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Board (PERB)

8-21-1981

State of New York Public Employment Relations Board Decisions from August 21, 1981

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from August 21, 1981

Keywords

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
WESTBURY TEACHERS ASSOCIATION : #2A-8/21/81
Respondent, :
- and - : BOARD DECISION AND
ALBERT HANDY and OTHERS SIMILARLY SITUATED, : ORDER
: CASE NO. U-4559

Charging Parties, :

JAMES R. SANDNER, ESQ. (RICHARD E.
CASAGRANDE, ESQ., of Counsel),
for Respondent

BOYD, HOLBROOK & SEWARD (JOHN G.
LIPSETT, ESQ., of Counsel),
for Charging Party

This matter comes to us on the exceptions of the Westbury Teachers Association (WTA) to a hearing officer's decision which found that it violated §209-a.2(a) of the Public Employees' Fair Employment Act by failing to provide Albert Handy with a detailed financial statement of its receipts and expenditures and those of its affiliates when it refunded agency shop fees to him which it determined were used for political or ideological purposes.

FACTS

In accordance with the refund procedures established by the Westbury Teachers Association (WTA), Albert Handy, a teacher employed by the Westbury Union Free School District, applied to it on September 15, 1978, for a refund of agency shop fees paid by him for the 1977-78 year. In a letter dated March 23, 1979, the WTA President advised Handy that the appropriate amount of the refund for the 1977-78 school year was \$.76. A check in that amount was enclosed. Handy appealed to the WTA Board of Directors in

April 1979. In doing so, he requested:

"(1) an itemized breakdown of the monies re-funded from AFL-CIO, NYSUT and the WTA, and (2) a complete budget indicating how the monies were spent for grievances and negotiations by the AFL-CIO, AFT, NYSUT and the WTA."

On December 7, 1979, the WTA informed Handy that NYSUT had identified \$7,012.00 as being spent for political and ideological activities and \$5,700.00 for contributions, and the total, divided by the dues income, came to \$.07 rebate. The WTA further informed Handy that the American Federation of Teachers determined that the rebatable portion of its per capita tax was \$.69.

Handy complained that the data produced was inadequate. In response thereto, he was sent a document entitled "WTA Budget".

1/ The WTA budget is as follows:

<u>W.T.A. BUDGET</u>		
	<u>1977-78</u>	<u>1979</u>
Legal Fee (Attorney)	\$5,500	\$6,100
Legal Fund (PERB Hearings, Arbitrations, Transcripts, Salaries for Teachers)	2,000	1,500
Salary for RA (Officers, Negotiators, & Building Reps)	9,250	13,050
Public Relations (Community Newsletter, Postage, Office Expenses, Telephone)	1,000	850
Conventions & Workshops (NYSUT, AFT, NEA, Committee 100, Labor Relations, Building Rep., etc.)	1,000	1,200
Office Expenses (1977-78 budget only)	700	---
Scholarship Fund	250	250
Retirement Fund	250	250
Hospitality (WTA meetings with Community)	250	300
	<u>\$20,200</u>	<u>\$23,500</u>

In the letter forwarding that document, the WTA president stated:

"If you have specific questions on expenditures in 1977-78 budget, please inquire in order that we may consider the request."

On these facts, Handy filed a charge which alleged, inter alia, the failure to furnish adequate financial information.

After conducting a hearing, the hearing officer issued his decision, to which the WTA has filed exceptions. In that decision, the hearing officer, quoting from United University Professions, Inc. (Barry), 13 PERB ¶3090 (1980), at page 3146, that WTA was obligated to provide "a detailed justification of its refund at the time of making such refund", found that the financial information furnished to Handy was inadequate.

To remedy the violation, the hearing officer suspended the WTA's right to collect agency shop fees from Albert Handy until it furnishes him "...with a financial statement sufficiently detailed to support a rational conclusion as to the purpose of the expenditures of agency funds..." He further ordered that unless such a financial statement were supplied within 30 days, the WTA refund to Handy \$161.48 (the amount sought by him) of the \$200.00 paid by him in agency shop fees for the 1977-78 school year, together with interest at the annual rate of 12% from September 15, 1978 (the date of the request for refund). As a further remedy, the hearing officer ordered that "because of the obdurate refusal of the WTA to accommodate Mr. Handy's reasonable requests, which caused the bringing of the instant charge, he shall be entitled to recover reasonable attorney's fees incurred in the prosecution of

the proceeding in a sum to be fixed by the undersigned upon the submission of his attorneys to me and to the WTA of a statement setting forth the services rendered, the number of hours spent thereon and the usual hourly rates of such attorneys".

The hearing officer also ordered "that at the time of any future denial or refund of agency fees to any unit member, the WTA shall furnish an itemized, audited statement of the complete receipts and expenditures of both the WTA and any of its affiliates which receive, either directly or indirectly, any portions of their revenues from agency fees or dues, together with the basis of the WTA determination of the amount of the refund or denial thereof, including identification of those items of expense determined by the WTA or its affiliates to be refundable or not refundable."

Finally, the hearing officer ordered the WTA to post a notice that it will furnish the required information in the future.

EXCEPTIONS

In its exceptions to the hearing officer's decision, the WTA asserts that:

1. PERB lacks subject matter jurisdiction over agency shop fee cases or, in the alternative, that its jurisdiction is limited to the sole issue of whether the union maintains an agency shop fee refund procedure.
2. PERB has no jurisdiction to order financial disclosure to an agency fee payer prior to Court review or to determine what disclosure must be made in future cases not presented by the instant charge. Further, PERB does not possess the sta-

- tutory authority to compel financial disclosure.
3. To require an objector to be given an itemized statement of each receipt and expenditure of the Association and its affiliates would be onerous and completely beyond what is necessary to protect the statutory and constitutional interests of the objector; the information could be used to harass the union.
 4. PERB has no authority to require disclosure to persons who do not request it.
 5. The hearing officer was arbitrary in finding that the disclosure was inadequate and that it could conceal rebatable expenditures.
 6. Attorney's fees can only be conferred when authorized by statute or contract or where actual malice of one party against the other is shown.
 7. While the hearing officer found that Handy could not bring the charge on behalf of others similarly situated and dismissed the charge as to them, he failed to specifically find that a class action could not be maintained.
 8. The hearing officer could not order a refund of \$161.48 since PERB under no circumstances has authority to determine the amount of the refund.
 9. Statutory and decisional law provides for interest on judgments, verdicts or decisions at 6% and not the 12% ordered by the hearing officer.

10. The hearing officer overlooked the fact that the charging party declined a specific invitation by the WTA to ask any questions he may have had concerning the Association's expenditures.
11. The hearing officer erred in suspending its right to collect agency shop fees from Handy until the ordered disclosure is provided.
12. Posting of the notice ordered by the hearing officer will cause unnecessary harassment of and embarrassment to the WTA.
13. Since the notice which the hearing officer directed to be posted sets forth requirements with respect to future refunds and persons other than the charging party, it is beyond PERB's authority.

DISCUSSION

The pivotal facts in this case are the same as those in Hampton Bays Teachers Association, NYSUT, AFT, AFL-CIO, 14 PERB ¶3018 (1981). In this case as in that, the financial statement furnished by the local contains only general categories of disbursements which do not enable those who have requested a refund "to evaluate the basis of the refund" (Hampton Bays Teachers Association, supra, at p. 3030). The information furnished by the locals' affiliates is the same in both cases.

For the reasons set forth in our Hampton Bays decision, we reject the exceptions to the hearing officer's findings and to PERB's jurisdiction to order disclosure, and find that the WTA vio-

lated Civil Service Law §209-a.2(a) by not providing adequate financial information as to the basis of the refund at the time it was made. Also, on the basis of our Hampton Bays decision, we reject the exceptions to those remedies ordered by the hearing officer which are the same as those ordered by us in Hampton Bays, namely, the furnishing of an audited statement of its receipts and expenditures and those of its affiliates when making the refund determination, and the posting of a notice setting forth its obligation to provide such financial statements in the future.

We also reject the exception to the hearing officer's direction that WTA provide the information or return to Handy the \$161.48 sought by him. In ordering return of the \$161.48, the hearing officer is not, as argued by the WTA, determining the amount of the refund of Handy's share of WTA's political or ideological expenditures, a determination this Board has decided in Hampton Bays Teachers Association, supra, is beyond our jurisdiction. Rather, he is recommending a remedy reasonably designed to prompt the WTA to meet its obligations under the Act.^{2/} We note that this argument of the WTA was made to and rejected without comment by the Appellate Division, Third Department in UUP v. PERB, 80 AD2d23 (1981).

We find merit to the WTA's exception to the ordering of interest at 12% rather than 6% per annum, the latter being the interest authorized by CPLR §5004 on judgments. In light of that section,

^{2/} Under the Act, the WTA must establish and maintain a valid refund procedure in order to collect agency shop fees from Handy. Unless it provides Handy with adequate financial information, it is not maintaining a refund procedure as to Handy and, therefore, may not keep the agency shop fees collected from him.

which is not controlling on us but does evidence a legislative policy in a corresponding area, we deem interest at 6% per annum, as urged by the WTA, to be appropriate.

We reject in principle the exception to the hearing officer's direction that the WTA's right to collect agency shop fees from Handy be suspended. This remedy, too, is reasonably designed to prompt the WTA to meet its obligations under the Act. We do not agree, however, with the hearing officer's order of an immediate suspension of the right to collect agency fees from Handy. The WTA's actions which violate the Act took place prior to the hearing officer's decision in United University Professions, Inc. (Barry), 13 PERB ¶4541, which enunciated for the first time the obligation of employee organizations under the statute to furnish detailed financial information at the time of refund. The suspension should, therefore, be conditioned upon WTA's not providing him with the information within a reasonable period of time. The 30-day period for supplying the information upon which the hearing officer conditioned the return of the \$161.48, to which the WTA has not taken exception, is a reasonable period of time upon which to condition the suspension of the right to collect agency fees from Handy.

We find merit in the WTA's exception to the hearing officer's award of attorney's fees. We need find no more than that, under these circumstances, the awarding of attorney's fees would not be justified.

Finally, we reject as obviously lacking in merit, the WTA's exception to the hearing officer having dismissed the charges as

to persons similarly situated to Handy without finding that a class action cannot be maintained.

NOW, THEREFORE, WE DETERMINE that the Westbury Teachers Association has violated §209-a.2(a) of the Public Employees' Fair Employment Act, and

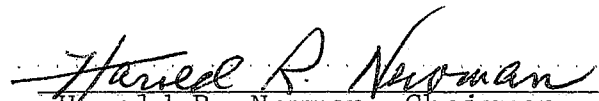
WE ORDER that:


1. The Westbury Teachers Association shall furnish to Albert Handy an itemized, audited statement of its receipts and disbursements and those of any of its affiliates receiving any portion of their revenues from the Westbury Teachers Association's agency fees or dues, such statement to indicate the basis of the determination of the amount of refund, including identification of those disbursements of the Association and its affiliates that are refundable and those that are not. The Westbury Teachers Association shall furnish such statement to Albert Handy within 30 days from the date of this order. Should it fail to do so, it shall cease and desist from collecting any agency shop fees from him until such time as it furnishes him with such statement, and it shall return to him the sum of \$161.48 together with interest at the rate of six per cent per annum from September 15, 1978.
2. At the time of making any other and future refunds to agency fee payers, the Westbury Teachers Association shall furnish to such persons, together with those refunds, an itemized, audited statement of its receipts and disbursements, and those of any of its affiliates.

receiving any portion of their revenues from agency fees or dues, such statement to indicate the basis of the determination of the amount of refund, including identification of those disbursements of the Association and its affiliates that are refundable and those that are not.

3. The Westbury Teachers Association shall post a notice in the form attached, at each facility at which any unit personnel are employed, on bulletin boards to which it has access by contract, practice or otherwise.

Dated, New York, New York
August 20, 1981


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify unit employees that:

We will, at the time of making agency shop fee refunds, furnish together with those refunds, an itemized, audited statement of our receipts and disbursements, and those of any of our affiliates receiving any portion of their revenues from agency fees or dues, such statement to indicate the basis of the determination of the amount of refund, including identification of those disbursements of the Association and its affiliates that are refundable and those that are not.

WESTBURY TEACHERS ASSOCIATION

.....
Employee Organization

Dated

By
(Representative) (Title)

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
NEW PALTZ CENTRAL SCHOOL DISTRICT,
Employer,
-and-
LOCAL 1120, COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,
Petitioner.
Case No. C-2186

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that
Local 1120, Communications Workers of America, AFL-CIO ^{1/}
has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Custodial Worker, Groundsman/Maintenance Operator, Building Maintenance Person, School Chauffeur, and Custodian

Excluded: Head Custodian

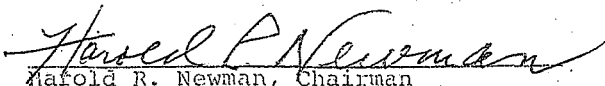
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with


Local 1120, Communications Workers of America, AFL-CIO and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

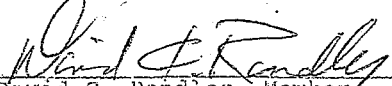
Signed on the 21st day of August, 1981
New York, New York

^{1/}

We note that the petitioner, Local 1120, represents both public and private employees, but we are satisfied with the Director's finding that public employees in the unit before us will be insulated from the others in the conduct of their labor relations and that they will honor the pledge they have taken to abide by the strike prohibition of the Public Employees' Fair Employment Act.


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randies, Member