
MALDEN EDUCATION ASSOCIATION AND JOSEPH W. ANGELO, MUPL-2595 (3/1/85).

72.3 agency service fee
93.63 reporting requirements

Commissioners participating:

Gary D. Altman, Commissioner
Maria C. Walsh, Commissioner

Appearances:

Brian A. Riley, Esq.	- Representing Malden Education Association
Joseph W. Angelo	- <u>pro se</u>

DECISION AND ORDER

This case raises the question of whether a union must comply with the informational reporting provisions of the Commission's agency service fee regulations in order to validly demand payment of a service fee from a non-member.

On March 16, 1983, Joseph W. Angelo (Angelo) filed a charge with the Labor Relations Commission (Commission) alleging that the Malden Education Association (Association) had engaged in a prohibited practice in violation of Section 10(b)(1) of the Law relative to the Association's demands that Angelo pay a service fee to the Association. On December 20, 1983, following an investigation, the Commission issued a Complaint and Notice of Hearing alleging that the Association had violated Section 10(b)(1) of the Law by demanding that Angelo pay an agency service fee when at the time of the demand the Association had failed to comply with the reporting provisions of Sections 13 and 14 of Massachusetts General Laws, Chapter 150E (the Law) as required by Section 17.05 of the Commission's Rules, 402 CMR 10.00, et. seq., 402 CMR 17.05.¹ On December 21, 1983, the Association filed its Answer to the Complaint wherein it admitted most of the factual and jurisdictional allegations of the Complaint but denied that it had not met the reporting requirements of the Law or that its conduct amounted to a prohibited practice under the Law.

¹ Section 17.05 of the Commission's Rules reads in full:

17.05: Demand for Payment of a Service Fee

(1) A bargaining agent seeking payment of a service fee shall serve a written demand for the fee upon the employee from whom the fee is sought. The written demand shall include the amount of the service fee, the period for which the fee is assessed, the method by which payment is to be made, the person to whom payment should be made, and the consequences of a failure to pay the fee.

(2) A bargaining agent making a written demand pursuant to 402 CMR 17.05(1) above shall attach to the demand a copy of the entire text of these Rules relating to agency service fee (402 CMR 17.00).

(3) No demand for payment of a service fee under this section shall be made until the bargaining agent making the demand has complied with the applicable provisions of M.G.L. c.150E, Sections 13 and 14.



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On February 6, 1984, the parties appeared at a formal hearing before a duly designated hearing officer of the Commission.² At the hearing the parties were afforded full opportunity to be heard, to examine and cross-examine witnesses and otherwise present evidence to support or defend the Complaint. Neither party called any witness nor filed post-hearing briefs. The oral arguments made by the parties at the hearing have been carefully considered.

Based on the record as a whole, we conclude that the Association violated Section 10(b)(1) of the Law by demanding that Angelo pay a service fee that was invalid due to the Association's failure to comply with the reporting requirements of the Commission's agency service fee regulations.

Facts

The Association is the exclusive representative for the purpose of collective bargaining of a bargaining unit consisting of all professional teaching personnel and administrative employees of the Malden School Committee (School Committee) excluding certain managerial and confidential employees. Angelo is a teacher employed by the School Committee of Malden in a position included in the bargaining unit represented by the Association. He is not, however, a member of the Association.

The Association and the School Committee were parties to a collective bargaining agreement effective from 1978 to 1979, the terms of which had been continued through August 31, 1982 by agreement of the parties dated September 25, 1981. Article 29 of the contract provided in pertinent part:

The collective bargaining agreement entered into by the Malden Education Association and the Malden School Committee contains an agency service fee. In essence this means that all teachers and administrators in Malden, who are not members of the Malden Education Association are required to pay a sum of money to cover the costs of bargaining and maintaining the contract.³

²In his initial charge, Angelo challenged the amount of the service fee for 1982-83 school year. Angelo declined to establish an escrow account with the Association for that amount prior to hearing as required by Section 17.07(3) of the Commission's Rules. The Commission (Edgar and Altman participating) dismissed a portion of Angelo's charge which challenged the amount of the fee because of Angelo's failure to establish an escrow account pursuant to Section 17.07(3). Dismissal of Allegations, Case No. MUPL-2595 contained in Complaint and Notice of Hearing issued December 20, 1983. Angelo requested reconsideration and the Commission reaffirmed the dismissal of the challenge to the amount of the 1982-83 service fee. At the hearing, Angelo attempted to reassert his challenge to the amount of the fee despite his failure to establish an escrow account. In light of the disposition of this matter on the question of the validity of the fee, it is unnecessary to reach the merits of his motion.

³At the hearing, Angelo made a motion to amend the language of Complaint paragraph 5 to reflect the language of the 1978-1979 collective bargaining agreement. The motion was unopposed, and we hereby grant the motion.



On or about January 8, 1983, the Association made a written demand that Angelo pay a service fee in the amount of \$219 for the school year 1982-83. Angelo refused to pay the fee, and instead, filed the instant charge with the Commission contesting both the validity and amount of the fee.

At the time that the Association made the demand for payment of the fee it had not filed informational reports with the Commission required by Sections 13 and 14 of the Law. Section 13 of the Law mandates that an employee organization "shall file with the Commission a statement of its name, the name and address of its secretary or other officer to whom notices may be sent, the date of its organization, and its affiliations, if any, with other organizations." To facilitate enforcement of these provisions and to standardize its recordkeeping, the Commission developed a form known as the "Employee Organization Information Report," or Form 1. Section 14 of the Law provides:

No person or association of persons shall operate or maintain an employee organization under this chapter unless and until there has been filed with the Commission a written statement signed by the president and secretary of such employee organization setting forth the names and addresses of all of the officers of such organization, the aims and objectives of such organization, the scale of dues, initiation fees, fines and assessments to be charged to members, and the annual salaries to be paid the officers.

To facilitate the collection of this information and to standardize its reporting the Commission developed a reporting form known as "Employee Organization Annual Report," or Form 2. Form 2 also contains a report of financial transactions and an operating statement indicating receipts and disbursements, the source of receipts and the purpose of disbursements made during the preceding fiscal year.

The Association alleged during the investigation of this matter and at the hearing that the requisite forms had been filed sometime during 1982, probably in November 1982. However, a search of Commission records at the time of the investigation in August 1983 and at various dates thereafter failed to disclose the reports. At the formal hearing in August 1983, the Association presented the Commission with copies of the Form 1 and Form 2 it alleges were filed in 1982.

We have examined the documents presented at the hearing and remain unpersuaded that the Association had met the filing requirements of the Law prior to making its demand on Angelo. The proffered Employee Organization Information Report (Form 1) is signed and dated November 8, 1982. The Employee Organization Annual Report (Form 2) proffered at the hearing is neither signed nor dated as required by the Law. Moreover, neither copy of the document is marked or stamped in any manner which would demonstrate that it had been received by the Commission.

At the hearing, the Association did not call any person responsible for the preparation or alleged filing of the reports with the Commission or any officer whose signature appears on the Form 1. Nor did it call any other person responsible for transmission of the documents to the Commission. The allegations of the Complaint gave the Association clear notice that the alleged failure of the



Association to file the required documents was the basis for the instant litigation. See paragraph 8, Complaint and Notice of Hearing. The Association failed to produce any competent evidence that the documents allegedly prepared by the officers of the Association for filing in 1982 for the 1982-83 fiscal year were ever sent to, or received by, the Commission. Commission Rule 12:10(4) provides that, "All documents shall be deemed filed upon receipt by the Commission." (Emphasis added). Conversely, documents not received by the Commission are not deemed to have been filed for purposes of the Law. Thus, we find that the Association had not filed the informational reports mandated by Sections 13 and 14 of the Law prior to demanding that Angelo pay a service fee for the 1982-83 school year.

Opinion

Section 12 of the Law permits public employers and their unions to negotiate collective bargaining agreements requiring payment of an agency service fee by non-members as a "condition of employment." M.G.L. c.150E, Section 12. The fee assessed non-members may include "a proportional share of collective bargaining, contract administration, and grievance adjustment expenses," School Committee of Greenfield v. Greenfield Education Association, 385 Mass. 70, 78 (1982), including those permissible expenses set out specifically in the Commission's Rules, 402 CMR 17.04(2)(a)-(r).

The Commission has promulgated Rules and Regulations to implement the provisions of Section 12 of the Law, including rules governing the method and manner by which an employee organization may validly demand payment of an otherwise legitimate fee. See 402 CMR 17.01 et seq. Section 17.05 of the Commission's Rules sets forth three requirements which must be met before demand for payment will be considered valid and enforceable. First, the demand for payment must be in writing; it must state the amount of the payment, the period for which the fee has been assessed; the method by which payment may be tendered and to whom; and the written demand must clearly state the consequences of non-payment, including what, if any, steps the bargaining agent intends to take to secure payment. Second, the demand must include a copy of the Commission's rules governing agency service fee. Third, the Rules state, "No demand for payment of a service fee under this section shall be made until the bargaining agent making the demand has complied with the applicable provisions of M.G.L. c.150E, Sections 13 and 14." (Emphasis added).

The Commission has held that, while the Law permits an employer and union to establish payment of a fee as "condition of employment," i.e., to require an employee to pay a bona fide fee or be subjected to discipline or discharge from employment, the Commission will construe its Rules establishing ratification standards to ensure fairness to fee payors, and will find invalid, and bar collection of, service fees levied pursuant to a ratification procedure that does not conform to all of the notice requirements of the Commission's Rules, United Steelworkers of America, 10 MLC 1080, 1081-83 (1983).

The Association argues that the Commission should not rule the Association's demand for Angelo's service fee to be invalid merely because the Association has not complied with Section 17.05(3) of the Commission's agency service fee



regulations. In support of its position the Association relies on the Commission's decision in Commissioner of Administration and Finance, 2 MLC 1322 (1976). There, the Commission rejected the argument that it should set aside the results of a statewide election involving five of the nine state bargaining units, because of the failure of the prevailing union to file the informational reports mandated by Sections 13 and 14 of the Law, prior to the date of the election. The Commission reasoned that the "appropriate remedy" for non-compliance with the reporting requirements in the context of a representation proceeding was to withhold certification of the prevailing union as the exclusive bargaining representative until the union had filed the necessary informational reports rather than set aside the results of the election. An appropriate remedy for failing to file the required reports was to withhold certification but not to disturb employees' choice of union representation.

The Association also cites Town of Auburn, 8 MLC 1266 (H.O. 1981), where a hearing officer denied an employer's motion to dismiss a prohibited practice complaint alleging bad faith bargaining practices where the charging party had not met the filing requirements of Sections 13 and 14 prior to hearing. The hearing officer, relying on Commissioner of Administration and Finance, *supra*, denied the motion to dismiss for lack of jurisdiction. The hearing officer opined that failure to comply with the Commission's regulations, Rule 15.04(2), did not deprive the Commission of jurisdiction to hear prohibited practice charges, but would require the Commission or hearing officer to "withhold a decision in a prohibited practice case pending compliance with Sections 13 and 14." Town of Auburn, 8 MLC at 1269.

The Association argues that failure to comply with the Commission's Rule 15.04(2) prior to demanding payment of a fee should not bar collection of the fee entirely but should merely postpone collection of the fee until such time as the appropriate reports are filed with the Commission. We disagree.

The language of Rule 17.05(3) is unambiguous: "No demand for payment of a service fee under this section shall be made until the bargaining agent making the demand has complied with the applicable provisions of M.G.L. c.150E, Sections 13 and 14." (emphasis added). It is axiomatic that use of the word "shall" demonstrates that the reporting requirements of the regulation are mandatory and not discretionary vis-a-vis the employee organization. Cf. Turnpike Amusement Park v. Licensing Commission of Cambridge, 343 Mass. 435, 437 (1962) [the word "may" in a statute imports discretion]. The validity of an agency service fee demand is dependent upon compliance with the provisions of 402 CMR 17.03 and 17.05. Therefore, non-compliance with either section 17.03 or 17.05 of the Rules renders invalid any demand made prior to compliance with the Rules.

Both the reporting and ratification rules are intended to protect important interests of all members of the bargaining unit, including particularly, agency fee payors. Rule 17.03 requires that any contract containing a mandatory fee provision be ratified by a majority of the entire bargaining unit, including employees who are not members of the employee organization, after the employee organization has given ample notification to the bargaining unit of the terms of the agency fee



provision. Failure to comply with the specified notice, voting or disclosure procedures contained in 402 CMR 17.03 renders any resulting service fee provision invalid. See United Steelworkers of America, supra.

The requirements of Section 17.05 also protect the interests of employees who are required to pay a service fee by insuring that any demand for payment of a service fee be in writing and contain sufficient information to allow the non-member to ascertain the identity of its bargaining agent, its leadership, and whether the fee demanded constitutes a proportionate share of the legitimate costs of negotiating and maintaining the collective bargaining agreement. Section 17.05 also requires dissemination of the Rules themselves to insure that the payor is aware of her or his rights under the Law. The Rules also mandate that the employee organization shall file with the Commission, and thus makes publicly available, basic information about the employee organization's organizational and financial status. Section 17.05 extends and supports the policy objectives of the reporting provisions of the Law, "to afford members of the employee organizations an opportunity to hold accountable their exclusive bargaining representative." Commissioner of Administration and Finance, 2 MLC at 1326. The filing requirement gives the non-member fee payors access to information at the point in time when such employees most need information in order to make an informed judgment about whether to acquiesce in an organization's demands for payment or to challenge the fee before the Commission. Section 17.05(3) thus ensures that non-members will have access to information about their bargaining representative. See, e.g., Sections 17.03(4) and 17.03(5)(f) and (g) which require public disclosure of the financial reports required by Section 14 of the Law and other organizational information prior to the ratification vote for a contract containing an agency fee clause. Failure to meet the reporting requirements of Sections 13 and 14 of the Law, as mandated by the Commission's Rule Section 17.05(3) deprives a fee payor of information deemed essential by the Law to make a reasoned judgment. As in the case of failure to comply with the ratification procedures prescribed by the Commission under Section 17.03, failure to comply with the filing requirement invalidates the demand for a service fee. See United Steelworkers of America, supra; 402 CMR 17.06(1). By mandating timely disclosure of current organizational and financial data Rule 17.05(3) insures that the service fee payors decision will be informed thereby reducing the possibility of misunderstanding and unnecessary agency fee litigation. Permitting a union to evade the responsibility for its conduct by filing the necessary reports after an employee has been subjected to a demand for a fee and/or instituted defensive litigation, would negate these goals.

CONCLUSION

Based on the foregoing facts and analysis, we conclude that, insofar as the Association had not met the filing requirement of Sections 13 and 14 of the Law on January 28, 1983 when it made a written demand for payment of a service fee for the 1982-83 school year, that demand was invalid and the Association is barred from collecting or attempting to collect a fee pursuant to that demand. The Association's attempts to collect the fee, pursuant to that demand, constitute interference with, restraint, and coercion of Angelo in the exercise of his rights under Section 2 of the Law in violation of Section 10(a)(1) of the Law.



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WHEREFORE, on the basis of the foregoing, IT IS HEREBY ORDERED that the Malden Education Association shall:

1. Cease and desist from:
 - a. Seeking to enforce the demand of on or about January 28, 1983, for an agency service fee for the school year of 1982-1983, or in any like manner interfering with, restraining or coercing Angelo in violation of Section 10(a)(1) of the Law;
 - b. Seeking the discharge of Angelo or any other sanction for failure to pay the service fee demanded on or about January 28, 1983.
2. Take the following affirmative action which will effectuate the purposes of the Law:
 - a. Post in conspicuous places where employees represented by the Association usually congregate or where notices are usually posted, and display for a period of thirty (30) consecutive days thereafter, signed copies of the attached Notice to Employees;
 - b. Notify the Commission in writing, within thirty (30) days of service of this decision and order of the steps taken to comply herewith.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

GARY D. ALTMAN, Commissioner
MARIA C. WALSH, Commissioner



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

Following hearing before the Massachusetts Labor Relations Commission, the Commission has determined that the Malden Education Association has violated Massachusetts General Laws, Chapter 150E by failing to comply with the reporting provisions of Chapter 150E before attempting to collect an agency service fee from Joseph W. Angelo, a teacher in the bargaining unit represented by the Malden Education Association. The Commission's Rules require that employee organizations must report certain organizational and financial information to the Commission prior to making a demand for payment of a service fee upon a non-member of the organization.

Section 2 of the Law guarantees employees the right to join or refrain from joining unions or otherwise engaging in collective activity. By demanding that Angelo pay the service fee for 1983-84 before making the necessary reports, the Association interfered with, restrained and coerced Angelo in the exercise of his rights to refrain from joining or supporting a union guaranteed by Section 2 of c.150E, in violation of Section 10(b)(1) of c.150E.

WE WILL NOT interfere with, restrain or coerce Joseph W. Angelo or any other non-member of the Association by demanding that non-members of the Association pay a service fee before we file the informational reports required by Sections 13 and 14 of the Law with the Commission.

WE WILL NOT seek sanctions against Angelo, or any other non-member of the Association, for failing to pay the fee demanded for the 1982-83 school year.

PRESIDENT
MALDEN EDUCATION ASSOCIATION

