LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION

In the Matter of	)	RECEIVED EMPLOYEE RELATIONS COMMISSION SEP 18 2008
CHRISTOPHER ALLEN NUNES	)	
Charging Party	)	
v.	)	UFC 26-06
LOS ANGELES COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL	)	Hearing Officer Report
Respondent	)	

HEARING OFFICER

Terri Tucker

APPEARANCES

For the Charging Party: Christopher Nunes
In Pro Per

For the Respondent: Ray Van der Nat
Law Offices of Ray Van der Nat
1626 Beverly Boulevard
Los Angeles, CA 90026

INTRODUCTION

The instant unfair employee relations practice charge proceeding arises under the Los Angeles County Employee Relations Ordinance ("Ordinance") and the Rules and Regulations ("Rules") of the Los Angeles County Employee Relations Commission ("ERCOM") or ("Commission"). Pursuant to the Ordinance and the applicable ERCOM Rules, Terri A. Tucker was appointed to serve as Hearing Officer.

A hearing was held in the Commission's offices on May 10, 2007 and April 16, 2008. Both parties appeared and were afforded full opportunity to present relevant evidence, examine and cross-examine witnesses, and offer argument. At the conclusion of the hearing, the parties agreed to submit briefs in support of their respective positions, which were to be received by the Hearing Officer on or before June 16, 2008. On or about July 31, 2008 a verbatim transcript of the proceedings was provided to the Hearing Officer for consideration in preparing this Report.

THE UNFAIR EMPLOYEE RELATIONS PRACTICE CHARGE

On October 5, 2006 Christopher Nunes ("Charging Party") filed an unfair employee relations practice charge within the meaning of Section 11, subsection A of the Employee Relations Ordinance, with the Los Angeles County Employee Relations Commission and against the Los Angeles County Building and Construction Trades Council ("the Council"). The basis of the charge was the following:

"On September 5, 2006 Skip Henke and Ray Van Der Nat of the Los Angeles County Building and Construction Trades Council at 1626 Beverly Blvd, Los Angeles, CA, have refused, as the union of record collecting agency fees from my pay, to provide an adequate explanation of the basis for the fees, in violation of Article 25, Section 4.E, Union Responsibilities, of the memorandum of Understanding 411, and *Chicago Teachers Union* v. *Hudson*, 475 U.S. 292 (1986)."

STATEMENT OF THE CASE

The matter came to hearing on May 10, 2007 for the resolution of Charging Party's motion to strike the Council's answer as untimely filed on April 26, 2007, and the Council's motion for a more definite statement of the charge. After presentation of the parties' positions on Charging Party's motion, the answer was deemed timely and the Council's motion resolved by agreement that the charge was intended to address both the alleged inadequacy of the *Hudson* notice and the Council's failure to provide its own financial information rather than that of IBEW Local 45 ("Local 45").

The Council represented that an arbitration before Arbitrator Robert Bergeson addressing the factual issues created by the charge had recently concluded and that the award was expected within weeks. The Hearing Officer therefore deferred further processing of the charge until after the arbitrator's award had been received.

Arbitrator Bergeson recused himself prior to issuing an award, and the arbitration began *de novo* before Arbitrator Thomas Kerrigan on September 17,

2007. The issue before the arbitrator was "Did the accountants' reports from the respective affiliated unions[1] correctly calculate the fair share fees charged non-members? If not, what is the correct fee to be charged?" Arbitrator Kerrigan concluded that "[t]he audit reports attached to the *Hudson* notices were accurate and correctly calculated the proper allocation of expenses contained therein. The Complainants' objections are accordingly without merit."

The parties submitted argument on the question of whether the charge had been resolved in arbitration or should proceed to hearing, and the Hearing Officer determined that the charge had not been resolved in arbitration and would proceed.[2]

The record created in the arbitration hearings did however fully address the factual issues in the instant case. The hearing on the charge therefore resumed on April 16, 2008 for the limited purpose of presenting any testimony or documents not already presented in first day's hearing, or in the two arbitration hearings.[3] On that date the parties agreed that although all issues raised in the unfair employee relations practice charge must be addressed, that the following issue was critical to the resolution of the charge:

> "In addition to the 7/26/06 *Hudson* notice from the Los Angeles County Building and Construction Trades Council, which includes IBEW Local 45's Financial Statements and Independent Auditor's Report dated

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[1] The correctness of three local unions' individual calculations of their 2006-2007 agency fee amounts was at issue. Local 45 was one of the three.

[2] The decision to proceed to hearing on the charge was based 1) on the fact that the arbitration award did not address basic issues raised by the charge, and 2) that the award erroneously upheld an incomplete and fundamentally deficient fee calculation in opposition to employee rights guaranteed in the Ordinance, Section 4. See discussion below, and Commission Rule 6.04.1(c).

[3] The *Hudson* notice, the transcripts of the Bergeson and Kerrigan arbitrations and the Kerrigan award were included in the documents received into evidence in the present case.

12/31/05, was the Council obligated to provide its own chargeable and non-chargeable financial statement to the Charging Party?"

The parties submitted written closing arguments, which were to be postmarked or electronically delivered no later than thirty days after the transmittal date of the transcript.[4]

SUMMARY OF POSITIONS

A. Charging Party's Argument

Charging Party argues as follows. The Council has refused to provide him with an adequate explanation of the basis of the agency fees it has collected from his pay. This violates Article 25, Section 4.E of the MOU 411, as well as Chicago Teachers Union v. *Hudson*, 475 U.S. 292 (1986). The MOU provides that the Council will "provide notice and maintain constitutionally acceptable procedures to enable non-member agency fee payers to meaningfully challenge the propriety of the use of agency fees as provided in Chicago Teachers Union v. *Hudson*, 106 S.Ct. 1066 (1986)." *Hudson* requires the Council to provide nonmembers with adequate information about the basis for the proportionate share from which the advance deduction of dues was calculated.

The Council is the union recognized as the exclusive bargaining representative in the MOU governing his employment, the union to whom the County pays Nunes' agency fees, and the union that sends him a *Hudson* notice. In addition, the Council reports to the Department of Labor that it has agency fee

[4] The Council's brief was timely received, and Charging Party's was received late due to a misunderstanding of the Commission's rules. Charging Party's written closing argument was not considered, but Charging Party was nonetheless given frequent and generous opportunities to argue his position during the hearing on the unfair, as well as in the arbitration proceedings, and his position and arguments have been clearly stated. Charging Party therefore has not been prejudiced by his late filing.

payers, and IBEW Local 45 reports that it does not. The Council therefore must provide him with its own audited financial information and statement of chargeable and nonchargeable expenses, and the information must comply with the requirements of the MOU and of *Hudson*. The Council has refused to do so.

B. The Council's Argument

The Council's argument is as follows. The purpose of a *Hudson* notice is to provide nonmember employees with sufficient information to enable them to determine if they want to object to the fees they are to be charged, and in this case Charging Party has testified that the June 2006 *Hudson* notice was sufficient to allow him to decide that he wanted to file an agency fee objection. The sufficiency of the notice has therefore been established and the charge must be dismissed.

In addition, the audited financial information of IBEW Local 45 was the audit used to determine the percentage of dues to be charged because Local 45 (and not the Council) is the entity that sets the amount of agency fees to be charged BU 411 agency fee payers. Further, the amount of fees charged has now been the subject of arbitration and has been adjudicated as correct.

FINDINGS AND CONCLUSIONS

I. Legal Framework

A. Overview

A long line of cases establishes the right of unions to require nonmembers to pay a fee for the benefit of union representation in matters of collective bargaining, contract administration or grievance adjustment, and for the First Amendment

interests of the nonmembers to be protected by an informed opportunity to pay only for those matters germane to the representational issues, and not for expenses for ideological or political purposes.[5]

B. *Hudson* notice requirements

The fundamental requirement of a *Hudson* notice is "an adequate explanation of the basis of the fee." *Hudson* 475 U.S. at 310. The adequacy of the explanation it critical:

> "Basic considerations of fairness, as well as concern for the First Amendment rights at stake, [...] dictate that the potential objectors be given sufficient information to gauge the propriety of the union's fee. Leaving the non-union employees in the dark about the source of the figure for the agency fee—and requiring them to object in order to receive

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[5] In *Wagner v. Professional Engineers*, 354 F.3d 1036, 1038-39 (9th Cir. 2004) the Ninth Circuit recently summarized the development of the basic principles relevant to this case. "A union that represents employees in a collective bargaining unit has a legal obligation to represent equally all employees in the bargaining unit, whether or not they are members of the union." [Quotation omitted.] [¶] Because all employees benefit from the union's representation, the Supreme Court has held that nonmembers constitutionally may be compelled to contribute their pro rata share of the cost incurred in obtaining the benefits of representation. As our court has recognized: It is settled law that a union may charge nonunion employees "certain fees to pay for their 'fair share' of the union's cost of negotiating and administering a collective bargaining agreement." [¶] The collective-bargaining agreement between PECG and the state contains a union security clause, which requires nonmembers to pay fees for the union's representational activities. These fees commonly are known as "fair share" or "agency" fees. Under the First Amendment, however, a fee payer has the right to decide whether to pay for political and expressive activities that are unrelated to collective bargaining, and may object to paying for nonrepresentational expenses. [...] [¶] Thus, although a union may charge fee payers the full equivalent of union dues, a fee payer may object to paying for nonrepresentational expenses. The expenditures that a union may not charge if a fee payer objects are commonly called "nonchargeable" expenditures. [¶] To facilitate fee payers' First Amendment choice, the union must provide fee payers with 'an adequate explanation of the basis for the fee.' This explanation is referred to as a '*Hudson* notice.' In the *Hudson* notice, each major category of expenditures is classified as chargeable, nonchargeable, or partly chargeable to objecting fee payers. Those classifications are referred to as the union's "chargeability determinations." (citations omitted).

information--does not adequately protect the careful distinctions drawn in *Abood*." *Hudson*, 475 U.S. at 306.

The *Hudson* court also clearly stated the requirement that the union provide in the *Hudson* notice information identifying its expenditures for chargeable purposes, and providing the reasons why fee payers were required to pay the calculated percentage of its total expenditures:

> "In this case, the original information given to the nonunion employees was inadequate. Instead of identifying the expenditures for collective bargaining and contract administration that had been provided for the benefit of nonmembers as well as members—and for which nonmembers as well as members can fairly be charged a fee-- the Union identified the amount that it admittedly had expended for purposes that did not benefit dissenting nonmembers. 475 U.S. at 306-307.

An explanation of only the nonchargeable portion of union expenditures is not adequate. As the Court made clear: "An acknowledgement that nonmembers would not be required to pay any part of 5% of the Union's total annual expenditures was not an adequate disclosure of the reasons why they were required to pay their share of 95%." 475 U.S. at 306-307.

In the footnote to this language, the Court also made clear that the *Hudson* notice must list 1) major categories of expenses, 2) verification of expenses by an independent auditor, and 3) explanations of the basis of chargeability determinations:

> "We continue to recognize that there are practical reasons why '[a]bsolute precision' in the calculation of the charge to nonmembers

> cannot be 'expected or required.' [Citation omitted.] Thus, for instance, the Union cannot be faulted for calculating its fee on the basis of its expenses during the preceding year. The Union need not provide nonmembers with an exhaustive and detailed list of all its expenditures, but *adequate disclosure surely would include the major categories of expenses, as well as verification by an independent auditor. With respect to an item such as the Union's payment of $2,167,000 to its affiliated state and national labor organizations, [...] for instance, either a showing that none of it was used to subsidize activities for which nonmembers may not be charged, or an explanation of the share that was so used was surely required."*

Id at 307, n.18. (Emphasis supplied.) It is well settled that to meet its constitutional obligation "the union must provide a statement of its chargeable and nonchargeable expenses, together with an independent verification that the expenses were actually incurred. *Harik v. Cal. Teachers Ass'n*, 298 F.3d 863, 866 (9th Cir. 2002).

II. The Adequacy of the *Hudson* Notice At Issue

A. The Notice

The Council is the exclusive bargaining representative of employees in Los Angeles County's Bargaining Unit 411 ("BU 411"). Charging Party is a member of BU 411. In July, 2006 the Council sent out its 2006-2007 *Hudson* notice to all agency fee payers of its affiliated local unions representing bargaining units whose represented employees are employed by Los Angeles County. The notices sent to members of Bargaining Unit 411 included 2005 financial information for IBEW Local 45.

The notices also included a letter telling the agency fee payers that the calculation of the fees they were being charged was based on 2005 audited financial information provided by the local union affiliated with the Council that

represented their bargaining unit. The letter explained their right to challenge the fees charged by filing an objection, and that challengers would have the chance to appear before an arbitrator to state the basis for their challenge to the calculation of the fair share fee. A number of bargaining unit employees, including Charging Party, filed timely challenges to the calculation of the agency fees for employees in BU 411.

B. Was the *Hudson* Notice Adequate, Based on the Fact that Nunes Admitted that He Received Sufficient Information to Enable Him to Decide Whether or Not to Object to the Agency Fees Charged Him?

In its closing brief the Council correctly asserts that a number of courts have stated that "The function of the [*Hudson*] notice is to give employees who don't belong to the union enough information about the agency fee for the forthcoming year to enable them to decide whether to challenge it." On that basis the Council asserts that Charging Party's (1) objection, and (2) his acknowledgement that the Council's July 2006 notice were sufficient for him to make a decision to object, require the conclusion that the notice was sufficient. This argument is not persuasive.

While it is true that a basic purpose of the notice is to provide the fee payer with adequate information to allow the fee payer to decide whether to object, the decision must be based on *sufficient* and *meaningful* information as to the calculation and chargeability justification of the fee. See *Hudson*, 475 U.S. 292 at 305-306, 307 n.18. In the Ninth Circuit, it is clear that "while a formal audit

is not required, the union must provide a statement of its chargeable and nonchargeable expenses, together with an independent verification that the expenses were actually incurred." *Harik*, 298 F.3d at 866.[6]

It is thus clear that the mere fact that Charging Party filed an objection, or that after reading the *Hudson* notice he decided to object in order to obtain more information is not the equivalent of a determination that the *Hudson* notice provided adequate notice under *Hudson*. Indeed, the *Hudson* court anticipated and rejected such an argument when it wrote: "Leaving the non-union employees in the dark about the source of the figure for the agency fee—and requiring them to object in order to receive information--does not adequately protect the careful distinctions drawn in *Abood*." *Hudson*, 475 U.S. at 306.

C. Was the Financial Information Sent to Charging Party in the *Hudson* Notice Adequate?

The Council's July 2006 *Hudson* notice included an "Independent Auditor's Report" ("the Report") prepared for Local 45 on behalf of NSBN, LLP, by Certified Public Accountant Dennis Ayers. One component of the Report was an audited statement of financial position for Local 45 for year ending December 31, 2005. The accountant also audited additional, "related" statements, including a Statement of Functional Expenses created by Local 45. This Statement of Functional Expenses is the only document in the Audit that purports to categorize

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[6] See also, *Dashiell v. Montgomery County*, 925 F.2d 750 (4th Cir. 1991). ("In summary, the First Amendment, as interpreted by *Hudson*, requires only that the union disclose as part of its initial explanation to employees (1) such information that reveals to the employees major descriptive categories of expenses which will be assessed against the employees; (2) the component dollar amount of each category so chargeable; and (3) information to show that the financial figures have been verified by an independent auditor.") 925 F.2d at 756-57.

Local 45's expenses, but there is no explanation in the report of what types of expenses are included in the vaguely-captioned categories

Nowhere in the *Hudson* notice is there a statement of chargeable and nonchargeable expenses. Nowhere in the notice is there any identification or explanation of the chargeable expenses. It does not state or offer a chargeable percentage of total union expenses for acceptance or objection.

The only reference to chargeable and non-chargeable expenses in the July 26, 2006 notice is Schedule A of the Report titled "Description of the Bases for Classifying Chargeable and Non-Chargeable Expenses for the Year Ended December 31, 2005." Schedule A consists of general, narrative explanations of the two categories and according to the Report was "presented for purposes of additional analysis and is not a required part of the basic financial statements."

There is no such "additional analysis" in the notice. The second paragraph of the description of non-chargeable expenses in the Auditor's report states:

> "Activities that are classified as non-chargeable include the following organizing costs; I) charitable support; II) legislative and political activities; and III) communications, publications, public relations and other efforts direct toward activities that are not considered germane to representing non-members in the collective bargaining process. [¶] During the year the Organization paid a total of $49,630 to charitable organizations, organizing and other expenses."

Although this $49,630 figure appears on a page in the Audit, it does not represent an audited sum. Ayers testified that he performed an audit of the financial information in the Report, but that he is not familiar with the *Hudson*

requirements, and it was not his responsibility to determine what is chargeable or nonchargeable to agency fee payers.[7]

Ayers nonetheless testified that Schedule A of his report is the only page pertinent to the calculation of the agency fee amount because that is where the sum of *nonchargeable* expenses appears. Indeed, the $49,630 is the only number in the *Hudson* notice that Local 45 offers as an explanation of the calculation of the agency fee percentage to be applied to member dues.

Even if the Council could legitimately back into the fee calculation by first calculating the non-chargeable portion of the Local 45 expenses, the $49,630 figure is unsubstantiated. Ayers was not able to provide (nor is it certain that he received) a full list of what expense categories or items comprise the $49,630, did not know all of the dollar amounts that were added to reach that sum, and did not audit any of the amounts to verify their authenticity.

Although it is possible to calculate a *hypothetical*, nonchargeable percentage using the $49,630 and Local 45's total stated expenses, there is still no way to know what expenses were included in the $49,630 and thus to form an opinion as to whether the $49,630 was the product of legally acceptable allocation.[8] When the nonchargeable expense categories named on Schedule A

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[7] Although the allocation of chargeable and nonchargeable expenses is not necessarily the job of the auditor, the law does require that the chargeable expenses, once identified, be verified. See discussion above.

[8] Ayers testified that he was not certain about which expenses were and were not included in the $49,630 total. For example, Ayers testified that he thought that the cost of a particular party was included, but he was not certain of the amount, and stated that the party expense was not reflected on the report. He also believed a portion of Local 45's office expense was not chargeable, but observed that there is nothing in the report that says so

are compared to the Statement of Functional Expenses, it is still impossible to deduce the numbers that comprise the $49,630 figure.[9]

Because Local 45's financial information failed to provide an allocation between chargeable and nonchargeable expenses; because it failed to explain or justify chargeable expenses for which the fee payers were being asked to pay; because the only number provided was not only a number associated with nonchargeable expenses rather than chargeable; and because even that number was unsubstantiated and admittedly uncertain, the Local 45 financial information and therefore the Council's *Hudson* notice was constitutionally inadequate and failed to give the fee payers an adequate explanation of the fee, in violation of *Hudson*.

C. Was The Council Obligated To Provide Its Own Chargeable And Non-Chargeable Financial Statement To The Charging Party In Addition To The 7/26/06 *Hudson* Notice From The Los Angeles County Building And Construction Trades Council, Which Includes IBEW Local 45's Financial Statements And Independent Auditor's Report Dated 12/31/05?

1. The Roles of the Council and its Affiliated Local Unions

In the arbitration hearings concerning the July 26, 2006 *Hudson* notice to fee payers in BU 411, the Council presented the following information.

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[9] For example, the category "Charitable organizations" is not listed as a functional expense in the Audit. "Organizing expense" is listed, but represents only $2466 of total expenses. Even if the category "Contributions" ($40,175) is added in, the total is $42,641, not $49,630.

The Council is not a traditional labor union, but rather a labor organization that represents employees of Los Angeles County by serving as the exclusive bargaining representative for a bargaining unit that includes all Los Angeles County employees in local Building & Trades unions; collecting and distributing dues and fees collected by the County by paycheck deduction; and sending out *Hudson* notices to agency fee payers.

The local craft unions that represent individual, County bargaining units are affiliated with the Council, and participate in these Council functions by sending representatives to MOU negotiations; setting the amount of dues and fair share fees; paying the Council a fee for the administration of its dues and fees; and providing their own financial information for the *Hudson* notices.

The affiliated locals perform all other normal functions of labor unions: they administer the MOU, file and process grievances, organize to gain more members, determine the amount of dues and fees, participate in collective bargaining as part of a union negotiating committee (headed by the Council), vote on contract proposals, and conduct meetings concerning decisions regarding ratification. Each has a relationship with its national or international parent union, and each has craft jurisdiction conferred by the AFL-CIO.

The Council is compensated the services it provides. From the private sector local unions it collects a per capita tax. The Council's public sector affiliated locals instead pay a service fee of 12.5% of the dues and fees the Council processes on their behalf.[10]

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[10] The Council's public sector local affiliates may however pay per capita taxes to other organizations, such as their parent international union.

2. Where Does The Agency Fee Money Go After It Is Deducted From The Employee's Paycheck?

Arbitration testimony also provided the following information. Pursuant to law and agreement, the County deducts union dues (in the case of union members), or agency fees (in the case of agency fee payers) from the employee's paycheck at a rate which is determined by each local union, communicated to the Council, and which the Council in turn communicates the information to the County. The County sends one check representing the entire amount collected from employees in the Building Trades bargaining unit, to the Council.

The Council puts the money into a "Public Sector Account" on behalf of its affiliates, does the necessary bookkeeping, and then issues checks to the affiliate Los Angeles County locals. All of the money in the Public Sector Account is from the County's deductions of dues and fees,[11] and 100% of the money that goes in, is passed through to the affiliate local unions. The Council is paid 12.5% of the amount collected, but is paid by the local unions and does not retain the percentage from the funds it collects.

The Council also established in arbitration that it does not determine the amount of fees or dues to be deducted from employee paychecks. For Charging Party that decision is made by Local 45, the local union representing Charging Party in the traditional sense, minus the duties of the Council. The money Charging Party pays in fees goes from his paycheck to the Council, and straight

[11] The Public Sector account bears interest, but no interest income is ever taken from the account.

through to Local 45. The Council does not spend any of the dues and fees it collects from the County on behalf of its affiliated local unions.

Because the Council has demonstrated that it has no role in determining member dues or agency fees, and that it does not spend any of the dues and fees collected, but instead distributes 100% of them to the affiliated local unions, the Council is not required to provide its own statement of chargeable and nonchargeable expenses as part of the *Hudson* notice.

D. What Are the Council's Responsibilities in Regard to the Adequacy of the *Hudson* notice?

The Council is the certified bargaining representative for Charging Party's bargaining unit—"the union of record" in Bargaining Unit 411's MOU. The Council therefore has the burden of adequately protecting the First Amendment rights of nonmembers and ensuring that they are treated in a non-discriminatory manner by adequately justifying and proving the proportion of chargeable to total union expenditures that establishes the fee amount for the agency fee payers it represents. *Abood v. Detroit Board of Education*, 431 US 209, 239-240 (1977). It is therefore the Council's responsibility to ensure that the information it sends to fee payers in the *Hudson* notices—including the financial information provided by its affiliated locals-- fully complies with relevant legal standards.

Beyond the Council's general obligation to provide constitutionally adequate financial information from the local union, there is also the issue which plagued Charging Party in this case: How is a fee payer to understand why (when the MOU says that the Council is his union and his pay-stub says that the

Council is receiving his fees), the Council would send him financial disclosure information for a different union instead of its own?

The reasons for this seeming contradiction are not clearly explained in the notice. Although arbitration testimony explained the relationship between the Council and Local 45, the notice did not. The notice failed to clearly explain either the division of union roles between the Council on the one hand, and its affiliated Los Angeles County craft locals on the other, or what the Council does with the agency fee funds after it receives it from the County.

If the Council spends any of the fee monies it receives from the County, *Hudson* and its progeny require the Council to provide its own verified statement of chargeable and nonchargeable expenses. If the Council does not spend any of the funds it receives from the County, the notice must nonetheless provide a *verified* explanation of what it does with the money after receipt.

The essence of the fee payer's inquiry is following the money trail, from paycheck deduction to its end use in payment of union expenses. In this case, the fees' journey includes a layover in the Council's "Public Sector Account" before the bookkeeping required in order to properly distribute the fees to the affiliated locals has been completed, and the fees then travel on to the local union to be spent. If there is no verified explanation of how the fees-- deducted from the objecting nonmember's paycheck and paid to the Council—were spent or otherwise distributed, then the Council has failed to provide an adequate explanation of the basis of the fees charged.

In the factual situation presented in this case, it is necessary to tell fee payers the complete story of where their money goes. If they do not know, they cannot make and informed evaluation of the fee amount. Thus this information has the same significance to their First Amendment rights as does any other part of a *Hudson* notice.

"Basic considerations of fairness, as well as concern for the First Amendment rights at stake, [...] dictate that the potential objectors be given sufficient information to gauge the propriety of the union's fee." 475 U.S. at 306. Surely an agency fee payer cannot be said to have sufficient information to gauge the propriety of the union's fee when he has not received information explaining the Council's use of the money it collected. See 475 U.S. at 307, n.18.

In short, as this case has repeatedly demonstrated the July 2006 *Hudson* notice did not explain the nature of the Council/affiliate/nonmember relationship, nor make it clear to the fee payer reading the notice that the fees paid were for the benefit of the local union, and that 100% of them are channeled through the Council for administrative purposes, and passed on to the local union. In order to meet the standard set by *Hudson* and its progeny, the Council's *Hudson* notice must do so.

D. Charging Party's Request For Adequate Information

On August 28, 2006 Charging Party wrote Council Representative Skip Henke to request a Statement of Expenses and Allocation Between Chargeable

and Non-Chargeable Expenses ("Statement").[12] The Council's attorney Ray Van der Nat replied by saying "By cover letter dated July 26, 2006, you were provided a copy of the chargeable and non-chargeable expense allocation which adequately explains the pro rata share of fees that are being charged to you."

On September 8, 2006 Charging Party wrote Van der Nat, again requesting an audited Statement from the Council.[13] At the time the hearing in this matter concluded, the Council had not provided Charging Party with a Statement, either from the Council, or from Local 45.

The charge reads as follows:

"On September 5, 2006 Skip Henke and Ray Van Der Nat of the Los Angeles County Building and Construction Trades Council at 1626 Beverly Blvd, Los Angeles, CA, have refused, as the union of record collecting agency fees from my pay, to provide an adequate explanation of the basis for the fees, in violation of Article 25, Section 4.E, Union Responsibilities,

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[12] The letter stated: "As the union of record collecting agency fees from my pay, I request that the Building Trades Council provide an audited "STATEMENT OF EXPENSES AND ALLOCATION BETWEEN CHARGEABLE EXPENSES AND NON-CHARGEABLE EXPENSES" in accordance with my constitutional rights as provided under Abood v. Detroit Board of Education 431 U.S. 209 (1977), Teachers Local 1 v. Hudson 475 U.S. 292 (1986) and Lehnert v. Ferris Faculty Association 500 U.S. 507 (1991) that will meet the adequate explanation of the pro rata share of the fees that you are collecting from my pay. Please reply promptly to my request. Any further collection of the agency fees from me made without the procedural safeguards required yb law will violate my rights under the Federal Civil Rights Act of 1871, U.S. Code 1983 and the U.S. Constitution."

[13] The letter stated: "I am an agency fee payer of the Los Angeles County Building and Construction Trades Council, referred to hereafter as BCTC). In accordance with U.S. Supreme Court case law, I request an audited STATEMENT OF EXPENSES AND ALLOCATION BETWEEN CHARGEABLE EXPENSES AND NON-CHARGEABLE EXPENSES of the union of record collecting these fees, the BCTC. The proportionate share of the union collecting the fees is the basis of the challenge. My pay voucher indicated the BCTC is making the deduction. MOU 411 is a contract of which the BCTC is a party to, and had a fiduciary obligation to act accordingly to the stipulations therein. If you will remember last agency fee year the BCTC returned all fees to a dozen county objectors for the same failure to act in accordance with the law, your letter dated May 11, 2006. Please reply promptly to my request"

of the memorandum of Understanding 411, and *Chicago Teachers Union* v. *Hudson*, 475 U.S. 292 (1986)."

Because the Council's July 2006 *Hudson* notice was deficient in several ways, among them the critical absence of a statement of expenses and allocation between chargeable and nonchargeable expenses, and thus failed to provide the adequate explanation of the basis of Charging Party's fees, the Hearing Officer finds and concludes that the Council's refusal to provide a new, adequate *Hudson* notice violated the Ordinance, Section 12(b)(1), in that the Council interfered with, restrained or coerced Charging Party in the exercise of the rights recognized or granted in this Ordinance, Section 4, specifically the right to refuse to join employee organization.

The following recommendations are therefore made.

RECOMMENDATIONS

The duly appointed Hearing Officer recommends that the Employee Relations Commission adopt the following order:

1) The Respondent violated §12(b)(1) of the Ordinance when it failed and refused to provide Charging Party with an adequate explanation of the basis for the fees, in violation *Chicago Teachers Union* v. *Hudson*, 475 U.S. 292 (1986).

2.) The Council shall promptly issue a new *Hudson* notice for BU 411 for the 2006-2007 fee year, and this notice a) will meet the legal standards set forth in this Report as to the adequacy of the Local 45 explanation of the chargeable expenses and how the agency fee is calculated; b) will include the constitutionally required explanation of the complete path the fees travel from

paycheck deduction, to union expenditure; and c) shall provide a new opportunity for fee payers to object.

Respectfully submitted,

Terri Tucker

Hearing Officer

Dated: August 22, 2008

Los Angeles, California