

A.B.D. No. 95-1

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

OAL DKT NO. PRB-0730-94
AGENCY DKT NO. AB-94-5

HANCEY H. DAVIS,

Petitioner,

v.

**COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO, LOCAL 1081,**

Respondent.

Hancey H. Davis pro se

Carla Markim Siegel, Esq., member of the Maryland Bar,
admitted pro hac vice for respondent (Zwerdling, Paul,
Leibig, Kahn, Thompson & Driesen, attorneys)

Attorney of Record: **Steven P. Weissman**, Esq., (Weissman and
Mintz, attorneys)

DECISION AND ORDER

On December 20, 1993, Hancey H. Davis filed a petition of appeal with the Public Employment Relations Commission Appeal Board ("Appeal Board"). Davis pays a representation fee in lieu of dues to the Communications Workers of America, Local 1081. The petition seeks a full explanation of CWA's chargeable and non-chargeable expenditures for fiscal years 1990 through 1993 and a refund of all representation fees based upon those fiscal years.

On January 11, 1994 CWA filed an Answer. On January 27, 1994 the case was referred to the Office of Administrative Law ("OAL") for hearing and assigned to Administrative Law Judge Ken R. Springer. On November 10, 1994 Judge Springer issued his "Partial Summary Decision" which grants in part CWA's motion to dismiss.

Judge Springer's order recommends that we find that the petitioner's challenge to representation fees which were based upon expenditures made during CWA's fiscal years ending December 31, 1990 and December 31, 1991 are untimely. The Administrative Law Judge has filed his recommended order with the Appeal Board for immediate review pursuant to N.J.A.C. 1:1-12.5(e).

On November 21, 1994 the petitioner filed exceptions to the recommended order. On December 1, 1994 the CWA filed a response. The case is properly before the Appeal Board to adopt, reject or modify the recommended order.

Petitioner asserts that prior to filing her petition, a representative of the Public Employment Relations Commission sent her petition forms and told her that there was no time limit in filing appeal board petitions. She further asserts that the petition is timely because the timeliness rules do not specify that the petition must challenge the representation fee assessed in a particular year.

N.J.A.C. 19:17-4.5 provides:

A petition of appeal seeking review by the Appeal Board of a representation fee in lieu of dues charged by a majority representative pursuant to N.J.S.A. 34:13A-5.5 shall be filed within six months after payroll deductions to collect the petitioner's fee have commenced.

The ALJ determined that petitioner's challenge to representation fees collecting during CWA's 1991-1992 and 1992-1993 dues years were untimely because the petition was not filed within six months of the start of payroll deductions for those dues years.

Under the system adopted by CWA, its dues year runs from June 1 to May 31. The amount assessed as a representation fee during a given dues year is based upon CWA local and international expenditures during their previous fiscal years. The international's fiscal year runs from July 1 to June 30 and Local 1081 uses the calendar year as the fiscal year. Thus the representation fee collected from Davis beginning June 1, 1991 were based upon expenditures made through December 1, 1990. Her 1992-1993 fee was calculated on costs incurred through December 31, 1991. Applying N.J.A.C. 19:17-4.5, challenges to the 1991-1992 fee should have been filed by December 1, 1991 and a challenge to the 1992-1993 fee would have been timely if filed before December 1, 1992.^{1/}

The ALJ properly applied the limitations period. The petitioner misconstrues the rule. Under her interpretation no one could challenge a representation fee until six months after collections had begun. The rule reads that a petition must be filed "within six months," not "anytime after six months." Read in concert with the other representation fee rules, it is apparent that a representation fee must be recalculated annually and a fee challenge must be asserted annually. See N.J.A.C. 19:17-3.4(b) and N.J.A.C. 19:17-4.3(a). Accordingly we will adopt the ALJ's

^{1/} CWA accepts as timely petitioner's challenge to the representation fee collected for the June 1, 1993 to May 31, 1994 dues year. Thus petitioner's allegation concerning the advice she was given by a Commission representative, even if true, did not prejudice her challenge to the dues year in progress when her petition was filed.

recommendation that petitioner's challenge to representation fees collected by CWA during the period June 1, 1991 to May 31, 1992 and June 1, 1992 to May 31, 1993 be dismissed as untimely. We make no ruling as to the timeliness of petitioner's challenge to any representation fee assessed in any subsequent dues year.

We will modify the ALJ's recommended order limiting the proofs at trial. We believe it is premature to rule that calculations from prior CWA fiscal years are per se irrelevant to the propriety of fees assessed in a subsequent dues year. The ALJ is free to make all necessary and appropriate evidentiary rulings during the hearing.

ORDER

That portion of the petition challenging the propriety of representation fees assessed by CWA Local 1081 for the dues year June 1, 1991 through May 31, 1992 and the dues year June 1, 1992 through May 31, 1993 are dismissed. The hearing may include all evidence or issues relevant to the validity of the representation fees assessed on the petitioner after June 1, 1993. The case may continue before the Office of Administrative Law for further proceedings in accordance with this decision.

BY ORDER OF THE APPEAL BOARD

WILLIAM L. NOTO
Chairman

DATED: TRENTON, NEW JERSEY
December 13, 1994