
WOBURN TEACHERS ASSOCIATION AND ELLEN DAILEY, MUPL-2570 (2/29/84).

72.3 agency service fee
75.1 dues and initiation fees
75.71 ratification votes

Commissioners Participating:

Paul T. Edgar, Chairman
Gary D. Altman, Commissioner
Maria C. Walsh, Commissioner

Appearances:

Brian A. Riley, Esq. - Representing the Woburn Teachers
Association/MTA/NEA
Ellen M. Dailey - Appearing pro se

DECISION

At issue in this case is whether the Woburn Teachers Association (Association) violated Section 10(b)(1) of General Laws Chapter 150E (the Law) by demanding that Ellen Dailey pay an allegedly invalid agency service fee. More specifically, we must consider whether the Association's failure to individually count and individually record the votes taken at a contract ratification meeting, violated Commission Rules 402 CMR 17.02,¹ and thereby rendered the agency fee provision invalid.

¹The Commission's Rules regarding ratification of an agency service fee provide as follows:

402 CMR 17.03 Ratification

- (1) No service fee shall be imposed unless the collective bargaining agreement requiring its payment as a condition of employment has been formally executed pursuant to a ratification vote of a majority of all employees casting valid votes in person at a meeting or meetings or by mail ballot ratification procedure.
- (2) The ratification vote shall be taken by mail or at a meeting or meetings called by the bargaining agent. The right to vote by mail or in person at a meeting shall be extended to all employees in the bargaining unit covered by the proposed collective bargaining unit covered by the proposed collective bargaining agreement. Ratification meetings shall be held at a reasonable time and place. Mail ballot ratifications shall be conducted in a manner calculated to ensure custody of the ballots and compliance with the public counting requirement of 402 CMR 17.03(3) below.
- (3) The vote shall be publicly counted, and the majority of the valid votes cast by mail or in person at a meeting or meetings shall prevail. If the collective bargaining agreement is ratified, the bargaining agent shall maintain a written record of the results of the vote until the expiration of said agreement.

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Statement of the Case

On January 31, 1983, Ellen Dailey (Dailey) filed a charge with the Labor Relations Commission (Commission) alleging that the Woburn Teachers Association (Association) had engaged in a prohibited practice within the meaning of Section 10(b)(1) of Massachusetts General Laws, Chapter 150E (the Law). Following an investigation of the charge, the Commission issued a Complaint on June 3, 1983, alleging that the Association had violated the Law by (Count 1) imposing an agency fee which was not validly ratified and (Count 11) by imposing an agency fee in excess of the amount permitted by Section 12 of the Law. A formal hearing on Count 1 of the Complaint was held on June 12, 1983 before Amy L. Davidson, a duly designated hearing officer of the Commission.² Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence was afforded to both parties. Both parties filed written briefs which have been duly considered.

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- (4) The bargaining agent shall maintain and make available for inspection by members of the bargaining unit, at reasonable times and places, a copy of its most recent financial report in the form of a balance sheet and operating statement listing all receipts and disbursements of the previous fiscal year as required by M.G.L. c.150E, Section 14.
- (5) Notice of the ratification procedure shall be given by the bargaining agent in a like manner to all employees in the bargaining unit at least 5 calendar days prior to the holding of the meeting(s) or the distribution of ballots to employees in a mail ratification unless extraordinary circumstances warrant notice of fewer than 5 days. The notice shall include the following information:
 - (a) The time and place of the meeting(s) or details of the mail ratification procedure;
 - (b) A statement that the proposed collective bargaining agreement, if ratified, will require payment of a service fee as a condition of employment;
 - (c) The current amount of the service fee;
 - (d) A statement that all employees in the bargaining unit may attend and vote at the meeting(s) or by mail in a mail ratification;
 - (e) A statement that all employees within the bargaining unit covered by the proposed agreement are eligible to vote;
 - (f) The full identity, including affiliations, of the bargaining agent;
 - (g) A statement that the bargaining agent's most recent financial report in the form of a balance sheet and operating statements listing all receipts and disbursements of the previous financial year is available for inspection.

²The hearing was limited to the portion of the Complaint alleging invalid ratification because the second count of the Complaint, involving the amount of the fee, will not be litigated until the contract expires.



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Findings of Fact

The Association is the exclusive bargaining representative of all professional teaching employees employed by the Town of Woburn School Department (School Department). The Association and the School Department were parties to a collective bargaining agreement for teaching employees effective September 1, 1981 through August 31, 1982 which contained the following agency service fee provision:

Article 33Agency Service Fee

As a condition of her/his continued employment by the Committee while this Agreement shall continue in effect, every employee covered by this Agreement if and when not a member in good standing of the Association, shall pay or, by payroll deduction, shall have paid to the Association an agency service fee of 100% of the affiliated dues; provided, however, that in no case shall such condition arise before the thirtieth (30th) day next following the date of the beginning of the employee's employment or the effective date of this Agreement, whichever date shall be later. An employee paying the agency service fee to the Association as provided herein may obtain from the Association a rebate of a pro rata share of certain expenditures of the Association, said expenditures as defined in G.L. c.150E, Section 12. The Association agrees as a condition of this provision to indemnify and save the School Committee harmless for any action it may take pursuant to this provision, including any claims made against it by any employee, or group of employees.

In November of 1982 the Association and the School Department reached agreement on the terms of a successor collective bargaining agreement to be effective from September 1, 1982 to August 31, 1984. Article 33 of the successor agreement contains an agency service fee provision identical to that of the prior agreement, which is reproduced above.

On November 22, 1982, the Association posted the following notice regarding ratification of the proposed successor collective bargaining agreement:

WOBURN TEACHERS ASSOCIATION

NOTICE TO ALL UNIT A EMPLOYEES (TEACHERS)

A RATIFICATION MEETING FOR THE PURPOSE OF CONSIDERATION OF THE PROPOSED AGREEMENT FOR A NEW CONTRACT WILL TAKE PLACE ON TUESDAY, NOV. 30, 1982 AT 7:30 P.M. AT THE FOLLOWING LOCATION:



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WOBURN ELKS
295 WASHINGTON ST.
WOBURN, MA.

THE PROPOSED AGREEMENT CONTAINS A PROVISION FOR AN AGENCY SERVICE FEE. IF THE PROPOSED AGREEMENT IS RATIFIED BY THE MEMBERS OF THE BARGAINING UNIT AND BY THE SCHOOL COMMITTEE, THE AGREEMENT WILL REQUIRE THE PAYMENT OF AN AGENCY SERVICE FEE AS A CONDITION OF EMPLOYMENT. THE AMOUNT OF THE AGENCY SERVICE FEE FOR THE PERIOD OF JULY 1, 1982 - JUNE 30, 1983 IS \$225; IT IS EXPECTED THAT THE AMOUNT OF THE AGENCY SERVICE FEE SHALL BE SLIGHTLY HIGHER FOR THE PERIOD OF JULY 1, 1983 - JUNE 30, 1984.

YOU ARE ALSO HEREBY INFORMED THAT:

- A) THE RATIFICATION MEETING IS OPEN TO ALL MEMBERS OF THE BARGAINING UNIT REGARDLESS OF MEMBERSHIP IN THE W.T.A., OR LACK THEREOF:
- B) ALL MEMBERS OF THE BARGAINING UNIT ARE ELIGIBLE TO VOTE ON THE PROPOSED COLLECTIVE BARGAINING AGREEMENT: AND
- C) THE FINANCIAL REPORT OF THE W.T.A. FOR THE FISCAL YEAR JULY 1, 1981 - JUNE 30, 1982 IS AVAILABLE FOR INSPECTION.

DATE OF POSTING: NOVEMBER 22, 1982

On November 30, 1982, the Association held a ratification meeting on the proposed successor agreement at the time and place designated on the notice. Employees who attended the meeting signed an attendance sheet and received a copy of the proposed amendments to the prior collective bargaining agreement. About one hundred fifty out of the total three hundred fifty unit employees attended the meeting. Union President Harry Wilkinson opened the meeting and explained the changes to the previous agreement. There followed a discussion of the salary increase and other proposed benefits in the successor agreement. Because the agency fee clause was not an amendment to the prior agreement, it was not included in the document containing the proposed amendments which had been distributed to employees at the ratification meeting. In addition, neither the Association nor any employees present at the meeting raised the issue of agency fee. At the conclusion of the meeting, a collective voice vote was taken in the form of "yeas" and then "nays" on the entire contract package, as had been the Association's practice.³ A majority of the eligible voters in attendance ratified the new agreement by voice vote.⁴ No one

³The Association's meetings are conducted in accordance with Robert's Rules of Order.

⁴Based upon the testimony of the Association's president, the Association's treasurer and Ann Luchini, a teacher called by the charging party, we find that a majority of employees voting ratified the agreement by voice vote on November 22, 1982.



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challenged the voice vote or moved for a hand vote. At the conclusion of the meeting, the Association's secretary made a note in the minutes of the meeting that the contract had been ratified by voice vote.

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. Our regulations provide that no service fee may be imposed unless the collective bargaining agreement establishing it has been ratified by a majority of employees casting valid votes as a ratification meeting or by mail ballot. 402 CMR 17.03 (1). In addition, the votes must be publicly counted, and the union is required to maintain a written record of the results of the vote until the expiration of the collective bargaining agreement. 402 CMR 17.03(3).

The charging party in the present case argues that the Association did not fulfill its obligations under 402CMR 17.03(1) and (3) because it did not individually count the number of votes cast at the ratification meeting on November 30, 1982. We disagree. As noted above, the November 30 ratification vote was conducted publicly and the majority of bargaining unit members ratified the agreement by voice vote. No one challenged the vote or moved for an individual hand vote. In these circumstances, we find that the Association met its obligations under 402 CMR 17.03(3). There is nothing in Section 12 or in the Commission's agency fee regulations requiring an individual count of the ratification vote. The only requirements are that the vote be publicly counted and that the majority prevail. Based upon the foregoing facts, we conclude that the Association fulfilled its obligation in the instant case. For similar reasons, we also reject the charging party's assertion that the Association failed to maintain a written record of the vote. As noted in the facts found above, the Association's secretary made a notation in the minutes of the November 30 meeting indicating that the collective bargaining agreement had been ratified by voice vote. We deem the notation in the minutes to be sufficient "written record of the vote" for purposes of 402 CMR 17.03(3). We do not read that regulation as imposing an obligation to keep a record of each individual vote or of the total number of votes cast in favor of the contract.

With respect to the other arguments raised by Dailey, there is no requirement in the regulations, other than the notice requirements contained in 402 CMR 17.03 (5),⁵ which were fulfilled, that a union raise and specifically discuss the agency

⁵402 CMR 17.03(5) provides that:

Notice of the ratification procedures shall be given by the bargaining agent in a like manner to all employees in the bargaining unit at least 5 calendar days prior to the holding of the meeting(s) or the distribution of ballots to employees in a mail ratification unless extraordinary circumstances warrant notice of fewer than 5 days. The notice shall include the following information:

- (a) The time and place of the meeting(s) or details of the mail ratification procedure;

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fee as a separate issue at a contract ratification meeting. In addition, we find no evidentiary support for Dailey's claim that the Association unlawfully coerced her in its demands for an agency service fee. Although the Association's initial demands for an agency fee did not include a copy of the Commission's regulations, the Association cured this defect by enclosing a copy of the regulations with its March 31, 1983 demand to Dailey. We find no merit in Dailey's claim that the Association violated the Law by sending agency fee demands to her before sending demands to certain other unit employees.⁶ In addition, the mere fact that the Association renewed its demand for an agency service fee for a year Dailey previously had contested was not unlawful. A union may renew its demand for unpaid agency service fees during years subsequently to the date of the agency fee. Finally, the Association did not violate the Law by permitting certain union members to pay their membership dues in installments.

For all of the reasons stated above, we conclude that the agency service fee provision contained in the current collective bargaining agreement between the Woburn Teachers Association and the Woburn School Committee was validly ratified on November 30, 1982. Therefore, we dismiss Count 1 of the Complaint alleging that

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- (b) A statement that the proposed collective bargaining agreement, if ratified will require payment of a service fee as a condition of employment;
- (c) The current amount of the service fee;
- (d) A statement that all employees in the bargaining unit may attend and vote at the meeting(s) or by mail in a mail ratification;
- (e) A statement that all employees within the bargaining unit covered by the proposed agreement are eligible to vote;
- (f) The full identity, including affiliations, of the bargaining agent;
- (g) A statement that the bargaining agent's most recent financial report in the form of a balance sheet and operating statements listing all receipts and disbursements of the previous financial year is available for inspection.

The purpose of the above quoted provision is to notify all employees that an agency fee obligation will adhere should they ratify the agreement. This assures that all bargaining unit members will have the opportunity to be present at the ratification meeting and, should they so desire, to vote against ratifying the agreement containing the agency fee provision.

⁶Some, if not all of these employees had been union members the previous year. The Association initially gave these former members notice of the amount of their union dues and an opportunity to renew their membership. When the employees failed to remit their dues, the Association sent them agency fee demands.



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the Association violated 10(b)(1) of the Law by demanding payment of an invalid agency service fee. Count II of the Complaint remains pending for further processing following the expiration of the collective bargaining agreement.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, Chairman
GARY D. ALTMAN, Commissioner
MARIA C. WALSH, Commissioner

