

P.D.D. No. 2010-5

STATE OF NEW JERSEY
BEFORE A DESIGNEE OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LITTLE SILVER BOARD OF
EDUCATION,

Public Employer,

-and-

Docket No. PD-2010-005

LITTLE SILVER EDUCATION
ASSOCIATION,

Petitioner.

SYNOPSIS

The Little Silver Education Association filed a petition for payroll deduction determination pursuant to N.J.S.A. 34:13A-5.5 and N.J.A.C. 19:19-2.2 requesting that the Commission order the Little Silver Board of Education to deduct a representation fee in lieu of dues from the salaries of employees who are not voluntary dues paying members of the majority representative. The Board objected to the petition arguing it was untimely because the Association had not sought to negotiate over representation fees during the negotiations that led to a memorandum of agreement. The Commission Designee held that the petition was timely, and that there was no limitation on when such a petition could be filed. He found that the Association's petition met all of the requirements under the statute and rules and that the Association was entitled to a Commission order directing the Board to institute the deduction of the representation fee.

P.D.D. No. 2010-5

STATE OF NEW JERSEY
BEFORE A DESIGNEE OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LITTLE SILVER BOARD OF
EDUCATION,

Public Employer,

-and-

Docket No. PD-2010-005

LITTLE SILVER EDUCATION
ASSOCIATION,

Petitioner.

Appearances:

For the Public Employer,
Lindabury, McCormick, Estabrook & Cooper, attorneys
(Anthony P. Sciarrillo, of counsel)

For the Petitioner,
Selikoff & Cohen, attorneys (Joel S. Selikoff, of
counsel)

DECISION

On March 30, 2010, the Little Silver Education Association (Association) filed a Petition for Payroll Deduction Determination with the Public Employment Relations Commission (Commission) seeking an order directing the Little Silver Board of Education (Board) to deduct representation fees in lieu of dues from the salaries of non-member employees in a negotiations unit consisting of all full time certificated personnel under contract with the Board, or on leave from the school district, including by way of limitation teachers, librarians, nurses,

learning disabilities teacher consultants employed by the Board; but excluding employees in the positions of superintendent, secretaries, administrative personnel and custodians. The petition was filed pursuant to N.J.S.A. 34:13A-5.5 and N.J.A.C. 19:19-2.2. Proper service was effected upon the Board. The law authorizes the Commission to conduct an investigation and to order a payroll deduction of representation fees in lieu of dues if a majority of employees in the negotiations unit are voluntary dues paying members of the majority representative and the majority representative maintains a demand and return system as required by N.J.S.A. 34:13A-5.6. The Association has filed documents in support of its claim that a majority of employees in the unit are voluntary dues paying members of the union and that it maintains the required demand and return system.

On April 26, 2010, the Board filed a brief and exhibits in opposition to the Association's petition. It argued that the Association had not made a timely demand to negotiate representation fees and, therefore, the Commission lacked jurisdiction to continue to process the petition. The Association responded by May 18, 2010, arguing that the parties had communicated regarding representation fees and that the Commission had jurisdiction and should grant the petition.

The investigation has revealed the following pertinent facts:

1. The parties signed a memorandum of agreement (MOA) on June 18, 2009 for a new collective agreement to be effective from July 1, 2009 through June 30, 2012. The Association had not made a demand to negotiate for - nor did the parties actually negotiate over - a representation fee (or agency fee) clause prior to signing the MOA.

2. By letter of November 16, 2009 - which was prior to the parties completing and signing their new collective agreement, the Association notified the Board's attorney of its desire to negotiate a representation fee clause for the new agreement. The Board's attorney responded by letter of November 23, 2009, asking the Association to provide dates and times to discuss the matter.

3. The Association sent proposed language for a representation fee clause to the Board on January 4, 2010. By letter of February 23, 2010, the Association asked the Board for its position on the representation fee clause and a voluntary recognition issue by March 1, 2010. The Board responded by letter of March 1, 2010 that the Association's request for negotiations over representation fees was untimely and it denied the Association's request to negotiate over that issue.

4. This petition was filed on March 30, 2010. There is no indication whether and/or when the new collective agreement was signed.

5. Based upon the above facts and the analysis below, I find that the Board and the Association have negotiated concerning the subject of representation fees in lieu of dues, but no agreement has been reached regarding such payments.

6. The Association is the majority representative of a collective negotiations unit consisting of all full time certificated personnel under contract with the Board, or on leave from the school district, including by way of limitation teachers, librarians, nurses, learning disabilities teacher consultants employed by the Board; but excluding employees in the positions of superintendent, secretaries, administrative personnel and custodians.

7. But for one minor correction provided by the Board, the parties have stipulated that the list of dues paying members attached to the Association's petition is accurate.

8. The evidence provided shows that the negotiations unit consists of 81 employees, of which 78 (96%) are currently voluntary dues paying members of the Association.

9. The Association maintains a demand and return system as required by N.J.S.A. 34:13A-5.5(c) and 5.6.

ANALYSIS

Although a demand to negotiate representation fees was made in this case, the Board argues it was untimely because it was made after the parties reached a memorandum of agreement for a

new contract. However, no timeliness requirement exists in either the Act or the rules. The Act simply provides that, if a majority of employees in the unit are voluntary dues payers and the union maintains a demand and return system then the employer should be required to implement a representation fee in lieu of dues for the non-dues payers.

N.J.S.A. 34:13A-5.5 provides in pertinent part:

If the commission determines during the investigation that a majority of the employees in the negotiations unit are voluntary dues paying members of the majority representative and that the majority representative maintains a demand and return system as required by subsection c. of this section and section 3 of P.L.1979, c.477 (C.34:13A-5.6), the commission shall order the public employer to institute a payroll deduction of the representation fee in lieu of dues from the wages or salaries of the employees in the negotiations unit who are not members of the majority representative.

Our rules at N.J.A.C. 19:19-2.2(a)3 provides that the petitioning union must:

Specify that the petitioner and the employer have negotiated concerning the subject of representation fees in lieu of dues and that no agreement requiring such payments has been reached;

There is no language in our rules requiring or suggesting when the parties had to have had negotiated over representation fees, only that they did, and that no agreement was reached.

The Commission and Court decisions in Hunterdon County, P.E.R.C. No. 2003-24, 28 NJPER 433 (¶33159 2002) aff'd, 369 N.J.

Super. 572 (App. Div. 2004), cert. den. 182 N.J. 139 (2004) are instructive. There, a union was not required to wait until after an existing contract expired to demand negotiations over representation fees. In comparing that case to its decision in Wayne Bd. Ed., P.E.R.C. No. 81-106, 7 NJPER 151 (¶12067 1981), where it held that an employer had an obligation to negotiate mid-contract over representation fees, the Commission explained that the union's unsuccessful effort to negotiate representation fees in the past satisfied its negotiations obligation over the subject for purposes of payroll deduction determination. The Commission also held that the Legislature did not specify a time frame for negotiations to satisfy payroll deduction requirements. 28 NJPER at 435.

The Appellate Division in affirming explained:

Suffice it to say, there is no statutory requirement that majority representatives have to wait until after existing contracts expire to demand either negotiations or an investigation by PERC to determine whether the statutory preconditions to the imposition of agency fees have been satisfied. The amendatory language is clear and the duty imposed on PERC, upon such a determination, is mandatory. Simply put, there is no legislative limitation as to the timing of negotiations or, alternatively, petitioning PERC. In re Hunterdon County, 369 N.J. Super. At 583.

Based upon a reading of our rules and Hunterdon, I find there is no time limitation for filing and pursuing a petition for payroll deduction determination. The remaining issue is

whether the parties "negotiated" over representation fees. I find they did. The Association made the demand to negotiate representation fees in November 2009, the Board, at first, gave an indication it would negotiate, but ultimately, it refused to negotiate. The Association made the appropriate effort to comply with N.J.A.C. 19:19-2.2(a)3, and cannot be penalized because of the Board's refusal to negotiate. The effort to negotiate over representation fees broke down making it appropriate for the Association to pursue this petition.

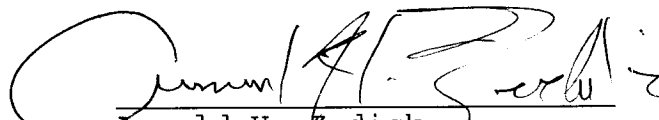
Consequently, having found that the Association has satisfied the conditions mandated in N.J.S.A. 34:13A-5.5 and N.J.A.C. 19:19-2.2, I find that it is entitled to the receipt of a representation fee in lieu of dues from unit employees who are not dues paying members of the Association, subject to compliance with the Public Employment Relations Commission Appeal Board rules, N.J.A.C. 19:17-1.1 to -4.5.

ORDER

The Little Silver Board of Education is **ORDERED** to institute a payroll deduction of the representation fee in lieu of dues from the wages or salaries of the negotiations unit employees who are not members of the Association after being notified by the Association that it has complied with the requirements of N.J.A.C. 19:17-3.3 and -4.1.

The Little Silver Board of Education must post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced, or covered by other materials.

Within twenty (20) days of receipt of this decision, notify the Commission Chair of the steps the Respondent has taken to comply with this order.



Arnold H. Zudick
Commission Designee

DATED: May 28, 2010
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:19-4.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:19-4.3.

Any request for review is due by June 8, 2010.



NOTICE TO EMPLOYEES



PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF THE NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT, AS AMENDED,

We hereby notify our employees that:

Pursuant to N.J.S.A. 34:13A-5.5, the Public Employment Relations Commission must order a public employer to institute a payroll deduction of a representation fee in lieu of dues from the wages or salaries of employees in a negotiations unit who are not members of the majority representative if a majority representative petitions the Commission to conduct an investigation and the investigation shows that a majority of negotiations unit employees are voluntary dues paying members of the majority representative and that the majority representative maintains a demand and return system as required by N.J.S.A. 34:13A-5.5(c) and 5.6.

On March 30, 2010, the Little Silver Education Association filed a Petition for Payroll Deduction Determination-Representation Fees. The Commission conducted an investigation and determined that a majority of employees in the unit consisting of all full time certificated personnel under contract with the Board, or on leave from the school district, including by way of limitation teachers, librarians, nurses, learning disabilities teacher consultants employed by the Board are voluntary dues paying members of the Association and that the Association maintains a demand and return system as required by N.J.S.A. 34:13A-5.5(c) and 5.6. Accordingly, the Commission has ordered the public employer to institute a payroll deduction of the representation fee in lieu of dues from the wages or salaries of the negotiations unit employees who are not members of the Association after being notified by the Association that it has complied with the requirements of N.J.A.C. 19:17-3.3 and -4.1.

Docket No. PD-2010-005

Little Silver Board of Education
(Public Employer)

Date: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, NJ 08625-0429 (609) 984-7372