

A.B.D. No. 88-1

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

Docket NO. AB-87-21

**GEOFFREY W. REES,**

Petitioner,

v.

**COMMUNICATIONS WORKERS  
OF AMERICA, LOCAL 1033**

Respondent.

Petitioner pro se, **Geoffrey W. Rees,**

For respondent, **Steven P. Weissman,** Esq., Communications Workers of America, AFL-CIO District 1, and **Michael T. Leibig,** Esq., Zwerdling, Schlossberg, Leibig & Kahn

DECISION AND ORDER

On April 24, 1987, Geoffrey W. Rees filed a petition of appeal with the Public Employment Relations Commission Appeal Board ("Appeal Board"). The petitioner is employed by the State of New Jersey and is represented in collective negotiations by Respondent, Communications Workers of America, AFL-CIO ("CWA-National"), and its affiliate, Local 1033 ("Local 1033").<sup>1/</sup> He pays a representation fee in lieu of dues which is shared by CWA-National and Local 1033. The petition and attached exhibits state that Rees demanded and received rebates of a portion of his representation fee for the period between January 1, 1986 and May, 1987. Rees received \$8.34

<sup>1/</sup> Local 1033 and CWA-National will be jointly referred to as "CWA".

as a rebate for 1986 and \$3.53 for January through May 1987. Both amounts included interest. The petition questions the manner in which the principal amount of the refunds was calculated although it does not challenge the percentage of expenditures CWA National and Local 1033 determined were subject to rebate. Based on calculations attached as exhibits to the petition, Rees contends that his rebate should have been \$54.37 for 1986 and \$20.68 for the first five months of 1987.

On May 18, 1987, CWA filed an Answer. The petitioner and the respondent have executed a stipulation of facts which also sets forth their contentions as to the manner in which the maximum representation fee should be calculated.<sup>2/</sup> The parties agreed to submit this dispute to the Board for a decision based on a record consisting of the Petition, the Answer and the stipulation and exhibits. We find the facts to be as set forth in the stipulation and exhibits.

The maximum representation fee is governed by N.J.S.A. 34:13A-5.5 which provides in part:

b. The representation fee in lieu of dues shall be in an amount equivalent to the regular membership dues, initiation fees and assessments charged by the majority representative to its own members less the cost of benefits financed through the dues, fees and assessments and available to or benefiting only its members, but in no event shall such fee exceed 85% of the regular membership dues, fees and assessments.

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2/ The stipulation is annexed.

c. Any public employee who pays a representation fee in lieu of dues shall have the right to demand and receive from the majority representative, under proceedings established and maintained in accordance with section 3 of this act, a return of any part of that fee paid by him which represents the employee's additional pro rata share of expenditures by the majority representative that is either in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment or applied toward the cost of any other benefits available only to members of the majority representative. The pro rata share subject to refund shall not reflect, however, the costs of support of lobbying activities designed to foster policy goals in collective negotiations and contract administration or to secure for the employees represented advantages in wages, hours, and other conditions of employment in addition to those secured through collective negotiations with the public employer.

Petitioner contends that the statute automatically sets a representation fee at 85 per cent of regular dues, which should be further reduced by the percentage of a majority representative's expenditures which can be financed by nonmember fees. CWA calculates non-chargeable amounts (which it calls the petitioner's "fair-share" amount) by separating the fee into the portions allocable to CWA-National and Local 1033. These amounts are multiplied by the percentages that CWA-National and Local 1033 expend on activities chargeable to non-members. CWA adds the two products together and compares them with the sum of the amounts actually assessed a petitioner by CWA-National and Local 1033. If the amount assessed as a representation fee exceeds the petitioner's "fair share", the difference is refunded with interest.

The difference in the parties' computations is that CWA's fair share calculation uses regular dues as a base figure and 85 per cent of regular dues as a maximum permissible fee, in the event the "fair share" calculation produces an amount which would exceed 85 per cent, while petitioner uses 85 per cent of regular union dues as the base figure to be reduced by applying the percentage of chargeable activities.

Under the petitioner's method of calculation, a non-member would pay 85 per cent only when the majority representative's percentage of expenditures on chargeable activities is 100 per cent. In all other cases non-members would be charged an amount which is less than 85 per cent. With the CWA's method, non-members will pay 85 per cent unless the sum of the amounts calculated by the respective local and national to be chargeable to non-members is less than 85 per cent of regular union dues. In that event non-members will pay the amount actually chargeable.

The language and legislative history of N.J.S.A. 34:13A-5.5 and the Supreme Court's interpretation of this section convince us that CWA's formula for computing the petitioner's representation fee is valid. The statute provides that the starting point in the computation of the fee is "an amount equivalent to the regular membership dues, fees and assessments...." The statute then provides that the fee is to be reduced by the percentage of expenditures the majority representative allocates to member-only benefits and to "activities or causes of a partisan political or

ideological nature only incidentally related to the terms and conditions of employment." The resultant figure is the representation fee in lieu of dues to be assessed on non-members unless it exceeds 85 per cent of regular membership dues. In that event, 85 per cent becomes the fee. Both the sponsor's statement to A-688, which became L. 1979, c. 477 and the Governor's statement on signing the bill explain that the fee is an amount "equal" (Sponsor's statement) or "equivalent" (Governor's statement) to regular membership dues reduced by the percentage used to finance member-only benefits and non-germane partisan political or ideological activities.

In Boonton Bd. of Ed. v. Kramer 99 N.J. 523 (1985), cert. den. U.S. Supreme Ct. Dkt. No. 85-684 (3/10/86) our Supreme Court described the 85 per cent figure as a "ceiling" on the maximum representation fee. 99 N.J. at 549. After determining that representation fees should be reduced before collection by the amount spent in the prior year on member-only benefits and political lobbying not authorized by the statute, the Court described how the fees are to be calculated:

Accordingly, the maximum non-member representation fee for the current year would be an amount equal to membership dues reduced by the percentage of impermissible expenditures in the prior year's budget. In no event may the non-member fee exceed 85 per cent of the dues charged to members.  
99 N.J. at 551, n.5; emphasis added.

It is apparent that multiplying regular dues by 85 per cent is not part of the initial calculation to be made in determining the

representation fee. Eighty-five per cent of regular dues is a ceiling to be applied after impermissible expenditures have been deducted from the base amount "equivalent" to regular membership dues. If the remainder exceeds 85 per cent, then it is discarded and 85 per cent of regular dues becomes the representation fee. If the remainder is less than 85 per cent, then it is retained as the representation fee and the 85 per cent ceiling does not come into play.

The petitioner's calculations apply the 85 per cent maximum at a premature stage of the representation fee computation. As set forth in the stipulation, the petitioner's method would result in a representation fee which was always less than 85 per cent except in the possible, but unlikely, case where a majority representative uses 100 per cent of its expenditures on chargeable activities. By using the term "equivalent", the Legislature intended that full dues, rather than 85 per cent of full dues is the starting point for the calculation of the fee. As observed by Boonton, the 85 per cent ceiling was designed "to minimize the likelihood that non-member fees will be used for purposes proscribed by the statute." 99 N.J. at 549-550.

We reject the petitioner's proposed calculations and determine that he is entitled to no additional refund of representation fees in lieu of dues for the period from January 1, 1986 through May 31, 1987.

ORDER

The petitioner's appeal is hereby dismissed.

BY ORDER OF THE APPEAL BOARD

William L. Noto  
Chairman

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Chairman Noto and Board Members Dorf and Verhage voted in favor of this decision. None opposed.

DATED: TRENTON, NEW JERSEY  
September 22, 1987