

A.B.D. No. 86-5

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

OAL DKT. NO. PRB-5884-83 et al.
AGENCY DKT NO. AB-83-11, et al.

MARILYN LEDERMAN, et al.

Petitioner,

v.

**COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO,**

Respondent.

Petitioners **Bernard T. Sweeney, Pauline Bartko and Daniel Alfieri**, appeared pro se at plenary hearings. No appearances by or on behalf of any other Petitioners.

Michael T. Leibig, Esq. (Zwerdling, Schlossberg, Leibig & Schlossberg, attorneys) and **Steven P. Weissman**, Esq. (Counsel, District One) for Respondent

DECISION AND ORDER

Between April 3, 1983 and February 24, 1984, 44 employees of the State of New Jersey filed Petitions of Appeal with the Public Employment Relations Commission Appeal Board ("Appeal Board"). The petitions allege that representation fees in lieu of dues assessed by the Communications Workers of America ("CWA") and its affiliated Locals pursuant to N.J.S.A. 34:13A-5.5 et seq. were improper. The Respondent filed an Answer to each petition and the cases were transferred to the Office of Administrative Law ("OAL") pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. They were

all consolidated for hearing and assigned to Administrative Law Judge Joseph Lavery, who conducted hearings on May 20 and 21, 1985.^{1/}

On December 5, 1985, the Administrative Law Judge issued his Initial Decision approving settlements reached by the CWA and nine of the petitioners and recommending dismissal of the remaining petitioners' appeals. A copy of his report is appended to this Decision.

No exceptions have been filed from Judge Lavery's Initial Decision.^{2/} We have reviewed the entire record in this proceeding and agree with his conclusion that the CWA and its affiliated Locals correctly calculated the pro rata rebates, as defined in N.J.S.A. 34:13A-5.5(c), due representation fee payers who requested such returns for the period between July 1, 1982 and December 30, 1983.^{3/} We modify his decision by granting refunds, in amounts

^{1/} Some of the petitions were initially dismissed and then remanded to the OAL as noted in the Procedural History portion of Judge Lavery's Initial Decision. See e.g., Daniel Alfieri v. C.W.A., A.B.D. No. 85-9, 11 NJPER 125 (¶16053 1985). The Appeal Board also dismissed seven petitions filed by employees who were still CWA members for the period covered by the petitions. See Joyce Eldridge, et al. v. CWA, A.B.D. No. 85-1, 10 NJPER 612 (¶15288 1984).

^{2/} The OAL has granted our request to extend the 45-day period of time to consider the Initial Decision.

^{3/} N.J.S.A. 34:13A-5.5(c) provides:
"Any public employee who pays a representation fee in lieu of dues shall have the right to demand and receive from the majority representative under proceedings established and maintained in accordance with section 3 of this act, a return

calculated by the CWA, to those petitioners in these consolidated cases, and these consolidated cases only, who did not make a demand for return of their pro rata shares until filing a petition with the Appeal Board. In all other respects we affirm Judge Lavery's Initial Decision.

The fact that an individual chooses not to join a majority representative does not mean that the employee necessarily objects to the organization's partisan political expenditures. The United States Supreme Court, in International Association of Machinists v. Street, 367 U.S. 740, 774, 48 LRRM 2345 (1961), held: "dissent is not to be presumed--it must affirmatively be made known to the union by the dissenting employee." Absent a demand by a representation fee payer for a return of his pro rata share, as defined in N.J.S.A. 34:13A-5.5(c), a majority representative has no obligation to escrow that person's representation fees or to provide the employee with a

3/ Footnote Continued From Previous Page

of any part of that fee paid by him which represents the employee's additional pro rata share of expenditures by the majority representative that is either in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms or conditions of employment or applied toward the cost of any other benefits available only to members of the majority representative. The pro rata share subject to refund shall not include the costs of lobbying activities designed to foster policy goals in collective negotiations and contract administration or to secure for the employees represented advantages in wages, hours, and other conditions of employment in addition to those secured through collective negotiations with the public employer."

rebate. The demand and return system adopted by the CWA affords a method to employees who pay representation fees to make such dissent known. The purpose of an appeal to the Appeal Board is to determine whether the amounts returned by the majority representative are correct.

The appeals in these cases cover three separate fiscal periods over 18 months. Because of a change in the CWA's fiscal year, separate rebates were calculated for July 1, 1982 to September 30, 1982, October 1, 1982 to March 31, 1983 and April 1, 1983 to December 31, 1983. Some of the petitioners did not file separate rebate requests covering all three of these periods. As a result they were not given rebates for the periods for which no request was made. Nevertheless, due to the confusion that may have arisen from the CWA's fiscal year changeover, the need for demands for rebates to be filed more than once within fairly brief periods of time, the newness of the entire procedure, and the fact that the petitioners did make known their objections by initiating appeals with this Board in a reasonably prompt fashion, we believe they should receive the full rebates calculated by the CWA for the three periods covered by these appeals. The names of the affected individuals and the periods for which they have not yet received rebates are appended to this decision.

We emphasize that the rebates awarded are to be in the amounts which were originally calculated by the CWA and its affiliated Locals. Based upon our review of the extensive record in

this case, we are persuaded that the calculations made by the CWA are correct and that there is no merit to the allegations in any of the petitions that the CWA expended any additional monies for impermissible purposes for the time periods in question. Since the CWA was not at fault in not sending rebates to petitioners who failed to demand them until filing petitions with this Board, we direct that only the principal amounts of the rebates be paid. No interest is due. Moreover, this order applies only to the petitioners whose appeals are still active in these cases and not to those who entered settlements with the CWA. The appropriate amounts can be computed by the CWA.

ORDER

The petitioners' appeals challenging the amounts calculated by the CWA and its Locals, 1033, 1038 and 1040, as pro rata rebates of representation fees in lieu of dues covering the period between July 1, 1982 to December 30, 1983 are dismissed. The CWA and/or the appropriate Local shall pay to those petitioners listed in the Appendix to this decision rebates in the amounts previously calculated by the CWA for the periods listed next to their names,

provided such rebates have not already been paid to them.^{4/}

BY ORDER OF THE APPEAL BOARD

Robert J. Pacca
Chairman

Chairman Pacca and Board Member Dorf voted in favor of this decision.

DATED: Trenton, New Jersey
February 18, 1986

^{4/} The petitioners entitled to rebates should assist the CWA by providing CWA with information concerning the amounts deducted as representation fees for the appropriate periods, if such assistance is needed and requested by the CWA.

APPENDIX A

<u>NAME</u>	<u>DOCKET NO.</u>	<u>LOCAL</u>	<u>REBATE DUE FOR</u>
Lane, Alan	AB-84-2	1033	7/1/82 to 12/31/83
Park, Szonga	AB-84-2	1033	7/1/82 to 12/31/83
Venella, Florence	AB-84-17	1033	7/1/82 to 9/30/82
Sweeney, Bernard	AB-83-9	1033	10/1/82 to 12/31/83
Campisi, Frank	AB-83-3	1033	10/1/82 to 12/31/83
Allen, James	AB-83-3	1033	10/1/82 to 12/31/83
Kossak, Seymour	AB-83-3	1033	10/1/82 to 12/31/83
Marlan, Herbert	AB-83-3	1033	10/1/82 to 12/31/83
Joyce Eldridge	AB-84-15	1033	7/1/82 to 12/31/83
Bartzak, Stephen	AB-84-15	1033	7/1/82 to 12/31/83
Cuskley, Lynn	AB-84-15	1033	7/1/82 to 12/31/83
Eckley, Janet	AB-84-15	1033	7/1/82 to 12/31/83
Giehl, Florence	AB-84-15	1033	7/1/82 to 12/31/83
Konnegue, Frances	AB-84-15	1033	7/1/82 to 12/31/83
Andreoli, Theresa	AB-84-15	1033	7/1/82 to 12/31/83
Moeller, Maryann	AB-84-15	1033	7/1/82 to 12/31/83
Clemens, Patricia	AB-84-15	1033	7/1/82 to 12/31/83
Stout, Susan	AB-84-15	1033	7/1/82 to 12/31/83
Neylan, Michael	AB-84-15	1033	7/1/82 to 12/31/83

<u>NAME</u>	<u>DOCKET NO.</u>	<u>LOCAL</u>	<u>REBATE DUE FOR</u>
Foster, Judy	AB-84-15	1033	7/1/82 to 12/31/83
Miles, Peggy	AB-84-15	1033	7/1/82 to 9/30/82 and 4/1/83 to 12/31/83
Jones, Maryann	AB-84-15	1033	7/1/82 to 9/30/82 and 4/1/83 to 12/31/83
Shaddow, Constance	AB-84-15	1033	7/1/82 to 9/30/82 and 4/1/83 to 12/31/83
Lederman, Marilyn	AB-83-11	1040	10/1/82 to 7/30/83*

*Petitioner left state employment on or about this date.