Blocking Beck

Union Dues and Politics Ten Years after the Decision

by Cassandra Chrones Moore

The Supreme Court's 1988 decision in *Communications Workers of America v. Beck* reverberated like a thunderclap among union officials. That decision established that union members and nonunion workers who are forced to contribute to unions cannot have their funds used for political purposes without their consent. *Beck* offered two potentially major benefits. First, it could have restored control of their money to individual workers. And second, since as much as 80 percent of dues are used for political purposes rather than to negotiate better salaries or working conditions, it could have reduced the ability of unions to wield political power that limits free markets. Unfortunately, ten years after the *Beck* decision, workers have regained very little of their freedom, largely because the Bush and Clinton administrations have had little interest in enforcing the law. Indeed, recent accusations that President Clinton reneged on part of the North American Free Trade Agreement to satisfy union leaders and secure campaign contributions well illustrate part of the problem that *Beck* could potentially help solve.

Worse, union officials have done everything in their power to block enforcement of *Beck*. Here the devil truly is in the details. Unions leaders have failed to give workers proper accounts of how their funds are spent, refused to submit to independent audits, rigged the arbitration system against the workers, and blocked the efforts of workers to take disputes to court. Enforcement efforts have proceeded through a series of pitched battles in the courts.

There has been some progress. Ballot initiatives have yielded promising results in Washington State, though one recently failed in California. But the road so far has been difficult and unless an administration in Washington is serious about enforcing the laws, workers' freedom will continue to be curtailed.

THE ROAD TO BECK

Beck was a step in a process that began with the 1935 National Labor Relations Act (NLRA). The law gave unions special privileges, for example, to be the exclusive representative of all workers in an enterprise if the majority of workers voted for representation. The Taft-Hartley Act was passed in 1947 to deal with some of the NLRA's problems. That statute permitted an employer and a union to agree that all employees must support the union financially as a condition of employment. This approach was meant to solve the "free rider" problem by insuring that the nonmembers would still pay their "fair share" of the costs of benefits secured by the union. Four years later, an amended Railway Labor Act included a provision modeled expressly after Section 8 (a) (3) of Taft-Hartley. Section 2, Eleventh extended to railroad labor, which was treated as a special case under federal law, the same rights and privileges of the union shop that were contained in the Taft Hartley Act. Financial support was to be restricted to "'periodic dues, initiation fees, and assessments."

That provision was construed by the Supreme Court in *Railway Employes Dept. v. Hanson (1956)* to mean that mandatory fees paid to unions by workers covered by the Railroad Act could only be used by unions to support collective bargaining and contract administration by authorizing only the collection of those fees necessary to finance collective bargaining. That meant that fees could not be spent by unions for other purposes, for example, on political causes, without the permission of the employees.

In 1986, in *Chicago Teachers Union v. Hudson*, just two years before *Beck*, the Supreme Court recognized the freedom of public sector employees to refuse to have their union dues used for political purposes without their permission. *Hudson* established four requirements for unions in order to make certain that workers' rights were protected: First, "timely, independently audited disclosures of union officials' expenditures" to allow dissenters to make informed objections; second, an "advance reduction" of any nonchargeable agency fees not in dispute; third, an impartial arbitrator, a person distinct from the independent auditor, to settle disputes promptly; fourth, an escrow of fees reasonably in dispute.

The *Beck* decision extended the same protection to employees in the private sector covered by the NLRA that previous decisions had afforded airline, railroad, and public sector employees. Justice Brennan, writing for the 5 to 3 majority, drew a parallel between Section 2, Eleventh, of the Railway Labor Act and Section 8(a)(3) of the NLRA. The Court declared that union members and nonunion members could be

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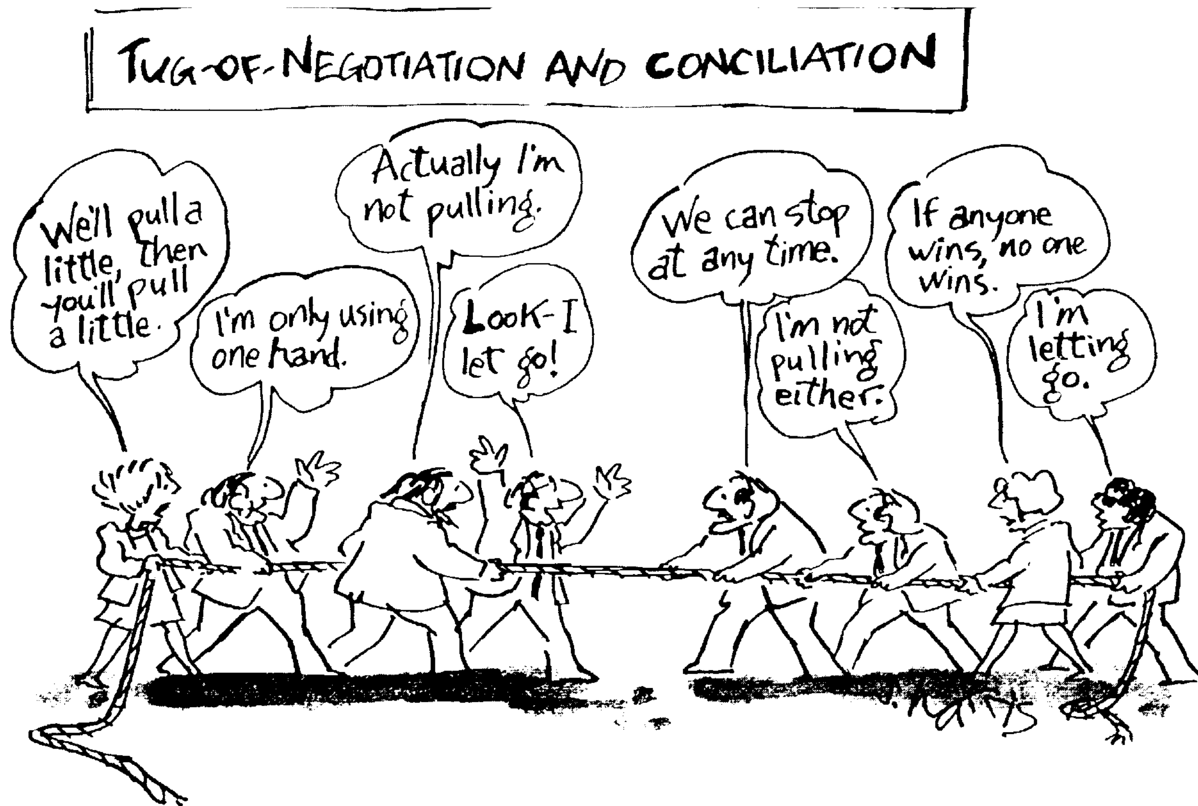


forced to pay only for collective bargaining "activities" such as contract negotiations and administration, and grievance adjustment. It was widely assumed that the procedural safeguards established in *Hudson* would be applied to all workers.

Not surprisingly, union leaders saw Beck as a strike to the heart of their political power. According to the Beck court, Communications Workers officials spent only about 19 percent of agency fees on collective bargaining; they had to return 79 percent to union members. That proportion is far from atypical. Nationwide, unions take in roughly $6 billion annually in compulsory union fees; in 1996, they officially spent $350 million in political campaigns.

In fact, off the record sums used for manning campaign booths, distributing literature, and working the telephones would push the tally much higher. Based on the *Beck* percentages and later research, some $4.6 billion annually probably is spent not on noncollective bargaining, but, rather on political activities.

EXECUTIVE FOOTDRAGGING

Part of the responsibility for enforcing *Beck* fell to the Executive branch of the federal government. In 1988 the outgoing Reagan administration took no action. With a presidential election that fall, the president did not want to endanger George Bush's chances to garner union support.

For nearly four years, President Bush did nothing to implement *Beck*. Finally, on 13 April 1993 he issued Executive Order No. 12800 directing federal contractors to post the following notice "in conspicuous places" thereby pointing out to workers that

> The law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

Upon assuming office, President Clinton's first official act was to issue an Executive Order revoking his predecessor's decree. In the accompanying "Statement by the President" Clinton stated that, "The effect of . . . [the Bush] order was distinctly antiunion, as it did not require contractors to notify workers of any of their other rights protected by the National Labor Relations Act, such as the right to organize and bargain collectively." Yet the Bush order specifically referred to the obligation of employees, as union members, to support collective bargaining. The president twisted his statement to suggest the opposite.

Clinton's commitment to ignoring *Beck* is hardly surprising in light of recent charges concerning campaign financing. One part of the North American Free Trade Agreement allowed Mexican and American truck drivers carrying cargo across the border to drive in the foreign country rather than hand off cargoes to national drivers. The Teamsters union strongly opposed that provision. Only a few weeks before the day in

1995 when that provision was to take effect, Transportation Secretary Federico Peña stated that, "We're unequivocally ready for December 18." But on that date Clinton backed out of the agreement, claiming concern that Mexican drivers would not observe American safety standards. (In fact, there were inspectors and provisions in place to assure such safety.) Paul Gigot, in the *Wall Street Journal* of 17 April 1998, notes that Clinton received cash support and campaign help from the Teamsters in his successful 1996 reelection bid.

NLRB BIAS

The National Labor Relations Board (NLRB) was established in 1935 to interpret and enforce federal labor law. But rather than enforcing the law objectively, the NLRB under Clinton has acted to block *Beck*. For example, on 4 February, in Sacramento, California, William B. Gould IV, president of the NLRB, announced his opposition to Proposition 226, up for vote in June 1998. This payroll protection initiative would require each union member to authorize annually the use of his dues for political purposes. Ironically Gould declared that it was "designed to deny unions and working families a voice in our society." Gould posted his opposition on the NLRB's website.

The battle over *Beck* during the past decade has centered on the NLRB and on court cases that argued the details of implementing the principles established in *Hudson*. As noted, workers have a right to independently audited statements of union expenditures, as well as a right to impartial arbitration of disputes with union leaders.

In order to determine which portion of dues unions were spending on legitimate collective bargaining and which portion unions were spending on objectionable political causes, workers required access to independently audited union financial records. Since *Beck*, union leaders have systematically thwarted such access and many of the court cases have been waged over that issue.

Normally, an unfair labor practice charge by an employee goes to the general counsel of the NLRB who registers it as a "complaint" and sends it to an Administrative Law Judge (ALJ) for a decision. An appeal of a decision goes to the five-member board of the NLRB; it can then be appealed to the federal court system that makes the final decision.

Union leaders, fearing that workers might circumvent that cumbersome process and go directly to the courts to enforce their rights under *Hudson* and, later, *Beck*, have created yet another mechanism that they maintain must be exhausted first in any union fee case.

Following *Hudson*, Mitchell Kraus, a union lawyer, asked the American Arbitration Association (AAA) to write new special rules for such cases. The AAA was established 1947 by federal statute to deal impartially with certain disputes. Union leaders wanted AAA appointed arbitrators to decide the validity of employees' challenges to agency fees. The problem: many AAA officials were also union officials. Four union lawyers essentially wrote the "new special rules," which the fourteen-member AAA board, composed almost exclusively of union officials or officials sympathetic to compulsory unionism, approved.

Arbitration is normally a process in which both parties seek a presumably neutral form of dispute resolution voluntarily. But AAA rules allow union officials to initiate "arbitration" even over the objections of employees.

Most surprising, employees have no voice in the selection of arbitrators. Employers and unions are assumed to be the parties in dispute and are allowed to choose. Arbitrators, paid only if they arbitrate a case, depend on being chosen to provide the service. Inevitably they are under pressure to be on good terms with employers and unions. They are far from the independent actors envisioned by *Hudson* and *Beck*.

According to AAA rules, the arbitrator "shall be the sole judge of the relevance and materiality of the evidence offered and conformity to legal rules of evidence should not be necessary." Thus union officials may avoid furnishing damaging evidence. Nor do AAA proceedings comply with normal rules of discovery in litigation. Attorneys representing dissidents, for example, may have little time to examine documents. Finally, if union lawyers violate arbitration rules but lawyers for dissidents fail to object in writing, the workers "shall be deemed to have waived the right to object." Many of the post-*Beck* cases have centered on the arbitration issue.

ABRAMS

In October 1987 Kenneth Abrams and three coworkers sued the Communications Workers of America (CWA), the same union then contesting Harry Beck's claims. They asserted that the union's notice of its objection procedures was overly broad in its definition of expenditure chargeable to workers, that it failed to notify employees adequately of their rights, and that the union's accounting methods were unreliable and inadequate. They also challenged the CWA's system of handling objections and refunds.

In its 1995 ruling in *Abrams v. Communications Workers of America*, the U.S. Court of Appeals for the District of Columbia Circuit agreed with the workers that the Union's notice to nonmember employees of their right to object to full payment of union dues is inadequate because it defines financial core expenses too broadly. The court noted, in particular, that it "inadequately explains the legal nature of a worker's right to object." Of profound significance, the court rejected the union claim that dissenters must exhaust union-imposed arbitration before going to the courts:

> CWA's procedure requiring an objector who challenges the allocation of chargeable and nonchargeable expenses to exhaust Union-provided arbitration violated its duty of fair representation by limiting the choice of forum for the challenge.

The decision on accounting procedures, however, favored the union. To establish chargeable and nonchargeable expenditures, CWA employees were supposed to keep time sheets that recorded activities in twenty-four categories. An outside firm determined the allocation between chargeable and nonchargeable activities. But the union employees had advance notice of which

thirteen week period the accountants would review to establish that the allocation was fair. A report prepared by a Professor Grubner of accounting and auditing at Harvard Business School noted that the union's method would allow CWA employees to skew that period toward chargeable activities.

MULDER

In 1994 in *United Food and Commercial Workers Local 951 v. Mulder* the union sued three nonunion employees of Meijer, Inc., who had objected in writing to the amount of "service fee" levied by the union to cover the cost of collective bargaining. The objection set in motion the union's internal procedure for handling dissent that required nonunion members to go through the AAA arbitration process before seeking judicial review. Two of the three AAA arbitrators upheld the fees.

On appeal, Judge Daughtrey, writing for the U.S. Court of Appeals, Sixth Circuit in 1994, found that "because the defendants had never agreed to arbitrate the dispute, no true arbitration existed to be confirmed." Concerning the union's argument, the judge noted:

> The problem with this proposition is that it confuses the union's presumed responsibility to provide a means of dispute resolution with its ability to *force* non-union members to use its selected method.

Citing *Abrams*, then on appeal, Judge Daughtrey continued, "Thus, the union cannot unilaterally impose a means of resolution and deprive nonmembers of the use of other fora." Since none of the three defendants had signed an agreement to arbitrate and to be bound by a court judgment after arbitration, they could bypass the AAA process and go directly to the courts.

GUNTER

The 21 February 1997 U.S. District Court New Mexico decision in *Robert Gunter et al., v. Atomic Projects and Production Workers Metal Trades Council, and Sandra Corporation*, stemmed from complaints filed against a labor organization representing eleven craft unions and their employer. In the grievance that made it through appeal, employees charged that the union was not giving them enough information about how it was spending dues. To be "adequate," the protesters charged, the union must not only provide the major categories of expenses but but also "justify" the chargeable expenditures.

The unions involved did use outside auditors and experts to review their records, but the protesting employees argued that the reviews "did not satisfy relevant accounting principles, and that the auditors failed to 'verify' that the expenditures were properly *categorized* as chargeable or nonchargeable." The Union had decided what was or was not chargeable; the auditors had merely confirmed that the expenditures were in fact made, in other words, that the numbers had been placed in the appropriate boxes. The objecting employees insisted that an independent auditor should review the Union's decision as to which expenses were chargeable and which were nonchargeable.

Although the use by the unions of a truly independent auditor, one who has no ties to the employing union or to an affiliate, may constitute a step in the right direction, the protesting employees argued that it would not go far enough. Expenditures require not only review and confirmation but also verification by an impartial reviewer. Otherwise the union will have final say in disposing of the dues. Judge Hansen, however, ruled for the union.

FINERTY

The issue of calculation and allocation reoccurred in *Michael Finerty vs. N.L.R.B*. In that case, *Finerty* challenged the CWA over its method of calculating the agency fee charged to nonmember unit employees. The CWA is an international union representing over six hundred thousand employees in the United States and Canada. With roughly eight hundred state and local government bargaining units and over eighteen hundred printing industry bargaining units, it represents approximately twenty-four hundred bargaining units. Its size gives it enormous power. A small variation in the way it calculates representational and nonrepresentational expenses can mean hundreds of millions for its treasury.

The CWA charges the locals for each employee—all of whom are represented by local unions—a per capita amount to cover its efforts on the employees' behalf. But the "one-size-fits-all" formula charges each employee the same amount regardless of how much the parent organization contributes to local collective bargaining efforts. With so many CWA units, it could be assumed that national efforts on the part of some locals were substantial, for other locals, minimal.

Petitioners in *Finerty* maintained that the national union's funding approach made it impossible for employees to distinguish between funds used for representational activities such as collective bargaining, and funds used for political purposes.

The National Labor Relations Board dismissed the complaint. The petitioners appealed to the United States Court of Appeals, District of Columbia Circuit which upheld the NLRB, ruling that the CWA did not violate its duty of fair representation "by calculating the reduced agency fees charged to objecting nonmember unit employees on union-wide basis." Nor had the union violated that duty by providing to objecting nonmembers "financial information disclosing the allocation of expenses on a union-wide rather than unit by unit basis."

The decision had its roots in *Lehnert v. Ferris Faculty Association*, decided by the Supreme Court in 1991. Although objecting employees could not be charged for lobbying expenses, Justice Blackmun, writing for the majority in that case, held that employees could be charged "their pro rata share of the costs associated with otherwise chargeable activities of its state and national affiliates, even if those activities were not performed for the direct benefit objecting employees' bargaining unit." The rationale? Those chargeable costs were "for services that may ultimately enure to the benefit of the local's members by virtue of their membership in parent organization." The objecting employees would thus be contributing to a "pool of resources" that might be "potentially available." That "pool of resources" might also serve as a slush fund for union officials.

CALIFORNIA SAW

Discussing the chargeability or nonchargeability of union fees inevitably brings up the question of authorization and verification of whether those fees have been divided correctly. In May 1995 Administrative Law Judge Clifford H. Anderson, who was attempting to consolidate a number of complaints filed against the NLRB, issued rulings inimical to *Beck* rights in several companies.

In *California Saw & Knife Works v. NLRB* in December 1995, the National Labor Relations Board affirmed the judge's rulings. In that decision the NLRB seemed to deny a key component of the *Beck* decision, that Section 8 (a) (3) of the National Labor Relations Act and Section 2, Eleventh of the Railway Labor Act were "statutorily equivalent." It was on that basis that Justice Brennan in *Beck* extended safeguards against the use of union dues for political purposes against the wishes of employees from the public sector, railroad, and airline workers to all private sector workers. The NLRB suggested that in the private sector, where no state action was involved, the *Hudson* requirements did not apply.

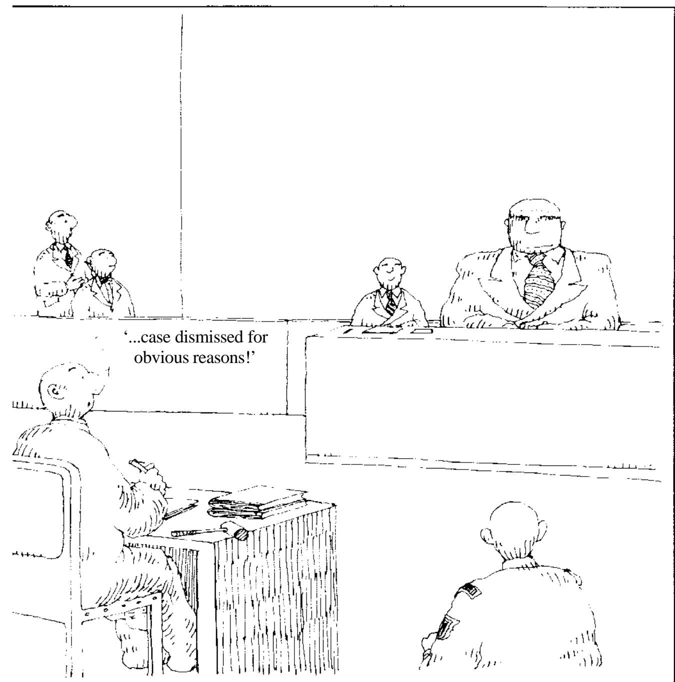
FERRISO

While that NLRB ruling was on appeal, another case concerning auditing was making its way through the courts. In *Lawrence R. Ferriso v. National Labor Relations Board*, an employee of the International Union of Electronic, Salaried, Machine, and Furniture Workers, petitioned for a review of the NLRB's ruling that the union was not obligated to provide the employee with an independent audit to assist the employee in deciding whether to challenge the union's calculation of its agency fee to nonmembers. The Court of Appeals for the District of Columbia Circuit held that the employee was indeed entitled to an independent audit, granted the review, and remanded the case back to the NLRB.

Ferriso, a nonmember, had asked the International Union to reduce his agency fees "to reflect only those expenses properly chargeable to him." Only with the information in hand could he decide whether to challenge the calculations of the agency fee. The union had provided, without explanation, a list of what percentage of costs of each of its affiliates was chargeable to *Ferriso* who then filed an unfair labor practices charge with the NLRB. The Board agreed that the union should provide data on the "major categories of expenditures" but was not required to furnish an independent audit. *Ferriso*, rejecting the union's offer of an arbitrator, appealed.

In her opinion Circuit Judge Wald held "that *Ferriso* is correct and that the Unions are required to provide him with an independent audit of their major categories of expenditures." The Judge also found "that the Board's rejection of the 'independent auditor' requirement was not rational, because any rational interpretation of the NLRA's duty of fair representation will necessarily include an independent-auditor requirement."

Further criticizing the NLRB, the judge stated: "We also find that the Board's apparent methodology for ascertaining what constitutes an appropriate audit is incorrect, and that such audits must, in general, conform to the ordinary norms for audits of



comparable entities." Specifically, the judge found that the Board failed to scrutinize the arrangement for verification except in a cursory manner, and, more seriously, failed to refer "to the accepted norms of the accounting profession in analyzing the experience and independence of the auditors." Citing the standards promulgated by the American Institute of Certified Public Accountants, the judge noted that an independent auditor must avoid even the appearance of being obligated to the client. The Securities and Exchange Commission has also set forth a requirement that "bars an accountant from auditing a firm or its affiliates if that firm has employed him or anyone else from his office during the period covered by his report."

The court ruled that "the NLRB shall order that the Unions provide *Ferriso* with an independent audit of their financial data, and that the independence and qualifications of the auditors conform to prevailing norms for audits of comparable entities."

Judge Wald also took a shot at the NLRB over *California Saw*, saying, "We think it is unlikely that an arrangement like that at issue in *California Saw* would be consistent with the ordinary norms for the independence of an audit." In addition, she noted the NLRB's contention in *California Saw* "that the independent-auditor requirement might be peculiar to cases involving state action," such as *Hudson*, but added, "We do not agree." Citing *Hudson*, *Miller*, and *Abrams*, the judge asserted that "an independent audit is the minimal guarantee of trustworthiness."

MACHINISTS

In 1998, the U.S. Court of Appeals for the Seventh Circuit put itself on a collision course with the decision in *Ferriso*. In the appeal of *California Saw*, known formally as *International Association of Machinists & Aerospace Workers v. NLRB*, the court found that "the NLRB did not act unreasonably" in

allowing an international union to pool union-wide all of its expenditures relating to collective bargaining—including those for litigation—and "divide the pool by the number of workers that the union represents to compute the basic agency fee." The Board had asserted that the economic interdependence of bargaining units created a "spillover" effect: the benefits won for one unit could accrue to another.

The court also declared that the NLRB had not acted "unreasonably" in permitting an international union to assign "auditors who are employed by it or one of its subordinate bodies, (but *who are not CPAs and may have no formal training in accounting),* to audit agency-fee calculations of a local or district with which the particular auditor has no present or prior affiliation."

In admirably convoluted style, Chief Judge Richard Posner declared:

> The machinists' auditors may be so biased or so unskilled that they make many mistakes, most no doubt favoring the union. But of this there is as yet no evidence. . . . It could be argued that an independent auditor hired by the local would actually feel a greater sense of obligation to the local as the entity paying its bills.

The Court clearly understood that its decision was "creating an intercircuit conflict over the issue of the 'independent' auditor" by disagreeing with the ruling of the appellate court for the District of Columbia Circuit in *Ferriso*.

Still, the conflicting rulings in *California Saw* and *Ferriso* make it likely that the audit issue will reach the Supreme Court.

THE SUPREME COURT ON MILLER

The issue of arbitration did reach the Supreme Court in *Air Line Pilots Association v. Robert A. Miller, et al.* And on 26 May 1998 the Court ruled in a seven to two vote that workers cannot be forced by their union into a union-established arbitration process to resolve complaints by workers that their union dues are being used for political purposes without their consent.

The case began in December 1991, when over one hundred nonunion Delta pilots filed a complaint in the United States District Court for the District of Columbia challenging the "service fees" charged to nonmembers. The court denied the complaint and the union began collecting the fees the following year. The pilots requested production of documents used in determining germane and nongermane expenditures; the union refused.

As the appeals forged ahead, the union claimed that the employees had consented to its AAA arbitration procedures. The pilots, however, insisted that they had filed letters only to preserve their rights and that they had, in fact, objected to the arbitration procedure and to the "denial of court review." The union appointed an arbitrator who rejected two requests not to proceed because the matter was in litigation. During the AAA proceedings, the arbitrator denied a request to permit discovery of evidence and to require ALPA to identify its exhibits and witnesses in advance.

Over years of continued legal wrangling, the pilots' filed repeated requests for the production of union documents that would enable them to determine allocation, but to no avail. The union also continued to maintain that employees had to exhaust the union's arbitration procedures, at the option of the union, before they could take a particular complaint to court. Finally, the U.S. Court of Appeals for the District of Columbia Circuit held that an employee wishing to bring an action in federal court did not have to first go through arbitration to challenge the union's calculation of chargeable expenses. There was "no *legal* basis for forcing into arbitration a party who never agreed to put his dispute over federal law to such a process." Furthermore, the court ruled that *Hudson* did not envision such a necessity for protesting agency shop employees.

The attorneys for the pilots argued that *Hudson* applied and nothing in that opinion suggests that nonunion employees can be forced to exhaust union arbitration of a dispute. Moreover, the union's maneuvers had been designed simply to consume the financial resources and the patience of the protesters.

The Supreme Court's decision in favor of the pilots puts an end to union insistence on arbitration as a necessary precondition to appearance in court. But as with other *Beck* rights, federal and state officials still could drag their feet on enforcement, and workers might find claiming these rights to be a slow and painful purpose.

The National Education Association, a Goliath among unions, filed an amicus brief before the Supreme Court in Miller. That is hardly surprising since it, too, uses the American Arbitration Association to satisfy the "impartial decisionmaker" requirement of Hudson and is itself embroiled in several Beck cases. The first, Bromley, et al., v. Michigan Education Association-NEA, et al., turns on the familiar issues of arbitration and discovery. The second case, Leer v. WEA, et al., NEA, also concerns agency fees.

WASHINGTON STATE INITIATIVES

Although the unions can delay in the courts, the court of public opinion has been handing down decisions which organized labor finds deeply disturbing. In 1992, Washington state voters passed, by 73 percent, Initiative 134, requiring the teachers' union to obtain annual written approval from each member to use compulsory dues for political purposes. Participation in the Washington Education Association's Political Action Committee (WEA-PAC) fell dramatically, from forty-five thousand to eight thousand.

Not to be defeated, the WEA soon established a "Community Outreach Program" (COP), separate from the now-voluntary WEA-PAC. The COP was funded with mandatory twelve dollar per member dues. Since the WEA has approximately sixty-five thousand members, the scheme created a slush fund of nearly $800,000 for political gamesmanship. Those dues were deposited in an anonymous "J" fund and divided between the parent organization and the Uniserve Councils or regional committees for political activities.

There ensued a complex interplay between the COP, the WEA-PAC and the WEA. From the COP, the WEA directed contributions to the WEA-PAC, the Washington State Democratic Party, and other political committees. In one striking instance, the COP loaned roughly $150,000 to the WEA-PAC. The WEA was supposed to reimburse the COP. The WEA-PAC later declared that the loan had been "forgiven."

Union members who thought the COP might actually be a vehicle for community outreach found out the truth in 1996. Even though the COP and the WEA-PAC provided the WEA with $900,000 annually, WEA needed more for its political expenditures. In 1996 it budgeted over $1.5 million to influence the election process. That included $700,000 in contributions to the "No to 173/177 Committee," established to defeat initiatives to allow charter schools and vouchers. To cover its costs, the WEA also laundered $410,000 from the National Education Association. The spending played a decisive role in the November 1996 defeat of the two pro-choice initiatives.

MEMBERS WERE THUS FORCED TO PAY A FINE RESULTING FROM THE VERY ACTIONS THEY WERE PROTESTING.

Supporters of those initiatives and teachers who objected to the union's politics sought help from the Olympia-based Evergreen Freedom Foundation (EFF), a private advocacy group. The Foundation submitted investigative findings to the state's Public Disclosure Commission which Commission that referred the case to Washington Attorney General Christine Gregoire to prosecute. In February 1997, the attorney general filed suit against the union for campaign finance violations. In June, Evergreen also filed a lawsuit against the WEA, charging that, with COP and the NEA, it is essentially a PAC, extracting political contributions from teachers without their written permission or disclosure of how the funds are used.

During the fall, the attorney general's lawsuit against the WEA moved forward, but then suddenly ground to a halt without the completion of discovery, interrogatories, or depositions. An administrative hearing by the Public Disclosure Commission on other violations was delayed for two months. Then, on 27 February 1998, Gregoire announced a settlement. All charges brought by the state were dismissed in return for a fine of $80,000, plus the payment of $20,000 in legal fees. Ironically those exactions were not levied against a person committing a violation of the law but against the union, to be paid from union funds. Members were thus forced to pay a fine resulting from the very actions they were protesting.

As part of the settlement, the WEA was to return to its teachers $330,000 in dues improperly collected through a one-time five-dollar reduction in 1998 dues. The five dollars supposedly represented the amount of COP dues contributed to the WEA-PAC and other political committees. The NEA was given a mere slap on the wrist for having failed to report the $410,000 supplied to the WEA for the November campaign. According to the Settlement Agreement, neither the NEA nor the WEA understood that the law required the NEA to be treated as an entity separate from the WEA.

Then the attorney general, in an offhand remark, delivered a bombshell. Gregoire, a Democrat with higher ambitions, announced that she did not think the provisions of Initiative 134 applied to labor union dues, only to union PAC money. According to the settlement, neither the WEA nor the COP were considered "political committees," begging the question of how they use their funds. Because of that interpretation, Gregoire believed that Initiative 134 did not apply to deductions that generate WEA's general funds.

That interpretation would pull the teeth of the initiative, allowing unions to launder their members' money through their own general fund and into political expenditures. The announcement was not a court judgment, not an agency rule, but an "official tolerance policy."

In March 1998, the EFF initiated legal action to modify or annul the attorney general's settlement. Specifically, the EFF wants to obtain standing in court for teachers so that they can reopen the attorney general's suit against the WEA. Meanwhile, the settlement indicates that the attorney general will not enforce the requirement that annual written permission from teachers be obtained when general union dues are used for political purposes.

CALIFORNIA: VICTORY IN SAN DIEGO

Perhaps the only solid victory in the struggle against union coercion has come from California. Jean Apple, a teacher, tried to resign from the union largely because she opposed the use of her dues for political purposes. The union local, however, told her that she could not leave until mid-1998, when the teachers' bargaining contract with the San Diego Unified School District expired. Until then she would have to pay full union dues.

With the help of the National Right to Work Legal Defense Foundation, Apple brought suit in November 1996. An attorney for the plaintiff said that union officials diverted over 95 percent of the teachers' compulsory dues "into subsidizing the partisan interests of a single, narrow ideological group." Nearly a year later, the union actually settled with Apple and ended litigation. The settlement eliminated compulsory membership requirements from contracts, accepted all current and past resignation requests, and mandated the rebate to all members requesting it of all dues money not spent on collective bargaining, contract negotiation, and grievance—the three union activity sanctioned by *Beck*. Refunds are expected to total $200 per year per member, roughly one-third of full dues.

Apparently the local union saw that as an isolated case that only applied to teachers in San Diego. But if the local union is wrong, the statewide implications are profound, since the California Teachers Association is 250,000 members strong.

There have been no challenges to the case. The settlement is a contract between the teachers' union and the San Diego school district, rather than a judicial ruling or an initiative dependent on administrative interpretation. Union officials who disregard the settlement can be sued for breach of contract, and thus far they seem inclined to observe it.

CALIFORNIA: PROPOSITION 226

A recent defeat for workers' rights came in California on 2 June 1998 with the defeat of Proposition 226. That initiative would have required employers and labor unions to obtain written permission annually before deducting political contributions from paychecks. It would not have created any new rights but would have simply created a mechanism by which workers could exercise their *Beck* rights.

Prop 226 garnered 740,000 signatures, 300,000 more than it needed to qualify for the ballot, showing significant initial support. A field poll released in February 1998 showed nonunion and union households favoring the initiative by 70 percent. But the initiative lost by 53 percent to 47 percent.

The failure of Prop 226 was first a matter of money. Opponents probably outspent supporters by ten to one. The AFL-CIO, with $20 million at its disposal, swamped the debate with television spots, radio ads, and political mailers claiming that Prop 226 would "muzzle" labor unions. As election day neared, phone banks swung into action. The California Teachers Association drew on its $3 million "Initiative Fund," enriched by $500,000 from the National Education Association. Opponents charged that the Pro-Prop 226 campaign was financed by sinister out-of-state interests. They based the accusation on a $441,000 contribution from the Washington D.C.-based Americans for Tax Reform. That concern was ironic given the out-of-state financial and manpower help from the AFL-CIO, the NEA, and others to defeat Prop 226.

The second reason for the initiative's failure was the flood of misleading and demagogic claims that Prop 226 would endanger police officers, pension funds, the United Way, and possibly widows and orphans as well. One radio ad featured a honey-voiced opponent, supposedly a teacher, asserting she was for campaign reform but against Prop 226. Unions protected children and families she said; Prop 226 would leave them defenseless.

Some ads suggested that 226 would cost millions of dollars to enforce. But four signed pieces of paper per employee, one for the employee's records, one for the employer, one for the union and one for the appropriate state office, could be adequate in this self-enforcing system. Employees refusing to have funds withheld for political purposes simply would present their copy of the signed statement to whoever issues their checks.

The unions claim that the initiative constituted an effort to weaken labor in favor of big business; "fairness," they asserted, would require corporations to get prior permission from shareholders before using corporate funds for political purposes. But owning stock in a corporation is purely voluntary; shareholders who disapprove of corporate actions can pick up the phone or go online and sell their shares. In fact, companies have changed some of their practices, for example, pulling investments from countries with dictatorial governments, in response to shareholder concerns. By contrast to the ease of selling stocks, in order to claim their *Beck* rights, both union and union members must often hire a lawyer and make their way through a costly and complicated judicial system that is often unfriendly to their cause.

Some opponents claimed that by eroding the unions' political power, Prop 226 would lead to the loss of workers' pensions and other benefits. That is a revealing objection since terms of employment are supposed to be negotiated between employers, unions and—one would hope—the employees themselves. In a sense, opponents were saying explicitly what most people already knew, that political power is a major factor in determining worker benefits, at the expense of market forces.

A third reason for the defeat of Prop 226 was that opponents managed to make it a prounion versus antiunion vote, as opposed to what it actually was, a vote for or against the freedom of individual workers.

FUTURE FIGHTS

Despite its failure, Proposition 226 may constitute a shot across the bow, alerting labor unions that their political practices can no longer go unchallenged. This fall, voters in Colorado, Oregon, and Nevada will decide similar initiatives aimed at implementing "*Beck* rights."

Another recent *Beck* success may better auger the results of the coming November initiatives than did California. In 1998 Wyoming became the fourth state, after Idaho, Michigan, and Washington, to enact "paycheck protection," requiring consent by union members before money can be withheld from their paychecks for political purposes. Wyoming is of particular interest, since it is one of the twenty-one right-to-work states in which union membership is voluntary. Thus workers can avoid having their dues used for political purposes by resigning from, or simply refusing to join the union.

Yet federal law still mandates that the union favored by most employees in a workplace be the exclusive representative of the workers. As long as that regulation remains in place, both right-to-work laws and paycheck protection seem necessary to safeguard worker rights. At the moment, many workers unwillingly join unions in right-to-work states because they want a voice in the selection of the representatives who negotiate their terms and conditions of employment, and a vote on ratification of a contract. Typically unions refuse to permit nonmembers to participate in such decisions in their bargaining units, additional evidence of organized labor's efforts to stifle discussion and dissent. Thus the fight for paycheck protection likely will continue in right-to-work as well as non-right-to-work states.

CONCLUSION

The *Beck* decision is an example of individual rights being affirmed by the Supreme Court and then thwarted by the executive branch and a government agency in Washington, the NLRB, that is supposed to enforce them. Workers who have resorted to the courts for relief have had to fight for each foot of freedom. It might be that Harry Beck's thunderclap has yet to reverberate in every union hall, but freedom of choice and a liberalized labor market are gathering a powerful number of supporters nationwide. Their conviction may bring dramatic changes in the labor-union marketplace.