

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

OAL DKT #PRB-07994-84
AGENCY DKT #AB-84-4

PHYLLIS CHARNEY ET. AL.

Petitioners,

v.

**EAST WINDSOR REGIONAL
SUPPORTIVE STAFF ASSOCIATION**

Respondent.

Steven W. Charney, nonlawyer representative appearing pursuant to N.J.A.C. 1:1-3.12, for petitioners

Richard Friedman, Esq. (Ruhlman, Butrym & Friedman, attorneys) for respondent

DECISION AND ORDER

On October 13, 1983, Phyllis Charney, Julia Given, Anna Van Pelt, Donna Smith, Muriel Ohle, June House, Louise Armitage and Maryann Godish, filed petitions of appeal with the Public Employment Relations Commission Appeal Board ("Appeal Board"). The petitioners are employees of the East Windsor Regional School District and are represented for purposes of collective negotiations by Respondent, East Windsor Regional Supportive Staff Association ("Association"), an affiliate of the New Jersey Education Association ("NJEA"). The petitions allege that representation fees in lieu of dues assessed by the Association and the NJEA for 1983-1984 pursuant to N.J.S.A. 34:13A-5.5 et. seq. were improper. The Respondent filed an Answer

on November 18, 1983 and the case was transferred to the Office of Administrative Law pursuant to N.J.S.A. 52:14B-1 et. seq. and N.J.S.A. 52:14F-1 et. seq. on October 24, 1984. The case was assigned to Administrative Law Judge Joseph Lavery, who conducted hearings on April 1 and 30, 1985. Prior to the close of the record all petitioners except Julia Given and Phyllis Charney withdrew their appeals.

On August 23, 1985, the Administrative Law Judge issued his Initial Decision recommending dismissal of the remaining petitioners' appeals. A copy of his report is appended to this Decision. He concluded that:

...the (Association) and the (NJEA) have satisfied their burden of proof under the Act. They have demonstrated that representation fees deducted from petitioners' salaries have not been put to impermissible uses, but have been expended on those functions which are germane to their responsibilities in the course of collective bargaining, contract administration and grievance adjustment.
Initial Decision at p. 18

No exceptions have been filed to the Initial Decision. Pursuant to N.J.S.A. 52:14B-10(c) the case is properly before us to affirm, reject or modify the Initial Decision.* Based upon our review of the entire record and in the absence of exceptions we

*The Office of Administrative Law has granted our request to extend the 45 day period of time to consider the Initial Decision.

adopt the findings of fact and conclusions of law made by Judge Lavery and affirm his conclusion that the petitioners' appeals should be dismissed.

N.J.S.A. 34:13A-5.5(c) establishes the right of a non-member paying a representation fee in lieu of dues to receive,

...a return 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 and 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 reflect, however, 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 terms and conditions of employment in addition to those secured through collective negotiations with the public employer.

We agree that none of the 1983-1984 expenditures of either the NJEA or the Association for rebatable or impermissible purposes exceeded the 15 per cent cushion built into the representation fee legislation which limits non-member assessments to a maximum of 85 per cent of the dues and fees charged to members. However, since the majority representative organizations and their affiliates must bear the burden of proof in Appeal Board cases, we do not agree that the percentage that the NJEA spends on rebatable or impermissible activities can automatically be imputed to the local Association, which had a separate budget and identifiable items of revenue and

expense (See Exhibits R-22 and R-23). On this point we agree with Judge Lavery's alternatively stated conclusion (Initial Decision at p. 18) that 1983-1984 local Association expenditures did not give rise to a right to a rebate, because the Association proved that the "social" and "political" expense items were almost entirely used for permissible, non-rebatable purposes (Tr. 4/1/85 at 149-151, 156). Based upon our review of the record and in the absence of exceptions, we agree with the Administrative Law Judge that the petitioners are not entitled to any rebate of their 1983-1984 representation fees in lieu of dues. We thus affirm the Initial Decision of the ALJ.

ORDER

The petitioners' appeal for a return of their 1983-1984 representation fees in lieu of dues is hereby dismissed.

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
October 16, 1985
ISSUED: October 17, 1985