

A.B.D. No. 91-1

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

In the Matter of

PAUL H. ROBINSON, et al.

OAL DOCKET NO. PRB 2806-88

Petitioners,

AB DOCKET NO. AB-88-14

-and-

PERC DOCKET NO. CI-H-88-26

RUTGERS COUNCIL, AAUP CHAPTERS

Respondent.

Paul Schachter, Esq., for respondent (Reinhardt & Schachter, attorneys)

Hugh L. Reilly, Esq., member of the Maryland bar, admitted pro hac vice, for petitioners (National Right to Work Legal Defense Foundation, Inc.) Attorney of Record: **Jeffry A. Mintz, Esq.** (Mesirov, Gelman, Jaffe, Cramer & Jamieson, attorneys)

DECISION AND ORDER

These petitioners were named plaintiffs in lawsuits filed in the United States District Court which, along with another lawsuit involving organizations affiliated with the New Jersey Education Association, resulted in Robinson v. N.J., 547 F. Supp. 1297 (D.N.J. 1982); Olsen v. CWA, 559 F. Supp. 754 (D.N.J. 1983); supp. opin. 565 F. Supp. 942 (D.N.J. 1983), rev'd and rem'd 741 F.2d 598 (3d Cir. 1984), rehearing en banc den. 741 F.2d 598 (1984), cert. den. 469 U.S. 1228 (1985) ("Robinson I") and, following remand, Robinson v. N.J., 806 F.2d 442 (3d Cir. 1986), cert. den.

481 U.S. 1070 (1987) ("Robinson II"). They filed an unfair practice charge with the Public Employment Relations Commission and a petition with the Public Employment Relations Commission Appeal Board after the United States Supreme Court declined to review Robinson II.

On November 24, 1987, Paul H. Robinson amended his Appeal Board petition to include the names of the other petitioners, Clifford Owens, Paul B. Kelley, Allan Roth, Calvin W. Corman, Elihu Abrahams, Arnold Glass, Charles W. Upton and Alex W. Wypyszinski. These petitioners are employed by Rutgers, The State University and are represented in collective negotiations by, but are not members of, respondent, Rutgers Council, AAUP Chapters ("AAUP"). They pay representation fees in lieu of dues which are shared by AAUP and Rutgers Council. The petition seeks review of representation fees paid to AAUP and Rutgers Council. An Answer to the petition was filed by AAUP. Paul H. Robinson has since left the University's employ.

On April 20, 1988, this matter was transferred to the Office of Administrative Law as a contested case and was assigned to Administrative Law Judge Joseph Lavery. On August 31, 1989, Judge Lavery issued a decision consolidating this case with the petitioners' unfair practice charge before the Commission (Dkt. No. CI-88-26), and the appeals of William Anderson (Appeal Board Dkt. No. AB-88-8; Commission Dkt. No. CI-88-23) and Alan Olsen (Appeal Board Dkt. No. AB-88-9 and Commission Dkt. No. CI-88-27). He found the Appeal Board had predominant interest.

On November 21, 1989, the Appeal Board, in a joint order with the Public Employment Relations Commission, found that the three Appeal Board petitions and their corresponding unfair practice charges should be consolidated with one another for hearing; that the predominant interest in the conduct and outcome of the consolidated matter rests with the Public Employment Relations Commission with respect to all issues relating to the adequacy of the representation fee collection procedures and the appropriate remedy to correct any deficient collection procedures; that the Appeal Board has sole jurisdiction over any issue relating to the amount of the representation fees; that the consolidated matter should be heard by an Administrative Law Judge; that the Public Employment Relations Commission shall first render a final decision on all issues within its predominant interest and then transmit the ALJ's initial decision, the Commission's final decision and the record to the Appeal Board pursuant to N.J.A.C 1:1-17.8(b) and (c).

The AAUP and the petitioners have entered into a settlement. On May 10, 1990, Judge Lavery issued an "Initial Decision-Settlement," reviewing the terms of the settlement and concluding that it was entered into voluntarily and disposed of all issues in dispute. He approved the settlement and ordered that the parties comply with its terms.

The Public Employment Relations Commission has decided not to review Judge Lavery's decision. Pursuant to N.J.S.A. 52:14B-10, the matter is now before the Appeal Board to affirm, reverse, remand or modify. We have reviewed the settlement and Judge Lavery's order

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(attached hereto), pursuant to N.J.S.A. 52:14B-10, and conclude that his action is correct.

ORDER

The Initial Decision-Settlement of Judge Lavery is hereby affirmed.

BY ORDER OF THE APPEAL BOARD

WILLIAM L. NOTO
Chairman

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

DATED: TRENTON, NEW JERSEY
July 10, 1990