
UNITED STEELWORKERS OF AMERICA AND SUSAN L. SWANSON, MUPL-2539 (8/16/83).

54.5711 agency service fee
72.3 agency service fee

Commissioners participating:

Paul T. Edgar, Chairman
Joan G. Dolan, Commissioner
Gary D. Altman, Commissioner

Appearances:

John C. Weld, Esq.	- Representing Susan L. Swanson
Warren H. Pyle, Esq.	- Representing the United Steelworkers of America

DECISION

Statement of the Case

This case raises the question of whether a union has to comply with the Commission's agency service fee ratification requirements to validly collect an agency service fee.

On August 25, 1982, Susan L. Swanson filed a charge with the Labor Relations Commission (Commission) alleging that the United Steelworkers of America (Union) was engaging in a prohibited practice relative to the charging of an agency service fee. On March 24, 1983, following investigation, the Commission issued a Complaint alleging that the Union had violated Section 10(b)(1) of G.L. c.150E (the Law) by failing to notify Swanson at least five days before its contract ratification meeting of: (1) the time and place of the meeting; (2) the current amount of the service fee; (3) the fact that all employees in the bargaining unit might attend and vote at the meeting; and (4) the fact that the Union's financial statement was available for inspection.

On April 21, 1983, a duly designated Commission hearing officer conducted a formal hearing in this matter, at which both parties were represented by counsel. Both parties filed timely post-hearing briefs.¹

On the basis of the record before us, we conclude that the Union violated the Law by failing to comply with the ratification requirements for an agency service fee contained in our Rules.

Statement of the Facts

Following certification by the Commission as the exclusive representative of the Town of Orleans Highway Department employees, the Union reached agreement with

¹ Neither party contests the Commission's jurisdiction over this matter.



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the Town on a first collective bargaining agreement. The Union held its ratification meeting on the afternoon of November 24, 1981 in the basement of the Town Hall. The unit then consisted of 19 employees. Sixteen employees attended the ratification meeting, where copies of the negotiated agreement were distributed. Its provisions, including one for an agency service fee, were discussed, and it was ratified unanimously.

Ten days before the ratification vote, Brian Coulson, President of the Local, prepared notices of the ratification meeting that he gave to unit members to post in the various work sites. The notices stated only the following: the time, date and place of the meeting, that the meeting would be held to ratify the agreement, and that all members could vote.

On the afternoon of the ratification meeting, before the meeting started, Coulson and Raymond Murray, a union staff representative, met with Swanson and the other clerical in the unit, Evelyn Carling, in Swanson's office. In that meeting, Swanson voiced her concerns over the inclusion of the clericals in the same unit with the other highway employees. She also expressed displeasure over the prospect of "being forced to join a labor union that we did not intend to join." Swanson testified that she was too livid after meeting with Coulson and Murray to attend the ratification meeting. She also maintained that she never saw any posted notice about the meeting and that the first time she heard about an agency fee was in April, 1982. Richard Knowles, another bargaining unit member, also testified that he never saw any notice posted and that Swanson did not attend the ratification meeting.

Union President Coulson and staff representative Murray testified that Swanson attended the ratification meeting.²

Opinion

Section 12 of the Law establishes a procedure under which unions may obtain agency service fee payments from bargaining unit members. To administer that statute, the Commission has formulated Rules and Regulations codified in 402 CMR 17.00 et seq.³ Pursuant to these regulations, a union was required to notify unit members of a ratification meeting at least five days prior to its being held. 402 CMR 17.04(5). The notice was required to include the time and place of the meeting, that the proposed collective bargaining agreement, if ratified, would require payment of a service fee, the amount of the fee, that the meeting was open to all employees regardless of union membership, that all employees in the bargaining

² In view of our disposition of this case, we need not resolve the conundrum of whether Swanson attended the meeting.

³ Since this case was filed, 402 CMR 17.00 et seq. was amended as of December 9, 1982. For purposes of this case, there is no difference between the relevant section of the old Rules, 402 CMR 17.04(5), and the new one, 402 CMR 17.03(5)(a) - (g).



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unit were eligible to vote, and that the union's most recent financial statements were available for inspection. Id.

The Union here concedes that it did not fulfill all of the above requirements. Although it may have posted notice of the time and place of the ratification meeting, the notice failed to contain all the other enumerated requirements of 402 CMR 17.04(5). In defense, the Union argues that Swanson knew the operative facts about the ratification meeting and either actually attended or deliberately chose not to attend. Furthermore, the Union contends that compliance with Rule 17.04(5) should lead only to a presumption of validity of the enacted fee and non-compliance should not absolutely bar collection of a fee, especially where a charging party had actual knowledge of the information required by that Rule.

The precise issue of whether actual knowledge of a ratification vote can supersede the notice requirements of the Rules has not previously come before this agency. Two cases, however, have treated the issue in dicta and merit examination.

In Southeastern Massachusetts University, 5 MLC 1245 (1978), a rival union attempted to use an incumbent's alleged invalidly ratified contractual agency service fee provision to remove that agreement as a bar to its representation petition. The Commission upheld the agreement as a bar to an election because, on its face, it lacked illegality. Although refusing, for contract bar purposes, to look beyond the contract itself, we stressed the need for strict conformity with the Rules when the validity of the fee itself is challenged in a prohibited practice case:

...[w]e agree with AFSCME that the agency service fee rules should be strictly enforced. However, the Rules and Regulations of the Commission in 402 CMR 17.00 provide a mechanism for challenge of an agency service fee which has not been adopted in accordance with required procedures, including procedures for notifying employees of contract ratification. The proper forum in which to litigate compliance with agency service fee regulations is an unfair labor practice hearing on a charge brought by an employee, not, as AFSCME contends, in a representation hearing upon a petition brought by a rival organization. Id. at 1247.

In Massachusetts Law Enforcement Council, 6 MLC 1148 (H.O. 1979), the Hearing Officer ruled a union's agency fee invalid where the notice of ratification failed to state the amount of the service fee and the voting eligibility of all employees. Id. at 1151. Although the decision was not itself appealed, the case did reach the Commission on a compliance issue. 6 MLC 2067 (1980). We found that the union failed to comply with the Hearing Officer's order and the Law by not publicly counting mail ballots in a rerun vote. Id. at 2071.

In this case, as in Mass. Law Enforcement Council, *supra*, the Union admitted that it did not specifically state in its notice that both members and non-members were eligible to vote for ratification. The Union argues that since this was a first contract and no one was then a union member, it was understood that "member" referred to members of the bargaining unit and not just the Union. This argument is unconvincing, especially when viewed in the context of the admitted failure to include other required items in the notice.



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In view of the dire consequences that may befall employees who fail to pay their agency fees, see Leominster Education Association, 9 MLC 1114 (1982) we must construe the Law and our Rules to ensure fairness in the agency service fee ratification process. Mass. Law Enforcement Council, 6 MLC at 2071. The almost complete lack of compliance with our Rule in this case seriously calls into doubt this ratification process. Regardless of whether Swanson knew certain of the details of the ratification meeting, the serious defects in the Union's notice require that we invalidate this agency service fee provision and bar the Union from collecting further agency service fees under it until a proper ratification takes place.

Order

WHEREFORE, on the basis of the foregoing, it is HEREBY ORDERED that the United Steelworkers of America shall:

1. Not enforce the agency service fee provision contained in the collective bargaining agreement between the Union and the Town of Orleans, which was ratified by the Union on November 24, 1981, until the provision is ratified in accordance with G.L. c.150E and the Commission Rules.
2. Not seek the discharge of or any other sanction against Susan L. Swanson for failure to pay the agency service fee provided for in the collective bargaining agreement referred to above.
3. Refund to Susan L. Swanson any and all moneys paid by her to the United Steelworkers of America or held in escrow by the Union pursuant to the agency service fee provision of the collective bargaining agreement referred to above.
4. Post in all places where notices are normally posted for bargaining unit employees copies of the attached Notice to Employees.
5. Notify the Commission within ten (10) days of receipt of this decision and order of the steps taken to comply therewith.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, Chairman
JOAN G. DOLAN, Commissioner
GARY D. ALTMAN, Commissioner



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NOTICE TO EMPLOYEES
POSTED BY ORDER OF
THE MASSACHUSETTS LABOR RELATIONS COMMISSION
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

WE WILL NOT enforce the agency service fee provision contained in the collective bargaining agreement between the United Steelworkers of America and the Town of Orleans, which the union ratified on November 24, 1981, until the agency service fee provision is ratified in accordance with G.L. c.150E and the Labor Relations Commission Rules.

WE WILL NOT seek the discharge of or any other sanction against Susan L. Swanson for failure to pay the agency service fee provided for by the above-referenced collective bargaining agreement.

WE WILL refund to Susan L. Swanson any and all moneys paid by her to the United Steelworkers of America or held in escrow by the United Steelworkers of America pursuant to the agency service fee provision of the above-referenced collective bargaining agreement.

WE WILL in the future comply with G.L. c.150E, Section 12 and the Labor Relations Commission Rules when providing for ratification of a collective bargaining agreement which contains an agency service fee.

President, Local Chapter
United Steelworkers of America

