

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

APPEAL BD DKT No. AB-99-4

LEONARD KELLY,

Petitioner,

v.

NEW JERSEY EDUCATION ASSOCIATION,

Respondent.

Appearances:

Leonard Kelly, pro se

Richard A. Friedman, Esq. for respondent (Zazzali, Zazzali, Fagella and Nowak, attorneys)

DECISION AND ORDER

On April 30, 1999, Leonard Kelly filed a petition of appeal with the Public Employment Relations Commission Appeal Board ("Appeal Board"). Since at least January 1, 1999, the petitioner, an employee of the Union County Educational Services Commission, has paid a representation fee in lieu of dues to the New Jersey Education Association and its national, county and local affiliates. The petition was supported by a brief and attached exhibits which had been submitted by the petitioner to an arbitrator appointed to assess the propriety of representation fees in lieu of dues assessed by the NJEA in accordance with the organization's internal review procedure.

On August 6, 1999, in lieu of filing an Answer, the NJEA submitted a copy of a letter and check it had sent to the

petitioner. The amount of the check, \$484.29, is slightly more than the amount listed on the petition as the sum Kelly is assessed annually as a representation fee in lieu of dues. The NJEA asserted that in accordance with Daly v. High Bridge Teachers' Ass'n, A.B.D. No. 90-3, 15 NJPER 550 (¶20225 1989), aff'd 242 N.J. Super. 12 (App. Div. 1990), certif. den. 122 N.J. 356 (1990), the tender of an amount equal to the representation fee assessed for the period covered by the appeal renders the petitioner's challenge before the Appeal Board moot.

On August 10, 1999 the petitioner responded, asserting that the NJEA had not maintained a proper demand and return system as required by N.J.S.A. 34:13A-5.6, specifically by failing to provide him with an appropriate breakdown of chargeable and non-chargeable expenses as required by Boonton Bd. of Ed. v. Kramer, 99 N.J. 523 (1985) cert. den. 106 S. Ct. 1388 (1986) and Chicago Teachers' Union v Hudson, 475 U.S. 292 (1986). Kelly asserted that he should be able to maintain his appeal to insure that a proper system to collect fees and process appeals is established. Alternatively, he argues that unless a comparable refund is offered to all those who are paying a representation fee in lieu of dues, his appeal is not moot. He also asserted that the amount of the refund check was not equivalent to an annual representation fee in lieu of dues as it did not include interest on the amounts already collected.

On August 26, 1999 we invited the parties to make any additional submissions on or before September 14, 1999.

On September 7, 1999 the NJEA submitted correspondence asserting that up until January 1, 1999, Kelly had been a member of the NJEA. A copy of a dues deduction termination request, signed by Kelly in accordance with N.J.S.A. 52:14- 15.9, was attached. The NJEA asserted that as Kelly was a member for much of the 1998-1999 dues year, the amount of the check it had tendered to him was well in excess of the amounts he had actually been assessed as a representation fee in lieu of dues, after he was no longer a member of the NJEA.

On September 24, 1999, Kelly submitted a letter objecting to the actions of two officials of the Westlake Education Association who, four days earlier, had allegedly tried to humiliate him by "serving" him with a letter in a formal and officious manner while Kelly was on bus duty in front of the Westlake School. The letter invited Kelly to join the Association, listed the amount of annual dues and of the representation fee in lieu of dues assessed to nonmembers, spelled out payment options and certain membership.

We now consider whether to dismiss Kelly's petition.

In Anderson et al, v. Communications Workers of America, P.E.R.C. NO. 90-52, A.B.D. NO. 90-4, 16 NJPER 13 (¶21008 1989), the Appeal Board and the Public Employment Relations Commission jointly held that in cases where disputes about the amount of a representation fee have been settled or resolved, the Appeal Board does not have jurisdiction to review the adequacy of the majority representative's fee collection procedures. But, a majority

representative's use of improper fee collection procedures is an unfair practice under the jurisdiction of PERC. Boonton Bd. of Ed. v. Kramer, P.E.R.C. No. 84-3, 9 NJPER 472 (¶14199 1983), *aff'd as mod.* 99 N.J. 523 (1985), *cert. den.* 106 S. Ct. 1388 (1986). PERC can order a majority representative to correct its fee collection procedures. See Boonton and Bacon, et al. and District 65, UAW, P.E.R.C. No. 87-72, 13 NJPER 57 (¶18025 1986), *aff'd* NJPER Supp. 2d. 196 (¶174 App. Div. 1988), *certif. den.* 114 N.J. 308 (1988).

Because our remedial power is limited to ordering a refund we can provide no further relief to the petitioner than that already proposed by the NJEA. Though he asserts that the NJEA should tender its offer to all fee payers, nothing Kelly has submitted establishes that he has authority to represent or speak for anyone other than himself. Thus, continued litigation before this agency could not augment the remedy which is now available as a settlement. Such litigation would be a waste of everyone's resources. See Daly; Wodzinski v. Woodbridge Tp. Ed. Ass'n, A.B.D. No. 88-5, 14 NJPER 381 (¶19149 1988).

As the correspondence and documents he has submitted show, the petitioner is aware that dismissal of his petition would not leave him without recourse to challenge the NJEA's fee collection procedures. He has already exercised his right to pursue his challenge before the arbitrator conducting a review of the NJEA's representation fee. And, his submissions to us reflect that he previously filed an unfair practice charge with PERC.

Petitioner does not contest the NJEA's assertion that, for part of the dues year covered by his appeal, he was a member of the NJEA, or its representation that the amount of the refund it has offered is well in excess of the representation fees he was assessed after January 1, 1999. As we can provide no additional relief we are deprived of ancillary jurisdiction to address the issues raised by the petitioner concerning the adequacy of the NJEA's refund procedure.

ORDER

The NJEA's motion is granted and this appeal is dismissed as moot.

BY ORDER OF THE APPEAL BOARD

CATHERINE FRANK-WHITE
Chairman

DATED: TRENTON, NEW JERSEY

October 26, 1999

ISSUED: October 27, 1999