UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UNITED FOOD & COMMERCIAL WORKERS
INTERNATIONAL UNION, LOCAL 700
(KROGER LIMITED PARTNERSHIP)

and Case 25-CB-8896

LAURA SANDS
An Individual

Michael Beck, Esq., for the General Counsel.
Jonathan D. Karmel, Esq. of Chicago, ILL,
for the Respondent Union.
James Plunkett, Esq., of Springfield, VA,
for the Individual Charging Party.

DECISION

Statement of the Case

C. RICHARD MISERENDINO, Deputy Chief Administrative Law Judge. On June 5, 2005, a charge was filed against the United Food and Commercial Workers Union, Local 700 (Local 700 or Union)[1] alleging that Local 700 failed to inform the Individual Charging Party, Laura Sands (Sands), of her right to become a non-member and of her right as a non-member to object to paying the equivalent of union dues and fees. This portion of the charge alleging that Sands was not provided with information in compliance with the legal standards established in *Communications Workers v. Beck,* 47 U.S. 735 (1988) and *NLRB v. General Motors,* 373 U.S. 734 (1963) was dismissed by the Regional Director for Region 25. On October 15, 2005, however, a complaint issued alleging that Local 700 violated Section 8(b)(1)(A) of the Act by failing to provide Sands with the percentage reduction of dues and fees for non-member objectors when the Union first informed her of her obligations under the union security clause.

On July 10, 2007, the General Counsel, Respondent Union, and Individual Charging Party submitted a Joint Motion and Stipulation of Facts pursuant to Section 102.35(a)(9) of the Board's Rules and Regulations waiving a hearing and submitting this case to an Administrative Law Judge for issuance of findings of fact, conclusions of law and order. The parties agreed that the stipulation of facts, charge, complaint, answer, exhibits attached to the stipulation, Statement of Issues Presented, and each party's Statement of Position would constitute the entire record in this case and that no oral testimony was necessary or desired.

On August 22, 2007, I issued an Order granting the joint motion and directing the parties to file briefs by September 24, 2007. The Individual Charging Party and the Respondent Union filed briefs.

[1] All dates are 2005, unless otherwise indicated.

On the entire record, and after considering the parties' position statements and the briefs filed by the Individual Charging Party and the Respondent Union, I make the following

Findings of Fact

I. Jurisdiction

Kroger Limited Partnership I (Kroger or Employer), a corporation, with its principal office in Cincinnati, Ohio, and a facility located, among other places, in Crawfordsville, Indiana, is engaged in the retail sale of groceries, pharmaceuticals, and sundry goods. During the 12-month period preceding the filing of the complaint, Kroger, purchased and received at its Crawfordsville, Indiana facility, goods valued in excess of $50,000 directly from points outside the State of Indiana. At all material times, Kroger has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent, United Food and Commercial Workers Union, Local 700, is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. *Stipulated Facts*

Local 700 and Kroger have a collective-bargaining agreement which requires as a condition of employment all bargaining unit employees to join or pay fees to the Union. On December 10, 2004, Sands was hired by Kroger to work at the Crawfordsville, Indiana faciliy.

By letter, dated January 11, 2005, the Union advised Sands that as a new employee she was represented by the Union. It also asked her to complete and return a membership application packet, which contained a copy of the collective-bargaining agreement's valid union-security clause, a membership application with check-off authorization, and the following separate statement:

> **Important Information Concerning Your Opportunity to Become an Active Member of the United Food and Commercial Workers International Union, AFL-CIO, CLC, Local 700 and Your Rights Under the Law.**
>
> The right by law, to belong to the Union and to participate in its affairs is a very important right. Currently, you also have the right to refrain from becoming a member of the Union. If you choose this option, you may elect to satisfy requirements of a contractual union security provision by paying the equivalent of an initiation fee and monthly dues to the Union. In addition, non-members who object to payment in full of the equivalent of dues and fees may file written objections to funding expenditures that are not germane to the Union's duties as your agent for collective bargaining. If you choose to be an objector, your financial obligation will be reduced very slightly. Individuals who choose to file such objections should advise the Union in writing at its business address of this choice. The Union will then advise you of the amounts which you must pay and how these amounts are calculated, as well as any procedures we have for challenging our computations.

> Please be advised that non-member status constitutes a full waiver of the rights and benefits of UFCW membership. More specifically, this means that you would not be allowed to vote on contract modifications or new contracts; would be ineligible to hold union office or participate in union elections and all other rights, privileges, and benefits established for and provided to active UFCW members by the UFCW International Constitution, Local 700 Bylaws, or established by the local Union.
>
> We are confident that after considering your options, you will conclude that the right to participate in the decision making process of your Union is of vital importance to you, your family and your co-workers, and you will complete your application for membership in the United Food and Commercial Workers.
>
> **Your involvement in your union is vital to the protection of job security, wages, benefits, and working conditions.**

(Jt. Exh. 2.)

On January 25, 2005, the Union sent Sands a second letter which explained her financial obligations to the Union. With regard to the amount of dues and the initiation fees, the letter stated:

> Currently, full regular monthly dues and fees based on your hire date of **December 10, 2004** are set forth below.
>
> | | |
> |---|---|
> | **Dues for February 2005** at $25.39 per month | $25.39 |
> | Initiation fees | $66.00 |
> | Total | $91.39 |

(Jt. Exh. 3)

Enclosed with the letter was a duplicate membership application packet, including the above-reference notice informing Sands, among other things, of her right to be and remain a non-member of the Union and to object to paying any dues or fees not germane to the Union's duties as the exclusive collective-bargaining representative. A few days later, Sands joined the Union.

On June 25, Sands sent a letter to the Union resigning as a member "effective immediately" and stating:

> ... I object to the collection and expenditure by the union of a fee for any purpose other than my pro rata share of the union's costs of collective bargaining, contract administration, and grievance adjustment, as is my right under *Communications Workers v. Beck,* 487 U.S. 735 (1988). Pursuant to *Teachers Local 1 v. Hudson*, 475 U.S. 292 (1986), and *Abrams v. Communications Workers*, 59 F.3d 1373 (D.C. Cir. 1995), I request that you provide me with my procedural rights, including: reduction of my fees to an amount that includes only lawfully chargeable costs, notice of the calculation of that amount, verified by an independent certified public accountant;

> and notice of the procedure that you have adopted to hold my fees in an interest-bearing escrow account and give me an opportunity to challenge your calculation and have it reviewed by an impartial decisionmaker. Accordingly, I also hereby notify you that I wish to authorize only the deduction of representation fees from my wages.

(Jt. Exh. 4.)

Four days later, on June 29, the Union responded in writing advising Sands of the percentage of her dues reduction and the reduced dollar amount. She also was provided with a copy of portions of the auditors' report and the procedure for objecting to and challenging the Union's calculation of the nonmember fees.[2] Sands did not challenge the Union's calculations.

III. *Issue Submitted*

Did the Respondent violate its duty of fair representation under the National Labor Relations Act by failing to include in its **initial** *Beck* notice to the Charging Party the amount of full Union dues and the percentage reduction in dues that objecting members would receive?

IV. *The Parties' Positions*

All of the parties acknowledge, and agree, that under current Board law new employees must receive an initial notice informing them of their right not to become a union member, of their right not to pay full union dues and fees, and of their right to object to payment of full dues and fees. *See California Saw & Knife Works,* 320 NLRB 224, 229-230 (1995). If an employee objects to funding union activities that are unrelated to collective-bargaining, contract administration, and grievance adjustment, the Union must advise the *Beck* objector of the percentage of reduction in fees, the basis for the union's calculation, and of the right to challenge these figures.

The Individual Charging Party and the General Counsel do not assert that under current Board law a violation occurred. Rather, they argue that current Board law should be reconsidered and reversed to require that unions inform employees in the initial *Beck* notice of the percentage reduction in dues that an objecting employee would receive and the total amount of dues to which the percentage applies. They argue that current Board law conflicts with the Supreme Court's decision in *Chicago Teachers Union v. Hudson,* 475 U.S. 292, 306 (1986), a public sector case, where nonunion employees challenged an agency shop agreement on the grounds that it violated their First and Fourteenth Amendment rights because it did not adequately prevent the use of their proportionate share of dues for impermissible purposes.The Court stated that "[b]asic considerations of fairness ...dictate that the potential objectors be given sufficient information to gauge the propriety of the union's fee."[3]

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[2] The Union maintains 36 separate dues rates, covering 5 Kroger bargaining units, including 9 separate dues rates covering the Kroger Clerks and Meat bargaining units.

[3] It should be pointed out that the "potential objectors" in *Hudson,* where not potentially objecting to being union members (because they already were nonunion members). Rather, as nonunion members they were potential objectors to the use of agency shop fees for purposes other than collective-bargaining and contract administration, which makes them more akin to second stage *Beck* objectors, who may potentially challenge a union's financial calculations.

The General Counsel and Individual Charging Party therefore assert that *Hudson* directs and fairness dictates that notice of the percentage deduction, along with the full dues, should be given to potential objectors, like Sands, in the initial notice in order for them to decide intelligently whether or not to object. They also argue that a change in current Board law is warranted in light of the appellate court decision in *Penrod v. NLRB,* 203 F.3d 41, 47 (D.C. Cir 2000) and the Board's decision in *Teamsters Local Union No. 579 (Chambers & Owen, Inc.),* 350 NLRB No. 87 (2007).

Finally, the General Counsel argues that requiring the Union to provide this information in the initial notice will not be burdensome because many major national and international unions have developed *Beck* systems with the percentage information readily available. In addition, the General Counsel asserts that local unions can make use of a "local presumption" that the percentage of a local's expenditures chargeable to objectors is at least as great as the chargeable percentage of its parent union and can rely on their international's *Beck* system to comply with their duty of fair representation.

Local 700 argues that a union breaches it duty of fair representation only if its actions are arbitrary, discriminatory, or in bad faith. Unions are given a "wide range of reasonableness" in meeting this standard. The current Board law is clear with regard to the initial notice unions must give to new employees. There is no argument or evidence that Local 700 violated its duty under current Board law. Rather, the stipulated facts show that the Union initally provided Sands with all the information required by law. Thus, the Union asserts that its conduct was not arbitrary, discriminatory or in bad faith.

Local 700 further asserts that providing Sands and thousands of other employees with individual calculation of their reduced dues and fees would be burdensome notwithstanding the fact that national and international unions have *Beck* systems in place. It points out that in Kroger bargaining units alone, the Union maintains 36 separate dues rates covering thousands of employees in five different Kroger bargaining units. Local 700 therefore argues that providing specific calculations of reduced dues and fees for all nonmembers would be overly burdensome.

Finally, Local 700 argues that reliance on *Hudson, supra,* is misplaced. It asserts that *Hudson* involved public sector employees and First Amendment rights and concerned nonunion employees who had already qualified for a reduced fee.

V. *Analysis and Findings*

It is well settled law that a Board administrative law judge must "apply established Board precedent which the Supreme Court has not reversed" (citation omitted), leaving for the Board, not the judge, to determine whether that precedent should be varied. *Waco, Inc.,* 273 NLRB 746, 749 fn. 14 (1984). All parties here agree that under current Board law Local 700 has not acted arbitrary, discriminatory, or in bad faith in violation of Section 8(b)(1)(A) of the Act. In addition, a careful reading of the Board's recent decision in *Chambers & Owens, Inc.* does not establish a basis for finding a violation.

In *Chambers & Owens, Inc.,* the issue before the Board was whether the union was required to provide a nonmember *Beck* objector with information concerning its affliates' activities and the extent to which those activities were chargeable or nonchargeable prior to the nonmember objector's filing a challenge to the Union's reduced dues and fees calculation. 350 NLRB No. 87, slip op. at 3 (2007). In other words, the question presented to the Board was how much information is a union required to furnish a *Beck* objector at the *second* stage of the *Beck*

objections procedure in order for the objector to decide whether or not to challenge the unions' reduced fee computations.

In that context, the Board agreed with the Supreme Court's reasoning in *Hudson* that "basic considerations of fairness" dictate that adequate information regarding dues and fees reductions be provided to objectors to allow them to challenge unions' reduced fees computations. It also found, in accord with the District of Columbia Circuit in *Penrod*[4]*,* that as to affiliate expenditures, *Hudson* is dispositive of the issue, i.e., unless a union demonstrates that none of the amount paid to affiliates was used to subsidize activities for which nonmembers may not be charged, then an explanation of the share that was so used is surely required. *Penrod,* 203 F.2d at 47. Notwithstanding the Board's favorable discussion of *Hudson* and *Penrod,* the Board in *Chambers & Owens, Inc.,* did not address the issue of whether a union is required to provide a potential *Beck* objector with financial information in the initial *Beck* notice. Despite the appellate court's holding in *Penrod* on that very issue, the Board to date has not applied the *Penrod* holding on that issue, thereby indicating a reversal of current Board law. An administrative law judge is bound to apply established Board precedent which neither the Board nor Supreme Court has reversed, notwithstanding contrary decisions by courts of appeals. *Los Angeles New Hospital,* 244 NLRB 960, 962 fn. 4 (1979), enfd. 640 F.2d 1017 (9th Cir. 1981). As a matter of current Board law, therefore, Local 700's conduct did not violate the Act.

Nor do the factual circumstances here warrant a violation. The thrust of the General Counsel and Individual Charging Party's argument is that more financial information in the initial notice is essential to helping a potential objector make an informed decision on whether or not to object to union membership. The undisputed facts show, however, that on June 25, 2005, Sands resigned as a union member "effective immediately" without any financial information other than the amount of union member dues. She also objected to the collection and expenditure by the Union of a fee for any purpose other than collective-bargaining, contract administration, and grievance adjustment, and demanded the percentage of her dues reduction and the reduced dollar amount, which she promptly received and did not challenge. Thus, it is quite apparent that Sands had all the information she needed to make an informed decision to object. In *Chambers & Owens, Inc.,* the Board found that where a union's procedure purporting to implement *Beck* actually impedes a nonmember employee from exercising his *Beck* rights and interferes with the statutory right under Section 7 to refrain from assisting a union, its conduct is arbitrary and unreasonable and therefore violated of Section 8(b)(1)(A) of the Act. 350 NLRB No. 87, slip op. at 3. The undisputed facts here do not support such a conclusion.

For these reasons, I find that the Respondent did not violate Section 8(b)(1)(A) of the Act as alleged in the complaint. Accordingly, I shall recommend that complaint be dismissed.

Conclusions of Law

The Respondent has not violated the Act in any manner alleged in the complaint.

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[4] In *Penrod,* the DC Circuit decided three issues: Did the NLRB engage in reasoned decision making in determining that a list of general expenditure categories provided by the union, in response to a *Beck* objection, was sufficient to allow employees to determine whether to challenge reduced fee calculations; was the union required to explain how its affiliated unions used money that the union considered chargeable to *Beck* objectors; and was the union required to identify in the initial *Beck* notice given to new employees and financial core payors, i.e., those employees who are not full union members, the percentage reduction in dues that would result from a *Beck* objection?

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The complaint is dismissed.

Dated, Washington, D.C. March 7, 2008

C. Richard Miserendino
Deputy Chief Administrative Law Judge

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