

A.B.D. No. 85-14

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

OAL DKT #PRB-6897-82
AGENCY DKT #AB-82-1

JOHN RUSSELL et.al.,

Petitioners,

v.

**EDISON TOWNSHIP EDUCATION
ASSOCIATION,**

Respondent.

OAL DKT #PRB-6898-82
AGENCY DKT #AB-82-2

THOMAS GAY,

Petitioner,

v.

**PASCACK VALLEY REGIONAL
EDUCATION ASSOCIATION,**

Respondent.

Nelson R. Kieff, Esq. for petitioners (National Right to Work Legal Defense Foundation, Inc.) pro hac vice through Jeffrey A. Mintz, Esq., (Mesirov, Gelman, Jaffe, Cramer & Jamieson, attorneys)

Richard A. Friedman, Esq. for respondents (Ruhlman, Butrym and Friedman, attorneys)

ORDER OF REMAND

On February 1, 1985, Administrative Law Judge Ronald I. Parker entered orders dismissing without prejudice Petitions of

Appeal filed with the Public Employment Relations Commission Appeal Board (hereinafter Appeal Board) under two separate docket numbers.

The petitions, in Docket No. AB-82-1, were filed with the Appeal Board on December 12, 1981 by John Russell, Leon Matelski, Richard Trexler, Edward Jakubco and A. William Onder (petitioners), employees of the Edison Township Board of Education, who pay representation fees in lieu of dues to the Edison Township Education Association (ETEA). The petitioners sought a review of the decision of the ETEA's demand and return system denying petitioners' requests for rebates.

In AB-82-2 a petition was filed with the Appeal Board on February 12, 1982 by Thomas Gay, an employee of the Pascack Valley Regional High School District Board of Education, who pays a representation fee in lieu of dues to the Pascack Valley Regional Education Association (PVREA). Gay's petition sought a review of the fee assessed him by the PVREA and also asserted, inter alia, that he should not be charged for that portion of his fee which goes to county, state and national affiliates of the local organization.

On July 16, 1982, the Appeal Board transferred both matters as contested cases to the Office of Administrative Law (O.A.L.) for hearing. The cases were assigned to Judge Parker. Between August

5, 1982 and October 17, 1983 the hearing of both cases was delayed by the parties' agreement to place the cases on the inactive list pending the outcome of federal litigation, involving all petitioners, which challenged the validity of the statute authorizing majority representatives to collect representation fees in lieu of dues.^{1/} On October 17, 1983, during a phone conference among counsel and Judge Parker, it was agreed that a consent order would be prepared dismissing, without prejudice, the petitioners' appeals in six months if at the end of that period there had been no ruling by the U.S. Court of Appeals in the petitioners' pending federal lawsuit. A written agreement, covering both cases, and entitled Agreement to Dismiss Without Prejudice, was prepared and executed by counsel for petitioners and the respondent Associations.^{2/}

1/ The petitioners are among the named plaintiffs in Robinson v. N.J., 547 F. Supp. 129, (D. N.J. 1982), supplemental opinion 565 F. Supp. 943 (D. N.J. 1983), reversed, ___ F. 2d. ___, 117 LRRM 2001 (3rd Cir. 1984), pet for reh, den. ___ F. 2d. ___ (9/84), pet. for cert. den. ___ U.S. ___ (1985). The mechanics of these delays are set forth in Judge Parker's initial decisions dismissing the petitions.

2/ The entire agreement reads: Petitioners John Russell, et al., and Respondents Edison and Pascack Education Assns., through counsel, agree that proceedings in the above matters be stayed as of October 16, 1983 for a period of six months. At the end
(Footnote continued on next page)

The six month period expired in May, 1984. The U.S. Court of Appeals issued its decision on August 6, 1984. No party moved to dismiss or process the petitions nor did the O.A.L. take action until Judge Parker issued his initial decisions dismissing the petitions because the Court of Appeals had not ruled upon the petitioners' federal lawsuit within the six month period set forth in the Agreement to Dismiss Without Prejudice.

After Judge Parker's initial decision was served upon the parties, petitioners' counsel, through a letter to Judge Parker dated February 14, 1985, filed a Motion to Reconsider Initial Decision. The letter/motion was forwarded to the Appeal Board as the Rules of the O.A.L. [N.J.A.C. 1:1-16.4(d)] do not give Administrative Law Judges the power to reconsider their decisions. Subsequently counsel for the petitioners indicated that he wished the motion to be treated as Exceptions to the Appeal Board in accordance with N.J.A.C. 1:1-16.4. A response to the Exceptions has been filed by the respondents and a reply by the petitioners. An

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of this six month period the parties agree that the matter be dismissed without prejudice, provided the U.S. Court of Appeals for the 3rd Circuit has not ruled in the presently pending appeals of Antonacci/Robinson v. State and Olsen v. State. In the event of such a ruling by the Court of Appeals, the parties may each rescind this agreement.

extension of the 45-day period in which to review Judge Parker's Initial Decision has been granted pursuant to N.J.A.C. 1:1-16.5.

Petitioners' exceptions concede that as a matter of chronology, the Court of Appeals ruling did not in fact occur within the six month period. However petitioners argue that the intent of the Agreement was to postpone administrative litigation until such time as the outcome of the federal litigation was known. Petitioners also point out that the last agreement to postpone came at the suggestion of respondents' counsel after the petitioners had indicated a desire to proceed before the O.A.L.

Respondents contend that all the conditions in the Agreement which would result in a dismissal were met and the Initial Decisions were therefore correct. Respondents also note that petitioners made no attempt to rescind the agreement during the six month period. The Associations also assert that most of the petitioners' substantive claims were resolved in the federal lawsuit, and thus relitigation before an administrative agency would be wasteful. Petitioners respond that the issues they seek to litigate in these cases were not covered by the federal litigation.

Both of these cases were commenced by the individual petitioners against the Associations to challenge representation fees in lieu of dues assessed upon them by the respondent Associations. Other broader issues (e.g. adjudicatory authority,

validity of Legislative delegation) are mentioned by the parties in the Exceptions and responses thereto. Since there has been neither argument nor determination of such broader issues in these two cases, it would be premature to comment upon either their relevance or the extent to which they may have already been litigated between the petitioners and the respondent Associations.^{3/}

It is apparent, however, that the federal courts have not determined the dollars and cents issue of whether the respondents have correctly calculated what portion, if any, of the petitioners' representation fees in lieu of dues is rebatable. Since the petitioners by filing Exceptions have indicated that they wish to pursue their appeals, and our acceptance of the Initial Decisions which recommend dismissals without prejudice would only make them refile their claims, we will reverse the Initial Decisions and remand these cases to the O.A.L. for hearing. We need not decide

^{3/} We do note that petitioners' counsel has asserted that the Associations are only indirectly involved and that this Board should participate in any proceedings before the O.A.L. on these cases. We disagree. This Board is an administrative agency performing quasi-judicial and quasi-legislative functions. Our task is to hear and determine cases commenced pursuant to our statutory authority. We do not participate in these cases as a party advocating any particular view. By contrast, the Associations are directly involved because it is the burden of the majority representatives in these cases to prove that the amounts assessed as representation fees in lieu of dues are within the parameters of the statute.

whether the Agreement to Dismiss Without Prejudice was self-executing, or was properly construed by Judge Parker.

ORDER

The Initial Decisions of the Office of Administrative Law are reversed and these cases are hereby remanded to the Office of Administrative Law for hearing.

BY ORDER OF THE APPEAL BOARD

ROBERT J. PACCA
Chairman

DATED: TRENTON, NEW JERSEY
April 16, 1985