BEFORE THE ARBITRATOR

In the Matter of the Arbitration of
The Financial Core Dues Challenges Involving

MINDY BLAKELY, JOSEPH BRENNAN, KELLY CARREL, THERESA COOK, JODI GALINSKY, JEFFREY GEHRKE, MICHAEL R. GLASS, RICHARD HECK, STEPHEN HENNING, RENEE LOUNSBURY, RICHARD LOUNSBURY, DAMON LUDWIG, M. KAY MAGELAND, WILLIAM MATZ, ROBERT MAYFIELD, GILBERT OSMOND, JOSHUA SCHLIEGER, MICHAEL A. SMITH, PAMULA J. WAHL

and

TEAMSTERS LOCAL UNION NO. 579

Case 1
No. 60183
A-5946

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by **Ms. Andrea F. Hoeschen**, on behalf of Teamsters Local Union No. 579.

Mindy Blakely, Jodi Galinsky, Michael R. Glass, Robert Mayfield, Joshua Schlieger, Michael A. Smith and Pamula J. Wahl, Objectors, on their own behalf.

ARBITRATION AWARD

Teamsters Local Union No. 579, hereinafter "Union", has established a written procedure which provides that it will request the Wisconsin Employment Relations Commission appoint a Commission staff member to act as a neutral arbitrator to decide disputes as to the Union's determination of the financial core fee amount. Pursuant to that procedure, on August 1, 2001, the Union requested that the Commission appoint a member of its staff as arbitrator to resolve the challenges of the above-named Objectors to the Union's determination of the financial core fee amount. The Commission designated David E. Shaw, a member of its staff, as arbitrator to resolve the disputes. By letters of August 15, October 9 and November 14, 2001, the undersigned requested a copy of the Union's written procedures.

By letter of November 26, 2001, the Union provided the undersigned with said procedures. Thereafter, the undersigned attempted to schedule a hearing in the matter, giving "due consideration" to the availability of the challengers and of the Union. Hearing was held before the undersigned on March 19, 2002, in Janesville, Wisconsin, and a stenographic transcript was made of the proceeding. Only those Objectors noted above appeared at the hearing. The parties agreed to a briefing schedule, which was completed by May 17, 2002.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

BACKGROUND

The Union is the recognized exclusive collective bargaining representative for

> "all regular full-time and regular part-time production employees, warehouse employees, shipping and receiving employees and maintenance employees, employed by Janesville Products at its facility located at 2315 Beloit Avenue, Janesville, Wisconsin. Excluding managerial employees, office clerical employees, professional employees, and supervisors as defined in the Act."

Those employees are covered by a union security agreement which requires that they be members in good standing of the Union. Under federal law, employees covered by such agreements cannot be required to be actual "members" of the union, but may only be required to pay union dues and fees. In COMMUNICATIONS WORKERS OF AMERICA V. BECK, 487 U.S. 735 (1988), the U.S. Supreme Court held that Sec. 8(a)(3) of the Labor Management Relations Act does not permit a union to expend funds of dues-paying non-member employees collected pursuant to a union security clause, over the objections of those non-member employees, on "activities unrelated to collective bargaining, contract administration or grievance adjustment", and that to do so would violate the union's duty of fair representation. Under the Court's ruling in BECK, unions are required to provide dues-paying non-members with notice of their rights under BECK, provide financial disclosure of the union's expenditures, and establish a procedure for such non-members to object to paying for activities not germane to the union's representational duties and to obtain a reduction in their fees for such activities, and to challenge the accuracy of the union's calculations.

By letter of January 26, 2001, the Union provided the financial core dues-paying non-member employees in the bargaining unit it represents at Janesville Products (hereafter "Objectors"), with notice of their right to object (on an individual basis) and request a reduction and to obtain an explanation of the reduced fee amount, along with an independent accountant's report of the Union's expenditures. The Union calculated the reduced fee amount to be 96.99% of the financial core dues amount. By letters of February 9, 2001, the Objectors

filed their objections. They received the additional financial information, as well as the Union's procedures for challenging its calculation of the reduced fee amount, by letter of March 30, 2001. By letters of April 6, 2001, the individual Objectors notified the Union that they did not agree with the Union's calculations of the reduced fee amount.

On August 1, 2001, the Union filed a request with the Commission to appoint a staff arbitrator to decide the challenges. Thereafter, the undersigned was appointed to arbitrate the challenges. Hearing was held before the undersigned on March 19, 2002, in Janesville, Wisconsin. Objectors Blakely, Galinsky, Glass, Mayfield, Schlieger, Smith and Wahl attended the hearing and had the opportunity to question Union witnesses and to present evidence on their own behalf.

UNION PROCEDURES

The Union's procedures for objecting and for challenging the financial core fee amount contains, in part, the following provisions:

. . .

(d) Procedure for Resolving Challenges to the Financial Core Fee

Local 579 reserves the right to consolidate contemporaneously-made challenges into a single consolidated case.

Promptly after receipt of the challenge(s), Local 579 will schedule a meeting of the challenger(s) with its Executive Board to hear the reasons for your objection(s) and to attempt to resolve the matter informally. If an agreement is reached at this meeting, the challenger(s) will be charged the agreed-upon amount, and the escrow will be deposited into the Local Union's general fund or returned to the objector(s) accordingly.

If no resolution is reached at the Executive Board step, then within 10 days after the meeting with the Executive Board, Local 579 will submit a request that the Wisconsin Employment Relations Commission (WERC) appoint a neutral arbitrator to decide the challenge(s) and will give the name(s) of the challenger(s) to the WERC. The WERC will inform the challenger(s) and Local 579 of the identity of the arbitrator from among the WERC staff.

The arbitrator will establish the date, time and place of the hearing, giving due consideration to your availability and the availability of the Union. You may attend and present your objection. Local 579 will attend to defend the correctness of its calculation against your objection.

(e) Costs of the Arbitration

The Union shall pay the arbitrator's fee and other expenses, the rental, if any, of the location chosen, and shall pay for its own and the arbitrator's copy of the transcript, if any.

The Union will bear its own expenses. You will be responsible for paying your own expenses, your own copy of the transcript, if any, and any other costs you incur in presenting your objection.

(f) Representation of Challenging Parties by Counsel

You may be represented by counsel or other representative of your own choosing in the arbitration process at your own cost.

(g) Arbitration Procedures

The arbitration hearing shall occur within 30 days of the date of your challenge or as soon as reasonably practicable thereafter. The exact date, time and place of the hearing shall be determined by the arbitrator.

Ten days prior to the start of the hearing, the Union will make available to you copies of the books and records upon which the Union relies to justify the amount of the financial core fee at your request. You may inspect these books and records at the Local 579 office in Janesville, WI.

You and the Union shall be given the opportunity to file post-hearing briefs. Such briefs must be filed within 30 days after the hearing is complete.

The arbitrator shall issue a written decision and award within 30 days after receipt of the post-hearing briefs. 1/ The arbitrator's award shall be binding on you, the Union and all challengers party to the consolidated case. Any and all financial core fee payments held in escrow shall be distributed to the Union or returned to you (or the other challengers in a consolidated case) in conformity with the arbitration award. If the award sustains your challenge, your financial core fee (and the financial core fee of each challenger participating in a consolidated case) will be reduced for the balance of the year in conformity with the arbitration award.

1/ The Union waived the thirty (30) day requirement for the issuance of an award.

POSITIONS

Union

The Union asserts that the evidence presented at hearing demonstrates that the financial core dues amount it calculated is both reasonable and lawful. In that regard, the Union notes that it presented testimony from a supervising auditor from the accounting firm that has audited the Union for the past several years who explained the categories of expenses that constitute the financial core rate and the process by which the firm verified the Union's expenses. The Objectors did not present any witnesses and did not identify any particular aspects of the dues that do not comply with the law.

In reply to the brief of the Objectors, the Union asserts that they did not identify any errors or improprieties in the audits; rather, the Objectors identified three areas of complaint with the financial core dues amount.

First, the Objectors argue that the amount should only reflect expenses incurred in representing their bargaining unit. There is no requirement that unions provide Objectors with a unit-by-unit breakdown of expenses. To be considered "germane to collective bargaining", expenditures do not have to result in a direct and tangible benefit to the dissenters' bargaining unit, monies spent to create a "pool of resources" potentially available to the local union are properly chargeable, even if none of the money is actually spent in that particular unit in a given year. LEHNERT V. FERRIS FACULTY ASSOCIATION, 500 U.S. 507 (1991); CALIFORNIA SAW AND KNIFE WORKS, 320 NLRB 224 (1995).

Second, the Objectors allege that the Union used funds for individual officers' election campaigns, but do not support the allegation with any evidence. They only allege in their brief that "On at least two occasions, flyers were posted on the Union bulletin board at work promoting a candidate for a particular position at the local union hall." They do not allege the candidates were current Union employees and provide no evidence that Union funds were used to pay for the flyers.

Last, the Objectors apparently object to having to pay toward fringe benefits for the Union's employees. The law is settled that all costs of representational activities, including the wages and benefits of the union's employees, are properly chargeable to the extent they are engaged in representational activities. JOHNSON CONTROLS WORLD SERVICES, 329 NLRB 543 (1999).

The Union requests that its financial core dues amount be declared to be reasonable and lawful.

Objectors

The arguments in the Objectors' brief are set forth in their entirety as follows:

We, the Financial Core Members of Janesville-Sackner Group, present our reasons for requesting a further reduction of the fees assessed us by Teamsters Local 579.

1. General Administrative costs: These costs have no direct cause and effect on us. All we receive is the right to fair representation. All other duties by this organization are used only by "full" paying members. Any administrative costs charged to us should involve the Janesville-Sackner Group contract ONLY, and not the costs of administering to every other group represented by Teamsters Local 579.

2. Warehousing costs: The International does not have any direct input into our contract or any grievances which may be brought forth. These are all handled by the "Local". So, there is no "Warehouse" principal when dealing with any issues concerning the contract between Janesville-Sackner Group and Teamsters Local 579.

3. Supplies and Printing: Teamsters Local 579 *did* campaign locally. On at least two occasions, flyers were posted on the Union bulletin board at work promoting a candidate for a particular position at the local union hall.

4. Employee benefits: "We" are not entitled to any "benefits" except fair representation. Therefore, we do not feel obligated to fund any benefits.

With all due respect, we are asking that our fees be further reduced to reflect more accurately our status as financial core members. We charge that even with the audit, as presented to us, that the "nonchargeable" figures were not fully disclosed to us. This does not involve money only directed to local politics but to undisclosed national political activities. Local treasury money can not go for direct political activities but it can do a lot such as mailings, support or oppose candidates, precinct visits, voter registration, and get out the vote drives.

DISCUSSION

According to the January 26, 2001 notice it sent to the Objectors, the Union calculated the reduced financial core fee amount for the period beginning March 1, 2001 through February 28, 2002 on its expenditures for the calendar year 1999. At hearing, the Union submitted "Schedules of Expenses and Allocation of Expenses Between Chargeable Expenses and Non-Chargeable Expenses – Modified Cash Basis and Report of Independent Auditors" for the years ended December 31, 2000, December 31, 1999, and December 31, 1998. The audits were performed by Thomas Havey LLP, a certified public accountant and consulting firm that primarily performs audits, including audits for a number of labor organizations. In addition, the Union presented as witnesses a senior member of that accounting firm who supervised the audit and the Secretary-Treasurer of Local 579.

The Objectors challenge the Union's calculations of the reduced financial core dues amount in four areas, which they describe as:

1) General Administrative costs
2) Warehousing costs
3) Supplies and Printing
4) Employee Benefits

General Administrative Costs and "Warehousing" Costs

The Objectors assert that they should only be charged for "administrative costs" related to administering the collective bargaining agreement covering their bargaining unit. Objectors also argue that they should not be charged for costs related to activities that only benefit "full" members of the Union. They do not, however, identify what activities they are referencing in that regard. Presumably, Objectors are disputing having to pay their pro rata share of the cost of holding membership meetings, ratification meetings etc., that is, activities in which only full members of the Union may participate. They also dispute the legality of the per capita charges for affiliation with the Joint Council and the International.

These issues were addressed by the U.S. Supreme Court in LEHNERT V. FERRIS FACULTY ASSOCIATION, supra. In that case, the objecting non-members asserted that the local union should not be permitted to utilize their fees for activities that "though closely related to collective bargaining generally, are not undertaken directly on behalf of the bargaining unit to which the objecting employees belong." Relying on its earlier decisions, the Court held:

> Petitioners' contention that they may be charged only for those collective bargaining activities undertaken directly on behalf of their unit presents a closer question. While we consistently have looked to whether non-ideological

expenses are "germane to collective bargaining." HANSON, 351 U.S., at 235, we have never interpreted that test to require a direct relationship between the expense at issue and some tangible benefit to the dissenters' bargaining unit.

We think that to require so close a connection would be to ignore the unified-membership structure under which many unions, including those here, operate. Under such arrangements, membership in the local union constitutes membership in the state and national organizations. See 643 F.Supp., at 1308. See also CUMERO v. PUBLIC EMPLOYMENT RELATIONS BOARD, 49 Cal. 3d 575, 603-604, 778 P.2d 174, 192 [132 LRRM 2575] (1989) (noting the inherent "close organizational relationship").

The essence of the affiliation relationship is the notion that the parent will bring to bear its often considerable economic, political, and informational resources when the local is in need of them. Consequently, that part of a local's affiliation fee which contributes to the pool of resources potentially available to the local is assessed for the bargaining unit's protection, even if it is not actually expended on that unit in any particular membership year.

The Court recognized as much in ELLIS. There it construed the RLA to allow the use of dissenters' funds to help defray the costs of the respondent union's national conventions. It reasoned that "if a union is to perform its statutory functions, it must maintain its corporate or associational existence, must elect officers to manage and carry on its affairs, and may consult its members about overall bargaining goals and policy." 466 U.S. at 448.

. . .

We therefore conclude that a local bargaining representative may charge objecting employees for their pro rata share of the costs associated with otherwise chargeable activities of its state and national affiliates, even if those activities were not performed for the direct benefit of the objecting employees' bargaining unit. This conclusion, however, does not serve to grant a local union carte blanche to expend dissenters' dollars for bargaining activities wholly unrelated to the employees in their unit. The union surely may not, for example, charge objecting employees for a direct donation or interest-free loan to an unrelated bargaining unit for the purpose of promoting employee rights or unionism generally. Further, a contribution by a local union to its parent that is not part of the local's responsibilities as an affiliate but is in the nature of a charitable donation would not be chargeable to dissenters. There must be some indication that the payment is for services that may ultimately enure to the

> benefit of the members of the local union by virtue of their membership in the parent organization. And, as always, the union bears the burden of proving the proportion of chargeable expenses to total expenses. CHICAGO TEACHERS V. HUDSON, 475 U.S., at 306; ABOOD, 431 U.S., at 239-240, n. 40; RAILWAY CLERKS V. ALLEN, 373 U.S., at 122. We conclude merely that the union need not demonstrate a direct and tangible impact upon the dissenting employee's unit.

The financial information presented by the Union indicates that both the Joint Council and the International break-out the amounts that are non-chargeable from the per capita taxes they receive from the Union. The senior auditor who testified, explained that they relied on reports and/or letters to verify those figures from the International and Joint Council. While this does not provide much detail so as to be able to judge the accuracy of those bodies' computations, the Objectors have not established, or even offered (other than asserting that the International has no direct responsibility for negotiating or administering the labor agreement covering their bargaining unit) a basis for finding that they are inaccurate. Rather, they dispute the propriety of their having to pay anything to those organizations. As noted above, the Court has rejected that contention.

As to Objectors' assertion that they should not be charged for the Union's "administrative costs" because they are not directly related to the representation of their bargaining unit, it is not clear as to what costs the Objectors are referring. If they are referring to such expenses as office expense, meeting and travel, automobile expense, salaries and expense allowances, postage, telephone and utilities, the Arbitrator is not aware of a requirement that unions allocate such expenses by bargaining unit, rather than per employee represented. Those costs would not be chargeable only to the extent they were incurred for non-chargeable activities. As Objectors have presented no evidence to show that the Union engaged in non-chargeable activities beyond that conceded by the Union, there is no basis upon which to question the Union's calculations in that regard.

Supplies and Printing

The Objectors assert that these categories cannot be considered totally chargeable to them because the Union did campaign in a local union election. In that regard, Objectors assert that on at least two occasions, flyers were posted on the Union bulletin board in their workplace promoting a candidate for a local union office. However, the Objectors have provided no evidence to support their assertions. Conversely, the Union's principal officer, Darrell Shelby, testified that the Union had not engaged in any political activities in the prior year, including not doing any mailings and not running any phone banks. Shelby also testified that while he did run for election to the Secretary-Treasurer position, he did not do any campaigning for the position. Thus, what evidence is in the record is contrary to the Objectors' assertions.

Employee Benefits

The compensation paid to the Union's employees, both in the form of salary and fringe benefits, is chargeable to objecting non-members, except to the extent that those employees engaged in non-chargeable activities on work time. Again, Shelby testified that Local 579 did not engage in any political or lobbying activities, but instead left that to the International and Joint Council. The senior auditor testified that in performing the audit, they review the minutes of the organization, question personnel as to the labor organization's involvement in political activities in the past year and, if necessary, review the time sheets of the personnel, in assessing the reliability of the labor organization's calculations as to the amounts that are chargeable or are non-chargeable. He further testified that, in his experience, which is extensive, many Teamsters locals engage in very little political or lobbying activities, but instead leave those to the International. This is consistent with Shelby's testimony. Thus, there is no basis in record upon which to find that the total amount of salary and fringe benefits paid to the Union's four employees was not fully chargeable to the Objectors.

In conclusion, faced with the independent auditor's report verifying the accuracy of the Union's allocation of its expenses into chargeable and non-chargeable categories, which is the basis for the Union's calculation of the reduced financial core dues amount, and the lack of any competing evidence that would provide a basis for questioning the accuracy of the Union's calculation, the Arbitrator must conclude that the reduced financial core dues rate, as calculated by the Union, is appropriate.

Based upon the foregoing, the evidence and the arguments of the parties, the undersigned makes and issues the following

AWARD

The financial core dues amount properly charged to the Objectors in this proceeding is the amount as has been calculated by Teamsters Local Union No. 579. Therefore, the challenges to the Union's calculation of the financial core dues amount are dismissed.

Dated at Madison, Wisconsin, this 11th day of July, 2002.

David E. Shaw /s/
David E. Shaw, Arbitrator

DES/gjc
6403.doc