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

OAL DKT #PRB-7869-84
AGENCY DKT #AB-84-6

JOYCE ALUNNI,

Petitioner,

v.

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Respondent.

No appearance by or on behalf of petitioner

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

ORDER OF REMAND

On February 5, 1985, Administrative Law Judge Joseph Lavery entered an order dismissing a Petition of Appeal filed with the Public Employment Relations Commission Appeal Board (hereinafter Appeal Board) on account of the petitioner's failure to appear at the hearing convened by the Office of Administrative Law pursuant to N.J.A.C. 1:20-1.1 et. seq. The proceeding was commenced following the conclusion of a demand and return system proceeding conducted by the Communications Workers of America (hereinafter CWA), the majority representative organization to which the petitioner pays a representation fee in lieu of dues. The petition alleges that the CWA is not entitled to the amounts it has assessed the petitioner.

N.J.S.A. 34:13A-5.6 and N.J.A.C. 1:20-3.2 provide respectively, that the majority representative bears the burden of proof both in demand and return system proceedings and in cases within the jurisdiction of the Appeal Board.[1/] In order to commence a proceeding in CWA's demand and return system, an employee paying a representation fee in lieu of dues need only notify CWA that he or she desires a refund of the rebatable portion of the representation fee in lieu of dues, i.e. monies expended by CWA for member-only benefits or lobbying activities which are only incidentally related to the terms and conditions of employment, N.J.S.A. 34:13A-5.5. The employee requesting a rebate need not appear before the persons or bodies comprising the demand and return system in order to avail himself or herself of the procedure, because the burden is on the union to justify the amount of its fee99. City of Jersey City and Jersey City Police Superior Officers Ass'n, P.E.R.C. No. 84-24, 9 NJPER 591 (¶14249 1983)

[dismd App. Div. No. A-652-83T3 by stip 3/2/84]ve organization. Such appeals are de novo proceedings with the burden of proof on the majority representative to establish that the fees assessed to non-member employees meet the requirements of the representation fee legislation. Given the similarilties between proceedings before this

1/ Our discussion of demand and return system proceedings in this opinion is for illustration purposes only and does not represent an opinion as to whether use of a demand and return system is a prerequisite to an appeal to this Board in general or in this specific case, nor is it a ruling on the validity of any particular demand and return system.

Board and a majority representative's demand and return system, the obligations required of petitioners to the Appeal Board should not be greater than those necessary to pursue a demand and return system proceeding.

Employees paying representation fees to CWA did not forfeit a right to their rebates if they did not personally appear before CWA's Executive Board, the final step of CWA's demand and return system. Similarly, we hold that even if the petitioner does not appear at an OAL hearing and fails to exercise her right to cross-examine the majority representative's witnesses, or otherwise challenge the proofs put on by the union, she does not forfeit the right to require the majority representative to justify its assessments. The right of an employee to a rebate of funds expended by the union for partisan political and ideological purposes, unrelated to the terms and conditions of employment, is grounded upon the First Amendment to the U.S. Constitution. See Abood v. Detroit Bd. of Ed., 431 U.S. 209, 95 LRRM 2411 (1977).

While we do not know why the petitioner failed to notify the O.A.L. of her inability to attend the scheduled hearing, we cannot agree that the ultimate sanction of dismissal is warranted where the law imposes no obligation whatsoever on the petitioner to go foward with any proofs. Since this is among the first of our cases being heard by the O.A.L., there is undoubtedly some confusion as to the obligations imposed by the representation fee statute.

So long as the petitioner is afforded the right to appear, be heard and challenge the presentation of proofs by the majority representative in accordance with the rules governing the conduct of contested cases generally, and our cases in particular before the O.A.L., the requirements of due process have been met. However, where a petitioner chooses to forego such rights, the majority representative must still prove its assessments are correct and permitted by law unless the petitioner has affirmatively stated that she wishes to forego her right to appeal.

ORDER

The Initial Decision of the Administrative Law Judge is rejected and the matter is remanded to the Office of Administrative Law for hearing.

BY ORDER OF THE APPEAL BOARD

Robert J. Pacca
Chairman

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

DATED: Trenton, New Jersey
February 19, 1985

ISSUED: February 21, 1985