

A.B.D. No. 91-3

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

In the Matter of

WALTER BARAN, et al.

OAL DOCKET NO. PRB 6888-89

Petitioners,

AB DOCKET NO. AB-89-1

-and-

FOP LODGE NO. 59,

Respondent.

Paul L. Kleinbaum (Zazzali, Zazzali, Fagella & Nowak,
attorneys) for petitioners

Stephen C. Richman (Markowitz & Richman, attorneys) for
respondent

DECISION ON RECONSIDERATION

Respondent FOP Lodge 59 asks that A.B.D. No. 91-2 be reconsidered and/or reopened. That decision found that the FOP had no written agreement with Middlesex County when, in May 1988, it began to collect representation fees in lieu of dues from the petitioners, several Middlesex County Sheriffs Officers and Investigators. The decision holds that the FOP must refund all representation fees collected from petitioners up until September 1, 1988 when a new collective agreement containing a representation fee provision took effect. We ordered the case remanded to the Office of Administrative Law to determine whether representation fees assessed by the FOP between September 1, 1988 and December 31, 1988 were excessive.

The FOP seeks to reopen the record to introduce an April 21, 1988 "Memorandum of Agreement" signed by representatives of the FOP and Middlesex County which is asserted to be a written agreement entitling it to representation fees from nonmembers for the period between May 30, 1988 and September 1, 1988. The document states that the FOP "has adopted the terms of the 1986-1987 collective negotiations agreement between the County and PBA Local 165 (PBA), the prior [majority] representative, which County-PBA agreement the parties consider presently effective." The FOP asserts that the agreement was not previously introduced because the parties did not contemplate that the manner in which the FOP adopted the expired PBA-County agreement would be an issue in the case. It contends that there exist "extraordinary circumstances" as meant by N.J.A.C. 1:20-18.2 which warrant granting its motion.

The petitioners note that the agreement was available prior to the hearing, could have been introduced then, and should not be brought in now. They assert that they have contended from the outset of their appeal that the FOP had no agreement allowing it to collect representation fees prior to September 1, 1988. The right of the FOP to collect agency fees without a written agreement with the County was one of the three issues listed in the prehearing order, briefed by the parties and addressed by the ALJ's decision. They contend that even if the document is placed in the record, the decision should remain unchanged because the agreement does not authorize the FOP to receive representation fees.

The FOP's claimed right to receive representation fees prior to September 1, 1988 has always been an issue in this case and if the FOP deemed the agreement relevant to that issue it should have sought to include it in the stipulated facts.* Nonetheless, an administrative agency may reconsider a decision and determine whether matters not previously considered warrant reassessment of its action. See In re Trantino, 89 N.J. 347, 364 (1982) which holds "A new development or new evidence relating to established facts or a material misapprehension concerning an essential matter which is critical to an agency determination can constitute a reasonable basis for reconsideration by the agency." The FOP's adoption of the expired PBA-County agreement is a stipulated and thus "established" fact. Because this document is relevant to an essential issue, i.e. whether the FOP had a written agreement allowing it to receive representation fees prior to September 1, 1988, we will grant reconsideration and add the document to the record. We now consider its effect on our prior ruling.

The memorandum of agreement makes modifications in several provisions of the expired County-PBA agreement which relate to union security issues. It provides that the County will only deduct dues for the FOP; that dues deductions for the PBA will terminate and that all agency shop or representation fee payments to the PBA shall cease. One union security issue which the memorandum does not

* The agreement is the same one referred to in Exhibit B to the stipulated facts. [See A.B.D. No. 91-2 at 9, n.3.]

address is the issue of representation fees to the FOP. Accordingly we find that the agreement did not give the FOP a right to collect representation fees in lieu of dues from the petitioners prior to September 1, 1988. As explained in A.B.D. No. 91-2, the provisions of the County-PBA contract which were based upon the assumption that the PBA was the majority representative became void when that assumption was no longer true. A new majority representative is not deemed a successor of the ousted union. The other provisions of the agreement which set the terms and conditions of employment remained unchanged because they could not be altered except through negotiations with the new majority representative, the FOP. Thus the April 15, 1988 agreement between the County and the FOP was effective to give the FOP the right to exclusive dues deductions and to provide that employees who wished to pay dues to the PBA could no longer do so through payroll deductions. It is silent on the FOP's right to collect representation fees and is not a written agreement signed by the majority representative and the public employer which authorized the collection of representation fees from the petitioners for the period prior to September 1, 1988.

ORDER

Petitioner's motion to reconsider and supplement the record is granted. On reconsideration A.B.D. No. 91-2 is unchanged.

BY ORDER OF THE APPEAL BOARD

WILLIAM L. NOTO
Chairman

Chairman Noto, Board Members Dorf and Verhage voted in favor of this decision.

DATED: TRENTON, NEW JERSEY
November 13, 1990