JD–1-09
Cleveland, OH

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

COMMUNICATIONS WORKERS OF AMERICA
AND COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 4309 (AT&T TELEHOLDINGS, INC., D/B/A
AT&T MIDWEST AND THE OHIO BELL TELEPHONE
COMPANY-Employer)

And CASE NO. 8-CB-10487

SANDA ILIAS, An Individual

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For the General Counsel

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DECISION

Statement of the Case

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Cleveland, Ohio, on October 27, 2008. The charge in this proceeding was filed by the Charging Party, Sanda Ilias on January 17, 2006 and an amended charge was filed by her on January 30, 2006. An Amended Complaint and Notice of Hearing was issued by the Regional Director for Region Eight on August 21, 2008. The Complaint alleges that Communications Workers of America and Communications Workers of America, Local 4309 (hereinafter Respondent, CWA, or Local 4309) engaged in conduct in violation of Section 8(b)(1)(A) of the National Labor Relations Act (hereinafter the Act). The Complaint alleges certain jurisdiction allegations which Respondents admit in their Answer. The Complaint also alleges that AT&T Teleholdings, Inc. d/b/a AT&T Midwest, a Delaware Corporation and the Ohio Bell Telephone Co., an Ohio corporation, are employers engaged in commerce, meet the jurisdictional requirements of the Act and are employers within the meaning of Section 2(2), (6) and (7) of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the Respondent and General Counsel, I make the following

Findings of Fact

I. Jurisdiction

AT&T Teleholdings, Inc. d/b/a AT&T Midwest, a Delaware Corporation, and The Ohio Bell Telephone Co., an Ohio corporation, herein referred to as the Employer, with an office and place of business in Cleveland, Ohio, has been engaged in providing communication services. The Union has admitted the jurisdictional allegations of the Complaint and I find that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Respondents are labor organizations within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Complaint Allegations

1. At all material times since about 1940, by virtue of Section 9(a) of the Act, the Respondents have been the exclusive collective bargaining representative of the employees in the Unit referred to in Appendix B of the April 4, 2004 through April 4, 2009 collective bargaining agreement.

2. At all material times, the Respondents have maintained and enforced the collective bargaining agreement referred to above covering the Unit and containing the following conditions of employment, herein called the Union Security Provision:

"Each employee, who is a member of the Union or who is obligated to tender to the Union amounts equal to periodic dues on the effective date of this Agreement, or who later becomes a member of the Union and all persons becoming employees on or after the effective date of this Agreement, shall, as a condition of employment pay or tender to the Union amounts equal to the periodic dues applicable to members, for the period from such effective date or, in the case of persons becoming employees after the effective date of this Agreement, on or after the thirtieth (30th) day of employment, whichever of these dates is later, until the termination of this Agreement. For the purpose of this Article, 'employee' shall mean any member of the bargaining unit."

3. Respondent CWA Local 4309 expends the monies collected pursuant to the Union-Security Provision on activities germane to collective bargaining, contract administration and grievance adjustment, herein called the representational activities, and on activities not germane to collective bargaining, contract administration and grievance adjustment.

4. On about September 30, 2004, the Charging Party, who is covered by the Union-Security Provision, resigned from membership in Respondent CWA Local 4309 and objected to paying dues for non-representational expenditures.

5. Since at least July 17, 2005, and continuing thereafter, the Respondents have maintained and enforce a rule that is published annually in the March/April edition of Respondent CWA's publication *CWA News*. The rule requires non-member bargaining unit employees, including the Charging Party, to annually, during the month of May, renew their objection to paying for non-representational expenditures during the month of May.

6. The Charging Party did not renew her objection referred to in paragraph 4 above in May 2005 for the 2005-2006 fiscal year or at anytime after her original resignation referred to in paragraph 4.

7. By the conduct described above in paragraph 5, Respondents have been restraining and coercing employees in the exercise of rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act.

8. At all material times, Helen Gibson, Administrator, Office of Special Programs, and Brenda Mallory, President, Respondent CWA Local 4309, have been agents of Respondent CWA Local 4309 within the meaning of Section 2(13) of the Act.

B. The Parties' Stipulations

At the hearing, the parties entered into the following stipulations:

1. This stipulation (paragraph no. 1) is being entered simply to provide background information for the hearing in this case: Charging Party, Sanda Ilias (Ilias) filed a previous unfair labor practice charge against Respondent CWA (CWA) and CWA Local 4309 (Local 4309) on December 13, 2004, which charge was assigned Case No. 8-CB-10252. Thereafter, the charge was amended on January 18, 2005 and February 8, 2005. Among other allegations, Ilias alleged that after she resigned from membership and objected to paying full dues on or about September 30, 2004, the Respondents continued to charge her full dues and did not provide her with the information that is owed a *Beck* objector, including a breakdown of representational and non-representational expenditures.[1]

2. This stipulation (paragraph no. 2) is being entered simply to provide background information for the hearing in this case: On July 27, 2005 Frederick J. Calatrello, Regional Director, Region 8, approved the terms of a bilateral informal settlement agreement in Case No. 8-CB-10252. Respondents fully complied with the terms of the settlement agreement. In doing so they provided Ilias with post-objection information including a breakdown of representational and non-representational expenditures and a check in the amount $136.85, reimbursing Ilias for non-representational expenditures for the 2004-2005 fiscal objector year.

3. CWA's objector year begins on July 1 and ends on June 30 of the following year.

4. CWA is primarily responsible for formulating and administering Respondents' *Beck* policy and practices. These policies and practices apply to all bargaining unit members represented by Local 4309 as well as all other CWA Locals.

5. For all the years relevant to this proceeding, CWA annually publishes a notice describing its *Beck* policy in the March/April edition of *CWA News*, a newsletter that is routinely sent to bargaining unit employees nationwide. The notice of its *Beck* policy, as published in the *CWA News,* has remained unchanged since at least 2004, when the charge was filed in Case No. 8-CB-10252.

[1] When used in this decision, "*Beck"* refers to the case of *Communications Workers of America (CWA) v. Beck,* 487 U.S. 735 (1988).

6. CWA provides *Beck* objectors with an advance reduction, reimbursing the objector for non-representational expenditures during the objector year in which the objection is made.

7. Brenda Mallory (Mallory) held the position of President of Local 4309 from at least as early as December 1, 2002 to December 1, 2005. Pam Wynn (Wynn) is currently the Local President and has held that position since December 1, 2005. When they held (or in Wynn's case continues to hold) the office of President, both Mallory and Wynn were agents of Local 4309 within the meaning of Section 2(13) of the National Labor Relations Act (the Act).

C. The Relevant Facts

Helen Gibson is the CWA's Administrator of Office of Special Programs. She has worked for the CWA since 1981. In her position, one of her responsibilities is overseeing the administration of the CWA's internal procedures for *Beck* objectors or agency fee payers. Her position was created in 1988 in response to the *Beck* case. She testified that bargaining unit members who want to retain their status as *Beck* objectors must make annual written requests to renew their objector status. The CWA represents about 400,000 employees in the private sector. Of these employees approximately 1500 are *Beck* objectors. Local 4309 represents about 700 employees at the AT&T facilities involved in this case.

Gibson testified that the Union publishes a pamphlet entitled "Your rights with respect to union representation, union security agreements and agency fee objections." She said this pamphlet is mailed to new employees and to members who have resigned and have become agency fee payers. In addition, the Union publishes this information annually in the March/April edition of the *CWA News* which is mailed to all members, including agency fee payers and *Beck* objectors. With respect to this case, the Union's policy with regard to the annual renewal of objections is as follows:

"Objections for the period of July through June must be sent during May. In addition, agency fee payers who are new to the bargaining unit may object within 30 days of receiving this notice, and employees who resign union membership may object within 30 days of becoming an agency fee payer. Employees filing late objections for either of these two reasons should so indicate in their letter of objection. New bargaining unit members are to receive this notice prior to any demand being made upon them for the payment of agency fees. If, however, for any reason a new unit member begins paying agency fees prior to the receipt of this notice, he or she may object retroactively to the commencement of such payments and for the duration of the current annual objection period.

The letter of objection should include name, address, Social Security number, CWA Local number, and employer. Objections must be sent to the Agency Fee Administrator, CWA (address and phone number omitted)."

Gibson testified that an agency fee payer is defined as a person who works under a union security agreement who chooses not to be a union member and thus must pay an agency fee equal to membership dues as a condition of employment. Of the Union's 400,000 private sector represented employees, about 13,000 are agency fee payers and of that category, about 1500 to 2000 are *Beck* objectors. Only the *Beck* objectors have the non-representational portion of their fee in lieu of dues refunded to them. And, only *Beck* objectors have to renew their status annually.

As the above policy states, other than new employees, the *Beck* objectors must file their objections annually in May for the upcoming June through July twelve month period. The Union accepts and acts on renewals filed in April, those filed in May or postmarked with a May date, and those filed with a June 1 date. Otherwise, it appears that an employee who is already an objector and fails to file renewed objections in that window of opportunity will lose that status for a year and have to wait until the following May to reinstate their status as an objector.

There was some testimony about procedures followed by the Union once it receives a timely notice of objection. If an objection is timely, the Union verifies the person's status as an employee and if so, determines the annual difference between the representational portion of the agency fee and the non-representational portion and refunds the latter portion for an entire year in a single check paid in advance. The method of calculation of this amount is also supplied to the objector and there are avenues of appeal if the objector disagrees with the method.

Gibson testified that the CWA receives about 1800 to 2000 objector letters annually, the vast majority of which are received in the May filing window. The Union, by a clerical employee, reads them to verify that the person sending the letter desires to be an objector, looking for words like "object," "objector," "pay reduced dues," or "don't want to pay for politics." She testified that those are key words that almost all such letters contain. If those words are not present, she reads the letters carefully to try to interpret the intent of the writer. She testified that she always tries to err on the side of the letter being one of objection.

As a reason for imposing the annual objection renewal, Gibson said that if the reader of an objection letter had to try to determine if the writer were seeking to be an objector continuing from year to year without an annual renewal request, the reviewer of the letter would have to be one with a higher level of judgment than the clerk or clerks who currently read the letters. She testified that reading the letters to make the determination would take more time. Gibson was not aware as of the date of hearing what percentage of the 1800 to 2000 objections letters received annually are renewed objections or new objections.

Another reason given by Gibson for the CWA continuing its practice of requiring annual objector renewal is her belief that the practice has been found lawful in certain Federal Appeals Court cases, a matter discussed at a later point in this decision.

A further reason given by Gibson is that the Union gets employee mailing addresses from employers via the computer. Sometimes the addresses are incorrect. She testified that the Union gets up to date information about members' addresses when they write to the Union. When the Union finds a conflict in the address given by the employer for a *Beck* objector and an address given by the objector, it uses the one given by the individual. She testified that part of the reason for requiring annual renewal is to keep the Union's address list for the objectors up to date. There was no showing that members write the Union annually giving them an updated address, yet there is no requirement to rejoin the Union on an annual basis nor is there a requirement that they update their mailing addresses with the Union on an annual basis. The same is true for agency fee payers who have not filed a *Beck* objector request. This group does not have to renew their status annually and has little contact with the Union as they are not allowed to attend meetings or vote. Gibson then testified that such information is necessary as they are required to notify the objectors of their right to object. She also testified that new employees are mailed a pamphlet detailing those rights and they are published in the *CWA News* annually. That publication is supposedly sent to all employees in the bargaining unit, members and objectors alike.

A further reason she gave for having the annual renewal requirement is that statistics about objection renewals are sent to the applicable locals to identify pockets of dissent among the represented workers so that issue might be addressed.

The only annual reminder to objectors that they must renew their objections in May of each year is the notice in the March/April edition of the *CWA News.* No individual reminders are mailed to the existing objectors.

The CWA represents employees in bargaining units that come under the jurisdiction of the Railway Labor Act. For workers in these bargaining units, if one objects and intends the objection to be ongoing, the Union "flags" that objector's file and that objector is not obligated to renew the objection annually. The CWA is following this procedure until a law suit concerning the renewal requirement is finally decided under the Railway Labor Act.

Charging Party Sanda Ilias is employed by AT&T in its facility in Cleveland, Ohio. She began working for AT&T's predecessor Ameritech in 1997. In about 2000 or 2001, Ameritech was acquired by SBC which also later acquired AT&T and changed its name from SBC to AT&T in about 2005. In September 2002, Ilias left her employment with SBC and was rehired by SBC after approximately one year, in August 2003. Her employment since that date has been continuous. Her position there is a full time customer service representative. She takes customer calls, takes payments, and corrects any problems a customer might have with the employer.

When she came back to work in 2003, she was a member of the Union. By letter dated September 30, 2004, she resigned her membership and gave notice of her intent to become a *Beck* objector. She testified that from the internet she learned of the National Right to Work Legal Defense Foundation, called them, and learned of her *Beck* rights. Following this call, she sent in her letter of resignation. Though Counsel for the Union questioned her knowledge about certain legal cases cited in the letter, it makes no difference with regard to the issue in this case. Without knowing for certain, I assume that the letter she wrote was a form letter supplied by the Foundation.

Her dues payments are deducted every two weeks from her paycheck. She is currently paying $30.17 to the Union twice monthly. Ilias testified that she had only received two or three editions of the *CWA News* and that was in 2004. According to Ilias, she did not read the editions she did receive because she viewed it as junk mail and did not have the time to read it. GC exhibit 3 is a CWA Notice Regarding Union Security Agreements and Agency Fee Objections. This publication spells out the CWA's policies regarding *Beck* objections and includes the requirement that these objectors renew their objection in writing each May for the next year. Ilias testified that she had not seen this notice either in the *CWA News* or posted on an employee bulletin board at her place of employment.

As of the time Ilias resigned her Union membership in 2004, she was unaware of the CWA's requirement that she had to renew her objection in writing in May of each succeeding year to continue to be considered a *Beck* objector. When she was a member of the Union, she did not have to renew her membership annually.

As noted in the stipulations above, Ilias received a check as a result of charges she brought against the Union in an earlier case. She also received another check from the Union in the amount of $159.34 dated April 5, 2006. Ilias testified that she assumed the check was sent because she was an objector. Ilias was on maternity leave from her job from about October

2005 until about January or February 2006. She paid union dues or an agency fee during that timeframe. She has not received a check from the Union since the one she received in April 2006. She did not remember sending in a request to renew her status after her original letter of resignation in 2004. Her affidavit to the Board indicates at the time she gave it, she was certain that she had not sent another letter. On cross examination, she testified at some point that she might have sent a renewal letter in January 2006, which caused the April check to be issued by the Union. Helen Gibson testified that the check was sent in response to an objection letter Ilias sent dated January 11, 2006. I cannot be sure that this letter was actually sent by Ilias or received by Respondent as that letter was not produced in evidence. The filing of the charge in this case may have been the triggering event that caused the check to be issued. The letter accompanying the check spells out the Union's policy of requiring written renewal request for objectors to be sent each May for the upcoming year. For Ilias not to have been aware of the policy following this letter can only mean that she did not read it. Additionally her amended charge filed with the Board in this case on January 30, 2006 references the Unions' renewal requirement.

Ilias testified that she objected to having to renew her objector status annually. She testified that it was inconvenient for her, citing time constraints caused by having two children and some personal financial problems including the loss of her house.

D. Conclusions

1. Respondents' Section 10(b) defense

Respondents allege that the Charging Party was aware of the rule requiring annual renewal of *Beck* objections more than six months prior to the filing of the charge that began this litigation. It relies on proof of that in certain attachments of factual material attached to their brief. General Counsel has filed a Motion to Strike, dated December 12, 2008, asking me to strike those attachments and all factual assertions and legal arguments based on them as they were not placed in evidence at the hearing. For the reasons set forth in the Motion, I hereby grant the motion.[2] Without this alleged evidence, there is no clear proof when the Charging Party gained knowledge of the rule at issue and thus, Respondents' Section 10(b) argument fails.

Moreover, in the UAW (Colt Manufacturing) case, the union advanced a Section 10(b) argument which the Administrative Law Judge rejected. While Respondent CWA in the present case argues unsuccessfully that Ilias was aware of the annual renewal requirement outside of the 10(b) period in this case, General Counsel asserts that Section 10(b) does not preclude a finding that the annual renewal requirement violates the Act. The Board has found that the continued maintenance of a rule is unlawful even though the rule was enacted outside the 10(b) period if the rule is found to be unlawful on its face or is presumptively unlawful. This type of reasoning has been applied to solicitation policies. In *Control Services, Inc.,* 305 NLRB 435 (1991), the Board adopted the ALJ's decision that the union's no solicitation policy was unlawful and that Section 10(b) did not bar a finding of violations. The violation in the instant case, the unlawful maintenance of this renewal rule, is not based on events that occurred outside of the 10(b) period, but rather the fact that the rule itself is unlawful. For this additional reason, I find

[2] I hereby strike Appendices A, B and C of Respondent's Brief and those portions of the Brief that rely on and refer to these Appendices, specifically: Page 2, lines 16-22; Page 3, lines 1-22; Page 4, lines 1-10, 16-21; Page 5, lines 1-3; Page 11, fn. 1; Page 28, fn. 21; Page 32, lines 17-23; and Page 33, lines 1-14.

that Respondents' Section 10(b) defense fails.

2. Legal Analysis

A proviso to Section 8(a)(3) of the National Labor Relations Act allows employers and unions to enter into union security agreements requiring all employees in a particular bargaining unit to become members on or after the 30th day following hire. The Supreme Court has held that the term "member" requires only the payment of periodic dues and fees as opposed to full membership. *NLRB v. General Motors Corp.,* 373 U.S. 734 (1963). Since the Court noted that the membership has been "whittled down to its financial core", bargaining unit members who resign from membership are often referred to as financial core members. In the instant case, Respondent CWA refers to individuals who chose to be non-members as "agency fee payers". Agency fee payers are those bargaining unit employees who work under an union security clause and must pay a fee equal to membership dues as a condition of employment.

The Supreme Court has also held that employees who are required to pay union dues and fees pursuant to a union security clause may only be charged for representational activities; that is, costs related to collective bargaining, contract administration and grievance adjustment. *Communications Workers of America (CWA) v. Beck,* 487 U.S. 735 (1988). These employees cannot be obligated to pay for non-representational expenditures after they have resigned from membership and objected to paying full dues. *California Saw & Knife Works,* 320 NLRB 224 (1995). When a bargaining unit member resigns his or her membership and objects to paying full dues, a union is required to take the following action: immediately reduce the non-member's dues and fees so they are charged only for representational activities; provide the objector information regarding the percentage of the reduction of dues and fees and the basis for calculating the reduction; and inform the objector of the right to challenge the Union's calculations and provide a procedure for challenging those calculations. In *California Saw & Knife Works,* the Board examined the public sector and Railway Labor Act cases and concluded that a union's *Beck* obligation under the National Labor Relations Act is governed by the duty of fair representation standard. In determining if a union has violated the Act with respect to its *Beck* obligations, the question to consider is whether the union's actions were arbitrary, discriminatory or in bad faith in discharging its obligations. To date, there are no Board decisions that directly address the issue presented in this case.

It is General Counsel's position that Respondent CWA's requirement that an employee annually renew his/her *Beck* objection is arbitrary because, more likely than not, the value judgment leading the employee to object will not change. The Respondent's proffered justifications serve no valid purpose other than to burden an objector's right to maintain their status as a *Beck* objector.

Two recent Administrative Law Judges' (ALJ) decisions have examined unions' proffered business justifications for requiring *Beck* objectors to annually renew their objections. *International Association of Machinists and Aerospace Workers, AFL-CIO and International of Machinists and Aerospace Workers, AFL-CIO, Local Lodge 2777, (L-3 Communications Vertex Aerospace LLC),* 15-CB-5169, J.D. (ATL) – 02-08, January 9, 2008; *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, Local Union 376 (Colt's Manufacturing Company, Inc.,* 34-CB-2631, JD (NY)-06-08, March 3, 2008. I find these cases helpful in deciding the instant case as they deal with the same issue in slightly different factual situations. The relevant analysis is to consider the relative burden and impact the annual renewal requirement places on objectors compared to Respondent's purported justification for maintaining this rule.

Much like Ilias, the objector in the *International Association of Machinist* (IAM) case testified that one objection should be sufficient. The objector in that case did not read the union's publication and thus received no notice of his obligation to renew his objection every year within a specified time period. The risk objectors bear is that they may forget to renew their objection or renew it at an incorrect time (outside the window period) and thus lose their right to object for that year. Similar to Respondent CWA, the IAM union official testified that one reason for requiring objectors to renew on an annual basis was to keep accurate track of their addresses so they would know where to send the annual audit showing how the reduction in fees was calculated for the coming year. The IAM also maintained bargaining unit employees' addresses through a database based upon information provided by the local lodges. In the instant case, Respondent maintains updated information based upon information provided by employers.

Also of significance in the IAM case is the fact that, like the CWA, some IAM bargaining unit employees were covered under contracts pursuant to the Railway Labor Act and as such the union had in place a system for accepting continuing objections. In an attempt to justify the renewal requirement for public sector employees, the IAM pointed to the burden it would have to shoulder if it had to determine from each objector's letter whether that individual was objecting just for the year or on a continuing basis. Despite this asserted justification, the ALJ determined that the annual renewal requirement was arbitrary and thus violated Section 8(b)(1)(A) of the Act.

In the *UAW/Colt's Manufacturing* case, the ALJ, on remand, noted that the Board's order presented him with a very narrow issue, i.e., whether the respondent could establish valid business justification for its requirement that objectors renew their objections on an annual basis and to what extent that requirement places a burden on the objector. In the *UAW* case, the ALJ referred to a May 30, 2006 ALJ decision in *General Truck Drivers, Local 952 (Albertson's)*-JD(SF)-30-60. The ALJ in the *Truck Drivers Local 952* case concluded that the annual renewal requirement created an additional effort to maintain objector status and that the union was unable to provide a sound reason to justify that encumbrance. He reasoned that if employees had an unencumbered right to resign from membership, they should also have an unencumbered right to file *Beck* objections.

Unlike the Respondent CWA, the UAW in *Colt's Manufacturing* operated a system that kept objectors well informed of the expiration date of their objections. The union in that case notified objectors 15 days prior to the expiration date of their objection and if they forgot to renew their objection, the union sent them a copy of the letter sent to the employer asking the employer to charge the objector the full amount of dues. While the ALJ in *Colt's Manufacturing* found that this reminder system lessened the burden on objectors, he found that the union failed to establish a valid business purpose to justify the annual renewal requirement. The ALJ noted that the union's rationale for the rule appeared to be principally related to recordkeeping. The union's specific justifications in that case were much like Respondent CWA's in the current case. Also similar to the present case, the ALJ noted that yearly renewals were only required of *Beck* objectors. They UAW did not require yearly renewals of union membership cards, dues check off authorization or notice of resignation. The union in that case did not satisfactorily explain the inconsistency. The ALJ found that the union's renewal requirement violated the Act.

Looking at the business justifications given by Respondent CWA for its renewal requirement, I am not convinced that they out weigh the burden and possible penalty the rule imposes on objectors.

The first reason given by Gibson in support of the rule is that it is lawful. That is not at all

clear. ALJ Joel Biblowitz addressed a similar defense in the *Colt's Manufacturing* case. There he stated:

"Although the Board has not yet ruled upon the legality of yearly renewal requirements of *Beck* objections, [FN 4] there are a number of court decisions that go both ways, and there is, at least, one decision from an administrative law judge on the subject. In *Tierney v. City of Toledo,* 824 F2d 1497, 1506 (6th Cir. 1987), the Court found this requirement 'not . . . unreasonable' and lawful. Similarly, *Abrams v. Communications Workers of America,* 59 F3. 1373, 1381-1382 (D.C. Cir. 1995), citing *Tierney* and *International Association of Machinists v. Street,* 367 U.S. 740, 774 (1961), stated: 'The annual renewal requirement is permissible in light of the Supreme Court's instruction that 'dissent is not to be presumed – It must affirmatively be made known to the union by the dissenting employee." On the other hand, three courts have found the annual renewal requirement to be unlawful. In *Shea v. International Association of Machinists,* 154 F.3. 508, 515 (5th Cir. 1998), involving the Railway Labor Act, the Court stated: 'The current procedure is cumbersome to both the union and the objecting employees because it requires annual computer entries. If the IAM recognized continuing objections made expressly and in writing, the employee would notify the union only once and neither the union nor the individual would be bothered with annual database entries. The IAM has not proffered any legitimate reason why an annual written objection requirement is necessary when the employee has previously furnished (and not withdrawn) a continuing written objection. It seems to us that the unduly cumbersome annual requirement is designed to prevent employees from exercising their constitutionally-based right of objection, and serves only to further the illegitimate interest of the IAM in collecting full dues from nonmembers who would not willingly pay more than the portion allocable to activities germane to collective bargaining. Certainly the procedure that least interferes with an employee's exercise of his First Amendment rights is the procedure by which an employee can object in writing on a continuing basis . . . If the IAM could bring forth a legitimate reason why written objections must be annually renewed and cannot be continuing, then perhaps we would have to evaluate whether the infringement is reasonably necessary. But in the absence of such a reason, we hold that the annual written objection procedure is an unnecessary and arbitrary interference with the employees' exercise of their First Amendment rights.

In *Lutz v. International Association of Machinists,* 121 F. Supp.2d 498, 506 (U.S. District Court, E.D. Virginia 2000), the Court stated:

… the annual objection requirement imposes a burden on the First Amendment rights of nonmembers, and yet, the IAM has not offered any legitimate reason for such a requirement . . .As the union conceded at oral argument, what is really at stake here is whether the union can collect more money as a benefit of the decision maker's inertia. In other words, it is the IAM's hope that objecting nonmembers will either forget or overlook the annual objection requirement, or will reconsider their objection on the merits, thereby enabling the IAM to collect greater funds from nonmembers.

In sum, the annual objection requirement fails First Amendment scrutiny because the requirement is without a valid justification and imposes an undue burden that creates a risk that funds 'will be used to finance ideological activities unrelated to collective bargaining.' [citing *Chicago Teachers Union v. Hudson,* 475 U.S. 292, 305 (1986)]

In *Seidemann v. Bowen,* 499 F.3 119, 125 (2d Cir. 2007), after discussing *Abrams, Tierney* and *Shea*, the Court stated:

We are persuaded by the Fifth Circuit's analysis in *Shea*, which is more in line with the

Circuit's jurisprudence regarding agency fee procedures and our reading of Supreme Court precedent. Although the Supreme Court in *Street,* supra, placed the burden of making an initial objection on the employee, nothing in *Street* or the subsequent decisions of the Supreme Court suggest that merely because an employee must initially make his objection known, a union may thereafter refuse to accept a dissenter's notice that his objection is continuing . . . The fact that employees have the responsibility of making an initial objection does not absolve unions of their obligation to ensure that objectors' First Amendment rights are not burdened.

Here, PSC's annual objection requirement burdens employees exercising their constitutionally protected right to object, and the union has proffered no legitimate need for disallowing continuing objections . . . We hold the annual objection requirement imposed by PSC in this case is an unnecessary burden on employees' exercise of First Amendment rights.

Finally, on May 30, 2006, Administrative Law Judge William Kokol issued a Decision in *General Truck Drivers, Local No. 952 (Albertson's)*-JD(SF)-30-60, [FN5] wherein he found the annual renewal requirement unlawful, stating:

The General Counsel and the three Charging Parties argue that such a requirement [annual renewal of *Beck* objections] is unlawful because it burdens the rights of employees who wish to continue to paying full membership dues. To be sure, the requirement creates an additional effort to maintain objector status. Moreover, the Union is unable to provide a sound reason justifying this encumbrance. In the absence of such an explanation, it appears that this restriction is arbitrary and designed only to discourage the exercise of a right protected by the Act. Moreover, it seems that if employees have an unencumbered right to resign from membership, so too should they have an unencumbered right to file *Beck* objections. " *Colt's Manufacturing,* supra, at pages 6-7.

Moreover, in the IAM case, the Board's remand makes it clear that it seeks an answer to the question of whether the respondent could establish valid business justification for its requirement that objectors renew their objections on an annual basis and to what extent that requirement places a burden on the objector. With the foregoing in mind, I will look at the business justifications asserted by Respondent and the burdens its requirement places on objectors.

The first business reason advanced by Gibson for imposing the annual objection renewal was that if the reader of the objection request had to try to determine if the writer were seeking to be an objector continuing from year to year rather than just for one year, the reviewer of the letter would have to be one with a higher level of judgment than the clerk or clerks who currently read the letters. She testified that reading the letters to make the determination would take more time. I find it curious that it would take more time to determine if a person who writes seeking objector status means for it to continue or just be a temporary thing. I believe an ordinary person who seeks such status would obviously intend it to be continuing until they themselves determine they no longer want that status and so inform the Union. Moreover, requiring such requests to be filed annually means that the Union must parse some 1800 to 2000 letters a year instead of just reading the few that would come in from new employees desiring objector status. Gibson was not aware as of the date of hearing what percentage of the 1800 to 2000 objections letters received annually are renewed objections or new objections. The Respondent has a procedure for continuing objections from year to year for certain of its bargain unit employees who are under the jurisdiction of the Railway Labor Act. There was no good reason advanced to show why employees under the jurisdiction of the National Labor Relations Act could not be afforded the same treatment. There was no showing how this procedure under the Railway Labor Act unduly burdened the Union.

Moreover, if the Respondent in its notice to employees about their rights under Beck noted that employees requesting this status make it clear whether they want only a one year objection or want an objection that continued from year to year, making a determination as to the objector's intent should be simple. Or even simpler would just be to treat all requests for objector status as continuing. That would then allow the clerk or clerks who currently make the decision of whether a request is or is not for objector status continue to perform this task and would significantly reduce the number of requests they must read from year to year.

A further reason given by Gibson for the renewal requirement is that the Union can use the requirement to help insure that its addresses for employees are correct. The Union currently gets employee mailing addresses from employers electronically via computer. She testified that sometimes the addresses are incorrect. She testified that the Union gets up to date information about members' addresses when they write to the Union. When the Union finds a conflict in the address given by the employer for a *Beck* objector and an address given by the objector, it uses the one given by the individual. She testified that part of the reason for requiring annual renewal is to keep the Union's address list for the objectors up to date. There was no showing that members write the Union annually giving them an updated address, yet there is no requirement to rejoin the Union on an annual basis nor is there a requirement that they update their mailing addresses with the Union on an annual basis. The same is true for agency fee payers who have not filed a *Beck* objector request. This group does not have to renew their status annually and has little contact with the Union as they are not allowed to attend meetings or vote. There was likewise no showing as to how many incorrect addresses are found by requiring the Beck objectors to renew their objections annually.

Gibson then testified that such information is necessary as they are required to notify the objectors of their right to object. This seems a little contrived as a person filing an objection obviously knows of their right already. Additionally, she also testified that new employees are mailed a pamphlet detailing those rights and they are published in the *CWA News* annually. That publication is supposedly sent to all employees in the bargaining unit, members and objectors alike.

A further reason she gave for having the annual renewal requirement is that statistics about objection renewals are sent to the applicable locals to identify pockets of dissent among the represented workers so that that issue might be addressed. I really do not buy into this reason. A better barometer of dissent and dissatisfaction within a local union would be better determined by the number of new objections received each year. The fact that some people continue to object does not indicate that something is currently wrong in a local. The number of objectors in the CWA compared with the number of non objecting members, if indeed it is a barometer of dissatisfaction, would indicate to me that there is extremely little dissatisfaction. Moreover, the objection is not necessarily to Union representation but is more likely an objection to dues being used for political and other non-representational purposes.

As noted earlier, the only annual reminder to objectors that they must renew their objections in May of each year is the notice in the March/April edition of the *CWA News.* No individual reminders are mailed to the existing objectors. From the testimony of Ilias, it is clear that she does not read this publication. Though it is clear that she has known of the requirement for some time, she clearly has forgotten to renew her request. The consequences of her failure to renew are huge compared with the benefits accruing to the Union as outlined by Gibson. If Ilias or another objector fails to timely submit the annual request, they must pay full fees for the following year. I find that the reasons for the rule advanced by Respondent pale with the burden placed on objectors, and that such reasons are not a legitimate business justification for the

rule. I thus find that Respondent's renewal requirement is arbitrary, unlawful and in violation of Section 8(b)(1)(A) of the Act.

Conclusions of Law

1. AT&T Teleholdings, Inc. d/b/a AT&T Midwest and the Ohio Bell Telephone Company is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
2. Communications Workers of America and Communications Workers of America, Local 4309 are labor organizations within the meaning of Section 2(5) of the Act.
3. By requiring their *Beck* objectors to renew their objections yearly, the Respondents violated Section 8(b)(1)(A) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I shall order that the Respondents rescind their requirement that *Beck* objectors renew their objection yearly. I shall also order Respondent to notify its existing *Beck* objectors, in writing, that they are not required to renew their objection yearly, and to notify its members of the change in the next edition of *CWA News* that is mailed to its members. I will further order that Respondents make the Charging Party whole, including interest, for any fees she paid to Respondents for non-representational expenses since she first filed her *Beck* objections in September 2004 that have not already been refunded to her.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondents, Communications Workers of America and Communications Workers of America, Local 4309, its officers, agents, and representatives, shall

1. Cease and desist from:

   a. Requiring employees of covered employers to file annual objections to paying full membership dues.
   b. In any like or related manner, restraining or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

[3] 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.

a. Within 30 days of the date of this decision, rescind their rule that all *Beck* objectors must renew their objections in writing on an annual basis in order to maintain their status as *Beck* objectors.
b. Within 30 days of the date of this decision, notify all present *Beck* objectors, in writing, that Respondents will no longer require annual renewals of *Beck* objections.
c. In the next issue of *CWA News,* state that Respondents will no longer require the annual renewal of *Beck* objections.
d. Within 14 days after service by the Region, post at its union offices in Cleveland, Ohio, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region Eight, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members and employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Employer has gone out of business or closed the facility or facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current covered members and employees.
e. Refund to the Charging Party, Sanda Ilias, that portion of the fees, with interest, she has paid since September 2004 that represent the non-representational fees that Ilias would not have been obligated to pay had she been considered a continuing *Beck* objector, notwithstanding Respondents' unlawful rule requiring annual renewal of *Beck* objections. Any fees refunded to the Charging Party are to be deducted from the amount owed.

Dated, Washington, D.C. January 9, 2009

_____
Wallace H. Nations
Administrative Law Judge

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT require the bargaining unit employees whom we represent to file annual objections to paying full membership dues.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of their Section 7 rights.

WE WILL rescind our rule that requires all *Beck* objectors to renew their objections annually to retain their status as *Beck* objectors.

WE WILL notify all present *Beck* objectors, in writing that we no longer require the annual renewal of *Beck* objections.

WE WILL publish in our next issue of *CWA News* the fact that we no longer require the annual renewal of *Beck* objections.

WE WILL make whole Sanda Ilias for any fees for non-representational expenses she has been forced to pay, with interest, since September 2004.

COMMUNICATIONS WORKERS OF AMERICA
AND COMMUNICATIONS WORKERS OF
AMERICA, LOCAL 4309

(Labor Organization)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1240 East 9th Street, Federal Building, Room 1695

Cleveland, Ohio 44199-2086

Hours: 8:15 a.m. to 4:45 p.m.

216-522-3716.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 216-522-3723.