The Use of Labor Union Dues For Political Purposes: A Legal Analysis

L. Paige Whitaker
Legislative Attorney

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Summary

Under union shop agreements, labor unions must establish strict safeguards and procedures for ensuring that non-members' dues are not used to support certain political and ideological activities that are outside the scope of normal collective bargaining activities. The "union shop" or "agency shop" agreement essentially provides that employees do not have to join the union, but must support the union in order to retain employment by paying dues to defray the costs of collective bargaining, contract administration, and grievance matters.

In a line of decisions, the Supreme Court has addressed this issue and has concluded that compulsory union dues of non-members may not be used for political and ideological activities that are outside the scope of the unions' collective bargaining and labor-management duties when non-members object to such use. Seven Supreme Court decisions have held that union dues exacted from dissenting non-members may not to be used for political and ideological purposes and must be expeditiously refunded to dissenting non-members according to proper procedural safeguards: (1) *International Association of Machinists v. Street*, 367 U.S. 740 (1961); (2) *Railway Clerks v. Allen*, 373 U.S. 113 (1963); (3) *Abood v. District Board of Education*, 431 U.S. 209 (1977); (4) *Ellis v. Brotherhood of Railway Clerks*, 466 U.S. 435 (1984); (5) *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986); (6) *Communications Workers of America v. Beck*, 487 U.S. 735 (1988); and *Lehnert v. Ferris Faculty Association*, 500 U.S. 507 (1991).

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Introduction

In 1988, the Supreme Court, in *Communications Workers of America v. Beck* (hereinafter referred to as *Beck*), ruled against organized labor and held that non-union employees could not be required to pay full union dues if some of those funds were to be used for activities unrelated to collective bargaining.[1] Under § 8(a)(3) of the National Labor Relations Act (NLRA),[2] a labor union and an employer can enter into a contractual agreement requiring all employees in the bargaining unit to pay union dues as a condition of employment no matter whether such employees became union members or not. The Supreme Court in *Beck* concluded that § 8(a)(3) of the NLRA (1) does not permit a labor union to expend funds on non-related union activities, such as lobbying and political activities, when dues-paying non-member employees object and (2) authorizes only those dues and fees necessary to the duties relating to labor-management relations.[3] In 1991 the Supreme Court in *Lehnert v. Ferris Faculty Association*, expanded the scope of the *Beck* holdings to include public sector employees so that such employees may not be compelled to subsidize political or ideological activities of public employee unions.[4]

During the 1992 presidential election year, on April 13, 1992, President George Bush issued Executive Order 12800 requiring federal contractors to post notices informing employees of their rights under the *Beck* decision. It required notification to federal contractor non-union employees that their union dues may not be used to support political activities that they oppose. It also required the Secretary of Labor to issue rules providing for financial disclosure and reporting requirements for labor unions in order to provide enforcement of the *Beck* holdings.[5] However, when President Bill Clinton took office, he repealed former President Bush's Executive Order by issuing Executive Order 12836 on February 1, 1993, which revoked certain executive orders concerning federal contracting.[6]

Prior to the *Beck* and *Lehnert* decisions, the Supreme Court regularly revisited this issue in a line of decisions which held that labor unions cannot use dissenting non-union employees' dues for political and ideological activities outside the scope of the activities related to collective bargaining. Such cases include: (1) *International Association of Machinists v. Street*, 367 U.S. 740 (1961); (2) *Railway Clerks v. Allen*, 373 U.S. 113 (1963); (3) *Abood v. District Board of Education*, 431 U.S. 209 (1977); (4) *Ellis v. Brotherhood of Railway Clerks*, 466 U.S. 435 (1984); and (5) *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986). These cases will be discussed in more detail in part four of this report. Although this report will not discuss the case in more detail since it does not concern labor unions, note that in *Keller v. State Bar of California*, 496 U.S. 1 (1990), the Supreme Court held that an integrated state Bar, which by statute is the regulatory body for the legal profession in a state and requires the payment of mandatory dues by its members, is analogous to a union. Therefore, according to the Court, using mandatory dues to fund political and ideological activities, where such expenditures are not necessarily and

[1] 487 U.S. 735 (1988).

[2] Codified at 29 U.S.C. § 158(a)(3).

[3] *Beck*, *supra*, at 751-54, 762-63.

[4] 500 U.S. 507, 522 (1991).

[5] Exec. Order No. 12800, April 13, 1992, *Notification of Employee Rights Concerning Payment of Union Dues or Fees*, 1992 U.S.C.C.A.N. B 22.

[6] Exec. Order No. 12836, Feb. 1, 1993, *Revocation of Certain Executive Orders Concerning Federal Contracting*, 1993 U.S.C.C.A.N. B 24.

reasonably incurred for the purpose of regulating the legal profession or improving the quality of the legal services available to the people of the State, the Bar violated the integrated Bar members' First Amendment rights.

Labor Union Political Activity Under the Federal Election Campaign Act of 1971, as Amended

Generally, political activities by labor unions in federal elections are prohibited.[7] First, the Labor Management Relations Act of 1947 prohibited labor union contributions to federal election campaigns.[8] Later, the Federal Election Campaign Act of 1971, as amended, (FECA), generally continued this broad prohibition of labor union activities and funds in federal elections. However, the FECA provided for three broad exemptions to this general prohibition of labor union political activities in federal elections: (1) communications by a labor organization directed at its members or their families on any subject: (2) non-partisan voter registration and get-out-the-vote activities by a labor organization which are directed to its members or their families: and (3) the establishment and administration of a political action committee or separate segregated fund (commonly known as a PAC) for the purpose of the solicitation of contributions to such fund for political purposes.[9] Generally, any other type of political activity by labor unions in federal elections is prohibited under the FECA, and labor union contributions and expenditures concerning federal elections outside these exceptions are prohibited.

Various advisory opinions of the Federal Election Commission (FEC) have further clarified the proper roles of labor unions in federal elections. For example, according to the FEC: a teacher's union could pay for the expenses of interns working in a Member of Congress' mobile office as long as their activities were non-political and exclusively related to the performance of the Member's official duties;[10] a labor union could circumvent political contribution requirements if it bought voter poll results from a candidate's campaign committee;[11] a labor organization could not pay for travel and living expenses of its members who were serving as delegates to a national nominating convention;[12] funds received by a labor PAC for the sale of membership lists would be treated as a contribution to the PAC;[13] a labor union's PAC funds could be used to pay the expenses of lobbying activities conducted by labor union officials;[14] a labor union's contributions to state and local candidates should specify that such funds cannot be used for federal candidates;[15] and a labor union PAC can solicit employees of subsidiary corporations for contributions when the corporate PAC solicits such employees even though the employees are not union members and the subsidiary corporation is not subject to a union contract.[16]

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[7] 2 U.S.C. § 441b(a) (prohibiting contributions and expenditures by labor organizations).

[8] Ch. 120, Tit. III, § 304, 61 Stat. 136, 159 (1947) (Now codified at 2 U.S.C. § 441b(a)).

[9] 2 U.S.C. § 441b(b)(2).

[10] FEC Advisory Opinion No. 1979-25, June 19, 1979.

[11] FEC Advisory Opinion No. 1980-19, March 14, 1980.

[12] FEC Advisory Opinion No. 1980-64, July 9, 1980.

[13] FEC Advisory Opinion No. 1981-7, March 9, 1981.

[14] FEC Advisory Opinion No. 1983-4, Feb. 18, 1983.

[15] FEC Advisory Opinion No. 1988-18, May 20, 1988.

[16] FEC Advisory Opinion No. 1990-25, Dec. 14, 1990.

FEC regulations also address the scope of a labor organization's participation in federal elections. Most notably, the regulations restrict those labor union communications directed to the general public and to union participation in voter registration and get-out-the vote-drives from containing express advocacy[17] and prohibit coordination with any candidate or political party. The revised regulations permit a labor organization to make registration and get-out-the-vote (GOTV) communications to the general public if such communications: (1) do not expressly advocate the election or defeat of a clearly identified candidate or candidates of a clearly identified political party or (2) are not prepared or distributed with the coordination of a candidate or political party (will subsequently be referred to as "coordinated" or "coordination").[18] A labor union may also distribute to the general public, official registration and voting information and forms and absentee ballots (if permitted by applicable State law) provided that such distributions do not contain express advocacy and are not coordinated.[19] A labor organization may donate funds to State or local government agencies to help defray the costs of printing and distributing these materials.[20] Moreover, a labor organization may also prepare and distribute to the general public the voting records of Members of Congress and voter guides, provided that the these materials do not contain express advocacy and that there was no coordination involved.[21]

FEC regulations also permit a labor organization to support or conduct voter registration or GOTV drives aimed both at employees outside its restricted class[22] and the general public, provided that: (1) the labor organization does not expressly advocate the election or defeat of a clearly identified candidate, or candidates of a clearly identified political party; (2) the labor organization does not coordinate with any candidate or political party; (3) the services are not primarily directed at individuals favored by the labor organization; (4) the services are made without regard to the voter's political preference; (5) the workers conducting such services are not paid only to register or transport voters supporting one or more particular candidates or political party; and (6) at the time these services are provided, the labor organization notifies, in writing, those receiving information or assistance regarding registration or voting of the availability of these services without regard to a potential voter's political preference.[23] Finally, a labor organization may donate funds to qualified nonprofit organizations to stage candidate debates.[24]

Various federal court decisions have determined the legality of certain types of labor union activities involving federal elections. For example, in the 1957 decision *United States v. United Automobile Workers,* the Supreme Court held that labor union expenditures, in connection with a federal election, would be prohibited to the extent that such activity amounted to electioneering

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[17] Expressly advocating is defined as any communication: (1) which uses specific phrases, such as "vote for" or "vote against," in order to urge the election or defeat of a clearly identified candidate; or (2) which a reasonable person would interpret as advocating the election or defeat of a clearly identified candidate. 11 *C.F.R.* §100.22. Courts are currently at odds over the second factor of this definition. See *FEC v. Furgatch*, 807 F.2d 857 (9th Cir. 1987), cert. denied, 484 U.S. 850 (1987), *Maine Right to Life Committee v. FEC,* 914 *F.Supp*. 8 (D. Maine 1996), *aff'd* 98 F.3d 1 (1st. Cir. 1996).

[18] 11 C.F.R. § 114.4(c)(2).

[19] 11 C.F.R. § 114.4(c)(3).

[20] *Id*.

[21] 11 C.F.R. § 114.4(4), (5).

[22] A labor organization's restricted class is its members and executive or administrative personnel, and their families. 11 C.F.R. § 114.1(j).

[23] 11 C.F.R. § 114.4(d).

[24] 11 C.F.R. § 114.4(f)(3).

for a particular candidate or political party.[25] The Court asserted that the legislative history of a provision of the Federal Corrupt Practices Act, prohibiting labor union contributions and expenditures in federal elections, would disallow the expenditure of union dues to pay for commercial broadcasts that are designed to urge the public to elect a certain candidate or political party.[26]

In *United States v. Boyle*, in 1973, the United States Court of Appeals for the District of Columbia Circuit, in affirming the conviction of a labor union president for consenting to unlawful contributions to federal candidates, held that there are compelling governmental reasons for justifying the federal prohibition against labor union contributions and expenditures in federal elections despite First Amendment free speech and association rights of the labor union.[27] The Court of Appeals in *Boyle* concluded that for a labor union disbursement to be illegal under federal law, it must be shown that the labor organization: (1) made a contribution or an expenditure, (2) in connection with a federal election, and (3) for the purpose of active electioneering.[28]

In a 1972 Supreme Court decision in *Pipefitters v. United States*, reversing certain convictions of labor union officers concerning the use of a political fund, the Court concluded that a legitimate labor union political fund must be separate from the labor union in that there must be a strict segregation of the political fund's monies from the union's dues and assessments.[29] The Court noted that, while former 18 U.S.C. § 610, which prohibited labor organizations from making contributions or expenditures connected with a federal election, might be interpreted to prohibit the use of union funds to establish and maintain a union political fund for the purposes of soliciting and making political contributions in federal campaigns, the provision of the Federal Election Campaign Act of 1971 allowing labor unions to establish separate segregated funds or political action committees may have impliedly repealed Section 610.[30]

Background of Union Security Agreements

The question frequently arises as to whether compulsory labor union dues may be used by a union for political purposes and, if so, under what restrictions or conditions may such dues be used. In order to understand that issue properly, it is necessary to understand the various types of union security agreements between employers and labor unions that require employees to provide some form of financial support to the unions as a condition of employment. One type of security agreement is the so-called "closed shop" whereby the employer agrees to employ only members in good standing with the union. This type of agreement was recognized by the National Labor Relations Act of 1935 (NLRA), popularly known as the Wagner Act,[31] but was later prohibited by the Labor Management Relations Act of 1947.[32]

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[25] 352 U.S. 567, 592 (1957).

[26] 352 U.S. at 585-87.

[27] 482 F.2d 755, 758 (D.C. Cir. 1973), *cert. den*. 414 U.S. 1076 (1973).

[28] *Id*., 760.

[29] 407 U.S. 385, 414 (1972).

[30] *Id*., 432.

[31] See ch. 372, § 8(3), 49 Stat. 452 (1935). See *Radio Officers Union v. NLRB*, 347 U.S. 17, 41 (1954) holding that the legislative history of the NLRA indicated that Congress intended the utilization of union security agreements to compel (continued...)

Another type of a union security agreement is the agency shop agreement whereby the employees do not have to join the union or have full union membership in good standing within thirty days, but must support the union by paying a sum of money equivalent to union dues in order to retain employment.[33] Most agency shop agreements provide for a service fee, which includes an initiation fee as well as certain dues that are paid by full union members.

Another form of a union security agreement is the union shop, which does not condition employment on union membership, but requires that employees join the union after a certain grace period on the job and remain members during the term of the labor-management agreement.[34]

A "maintenance of membership" clause in a union contract is another form of union security which imposes no obligation to join the union, but requires that one remain a member once voluntarily becoming one until the expiration of the collective bargaining agreement.[35]

Other less formal union security agreements are: (1) a dues-checkoff provision, (2) a fair-share agreement, or (3) a hiring-hall provision. The dues-checkoff provision does not require anyone to join a union or retain union membership, but simply requires that the employer shall deduct from the salary of the union members their union dues and credit that amount to the union. A fair-share agreement would require all employees to pay the prorated share of the union's collective bargaining and representational expenses, but not irrelevant expenses. The hiring-hall provision is a device for job security in certain industries such as in the maritime and construction industries whereby the union and the employer agree that the union-hall is to be the exclusive mode for job referrals.[36]

In 1956, the Supreme Court in a unanimous opinion in *Railway Employees' Dept., A.F.L. v. Hanson* upheld the union shop provision of § 2, Eleventh of the Railway Labor Act, as amended,[37] which provided that notwithstanding the law of any state, a carrier and a labor organization may make an agreement requiring all employees within a stated period of time to become members of the labor organization provided that there is no discrimination against any employee and provided further that membership is not denied or terminated for any reason other than the non-payment of periodic union dues, fees, and assessments.[38] The Court found that the

(...continued)

the payment of union dues and fees.

[32] The Labor Management Relations Act of 1947 is popularly titled the Taft-Hartley Amendments of 1947. See ch. 120, § 101, 61 Stat. 140-141 (1947), amending § 8(3) of the NLRA and renumbering it § 8(a)(3). This section is codified at 29 U.S.C. § 158(a)(3).

[33] See generally, Joseph Jenkins, LABOR LAW, v. 2, § 4.9 (Cincinnati: W.H. Anderson Co., 1969).

[34] Under the National Labor Relations Act, as amended, union shop agreements are permitted whereby employees must obtain membership in the union within 30 days of being employed, or within 30 days after the effective date of the agreement, whichever is later. See 29 U.S.C. § 158(a)(3). However, under the Railway Labor Act (RLA), the union security requirements are substantially the same as in NLRA except that the period whereby employees are required to join a union is 60 days rather than 30 days. See 45 U.S.C. §§ 151-158.

[35] Robert Gorman, *Labor Law, Unionization and Collective Bargaining*, 641-42 (St. Paul: West Publishing Co., 1976).

[36] *Id.*, 642-43.

[37] 64 Stat. 1238, codified at 45 U.S.C. § 152, Eleventh.

[38] 351 U.S. 225, 228, 238 (1956).

union shop provision of § 2, Eleventh was within the power of the Congress under the Commerce Clause and did not violate either the First or the Fourteenth Amendments.[39]

The *Hanson* Court noted that it is argued that the union shop agreement forces employees into ideological and political associations that violate their freedom of conscience, freedom of association, and freedom of thought. However, the Court intimated that if the union shop arrangement were used to impose membership conditions, other than the payment of periodic dues, initiation fees, and assessments, involving ideological or political associations to which members may be opposed, it might present First Amendment problems.[40]

Supreme Court Decisions Concerning The Use of Compulsory Union Dues for Political Purposes

Several years after the Supreme Court upheld the validity of union security agreements, it was faced with the issue of whether a union may use funds, raised pursuant to a union-shop agreement,[41] to support candidates for public office against the wishes of dissenting employees. The Court, in *International Association of Machinists v. Street*,[42] found that such expenditures fall outside of the scope of the reasons that justified union shop agreements.[43] The Court asserted, however, that any dissent by employees to the use of labor union funds for political causes is not to be presumed, but must be made known by them to the labor union. Moreover, only those employees who had identified themselves as being opposed to the political uses of their funds would be entitled to relief.[44]

The Court was quick to note that this holding would not curtail the traditional political activities of labor unions, but required only that labor unions must not support those activities against the expressed wishes of dissenting employees.[45] The Court also suggested the following two possible remedies: (1) an injunction against expenditures for political causes opposed by complaining employees, in the amount of union dues exacted from them in proportion to the union's total expenditures for political purposes to the union's total budget, or (2) restitution to each dissenting employee of the portion of his or her dues which was spent by the union for political purposes.[46]

In 1963, the Supreme Court in *Railway Clerks v. Allen* reaffirmed that, under § 2, Eleventh of the Railway Labor Act, labor unions cannot, over an employee's objection, use exacted funds to support political activities which such employees oppose.[47] The *Allen* Court extended *Street*, finding that "it would be impractical to require a dissenting employee to allege and prove each

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[39] *Id*., 238.

[40] *Id*., 236.

[41] The union shop authorization in the *Street* case was pursuant to § 2, Eleventh of the Railway Labor Act (64 Stat. 1238, 45 U.S.C. § 152, Eleventh).

[42] 367 U.S. 740 (1961).

[43] *Id.* at 767.

[44] *Id.*, 774.

[45] *Id.*, 770.

[46] *Id.*, 775.

[47] 373 U.S. 113, 118-19 (1963).

distinct union political expenditure to which he objects,"[48] but retained its requirement that such opposition be made known to the union by each dissenting employee.

The *Allen* Court reaffirmed the remedies suggested by the *Street* Court, but offered suggestions of its own. It suggested a practical decree which would order: (1) a refund to the dissenting employee of a portion of the exacted dues in the same proportion that the political expenditures bore to the total union expenditures, and (2) a future reduction of dues from the dissenting employee by the same proportion.[49] The Court placed the burden of determining the appropriate proportions on the unions since they were in possession of the relevant materials.

In 1977, the Supreme Court, in *Abood v. Detroit Board of Education*, extended *Street* and *Allen* to encompass dissenting non-union *public* employees,[50] basing its decision, however, on constitutional grounds that were not at issue in the prior cases. While a labor organization can constitutionally expend funds for the expression of political and ideological views which are not germane to its collective-bargaining activities, it can only finance such expenditures from the dues of non-dissenting employees.[51] Dissenting, non-union employees have a constitutional First Amendment right to prevent a labor union from using a proportionate share of their service fees for certain political and ideological activities unrelated to the union's collective-bargaining activities.[52]

The *Abood* Court noted that in determining a remedy, the objective of the Court would be to devise a method to prevent the compulsory subsidization of political and ideological activities by dissenting, non-union employees without restricting the union's ability to require all employees to pay for the union's collective-bargaining activities. As it had previously in *Street* and *Allen*, the *Abood* Court, in remanding the case for further proceedings, suggested remedies which included: (1) a refund of that portion of the exacted dues in the proportion that union political expenditures bore to the total union expenditures and (2) a reduction of future union dues to dissenting non-union employees by the same proportion.

In *Ellis v. Brotherhood of Railway Clerks*, the Court was asked to determine the validity of a rebate scheme, in which a labor union collected dues from employees and used them for certain political and ideological activities, later paying a rebate to employees who dissented from the political and ideological use of such dues.[53] The Court noted that under the rebate scheme the union obtains an involuntary loan for those political and ideological activities to which the dissenting employees object.[54] Since there were readily available acceptable alternatives to such union borrowing, such as advance reduction of dues and/or interest-bearing accounts, the Court found that a union cannot be allowed to use the dissenting employees' funds even temporarily. Thus, the Court found that although the rebate scheme reduces the statutory violation, it does not eliminate the violation.[55]

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[48] *Allen, supra*, at 118.

[49] *Id.*, 122.

[50] 431 U.S. 209 (1977).

[51] *Id.*, 235-36.

[52] *Id.*, 234. *Cf., Buckley v. Valeo*, 424 U.S. 1, 22-23 (1976) in which the Supreme Court held that contributions to organizations for the purpose of spreading a political message were protected by the First Amendment.

[53] 466 U.S. 435 (1984).

[54] *Id.*, 443.

[55] *Id.*, 444.

In reaching its decision, the Court developed the following test for determining whether certain activities must be paid for by dissenting employees subject to a labor-management agreement: "... the test must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues." Under such a standard dissenting employees could be required to pay their fair share of: (1) the direct costs of negotiating a collective bargaining contract; (2) the direct costs of administering such a contract; (3) the costs of settling grievances and disputes; and (4) certain costs of activities or undertakings by a labor union to implement or effectuate the duties of the labor union as the exclusive representative of the employee.[56] The Court found that dissenting employees could be charged for such union activities as: (1) conventions which are essential to the labor union's discharge of its duties as a collective-bargaining agent; (2) labor union social activities which are reasonably related to the union's collective bargaining activities; (3) labor union publications which report on labor-management relations and collective bargaining activities; (4) organizing expenses for the purpose of making the labor union stronger; and (5) litigation expenses incurred in negotiating and administering a labor contract or in settling grievances and disputes.[57]

Two years later, in *Chicago Teachers Union v. Hudson*,[58] the Court was presented with an issue involving the procedural safeguards related to the collection of agency fees by a union. Under the agency shop agreement between the union and the Chicago Board of Education, "proportionate share payments" which approximated 95 percent of the regular union dues were deducted from non-members' paychecks.

The union established a three-stage procedure with the union's administration to consider non-members' objections to such deductions. The Court found that the union's procedure failed to minimize the risk that the exacted fees of non-union employees might be used for impermissible ideological and political purposes.[59] The Court concluded that this procedure was inadequate even though the exacted funds of the non-members were placed in an escrow account. The procedure contained three fundamental flaws: (1) failure to minimize the risk that non-union employees' contributions might be temporarily used for political and ideological purposes; (2) failure to provide sufficient information to non-members about the basis of their proportionate shares and the method of determining their "advance reduction of dues;" (3) failure to provide a reasonably prompt decision by an impartial arbitrator in determining whether or not a non-member's dues should be further reduced.[60]

Accordingly, the Supreme Court held that the constitutional requirements for the union's collection of agency fees from non-members would include: (1) an adequate explanation for the basis of the fee; (2) a reasonably prompt opportunity to challenge the amount of the fee before an impartial arbitrator; and (3) the establishment of an escrow fund for the amounts reasonably in dispute while any challenges are pending. The Supreme Court remanded the case to the district court for further proceedings consistent with such holdings.[61]

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[56] *Id.*, 448.

[57] *Id.*, 448-53.

[58] 475 U.S. 292 (1986).

[59] *Id.*, 309.

[60] *Id.*, 304-07.

[61] *Id.*, 310.

Like the prior decisions, the 1988 Supreme Court decision in *Communications Workers of America v. Beck* held that § 8(a)(3) of the National Labor Relations Act does not permit a labor union to spend funds exacted from dues-paying non-union employees on certain activities unrelated to collective bargaining when those employees object to such expenditures.[62] The Court found that § 8(a)(3) of the National Labor Relations Act was like § 2, Eleventh of the Railway Labor Act in that it authorized the exaction of only those dues which would be necessary to "performing the duties of an exclusive [bargaining] representative of the employees in dealing with the employer on labor-management issues."[63]

In examining the legislative history of § 8(a)(3), the Court found that Congress wished to afford non-members adequate protection by allowing the collection of only those fees which would be necessary to finance collective bargaining activities. Even though Congress under § 8(a)(3) did not in any way limit the uses for which the unions could expend such fees exacted from non-members, such silence was not to be interpreted to mean that there was congressional acquiescence in the use of funds for activities that were unrelated to collective bargaining activities.[64] Congress' purpose in providing for compulsory unionism was to force employees to bear their fair share of the costs related to negotiations, administration of collective bargaining agreements, and the settlement of disputes, but not to support union political activities which they oppose. Under § 8(a)(3), Congress' justification for the union shop would limit the union's expenditures which can be passed on to non-members only to those relating to labor-management relations.

The Court concluded that it was not the intent of Congress under § 8(a)(3) of the National Labor Relations Act to allow unions in agency shop agreements to have free rein to exact dues from non-members in any amounts they please and then to spend them on activities which are unrelated to collective bargaining activities. *Beck,* however, does not extend to union members. The only way that such an employee may fall under the ruling in *Beck* is to first resign his union membership and then object to the use of his exacted dues for political or other purposes unrelated to collective bargaining.

The last case concerning the use of agency fees decided by the Supreme Court was *Lehnert v. Ferris Faculty Association.*[65] In *Lehnert,* the Court upheld the constitutionality of the Michigan statute providing for agency-shop agreements in the public sector, and set forth a three-part test for determining permissible non-political and non-ideological uses for the service fee that non-members are required to pay the unions for their services as sole collective bargaining agent for all employees. The Michigan statute applied to faculty members of Ferris State College, a public educational institution, who are represented by the Ferris Faculty Association (FFA), a local bargaining unit affiliated with the Michigan Education Association (MEA) and the National Education Association (NEA). The non-union faculty brought suit to challenge certain uses of the service fees which they were compelled to pay the FFA and which were equivalent to the amount of dues required of a union member. They claimed that the use of fees for purposes other than the negotiation and administration of the collective bargaining agreement was in violation of their rights under the First and Fourteenth Amendments of the Constitution.

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[62] 487 U.S. 735 (1988).

[63] *Id.*, 752, quoting *Ellis v. Railway Clerks,* 466 U.S. at 447-48.

[64] *Id.*, 751-54.

[65] 500 U.S. 507 (1991).

The Supreme Court established a test, derived from the preceding line of cases, for determining whether a particular expenditure of union funds could be charged to non-member employees. Chargeable uses must: (1) be germane to collective bargaining activities; (2) be justified by the governmental interest in the maintenance of labor peace and the prevention of "free riders" who benefit from the union's collective bargaining activities without contributing to the costs of such activities; and (3) not add significantly to the burdening of free speech inherent in the existence of an agency or union shop.[66] The Court also rejected the petitioners' contentions that they could only be charged for collective bargaining activities undertaken directly for their local unit and that there must be a direct link between an activity and a tangible benefit to the local unit.[67]

Four activities were found by the Supreme Court to be chargeable to the non-members. First, non-members should subsidize NEA program expenditures for collective-bargaining services provided in states other than Michigan and reportage of such activities in the MEA publication, the *Teacher's Voice.* Second, non-members may be charged for the reportage of general information in the *Teacher's Voice,* such as news about teaching and education generally, professional development, unemployment, job opportunities, MEA award programs, and other matters that are neither public nor political, benefit all, and do not additionally burden First Amendment rights.[68] Third, non-members may be charged for the cost of participation by local-unit delegates in the NEA and MEA conventions and the Coordinating Council meeting. And finally, strike preparations are chargeable to non-members, even where the contemplated strike would be illegal under state law if it actually occurred, because the strike preparations constitute part of collective bargaining strategy and do not additionally burden First Amendment rights.[69]

The Supreme Court also ruled that four other uses may not be charged constitutionally to the non-members.[70] First, lobbying other than for ratification and implementation of the collective bargaining agreement is not chargeable to non-members.[71] Second, a union program aimed at securing funds for public education in Michigan and reportage on this program in the *Teacher's Voice* were not chargeable to non-members[72] because they were public-relations and lobbying-type activities unrelated to ratification and implementation of the collective-bargaining agreement. Third, litigation that does not concern the local bargaining unit and reportage of such litigation in union publications may not be supported by funds from non-members.[73] Finally, public relations activities of the local unit which are designed to improve the image of the teaching profession may not be charged to non-members.[74]

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[66] 500 U.S. at 519.

[67] 500 U.S. at 522-24.

[68] 500 U.S. at 529.

[69] 500 U.S. at 530-32.

[70] Although a majority of the Court agreed on the judgments enumerated in the opinion with regard to whether a use could be charged to non-members, several opinions used different analyses to arrive at the same conclusion. The rationale given in the text above is that of Justice Blackmun, joined by Chief Justice Rehnquist and Justices White and Stevens.

[71] 500 U.S. 519-22, 559-60.

[72] 500 U.S. at 527, 559-60.

[73] 500 U.S. at 528, 555 & 560.

[74] 500 U.S. at 528-9, 559.

Author Contact Information

(name redacted)
Legislative Attorney
[redacted]@crs.loc.gov, 7-....