

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

AGENCY DKT NO. AB-99-1

ROBERT A. WALSH, M.D.

Petitioner,

v.

**COMMUNICATIONS WORKERS OF
AMERICA, LOCAL 1037**

Respondent.

Robert T. Walsh, M.D., Petitioner pro se

Colin M. Page, Esq., for Respondent (Weissman and Mintz, attorneys)

DECISION AND ORDER

On October 13, 1998, March 1, 1999 and June 8, 1999, Robert T. Walsh, M.D. filed, perfected and amended a petition of appeal with the Public Employment Relations Commission Appeal Board ("Appeal Board"). Dr. Walsh, a medical consultant employed by New Jersey Department of Labor, pays a representation fee in lieu of dues to the Communications Workers of America, Local 1037. As amended, the petition states that the petitioner objects to the amount he has been assessed. The petitioner seeks a refund of all fees paid dating back to the time he first became a full-time State employee. On March 26, 1999, CWA filed an Answer and a motion to dismiss the petition as untimely. After Dr. Walsh amended his petition, CWA was advised it could amend its Answer and Dr. Walsh was advised that he could respond to the CWA's dismissal motion.

Attempts to settle the dispute were unsuccessful. The matter is now before the Appeal Board to rule on CWA's motion and to

consider whether to transfer the petition to the Office of Administrative Law as a contested case. These facts appear.

Letters from Dr. Walsh to the State's Office of Employee Relations and to CWA officials, requesting that his representation fees be refunded, were attached to Dr. Walsh's letter to the Appeal Board, which, on October 15, 1998, was docketed as a petition of appeal. Dr. Walsh was sent forms to complete to provide information necessary to process his appeal. Neither CWA nor the OER were advised at that time of the docketing of Dr. Walsh's case.

On February 8, 1999, the Appeal Board wrote to Dr. Walsh advising that unless completed forms were filed on or before March 1, 1999, the petition would be administratively dismissed. The completed forms were filed on the deadline. On March 8, 1999, the Appeal Board wrote to the CWA enclosing a copy of Dr. Walsh's petition and requesting an Answer which CWA filed on March 26, 1999. A motion to dismiss the petition accompanied the Answer.

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.

To the extent the petition challenges the representation fee in lieu of dues for the dues year which commenced in July, 1998, we find that it is timely filed and we will transfer the petition to the Office of Administrative Law as a contested case. Because CWA had received no notice that Dr. Walsh had commenced an

Appeal Board proceeding until March, 1999 when his filing was perfected, it apparently assumed the petition was untimely. However Dr. Walsh's case was docketed on October 13, 1998, within six months of the beginning of the dues year that began in July, 1998. At that time, CWA was already aware of Dr. Walsh's demand for a refund. Thus it suffered no prejudice from the delay in the filing of the completed petition forms.

Dr. Walsh's amended petition seeks a return of all representation fees he has been assessed since he became a full-time state employee. Because he has not filed a timely challenge to the fees assessed in dues years prior to the one commencing in July, 1998, that relief is unavailable. See Davis v. CWA, A.B.D. No. 95-1, 21 NJPER 192 (¶26124 1994) (petition may not seek refund of fees for prior dues years where petitioner did not file a timely challenge to fees assessed during those dues years).

ORDER

The motion to dismiss is granted as to petitioner's request for a refund of all representation fees in lieu of dues assessed to him by CWA for any and all dues years prior to the one which commenced on July 1, 1998. The motion is otherwise denied and the matter is transferred to the Office of Administrative Law as a contested case.

BY ORDER OF THE APPEAL BOARD

CATHERINE FRANK-WHITE
Chairman

DATED: TRENTON, NEW JERSEY
December 21, 1999
ISSUED: December 22, 1999