

Starting over in the airline business is basically something you do on your own. No one pays to move you to a new city. No one gives any regard to the fact that you may have 20 years experience in your work field. You start again at the bottom of the seniority list, at the bottom of the pay scale, as if you'd never done it before in your life. This is regardless of whether you moved to an airline represented by the same union or no union or a different union. This is what I faced.

With the help of the National Right to Work Legal Defense Foundation, I didn't have to do that. I filed a lawsuit against U.S. Airways and the Machinists Union. I couldn't have afforded to do this on my own. I would have been lucky to find a lawyer to hire who knew enough about this area of law that he could have helped me at all.

The IAM spared no expense to fight me. They used their own lawyers. They hired lawyers from the Washington, D.C. law firm of Bredhoff & Kaiser. They battled every step of the way to make my discharge stick.

It didn't. On September 14, the District Court in Charlotte, North Carolina, ruled my discharge was unlawful. The Machinists, according to the Court, had failed to meet many of the pre-collection obligations that it owes to non-members. The Court ruled the union had forced my firing on a "flimsy and indefensible basis." The court said that the union had "untimely and inadequate practices and procedures." It called the union's officials "downright arrogant" and their procedures "maddening nonfeasance." U.S. Air has rehired me. The union settled. I feel vindicated, but not really compensated for a year-and-a-half that was stolen out of my life.

I have never yet received any financial disclosure from the Machinists Union. I doubt that I ever will, other than something like this. In order to keep my job, I will likely have to continue paying fees to this union, without ever knowing how they really spend my money.

In conclusion, I say to this honorable House, in a free country like America, employees shouldn't have to be fired and face economic and emotional ruin and run a two-year legal gauntlet to protect their right to refrain from supporting causes they oppose.

Thank you very much.

WRITTEN STATEMENT OF CRAIG SICKLER, CHARLOTTE, NORTH CAROLINA
– SEE APPENDIX G

Chairman Norwood. Thank you very much, Mr. Sickler.

And, Mr. Corson, we'd love to hear from you now, please.

Mr. Corson. All right.

Chairman Norwood. Pull it close.

STATEMENT OF CHRISTOPHER T. CORSON, ASSOCIATE GENERAL COUNSEL, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, UPPER MARLBORO, MARYLAND

Mr. Corson. My name is Christopher Corson. I'm associate general counsel to the Machinists Union. I would like to thank the Chairman and other members of this subcommittee for the opportunity to address Beck rights on behalf of the Machinists Union.

I will summarize my prepared statement, but I also do want to make sure that all the Subcommittee members know that it is the Machinists Union that represents Ms. Cope and Mr. Sickler and we will be glad to respond to any questions that any Committee members have about their particular situations and our practices.

The rights of fee objectors are based on the freedoms of speech and association in the First and Fourteenth Amendments to the Constitution. These principles are fundamentally important to labor unions, which are America's most vibrant, private mass democratic institutions. That democracy is in the establishment of any collective bargaining relationship, which must be done by the collective will of a majority of employees and appropriate bargaining unit, often through a secret ballot election. Thereafter, unions are required by federal law, the Labor-Management Reporting and Disclosure Act, to continue to operate on voluntary and democratic principles.

Local officers must be elected at least every three years by secret ballot. International officers must be elected at least every five years, either by secret ballot or by a convention of delegates, themselves chosen by secret ballot.

In the Machinists Union, our international level officers, our highest-level officers, are elected by popular referendum among the membership. Member dues may only be increased by the same methods, and all union members have an equal right to nominate candidates, vote in union elections and exercise the freedoms of speech in association within their unions without fear of discrimination. We operate by those values in the Machinists Union.

Turning to objector rights, the specific rights we're talking about today, the first is called the General Motors right. Under the General Motors right, and it's named for a Supreme Court case, all union-membership in the United States must be and is voluntary. Employees covered by a union security clause have the right to remain non-members and they may satisfy the clause by paying a representation fee to the union instead of dues.

The second right is the Beck right. One could also call it after a number of other Supreme Court cases that have upheld this right, Hudson, Ellis, Lehnert, Abrams, Abood. Under the Beck right, fee payers are further protected because unions are required to afford them a notice and a procedure for withholding a percentage of their fees equal to the percentage of union activities that are not germane to collective bargaining.

The Beck compliance program of the Machinists Union, it's one of the areas of responsibility that I have within our legal department was originally developed by a distinguished professor of law from Catholic University of America, Roger C. Hartley, who originally formulated the legal bases of our program, our record-keeping requirements, and our calculation methodologies. Most aspects have proven durable since initiation in 1986, although we have made refinements in response to further direction from the courts and our own efforts to anticipate the development of fee objector law.

For example, we recently responded to the litigation where Mr. Sickler was one of the plaintiffs, it is noted in my testimony, by moving from international level auditors for our subordinate affiliates to independent certified public accountants. Now I do want to note we have used independent certified public accountants for our international level auditing since the beginning. We had used trained auditors from our international to audit our subordinates and we no longer do that.

We also have modified our escrow procedure and we have shortened the time between objection and arbitration. For example, the arbitrator brief that covers this year's fee objectors' challenges was just filed and it is here. This is what we file and give to anyone who challenges our system to fully explain our system, and provide all the documentation.

Let me describe how the program works at the present time.

When we first seek to sign up a bargaining unit employee as a union member or a fee payor, we are now using a preprinted three-part form. The top of the form asks for basic identification information. Next is a membership application that the employee can sign or not, and there is a box which clearly indicates that this is an option. Thus an employee's General Motors right is protected.

The following section is to check off authorization. It is also optional. At the bottom is an important notice that tells the employee to read the detailed explanation of Beck rights and procedures, which is printed on the back of the third sheet. The employee keeps that third sheet, therefore guaranteeing that he or she has notice.

We also, as Mr. Sickler noted, publish our Beck notice each year in the year-end issue of our magazine called the IAM Journal. We use a special computer program to generate the subscription list for that issue to ensure that anyone who was laid off or lapsed during that year receives that issue. This is to make sure that everyone who could possibly have a right and a need to get our Beck notice does, in fact, receive it. And our magazine is sent to anyone who was covered by a union security clause, not just members.

A copy of our Beck notice is attached to my testimony. If you review it, you will see that it explains objector rights. It explains the reductions that objectors will receive the following year, and in our cycle this notice is published in our year-end issue, announcing the reductions that will be available to objectors the following years, and those reductions are set out.

The notice also explains the time periods and the procedures for becoming an objector, the time periods and procedures for challenging our reductions in the arbitration, and the procedures for arbitration. Any employee who requests objector status is sent the audited financial information that we used in calculating the advanced reductions set out in the notice. I do want to note, I do not agree any more than Mr. Sickler that the copy that he received of that financial information was adequate. In fact, I have responded to requests for better copies and, of course, people should have clear copies of the financial information that they deserve, and I've sent them out.

We maintain an escrow account at our international level to protect against any possibility that we may have the improper use of objector moneys pending the arbitrator's award. Currently the amount in that escrow is \$180,000, which is far larger than any amount that could possibly be in dispute with all of our objectors combined.

In the arbitration of challenges we receive, we bear the burden of proof and we furnish each challenger with an independent certified public accountant audit of each entity to which that challenger's fees go. That is the International District Lodge, if appropriate, and the local lodge.

As I said, our brief, exceeds 100 pages of detailed explanation about methodologies, our record keeping and our calculations, and we attach about two inches of exhibits.

Now I do want to focus on, obviously, the specific question that, Mr. Chairman, you have posed, and that is: are workers being heard here? The Machinists Union is proud to have about 500,000 members. Our yearly number of objectors is about 500 to 700, or a bit more than 1/10th of 1 percent. This year, 13 of those objectors invoked arbitration. Last year, the number was only eight. In these arbitrations, only one or two challengers will ever actually make a submission to the arbitrator. Given our efforts at notice, this low level of response suggests to us that the vast majority of employees who pay dues or fees do not object to the activities of our union that the courts have deemed nonrepresentational.

When I talk to objectors or potential objectors directly on the telephone, the common complaint is that an employee does not want his or her fees used for campaign contributions, but they are not. Campaign contributions must come from voluntary contributions to a PAC. They cannot come and do not come from dues or fees.

When an objector does withhold a portion of fees from those activities that the courts have said are non-germane to collective bargaining, those activities are mostly nonpolitical. They include organizing new units, providing services to our retired employees, working on our communities to support groups such as little leagues and the Boy Scouts, working with our nonprofit affiliates that furnish health and safety training and dislocated worker retraining, working for the advancement of civil rights and maintaining relations with other labor unions.

Some of these non-chargeable activities are politically oriented, but most of them involve legislation that is important to working families or they are spent on nonpartisan efforts such as voter registration drives or get out the vote drives, which are conducted

without regard to party affiliation. All of these efforts strengthen our ability to negotiate good contracts, and we actually think they could be recognized as germane to collective bargaining, although the courts currently disagree.

If an objector's concerns relate to the small portion of partisan political expenditures that do take place at election time, such as issue ads, the Beck process is truly a bludgeon for that purpose. It is not a scalpel.

It also often appears to us that Beck objections are spurred by concerns other than the freedoms of speech and association that we're talking about here. By filing an objection, employees simply have a way to pay less to the union for the representation they are receiving, while retaining full rights to equal representation. Other employees may be dissatisfied with the union's germane activities.

We did have a challenger last year who submitted to the arbitrator a list of subjects on which he disagreed with the way we were administering the contract and representing his unit. Now, of course, all of those subjects are clearly germane to collective bargaining. He was not a legitimate Beck type objector at all, but we are required to treat as Beck type objectors anyone who invokes our procedures.

Before leaving the freedoms of speech and association, I would like to request the Subcommittee's attention to other important employee rights grounded in these values, namely: the right to organize in a union for mutual protection; the right to engage in protected, concerted activity; and the right to communicate with the public on issues of concern to employees.

Employers violate these rights regularly and systematically. The remedies available under the federal labor laws take too long and are grossly inadequate. When President Bush recently ordered federal contractors to post notices of Beck rights, he omitted any mention of these other rights that concern a far greater number of employees and desperately need protection. A level playing field is called for here.

In closing, I want to emphasize my initial statement: the General Motors right and the Beck rights are important. The freedoms of speech and association are fundamental values for the labor movement. Even though our evidence shows that relatively few employees wish to invoke these rights and our cost of compliance is very high, the Machinists Union will continue to honor these values as they apply to objectors, but we would also ask employers to honor these values as they apply to our members and our potential members.

On behalf of the Machinists Union, I would like to thank the Chairman and the Subcommittee members for this opportunity, and I would be happy to answer any questions.

WRITTEN STATEMENT OF CHRISTOPHER T. CORSON, ASSOCIATE GENERAL COUNSEL, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, UPPER MARLBORO, MARYLAND – SEE APPENDIX H

Chairman Norwood. Thank you very much, Mr. Corson. We appreciate you taking time and your remarks.

Now we will conclude with Mr. Ray LaJeunesse.

Mr. LaJeunesse. LaJeunesse.

Chairman Norwood. LaJeunesse, okay.

Pull that mike close.

STATEMENT OF RAYMOND J. LAJEUNESSE, JR., VICE PRESIDENT AND STAFF ATTORNEY, NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC, SPRINGFIELD, VIRGINIA

Mr. LaJeunesse. Chairman Norwood and distinguished members of the Committee, I am staff attorney with the National Right to Work Legal Defense Foundation. Since the foundation was established in 1968, it has provided free legal aid to the plaintiffs in almost every case litigated about the right of workers not to subsidize union political and other non-bargaining activities. The most famous of these cases is Communications Workers v. Beck.

I have worked for the Foundation for more than 30 years. I have represented tens of thousands of employees in cases like Beck. I was the lead counsel for the plaintiff workers in three such cases that I argued in the United States Supreme Court.

I commend you for investigating the adequacy of this country's labor laws after Beck and related cases. Implementation of Harry Beck's victory in the Supreme Court is a serious problem. Many American workers are forced by virtue of a unique privilege Congress granted unions to contribute their hard-earned dollars to political and ideological causes they oppose.

I am talking about union dues and agency fees collected from workers under threat of loss of job. These moneys, under federal election law, are lawfully used for registration and get out the vote drives, candidate support among union members and their families, administration of union political action committees, and issue advocacy. These in kind political expenditures amount to between 300 to \$500 million in a presidential election year. The unions spend many millions more on state and local elections and lobbying at all levels of government.

Under the National Labor Relations and Railway Labor Acts, employees who never requested union representation must accept the bargaining agent selected by the majority in their bargaining unit. Then, if their employer and the union agree, the law forces these employees to pay fees equal to union dues for the unwanted representation or be fired. The evil inherent in compelling workers to subsidize our unions' political and ideological activities is apparent. As Thomas Jefferson eloquently put it, ``to compel a

man to furnish contributions of money for the propagation of opinions which he doesn't believe, is sinful and tyrannical." Preventing that evil, however, is not easy under current law.

In dissenting from the Supreme Court's first ruling on the problem, in *Machinists v. Street*, the late Justice Hugo Black articulated the difficulty well. To avoid constitutional questions, the Court held that the Railway Labor Act prohibits the use of objecting workers' forced dues and fees for political and ideological purposes. However, the Court majority held that the employees' remedy was merely a reduction or a refund of the part of the dues used for politics. Justice Black exposed that remedy's fatal flaw, and I quote.

"It may be that courts and lawyers with sufficient skill in accounting, algebra, geometry, trigonometry, and calculus will be able to extract the proper microscopic answer from the voluminous and complex accounting records of the local, national, and international unions involved. It seems to me, however, that this formula, with its attendant trial burdens, promises little hope for financial recompense to the individual workers whose First Amendment freedoms have been flagrantly violated."

The Supreme Court's later *Beck* decision ruled that employees covered by the National Labor Relations Act also cannot lawfully be compelled to subsidize a union's political and ideological activities. That decision should have paved the way for all private sector employees to stop the collection of dues for anything other than bargaining activities.

However, like *Street*, *Beck* is not self-enforcing. Experience shows that Justice Black was correct. Without the help of an organization like the Foundation, no employee or group of employees can effectively battle a labor union and ensure that they are not subsidizing its political and ideological agenda. Even with the rulings in *Beck* and related cases, the deck is stacked against the individual employees. And even with the help of the Foundation, which cannot assist every worker who wants to exercise *Beck* rights, complicated and protracted litigation often is necessary to vindicate those rights.

Employees must overcome many hurdles to exercise their *Beck* rights. The first obstacle is the compulsory unionism agreements. The courts have long held that actual union membership cannot lawfully be required. Yet most unions and employers still negotiate contracts that state that "membership in good standing" or "membership" is required. In *Marquez v. Screen Actors Guild*, the Supreme Court sanctioned this misleading practice. The Court reasoned that contracts merely use a legal "term of art" that "incorporates all of the [judicial] refinements associated with the language."

The *Marquez* decision, I respectfully submit, does not consider the realities of the workplace. As the then chairman of the National Labor Relations Board, a Clinton appointee said in 1998, "even today, many workers and employers do not understand that 'membership' is what the United States Supreme Court has defined it to be," not what it literally and commonly means. Almost every day, the Foundation receives calls and e-mail messages from employees who believe that the contract under which they work requires them to join the union.