

A.B.D. No. 94-2

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

OAL DKT No. PRB-7964-92
APPEAL BD DKT No. AB-92-3

JOSEPH BATTITO,

Petitioner,

v.

**COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO,**

Respondent.

Appearances:

Joseph Battito, pro se

Eric S. Brown, Esq. member of the District of Columbia Bar, admitted pro hac vice, Attorney of Record: **Steven P. Weissman,** District Counsel Communications Workers of America, AFL-CIO, for the Respondent

DECISION AND ORDER

On June 3, 1992 Joseph Battito, an employee of the New Jersey Department of Military and Veterans Affairs filed a petition with the Public Employment Relations Commission Appeal Board. The petitioner pays a representation fee in lieu of dues to the Communications Workers of America, AFL-CIO, a majority representative organization. The petition sought review of the amount assessed as a representation fee in lieu of dues for the period covering July 1, 1992 to June 30, 1993. An Answer was filed by the CWA and on October 15, 1992 the case was transferred to the Office of Administrative Law for hearing and was assigned to Administrative Law Judge Beatrice S. Tylutki.

On July 30, 1993 Judge Tylutki issued an "Initial Decision" which has been served on the parties. The decision orders that the petitioner's appeal be dismissed. Neither party has filed exceptions. The decision is now before the Appeal Board to adopt, reject or modify.^{1/}

The ALJ's decision discusses 11 specific issues raised by the petitioner relating to the calculation and use of the representation fee to which the CWA was directed to respond. The ALJ found that the CWA had satisfied its burden of proof and had provided reasonable and lawful explanations to the questions raised by the petitioner. She concluded that the CWA had shown that it had properly allocated its expenses and that the representation fee assessed on the petitioner for the 1992-1993 fiscal year was appropriate and consistent with law.

On review of the entire record, including the evidence presented by CWA in support of its answers to the 11 specific objections, we are satisfied that the Administrative Law Judge correctly dealt with each of the issues raised by the petitioner and we adopt Judge Tylutki's initial decision.^{2/}

^{1/} An extension of the period in which to review the decision has been granted by the Office of Administrative Law.

^{2/} The CWA listed as an expense chargeable to nonmembers "demonstrations, leafleting and strikes about CWA wages, hours working conditions including picket lines, strike committee meetings etc." (emphasis added). We note that the U.S.

ORDER

The Initial Decision of the Office of Administrative Law (attached hereto) in AB-92-2 is hereby adopted and the petitioner's appeal of his 1992-1993 representation fee is hereby dismissed.

BY ORDER OF THE APPEAL BOARD

WILLIAM L. NOTO
Chairman

Chairman Noto and Board Members Dorf and Dileo voted in favor of this decision; none opposed.

DATED: TRENTON, NEW JERSEY
October 19, 1993
ISSUED: October 26, 1993

2/ Footnote Continued From Previous Page

Supreme Court has held that while strike preparation expenses are chargeable to nonmembers, the costs of engaging in an illegal strike are not. Lehnert v. Ferris Faculty Ass'n, ___ U.S. ___ 111 S.Ct. 1950, 137 LRRM 2321, 2330-2331 (1991). There is no evidence in this record that CWA has either engaged in any illegal strikes or has assessed nonmembers for the cost of any illegal strike. Since this issue was not litigated by the parties, our adoption of the ALJ's decision should not be viewed as a ruling on it.