A.B.D. No. 88-5

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

OAL DKT NO. PRB-5501-87
AGENCY DKT NOS. AB-87-8,
AB-87-20, AB-87-25

PETER WODZINSKI, STEPHANIE ROBIN FAUGHT AND HOWARD L. SALLES,

Petitioners,

v.

WOODBRIDGE TOWNSHIP EDUCATION ASSOCIATION

Respondent.

Peter Wodzinski, Stephanie Robin Faught and Howard Salles, petitioners pro se,

Richard A., Friedman, (Ruhlman, Butrym and Friedman, attorneys) for respondent.

DECISION AND ORDER

On September 15, 1986, April 16, 1987, and May 25, 1987, Peter Wodzinski (AB-87-8), Stephanie Robin Faught (AB-87-20), and Howard L. Salles (AB-88-25), respectively, filed petitions of appeal with the Public Employment Relations Commission Appeal Board ("Appeal Board"). Wodzinski filed an amendment to his petition on May 1, 1987. The petitioners are teaching staff members of the Woodbridge Township School District who pay representation fees in lieu of dues to the Woodbridge Township Education Association and its affiliates, the Middlesex County Education Association ("MCEA"), the New Jersey Education Association ("NJEA") and the National Education Association ("NEA").

The Faught and Salles petitions state only that information concerning the expenditures of the Association and the MCEA was not received by them until December, 1986 and January, 1987, and therefore neither organization is entitled to representation fees for the 1986-1987 fiscal year retroactive to September 1986.[1/] The Wodzinski petition contains a similar allegation and also alleges that the amount assessed by the Association for the 1984-1985, 1985-1986 and 1986-1987 dues years included expenditures on activities unrelated to negotiations and contract administration. Petitioners allege that the Association has illegally collected fees covering a period when there was not an adequate demand and return system in place. Petitioners seek a refund of all fees paid which are allocable to the period from September, 1986 up until the dates petitioners received information concerning the expenditures of the Association and the MCEA. Wodzinski seeks full refunds of all fees back to the 1983-1984 dues year.[2/]

On January 21, 1987, and May 13, 1987 (AB-87-8), April 29, 1987 (AB-87-20), and June 8, 1987 (AB-88-25), the Association filed

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1/ The respondent's dues year coincides with its fiscal year. See N.J.A.C. 19:17-3.1, 3.2

2/ Faught and Salles were among 12 petitioners in Howard Salles et al v. Woodbridge Tp. Education Association, Docket No. AB-87-11., who challenged representation fees assessed in 1983-1984, 1984-1985 and 1985-1986. That petition was withdrawn before collections began for the 1986-1987 dues year.

Answers to the petitions. On August 13, 1987, after consolidating the three petitions, we referred the matter to the Office of Administrative Law for hearing.[3/] The matter was assigned to Administrative Law Judge Daniel Monyek. On November 20, 1987, following a conference, Judge Monyek issued a Prehearing Order, listing four issues in dispute:

1. Does the Public Employment Relations Commission Appeal Board have jurisdiction to hear appellants' appeal with regard to the question of retroactive deductions where information pertaining to said deductions was received prior to the making of the deduction but which deductions covered certain months prior to the receipt of the relevant information, during which months services were rendered by the Education Association to appellants and which deductions 0ere made pursuant to the information received by appellants.

2. If the Public Employment Relations Commission Appeal Board has jurisdiction to hear the aforesaid question, was the procedure employed by respondent proper?

3. Whether the expenditures of respondent for 1986-1987 dues entitles Appellant Wodzinski to a refund, and if so, how much?

4. Whether Wodzinski's assertion for refunds for fiscal years 1983-84, 1984-85, and 1985-86, was timely filed, and if so, is he entitled to a refund, and if so entitled, how much of a refund?

3/ All three petitioners and respondent agreed that the petitions should be consolidated for hearing. A request by the respondent that these cases should be further consolidated with all pending cases involving NJEA/NEA affiliates was denied without prejudice.

On December 21, 1987, respondent filed a Motion for Summary Decision with respect to the first issue in the prehearing order and a stipulation of partial settlement executed by respondent's counsel and Wodzinski. The stipulation recited that Wodzinski abandoned all challenges to fees assessed for 1983-1984 through 1986-1987, except to challenge the respondent's right to collect fees retroactively for the period prior to his receipt of budgetary information for the 1986-1987 fiscal/dues year. Respondent agreed to pay Wodzinski $200.00.

On March 25, 1988, Judge Monyek issued his initial decision, which granted respondent's motion for summary decision and approved the partial settlement with petitioner Wodzinski. Relying upon Boonton Bd. of Ed. v. Kramer, 99 N.J. 523 (1985), cert. den. 106 S. Ct. 1388 (1986), he concluded that the Appeal Board lacked jurisdiction to hear fee challenges which are based solely on the mechanics of fee collection, rather than on the amount of the fee or the purposes for which the fee was used. He recommended that the settlement agreement with petitioner Wodzinski be approved and that all other claims of all petitioners be dismissed. A copy of his report is appended to this Decision.

On March 30, 1988, the petitioners sent a letter to the Public Employment Relations Commission ("Commission") and copied the Chairman of the Appeal Board. The letter referred to the initial decision and stated that the petitioners wished to challenge the retroactive collection of fees for the 1986-1987 and 1987-1988 fiscal years before the Commission. On April 12, 1988 we wrote to

the petitioners advising that Judge Monyek's decision was not final, that their letter was received within the time period allotted for filing exceptions to an Initial Decision, and that they could have until April 20, 1988 to supplement their letter. No further submission was made by the petitioners. On April 20, 1988 the Association responded to the petitioner's March 30, 1988 letter urging that the Appeal Board adopt the initial decision. Pursuant to N.J.S.A. 52:14B-10(c) the case is properly before us to adopt, reject or modify the Initial Decision.

We have reviewed the Initial Decision in light of the petitioner's exceptions, respondent's reply and the record. There are no disputed factual issues and the matter is appropriate for summary decision. We adopt Judge Monyek's recommendations that the settlement be approved and the petitions be otherwise dismissed, but we reject his conclusion that the Appeal Board lacks jurisdiction to determine any issues involving the existence and mechanics of the systems established by majority representative organizations to provide information about and collect representation fees.

Wodzinski's challenges to the amounts of the representation fees have been resolved by the partial settlement. Salles and Faught have not challenged either the calculation of their fees or the purposes for which the petitioner and its affiliates have used the fees. Thus the challenge to the demand and return system used by respondent is not coupled with a challenge to the amount or the uses of the fees. Under these circumstances we agree that the

petitions should be dismissed.[4/] However, we do not agree with the Administrative Law Judge's conclusion that all challenges to the presence, structure and mechanics of a majority representative's demand and return system are beyond our jurisdiction. While the Judge properly framed a narrow issue (Initial Decision at 4), his comments could foreclose our inquiry into such issues in cases where their resolution might be necessary to discharge our statutory responsibilities. An administrative agency's authority should be construed to accomplish the full legislative intent. Cammarata v. Essex County Park Commission, 26 N.J. 404 (1958). Thus, we disagree with Judge Monyek's view of Boonton. The Supreme Court held that the Commission lacked jurisdiction to determine challenges to the amount of the fee. 99 N.J. at 534-535. It held such matters were within the exclusive jurisdiction of the Appeal Board. 99 N.J. at 536, n.1. The focus was on the Commission's jurisdiction. The Court did not hold that the Appeal Board lacked jurisdiction to consider the existence or sufficiency of a demand and return system.

Where a petitioner has settled or abandoned any challenge to the amount or uses of the fee, and does not question the accuracy of the information explaining the fee's basis, there is no reason

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4/ It is not clear from the record whether all of Wodzinski's 1986-1987 representation fees have already been refunded. If that is the case his appeal would be moot and we would dismiss his petition. See Mallamud and Rutgers Coun. of AAUP Chapters, A.B.D. No. 86-9, 12 NJPER 324 (¶17127 1986), app. dism. as moot App. Div. Dkt. No. 4715-85T6 (6/1/87)

for this Board to act.[5/] However, where a refund of representation fees is sought because it is alleged that the amounts assessed are improperly calculated or are used for impermissible activities, the existence and integrity of the demand and return system may be relevant. The amount of the fee must be based upon the information provided to representation fee payers by the demand and return system. See N.J.A.C. 19:17-3.3(a)(1), 19:17-3.4(a)(2). Thus the adequacy of the information provided may be relevant in determining whether the majority representative has adequately established how the fee is being spent.

Additionally, a narrow restriction on our jurisdiction could require fee payers to commence administrative proceedings before two agencies to obtain adequate relief. Boonton declared that systems to review representation fees should "contain no features that would in any manner restrain or inhibit a non-member employee from utilizing it." 99 N.J. at 551-552. A fee payer who seeks only a refund of fees improperly collected can get full relief from the Appeal Board. He may not want to expend the effort to prosecute an unfair practice charge. See N.J.S.A. 34:13A-5.4(c). Yet if a narrow view of our jurisdiction prevails a fee payer may

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5/ We do not view the issue decided by the Administrative Law Judge to be a challenge to the "amount" of the fee. Had the information been given to the petitioners before the dues/fiscal year, the representation fee would have been the same and the present issue would not have been raised. We also note that when we referred these cases to the Office of Administrative Law, the dispute also involved challenges to the amount and uses of the fee.

first have to go to the Commission to remedy an absent or defective demand and return system and also to the Appeal Board to obtain a refund if the majority representative cannot justify its fee.[6/]

In sum, we do not agree that demand and return system issues are beyond our jurisdiction. Such issues may bear directly on the disputes this Board was established to resolve. Cf. NLRB v. C and C Plywood, 385 U.S. 421 (1967) (NLRB has power to interpret collective bargaining agreements if necessary to resolve unfair practice charges). But since these petitioners have either resolved or abandoned their attack on the amount or uses of the fees, our jurisdiction is not properly invoked. Since we dismiss the petitions, we do not determine whether retroactive collection under the circumstances is proper.

ORDER

The Initial Decision of the Office of Administrative Law, as modified above, is adopted.

BY ORDER OF THE APPEAL BOARD

WILLIAM A. NOTO
Chairman

DATED: TRENTON, NEW JERSEY
May 10, 1988

Chair Noto and Board Members Dorf and Verhage voted for this decision.

6/ The Commission does not have jurisdiction to review the amounts assessed as representation fees. Boonton.