

P.D.D. No. 2006-5

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

In the Matter of

LEBANON TOWNSHIP BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. PD-2006-003

LEBANON TOWNSHIP PARAPROFESSIONALS
ASSOCIATION,

Petitioner.

SYNOPSIS

Lebanon Township Paraprofessionals 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 Lebanon Township 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 Lebanon Township Board of Education opposed the petition arguing that since agreements were reached over some elements of a representation fee article, the Association did not comply with the statute or rule. The Commission Designee, however, 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.

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Appearances:

For the Public Employer,
Parker McCay, attorneys
(Russell Weiss, Jr., of counsel)

For the Petitioner,
William Render, NJEA UniServ Representative

DECISION

On February 3, 2006, the Lebanon Township Paraprofessionals Association (Association) filed a Petition for Payroll Deduction Determination with the Public Employment Relations Commission (Commission) seeking an order directing the Lebanon Township 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 and part-time paraprofessionals employed by the Board; but excluding Superintendent, Building Principals, Board Secretary/ Business Administrator, Assistant Principals, Director of Special

Services, secretarial and clerical workers, cafeteria workers, teachers, custodians, substitutes, and all other employees not specifically included in the unit.

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 February 27, 2006, the Board filed its response pursuant to N.J.A.C. 19:19-3.2(a). The Board confirmed that the Association proposed instituting the collection of representation fees in lieu of dues for non-member unit employees but disputes whether no agreement had been reached at the time the instant petition had been filed.

The Board argues that the parties exchanged proposals on agency fee language and agreed upon some but not all items in their proposals. In fact, the Board's February 27th response to this petition specifically notes that as of February 15, 2006,

the Association had not agreed upon and would not further negotiate over the Board's agency fee counterproposal, particularly the amount of the fee provision and perhaps indemnification language.

The Board argued that some agreement was reached on agency fee issues, and therefore, that the Association had not satisfied N.J.S.A. 34:13A-5.5a and N.J.A.C. 19:19-2.1(a) which permit a payroll deduction determination only if no agreement is reached. The Association did not reply to the Board's response. N.J.S.A. 19:19-3.5.

Having considered the Board's submission, including its own recitation of the facts, I find that the Association has complied with both the Act and our rules and the facts support its petition for payroll deduction.

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

Notwithstanding any other provisions of law to the contrary, the majority representative and the public employer of public employees in an appropriate unit shall, where requested by the majority representative, negotiate concerning the subject of requiring the payment by all nonmember employees in the unit to the majority representative of a representation fee in lieu of dues for services rendered by the majority representative. . . . If no agreement is reached, the majority representative may petition the commission to conduct an investigation. 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.

N.J.A.C. 19:19-1.1(a) provides in pertinent part:

N.J.S.A. 34:13A-5.5 requires negotiations over the subject of requiring employees in a negotiations unit who are not members of their majority representative to pay a representation fee in lieu of dues to their majority representative. As amended by P.L. 2002, c. 46, effective August 1, 2002, that section permits the majority representative to petition the Commission to conduct an investigation if no agreement for representation fees in lieu of dues by payroll deduction is reached during negotiations.

On its petition filed on February 3, 2006, the Association noted that as of January 25, 2006 it had demanded the Board agree to the deduction of representation fees of non-members and that no agreement had been reached. The Board's February 27th response to the petition shows that on January 25, 2006 a dispute remained over three elements of its representation fee counterproposal including the demand and return system, the amount of the fee, and indemnification language. By February 15, the Board notes it was still seeking agreement on the fee amount and perhaps the indemnification language but the Association refused to negotiate further over that proposal.

At that point in negotiations it appears from the Board's own submission that no further negotiations was occurring over the agency fee proposal, and that no final agreement had been reached on an agency fee article. The statute and rule merely require that no agreement had been reached on agency fee deductions. The evidence, therefore, need only show that the parties in negotiations reached the point of finality on the issue of representation fees. The evidence presented by the Board demonstrates such finality. While the parties may have agreed to some elements of an agency fee system if adopted, the facts show they did not have a negotiated agreement authorizing such deductions. Consequently, I find the intent of the statute and rule were met, and the petition was properly filed.

In its response to the petition, the Board also argued that the Association expects the Commission to not only order the deduction of agency fees, but also the Association's version of its agency fee provision be written into the contract. A payroll deduction determination only orders an employer to deduct the representation fee, it does not order an employer to implement any particular agency fee article into the parties collective agreement. Additionally, the Board's concern over attempting to obtain indemnification language through negotiations is obviated by the order in this decision. Since payroll deduction determination is based upon a legislative mandate and this order

requiring deductions, the Board is being compelled to act instead of choosing to act. Thus, it does not need indemnification for deducting the fees.

Consequently, I conclude the Association complied with the statute and rule and the facts support the petition.

Accordingly, based upon the above found facts and the analysis, the investigation has revealed the following:

1. 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.

2. The Association is the majority representative of a collective negotiations unit consisting of all full-time and part-time paraprofessionals employed by the Board; but excluding Superintendent, Building Principals, Board Secretary/ Business Administrator, Assistant Principals, Director of Special Services, secretarial and clerical workers, cafeteria workers, teachers, custodians, substitutes, and all other employees not specifically included in the unit.

3. The parties have stipulated that the list of dues paying members attached to the Association's petition is accurate.

4. The parties have stipulated that the negotiations unit consists of 27 employees, of which 24 (89%) are currently voluntary dues paying members of the Association.

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

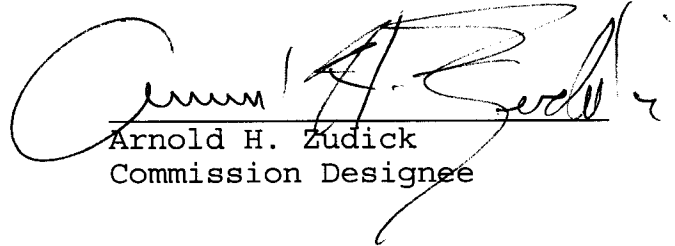
Consequently, having found that the Association has satisfied the conditions mandated in N.J.S.A. 34:13A-5.5 and N.J.A.C. 19:19-1.1 and 19:19-2.2, I find that it is entitled to the receipt of a representation fee in lieu of dues from unit employees who are not dues paying members of the Association,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

ORDER

Lebanon Township 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 Lebanon Township Paraprofessionals 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 Board 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: April 5, 2006
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 April 18, 2006.



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 February 3, 2006, the Lebanon Township Paraprofessionals 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 and part-time paraprofessionals 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-2006-003

Lebanon Township 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