

A.B.D. No. 90-1

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

Docket NO. AB-89-2

LAWRENCE J. LONGO,

Petitioner,

v.

**COMMUNICATIONS WORKERS
OF AMERICA, LOCAL 1034**

Respondent.

Petitioner pro se, **Lawrence J. Longo,**

For respondent, **Steven P. Weissman,** Esq., Communications
Workers of America, AFL-CIO District 1

DECISION AND ORDER

On January 19, 1989, Lawrence J. Longo 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, but is not a member of, respondent, Communications Workers of America, AFL-CIO and its affiliate, Local 1034 ("Local 1034"). He pays a representation fee in lieu of dues which is shared by CWA and Local 1034. The petitioner contends that a portion of the representation fee assessed by Local 1034 "is charged to me for services that are not wanted by (me), not provided to me, and which do not have any relevance to representing me to my employer." Specifically the petitioner states that non-members should not be charged for any amounts Local 1034 spent on two newsletters ("State Worker" and

"News-n-Views") and on two social events (a picnic and a Christmas party). A Local 1034 financial statement is attached to the petition. It reflects that Local 1034 determined that the social events (which were open to non-members) could be financed by dues and representation fees. However, the statement also reflects that portions of the two newsletters concerned nonchargeable activities and Local 1034 reduced non-members' share of the costs of the newsletters accordingly.^{1/}

On February 2, 1989, CWA filed an Answer. Since there is no dispute as to any material facts, the parties have agreed that this petition should be submitted directly to the Appeal Board for determination of the following issue: Whether the 1988-1989 CWA representation fee may include amounts attributable to expenditures made by Local 1034 for the two newsletters and the two social functions. Both parties submitted argument in support of their respective positions.

Petitioner contends he should not pay any amount not specifically associated with representation of employees. He contends that neither the publications nor the social affairs have any connection with representing him to his employer. He does not dispute the accuracy of the figures listed by Local 1034 as

^{1/} Local 1034 reported expenditures of \$579,802.12, of which it charged \$492,047.19 to both members and non-members. The social affairs are listed as costing \$7,475.98. Local 1034 states it spent \$29,733.09 on the "State Worker" of which \$23,608.04 was deemed chargeable and \$1,473.74 on "News-n-Views", of which \$1,228.07 was labeled chargeable.

representing the cost of the publications and the social events and therefore we will not review those amounts.

The CWA responds that the U.S. Supreme Court has held that non-members can be assessed for social events and the portions of the union publications which report on chargeable activities. On the social events, Ellis v. Brotherhood of Railway and Airline Clerks, 466 U.S. 435, 80 L.Ed.2d 428, 104 S. Ct. 1883 (1984) states:

While these affairs are not central to collective bargaining, they are sufficiently related to be charged to all employees. As the Court of Appeals noted, "these small expenditures are important to the union's members because they bring about harmonious working relationships, promote closer ties among employees, and create a more pleasant environment for union meetings." 104 S. Ct. at 1883.

Concerning publications, Ellis observes:

The union must have a channel for communicating with employees, including the objecting ones, about its activities. Congress can assume to have known that union funds go toward union publications; it is an accepted and basic union activity. The cost of "worker education" was specifically mentioned during the congressional hearings.

* * *

If the Union cannot spend dissenters' funds for a particular activity, it has no justification for spending their funds for writing about that activity. By the same token, the Act surely allows it to charge objecting employees for reporting to them about those activities it can charge them for doing.

Id. at 1983-1984 (footnote omitted)

Our Supreme Court in Boonton Bd. of Ed. v. Kramer, 99 N.J. 523 (1985), cert. den. 106 S. Ct. 1388 (1986) discussed Ellis extensively. We find nothing in the representation fee act (N.J.S.A. 34:13A-5.5 et. seq.) or Boonton which indicates that our view of open social activities and union publications should be different than that espoused in Ellis. As long as social activities are a small portion of the union's expenditures and non-members do not share in the costs of those portions of union publications which do not report on chargeable activities, these are costs which non-members may be compelled to help defray. As in Ellis, Local 1034's expenditures on social activities are small in comparison to the rest of its expenses (1.3 per cent) and an allocation has been made between chargeable and nonchargeable items in the publications.

We find that petitioner's representation fee may include amounts attributable to the chargeable costs of the newsletters and the costs of the social events.

ORDER

The petitioner's appeal is hereby dismissed.

BY ORDER OF THE APPEAL BOARD

William L. Noto
Chairman

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

DATED: TRENTON, NEW JERSEY
July 11, 1989