

# REVOLUTION AHEAD: COMMUNICATIONS WORKERS v. BECK

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[T]o compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical.<sup>1</sup>

— Thomas Jefferson

Who does not see . . . [t]hat the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?<sup>2</sup>

— James Madison

Predictions for a major public policy change in this country regarding union political activities were given a substantial new foundation when the Supreme Court decided *Communications Workers v. Beck*.<sup>3</sup> The five-to-three majority held that the National Labor Relations Act<sup>4</sup> (NLRA) limits the amount of money that may be exacted from nonunion employees by a labor union as a condition of employment to the proven cost of collective bargaining. This decision frees nonunion employees in a so-called “agency shop”<sup>5</sup> from the coerced political, ideological, and other non-bargaining spending that they formerly supported solely to retain their jobs.<sup>6</sup> The decision means that

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1. I. BRANT, JAMES MADISON: THE NATIONALIST 354 (1948), *quoted in* Abood v. Detroit Bd. of Educ., 431 U.S. 209, 234 n.31 (1977).

2. 2 THE WRITINGS OF JAMES MADISON 186 (Hunt. ed. 1901), *quoted in* Abood v. Detroit Bd. of Educ., 431 U.S. 209, 234 n.31 (1977).

3. 108 S. Ct. 2641 (1988).

4. 29 U.S.C. §§ 141-187 (1982 & Supp. V 1987).

5. In a “closed shop,” employees must become members in order to gain employment; in a “union shop,” employees must join the union and pay dues as a condition of continued employment, usually following a grace period; and in an “agency shop,” employees need not formally join the union, but must nonetheless pay initiation fees and dues to retain employment.

6. See *Austin v. Michigan Chamber of Commerce*, No. 88-1569, slip op. at 12 (U.S. Mar. 27, 1990) (The decision expands upon the holding in *Beck*—“union members who disagree with union’s political activities need not give up full union membership in the organization to avoid supporting its political activities. . . . [A] union may not compel those employees to support financially ‘union activities beyond those germane to collective bargaining, contract administration, and grievance adjustment.’” (quoting *Beck*, 108 S. Ct. at 2648)). For a further application of the *Beck* result to full-fledged union

they no longer can be legally required to support politicians and causes chosen by union officials.

The district court in *Beck* found that the cost of collective bargaining for the employee plaintiffs was only twenty-one percent of the dues levied by the Communications Workers of America (CWA) as a condition of being employed by the Chesapeake and Potomac Telephone Company. Seventy-nine percent of the dues was spent by union officials for "in-kind" services in federal and state political campaigns, for ideological movements in favor with the officialdom, and for a broad range of other expenses unrelated to the bargaining function.<sup>7</sup> Thus the Supreme Court's decision limiting dues to the proven cost of collective bargaining severely cuts back on the amount of dues unions may demand.

Extrapolating the dues cutback to the more than fifteen million Americans directly affected<sup>8</sup> shows that the decision could have a tremendous impact on union officials' power to control elections. With typical union dues at more than \$330 per employee per year, and with compulsory union dues providing an annual \$5.1 billion to union treasuries, the decision could reduce revenues of organized labor by more than \$4 billion nationwide.<sup>9</sup> The political funds from compulsory union fees, upwards of \$355 million annually (including in-kind services) in a presidential election year,<sup>10</sup> will be sharply diminished.

Every index of union political and social preferences shows that nearly all of the funds mentioned here benefit only politicians and causes of "the left." Candidates running on platforms featuring the enhancement of individual rights, limited government, a strong national defense, and free markets are never in line for support from compulsory union dues, but are usually opposed by such financial support. The Democratic Party's control of the House of Representatives for the past thirty-

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members, see *Kidwell v. Transportation Communications Int'l Union*, 731 F. Supp. 192 (D. Md. 1990).

7. See *Beck v. Communications Workers*, 112 L.R.R.M. (BNA) 3069, 3074 (D. Md. 1983).

8. See Larson, *Harry Beck's Earthquake*, POL'Y REV. 74 (Summer 1989). Under *Beck*, every union member in an agency shop has an absolute right to withdraw from the union and to pay only about one fifth of his prior dues. See *infra* note 25 and accompanying text.

9. See DAILY LAB. REP. (BNA) No. 18, at A-1 (Jan. 30, 1989).

10. See CONGRESSIONAL QUARTERLY, INC., CAMPAIGN PRACTICES REPORT 4 (G. Craney ed. Apr. 17, 1989).

eight years is a vivid and accurate gauge of the success of the compulsory dues-funded campaigns.

In short, the *Beck* decision revolutionizes the previously unbroken practice of forcing all employees under NLRA agency-fee agreements to support candidates and issues that they would not freely choose. When the decision is fully implemented, the enormous political power of organized labor will shrivel to that enjoyed by voluntary associations.

## I. THE BACKGROUND AND EARLY CASE HISTORY

Harry Beck had been a union steward prior to the time that he and other employees brought suit as nonunion employees against the CWA in 1976.<sup>11</sup> Why the suit? Mr. Beck and the others observed, as millions of others had observed during the twenty-nine years since the enactment of the Taft-Hartley Act,<sup>12</sup> that the behavior of union officials changed dramatically upon negotiating for and establishing an agency shop. They observed that before an employer had agreed to an agency fee clause in a nationwide collective bargaining agreement, union members retained a voice in union affairs and the officials were responsive to the desires of the members. After establishing the agency shop, union officers suddenly and predictably changed; they became arrogantly bound up in their own power to force individuals to pay money to them.<sup>13</sup>

Carefully weighing the risks to themselves and to their families, Mr. Beck and the other employees chose to fight rather than continue to support political causes to which they were opposed. They discovered through experience that which others had observed from a distance. Archibald Cox, a professor of labor law at Harvard Law School, said:

Workers are unfamiliar with the law and hesitate to become involved in legal proceedings. The cost is likely to be heavy, and they have little money with which to post bonds, pay

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11. See H. Beck, Memorandum in re *Beck v. CWA*, 1966 to 1989, at 4 (on file at HARV. J.L. & PUB. POL'Y).

12. Labor Management Relations (Taft-Hartley) Act, 61 Stat. 136 (1947) (codified as amended at 29 U.S.C. §§ 151-175 (1982 & Supp. V 1987)). The Wagner Act, 49 Stat. 449 (1935) (codified as amended at 29 U.S.C. §§ 141-169 (1982 & Supp. V 1987)) had provided for closed shops; the Taft-Hartley Act amended the Wagner Act to allow the agency shop, which has union and nonunion employees.

13. Lord Acton had described this type of change long before: "Power tends to corrupt and absolute power corrupts absolutely." J. BARTLETT, *FAMILIAR QUOTATIONS* 750 (14th ed. 1968).

lawyer's fees and print voluminous records. Time is always on the side of the defendant. Even if the suit is successful, there are relatively few situations in which the plaintiff or his attorney can reap financial advantage. Most men are reluctant to incur financial cost in order to vindicate intangible rights. *Individual workers who sue union officers run enormous risks, for there are many ways, legal as well as illegal, by which entrenched officials can "take care of" recalcitrant members.*<sup>14</sup>

The CWA moved for (1) dismissal of the suit, or (2) a stay and an order that the employees first exhaust internal procedures said to have been established by the CWA officials to deal with overcharges of dues and fees. The district court denied the dismissal and determined that granting the second part of the motion would not promote settlement of the case and would cause unnecessary delay.<sup>15</sup> The CWA also claimed that the employees had no standing to bring the suit because they had not first made claims against the union under the rebate procedure. The court simply noted that the Supreme Court had decided this issue years before in *Brotherhood of Railway Clerks v. Allen*,<sup>16</sup> in which it noted that "[r]espondents first made known their objection to the petitioners' political expenditures in their complaint filed in this action; however, this was early enough."<sup>17</sup>

The district court thereupon issued a declaratory judgment based upon the undisputed fact that the CWA had a dues-equivalent agency fee arrangement that required the payment to it of an amount in excess of the cost of collective bargaining—the exact amount as yet undetermined. The court ruled specifically "[t]hat such collection by the defendant violates the first amendment rights of the plaintiffs."<sup>18</sup> The decision further set forth the role of the court-appointed special master in determining the amount of the agency fee devoted to collective bargaining.<sup>19</sup>

The district court dismissed the employer defendants from the case before trial, finding no support for the cause of action

14. Cox, *Internal Affairs Of Labor Unions Under The Labor Reform Act Of 1959*, 58 MICH. L. REV. 819, 853 (1960) (emphasis added).

15. See *Beck v. Communications Workers*, 468 F. Supp. 87, 90-91 (D. Md. 1979).

16. 373 U.S. 113 (1963).

17. *Id.* at 120 n.6.

18. 468 F. Supp. at 97.

19. See *id.*

alleged under the Civil Rights Acts of 1871.<sup>20</sup> The court found no state action to support a claim under section 1983, and no unlawful conspiracy to support a claim under section 1985(3).<sup>21</sup>

Employers may still be held liable under *Beck*, however, for violating, or assisting the union in violation of, an employee's right under the National Labor Relations Act to be free from exaction of dues in excess of the costs of collective bargaining. The Supreme Court held in *Beck* that the National Labor Relations Board (NLRB) has primary jurisdiction over cases alleging violations of section 8(a)(3) of the NLRA.<sup>22</sup> This subsection states that it is an unfair labor practice for *an employer* to discriminate against an employee by encouraging or discouraging membership in a labor union.<sup>23</sup> A proviso in the statute authorizes agreements between employers and unions to require employees to be union members as a condition of employment.<sup>24</sup> But *Pattern Makers' League v. NLRB*,<sup>25</sup> along with *Beck*, makes it clear that the most that may be required of any individual is the payment of the cost of collective bargaining. The union is justified in collecting dues under the statute because of the duty that the statute imposes on the union—the duty of fairly representing the employee in negotiations with his employer regarding wages, hours, and conditions of employment.<sup>26</sup>

Furthermore, the NLRB General Counsel has adopted guidelines for enforcing section 8(a)(3) that embrace court decisions arising under the Railway Labor Act (RLA)<sup>27</sup> and in the public sector.<sup>28</sup> In each of those regimes, the courts have fixed liability on employers who violate, or participate with unions in the violation of, rights to be free from the exaction of more than collective bargaining expenses.<sup>29</sup> Moreover, under the

20. 42 U.S.C. § 1983 (1982).

21. See *Beck v. Communications Workers*, 95 L.R.R.M. (BNA) 2785, 2787 (D. Md. 1977).

22. See *Communications Workers v. Beck*, 108 S. Ct. 2641 (1988).

23. See 29 U.S.C. § 158(a)(3) (1982).

24. See *id.*

25. 473 U.S. 95 (1985) (union members have an unequivocal right to resign at any time—even during a strike).

26. See *Wallace Corp. v. NLRB*, 323 U.S. 248 (1944).

27. 45 U.S.C. §§ 151-188 (1982 & Supp. V 1987).

28. See Memorandum by NLRB General Counsel Rosemary M. Collyer, "Guidelines Concerning *CWA v. Beck*," Memorandum GC 88-14, at 1 (Nov. 15, 1988) [hereinafter General Counsel Guidelines].

29. See *Tierney v. Toledo Police Patrolmen's Ass'n*, 824 F.2d 1497 (6th Cir. 1988); *Dixon v. Chicago Firefighters Union*, 669 F. Supp. 851 (N.D. Ill. 1987); *Ellis v. Western*

NLRA, employers have an obligation to investigate the validity of labor unions' attempts to sanction employees under section 8(a)(3) compulsory union clauses.<sup>30</sup> Thus, it seems assured that employers under the NLRA will feel the sting as the NLRB begins to implement the principles underlying *Beck*.

## II. THE TRIAL

At trial, the affairs of a major national labor union were spread in detail on the public record. In unprecedented volume, the books and records, the correspondence, minutes, memoranda, newspapers, contracts, reports, and notes were all produced as required by the federal rules governing civil litigation. Accompanying the documents were witnesses including the national president, the secretary-treasurer, principal accountants both inside and outside the union, and such experts as Professor and former Secretary of Labor, Willard Wirtz.

The evidence was overwhelming: The major labor unions of our country are engaged in a variety of political, ideological, social, charitable, and other programs that expend great blocks of officer and staff time as well as transportation and overhead resources costing hundreds of millions of dollars. Collective bargaining turned out to be a minor part of what the unions do with their multi-million dollar budgets.

The CWA officials bore the burden of proving the cost of collective bargaining. The expert testimony of Willard Wirtz on behalf of the CWA was one of the more interesting portions of the trial. His testimony may be summarized as follows: Everything under the sun and imaginable to humankind, with rare departures of only minor significance, is collective bargaining activity as envisioned by the draftsmen of our national labor relations statutes.<sup>31</sup> The result of the Wirtz view, unsurprisingly, is that union officials would be fully justified in charging

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Airlines, Inc., 652 F. Supp. 938 (S.D. Cal. 1987); see also *Damiano v. Matish*, 830 F.2d 1363 (6th Cir. 1987).

30. Cf. *Glover v. St. Louis-S.F. Ry.*, 393 U.S. 324, 331 (1969) (Harlan, J., concurring). This conclusion is applicable to NLRB proceedings through *Miranda Fuel Co.*, 140 N.L.R.B. 181, 185 (1962), and *Versatile Services*, 258 N.L.R.B. 810, 816 (1981) ("By discharging [employees] under the union-security provisions of the collective-bargaining agreement despite its knowledge they had not been . . . informed of their obligations under such provisions . . . Respondent Company has violated Section 8(a)(3) and (1) of the Act.").

31. See Willard Wirtz trial testimony; Feb. 14, 1980, at 1-73; Mar. 10, 1980, at 1-135; Apr. 7, 1980, at 1-115.

compulsory fees very close to the amount of union dues paid by voluntary members of the union. The usefulness to the CWA of this expert opinion proved to be limited. The district court found that the collective bargaining activity of the union accounted for only twenty-one percent of the union expenditures and ordered that the remaining seventy-nine percent of the money be refunded to the employees.<sup>32</sup>

Collective bargaining is the duty imposed upon the union by the same statute that grants the union the special privilege of extracting money from the employees at the cost of losing their jobs if they decline to pay.<sup>33</sup> Indeed, collective bargaining is the statutory basis for the fee. The fee for collective bargaining is acknowledged by the Supreme Court to have an impact on rights protected by the First Amendment, but the impact is said to be justified to assure labor peace.<sup>34</sup> In other contexts, extortion of money to assure "peace" or the absence of violence is said by legislatures to be a crime.<sup>35</sup>

#### A. *Politics*

The evidence produced at trial explored in detail the CWA's operation of its Committee on Political Education (COPE). The committee exists to fund candidates for political office at every level of government. Its fund raising taps resources of all kinds, not the least of which is the cajoling of employees by national and local officers for contributions. Of course, the fund-raising activities, including solicitations, administration, data processing, record-keeping, and overhead, are all paid out of union treasury money. In proudly describing the scope and success of this program, former CWA President Glenn E. Watts claimed, "[W]e in CWA[] have influence in this country *in every conceivable way* that is all out of proportion to our numbers."<sup>36</sup>

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32. See *Beck v. Communications Workers*, 112 L.R.R.M. (BNA) 3069, 3074 (D. Md. 1983).

33. See 29 U.S.C. § 158(a)(3), (d) (1982). The bargaining duty is defined by § 8(d) as: the mutual obligation . . . to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

34. See *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 222 (1977).

35. See, e.g., *Hobbs Act*, 18 U.S.C. § 1951 (1988).

36. Trial Exhibit no. 5A (transcript of remarks by CWA President, Glenn E. Watts, at

The CWA boast is not limited to the cash contributions raised for COPE, but is also a tribute to the union's in-kind political activity, which is estimated to involve between five and ten times the amount of money available from the "contributions" fund.<sup>37</sup> The cash contributions for the 1976 election campaign from CWA were \$826,000,<sup>38</sup> suggesting that in-kind services rendered by this union cost between \$4.13 and \$8.26 million. To whom were these millions of dollars funnelled? Here is a sampling from the record evidence: the National Democratic Campaign Committee, the 1976 Presidential Forum Steering Committee, the Democratic Senatorial Campaign Committee, the 1978 Democratic Dinner Committee, the Democratic National Finance Committee, and the Democratic National Finance Council.<sup>39</sup> The Democratic National Committee treasurer described the CWA treasurer as one of the persons "who over the past several years have been the very backbone of the Party's fund-raising efforts."<sup>40</sup>

The in-kind services and activities included staff time and effort in serving as delegates to the national Democratic nominating convention and working to help others become convention delegates. For example, one national union vice president advised a union representative that his "next assignment" was to become a convention delegate.<sup>41</sup> The 1976 nomination and election campaigns produced a great part of the pre-trial discovery evidence and the trial record.

Democratic dinners, cocktail parties, breakfasts, committee meetings, and the like occupied the time and attention of officers of the CWA. The officers also spent time giving testimony before, and service as members of, the platform committee and its subcommittees, including the extensive preparation and co-

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the Union Builders' Rally, June 20, 1977, at 10) (emphasis added), *Beck v. Communications Workers*, 112 L.L.R.M. (BNA) 3069 (D. Md. 1983).

37. See De Toledano, *Labor's Free Ride*, NAT'L REV., Aug. 4, 1978, at 959.

38. See FEDERAL ELECTION COMMISSION, FEC DISCLOSURE SERIES NO. 10, LABOR-RELATED POLITICAL COMMITTEES: RECEIPTS AND EXPENDITURES, 1976 CAMPAIGN 33-34 (1978).

39. See Exhibits Submitted to the Special Master in *Beck v. Communications Workers of America* (on file in the U.S. District Court, District of Maryland).

40. Trial Exhibit no. 534 (letter to CWA treasurer, Louis B. Knecht, from Joel W. McCleary, treasurer of the Democratic National Committee, Apr. 14, 1977), *Beck v. Communications Workers*, 112 L.L.R.M. (BNA) 3069 (D. Md. 1983).

41. See Trial Exhibit no. 1425 (memo from CWA Vice President George Strick, to CWA Representative John E. O'Connell, Jr., Dec. 3, 1975), *Beck v. Communications Workers*, 112 L.L.R.M. (BNA) 3069 (D. Md. 1983).

ordination involved in such work. They likewise devoted time to the convention's Arrangements Committee in aid of the nominating process. The objective of all of this time and effort, and the considerable expense entailed, was "to influence the selection of the Democratic Presidential Nominee."<sup>42</sup> The CWA did so by sending more than ninety-five individuals to the Democratic National Convention in 1976. The representatives were financed not by COPE, but by union treasury money—money forced from the pockets of Harry Beck and the other plaintiffs in the suit.<sup>43</sup>

After the convention, the union intensified its efforts. Its activities included computerized data processing of lists for mailing and voter registration, staff work in getting out the vote, and work with other labor unions and the League of Women Voters.<sup>44</sup> As another major industrial union said with regard to this kind of use of union treasury money in political campaigns for federal office:

[Union treasury money including compulsory fees] can't go for direct political contributions—but it can do a lot: mailings supporting or opposing candidates, phone banks, precinct visits, voter registration and get-out-the-vote drives, contributions to national, state or local central COPEs. *And* it can be used to raise voluntary funds for the [United Steel Workers of America Political Action Committee]. . . .<sup>45</sup>

The CWA apparently considered its efforts a huge success: "During 1976, CWA implemented the largest political campaign effort [to date] in the organization's history. . . . Our success is evident not only in the nomination of Walter Mondale for Vice President, but also in the Democratic platform and in convention action on key reform measures of the Democratic Party."<sup>46</sup> To celebrate the success of the 1976 efforts, the CWA joined the inauguration events by hosting 100 CWA Executive Officers and political staff during the inauguration week.<sup>47</sup>

42. Trial Exhibit no. 1427 (memo from CWA Vice President Strick to Virginia and D.C. Local Presidents, Jan. 23, 1976), *Beck v. Communications Workers*, 112 L.L.R.M. (BNA) 3069 (D. Md. 1983).

43. See Exhibits Submitted to the Special Master, *supra* note 39, nos. 228, 231, & 698.

44. See *id.* nos. 133, 152, 160, 161, 168, 216, 693, 1409A, & 1612.

45. *Local Union PACs: How to Get Political Action Where It Counts*, 44 STEELABOR 8, 9 (July 1979).

46. Trial Exhibit no. 128 (draft of leaflet, *CWA Politics*, 39th Annual Convention, 1976), *Beck v. Communications Workers*, 112 L.L.R.M. (BNA) 3069 (D. Md. 1983).

47. See Trial Exhibit no. 174 (letter from CWA President Watts to Bardyl Tirana, Co-

### B. Lobbying

The trial record also demonstrated that well-funded lobbying on Capitol Hill is an ongoing CWA concern. The issues lobbied before Congress are wide-ranging, but not much more so than the issues of concern to union officials. Lobbying is not confined to bills touching on the union's role in collective bargaining, or even to bills affecting the union as an institution. Bills that bear no particular relation to the union's members, as members, are vigorously promoted or contested by union lobbyists. In addition to labor law "reform" involving bills to expedite the imposition of unionization upon America's working people, all kinds of legislation were and are addressed by union lobbying.<sup>48</sup> The CWA also works to get its candidates appointed to important government posts.<sup>49</sup>

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Director of the Carter-Mondale Inaugural Committee, Dec. 15, 1976), Beck v. Communications Workers, 112 L.L.R.M. (BNA) 3069 (D. Md. 1983).

48. For some examples, see Exhibits Submitted to the Special Master, *supra* note 39: telecommunications policy legislation, no. 68; the Consumer Communications Reform Act, no. 1730; Telephone Monitoring legislation, no. 63; directory assistance charges, no. 474; telephone service excise taxes, no. 30; President Carter's wage insurance plan, no. 89; situs picketing, no. 1735; the Agency for Consumer Protection, nos. 58 & 1673; tax equity, nos. 18, 1729; minimum wages, no. 47; postcard voter registration, no. 9; universal voter registration, no. 51; national health insurance, no. 1817; Emergency Jobs Appropriation, no. 8; Emergency Middle Income Housing Act, strip mining, depletion allowance, and variable interest rate mortgages, no. 1727; windfall profits, no. 1517; the Humphrey-Hawkins bill, no. 1525; retention of the Congressional Joint Economic Committee, no. 23; food stamps, no. 92; natural gas, no. 31; natural gas pipeline proposals, no. 34; pregnancy disability, no. 50; Occupational Safety and Health Administration amendments, no. 62; a thirty-two-hour work week, no. 35; part-time employment tax credits, no. 16; Tax Expenditure Review Act, no. 53; hospital cost containment, no. 102; making presidential election days national holidays, no. 51-P3; the Human Resources Development Act, no. 82; observance of the International Women's Year, no. 717; lie detection in employment, no. 117; the government procurement code, no. 115; repeal of section 14(b) of Taft-Hartley, no. 552; public works jobs, no. 42; the Clinch River breeder reactor, no. 1808; the value added tax, no. 739; copyright law revision, no. 108; and countercyclical legislation, no. 485.

49. The trial record revealed that CWA sought to have individual candidates appointed to a variety of government positions. See Exhibits Submitted to the Special Master, *supra* note 39: United States Attorney General, no. 435; positions within the Department of Labor, no. 438; Department of Health, Education, and Welfare, no. 438; Arms Control and Disarmament Agency Director, no. 439; Federal Labor Relations Authority in Boston, no. 443; U.S. Census Bureau, no. 450; U.S. Coordinator For The Alliance For Progress under the Carter Administration, no. 458; Environmental Protection Agency Administrator, no. 460; Federal Communications Commission, Maritime Administrator, no. 487; Administrator of the National Aeronautics and Space Administration, no. 491; U.S. Department of Labor Regional Director, no. 492; Department of Labor Staff, no. 494; U.S. Postal Service, no. 497; International Trade Commission, no. 499; Federal Energy Regulatory Commission, no. 501; Savings Bond Promotion Sales Representative, no. 503; NLRB General Counsel, no. 508; NLRB Officer-in-Chief, no. 518; United States Chief of Protocol, no. 512; and Consumer Product Safety Commission, no. 1452. CWA also took actions to assure that the proper persons were nominated and confirmed as federal judges, nos. 753, 1781, 1777, & 469.

To accomplish their objectives, the CWA drew upon a full array of lobbying techniques, including mail, telephone, and telegram campaigns aimed at representatives and senators in Washington. The CWA prepared and submitted statements to the appropriate committees of each House. Discussions, lunches, and meetings were held with the appropriate congressmen, votes were counted on both sides, files were maintained, alliances were formed, and the results were publicized.<sup>50</sup> Of course, a multitude of other groups behave the same way in Washington. But the CWA officials had a distinct advantage: They could force people to pay for all of their lobbying efforts, whether or not those people opposed the very public policies being pursued.

The lobbying activity of unions at the state and local level is similar to the CWA's national campaign. In each case, all that is necessary is that the union officials be motivated to support or oppose a public issue, and the full arsenal of compulsory funds is at the disposal of those individuals who are privileged to make the decisions.

### III. POST-TRIAL RULINGS

The first trial before the special master, Wilson K. Barnes,<sup>51</sup> required twenty-seven days and thousands of pages of exhibits obtained from the CWA files during the extensive pre-trial proceedings. In August 1980, the master issued his report to the district court judge. The report found that nineteen percent of the agency fees had been spent on collective bargaining activities and that the remaining eighty-one percent would have to be refunded to the employees. The master also recommended an injunction against the defendants to prohibit them from attempting to collect from plaintiffs more than nineteen percent of payments required of members.<sup>52</sup>

Upon motion by the CWA, the court recommitted the case to the special master to make specific findings as to the local union expenditures, to reconsider the injunction recommendation in light of the CWA's arguments concerning modifications

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50. See Exhibits Submitted to the Special Master, *supra* note 39, nos. 14, 41, 66, 77, 123, & 199.

51. Judge Barnes had retired from the Maryland Court of Appeals, the highest appellate court of that state.

52. See *Beck v. Communications Workers*, 106 L.R.R.M. (BNA) 2323, 2325 (D. Md. 1981).

in its record-keeping system, and to correct clerical errors.<sup>53</sup> The special master received more than 2,000 additional exhibits and heard additional testimony on the record. This added evidence enabled him to issue a supplemental report in September 1981.<sup>54</sup>

The district court accepted the special master's determination that the local unions' percentages should be the same as those revealed by the evidence for the national CWA. This determination was based on the failure of the local unions to meet their burden of proof. The application of the national CWA results was, therefore, the most favorable to the local unions. The CWA contended that the court should have applied a "preponderance of the evidence" standard of proof, rather than the stricter "clear and convincing" standard actually applied. To this contention, the court responded that "given the basic First Amendment freedoms at issue in this case and the solicitude with which the Supreme Court has protected them, the special master was justified in applying a 'clear and convincing evidence' test in this action."<sup>55</sup> Subsequently, in 1984, the Supreme Court held in *Ellis v. Brotherhood of Railway Clerks*<sup>56</sup> that in suits over the cost of collective bargaining, the ordinary standard of proof in civil actions, proof by a preponderance of the evidence, should be applied.

The court also approved the special master's drawing of adverse inferences from the failure of the CWA to produce thirty of its employees for questioning on the allocation of their time to permissible projects, and his finding on the CWA's failure to meet its burden of proof because of the absence of time records.<sup>57</sup> The Supreme Court, in the earlier Railway Labor Act cases, had suggested that time records for union staff members could be an important tool in segregating collective bargaining costs from others.<sup>58</sup>

Noting certain minor errors in arithmetic, the district court found that the CWA had proved that only twenty-one percent

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53. *See id.* at 2326.

54. *See Beck v. Communications Workers*, 112 L.R.R.M. (BNA) 3069, 3072 (D. Md. 1983).

55. *Id.* at 3073.

56. 466 U.S. 435 (1984).

57. *See Beck v. Communications Workers*, 112 L.R.R.M. (BNA) 3069, 3073-74 (D. Md. 1983).

58. *See, e.g., Brotherhood of Ry. Clerks v. Allen*, 373 U.S. 113, 122 (1963).

of dues represented the cost of collective bargaining and that seventy-nine percent should be refunded to the plaintiffs.<sup>59</sup> The court also approved the permanent injunction recommended by the special master that incorporated, with some modifications, a new and elaborate system of record-keeping, allocations, and expert-conducted statistical sampling. The injunction restrained the CWA and its agents from charging or collecting fees in excess of that which an independent certified public accountant would determine to be part of collective bargaining.<sup>60</sup>

#### IV. THE APPEAL

In a two-to-one decision, the Fourth Circuit affirmed the trial court's decision. It held that the RLA and the NLRA must be construed in the same manner because the two statutes are phrased similarly and express the same legislative purpose.<sup>61</sup> Every effort by the CWA to distinguish the two statutes was rejected by the panel majority, Judges Russell and Chapman. The CWA had urged that the Railway Labor Act interpretation was "tortured" so that the Supreme Court would not be required to strike down that Act as unconstitutional. The majority noted, however, that the Supreme Court had characterized the interpretation as "entirely reasonable."<sup>62</sup>

The CWA contended that the constitutional issue presented by the RLA's preemption of state right-to-work laws was not present in applying the NLRA, in which Congress had expressly authorized states to enact right-to-work legislation.<sup>63</sup> The majority noted that the argument is without force in a state like Maryland without a right-to-work law: "[I]t seems inconceivable that the Supreme Court would, in construing the two statutes, offer protection to one group of employees and deny it to others because of some action taken by another state in enacting a statute under [NLRA] section 14(b) to protect only that latter state's employees."<sup>64</sup> Furthermore, because the case presented a claim for breach of the union's duty of fair repre-

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59. See 112 L.R.R.M. (BNA) at 3074-75.

60. See *id.*

61. See *Beck v. Communications Workers*, 776 F.2d 1187, 1201-02 (4th Cir. 1985).

62. *Id.* at 1201 (citing *International Ass'n of Machinists v. Street*, 367 U.S. 740, 750 (1961)).

63. See National Labor Relations Act § 14(b), 29 U.S.C. § 164(b) (1982).

64. 776 F.2d at 1202.

sentation, the majority had no hesitation in rejecting the CWA's contention that the NLRB had jurisdiction instead of the courts.<sup>65</sup>

Having reached the result through statutory interpretation, the majority noted that it did not need to decide the constitutional questions presented. The court, however, did briefly discuss the issue of the presence of state action in the facts of the case to make it clear that it did not agree with the CWA's arguments on this issue:

Such authority as the union has in this case is grounded directly on the power given it as a result of its status as bargaining representative under the federal statute and under an agency contract that in turn owes its status to another federal statute. When that power—power to collect against the employee's will—to collect the dues-equivalent and to use those funds in a completely unconstitutional way (i.e., for political and lobbying purposes) is exercised by the union entirely under federal authorization, it seems impossible not to find in such union action governmental action. It is true, the actor is the union, but the union acts only under the warrant of federal authority. The union wears the cloak of the government; in making its demands it acts under the authority vested in it by the federal government. As Justice Douglas said in his concurring opinion in *Street*: "Since neither Congress nor the state legislature can abridge [First Amendment] rights, they cannot grant the power to private groups to abridge them." There is, in our opinion, governmental action.<sup>66</sup>

The court then acknowledged that the tests of state action from the 1982 decision in *Lugar v. Edmondson Oil Company*<sup>67</sup> were met. The employees' deprivation was caused by the exercise of a right or privilege created by the state, and because the union's power flows from the statute, the conduct of the union is equal to action by the state.<sup>68</sup>

Concluding its treatment of the state action question, the court distinguished the Supreme Court decisions in *United Steelworkers v. Weber*<sup>69</sup> and *United Steelworkers v. Sadlowski*<sup>70</sup> by noting

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65. *See id.* at 1203.

66. *Id.* at 1208 (quoting *International Ass'n of Machinists v. Street*, 367 U.S. 740, 777 (1961)).

67. 457 U.S. 922 (1982).

68. *See* 776 F.2d at 1207-08.

69. 443 U.S. 193 (1979).

70. 457 U.S. 102 (1982).

that in the latter case the Supreme Court had held the challenged conduct to be valid, and in the former the Supreme Court had found that the addition of an affirmative action plan to a collective bargaining agreement was completely voluntary.<sup>71</sup>

The majority reversed the district court on the issue of the standard of proof. The burden placed on the CWA at trial was proof by clear and convincing evidence, but during the course of the *Beck* litigation the Supreme Court decided *Ellis v. Brotherhood of Railway Clerks*,<sup>72</sup> holding that the proper standard of proof in this type of case is the ordinary civil lawsuit standard: preponderance of the evidence. A remand for a new trial was, therefore, required. Noting that the case was then six years in the courts, the majority expressed the hope that the remand would simply be followed by a re-weighing of the evidence already in the record.<sup>73</sup>

Mr. Beck and his fellow employees had also appealed. They contended that the injunction entered below was not an adequate protection of their First Amendment rights because it allowed the CWA to collect the full amount of dues or fees, subject to a later rebate as determined by an independent certified public accountant. The majority affirmed the injunction order because the fees collected were required to be placed in an interest-bearing escrow account, thereby accommodating the Supreme Court's warning in *Ellis* that the fees must not be used by the union, even temporarily.<sup>74</sup>

Chief Judge Winter dissented, finding both the plain language of section 8(a)(3) of the NLRA and its legislative history contrary to the interpretation placed on the statute by the majority.<sup>75</sup> He similarly disagreed with the majority on the consti-

71. See 776 F.2d at 1208-09.

72. 466 U.S. 435 (1984).

73. See 776 F.2d at 1212-13.

74. See *id.*; see also 466 U.S. at 444. Five months later the Supreme Court decided *Hudson v. Chicago Teachers' Union Local No. 1*, 475 U.S. 292 (1986), which mandated notices to nonunion employees who are required to pay fees as a condition of employment. These notices must be given to employees prior to the taking of any fee, and must contain audited financial information regarding the union's expenditures for collective bargaining activities. See *id.* at 306-07. *Hudson* also clarified the vague discussion of escrow in *Ellis*, requiring an escrow account for the deposit of funds over which there is a good faith dispute. See *id.* at 310. The amount of the fee collected must be reduced by the sum of the amounts preliminarily determined to be expended on activities other than collective bargaining. See *id.* at 307. Finally, there is to be a prompt and impartial determination of the amount of the cost of collective bargaining. See *id.*

75. See 776 F.2d at 1214-25 (Winter, C.J., dissenting).

tutional issues; he would have found an absence of state action because union security agreements are completely voluntary under the NLRA. He found the statutory monopoly bargaining privilege granted to labor unions by the Act insufficient to make the private labor union's acts state action. Citing *United Steelworkers v. Weber*<sup>76</sup> and *United Steelworkers v. Sadlowski*,<sup>77</sup> he argued that the enforcement machinery established and operated by the federal government to apply compulsory fee agreements to employees did not change the result.<sup>78</sup> Judge Winter distinguished the Railway Labor Act cases because, unlike the NLRA, the RLA specifically preempts state right-to-work statutes, thus creating an added element of government involvement sufficient in his opinion to find state action.<sup>79</sup> He would have reversed the district court and dismissed the case.<sup>80</sup>

#### V. REHEARING EN BANC

The CWA sought and obtained a rehearing in the court of appeals, and the case was reargued before an en banc court of ten judges. On September 12, 1986, the en banc court issued its decision in three separate opinions.<sup>81</sup> The court reported in a per curiam opinion that six of the ten judges voted to sustain jurisdiction of the case in the federal courts, "though in some instances on somewhat varying grounds."<sup>82</sup> Judges Russell, Widener, Chapman, Ervin, and Wilkinson voted to sustain jurisdiction of the suit against the union under section 8(a)(3) of the NLRA for breach of the union's duty of fair representation. They determined that jurisdiction was properly invoked under Title 28 of the United States Code, section 1337, as arising under an act of Congress regulating commerce. Judges Widener, Ervin, and Wilkinson thought that it was unnecessary to resolve whether jurisdiction also existed on constitutional grounds, but Judges Russell and Chapman, the original panel majority, voted to sustain jurisdiction on the constitutional claims also.<sup>83</sup>

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76. 443 U.S. 193 (1979).

77. 457 U.S. 102 (1982).

78. See 776 F.2d at 1222-23 (Winter, C.J., dissenting).

79. See *id.* at 1220-21.

80. See *id.* at 1224-25.

81. See *Beck v. Communications Workers*, 800 F.2d 1280 (4th Cir. 1986) (en banc).

82. *Id.* at 1282 (per curiam).

83. See *id.* (per curiam).

Chief Judge Winter continued to favor dismissal of the suit and was joined by Judges Hall, Phillips, and Sprouse.<sup>84</sup> Had the remaining judge, Judge Murnaghan, joined Chief Judge Winter, there would have been a tie vote. In fact, Judge Murnaghan did agree that no constitutional claim was presented by the facts of the case. Moreover, he thought that no claim was presented under section 8(a)(3). Instead, he voted to sustain federal court jurisdiction by virtue of the CWA's fiduciary duty of fair representation, which, he wrote, is implicit in the statute as a whole.<sup>85</sup> He was careful to note that the agency fees justified for nonunion employees are coextensive with the duties owed to the employees by the union: collective bargaining, contract administration, and grievance adjustment.<sup>86</sup>

## VI. THE SUPREME COURT

The Supreme Court invited the views of the United States by requesting a brief from the Solicitor General before granting certiorari. The Solicitor General, Charles Fried, in turn sought guidance from the National Labor Relations Board. Not surprisingly, the majority of the NLRB and its General Counsel sided with the CWA—not surprisingly, because the Board for some fifty-three years has been the tax-subsidized partner of union organizers, and has regularly sacrificed individual employees to the supposed greater good of institutional unionism. For example, forty years after the Board had ruled that full union membership could not be lawfully required as a condition of employment,<sup>87</sup> and twenty-six years after the Supreme Court had reached the same conclusion,<sup>88</sup> the Board's official notices to employees persisted in advising them to the contrary.<sup>89</sup>

Despite his motivation to provide representation of the NLRB's interest, Solicitor General Fried's position was strange. Backed by Attorney General Edwin Meese III, he argued that the Supreme Court had gone far enough down the path of nar-

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84. *See id.* at 1290-93 (Winter, C.J., dissenting).

85. *See id.* at 1282-90 (Murnaghan, J., concurring).

86. *See id.* at 1287 (Murnaghan, J., concurring).

87. *See* Union Starch & Refining Co., 87 N.L.R.B. 779, 784 (1949).

88. *See* NLRB v. General Motors Corp., 373 U.S. 734, 742 (1963) (compulsory union membership as a condition of employment was "whittled down to its financial core" by the 1947 amendments to section 8(a)(3) of the NLRA).

89. *See* NLRB, Notice to Employees, U.S. GPO: 1987-0-181-574/62752, Form NLRB-666(8-83).

rowing the range of compulsory union fees to the cost of collective bargaining through statutory construction.<sup>90</sup> One might have expected Solicitor General Fried and Attorney General Meese, political appointees of an administration elected on the promise of enhancing individual freedom and reducing a big and oppressive government, to be predisposed to the view of the case held by the employee plaintiffs. Indeed, the platforms of the successful Republican presidential campaigns of both 1980 and 1984 contained specific commitments against the idea of forcing employees to finance political campaigns with union dues.<sup>91</sup> In fact, the government's position may have been a close call. Contemporary news reports told of a marked division of opinion within the Department of Justice and the White House Counsel's office over the position to be taken in the *Beck* case.<sup>92</sup>

From a purely political and pragmatic point of view, the case provided an opportunity not only to champion the individual political freedom of working Americans, but also to do great damage to a \$355 million political machine that, at the least, had helped to put in place virtually every elected opponent of the Reagan-Bush Administration. Nevertheless, Solicitor General Fried and the NLRB officials entered the case at the Supreme Court level siding with the CWA and with another *amicus curiae*, the AFL-CIO. The purported justification for the government's position was a concern over judicial restraint.<sup>93</sup> The government's position would have resulted in sanctioning as legal and constitutional a system requiring employees, as a condition of keeping their jobs, to pay for political candidates and causes that they voted against at the polling place.

Noting that a conflict existed between the rulings of the Fourth Circuit in *Beck* and the Second Circuit in *Price v. United Auto Workers*,<sup>94</sup> the Supreme Court granted certiorari.<sup>95</sup> In a

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90. See Brief for the United States as Amicus Curiae at 21-23, *Communications Workers v. Beck*, 487 U.S. 735 (1988) (No. 86-637) (citing *International Ass'n of Machinists v. Street*, 367 U.S. 740 (1961)).

91. See 1984 Republican Platform, reprinted in XL CONG. Q. ALMANAC 41-B, 54-B (1984); COMMITTEE ON RESOLUTIONS TO THE REPUBLICAN NATIONAL CONVENTION, REPUBLICAN PLATFORM: FAMILY, NEIGHBORHOOD, WORK, PEACE, FREEDOM 31 (July 14, 1980) (proposal).

92. See, e.g., *High Court Hands R-T-W Major Victory*, HUM. EVENTS, July 9, 1988, at 5.

93. See Brief for the United States, *supra* note 90, at 29-30 (arguing that the Court should not extend the "state action" doctrine to this case).

94. 795 F.2d 1128 (2d Cir. 1986).

95. See 108 S. Ct. at 2646.

majority opinion by Justice Brennan, the Court ruled that primary jurisdiction rests with the NLRB for claims arising from section 8(a)(3) of the NLRA.<sup>96</sup> Because the CWA raised section 8(a)(3) as a defense to the claim of a breach of the duty of fair representation, however, the courts had jurisdiction to decide the section 8(a)(3) question.<sup>97</sup> The majority viewed the question as one of first impression: "Although we have never before delineated the precise limits Section 8(a)(3) places on the negotiation and enforcement of union security agreements, the question the parties proffer is not an entirely new one."<sup>98</sup> The question was similar to the one arising under similar provisions in the Railway Labor Act that was presented in *International Association of Machinists v. Street*.<sup>99</sup> Thus Justice Brennan began with a discussion of the decisions under the RLA that limited the employees' union obligation to paying the cost of collective bargaining.<sup>100</sup>

The Court analyzed the legislative history of amendments to the NLRA and the RLA, finding that the 1947 amendments to the NLRA were enacted to eliminate so-called free riders—employees who, according to unions, benefitted by union representation without paying any money to the union. The CWA contended that because the RLA originated with voluntary unionism while the NLRA began with compulsory unionism, the amendments to each brought differing results.<sup>101</sup> The Court, however, found that the object—the elimination of free riders—was the same in each case. Furthermore, according to the legislative history, Congress's 1951 amendments to the RLA sought to conform the RLA to the NLRA as amended in 1947.<sup>102</sup> The Court found in the virtually identical wording of the statutes a strong indication of the similarity of their mean-

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96. Because he had assumed the bench the month following oral argument in *Beck*, Justice Kennedy did not participate in the decision of the case. Had his vote been required, it is quite likely that he would have voted for the statutory interpretation that ultimately prevailed. His views are evidenced by his participation in a 1976 panel decision by the Court of Appeals for the Ninth Circuit upholding the general principle of limiting the payment obligation of employees under NLRA union-security agreements to the cost of collective bargaining. The panel found that the obligations imposed by the Railway Labor Act were equally applicable under the NLRA. See *Seay v. McDonnell Douglas Corp.*, 533 F.2d 1126, 1128 (9th Cir. 1976).

97. See 108 S. Ct. 2647.

98. *Id.* at 2649.

99. 367 U.S. 740 (1961).

100. See 108 S. Ct. at 2648-49.

101. See *id.* at 2653.

102. See *id.* at 2654.

ing: "In the face of such statutory congruity, only the most compelling evidence could persuade us that Congress intended the nearly identical language of these two provisions to have different meanings. Petitioners have not proffered such evidence here."<sup>103</sup>

With respect to the state action issue, the Court stated that even assuming no state action was present in the exaction of dues and fees under the NLRA, the two statutes should not be read differently. The interpretation given to the RLA in *Ellis v. Brotherhood of Railway Clerks*<sup>104</sup> was entirely reasonable, according to the majority, and not a disingenuous or strained interpretation contrived merely to preserve the constitutionality of the statute: "We conclude that Section 8(a)(3), like its statutory equivalent, Section 2, Eleventh of the RLA, authorizes the exaction of only those fees and dues necessary to 'performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.'"<sup>105</sup>

Justice Blackmun, joined by Justices O'Connor and Scalia, wrote for the dissenting Justices.<sup>106</sup> They agreed with the majority that the NLRB has primary jurisdiction of claims brought under section 8(a)(3) and that the courts must decide the interpretation of that section when it is raised as a defense to the claim of a breach of the duty of fair representation.<sup>107</sup> There the agreement ended.

The dissent argued that the plain statutory language did not limit the privilege of the union to collect "dues and fees" from employees. Furthermore, even if the statute had been ambiguous, the Court should have deferred to the expertise of the NLRB in applying the statute and in resolving ambiguities.<sup>108</sup> The dissenting Justices' reading of the legislative history enhanced their conviction that no such limitation had been intended by Congress. Justice Blackmun criticized the majority for relying too heavily upon the legislative history of the 1951 amendments to the RLA, and ignoring the record of the deliberations leading to the 1947 amendments to the NLRA.<sup>109</sup>

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103. *Id.* at 2652-53.

104. 466 U.S. 435 (1984).

105. 108 S. Ct. at 2657 (quoting *Ellis*, 466 U.S. at 448).

106. *See id.* at 2657 (Blackmun, J., concurring in part and dissenting in part).

107. *See id.* (Blackmun, J., concurring in part and dissenting in part).

108. *See id.* at 2660 n.6 (Blackmun, J., concurring in part and dissenting in part).

109. *See id.* at 2666 (Blackmun, J., concurring in part and dissenting in part).

The dissenters, however, did not address the looming question that their statutory interpretation necessitates: Does the Constitution allow a monopoly labor union ensconced by the government to have unrestricted access to and use of compulsory fees, with governmental enforcement of the privilege through the tax-supported resources of the NLRB and the courts? The question would appear to be self-answering in the negative, but no hint is given in the dissenting opinion.

In *Abood v. Detroit Board of Education*,<sup>110</sup> the Court declared that the First Amendment rights of employees in the public and private sectors are the same.<sup>111</sup> Evidently the remedies for the two groups for invasions of these rights will also be the same. Indeed, within a few months of the *Beck* decision, the General Counsel of the NLRB issued a memorandum directing and explaining enforcement of the NLRA as interpreted by the Court in *Beck*. She applied the due process requirements of *Chicago Teachers Union Local No. 1 v. Hudson*<sup>112</sup> to unions subject to the NLRA. The requirements imposed on unions include a reduction of the fee by the amount acknowledged to be for non-bargaining functions, independently audited financial information that shows employees the cost of collective bargaining as determined by the union initially, an escrow account for disputed amounts, and a prompt and impartial determination of the fee by an unbiased agency.<sup>113</sup> Perhaps because of a lack of will, or because of turnover of political appointees at the NLRB, more than a year following *Beck* the dictates of the memorandum have been only lightly enforced.<sup>114</sup>

## VII. CONCLUSION

An estimated two to three million nonunion employees are subject to compulsory fee agreements;<sup>115</sup> 15.4 million Americans are employed under compulsory union contracts.<sup>116</sup> This system generates more than \$10 million per day in union staff payroll expenses: \$3.8 billion per year.<sup>117</sup> The value of in-kind

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110. 431 U.S. 209 (1977).

111. *See id.* at 226 & n.23.

112. 475 U.S. 292 (1986).

113. *See* General Counsel Guidelines, *supra* note 28, at 3-5.

114. *See* NATIONAL RIGHT TO WORK COMMITTEE, AN INVESTIGATION OF GOVERNMENT DISINFORMATION (1989).

115. *See* Larson, *supra* note 8, at 75.

116. *See id.* at 74.

117. *See id.* at 75.

services for political candidates has been estimated at between \$100 million and \$350 million dollars in an election year.<sup>118</sup> Without this war chest, taken-for-granted reelection of incumbent, pro-union congressmen is finished.

To make this prediction a reality, employees must, in the words of nationally syndicated columnist John Chamberlain, "come alive to their rights."<sup>119</sup> To assist in making employees aware of the *Beck* decision and to aid them in gaining the political and economic freedom guaranteed by the Supreme Court, the National Right To Work Legal Defense Foundation has launched a major information program, concentrating at first on the large and heavily unionized (2.2 million members) state of California.<sup>120</sup>

The goals of this program are (1) to inform all employees that they cannot be forced to pay a labor union more than the union can prove is spent on collective bargaining, (2) to reform and correct the damaging propaganda published by the NLRB and union officials to employees about their obligations to labor unions, and (3) to provide legal assistance to employees who assert rights to be free from illegal union coercion. The program is designed to reach every victim of a compulsory union collective agreement. As political freedom becomes a reality, the domination of Congress by organized labor will disappear, perhaps gradually, but surely. For our children and grandchildren, the United States will be that much closer to the ideal of the land of freedom and opportunity envisioned by our Founding Fathers.

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118. *See id.* at 74.

119. Chamberlain, *Union Dues . . . and Don'ts*, Wash. Times, July 15, 1988, at F4, col. 2.

120. *See Larson, supra* note 8, at 76.