

NOT TO BE PUBLISHED
IN BOUND VOLUMES

PHG
Goshen, IN

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION, AFL-CIO, CLC
(Trimas Corporation d/b/a Cequent
Towing Products)

and

Case 25-CB-8891

DOUGLAS RICHARDS

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION, AFL-CIO, CLC
(Chemtura Corporation)

and

Case 25-CB-9253
(formerly 6-CB-11544)

RONALD R. ECHEGARAY

and

Case 25-CB-9254
(formerly 6-CB-11545)

DAVID M. YOST

ORDER DENYING
MOTION FOR RECONSIDERATION

On August 16, 2011, the National Labor Relations Board issued a Decision and Order in this proceeding.¹ The Board found that the Respondent violated its duty of fair

¹ 357 NLRB No. 48.

representation by requiring nonmembers whom it represents and who seek objector status under *Communications Workers of America v. Beck*² to assert their objections on an annual basis. The Board ordered the Respondent to rescind its annual renewal requirement and to recognize the three Charging Parties as continuing objectors until they revoke their objections or the Respondent implements a lawful annual renewal requirement, whichever occurs first.

On August 29, 2011, the Charging Parties filed a Motion for Reconsideration. On September 12, 2011, the Respondent filed an opposition.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.³

The Charging Parties request reconsideration of the Board's remedy, arguing that it should encompass all current and past *Beck* objectors represented by the Respondent nationwide. They argue that the Respondent

² 487 U.S. 735 (1988).

³ The Charging Parties have filed a motion to disqualify Members Block, Griffin and Flynn from ruling on this case, arguing that their recess appointments to the Board by the President exceeded his authority under Section 3(a) of the National Labor Relations Act and Article II, Section 2 of the United States Constitution. For the reasons set forth in *Center for Social Change, Inc.*, 358 NLRB No. 24 (March 29, 2012), we reject the Charging Parties' argument. Accordingly, the motion is denied.

should be ordered to recognize all such objectors as continuing objectors and to provide them with make-whole relief, including reimbursement of all dues and fees collected from them for nonrepresentational activities. Alternatively, the Charging Parties assert that such relief should encompass all individuals represented by the Respondent who have filed *Beck* objections since August 27, 2010, the date on which the Board issued its lead decision addressing the validity of a *Beck* annual renewal requirement. See *Machinists Local Lodge 2777 (L-3 Communications)*, 355 NLRB No. 174 (2010).

Under Section 102.48(d) of the Board's Rules and Regulations, a motion for reconsideration must be justified by "extraordinary circumstances." For the reasons set forth below, the Charging Parties have failed to make this showing.

The Board in *L-3 Communications*, *supra*, specifically declined to "announc[e] a per se rule" that annual renewal requirements are unlawful. Rather, the Board stated that it would proceed on a case-by-case basis "to inquire into a union's *Beck* procedures when they are challenged to determine whether the union has demonstrated a legitimate justification for an annual renewal requirement or otherwise minimized the burden it imposes on potential

objectors.” Id., slip op. at 1. The Board found in *L-3 Communications* that the unions had failed to present a legitimate justification for their annual renewal requirement sufficient to justify even the modest burden the requirement posed on an individual seeking to make an objection. Id.⁴ The Board granted prospective remedial relief only, however, because the unions could reasonably have believed that their requirement was lawful in light of court approval of the requirement, the lack of any contrary indication by the Board, and the General Counsel’s previous advice approving the requirement. Id., slip op. at 8. The Board thus ordered the unions to rescind their annual renewal requirement, but did not order make-whole relief, and directed the unions to recognize the charging party only – not all *Beck* objectors represented by the unions nationwide – as a continuing objector.

The Charging Parties’ request for make-whole relief here is inconsistent with the decision in *L-3 Communications*, in which the Board specifically declined to give retroactive application to its ruling. Likewise, the

⁴In contrast, in *Auto Workers Local 376 (Colt’s Mfg. Co.)*, 356 NLRB No. 164 (2011), the Board applied the standard announced in *L-3 Communications* to find that the unions’ annual *Beck* renewal requirement was not unlawful, because the unions there had taken steps to minimize the burden the requirement imposed on objectors.

Charging Parties' request that remedial relief be extended to all nonmembers represented by the Respondent exceeds the limited prospective relief granted in *L-3 Communications*.

In addition, contrary to the Charging Parties' contention, the issuance of the Board's decision in *L-3 Communications* did not immediately render the Respondent's annual renewal requirement unlawful and trigger a remedial obligation by the Respondent. Rather, the Board explained that it would proceed on a case-by-case basis to evaluate the validity of a union's annual renewal requirement based on the specific factors presented.⁵

The Board having considered the matter,

⁵ Moreover, in arguing that its annual renewal requirement was not arbitrary, the Respondent here relied on at least one aspect of its procedure not present in *L-3 Communications*. In the instant case, each objector received an advanced dues reduction check on a quarterly basis, and the Respondent argued that its annual renewal requirement was needed to minimize the risk of unnecessarily paying advance rebates to individuals who are no longer employed in a bargaining unit represented by the Union. 357 NLRB No. 48, slip op. at 4. The administrative law judge (although ultimately reversed by the Board) relied in part on this justification in finding that the Respondent's procedure was not unlawful. *Id.*, slip op. at 21. Thus, the issuance of the Board's decision in *L-3 Communications* would not necessarily have put the Respondent in the present case on notice that its annual renewal requirement was unlawful.

IT IS ORDERED that the Motion for Reconsideration is denied.⁶

Dated, Washington, D.C. April 18, 2012.

Mark Gaston Pearce, Chairman

Brian E. Hayes, Member

Richard F. Griffin, Jr. Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

⁶ We reach the same conclusion and issue a similar order today with respect to the motion for reconsideration in *Electrical Workers Local No. 34, 357* NLRB No. 45 (2011).