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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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April 4, 2011

Mr. Lafe Solomon
Acting General Counsel
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570-0001

Dear Mr. Solomon:

The House Committee on Oversight and Government Reform is examining the use of union dues and fees to fund political causes contrary to the will of many union workers. On February 8, 2012, the Committee held a hearing entitled, "The Right to Choose: Protecting Union Workers from Forced Political Contributions," that featured three union workers who testified that their rights are being violated by the use of their dues to support political activity. The full hearing video and testimony of all of the witnesses are available at <http://issues.oversight.house.gov/worker-rights>. I write to request additional information to further inform the Committee in its oversight of these issues.

It is indisputable that union political speech is subject to First Amendment protections; however, the First Amendment also protects against compelled speech of union workers. Indeed, the U.S. Supreme Court has long recognized that constitutional and statutory protections exist to protect a limited number of union workers from forced political contributions.¹ In a significant victory for these union workers, the Supreme Court held in *Communications Workers of America et al. v. Beck et al.*, that the National Labor Relations Act does not allow a union, over the objection of dues-paying nonmember workers, to spend fees on activities unrelated to collective bargaining and other representational activities.² Subsequent to this decision, the National Labor Relations Board (NLRB) mandated that unions abide by limited notification procedures to inform a union worker of their *Beck* rights and to object to non-representational expenditures by the union.³

¹ See, *International Association of Machinists v. Street*, 367 U.S. 740 (1961); *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977); *Chicago Teachers Union, Local No. 1 v. Hudson*, 475 U.S. 292 (1986).

² *Communications Workers of America et al. v. Beck et al.*, 487 U.S. 735 (1988).

³ See, *California Saw*, 320 NLRB 224, 233 (1995), *enfd* 133 F.3d 1012 (7th Cir. 1998).

Nevertheless, worker rights advocates have expressed concern that significant government and union-imposed barriers remain for workers to exercise their rights.⁴ Federal notification requirements have been rolled back under the Obama Administration, and Terry Bowman, a “proud” UAW member, testified at the hearing that he believes the UAW places only a “small paragraph” in its Solidarity Magazine just once a year to notify its workers about their *Beck* rights.⁵ Further, it appears that the UAW requires that *Beck* objections must be renewed each year.⁶ Disturbingly, Mr. Bowman explained that “workers who [do] exercise their *Beck* rights are frequently the victims of humiliation, persecution and harassment on the job for resigning their union membership, and union officials do nothing to stop or even discourage this intimidating tactic.”⁷

It appears that “*Beck* issues” are a “policy issue in which [you are] particularly interested.”⁸ In light of this interest, and to assist the Committee in its examination of these issues, I request that you answer the following questions and provide relevant documents to substantiate your responses from the time period January 20, 2009, to present. A response is requested by April 18, 2012. For the purpose of the questions, an alleged “*Beck* violation” is defined as the collection of union fees as a condition of employment in excess of what is permitted under the Supreme Court’s decision in *Communications Workers v. Beck* or without providing one or more of the procedural protections required under *Beck* as applied by the courts and the Board.

1. Please expand on any personal interest you have in *Beck* issues.
2. How many alleged *Beck* violations are currently pending before the Office of General Counsel?
 - a. How many alleged *Beck* violations have resulted in the issuance of a complaint?
 - b. How many alleged *Beck* violations have resulted in a settlement?
 - i. What type of relief has been provided to workers who received a settlement?
 - c. How many alleged *Beck* violations have been dismissed without the issuance of a complaint? Please explain the basis for each dismissal.

⁴ Raymond J. LaJeunesse, Jr., Esq, Workers’ Experiences in Attempting to Exercise Their Rights Under *Communications Workers v. Beck* and Related Cases, Engage Volume 3 Apr. 2002.

⁵ *The Right to Choose: Protecting Union Workers from Forced Political Contributions: Hearing Before the H. Comm. on Oversight & Govt. Reform*, 112th Cong. (2012) (Testimony of Terry Bowman).

⁶ See UAW About, “Notice to persons covered by union security agreements regulated under National Labor Relations Act,” available at <http://www.uaw.org/page/notice-persons-covered-union-security-agreements-regulated-under-national-labor-relations-act> (last visited March 8, 2012).

⁷ *The Right to Choose: Protecting Union Workers from Forced Political Contributions: Hearing Before the H. Comm. on Oversight & Govt. Reform*, 112th Cong. (2012) (Testimony of Terry Bowman).

⁸ Memorandum GC 11-11, Office of the General Counsel, *Mandatory Submissions to Advice*, Apr. 12, 2011.

3. How many alleged *Beck* violations are pending before the Board?
 - a. How many alleged *Beck* violations have been decided by the Board?
 - b. How many of these cases have been decided in favor of the union?
 - c. How many of these cases have been decided in favor of the worker?
4. What is the average amount of time it takes the Office of General Counsel to process an alleged *Beck* violation—from the filing date to a final disposition? Please provide an accounting of each alleged *Beck* violation and the length of time it took for the charge to reach a final disposition.
 - a. How does the average amount of time it takes to process an alleged *Beck* violation compare to the average amount of time it takes to process other unfair labor practice charges?
5. What is the average amount of time it takes for the Board to issue a decision in an alleged *Beck* violation? Please provide an accounting of each alleged *Beck* violation decided by the Board and the length of time it took to render a decision.
6. Does the Office of General Counsel maintain the policy outlined in a 1998 General Counsel Memorandum that “an unfair labor charge alleging improper agency fee charges should be dismissed if the objecting party generally asserts that he has been improperly charged?”⁹
 - a. Does the Office of General Counsel maintain the policy that a worker must “present evidence or ... give promising leads that would lead to evidence that would support [a *Beck* violation]?”¹⁰
 - b. How does the Office of General Counsel define a “promising lead?”
 - c. How many cases have been dismissed by Office of General Counsel because a worker could not “present evidence” or a “promising lead” of an alleged *Beck* violation?
7. Does the Office of General Counsel maintain the policy that “cases raising questions as to whether the charging party has met [the evidence burden] should be submitted to the Division of Advice?”¹¹
 - a. If so, how many cases of alleged *Beck* violations has the Division of Advice determined to have met the burden?

⁹ Memorandum GC 98-11, Office of the General Counsel, *Guidelines Concerning Processing of Beck Cases*, Aug. 17, 1998.

¹⁰ *Id.*

¹¹ *Id.*

- b. How many cases of alleged *Beck* violations has the Division of Advice determined has not met the burden?
8. Does the Office of General Counsel maintain the policy that the union must verify by an audit that the chargeable and non chargeable expenditures claimed were made?
9. How many cases have been referred to the Division of Advice concerning “the type and level of audits unions must give *Beck* objectors?”¹²
 - a. What is the current status of such cases?
 - b. How many have resulted in the issuance a complaint?
 - c. How many have been dismissed?
 - d. How many are pending before the Board?
10. How many cases have been referred to the Division of Advice that concern “whether *Beck* objectors are entitled to audits along with the notice of their *Beck* rights?”¹³
 - a. What is the current status of such cases?
 - b. How many resulted in the issuance of a complaint?
 - c. How many have been dismissed?
 - d. How many are pending before the Board?
11. Did you participate in advising the Board in its issuance of the “Employee Rights Under the National Labor Relations Act” poster rule?¹⁴ If so, did you advise the Board that they should consider including in the notice notification of a workers’ *Beck* rights under the National Labor Relations Act in the poster? If not, why not?

In preparing your answers to these questions, please answer each question individually and include the text of each question with your response. When producing documents to the Committee, please deliver production sets to the Majority Staff in room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

¹² Memorandum GC 11-11, Office of the General Counsel, *Mandatory Submissions to Advice*, Apr. 12, 2011.

¹³ *Id.*

¹⁴ See National Labor Relations Act, Employee Rights under the National Labor Relations Act, available at <http://www.nlr.gov/sites/default/files/documents/1562/employeeerightsposter-8-5x11.pdf>.

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The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at “any time” investigate “any matter” as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee’s request.

If you have any questions about this request, please contact the Committee at 202-225-5074. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darrell Issa", with a large, sweeping flourish extending to the right.

Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

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Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.
8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.