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BOUND VOLUMES

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE & AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA, LOCAL 376  
(Colt's Manufacturing Company)

Case 34-CB-2631

and

INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE & AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA, UAW

Case 34-CB-2632

and

GEORGE H. GALLY

ORDER DENYING CROSS-MOTIONS FOR SUMMARY JUDGMENT  
AND REMANDING

Upon charges filed by the Charging Party, George H. Gally, the General Counsel of the National Labor Relations Board issued an order consolidating cases and consolidated complaint on August 12, 2003, against Respondents International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 376, and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW. The complaint alleged that the Respondents violated

Section 8(b)(1)(A) of the National Labor Relations Act by requiring nonmember *Beck*<sup>1</sup> objectors to renew their objections annually. The Respondents filed an answer admitting in part and denying in part the complaint allegations and requesting that the complaint be dismissed.

On December 8, 2003, the General Counsel filed with the Board a Motion for Summary Judgment and supporting brief. The General Counsel noted that there were no facts in dispute, and thus he requested that the Board rule on his motion and decide the case. On the same day, the Respondents filed with the Board a Cross-Motion for Summary Judgment and supporting brief, arguing that the complaint should be dismissed. On December 10, 2003, the Board issued an order transferring the proceedings to the Board and Notice to Show Cause why the General Counsel's or the Respondents' motion should not be granted. The Respondents filed an opposition to the General Counsel's motion, and the Charging Party filed a brief in response to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having duly considered the matter, the Board issues the following

**Ruling on Motions for Summary Judgment**

The facts drawn from the undisputed statements in the pleadings and briefs are as follows. The Employer, Colt's Manufacturing Company, Inc., is engaged in the manufacture and non-retail sale and distribution of firearms. During the relevant period, the Respondents have been the exclusive collective-bargaining representative for certain

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<sup>1</sup> *Communication Workers of America v. Beck*, 487 U.S. 735 (1988).

employees at the Employer's West Hartford, Connecticut facility. During the relevant period, the Employer and the Respondents have maintained and enforced a collective bargaining agreement, which contains, among other things, a union security provision (Article IV) requiring all unit employees to become and remain members of the Union in good standing. The Respondents also have maintained a procedure ("Agency Fee Payer Objection Administration—Private Sector") that governs the reduction in dues and fees for nonmember employees who object to the payment of dues and fees for nonrepresentational activities. This procedure provides that objections filed by nonmembers are valid for 1 year, and requires that objections be renewed annually. On or about February 25, 2002, the Respondents recognized Charging Party Gally as an objecting nonmember for a period of 1 year. On March 10, 2003, the Respondents notified the Employer by letter that Gally failed to renew his objection and thus should no longer be considered an objecting nonmember. On March 17, 2003, Gally notified the Respondents of his intention to renew his objection, and he requested that his objection be considered continuous for 3 years. The Respondents notified Gally by letter dated March 27, 2003, that he was recognized as an objecting nonmember for a 1-year period expiring on April 1, 2004, and that he was required to renew his objection, if he so chose, during the 30-day period before April 1, 2004. Gally subsequently filed an unfair labor practice charge with the Board alleging that the Respondents' 1-year renewal requirement for nonmember objectors violates the duty of fair representation and Section 8(b)(1)(A) and (2) of the Act.

The General Counsel contends that this case is ripe for summary judgment

because the Respondents have admitted in their Answer to the facts alleged in the complaint, and thus no material facts are in dispute. We disagree. The Respondents state that the General Counsel's legal theory is that the annual renewal policy for *Beck* objectors violates the "arbitrary" prong of the duty of fair representation.<sup>2</sup> The General Counsel argues that the policy places an undue burden on the objector and serves no legitimate business purpose. In response, the Respondents argue, among other things, that the renewal requirement serves legitimate business purposes and places a minimal burden on the objector. In addition, the Respondents claim that they receive "hundreds of objection letters . . . annually," and the 1-year renewal is necessary to allow the Respondents to keep track of the status of their nonmember objectors. We find that factual disputes exist regarding the extent of the burden on objectors and the legitimacy of the Respondents' asserted business justification for (1) precluding objectors from asserting fixed periods for their objections (e.g., the 3-year period asserted here), and (2) requiring objectors to renew their objections annually. By litigating this issue, the parties can present specific evidence in support of their claims. In addition to the extant factual issues, the parties have not, in our view, fully developed and briefed the pertinent legal issues. As noted above, the Respondents state that the General Counsel argues only that the Respondents' policy is "arbitrary." The Respondents further assume that the General Counsel is not alleging that the policy is discriminatory or in bad faith. The Respondents' assumption appears unwarranted. As noted above, a union's duty of fair

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<sup>2</sup> See *Vaca v. Sipes*, 386 U.S. 171, 190 (1967) ("A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith."). The Board held in *California Saw and Knife Works*, 320 NLRB 224, 229-230 (1995), that, in light of the Supreme Court's "explicit directive" in *Air Line Pilots v. O'Neill*, 499 U.S. 65, 67 (1991), that the duty of fair representation applies to all union activity, a union's obligations under *Beck* are to be measured by that standard.

representation requires that its actions be neither arbitrary, discriminatory, nor in bad faith. We find nothing in the current record to warrant excluding any of these factors from our consideration. Indeed, the Charging Party argues that the policy is discriminatory because it requires one class—*Beck* objectors—to renew their objections annually, but it allows all other members and nonmembers to retain their status without renewal. We think the parties should have the opportunity to explore these matters and to advance arguments with respect to the standard they believe should be applied in assessing any business justification asserted by the Respondents under either an “arbitrary” or “discriminatory” theory. See, e.g., *Air Line Pilots v. O’Neill*, supra, 499 U.S. at 78; *Black v. Ryder/P.I.E. Nationwide, Inc.*, 15 F.3d 573, 584 fn. 18 (6<sup>th</sup> Cir. 1994); *Carter v. United Food and Commercial Workers, Local No. 789*, 963 F.2d 1079, 1082 (8<sup>th</sup> Cir. 1992); *Auto Workers Local 651 (General Motors)*, 331 NLRB 479 (2000); *Teamsters Local 101 (Allied Signal)*, 308 NLRB 140 (1992).

In light of the significant right at stake in this case, an employee’s Section 7 right to refrain from concerted activity, we find that the current record is insufficient to resolve whether the Respondents’ annual renewal policy unlawfully infringes on that right. Accordingly, we deny the General Counsel’s and the Respondents’ Motions for Summary Judgment.

#### ORDER

IT IS ORDERED that the General Counsel’s Motion and the Respondents’ Cross-Motion for Summary Judgment are denied, and the proceeding is remanded to the

Regional Director for Region 34 for the purpose of issuing a notice of hearing and scheduling a hearing before an administrative law judge.<sup>3</sup>

Dated, Washington, D.C., July 20, 2007.

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Robert J. Battista, Chairman

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Peter C. Schaumber, Member

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Peter N. Kirsanow, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

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<sup>3</sup> We ask that the case be heard expeditiously, and, if any exceptions are filed to the judge's decision, we pledge to give them a prompt review.