NLRB REMEDIES:

WHERE ARE THEY GOING?

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The National Labor Relations Board's remedies are the vehicles through which the policies of the National Labor Relations Act are realized, and the means by which rights conferred by the Act are protected. Through the appropriate remedies, the Board ensures that conditions at the workplace are restored to those which existed before the onset of unlawful conduct. Effective remedies also deter unlawful conduct and promote voluntary compliance with the Act.

Congress chose not to specify the precise remedies that would be available to the Board, understanding the Board's need for flexibility to meet diverse situations and those which Congress did not expressly envision. As the Supreme Court noted, "in the nature of things Congress could not catalogue all the devices and stratagems for circumventing the policies of the Act. Nor could it define the whole gamut of remedies to effectuate these policies in an infinite variety of specific situations. Congress met these difficulties by leaving the adaptation of means to end to the empiric process of administration."[1] Thus, the Supreme Court "has repeatedly interpreted [Section 10(c) (of the NLRA)] as vesting in the Board the primary responsibility and broad discretion to devise remedies that effectuate the policies of the Act, subject only to limited judicial review."[2]

In short, it is the Board's institutional role to ensure that its arsenal of remedies carries out the purposes of the Act. Today, as in 1935, employees are still discharged for attempting to organize a union, and measures may still be needed to level the playing field. Indeed, for a mature statute the growing incidence of discipline for union activity is disturbing. While these realities persist, much else has changed. Economic and technical changes are sweeping the workplace, and some of these changes have impacted the effectiveness of the Board's traditional remedial strategies.

Thus, the Board has periodically adopted changes aimed at improving the Act's remedial scheme. Some of its most recent changes are discussed

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[1] Phelps Dodge Corp. v. NLRB, 313 U.S. 177, 194 (1941).

[2] Sure-Tan, Inc. v. NLRB, 467 U.S. 883, 898-99 (1984).

below. In addition, I want to explore remedial initiatives designed to meet the new challenges of the changing workplace.

REMEDIES FOR ORGANIZING INTERFERENCE

The Board has always been concerned that its remedies be responsive to situations where extensive campaigns of employer unfair labor practices undermine the right of employees to participate in free and fair elections. In *NLRB v. Gissel Packing Co.*,[3] the Supreme Court upheld the Board's authority to issue a remedial bargaining order based on union authorization cards from a majority of employees.[4] Such relief is appropriate when the employer commits unfair labor practices so serious as to make "the holding of a fair election unlikely."[5] Over the years, however, the traditional enforcement process has had shortcomings which needed to be addressed. A *Gissel* bargaining obligation is often delayed for several years as the case is litigated before the Board and circuit courts. During that time, "the union's position in the plant may have already deteriorated to such a degree that effective representation is no longer possible."[6] Legal commentators have noted that an ultimate *Gissel* bargaining order issued by the Board often does not produce a viable and enduring bargaining relationship.[7] Lengthy enforcement litigation also leaves the Board's *Gissel* order vulnerable to an employer's passage of time and changed circumstances defenses by the time a case reaches a circuit court.

To address these concerns, the Board, with court approval, has sought interim *Gissel* bargaining orders under Section 10(j) of the Act. Where an employer's violations have precluded employees' choice regarding representation through the election process, use of Section 10(j) is particularly appropriate to preserve the effectiveness of the Board's final remedy.[8] The benefits of such a process can be substantial. Thus, 69% of the 68 cases in which the Board has sought 10(j) interim *Gissel* bargaining orders between FY 1990 and 1998 were resolved favorably, either through settlement (28 cases), or a favorable decision by a district court (19

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[3] 395 U.S. 575 (1969).

[4] *Id.* at 619.

[5] *Id.* at 610.

[6] Seeler v. Trading Port, Inc., 517 F.2d 33, 38 (2d Cir. 1975).

[7] See Paul Weiler, *Promises to Keep: Securing Workers' Rights to Self-Organization Under the NLRA*, 96 HARV. L. REV. 1769, 1795 (1983); *see also* Terry A. Bethel and Catherine Melfi, *The Failure of Gissel Bargaining Orders*, 14 HOFSTRA LAB. L.J. 423 (1997).

[8] Under the Board's Rules and Regulations, Section 102.94(a), whenever a district court grants an injunction under Section 10(j), the Board obligates itself to expedite the underlying unfair labor practice proceeding. Such expedition may further limit the development of changed circumstances in the administrative case.

cases).[9] Further, in only two of the favorably resolved 10(j) cases did the underlying unfair labor practice case go before a circuit court for Section 10(e)-10(f) enforcement of the Board's order.[10] Thus, in many cases, with 10(j) relief, the entire underlying labor dispute can be resolved short of the full litigation through circuit court enforcement of a final Board order.

I will continue to work with the Regions to ensure that they consider the use of 10(j) to obtain interim bargaining orders in all appropriate cases.

There are, of course, situations where a bargaining order is not appropriate, even though employer unfair labor practices waged against a union organizing campaign are serious enough to inhibit employees' free choice. This may be because the union has never obtained majority status, or because the effects of the unlawful conduct, though serious, were not widespread. In these cases, the Board, with court approval, has ordered various restorative remedies designed to hasten the return to conditions that will enable employees to make their own choice through a Board election.[11]

These restorative remedies are primarily grouped into two classes: access remedies and notice remedies. The access remedies "are designed to assist the [u]nion in communicating with the employees, and to assist the employees in hearing the [u]nion's side of the story without fear of retaliation."[12] By enabling the employees to make an informed choice, the access remedies go to the heart of the employees' ability to exercise their right to vote in a meaningful way.[13] The notice remedies are intended to "inform the employees of their statutory rights and the legal limits on the [e]mployer's conduct, and to reassure them that further violations will not occur."[14]

These remedies historically have been used in a relative handful of cases. The empirical evidence, however, is strong that employer willingness to engage in serious and pervasive unfair labor practices to counter organizational activity is not uncommon, and that such conduct is

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[9] The 19 wins were 48% of the *Gissel* 10(j) cases litigated to a court decision in this period.

[10] The Board was successful before the courts in both cases.

[11] *See* Fieldcrest Cannon, Inc., 318 N.L.R.B. 470 (1995), *enforced in relevant part* 97 F.3d 65 (4th Cir. 1996).

[12] Teamsters Local 115 v. NLRB, 640 F.2d 392, 399 (D.C. Cir. 1981).

[13] 13. See Derek C. Bok, *The Regulation of Campaign Tactics in Representation Elections under the National Labor Relations Act* 78 HARV. L. REV. 38, 46 (1964).

[14] Teamsters Local 115, 640 F.2d at 399-400.

often devastatingly effective in hobbling organizational campaigns.[15] For that reason, I intend to take steps to ensure that the restorative remedies that the Board has already developed in this area will be applied in all appropriate cases--that is, where the severity of the violations and the extent of their dissemination rises to the level that would otherwise warrant a *Gissel* order. By more complete restoration of the *status quo ante*, notice and access remedies should bring the question of representation to a more timely resolution.

In *Fieldcrest Cannon*, for example, the Board augmented its traditional cease-and-desist, affirmative and posting provisions with "special notice and access remedies . . . necessary to dissipate fully the coercive effects of the unfair labor practices found."[16] The Board ordered that Fieldcrest:

> (1) publish the notice, in Spanish and English, in the company's internal newsletter and mail copies to all employees on the company's payroll going back to the onset of the unfair labor practices;[17]
> (2) convene its employees during working time and have the company's vice president read the notice to them;
> (3) publish the notice in a local newspaper of general circulation twice weekly for four weeks;
> (4) supply the union with names and addresses of its unit employees;
> (5) allow the union reasonable access to its bulletin boards and all places where notices to employees are customarily posted;
> (6) grant the union access to nonwork areas during employees' nonwork time;
> (7) give the union notice of, and equal time and facilities for the union to respond to, any address made by the company regarding the issue of representation; and
> (8) afford the union the right to deliver a 30-minute speech to employees on working time prior to any Board election in a time frame of not more than 10 working days before, but not less than 48 hours before, the election. With regard to the conduct of a rerun election, the Board ordered that it be conducted at a neutral, off-premises site deemed suitable by the Regional Director.[18]

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[15] *See* PAUL WEILER, GOVERNING THE WORKPLACE: THE FUTURE OF LABOR AND EMPLOYMENT LAW 111-14 (1990) (reviewing studies tying increase in unfair labor practices to decline in union election success rates).

[16] Fieldcrest Cannon, 318 N.L.R.B. at 473.

[17] Due to the demographics of the workforce, all of the Board's notice remedies in *Fieldcrest Cannon* included translations into Spanish.

[18] Fieldcrest Cannon, 318 N.L.R.B. at 474.

The Board ordered similar provisions in *Three Sisters Sportswear Co.*[19] and *Monfort*,[20] and to a somewhat lesser degree in *United States Service Industries*[21] *and S.E. Nichols.*[22]

We recently settled a case by applying the remedial principles of Fieldcrest Cannon.[23] The remedies deviated somewhat from those in Fieldcrest Cannon and similar cases: they required that the list of names and addresses of unit employees be updated every six months, whereas the Board cases do not specifically provide for six-month updates; and they called for a 60-minute speech, rather than the 30 minutes typically granted by the Board.

Finally, it is noteworthy that through prompt intervention in a number of cases, we have succeeded in avoiding the necessity to impose the Fieldcrest Cannon notice and access remedies. Thus, where the unfair labor practice charges were filed before the situation had a chance to escalate, we have effectively used Section 10(j) to nip the problem in the bud by restoring laboratory conditions and thereby paving the way for a relatively prompt election.

NOTICE INITIATIVES

In addition to strengthening notice provisions in cases of egregious unlawful conduct, I am exploring the use of several measures designed to improve the general effectiveness of the Board's traditional remedial notices. These changes are necessary to meet the needs of a diverse workforce and to keep pace with the changing methods of workplace communication.

The Board's practice of including notice postings in its remedial orders dates back to the Board's inception. The Board notice serves an important purpose: it describes their rights to employees and reassures them that these rights will be vindicated.

In recent years, the Board has made substantial progress in improving the language of the notices. In this regard I intend to propose a model notice, which includes the following features:

- it is drafted in layperson's language and without legal jargon;

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[19] Three Sisters Sportswear Co., 312 N.L.R.B. 853 (1993).
[20] Monfort of Colorado, Inc., 298 N.L.R.B. 73 (1990), *enforced in relevant part*, 965 F.2d 1538 (10th Cir. 1992).
[21] 319 N.L.R.B. 231 (1995), *enforced* 107 F.3d 923 (D.C. Cir. 1997) (table).
[22] 284 N.L.R.B. 556 (1987), *enforced* 862 F.2d 952 (2d. Cir. 1988).
[23] Fieldcrest Cannon, Inc., 318 N.L.R.B. 470 (1995).

- it contains a statement explaining what the NLRB is and generally describing an employee's rights under the Act;
- it sets forth the Regional Office's address, telephone number and hours of operation, along with a statement that employees may obtain information from the Region, in confidence, regarding their rights under the Act;
- it provides a statement, in Spanish, that a Spanish-speaking Board agent can be made available to talk with them; and
- it includes the Board's Internet address.

Last, I have instructed Regions to be alert to the growing number of workplaces in which e-mail messages and electronic bulletin boards constitute normal methods of communicating with employees. In these circumstances, we will be requesting that the notice be posted through such electronic media.[24]

FRONTPAY

The standard Board remedy for discriminatory discharges is reinstatement, and it should continue to be so. Reinstatement best effectuates the purposes and policies of the Act, because it restores the employee to the circumstances that existed prior to the Respondent's unlawful action, or that would be in effect had there been no unlawful action. Recently, however, I have asked the Regions to be alert to cases that raise the issue of whether frontpay would be an effective remedy. Frontpay is a monetary award for loss of anticipated future earnings resulting from past discrimination. It is "the salary that an employee would have received had he or she not been subjected to unlawful discrimination of his employer, subject to the employee's mitigating his or

[24] In general, the Board should not limit itself to traditional media of communication, such as bulletin boards, but should extend its method of communication to include whatever up-to-date technology the management and employees have come to rely upon as their form of workplace communication. *See* Pacific Bell, 330 N.L.R.B. No. 31, slip op. 5 (Nov. 30, 1999), where the employer was required, in addition to the normal posting requirement, to notify each unit employee by electronic transmission such as E-mail. ("The Board's traditional notice posting as a means of communication with employees is increasingly less effective in an electronic age in which the physical posting of notices in common areas generally is not the sole or even the most common means of providing information to employees. . . ").

her damages."[25] Computing frontpay is often very difficult,[26] and the court must take many relevant factors into account.[27]

In recent years, the federal courts have granted frontpay under a number of federal statutes, including ADEA and Title VII; the Family and Medical Leave Act and the Disabilities Act; the Surface Transportation Assistance Act; the Rehabilitation Act; the Pregnancy Discrimination Act; ERISA,[28] Section 301; and the FLSA. In general, the courts have granted frontpay when reinstatement was not feasible.[29] Thus, frontpay has been awarded in circumstances where there was extreme sexual harassment by supervisors which led to the discriminatee's nervous breakdown;[30] when the discriminatee was close to retirement age and could not find the same kind of job;[31] when the court thought that reinstatement would "unduly disrupt" the operations of the entity;[32] when the court was reluctant to require "bumping";[33] when there was reorganization within the corporation and the employer could not establish that absent the discrimination he would not have retained the employee;[34] when there was animosity between the parties;[35] or when the court had already awarded liquidated damages to the plaintiff.[36]

CONSEQUENTIAL DAMAGES

There are times when the awarding of backpay to a discriminatee does not make that individual "whole" because it includes only lost wages, and no other damages attributable to the discriminatee's loss of regular income. These other damages include loss of a car or a house, or damage

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[25] Hudson v. Reno, 130 F.3d 1193, 1203 (6th Cir. 1997), *cert. denied* 525 U.S. 822 (1998).

[26] *See* Mason v. Oklahoma Turnpike Auth., 115 F.3d 1442, 1458 (10th Cir. 1997); Suggs v. ServiceMaster Educ. Food Management, 72 F.3d 1228, 1234-35 (6th Cir. 1996).

[27] These include life expectancy, salary and benefits at the time of termination, any potential increase through regular promotions and cost of living adjustment, the reasonable availability of other work opportunities, the period within which a plaintiff may become re-employed with reasonable efforts, and methods to discount any award to present net value. Davoll v. Webb, 194 F.3d 1116, 1144 (10th Cir. 1999).

[28] *See* Musick v. Goodyear Tire & Rubber Co., 81 F.3d 136 (11th Cir. 1996), *cert. denied* 519 U.S. 965 (1996).

[29] Davoll,194 F.3d at 1143 n.19.

[30] Stoll v. Runyon, 165 F.3d 1238, 1241 (9th Cir. 1999).

[31] *See* Kelley v. Airborne Freight Corp., 140 F.3d 335, 355-56 (1st Cir. 1998), *cert. denied* 525 U.S. 932 (1998).

[32] *See* Hill v. Pontotoc, 993 F.2d 422, 424 (5th Cir. 1993).

[33] *See* Walsdorf v. Board of Comm'rs for E. Jefferson Levee Dist., 857 F.2d 1047, 1054 (5th Cir. 1988).

[34] *See* MacDissi v. Valmont Indus., Inc., 856 F.2d 1054, 1060 (8th Cir. 1988).

[35] *See* Whittlesey v. Union Carbide Corp., 742 F.2d 724, 729 (2d Cir. 1984).

[36] *See* United States E.E.O.C. v. Century Broad. Corp., 957 F.2d 1446, 1464 (7th Cir. 1992).

to the employee's credit rating. In my view, both the language and legislative history of Section 10(c) of the Act are broad enough to embrace the principle that in order to restore the status quo ante, the Board may direct a remedy for all economic consequences that directly and foreseeably result from an employee's unlawful discharge.[37] Accordingly, where a discriminatee's harm cannot be addressed through the Board's traditional backpay award, we will, in appropriate cases, seek as part of the remedy, a requirement that discriminatees be made whole for compensatory damages.

DAILY COMPOUNDING OF INTEREST

Under current practice, the Board's remedial orders provide for interest to be computed as prescribed in New Horizons for the Retarded, Inc..[38] The Board's remedial orders do not provide for the compounding of interest on monetary awards. As a result, discriminatees are often deprived of a true "make whole" remedy, particularly where the payment of backpay is delayed for extended periods of time. Moreover, the current practice operates as a significant disincentive to the early settlement of cases, thus impeding the Agency's ability to better effectuate the policies of the Act.

In recognition of this problem, the Office of the General Counsel, beginning in 1989, sought the adoption of a policy pursuant to which interest on backpay and other monetary awards would be compounded on a daily basis. In 1990, the Board responded by issuing a decision stating that it was "taking the matter under advisement."[39] Then, in 1992, the Board published in the Federal Register a Notice of Proposed Rulemaking soliciting comments on the proposed implementation of a rule under which all interest awarded on backpay and other monetary awards would be compounded daily.[40] In its notice of rulemaking, the Board pointed out the "significant purposes" that would be served by compounding interest daily.[41] Thus, the Board stated that a formula incorporating daily compounding of interest would better compensate discriminatees for the delay in their receipt of wages--in particular, to offset, at least partially, the reduction in value of delayed payments to discriminatees resulting

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[37] *See, e.g.*, Freeman Decorating Co., 288 N.L.R.B. 1235, 1235 n.2 (1988).
[38] 283 N.L.R.B. 1173, 1174 (1987); Codification of Standardized Remedial Provisions in Board Decisions Regarding Offers of Reinstatement, Make-Whole Remedies, Computation of Interest, and Posting Notices, 57 Fed. Reg. 7897, 7898 (1992) (to be codified at 29 C.F.R. pt. 103) (proposed Mar. 5, 1992) [hereinafter Codification of Standardized Remedial Provisions].
[39] Alaska Pulp Corp., 300 N.L.R.B. 232, 232 n.4 (1990).
[40] Codification of Standardized Remedial Provisions, *supra* note 35 at 7897-98.
[41] *Id.* at 7898.

from inflation during the backpay period. It would also promote prompt payment of legal obligations.[42]

Following a review of the comments received in response to the Notice of proposed rulemaking, the Board concluded that this matter would better be considered in the context of an actual case or cases, rather than by rulemaking.[43] Accordingly I will be looking for appropriate vehicles with which to present this issue to the Board.

PROTECTING THE ORGANIZATIONAL RIGHTS OF UNDOCUMENTED ALIENS

An example of the way in which the Board has adapted existing remedies to accommodate the changing needs of the workplace concerns the organizational rights of undocumented aliens. The Board has long held that undocumented aliens are statutory employees entitled to vote in Board elections. In NLRB v. Sure-Tan, Inc., the Seventh Circuit upheld the Board's certification of a union over objections based on the assertion that six of the seven voters were illegal aliens. The court found no inconsistency between the Board's action and federal immigration policy, observing that "declining to certify this [u]nion could only have the effect of encouraging violations of the immigration laws. . . . "[44] In a later case, Sure-Tan, Inc. v. NLRB[45] the Supreme Court affirmed the NLRB's finding that the employer violated the Act by reporting undocumented aliens to the INS in retaliation for their engaging in union activities. The Court stated that "the Board's categorization of undocumented aliens as protected employees furthers the purposes of the NLRA."[46]

In 1986, Congress enacted the Immigration Reform and Control Act[47] ("IRCA"), which made it illegal for employers to hire undocumented aliens. In A.P.R.A. Fuel Oil Buyers Group, Inc.,[48] ("A.P.R.A.") the Board was called upon to reconcile the goal of remedying employer discrimination for protected activity with IRCA's goal of deterring the unlawful employment of undocumented aliens. In A.P.R.A., the employer hired two undocumented applicants who he knew at the time of hire were legally ineligible to work in the United States, then later discharged them because of their union activities. The Board, finding that the termination

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[42] *See id.*

[43] Rules Regarding Standardized Remedial Provisions in Board Unfair Labor Practice Decisions and the Appropriateness of Single Location Bargain Units in Representation Cases, 63 Fed. Reg. 8890, 8890-91 (1998) (to be codified at 29 C.F.R. pt. 103) (proposed Feb. 23, 1998).

[44] NLRB V. Sure-Tan, Inc., 583 F.2d 355, 360 (7th Cir. 1978).

[45] 467 U.S. 883 (1984).

[46] *Id.* at 892.

[47] 8 U.S.C. § 1324a (2000).

[48] 320 N.L.R.B. 408 (1995), *enforced* 134 F.3d 50 (2d Cir. 1997).

violated Section 8(a)(3), granted the employees full redress. The Board noted that its decision would deter "unprincipled and opportunistic employers, and level the competitive playing field. . . "[49] between them and law-abiding employers. Mindful, however, that the discriminatees were ineligible to work in the United States, the Board conditioned their reinstatement on meeting IRCA's eligibility requirements. Secondly, the Board awarded the discriminatees backpay until either the employer reinstated them subject to IRCA's verification requirements or the employees failed to establish after a "reasonable time" that they were authorized to work in this country.[50] The Second Circuit enforced the Board's remedies in their entirety.[51]

More recently, in Hoffman Plastic Compounds, Inc.,[52] an employer hired and then unlawfully terminated an employee without ever having reason to know that the discriminatee had fraudulently represented that he was eligible to work in the United States. At the compliance hearing, the employer argued that the employee was an illegal alien. Because the employer had attempted to comply with IRCA and had not knowingly hired other employees in violation of IRCA, the Board declined to order the discriminatee's reinstatement and tolled backpay as of the date the employer first learned that the employee had fraudulently procured identification to gain employment.[53]

Pursuant to A.P.R.A., the NLRB's Regional Offices now seek unconditional offers of reinstatement to discriminatees, unless it can be shown that they are unauthorized to work in this country. Upon such a showing, the discriminatee's reinstatement becomes conditional. I have concluded that evidence pertaining to a discriminatee's work authorization status is irrelevant to the underlying question of the employer's liability under the Act and should not be admitted at an unfair labor practice proceeding. Further, questions concerning reinstatement are appropriately raised only in a compliance proceeding.[54] Evidence of work authorization status is relevant in a compliance proceeding only if the respondent has a reasonable basis for contending that the discriminatee cannot lawfully work in the country. The compliance proceeding should not be used as a fishing expedition to try to determine whether someone is unlawfully in the country.

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[49] *Id.* at 414.

[50] *Id.* at 416.

[51] The court noted that the Board's decision enjoyed the dual advantage of providing relief to the discriminatees commensurate with their right to work in this country, while it "felicitously keeps the Board out of the process of determining an employee's immigration status." NLRB v. A.P.R.A. Fuel Oil Buyers Group, Inc., 134 F.3d 50, 57 (2d Cir. 1997).

[52] 326 N.L.R.B. 1060 (1998), *enforced* 208 F.3d 229 (D.C. Cir. 2000).

[53] Hoffman, 326 N.L.R.B. at 1062.

[54] Intersweet, Inc., 321 N.L.R.B. 1 (1996), *enforced* 125 F.3d 1064 (7th Cir. 1997).

In sum, through these cases, the Board has protected federal immigration policy, while preventing its misuse as a weapon to deprive some of the most "powerless and desperate"[55] workers of their statutory rights.

THE UNION'S DUTY OF FAIR REPRESENTATION

During the last few years, certain union obligations, under their duty of fair representation regarding employees' rights under Communications Workers of America v. Beck[56] have been addressed and clarified. These pertain to a union's duty to inform employees of their rights and obligations with respect to payment of union dues under a union security clause, and a union's duty to inform employees of their right to be and remain a nonmember subject only to the duty to pay union initiation fees and periodic dues.

It has been settled law for more than 30 years that a union violates Sections 8(b)(1)(A) and (2) of the Act by requesting and causing an employer to discharge an employee for nonpayment of union dues if it does not first inform the employee of the actions necessary to satisfy his union-security obligations and avoid discharge.[57] In Beck, the Supreme Court refined the "financial core" obligations of employees working under union-security agreements, and held that the financial core membership that may be required under Section 8(a)(3) of the Act does not include "the obligation to support union activities beyond those germane to collective bargaining, contract administration, and grievance adjustment."[58] Applying these principles, the Board held in California Saw and Knife Works,[59] that a union's duty of fair representation requires that when or before a union seeks to enforce a union-security clause, it should inform the employees of their General Motors[60] right to be a nonmember. The Board also held that nonmembers have the right:

> (1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to intelligently decide whether to object; and (3) to be

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[55] A.P.R.A. Fuel Oil Buyers Group, Inc., 320 N.L.R.B. 408, 414 (1995).
[56] 487 U.S. 735 (1988).
[57] NLRB v. Hotel, Motel and Club Employees' Union, Local 568. AFL-CIO, 320 F.2d 254, 258 (3d Cir. 1963).
[58] 487 U.S. at 745.
[59] 320 N.L.R.B. 224 (1995), enforced sub nom. IAM v. NLRB, 133 F.3d 1012 (7th Cir. 1997), cert. denied sub nom. Strang v. NLRB, 525 U.S. 813 (1998).
[60] NLRB v. General Motors Corp., 373 U.S. 734 (1963).

apprised of any internal union procedures for filing objections.

In addition, if the employee chooses to object, the union must apprise the employee of the percentage of the reduction, the basis for the calculation, and the right to challenge these figures.[61]

In Paperworkers Local 1033 ("Weyerhaeuser Paper Co."),[62] the Board found that the rationale of California Saw for concomitant notice of Beck and General Motors rights applies equally to those who are still full union members and who did not receive those notices before they became members.

Thus, the law now requires the union to notify current members of their General Motors rights if they have not previously received such notice, in order to be certain that they have voluntarily chosen full membership.

CONCLUSION

It remains the historic purpose of the Act to promote industrial peace by providing the means for protecting the rights of employers, employees, and unions in their relations with each other. It is the Board's role to fulfill that statutory mandate. Congress, understanding the Board's need for flexibility to meet diverse and evolving situations, granted the Board considerable discretion to fashion remedies that would enable it to carry out its task.

The Board, in order to remain effective, must continually reevaluate, revise, and update its remedial strategies in order to keep pace with the changing needs of the workplace. Most recently, this has meant developing new remedies to address the problems of discriminatees who are undocumented aliens and remedies for organizational interference. Further remedial issues will be placed before the Board in such areas as frontpay for discriminatory discharges, consequential damages and daily compounding of interest on monetary awards. Finally, the Board has strengthened and clarified certain union obligations under their duty of fair representation. As General Counsel, I want to continue the efforts to fulfill the remedial promise of the Act by meeting the new challenges of the changing workplace.

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[61] California Saw and Knife Works, 320 N.L.R.B. at 233.

[62] 320 N.L.R.B. 349 (1995), *enforced in part sub nom.* Buzenius v. NLRB, 124 F.3d 788 (6th Cir. 1997), *vacated* United Paperworkers Int. v. Buzenius, 525 U.S. 979 (1998).