

FAIRHAVEN EDUCATORS ASSOCIATION AND KENNETH AINSLEY, LAURA AINSLEY, PETER ANTHONY, CAROL BRYDEN, CHARLES CIPOLLINI, CAROLYN LIMA, QUENTIN MATSON, GAIL WALTZ, MUPL-2828 - 2843 (11/12/86).

2.3 agency service fee

Parties participating:

Paul T. Edgar, Chairman
Elizabeth K. Boyer, Commissioner

Cases:

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| Kenneth Ainsley | - Pro se, and representing Laura Ainsley, Peter Anthony, Carol Bryden, Charles Cipollini, Carolyn Lima, Quentin Matson, Gail Waltz |
| Brian A. Riley, Esq. | - Representing the Fairhaven Educators Association |

DECISION

Statement of the Case

In February 21, 1985, the eight charging parties filed charges alleging that Fairhaven Educators Association (FEA) had demanded payment of an agency fee for the 1984-85 school year that was both invalid within the meaning of G.L. c.150E, Sec. 12 and 402 CMR 17.03 and 17.05, and in excess of the amount permitted by G.L. Section 12. On October 21, 1985, the Commission issued a Complaint and Notice of Hearing, and on February 21, 1986, an Amended Complaint. The cases were scheduled for hearing and decision.¹

Margery Williams, a hearing officer of the Commission, presided over two days of hearing on February 21, 1986 and March 28, 1986. The parties were given full opportunity to be heard, to examine and cross-examine witnesses, and to present and defend their respective positions. All parties submitted opening briefs.

Facts

The FEA represents a bargaining unit of teachers in the Fairhaven Public Schools. On September 13, 1984, the FEA held a meeting of the bargaining unit to discuss the proposed September 1, 1984 - August 31, 1986 collective bargaining agreement.

The Commission deferred hearing on the allegations that the FEA imposed a fee in excess of the amount permitted by Section 12 until the FEA's 1984 - 1986 collective bargaining agreement expired.



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agreement. The proposed agreement contained, for the first time in the unit's history, an agency fee provision.²

Sometime before the September 13, 1984 meeting, the FEA distributed a notice of the meeting to all bargaining unit members through the school mail. The notice said, in pertinent part:

The financial report of the F.E.A. is available for inspection for the fisical [sic] year July 1, 1983 - June 30, 1984[.]

Soon after he received this notice, Charging Party Peter Anthony telephoned Gail Enos, President of the FEA, and asked her for the financial information referred to in the notice. Enos replied that the information would be available at the ratification meeting.

Deborah Medeiros, treasurer of the FEA, brought the following financial records to the September 13, 1984 ratification meeting:

²The membership ratified the proposed agreement, including Article 32, the agency fee provision, which read as follows:

32.1 The Committee agrees to require (during the term of this Agreement) that all employees covered by this Agreement except those employees certified to the Committee by the Association as being members of the Association as of the 45th day of their employment or the 30th day after the effective date of this Agreement, whichever is later, shall pay to the Fairhaven Educator's Association a service fee set by the Association which fee shall not exceed the amount of dues paid to the Association by a regular active member.

32.2 The Association agrees to save the School Committee and Town harmless from any action arising out of deductions for the agency service fee and commenced by any employee against the School Committee or Town and assumes full responsibility for the disposition of funds so deducted once they have been paid to the Association.

32.3 Disputes between the parties concerning this provision shall be resolved in accordance with the grievance procedure contained in this Agreement. In the event such a dispute is submitted to arbitration, the arbitrator shall have no power or authority to order the School Committee to pay such service fee on behalf of any bargaining unit member. If the arbitrator decides the bargaining unit member has failed to pay or authorize the payment of the service fee in accordance with this provision, the only remedy shall be the suspension of the bargaining unit member for one week without pay if the unit member continues to refuse to pay or authorize payment of the service fee.



1. The FEA's ledger books, which record every expense of the FEA since 1976-77.
2. The forms that the FEA had completed and filed with the Commission to comply with the financial disclosure requirements of Sections 13 and 14 of the Law for fiscal year 1983.³ Medeiros had not yet prepared the fiscal 1984 forms. Fiscal 1984 did not end until August 31, 1984, and she did not have all the data she needed to complete the forms until mid-September.
3. The FEA's checkbook with receipted checks for an unspecified period of time.
4. The FEA's monthly treasurer's reports for an unspecified period of time. Medeiros prepares these reports each month, and they are posted in each of the six school buildings.

Peter Anthony approached Medeiros at the meeting and looked through the FEA's ledger for about ten minutes before the meeting began. He found the format confusing and asked for a balance sheet. Medeiros was not sure what Anthony wanted to see; because the FEA had never before had an agency fee provision in its contract, she was not familiar with the Commission regulations regarding agency fees. She did not provide him with the treasurer's reports, because she thought he had already seen them posted in the schools; nor did she think he would be interested in the Forms 1 and 2. Medeiros did promise to send him a balance sheet after the meeting. Immediately after the meeting, Anthony met with Enos for about half an hour to discuss the financial information.⁴

Also at the September 13, 1984 ratification meeting, charging party Ainsley asked FEA negotiator Edward Hayes if there was a rebate procedure for agency fee payers. Hayes responded that there was none yet because the bargaining unit had not yet ratified the agency fee provision.

About three weeks after the ratification meeting, Anthony received the document reproduced below from Medeiros in response to his request for a balance sheet.

³The Commission supplies employee organizations with these forms, which are known as Forms 1 and 2.

⁴We base this finding upon Enos's corroborated testimony. Anthony testified that he only examined the books for ten or fifteen minutes before the meeting, and that he did not ask to look at the books again after the meeting. Enos testified that she sat talking with him for about half an hour, going over the books and discussing Anthony's differences with the FEA. Edward Chase, then vice-president of FEA, who observed Enos and Anthony talking after the meeting, corroborated her testimony.



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Expenses 1983-1984

| | | |
|-----------------------|---------------------|---|
| Governance & Admin. | \$ 1,849.15 | |
| Office Maintenance | 162.41 | |
| Negotiations | 40.00 | (local only meeting)- Luncheon we paid for directly |
| MTA/NEA Dues | 28,716.00 | (Negotiations) MTA Dues |
| Conventions/Workshops | 926.31 | |
| Public Relations | 877.42 | outreach, etc. |
| | <u>\$ 32,571.29</u> | |

On January 6, 1985, the FEA sent letters to the charging parties demanding payment of the agency service fee. The letter stated that the FEA was demanding the amount due "[p]ursuant to 402 CMR 17.05 of the rules and regulations of the Labor Relations Commission," and concluded, "For your convenience we have attached a copy of the rules and regulations." Attached to the demand were the last five pages of a six-page document setting forth the Commission's regulations governing agency service fee, 402 CMR 17.00 et seq. The first page, containing the caption "402 CMR: Labor Relations Commission" and the text of 402 CMR 17.01, 17.02 and 17.03(1), was missing.

Around the end of December, 1984, before the charging parties received the demand, they received in the mail a form letter from Enos, with a green document attached to it entitled "MTA NEA Agency Fee Rebate Procedure." The letter began: "This is a copy of the rebate procedure," and went on to urge agency fee payers to become members. The green document informed the reader that "A nonmember...is eligible to receive a rebate of that portion of the fee which otherwise would be used by the NEA, MTA, or local affiliate for political activity." It contained complete instructions for requesting a rebate, and listed the amount of the 1984-85 rebate as \$6.04 for the MTA and \$.25 for the NEA. The amount of the local association's rebate was left blank.

On February 1, 1985, Ainsley wrote to Deborah Medeiros, stated that he had received a copy of the rebate procedure, and asked for "a copy of the F.E.A. rebate procedure as well as information relative to the amount which you anticipate the F.E.A. will rebate to each non-member for the 1984-1985 school year." Medeiros promptly telephoned Ainsley and told him she had made a mistake in filling in the rebate amounts on the green document; the FEA rebate was actually \$.25, and the MTA rebate was \$6.04. She explained that the amount of the NEA rebate was unavailable at the time that the FEA had mailed out the rebate procedure.⁵

On January 23, 1985, charging party Cipollini, on behalf of all charging parties, wrote Enos requesting the entire text of 402 CMR 17.00 et seq., as well as

⁵Agency fee payers can apply for a rebate before the rebates have been calculated.



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"a copy of the most recent financial report in the form of a balance sheet compiled by the [FEA] for the previous financial year." In response, Cipollini received in his school mailbox some kind of financial report of the FEA, although it is not clear from the record exactly what the document was. Enos testified that she also sent to Cipollini the MTA's "Agency Fee Handbook," which contains the full text of 402 CMR 17.00 et seq. Cipollini testified that he did not receive it.⁶

Opinion

Section 12 of the Law establishes a procedure under which employee organizations may exact agency fee payments from bargaining unit members. The Commission has promulgated regulations to administer that statutory provision, 402 CMR 17.00 et seq. The Complaint in this case alleges that the FEA invalidly demanded payment of a service fee by (1) failing to attach a complete copy of 402 CMR 17.00 et seq. to its January 6, 1985 demand, as required by 402 CMR 17.05(2); (2) failing to state in the notice of contract ratification that its most recent financial statement in the form of a balance sheet was available for inspection, as required by 402 MCR 17.03(5)(g); (3) failing, when it conducted its September 13, 1984 ratification meeting, to have available for inspection its most recent financial report in the form of a balance sheet and operating statement listing all receipts and disbursements of the previous financial year, as required by 402 CMR 17.03(5)(g); and (4) failing to have a rebate procedure, as required by Section 14 of the Law. We will consider these allegations seriatim.

1. Omission of the First Page of the Agency Fee Regulations Attached to the Demand.

Commission Rule 402 CMR 17.05(2) requires a union to attach to a demand letter "a copy of the entire text" of 402 CMR 17.00 et seq. As we remarked in Malden Education Association, 11 MLC 1500, 1505 (1985), the regulation "requires dissemination of the Rules themselves to insure that the payor is aware of her or his rights under the Law."

There is no dispute that the first page of the rules was missing from the FEA's January 6, 1985 demand. However, we infer that the omission was a clerical error. The FEA supplied the balance of the regulations, and the attached demand letter identified them as regulations of the Commission. Charging parties were eventually able to file timely charges arising under the regulations. By attaching all but the first page of the regulations, and referencing the regulations in the text of the demand letter, the FEA demonstrated its intent to comply with 402 CMR 17.05(2). In the absence of any showing that the omission was intentional or that it materially harmed the charging parties, we will not conclude that the FEA's clerical error rose to the level of a violation of the Law.

⁶ It is not necessary for us to resolve any conflict that this testimony presents.



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2. The Notice of Contract Ratification.

The FEA's ratification notice stated: "The financial report of the F.E.A. is available for inspection for the fisical [sic] year July 1, 1983 - June 30, 1984." It did not replicate 402 CMR 17.03(5)(g), which requires the notice to state "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." However, in two previous cases we have examined the phrasing that the FEA employed here and have ruled that such phrasing complies with the rule. Weymouth Teachers Association, 12 MLC 1789, 1793 (1986); Woburn Teachers Association, 12 MLC 1767, 1773 (1986). Accordingly, we conclude that this portion of the ratification notice complied with the requirements of the rule.

3. Availability of the Financial Information Required by 456 CMR 17.03.

402 CMR 17.03(4) requires a union to "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." 402 CMR 17.03(5)(g) in turn requires the union to announce in the ratification notice that it does have the document "available for inspection."

The record reveals that the FEA complied with these rules. 402 CMR 17.03(4) requires a union to maintain certain financial documentation in compliance with Section 14 of the Law. In Malden Education Association, 11 MLC at 1502, we noted that the Commission has developed a standardized form, known as Form 2, to facilitate collection of the information that Section 14 requires. Thus, the documentation to which 402 CMR 17.03(4) and 17.03(5)(g) refer is Form 2.

Sometime before the September 13, 1984 ratification meeting, charging party Peter Anthony asked Enos for the financial information mentioned in the ratification notice. Enos promised to bring the information to the ratification meeting. The FEA indeed had its 1983 Form 2 at the ratification meeting, along with various other kinds of financial data. While it is true that Medeiros did not show the Form 2 to Anthony, this occurred because Medeiros and Anthony misunderstood each other. Although Medeiros did her best to furnish Anthony with the information he sought, she was ultimately unsure of what he wanted to see; Anthony, for his part, was uncertain of what he was looking for. We cannot equate this misunderstanding with willful noncompliance by the FEA. There is no dispute that the FEA had its 1983 Form 2 at the September 13, 1984 ratification meeting, in accordance with the rule's requirement to make it "available for inspection...at reasonable times and places."

Charging parties further contend that because the FEA did not have its 1984 Form 2 at the ratification meeting, the FEA failed to meet the rule's requirement that it have available its "most recent financial report...of the previous fiscal year." However, the FEA did have available the most recent Form 2 that it was possible to prepare. Medeiros explained that she had not yet prepared the 1984 form



at the time of the meeting because she could not calculate accrued interest for fiscal 1984 until the end of September. It would be neither feasible nor desirable to require unions to postpone contract ratification until they are able to calculate Form 2 data for the most recent fiscal year. We conclude that it was sufficient for the FEA to make available its fiscal 1983 Form 2 at the September 13, 1984 ratification meeting.

4. Availability of a Rebate Procedure.

Section 12 of the law provides, *inter alia*, "No employee organization shall receive a service fee as provided herein unless it has established a procedure by which any employee so demanding may obtain a rebate..." of the employee's pro rata share of impermissible expenditures.

The evidence clearly demonstrates that the FEA had a rebate procedure in place as of the end of December, 1984, about a week before it mailed the demand. Furthermore, the rebate procedure was no less valid for its failure to set forth the amount of the NEA rebate. The NEA had not yet calculated its rebate as of the date the FEA mailed out the rebate procedure, but the unavailability of that figure did not prevent a fee payer from applying for a rebate.

Conclusion

The evidence demonstrates that the FEA had fully complied with 402 CMR 17.05(2), 17.03(5)(g), 17.03(4) and Section 14 of the Law when it demanded that the charging parties pay their agency fees. Accordingly, those allegations of the Complaints that challenge the validity of the 1984-85 agency fee are hereby DISMISSED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, CHAIRMAN

ELIZABETH K. BOYER, COMMISSIONER

