Court case Lehnert v. Ferris Faculty Association, the teachers union claimed only seventeen percent of the group's expenses were not attributable to contract administration, grievance adjustment and collective bargaining. Through discovery, it was learned that ninety percent of the union's expenses could not be attributed to contract administration, grievance adjustment and collective bargaining.

The lack of strict accounting standards and disclosure of financial information that plays such a major role in the current wave of union corruption has also acted to frustrate workers seeking to assert their First Amendment rights against compelled speech recognized in Beck.

Lack of Information on Workers' Beck Rights

A 1997 National Voter Survey poll showed 67% of union members were unaware of the Supreme Court's Beck decision. A national survey by Lutz Research in 1996 found 78% of union members were unaware of their right to a refund and dues adjustment for the portion of their dues spent on non-workplace activities.

There is no independent source of such information in the workplace. The modest effort of President George H. W. Bush to require federal contractors to post workplace notices was rescinded under President Clinton, and a similar executive order by President George W. Bush is being challenged in federal court by unions determined to see that workers receive as little notice of their Beck rights as possible.

Intimidation

When Rep. William F. Goodling chaired the House Education and the Workforce Committee, he held a series of hearings focusing on problems encountered by workers trying to assert their rights in the workplace. In a statement released on November 3, 1999, he summarized the results of those hearings by stating:

> "We heard worker after worker testify about the incredible burdens they have faced trying to exercise their rights under current law and trying to recover their money"

Rep. Goodling went on to state that the testimony of the workers:

> "...often described stonewalling, harassment, coercion, and intimidation of workers who tried to recover what is rightfully theirs."

The testimony of one worker, aircraft mechanic Kerry Gipe, at a March 18, 1997, hearing set forth the specifics of the intimidation he faced when he tried to enforce

his rights:

> "...the union began an almost immediate smear campaign against us...portraying us as scabs and freeloaders...We had our names posted repeatedly on both union property and company property accusing us of being scabs. We were thrown out of our union hall, and threatened with physical violence...We were accosted at work, we were accosted on the street. We were harassed, intimidated, and threatened. We were told our names were being circulated among all union officials in order to prevent us from ever being hired into any other union shop at any location."

As a practical matter, the burden is on workers who wish to assert their First Amendment rights and not on unions which have a financial motive for denying the workers' First Amendment Beck rights.

Procedural Hurdles

Aside from outright intimidation, unions bent on thwarting Beck rights have resorted to a tangle of procedural hurdles to make it burdensome for workers to exercise their Beck rights.

Among the tactics employed have been one-sided arbitration requirements, limited windows of time each year for workers to exercise their rights, delays and outright refusals of union officials to respond appropriately to requests submitted by workers.

Time and again, efforts by unions to frustrate the Beck rights of workers through procedural hurdles have been found unconstitutional. In a 1998 case, Shea v. Machinists, the U.S. Court of Appeals for the Fifth Circuit found that the union's requirement of an annual objection by workers, whereby they can opt out of full union membership only if they notify the union in writing each year during a 30-day window of time, violated the First Amendment.

The Labor Relations Institute, Inc. of Oklahoma recently collected and analyzed complaints filed with the National Labor Relations Board by workers against unions relating to Beck rights abuses. Complaint after complaint, many handwritten, described a litany of tactics used by unions to discourage workers from asserting their Beck rights. Workers complained of not being informed of their rights, not being given accurate financial information, being told they must go physically to union offices to get information, not providing underlying financial information supporting claimed amounts due for core activities, and simply ignoring requests by workers.

The unions have powerful financial incentives to ignore the Beck rights of workers and workers have few practical ways to enforce their rights.

Enforcing Beck Rights Can Help Curb the Current Wave of Union Corruption

The parallels between union efforts to frustrate efforts by workers to assert their Beck rights and what the New York Times recently called "the wave of union corruption" are striking.

Both problems have their greatest impact on workers.

Both problems involve the misdirection of millions of dollars of workers' money annually.

Both problems persist despite numerous court decisions underscoring the rights of workers.

Both problems persist, in part, because workers have very little meaningful or accurate accounting of how their union spends their money.

The high-profile corruption involving unions and their leaders is beyond debate:

- Teamsters election stolen - along with over $885,000 in union funds
    - 1996 reelection of Teamster President Ron Carey was accomplished through the looting of $885,000 in Teamster funds
    - six Carey cronies were convicted of or pled guilty to crimes that furthered the laundering of money to finance the reelection
    - Teamster political director William Hamilton was convicted on six counts and sentenced to three years in jail
    - AFL-CIO secretary-treasurer Richard Trumka has invoked the Fifth Amendment when questioned about his role in the looting of the Teamsters' funds
- Laborers President Arthur Coia resigned, agreeing to plead guilty to mail fraud related to union corruption
    - Coia, the head of the Laborers Union, defrauded governments of approximately $100,000 in taxes
- Longtime President of Hotel Employees and Restaurant Employees Union, Ed Hanley, forced to resign by federal monitor
    - Hanley led union from 1973-98, entire term shrouded in scandal
    - Department of Justice report said HERE was a classic case of

organized crime's control over a union, asserting Chicago mob helped Hanley get the presidency

- the court-appointed monitor alleged corruption including use of phantom local to allow union officials to charge vacation costs as union expenses

- American Federation of State, County and Municipal Employees District Council 37 scandal

  - New York City's largest municipal union has had over two dozen of its officials and vendors indicted on corruption charges

  - the president of one of the locals was ousted after it was learned he embezzled more than $1.7 million

  - January 7, 2000 New York Times article cited a leaked internal AFSCME document showing "excessive corruption" in the union as shown by $4.6 million in claims AFSCME made to its insurance company on a policy covering fraud, with about half the problems stemming from the corruption in New York

- Union officials of international unions affiliated with the AFL-CIO who have pled guilty to, been convicted of, been indicted for, and/or been removed from office in the past three years because of union corruption

  - Gus Bevona, International Vice President, Service Employees International Union (SEIU)

  - Albert Diop, International Vice President, American Federation of State, County and Municipal Employees (AFSCME)

  - Peter J. Fosco, International Vice President, LIUNA

  - Thomas Hanley, Director of Organization, Hotel Employees and Restaurant Employees Union (HERE)

  - Jake West, President of Organizing, International Association of Bridge, Structural, and Ornamental Reinforcing Iron Workers

  - Joseph C. Talarico, International Secretary-Treasurer, United Food and Commercial Workers

The union corruption cases cited above are just the tip of the iceberg. Union corruption at the state and local level is virtually a daily news story. The Union Corruption Update published every two weeks by National Legal and Policy Center since June 1998 has documented hundreds of accounts of such corruption with each

account having one thing in common: the financial victims of the corruption are American workers who fund the union treasuries, pension funds, and other looted accounts.

The right of access to independently audited financial information is essential to any meaningful enforcement of Beck rights because workers must have such information to know whether any refund of dues and fees not associated with collective bargaining is accurate. At the same time, the right to access to independently audited union financial information will help curb the epidemic of corruption cases in which union funds have been illegally taken for personal use.

Meaningful Remedies

Any overall remedy to the current situation in which First Amendment Beck rights are not easily exercised has to address each of the major hurdles which now exist. Legal scholars and jurists have often declared that a right without a remedy is no right at all.

Unfortunately, Beck rights do not currently have meaningful remedies.

The objective of any reform is to ensure that First Amendment rights of workers recognized by the Supreme Court in Beck do have remedies. While reasonable people may disagree as to how to best protect these First Amendment rights, there should at least be a consensus that workers are entitled to these rights, that these rights should not be difficult or costly to assert, and that the burden of proof should be on those who seek to thwart these rights, not, as now, on those who seek to exercise them.

Meaningful remedies must ensure the following:

- workers are reliably informed of their Beck rights and that any attempt to misinform workers on the subject be prohibited and punishable

- workers must have easy access to independently audited union financial information so that they know how much of their fees are spent for collective bargaining and contract purposes as compared to political, lobbying, organizing, and other non-core activities

- workers have readily available legal protection against intimidation of any type for exercising their rights

- that the burden of proof in any dispute as to the exercise of Beck rights should be on unions seeking to deny the rights, not those seeking to exercise them

Meaningful Remedies: What Congress and the Department of Labor Can Do

While the best guarantee that Beck rights are honored would involve the codification of those rights into law by Congress, there are some reforms that can be undertaken by the Department of Labor which could incrementally assist in the honoring of those rights.

An added benefit to some of these Department of Labor reforms would be to make it more possible for workers to know exactly how their unions are spending their dues and fees. This outcome would help curb corruption which has flourished due to the secrecy and inaccessibility of union financial information.

The major drawback of any reliance on mere regulatory actions to enact reforms is that such reforms may also be more readily undone by some future Department of Labor less committed to Beck rights or thwarting corruption.

Under the Labor-Management and Disclosure Act of 1959 (LMRDA), popularly known as the Landrum-Griffin Act, labor organizations file annual financial reports, called Labor Organization Annual Reports or LM-2 Forms, with the Secretary of Labor. Unfortunately, there are many weaknesses with respect to what is included within these forms, how often they are required, and their general lack of specificity with respect to expenditures.

Many of these weaknesses have been documented extensively. The U.S. House Education and the Workforce Committee, Oversight and Investigations Subcommittee, Public Policy Recommendations in the American Worker Project Report, as reprinted at Daily Labor Report (BNA) No. 149, at E-9 (August 4, 1999) shed light on the internal inconsistencies found in LM-2 reports:

> "[T]he current version of the LM-2 makes it impossible to discern the costs of travel by any union officer. The form requires direct reimbursements for travel costs to be itemized by an officer (or employee). On the other hand, travel expenses accumulated by union officers that the union directly pays for, such as through a union credit card, are not listed by employee; instead, the form merely directs the union to list the total amount of their travel expenses. Thus, the LM-2 Form may only include one-quarter, or even one-tenth, of an employee's actual expenses."

While the Secretary of Labor has authority under Title II, Section 201 of Landrum-Griffin to require new categories to be applied to the specifications of LM-2 Form disbursements, the many other flaws of the reporting regime, especially the lack of independent audits, limit the effectiveness of reforms based solely on administrative action.

Drawing on his experience as editor of Union Corruption Update since its inception, Michael Nelson, Director of National Legal and Policy Center's Organized Labor Accountability Project, authored a law review article examining policy options available to curb union corruption (Slowing Union Corruption: Reforming the

Landrum-Griffin Act to Better Combat Union Embezzlement, 8 George Mason Law Review 527 (2000)). Several of the policy options examined deserve attention as reforms to better enforce Beck rights:

Require Annual Audits and Quarterly Reports

Amending Landrum-Griffin to require annual audits and quarterly reports similar to those of the Securities Exchange Act of 1934 (SEA) would increase the probability of detecting embezzlement as well as acting as a deterrent. The accounting standards should also incorporate the distinction found by the Supreme Court in Beck between collective bargaining and other such core activities on the one hand and other non-core activities such as electioneering, lobbying, organizing, and political actions.

Union financial reports modeled after the Securities and the Exchange Commission's Form 10-K would have to be certified by an independent accountant and unions would be required to undergo an annual audit conducted under generally accepted accounting standards. Illegal acts uncovered by auditors would have to be reported to the union, its board and the Department of Labor. Quarterly reports, the equivalent of the SEC's unaudited 10-Q form, could supplement the flow of unions' financial disclosure.

If workers are to have any real chance to assert their Beck rights, they need accurate financial data The government has to do more to ensure that workers have such accurate data.

Improved Enforcement

Landrum-Griffin has long had enforcement deficiencies. One measure to strengthen enforcement would be to allow the Department of Labor to sue under Section 501 (b). Currently, union members are granted a cause of action to sue when union officials breach their fiduciary duties under Section 501(a). This reform would allow the Department of Labor to proceed when union members are unable to pursue their causes of action.

Support for this proposal can be found in the testimony of Kurt W. Muellenberg, the court-appointed monitor of the Hotel Employees and Restaurant Employees Union from 1995 to 1998. On July 21, 1999, he testified before Rep. Boehner's subcommittee, stating:

> "My experience as a Monitor suggests that the LMRDA's reliance on private suits by members to compel adherence to Section 501(a) is impractical. Few members have the interest, tenacity, sophistication and wherewithal to investigate and assemble the circumstantial evidence necessary to pursue a claim under 501(a)"

Similarly, workers who encounter intimidation, harassment, delay, or any of the

other tactics used by unions to obstruct a worker from asserting Beck rights, should have the option of allowing the Department of Labor stepping in to enforce their Beck rights. The burden is presently on the shoulders of the individual worker whose Beck rights are ignored. Such a reform would be a deterrent to unions who presently have a financial incentive to obstruct workers seeking a refund of dues and fees for non-collective bargaining purposes.

Impose Civil Money Penalties

Congress should consider amending Landrum-Griffin to allow the Department of Labor to recover civil money penalties for breaches of fiduciary duty (Section 501 (a)) and violations of the disclosure measures (Title II). These reforms are modeled after the SEC's rule, 15 U.S.C. § 78u-2, which penalizes willful violations of the statute, inducing or procuring violations by any other person, and the willful making of false statements. Under this rule, penalties are established based on the gravity of the violations.

Congress has already empowered the Department to impose civil money penalties in other areas of labor law, such as ERISA and child labor. There is no good reason the Department should not have this power to enforce Landrum-Griffin disclosure provisions and Beck rights.

Similar sanctions should be considered as a deterrent to unions which willfully obstruct workers' exercise of their Beck rights.

Any codification of Beck rights by Congress should also address the following issues which have arisen since the Supreme Court handed down its decision in 1988:

- **Prior Approval:** Unions should be required to obtain written prior approval from each worker prior to the use of any fees or dues for non-collective bargaining purposes.

- **Participation in Union Decisions:** Workers who pay for the cost of union representation must be allowed to participate in union decisions regarding representation. Workers who exercise their Beck rights while continuing to pay agency fees should still be allowed to exercise such rights as voting to ratify contracts.

- **Constitutional Rights of Private and Public Sector Workers are Identical:** The long line of Supreme Court cases on the First Amendment rights against compelled speech make no distinction as to citizens having different rights contingent on whether they are in the private or public sector. Any meaningful remedy should treat all workers equally.

- **Civil Action/Remedial Relief:** Any union that fails to secure the required authorization for use of fees for non-core purposes should be liable to the

affected worker for damages equal to two times the amount of the fees accepted in violation of the law. Capped punitive damage awards should also be considered. Additionally, the worker should be entitled to recover reasonable attorney's fees and costs.

Conclusion

Workers who belong to unions or pay agency fees have a fundamental right to know how those funds are spent. They have a First Amendment right against being compelled to support political causes with which they disagree.

But rights, like the Supreme Court decisions that support them, are not self-enforcing. In the absence of remedies to ensure those rights, recent history suggests that unions whose interests are threatened by workers exercising their rights will do their utmost to undermine those rights.

The weight of evidence suggests that the "wave of union corruption" described by the New York Times is occurring because of weaknesses in the system of laws meant to prevent, detect, and punish those crimes. Workers whose hard-earned money is being stolen through union corruption deserve the protection of the law. No credible argument can be made that workers should have less legal protections against corruption than shareholders have against unscrupulous corporate officers. The policies modeled after the Securities and Exchange Commission's safeguards will promote more disclosure, better accounting and a more credible deterrent to union corruption than now exists.

The Supreme Court decisions repeatedly recognizing the rights of workers against compelled political speech are the law of the land, yet those rights are elusive without meaningful remedies. Workers who have no access to reliable information as to what portion of the funds they provide to unions go for collective bargaining as opposed to politics are poorly equipped to exercise their First Amendment rights, especially in the face of harassment, retaliation, and the studied indifference and delay of government bureaucracies to their plight. Congress has the power to provide a workable, reasonable, mechanism to ensure that the constitutional rights of workers are honored. It just needs the will and political leadership.

If First Amendment rights and deterring financial corruption are not worker rights worth protecting with legislation, what are?

APPENDIX H- WRITTEN STATEMENT OF THE HONORABLE ROBERT B. HUNTER, MACKINAC CENTER FOR PUBLIC POLICY, MIDLAND, MICHIGAN

Testimony of Robert P. Hunter, J.D., LL. M
Director of Labor Policy
The Mackinac Center for Public Policy
on
Beck Rights 2001 - Are Worker Rights Being Adequately Enforced?

House Committee on Education and the Workforce
Subcommittee on Workforce Protections
Wednesday, November 14, 2001

Mr. Chairman and Members of the Subcommittee:

Thank you for the honor of appearing before you this morning to present my views on one of the most significant labor law decisions protecting working men and women: Communication Workers v. Beck.

In my view, the importance of the Beck case is to the rights of union workers as Brown v. Board of Education is to the civil rights of minority Americans. Despite the importance of Beck to the freedom and workplace opportunities for union workers, the National Labor Relations Board has misapplied the Supreme Court's ruling in Beck to the detriment of those employees who rely on the Board for the protection of their rights. It is high time that the Board and General Counsel now rethink their Beck enforcement responsibilities to guarantee workers the full promise of the Beck Doctrine.

Since appearing before the full Committee about four years ago on this general subject, not much has changed in Michigan concerning worker knowledge of Beck rights or the exercise of those rights. At that time I told the Committee that Beck rights were not having much impact for various reasons – the prime of which is worker lack of knowledge that these rights even exist and are available to them.

While there are several problems with regard to Beck rights enforcement, chief among them are inadequate notice and communication to eligible union employees. If a worker never learns of these rights in the first instance, all of the other Beck protections are meaningless as to him/her.

Widespread dissemination of information on these rights may never be a reality. That is because the bulk of our labor laws rest on the presumption of voluntary compliance, mostly by employers. In the case of Beck rights, the unions bear the primary responsibility for informing their represented employees of their existence and the process to take advantage of them. While some unions do a relatively good job in complying with their Beck obligations, effective notification of these employee rights does not appear to universally apply.

Many labor unions will not divulge the rights for fear of losing union income, membership, and political clout. Employers with not intercede because they view these matters as internal union problems, or because they are afraid of angering the union. Government agencies and courts have been slow to respond with information and definite rulings. Politicians seem incapable of reaching a consensus because of long-standing divisions among political parties. The news media have not widely publicized the issue.

While many employees may not be aware of their Beck rights, I, along with other individuals and groups, are trying to pick up the slack by attempting to educate and notify employees via the internet and through other publication. While these are worker-helpful activities, they are of limited value recognizing the vast number of workers who must learn of their rights.

Along this same line, I applaud Pres. Bush's E.O. 13201 requiring non-exempt Government contractors and subcontractors to post notices informing their employees that under Federal law, those employees have certain rights related to union membership and use of union dues and fees. This order is a step in the right direction but even when fully implemented by the U.S. Department of Labor, it will at best reach a limited audience of workers.

While I am discouraged about the current state of worker knowledge, the situation is not hopeless and positive moves can be made.

The U.S. Department of Labor can and should revise union financial reporting and disclosure requirements under the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) to require detailed financial reports, prepared by independent third-party auditors, using generally accepted auditing and accounting principles. Dissemination of the reports should be more user-friendly in accessibility, either manually or through electronic means. This will help workers to obtain their union's annual financial disclosure without the necessity to first confront their union representatives.

State Governors by way of executive order, should be encouraged to emulate President Bush's E.O. 13201 by requiring state contractors to post employee Beck notices in workplaces as a condition of contract with the state. Also by way of example, former California Governor Pete Wilson issued E.O. (W-183-98) to inform state and local public employees, including teachers, of the First and Fourteenth Amendments constitutional guarantees not to be compelled to contribute financially to political or ideological activities as a condition of their employment. I have urged my Governor Engler to issue an E.O. protecting union workers. Other Governors should follow suit.

Analogizing to the pending rules to amend the Federal Acquisition Regulation (FAR) which expands the existing requirements that prospective government contractors must meet under procurement laws, such as those pertaining to "satisfactory compliance with federal labor and employment laws", the U.S.

Department of Labor (DOL) should consider a similar rule for labor organizations as a condition for obtaining a federal grant or contract with the Department. This action might aid Beck compliance for those unions who conduct business with the DOL.

While my colleagues on the panel will suggest additional ways to better enforce the Beck doctrine, I will focus on the National Labor Relations Board, what it has done in this area, and what it can do in the future to protect worker Beck rights.

As a former NLRB member who was often in the hot seat of contentious labor questions, I am sensitive not to be overly critical of the Board and its decisional process. A Board Member's job is not easy. And yet, the Board is the primary protector of Beck rights under the NLRA and the Supreme Court's decision in the Beck case so that it cannot escape scrutiny. In the area of Beck rights, it has dropped the ball, in my opinion.

When one examines the Board's somewhat tortured history of issuing Beck cases, three observations occur to me:

> The Board's seminal decision explaining its Beck philosophy in California Saw and Knife Works (1995), was usually slow in issuing some seven years after the U.S. Supreme Court decided the Beck case. Related cases have been trickling out since then.
>
> The body of Board case law on Beck rights seems to have spawned ambiguous flexible union rules which have established a policy but not necessarily clearly established employee comprehensive rights. Previous Committee witnesses have correctly testified that the Board itself has given workers inadequate protection and relief when it finally decides Beck cases.
>
> The Board's decisions have created an incorrect balance between the Beck statutory rights of nonmember objectors and the derivative interest of a labor organization in demanding financial support form those nonmembers.

These observations are all troubling. I have examined most of the Board's cases explaining its rationale on enforcing Beck rights and I am persuaded that former member Brame got it right in his dissent in Office & Professional Employees Local 29 (Dameron Hospital Assn.), 164 LRRM 1105 (2000), 331 NLRB No. 15 (2000). I commend his dissent to the attention of the Subcommittee.

Member Brame makes a compelling case that the Board in Cal. Saw and Knife and its progeny have ignored the analytical standards laid down by the U.S. Supreme Court in Beck. Instead, he argues, the Board has applied a far less demanding duty

of representation standard as contrasted with evaluating whether a union's conduct in denying a worker's Beck rights restrains and coerces employees in their right to refrain from union activities.

Under Mr. Brame's mode of analysis, the Board's duty of fair representation standard of review neither provides adequate protection of the statutory Section 7 right to refrain from participating in union activity nor adheres to the binding precedent enunciated by the Supreme Court in similar public sector and Railway Labor Act cases.

The Court in Beck based its NLRA decision on the legislative history of section 2, Eleventh of the Railway Labor Act and held that this statute does not permit a union, over the objections of nonmembers, to expend compelled agency fees on political causes.

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 Ellis v. Railway Clerks, 487 U.S. at 762-63. Moreover, Beck ruled that decisions in this area of the law under the RLA are ***"controlling"*** under the NLRA, Id. at 745 (emphasis added). In Ellis, the Supreme Court held that union organizing is not lawfully chargeable under the RLA, 466 U.S. at 451-53. Despite the Court's clear mandates, the Board has held that organizing is chargeable to objecting nonmembers under the NLRA.

I believe the Board has erred in its Beck cases by distancing itself from the Court's controlling RLA precedent and by applying a rationale which distinguishes NLRA Beck cases from the substantial unified and broader body of federal law involved in other dues objectors cases.

Accordingly, if a majority of the Board was to agree with this assessment, what are their options at this point?

They are essentially two: (1) the Board could issue further decisions modifying and clarifying its position; or (2) could it engage in informal rulemaking. Under the circumstances, option (2) is my preference because I believe necessary policy revisions could be done more quickly than through adjudicatory process. In addition, rule-making would be a better vehicle to establish a clear, comprehensive and relatively fixed rule in defining the obligations that a labor organization must meet in the creation and administration of a union security agreement.

While I acknowledge that substantive rulemaking is a relatively rare phenomenon for the Board, it is not unheard of. In fact the NLRB in 1992 proceeded down a rulemaking path for notifying employees in order to assure that employees receive notice of their rights under Beck. [Reference: Federal Register, Vol. 57, No. 184, September 22, 1992]. The proposed rules were eventually withdrawn four years

later in favor of a case-by-case implementation of Beck's notice requirements [Reference: 61 Fed. Reg. 11, 167 (1996)]. It seems to me that the Board has been struggling over Beck issues, to the disadvantage of potential Beck objectors.

I believe the Board would benefit from receiving the views of employees, employers, labor organizations, scholars and others in fashioning a rule that not only protects employees, but also is balanced to foster union compliance. The Board should seek comment, at a minimum, on employee notice requirements, categorization of union representational and nonrepresentational activities, and procedures to be followed in challenging a union's financial disclosure. A rule carefully crafted to meet the Supreme Court's requirements which takes into account any practical problems of union administration and application will help the NLRB enforce Beck rights in a timely and definite manner. Union participation is essential and hopefully a consensus rule that labor organizations can live with will emerge.

Three guiding principles I would hope the Board would bear in mind as they evaluate comments on a proposed rule: (1) when imposing any limitation on employees freedoms in the context of a union security clause exacting a union financial obligation, there is a need to minimize infringements of individual employee rights; (2) employees in other private and public sector employment have a common set of interests; and (3) policies involved in the union security labor relations structure are best served by a unified treatment of the rights and remedies of employees under union security agreements.

My suggested proposed notice to employees which meets the elements of these principles is attached as ***Appendix 1***.

The NLRB's new General Counsel, who is my friend, has a constructive role to play in Beck enforcement in at least two ways: (1) by providing Beck information to employees and the public; and (2) by continuing to bring to the Board Beck issues that are not yet settled, or which in his judgment have been decided improperly, after he independently develops his own Beck enforcement philosophy. He need not be bound by any prior General Counsel's interpretation of the Beck case to establish his prosecutorial function under the NLRA.

Recently, General Counsel Rosenfeld seems to have acknowledged his independence of thought when he purportedly told an ABA labor committee that he may make some "midcourse corrections" [referring to his legal standards in prosecuting NLRA cases]. I hope that he considers the Beck doctrine an area of priority which cries out for these corrections.

On the information side, the President's E.O. 13201 notice provisions invites the public to contact the NLRB for further information on employee Beck rights. The Board's General Counsel should be prepared to handle these information requests.

Preparation takes on at least three facets: (1) The General Counsel should review

the prior GC Memorandum 01-04 issued by a former Acting General Counsel to determine whether he agrees with its analysis, and whether it properly advises the Board's regional personnel with accurate and uniform Beck information when the public calls local offices; (2) he should prepare a printed informational piece to mail to interested callers or writers; and (3) the Board's website should be updated to prominently display, and make available for download, Beck information.

On the adjudicatory side, the General Counsel should continue to enforce Beck by bringing to the Board unresolved questions or issues concerning Beck rights, for the Board's determination. He shouldn't be reluctant to bring new cases to the Board which challenge the Board's current Beck doctrine, when he feels it conflicts with the U.S. Supreme Court's analysis. I would hope when the General Counsel carry's out his litigation responsibilities under the NLRA, he will be mindful of the Supreme Court's guidance in Beck and other related decisions so as to fully and faithfully seek to protect employee rights in the broadest possible way. The three guiding principles I have suggested in my testimony would be a good starting point, but it would be most helpful to employees if he would rethink the approach to enforcing Beck rights.

Mr. Chairman: I commend you and your fellow committee members for your leadership role in bringing greater focus to the protections and opportunities afforded by Beck rights to the millions of America's unionized working men and women. There are not great pro- Beck lobbies knocking down your doors for attention and action because of the nature of these individual employee rights. Your concern and involvement may well make the difference to the realization of worker rights which for too long have remained one of the greatest secrets of modern day labor relations. Thank you for your service and the opportunity to share my views.

***Appendix 1*:**

Draft NLRB Rulemaking on its Policy Implementing the U.S. Supreme Court's Beck Decision

The National Labor Relations Board hereby revises its holding in California Saw and Knife Works[1], and subsequent related issued decisions, on the basis that it has applied an incorrect legal standard, as a matter of its statutory interpretation of the National Labor Relations Act, and caused an incorrect balance between the statutory rights of nonmember union dues objectors and the derivative interest of a labor organization in demanding financial support from nonmembers.

Section 8(a)(3) of the National Labor Relations Act permits parties to a collective bargaining agreement to provide that all employees in a bargaining unit compensate the union for providing exclusive bargaining representation. In Communications v. Beck[2], the Supreme Court held, among other things, that Section 8(a)(3) does not permit a union to expend funds, exacted from nonmember employees who object, on activities not related to the union's functions as the exclusive bargaining agent.

The Court defined these functions as collective bargaining, contract administration, and grievance adjustment[3].

In Beck, the Supreme Court integrated union security law under the Act into a broader body of law involving railroad and airline employees[4], and state and local public employees[5], dealing with union security arrangements and the union duty to represent all employees without discrimination. The Court also enlarged the previous administrative and judicial scope of the right of employees to refrain from union activities when required to work under a union security clause.

In applying narrow readings of the Court's decision in Beck, the Board has failed in California Saw, and subsequent decisions, to consider the implications of Section 8 (b)(1)(A), union unfair labor practices which restrain or coerce employees in the exercise of rights guaranteed in Section 7, in providing adequate protection of the employee right to refrain from participating in union activity. The Court's cases dealing with union security pursuant to Sec. 301 litigation provide no basis for analyzing a union's Beck obligations under the fair representation doctrine in an unfair labor practice proceeding.

Accordingly, the Board herein modifies its decision in California Saw and Knife Works and its progency to adhere to the Court's binding precedent as established by a uniform body of Federal law and to afford full protection for employees to participate in, or refrain from, union activities under the Act. The Board recognizes that the Court's analysis is grounded on three fundamental principles which must be applied under the Act: (1) when imposing any limitation on employees freedoms in the context of a union security clause exacting a union financial obligation, there is a need to minimize infringements of individual employee rights; (2) employees in other private and public sector employment have a common set of interests; and (3) policies involved in the union security labor relations structure are best served by a unified treatment of the rights and remedies of employees under such an arrangement.

Giving full effect to Court's principles under the jurisdictional and analytical framework set out in Beck , funds spent on nonrepresentational activities by a labor organization will now be analyzed under Section 8(b)(1)(A), prohibitions on union conduct.

To avoid potential violations of Section 8(b)(1)(A) a union's dues-objection policy must conform to the following requirements:

Employee Notice

> When seeking to obligate any employee to pay dues, fees or their equivalent under a lawful union security clause, a union must provide to all effected employees a written notice, upon date of hire or at least annually, which sets

forth the following employee rights:

> The right of each employee to become or remain a member or nonmember of the labor organization;
>
> The right to object to paying uniformly required union dues, fees, or other assessments to support activities by the collective-bargaining representative which are not expended on collective bargaining, contract administration and grievance processing.
>
> The right to know in sufficient detail, verified by an independent auditor, what percentage of funds expended by the labor organization and its affiliates during its most recent fiscal year, are spent for representational and non-representational activities.
>
> The right to an advance reduction in required fees and dues for objecting nonmember employees by the same percentage the labor organization spends on non-representational activities.
>
> The right to know of any internal union requirements governing registering objections to non-representational expenditures except that the requirements shall not impose conditions beyond compelling an employee objection to be written and mailed to a designated union agent which information shall be immediately provided to the employee.
>
> The right of an objecting nonmember to challenge a union's calculation of expenditures as chargeable or nonchargeable to the employee.
>
> The right of a challenging objecting nonmember to choose the forum available to decide the issue of disputed dues and to place all challenged amounts in escrow until a neutral decision-maker has resolved the dispute.

Footnotes

320 NLRB 224, 248-249 (1995), supplemental decision, 321 NLRB 731 (1996)

487 U.S. 735 (1998)

Id. At 745

Ellis v. BRAC, 466 U.S. 435 (1984); Machinists v. Street, 367 U.S. 740 (1961)

Abood v. Detroit Board of Education, 431 U.S. 209 (1977);

Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986);

Lehnert v. Ferris Faculty Association, 500 U.S. 507 (1991)

APPENDIX I- WRITTEN STATEMENT OF ARTHUR F. ROSENFELD, GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD, WASHINGTON, D.C.

Testimony of
Arthur F. Rosenfeld
General Counsel, National Labor Relations Board
before the
Subcommittee on Workforce Protections
Committee on Education and the Workforce
United States House of Representatives

November 14, 2001

Chairman Norwood and members of the Subcommittee:

Thank you for this opportunity to testify before the Subcommittee regarding "what the Office of the General Counsel of the National Labor Relations Board has done, and in the future can do, to implement the *Beck* rights guaranteed to workers under [the] law."

Introduction

The National Labor Relations Board (NLRB) is an independent federal agency that administers the National Labor Relations Act (NLRA). The NLRB has two principal functions: to prevent and remedy unlawful acts, called unfair labor practices, by either employers or unions, and to determine, through secret-ballot elections, whether or not employees wish to be represented by a union in dealing with their employers and, if so, which union.

The NLRB has two major, separate components. The Board itself, consisting of up to five Members, adjudicates unfair labor practice complaints on the basis of formal records in administrative proceedings and resolves election cases. The Board's decisions establish federal labor policy under the NLRA. The General Counsel has independent prosecutorial authority and is responsible for the investigation and prosecution of unfair labor practice cases and for the general supervision of the NLRB's 32 Regional Offices and satellite offices in the processing of unfair labor practice and representation cases. The General Counsel's office does not act on its own initiative in processing unfair labor practice cases. Rather, charges of unfair labor practices must be filed with the NLRB in one of its Regional Offices by members of the general public in order to initiate the statutory process.

In performing the duties of chief prosecutor and investigator under the NLRA, the General Counsel, through the Regional Office staffs, investigates, determines merit, and thereafter either dismisses the unfair labor practice charges or, absent settlement, commences formal adjudication by issuing administrative complaints. In making these merit decisions, the General Counsel is guided by the body of decisions and orders of the Board.

In the course of a typical year, approximately 30,000 unfair labor practice charges are filed with our Regional Offices. Of these, approximately two-thirds (about 20,000) are determined to lack merit and are either dismissed or withdrawn by the charging party. Of the approximately 10,000 cases deemed to have merit and thus to warrant further proceedings, approximately 90 to 95 percent are settled. The remaining cases are litigated—usually in a hearing before an Administrative Law Judge of the Board and are ultimately appealable to the Board.

Thereafter, a party aggrieved by the Board's decision may seek review, or the Board may seek enforcement of its order, in an appropriate United States Court of Appeals.

The Supreme Court's *Beck* Decision

Under Section 8(a)(3) of the NLRA (29 U.S.C. § 158(a)(3)), an employer and union may negotiate a collective-bargaining agreement that contains a "union-security" clause requiring all employees in a particular bargaining unit to become "members" on or after the 30th day following being hired. In a 1963 decision, *NLRB v. General Motors Corporation*, 373 U.S. 734, the Supreme Court held that the term "member" requires only the payment of periodic dues and fees as opposed to full membership. Since the Court noted that "the membership that is required has been whittled down to its financial core," individuals choosing not to become full members are often referred to as "financial core members." Thus, under current law, no one has to be a full member of a union in order to maintain a job, but all employees subject to a union security obligation can be required to pay union dues and fees. The Board in *Paperworkers Local 1033 (Weyerhauser Paper Co.)* held that a union must give employees notice of their *General Motors* rights to be financial core members before seeking to obligate employees under a union security clause.

In *Communication Workers of America v. Beck*, 487 U.S. 735 (1988)("*Beck*"), the Supreme Court further defined what were the "financial core" obligations under *General Motors*. The Court held that unions may not require financial core members to finance union activities beyond those germane to collective bargaining, contract administration, and grievance processing.

Initiatives of the Office of the General Counsel

Following *Beck*

It has always been the policy of the Office of the NLRB General Counsel to make prosecutorial decisions in light of existing Board law and to place unresolved legal issues before the Board for decision.

The Office of the General Counsel provides substantive and procedural guidance to Regional Offices via General Counsel Memoranda, Operations Memoranda and Advice Memoranda. Much of this material is made available to the public upon issuance.

Although *Beck* was a duty of fair representation case brought under Section 301 of the Labor Management Relations Act, not the NLRA, it clearly had implications for the NLRB. Accordingly, and shortly after the Supreme Court issued its *Beck* decision, then-General Counsel Rosemary M. Collyer issued Memorandum GC 88-14 (November 15, 1988)(copy attached) to agency staff and the public in order to provide guidance in the processing of *Beck* charges and the issuance of complaints. Memorandum GC 88-14 set forth the General Counsel's views as to the class of employees who were eligible for *Beck* rights. It determined that unions are required to provide notice to such employees of their *Beck* rights and it described the form, substance and timing of the required notice. The memorandum further took the position that employees must be permitted to object to funding non-representational union activities and went on to set forth the General Counsel's views as to union obligations upon receiving an objection as well as the means for objectors to challenge a union's allocations of representational and non-representational expenditures. It generally identified types of union expenditures that the General Counsel viewed as representational and non-representational.

As matters not resolved in GC Memorandum 88-14 arose in individual cases, Regional Offices submitted them to the Division of Advice for guidance on how to proceed. These decisions were communicated in Advice Memoranda distributed to all Regional Offices. Memorandum GC 88-14 and Advice Memoranda addressing specific factual situations represented the NLRB's articulation of employee rights under *Beck* until the Board issued its first decision applying *Beck* in 1995.

The Office of the General Counsel also has issued memoranda to educate the general public regarding employees' *Beck* rights. Thus, on May 11, 1992, General Counsel Jerry M. Hunter issued Memorandum GC 92-5 (copy attached), a reference guide designed to answer public inquiries regarding typical union security and *Beck* issues. Memorandum GC 01-04 (April 6, 2001)(copy attached), issued by Acting General Counsel Leonard R. Page, updated Memorandum GC 92-5 by incorporating subsequent Board decisions regarding *Beck*, described infra. Consonant with its purpose of educating the general public regarding *Beck*, the memorandum was made available to the general public and is available on the NLRB internet website.

In August 1998, following the Supreme Court's decision in *Air Line Pilots v. Miller*, former General Counsel Fred Feinstein issued Memorandum GC 98-11 to provide guidance on the processing of unfair labor practice charges alleging that unions have improperly charged objectors for nonrepresentational activities—so called "challenge cases." The objective of Memorandum 98-11 is to harmonize the Regional Offices' practice in investigating such allegations with those used in investigating unfair labor practice cases (ULP) generally. We are reviewing Memorandum 98-11 to ensure its consistency with current law and to determine whether it places an undue burden on charging parties.

The Board's Proposed Rulemaking Regarding *Beck*

In 1992, the Board considered the possibility of addressing the numerous and

complex questions raised by *Beck* through rulemaking. On February 27, 1992, the Board announced that it wished to receive public comment on whether to undertake such proposed rulemaking. The Board received 112 comments and held a public meeting on May 4, 1992, at which it was briefed on and considered these comments. The Board then decided: (1) to pursue rulemaking, directing its staff to produce a preliminary draft of a set of rules and associated comment; (2) to adjudicate *Beck* cases during the rulemaking process; and (3) to hold oral argument on the proposed rules.

The Board issued its notice of proposed rulemaking and oral argument on September 22, 1992. The proposed rules included, among other things, alternative methods unions could use to notify employees of their *Beck* rights; challenge procedures; and alternative ways of classifying expenditures as chargeable or non-chargeable. The Board also proposed a model union security clause.

The Board held hearings on its proposed rules on November 5, 1992, and March 16, 22, and 30, 1993. Attorneys representing various unions, business groups, and the National Right to Work Legal Defense Foundation, as well as employees and a certified public accountant, addressed the Board and responded to the questions of the Board members.

In 1995, the Board issued *California Saw & Knife Works.* This was the first decision conveying the Board's conclusions as to a union's obligations under *Beck.* Subsequently, the Board continued to address *Beck* questions solely through case-by-case adjudication rather than through rulemaking, because it concluded that it could more expeditiously address the issues raised in the notice of proposed rulemaking by deciding pending cases than through the rulemaking process.

Employee Rights and Union Obligations Under *Beck* as Articulated by the Board

In *California Saw* the Board established a comprehensive system of procedural obligations for unions and provided meaningful guidance regarding the distinction between chargeable and non-chargeable expenditures. In subsequent decisions, the Board has addressed and decided additional procedural and substantive questions. Following is a summary of employee rights and union obligations under *Beck*, as articulated by the Board.

In order to be eligible for *Beck* rights, an employee (1) must be a nonmember and (2) must be covered by a union-security clause in a collective bargaining agreement. In general terms, a union's obligations under *Beck* are to provide notice to nonmember employees of their *Beck* rights; to refrain from charging objectors for nonrepresentational expenses; to provide objectors with a financial disclosure of the union's expenditures; and to establish procedures for objectors to challenge the accuracy of the union's disclosure and charges.

1. Initial Notice

A union's initial obligation under *Beck* is to inform an employee of his/her right to be or remain a nonmember, subject only to the duty to pay initiation fees and dues. A union must also inform employees 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 employees intelligently to decide whether to object; and (3) to be apprised of any internal union procedures for filing objections.

The initial *Beck* notice must be given at or before the time the union first seeks to obligate a nonmember employee to pay fees and dues under the terms of the union security agreement. In addition, a union member employee must be provided with an initial *Beck* notice if he did not receive such notice at the time he entered the bargaining unit. The initial notice requirement is satisfied by giving the employee notice once and is not a continuing requirement. The Board does not require the initial *Beck* notice to be in any particular form as long as the union has made reasonable efforts.

2. Treatment of Objectors

Generally, a union may require that objections be sent to the union during a specified annual "window period." However, a union must grant employees who resign their full union membership, following the expiration of an annual window period, a separate period in which to file a *Beck* objection. Moreover, a union cannot require that objections be sent by registered or certified mail, or that employees mail objections individually rather than consolidating several objections in one envelope.

Once a nonmember employee objects, a union must refrain from charging him for that portion of dues which is expended for nonrepresentational functions. The union must also apprise the objector of the percentage of reduction in fees for objecting nonmembers, the basis for the union's calculation, and the right to challenge these figures. The information the union provides to an objector must be sufficient to enable the objector to determine whether to challenge the union's allocations. Thus, a union must provide a summary of major categories of "chargeable" and "nonchargeable" expenditures, but need not provide detailed supporting back up data for "mixed categories" containing chargeable and non-chargeable expenses. Where a union has no expenditures in a particular category (a "zero category"), the union does not have to report that fact to the objector, who can infer that silence means the union did not spend money on that activity. In addition, the union must verify by audit that the expenditures claimed were actually made. The Board has held that the audit need not be conducted by an independent outside auditor.

In another case, *Teamsters Local 166 (Dyncorp Support Services)("Dyncorp I"),* the General Counsel argued that a union's financial disclosure statement to objectors was inadequate because, although it listed major categories of expenditures, including "per capita" payments made to affiliates, it failed to specifically identify the affiliates and break down those entities' expenditures. The Board disagreed; it

reasoned that the disclosure was adequate to enable objectors to determine whether to challenge the union's reduced dues calculation, at which point the union would be required to provide more detailed supporting information.

Alternatively, a local union may utilize a "local presumption" in which no separate allocation of the local union's expenditures is performed but instead it is presumed, for disclosure purposes, that the percentage of the local's expenditures that is chargeable to objectors is at least as great as the percentage of its parent union's expenditures that is chargeable.

A union need not provide a *Beck* objector with *Beck*-related financial information if the union expressly waived the objector's obligations under the union security clause and informed the objector that he is not required to pay any dues or fees. However, a union violates the Act when it waives an objector's obligations under the union security clause, but does not communicate that fact to the objector.

3. Challenge

An objector may challenge the union's allocation of representational and nonrepresentational expenditures. A union must provide "reasonable procedures" enabling objectors to file such challenges. A union's challenge procedure must not be arbitrary, discriminatory, or administered in bad faith. The Board has indicated that once a challenge is made, the union bears the burden of proving that the expenditures are chargeable to the degree asserted.

Finally, the Board has held that a union that has not satisfied its obligations under *Beck* may not lawfully seek to have an employee discharged, or cause an employee to be discharged, for failing to pay fees or dues under a union security clause.

4. Representational versus non-representational union expenditures

In *Beck*, the Court held that Section 8(a)(3) does not permit unions to expend funds, over the objection of the nonmember employees, on activities "unrelated to collective bargaining, contract administration and grievance adjustment." The Board and courts have undertaken to determine, in contested cases, which specific functions fall within these categories.

Generally, expenses incurred for activities within the objector's bargaining unit are chargeable if they are "germane" to the union's representational role. Expenses attributable to activities outside the objector's bargaining unit – "extra-unit" expenses – may be charged if, in addition to being "germane" to the union's representational role, they are incurred for services that may ultimately inure to the benefit of the members of the bargaining unit by virtue of their local union's membership in the parent organization.

The Board has held for example that organizing expenses may be charged to *Beck* objectors, at least to the extent the organizing is within the same competitive market as that of the bargaining unit employer.

The Board also has held that a union's litigation expenses would be considered representational if they are germane to the union's role in collective bargaining, contract administration or grievance settlement.

Finally, in order to implement these *Beck* rights most fully, the General Counsel has sought, and the Board has instituted, a variety of remedial measures to ensure that employees' *Beck* rights are vindicated.

The Future

As stated above, the General Counsel is guided by the decisions of the Board in making litigation decisions. This practice is grounded in NLRA Section 3(d): "The General Counsel of the Board shall....have final authority, *on behalf of the Board,* in respect of the investigation of charges and issuance of complaints...and in respect of the prosecution of such complaints before the Board...." Indeed, prior to the vote to override the President's veto of the Taft-Hartley Act, Senator Taft answered criticism that Section 3(d) placed too much power in the hands of a single official, explaining:

> In order to make an effective separation between the judicial and prosecuting functions of the Board and yet avoid the cumbersome device of establishing a new independent agency in the executive branch of the Government, the conferees created the office of general counsel of the Board.... We invested in this office final authority to issue complaints [and] prosecute them before the Board....
>
> [H]e, of course, must respect the rules of decision of the Board and of the courts. In this respect his function is like that of the Attorney General of the United States or a State attorney general.

Consistent with its duties under the NLRA, the Office of the General Counsel has no reluctance to present cases to the Board seeking reversal of current law when the Board signals some willingness to change its view or where a Supreme Court decision has called current Board law into question. However, this process is not self-initiating. The General Counsel can issue a complaint only upon the filing of charges by members of the general public. Operating within this framework, the Office of the General Counsel will continue the vigorous investigation and prosecution of *Beck* charges, as it has since the *Beck* decision first issued.

Thank you for this opportunity to better acquaint the Subcommittee with the

important work of the NLRB's Office of the General Counsel regarding the implementation of the *Beck* rights guaranteed to workers under the law. I would be happy to answer any questions you may have.

APPENDIX J- WRITTEN STATEMENT OF REPRESENTATIVE HILDA L. SOLIS, SUBCOMMITTTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Statement of Congresswoman Hilda L. Solis
Beck Rights
November 14, 2001

First, I would like to thank all of the witnesses for joining us today and I would also like to thank the Chairman for continuing the debate on this important issue.

I would like to take this opportunity to highlight some of the shortcomings I see in the current Beck Rights debate. Perhaps the most important issue I see is the biased information our working men and women seem to be receiving. President Bush recently issued an Executive Order mandating that firms who conduct business with the federal government inform employees of their right not to join a union and not to pay union dues. However, there is no similar law informing employees of their right to join a union.

I must say that I find this rather perplexing. In effect, we are telling our working men and women of their right *not to do something* when they were never even informed of their *right to do something*. Where I come from, that is putting the cart before the horse.

The second point I take issue with is the implication that organizing somehow falls beyond the bounds of collective bargaining. A union's ability to organize directly corresponds with its ability to collectively bargain. The promise of the continued existence of a certain union enhances its power and position. If an employer could somehow weaken the right to organize, they could simply "wait out" a union involved in an organizing campaign.

Again, if we are to have an open and honest debate about "Beck Rights," we need to be fair to all sides.

Thank you.

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