A.B.D. NO. 2007-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION APPEAL BOARD

In the Matter of

HENRY WIECZOREK, et al.

Petitioners,

-and-

COMMUNICATIONS WORKERS OF AMERICA, LOCAL 1034,

Respondent.

OAL DKT. NO. PRB 6416-03
AGENCY DKT. NO. AB-2003-02

Appearances:

For the Petitioners, Henry Weiczorek and Ed Koppp, pro se, on behalf of themselves and Petitioners listed in Appendix A

For the Respondent, Weissman & Mintz, attorneys (Steven M. Weissman, Esq. and James M. Cooney, Esq.)

DECISION ON MOTION FOR RECONSIDERATION

On October 20, 2006, Respondent Communications Workers of America Local 1034 moved to reopen this matter seeking reconsideration and/or clarification of the decision of the Public Employment Relations Commission Appeal Board issued on September 27, 2006 and designated as A.B.D. No. 2007-1, ____ NJPER ____ (¶_____ 2006).[1/] That decision affirmed in part and reversed and remanded in part the Initial Decision of Administrative Law Judge Douglas R. Hurd, recommending that the

1/ The CWA also requested that the Appeal Board hear oral argument on its motion.

respondent be ordered to refund the representation fees collected from the petitioners during the period December 6, 2002 through April 13, 2006 together with interest.

Specifically, we ordered that the representation fees in lieu of dues collected from the petitioners covering the period December 6, 2002 and ending June 30, 2003, be refunded with interest. We did not adopt the portion of the Initial Decision recommending that the representation fees collected from the petitioners for the period commencing July 1, 2003 and ending April 13, 2006 be refunded. Instead, we ordered that the petitioners be permitted an additional month in which to initiate challenges to the representation fees deducted from their salaries for the 2003-2004, 2004-2005 and 2005-2006 dues years. Those petitioners wishing to pursue such claims would do so by filing new petitions with the Appeal Board for each of those dues years.

CWA's motion was filed in the form of a legal brief. On December 2, 2006, the petitioners, through Henry Wieczorek, filed a statement in opposition to CWA's motion urging that the Appeal Board's decision be undisturbed. On December 19, 2006, Appeal Board Chairman John Tesauro presided at oral argument on the CWA's motion.[2/]

2/ Appeal Board member Raymond T. Bolanowski, Esq., was not able to attend the oral argument but has been presented with (continued...)

CWA argues that A.B.D. No. 2007-1 improperly concludes that the ALJ held in his initial decision that it did not meet its burden of proof to establish that it used the petitioners' fees only on expenses germane to collective negotiations and contract administration. See N.J.S.A. 34:13A-5.6; N.J.A.C. 1:20-14.2; Lehnert v. Ferris Faculty Association, 500 U.S. 507 (1990). It further argues that there is no authority to extend to the petitioners additional time to challenge representation fees in lieu of dues collected during a given dues year beyond the six month period afforded by N.J.A.C. 19:17-4.5.

After reviewing the parties' written and oral arguments we grant reconsideration solely to clarify our prior decision.

Initially, we decline to modify the portion of our order granting the petitioners the ability to file challenges to representation fees assessed for the dues years, 2003-2004, 2004-2005 and 2005-2006.[3/] We rely on the explanation contained in our opinion.

2/ (...continued)
the written submissions and a stenographic transcript of the oral argument. Appeal Board member Charles DeCicco is not participating in this case.

3/ Petitions challenging the fees for those years have been filed, but have not been processed pending disposition of this motion.

We now clarify our ruling that the CWA did not meet its burden of proof with respect to the representation fees collected between December 6, 2002 and June 30, 2003.

A majority representative that receives representation fees in lieu of dues is required to provide a properly verified Hudson notice to all non-members it represents and at least a 30-day period to register an objection before it collects representation fees for a given dues year.[4/] However, the pre-collection notice is distinct from and, in and of itself, does not satisfy the quantum of proof a union needs to justify its fee before an impartial tribunal when fee challenges are filed. See Paul L. Stracker v. Local 195 Intern. Fed. of Prof. and Tech. Engineers, AFL-CIO, A.B.D. No. 86-10, 12 NJPER 333, 335 (¶17128 1986), recon. den. A.B.D. No. 86-11, 12 NJPER 388 (¶17153 1986). In short, evidence that a properly verified Hudson notice was distributed to non-members in advance of representation fee deductions is not proof that the statement is accurate or that the expenditures it lists are properly classified as chargeable or non-chargeable under the Lehnert test.[5/] The evidence and testimony produced by the CWA at the

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4/ See Chicago Teachers' Union v Hudson, 475 U.S. 292 (1986); Boonton Bd. of Ed. v. Kramer, 99 N.J. 523 (1985), cert. den. 106 S. Ct. 1388 (1986).

5/ "Verification" is an auditing term. Accountants do not make substantive legal judgments as to whether a particular expense is chargeable.

hearing focused on the Hudson notice, rather than proof that the activities engaged in, and expenditures made by, the majority representative were, respectively, chargeable to non-members as a matter of law, and disbursed as listed as a matter of fact. In contrast, the initial decisions issued by the Office of Administrative Law in Stracker, 12 NJPER at 336 to 338 and Charney et al. v. East Windsor Regional Supportive Staff Association, A.B.D. No. 86-1, 11 NJPER 680, 681 to 688 (¶16235 1985) refer to testimony by officials of those majority representative that actually engaged in or oversaw the activities and expenditures described in the pre-collection notices.[6/]

As the burden of proof is on the majority representative, it is not necessary for a non-member to specifically challenge any of the items in the Hudson notice or other expenditures or activities the non-member may know about. In Charney, the non-members generally contended "that the [majority representative] has not properly disbursed the monies which it collected from non-union members." 11 NJPER at 682. Accordingly, absent stipulations as to the facts or limiting the issues, the fact that the petitioners may have identified one or two specific expenditures which they deemed non-chargeable, does not relieve the majority representative of presenting proofs adequate to show

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6/ In Charney, a report of an impartial third party umpire who had held a hearing and concerning the majority representative's expenditures was also placed in evidence. 11 NJPER at 682.

that it properly used the representation fees collected from non-members. In affirming our prior ruling we do not make any finding that any of the activities or expenditures listed in the CWA's Hudson notice, issued for fees collected between December 2, 2002 and June 30, 2003, were non-chargeable or inaccurate. We simply hold that adequate proofs were not produced. As our decisions and pertinent judicial precedent have explained the evidentiary obligations of majority representatives in fee challenge hearings, we decline to modify our prior order.

ORDER

The motion for reconsideration is granted for the limited purpose of clarifying the opinion in A.B.D. No. 2007-1 as discussed in this decision. It is otherwise denied.

BY ORDER OF THE APPEAL BOARD

JOHN F. TESAURO
Chairman

DATED: February 15, 2007

Trenton, New Jersey