

MASSACHUSETTS LABOR CASES

CITE AS 13 MLC 1555

ELLEN M. DAILEY AND WOBURN TEACHERS ASSOCIATION, MUPL-2850 (4/3/87). RULING ON
CHARGING PARTY'S MOTION FOR JUDGMENT.

72.3 agency service fee
91.8 standard of proof
92.37 subpoenas and motions to quash
92.481 motion for judgment

Commissioners participating:

Paul T. Edgar, Chairman
Maria C. Walsh, Commissioner
Elizabeth K. Boyer, Commissioner

Appearances:

John C. Scully, Esq. - Representing Ellen M. Dailey
Brian A. Riley, Esq. - Representing the Woburn Teachers
Association

Ruling on Charging Party's Motion for Judgment

Statement of the Case

In this and three companion decisions,¹ we consider for the first time a public employee union's burden of proof in cases challenging the amount of an agency service fee. Specifically, we examine the amount and kinds of evidence that are necessary to satisfy an employee organization's burden of justifying the amount of a service fee.

On April 10, 1985, Ellen M. Dailey (Dailey), a teacher in the Woburn public schools, filed a charge challenging the validity and amount of agency service fees that her exclusive bargaining representative, the Woburn Teachers Association (WTA), had demanded of her for the 1981-82 and 1984-85 school years. The Labor Relations Commission (Commission) issued a complaint on September 4, 1985, alleging, *inter alia*, that the 1981-82 fee was in excess of the amount permitted by Section 12 of G.L. c.150E (the Law). The Commission dismissed the validity charges and deferred the hearing on Dailey's challenge to the 1984-85 service fee until after the 1984 to 1987 collective bargaining agreement had expired. The WTA filed its answer on September 11, 1985.

In September 1985, Dailey served upon the WTA and its affiliate, the Massachusetts Teachers Association (MTA), two identical subpoenas duces tecum, requesting:

¹ See Worcester Education Association, Case Nos. MUPL-2488, MUPL-2537, MUPL-2575, MUPL-2595, MUPL-2612, MUPL-2630, MUPL-2638, and MUPL-2639; Milford Teachers' Association, MUPL-2491; and Newton Teachers Association, MUPL-2685, MUPL-2687-90, MUPL-2695, MUPL-2701, MUPL-2708, and MUPL-2742.



Ellen M. Dailey and Woburn Teachers Association, 13 MLC 1555

for each organization to which a portion of the \$210.00 service fee demanded of Ellen Dailey for the 1981-82 academic year will be paid:

- 1) For each employee whose activities the Woburn Teachers' Assn., or its affiliates wishes to charge me: a) timesheets or time records; b) all correspondence; c) all expense sheets or vouchers.
- 2) All financial books and records. This includes, but is not limited to: a) all disbursements and receipts journals, b) all financial reports, c) all audits, d) all checkbook ledgers, e) all cancelled checks, f) all invoices, g) all bank statements, h) all tax returns (and if the organization is non-profit, all unrelated income tax returns, i) all ledgers showing income, expenditures, assets, liabilities, capital, segregated funds and j) every document of every type which tends to reveal the financial history of the organization.
- 3) All minutes of meetings.

The above is limited in terms of time to the 1981-82 academic year.

On October 2, 1985, the WTA filed a Motion to Revoke the subpoenas, and counsel for Dailey announced his intent to move for judgment at the close of the presentation of the WTA's evidence at hearing.² Both motions concerned the adequacy of the WTA's evidence to meet its burden of proof. In its Motion to Revoke, the WTA contended that, because the nine exhibits it planned to offer were sufficient to meet its burden, the subpoenas seeking additional information were burdensome, harassing, and irrelevant. Dailey argued in her Motion for Judgment, however, that the nine exhibits did not meet the WTA's burden of proof and that only the specific information requested in the subpoenas would suffice. Because of the similarity of the issues presented, the parties agreed to argue both motions in the same proceeding.

On October 3, 1985, Margery Williams, a hearing officer of the Commission, presided over pre-hearing argument on the two motions. She then opened the hearing. The WTA introduced the nine exhibits into evidence and then rested. Dailey moved for judgment. The hearing officer referred both motions to the Commission for decision. Both parties have submitted briefs on the motions.

On March 27, 1986, the Commission sent a notice to all parties requesting them to submit memoranda addressing whether Chicago Teachers Union, Local 1 v. Hudson, 106 S. Ct. 1006 (1986) applied to the facts of this case. The charging parties responded, arguing inter alia, that Hudson requires public employee unions to provide an independent, verified, pre-taking accounting at the time they demand agency service

²Dailey styled this motion a Motion for Judgment. The motion tests the sufficiency of the WTA's evidence to sustain the WTA's burden of proof and is similar to a Motion for Directed Verdict made pursuant to Mass. R. Civ. P. 50(a). See Smith & Zobel, Rules Practice Section 50.6 (1977 & Supp. 1986).



fees. Charging parties asserted that, because the Association did not provide such pre-demand information, any monies in escrow had to be released immediately to them, pending the Commission's decision in these cases. Further, the charging parties argued that the Association's written submission did not establish a prima facie showing that the assessed fees reflected permissible expenses because the Hudson information requirement was not satisfied. The Association argued that, because Hudson is factually distinguishable, it is inapplicable to the facts of this case.

Because we conclude that the WTA's evidence is not sufficient to meet its burden of proof, we allow Dailey's Motion for Judgment and order the amount of Dailey's 1981-1982 service fee released from escrow³ and returned to Dailey.

Facts⁴

The WTA is the exclusive collective bargaining representative for teachers employed in the Woburn schools, including Dailey. The WTA and the Woburn School Committee are parties to a collective bargaining agreement (Agreement) that is effective from September 1, 1984 to June 30, 1987. That Agreement sets the terms and conditions of employment for teachers represented by the WTA. Article XXXIII of the Agreement provides that, subject to the provisions of Section 12 of the Law, all employees covered by the Agreement who were not members of the Association in good standing would be required to pay an agency service fee as a condition of continued employment. By its terms, Article XXXIII applies to all outstanding agency service fees owed by current employees for the 1981-82 academic year. Because Dailey was not a member of the Association in good standing during the 1981-82 academic year, she was required to pay a service fee for that period of time.

On or about March 20, 1985, the WTA demanded that Dailey pay a service fee in the amount of \$210 for the 1981-82 academic year. The amount of the fee was equal to the Association's membership dues for the same time period. The 1981-82 agency service fee demanded of Dailey was apportioned among the WTA and its affiliates as follows: \$21 was allocated to the WTA, \$141 to its statewide affiliate, the Massachusetts Teachers Association (MTA), and \$48 to its national affiliate, the National Education Association (NEA). The rebate⁵ available to Dailey for the 1981-82 fee through the internal rebate procedure of the WTA and its affiliates was \$6.29 from the MTA and \$4.42 from the NEA, a total of \$10.71.

³ Pursuant to Commission Regulation 456 CMR 17.07 (formerly 402 CMR 17.07) the parties had established a joint escrow account to hold the amount of the 1981-82 agency service fee due from Dailey.

⁴ Neither party contests the jurisdiction of the Commission in this matter.

⁵ The "rebate" is that portion of the agency service fee which the unions volunteer to refund to the fee payer. Generally such rebates represent an amount which the unions concede is not chargeable to the fee payer, such as for political contributions or for benefits available only to union members.



Ellen M. Dailey and Woburn Teachers Association, 13 MLC 1555

The remaining findings of fact are based on nine exhibits proffered by the WTA. Those exhibits are as follows:

WTA Exhibit 1 is a one-page summary of the WTA's receipts and disbursements for FY 1981-82, signed by an accountant. The summary lists the dollar amounts of total receipts and of total disbursements in each month of FY 1981-82, but does not itemize the source of receipts or the purpose of expenses. The receipts and disbursements for the entire year are summarized as follows:

<u>RECEIPTS</u>		<u>DISBURSEMENTS</u>	
Dues	\$78,274.75	MTA	\$85,955.50
MTA Supp.	2,483.53	Misc. Exp.	2,624.62
Misc. Income	525.92	Office Exp.	4,802.84
Interest	940.06	Off. Neg. & PRR	3,663.44
TOTAL	\$82,224.26		\$97,046.40

WTA Exhibit 2 is a one page summary of the WTA's receipts and disbursements from its "fund raising" account for FY 1981-82, signed by an accountant. Like WTA Exhibit 1, WTA Exhibit 2 lists the monetary amounts of total receipts and of total disbursements from a fund raising account in each month of FY 1981-82, with no itemization. Total receipts and disbursements from this account for the entire year are listed as follows:

<u>RECEIPTS</u>		<u>DISBURSEMENTS</u>	
Ticket Sales	\$4216.00	Awards	\$1920.00
Prop. 2-1/2 Ref.	118.32	Expenses	1612.79
Interest	80.96	Lottery Com	458.85
Toys for Tots	178.27	Toys for Tots	900.00
TOTAL	\$4593.55	Scholarship	200.00
		TOTAL	\$5091.59

WTA Exhibit 3 is a copy of the WTA's check register for FY 1981-82. The exhibit purports to list all checks that the WTA issued in FY 1981-82, by date, check number and amount, with a brief description of each check's purpose. There are 136 checks listed. Below are sample entries:

Aug. 11	John Neergaard - Aug. Rent	965	\$150.00
Oct. 5	Barbara Pooler - Mileage for Leg. Conference	989	10.40
Oct. 19	Moreno's Caterers	993	335.30
Dec. 3	Brendan Doherty - Neg. Team Refund	1010	35.00
Feb. 9	Woburn Printing Co. - Newsletter	1045	34.00



MASSACHUSETTS LABOR CASES

CITE AS 13 MLC 1559

Ellen M. Dailey and Woburn Teachers Association, 13 MLC 1555

Mar. 15	Kathryn M. Winterson - Postage & Phone	1058	24.50
May 3	Janet Bellizia - Grievance	1074	25.00
Jun. 21	Adrienne Christo - 1/2 Salary, Newsletter, Supplies	1089	118.68

WTA Exhibit 4 is a 23 page document entitled "Massachusetts Teachers Association: Report of the Treasurer, Balance Sheet, June 30, 1982, Summary of Operations for the Period July 1, 1981 - June 30, 1982." The document contains:

- (A) A one-page "Statement of Financial Position as of June 30, 1982," listing dollar amounts of current assets, current liabilities and net worth of the MTA;
- (B) A one-page breakdown of the MTA's income and expenses for FY 1981-82. Income is broken into thirteen categories, e.g., Dues, UniServ, Advertising. Expenses are broken into 18 categories, e.g., Administrative Services, Governmental Services, Professional Development, and Debt Principal.
- (C) Nineteen pages of "Income/Expense Analysis, Actuals vs. Original Budgets for April - June 30, 1982." Each page represents either a division of the MTA -- Governance, Administrative Services, Building, Finance and Accounting, Government Services, Legal Services, Higher Education, Organization and Management, Professional Development, Public Relations, Publications and Research -- or a region of the MTA, e.g., Central Region, Northeast Region and Western Springfield. Within each of these categories expenses are listed and roughly itemized. For example, under both Government Services and Legal Services such expenditures as "salaries," "subscriptions," "staff travel," and "dues" appear; under Northeast Region, "salaries," "staff travel," "equipment," and "collective bargaining."

WTA Exhibit 5 is an 11-page document entitled "Massachusetts Teachers Association, Combined Financial Statements, Years Ended June 30, 1982 and 1981 with Report of Certified Public Accountant." The document includes a "Combined Balance Sheet -- June 30, 1982 and 1981" and a "Combined Statement of Revenues and Expenses and Changes in Fund Balances." The latter break down expenditures very generally into sixteen categories, including the divisions listed in WTA Exhibit 4(C). Also listed are expenditures for "Special Services," "Professional Rights Fund," and "Stop Proposition 2-1/2 Campaign." WTA Exhibit 5 includes a statement from the Arthur Young accounting firm affirming that the financial statements "present fairly the combined financial position of the Massachusetts Teachers Association at June 30, 1982 and 1981, the combined changes in financial position for each of the two years then ended and the combined revenues and expenses and changes in fund balances for the year ended June 30, 1982, in conformity with generally accepted accounting principles applied on a consistent basis...."



Ellen M. Dailey and Woburn Teachers Association, 13 MLC 1555.

WTA Exhibit 6 is a five-page document comprising the MTA's "1981-82 Final Rebate: Summary" and "1981-82 Final Rebate: Explanation." The "Explanation" briefly summarizes the requirements of G.L. c.150E, Section 12, and then describes how the MTA calculated the 1981-82 \$6.29 rebate. Generally, the "Explanation" recites that the MTA examined its expenditures in all divisions, decided which were impermissible, and calculated the proportion of impermissible to permissible expenditures.⁶ The MTA then took this percentage and applied it to membership dues to produce the "rebatable amount." Thus, in 1981-82, the MTA calculated that 4.46% of its total expenditures were impermissible. It applied the 4.46 percentage to \$141, the amount of membership dues for that year, to produce \$6.29 as the rebate available to agency fee payers.

WTA Exhibit 6 lists the dollar amounts of "rebatable" expenditures, if any, in each of its divisions, with a brief justification for the designation. For example:

Public Relations. Amount expended was \$269,803 with \$19,159 for rebatable activity. This continues the 1% for negligible rebatable activity and the calendar handbook -- a service for members only.

The document offers no substantiation for the conclusion that there was "no rebatable activity" in the Legal Services, Higher Education, Research, and Regional Offices divisions.

WTA Exhibit 7 is the NEA's "Program Accomplishment Report Fiscal Year 1981-82." This document purports to describe briefly every program sponsored by the NEA, the amount budgeted for each program, and the amount actually spent in FY 1981-82. The report is broken into twelve categories: Affiliate Services, Communications, Government Relations, Human and Civil Rights, Instruction and Professional Development, Legal Services, Political Affairs, Research, Administrative, Business and Finance, Data Processing and Governance. Typical entries read as follows:

Area: Affiliate Services

Provide assistance to the Texas State Teachers Association to achieve organization strength and membership.

State structure strengthened and membership expanded in Texas.

Assistance was provided as contracted.

Budgeted: \$690,290 Expended: \$760,415

⁶ G.L. c.150E, Section 12 specifies that unions may charge fee payers for certain expenses while the union is not permitted to charge other expenses. Commission Regulation 17.04, 456 CMR 17.04 (formerly 402 CMR 17.04) itemizes permissible and impermissible expenses.



MASSACHUSETTS LABOR CASES

CITE AS 13 MLC 1561

Ellen M. Dailey and Woburn Teachers Association, 13 MLC 1555

Area: Political Affairs

Assist affiliates in organizing and training members for political activities within the Democratic and Republican parties.

State affiliates assisted in preparing members for political activity.

Eight of the nine books of the newly developed training series have been completed. Approximately 20,000 of these books have been delivered through training sessions to NEA field staff, state government relations and political affairs specialists, UniServ staff, and elected leaders.

Training has included developing local political action committees, NEA-PAC fundraising and volunteer recruitment for member contact programs. The focus has been on in-house political organizing and how to get organizational benefit from political activities. NEA and state staff have been used as trainers, with consultants used to deliver technical services or information.

Budgeted: \$197,936

Expended: \$202,453

Area: Business and Finance

Provide funding for technical and consultative services to state affiliates and assist affiliates in conversion to the on-line accounting system.

Assistance provided to state affiliates in business and financial management functions; on-line accounting system implemented on pilot basis in five states.

Technical and consultative services were provided to state affiliates. On-line accounting system was implemented in seven states and five additional states were trained for accounting system implementation in September 1982.

Budgeted: \$213,655

Expended: \$208,374

WTA Exhibit 8 is a financial report for the National Education Association as of August 31, 1981 and 1982. It consists of "General Fund Balance Sheets," "Statements of General Fund Activity," "General Fund: Statements of Changes in Financial Position," "Capital Improvement Fund Balance Sheets," "Special Purpose Funds Consolidated Balance Sheets," and notes to these documents. Also attached is a verification by the accounting firm of Arthur Andersen & Co.

WTA Exhibit 9 is a document entitled "Political Activity Rebate - Final 1981-82" of the NEA. This document purports to show the amount of money spent for "political activity" in all NEA programs and its relation to the NEA's rebate to agency-service fee payers. The document lists the same twelve categories that appear in



Ellen M. Dailey and Woburn Teachers Association, 13 MLC 1555

WTA Exhibit 7, the NEA's "Program Accomplishment Report," with the addition of a category entitled "UniServ." Each category is further broken down into subcategories. For each subcategory, the document sets forth a dollar amount identified conclusorily as "Amount Expended for 'Political Activity,'" and calculated as a percentage of total expenditures in that subcategory, e.g.:

<u>Government Relations</u>	<u>Amount Expended for 'Political Activity'</u>
Oppose Anti-Education Legislation 30% of \$201,748	\$ 60,524
Coordinated National, State, Local Lobbying System -- 20% of \$479,113	119,778
Congressional Contact Teams 20% of \$320,050	64,010
Legislative Conference 30% of \$104,274	31,282
Special State Projects 100% of \$42,251	42,251
Equal Rights Amendment 100% of \$183,321	183,321
Coordinated Monitoring System 40% of \$227,304	90,922
Federal Agency Reporting 40% of \$206,131	82,452
TOTAL	<u>\$ 674,540</u>

The document then calculates the proportion of all "political activity" expenditures to total NEA expenditures to yield a figure of 9.2%. It applies 9.2% to \$48, the amount of local dues passed through to the NEA, to yield \$4.42, the amount "rebat-able" to agency fee payers.

Opinion

Under G.L. c.150E, Section 12, public employees who are not union members may be required to pay an agency service fee to the union that represents them for purposes of collective bargaining if they are covered by a collective bargaining agreement containing a service fee requirement. However, a union may not impose a service fee on the non-members whom it represents that is in excess of their "pro rate share of the legitimate costs of collective bargaining." Lyons v. Labor Relations Commission, 397 Mass. 498, 501 (1986); see also School Committee of Greenfield v. Greenfield Education Association, 385 Mass. 70, 76 (1982) ("proportional share of collective bargaining, contract administration, and grievance expenses.") This limitation



Ellen M. Dailey and Woburn Teachers Association, 13 MLC 1555

is grounded in the First Amendment requirement that public employee unions refrain from collecting monies from non-members for the support of ideological causes not germane to the unions' duties as collective bargaining agents. Chicago Teachers Union, Local 1 v. Hudson, 106 S. Ct. 1006 (1986); Ellis v. Railway Clerks, 466 U.S. 435, 447 (1984); Abood v. Detroit Board of Education, 431 U.S. 209, 225-26 (1977).

A public employee union that imposes a service fee in excess of the non-members' pro rata share of the costs of collective bargaining commits a prohibited labor practice within the meaning of G.L. c.150E, Section 10(b)(1). School Committee of Greenfield, 385 Mass. at 76. When an employee files a charge challenging the amount of a service fee, the employee organization bears the burden of proving that the service fee reflects the fee payer's proportionate share of permissible expenditures. Abood at 239-240 n.40; School Committee of Greenfield at 85; 456 (formerly 402) CMR 17.15(2).

Here, we must consider whether the WTA has sustained its burden of establishing that the \$141 agency fee it charged Dailey, minus the \$10.71 "rebatable amount" that the WAT concedes was not chargeable to Dailey, was Dailey's proportional share of the permissible expenditures of the WTA and its affiliates. The WTA's position is that the agency fee minus the "rebatable amount" for 1981-82 accurately reflects Dailey's pro rata share of permissible expenditures. WTA Exhibits 6 and 9 reveal that, in 1981-82, the MTA and NEA calculated the "rebatable amounts" by adding all of the expenditures that the organizations themselves designated as impermissible, calculating what percent of total expenditures was impermissible, and applying that percentage to \$141, the total amount of 1981-82 membership dues. The result was \$6.29 of MTA expenditures, and \$4.42 of NEA expenditures. The balance, according to the WTA, represents Dailey's pro rate share of the legitimate costs of collective bargaining.⁷

Dailey raises a host of objections to this procedure. For the purposes of this motion, we need address only one, because it is dispositive.⁸ Dailey argues that, even if the WTA and its affiliates had accurately identified all of their impermissible expenditures, the WAT's method of calculating Dailey's share would nonetheless fail to comply with the constitutional mandate because there is no evidence of how members' dues are calculated and what relation they bear to total expenditures. "Applying a carefully calculated percentage to an arbitrary number does not provide any meaningful result." Dailey's Brief on Motion for Judgment at 7.

⁷ We note that the WAT calculated no rebate amount and we understand the WTA to take the position that it spent all of the \$21 allocable to it permissibly.

⁸ Dailey contends, *inter alia*, that, while the WTA's evidence may accurately reflect certain impermissible expenditures, it fails to sustain the WTA's burden to show that the balance of its expenditures were permissible, that the WTA's identification of certain expenditures as impermissible are conclusory and lack supporting documentation, and that the WTA may not charge Dailey for expenses incurred on behalf of employees outside Dailey's bargaining unit.



We agree with Dailey's position. Under Section 12 of the Law, public employees "may be forced to pay their proportional share of collective bargaining, contract administration, and grievance adjustment expenses." School Committee of Greenfield, 385 Mass. at 78. We hold, however, that the amount of the proportional share can be determined by: (1) adding up all of the amounts that a union has spent permissibly and dividing the total by the number of employees represented; or (2) evidence that the membership dues for a particular year represented the members' pro rata share of the anticipated union expenses for that year and that a particular proportion of those expenses were permissible. Thus, assuming, without deciding, that all of the WTA's expenditures in 1981-82 were permissible, the WTA could divide \$87,046.40 (the amount of total expenditures shown in WTA Exhibit 1) by the number of employees in the WTA bargaining unit to determine the agency fee. Similarly, the MTA could divide its total permissible expenditures by the number of employees represented by the MTA to determine the portion of the agency fee payable to the MTA.

In 1981-82, Ellen Dailey was charged \$21 by the WTA, \$141 by the MTA and \$48 by the NEA. The WTA contends that only \$10.71 of this was impermissibly spent. But the WTA and its affiliates calculated this figure as a percentage of dues. It is impossible for us to evaluate the relationship of the remaining \$199.29 to Dailey's "pro rata share of the legitimate costs of collective bargaining" because the WTA introduced no evidence that membership dues in 1981-82 represented the members' pro rata share of the WTA and its affiliates' total expenditures for that year. Nor did the WTA produce any evidence of the number of employees in the WTA bargaining unit, of the number of employees represented by the MTA or of the number of employees represented by the NEA. Absent that evidence, we conclude that the union has not begun to meet its burden of establishing the permissibility of the 1981-82 agency fee.

In light of this conclusion, it is not necessary for us to resolve other issues that Dailey has raised regarding the sufficiency of the WTA's evidence. In the interest of providing guidance for future litigants, however, we believe it desirable to address some of the concerns reflected in the parties' arguments.

Commission Rule 456 CMR 17.04 (formerly 402 CMR 17.04) lists seven categories of impermissible and eighteen categories of permissible union expenditures. In the future, for a union to meet its initial burden to show that the agency fee reflects permissible expenditures, its evidence must satisfy the following guidelines. At a minimum, the union's evidence should include audited financial records or equally reliable evidence itemizing the union's expenditures and demonstrating how they relate to the categories in 456 CMR 17.04. See Chicago Teachers Union, Local 1 v. Hudson, 106 S. Ct. 1006, 1014 n.18 (1986) (suggesting that a union should provide an audited financial statement before demanding a service fee).

Because some expenditures, like "grievance arbitration fees," by their very nature are inherently related to collective bargaining, we will presume them to be permissible. A union satisfies its prima facie burden as to those items by merely listing them without further explanation. However, other expenditures, like "legal fees," are not on their face inherently related to collective bargaining. A union's burden to justify the permissibility of those expenses goes beyond listing them in the financial records it submits. It must demonstrate, either by detailed



Ellen M. Dailey and Woburn Teachers Association, 13 MLC 1555

documentary⁹ or reliable testamentary evidence why the expenses should be included in one of the permissible categories.

This rule can best be illustrated by applying it to the evidence the WTA has submitted here. For example, WTA Exhibit 1 includes an expenditure of \$2,624.62 for "Misc. Exp." Because we cannot determine from the face of the exhibit that that expense is inherently related to collective bargaining, it does not satisfy the WTA's initial burden. WTA Exhibits 4, 5 and 6, "MTA 1981-82 Final Rebate," "MTA Report of the Treasurer," and "MTA Combined Financial Statements," suffer from a similar defect. All three exhibits list \$1,014,956 as the MTA's expenditure for legal services. WTA Exhibit 5 does not itemize the expenditure at all. WTA Exhibit 4 breaks expenditures into the following categories: Salaries, Wages, Staff Travel, Wage Travel, Telephone, Office Supplies, Depreciation, Dues, Subscriptions, Insurance and Taxes, Legal, and Legal Support. Because legal services are not inherently related to collective bargaining, that description, without more, is not enough. Further, WTA Exhibit 6 merely states conclusively that "the entire division's activity is for maintaining job security and other collective bargaining issues."¹⁰ However, absent additional detail or explanatory testimony, a union's conclusory designation of an expenditure as "permissible" will not suffice. Nor will an attempt to summarily categorize expenditures under 456 CMR 17.04 (formerly 402 CMR 17.04), absent supporting evidence. *Chicago Teachers Union v. Hudson* requires that challenges to an agency fee be resolved by "an impartial decisionmaker." 106 S.Ct. at 14. The Commission can only undertake the task of designating a union's expenditures permissible or impermissible if it has more than a union's self-serving conclusory descriptions of expenses.

Similarly, WTA Exhibit 3, the WTA's check register for FY 1981-82, is exhaustively itemized, but many of the descriptions, like "Moreno's caterers," are so cryptic that it would be impossible to judge the permissibility of the expense. Others, like "Grievance," although brief, are clear enough on their face to meet the union's initial burden to show the permissibility of the expense.

In contrast, WTA Exhibit 7, the NEA's "Program Accomplishment Report," provides many examples of the kind of data necessary for the Commission to draw the line between permissible and impermissible expenditures. For example, the description of \$202,453 to "[a]ssist affiliates in organizing and training members for political activities within the Democratic and Republican parties" is plain enough

⁹Any offered documents, of course, must be admissible as evidence.

¹⁰Because WTA Exhibit 5 is accompanied by an auditor's verification, we will accept as sufficient to meet the WTA's initial burden of proof that the totals are accurate computations of the expenses included in those categories. If the category of expense is clearly related to collective bargaining, the union will have met its initial burden of proof. The union, however, will be required to provide supporting evidence for any category of expense that is not inherently related to collective bargaining.



Ellen M. Dailey and Woburn Teachers Association, 13 MLC 1555

to demonstrate that the activity described falls squarely within the prohibition of 456 CMR 17.04(1)(a) (formerly 402 CMR 17.04(1)(a)).¹¹

In sum, while it has not been necessary for us to decide here whether the WTA's evidence provides a sufficiently detailed description of expenditures to meet the WTA's initial burden, we expect that, in future cases, a union's evidence will include a listing of all expenditures that on their face appear inherently related to bargaining. All other expenditures must either be itemized with particularity or described in sufficient detail by witnesses to enable the Commission to categorize them as permissible expenses.

Conclusion

Because the WTA's evidence is insufficient to meet its initial burden to show the permissibility of any of the 1981-82 agency fee demanded of Ellen Dailey, we conclude that the WTA has violated Section 10(b)(1) of the Law by demanding that Dailey pay an agency service fee for the 1981-82 school year that exceeds the amount permitted in Section 12 of the Law. We therefore allow Dailey's Motion for Judgment.¹²

Order

WHEREFORE, based upon the foregoing, it is hereby ORDERED that the Woburn Teachers Association shall:

1. Cease and desist from demanding of Ellen Dailey an agency service fee for the 1981-82 school year;
2. Not attempt to enforce against Ellen Dailey the agency fee provision contained in any collective bargaining agreement between the Woburn School Committee and the WTA, to the extent that such agency fee provision applies to the 1981-82 school year;
3. Not seek the discharge of, or any other sanction against, Ellen Dailey for failure to pay the agency fee for the 1981-82 school year;
4. Release to Ellen Dailey all monies held in joint escrow by the WTA and Dailey, plus all interest accrued to the date of the dissolution of the escrow account;

¹¹ Conclusory statements that particular expenses are "impermissible" or "rebatable" will be treated as admissions against interest and admitted into evidence.

¹² In view of our disposition of the case we do not reach charging parties' argument that the Association failed to supply adequate information at the time of demand, and that, therefore, Hudson requires the release of their funds from escrow.



Ellen M. Dailey and Woburn Teachers Association, 13 MLC 1555

5. Post in all places where notices are normally posted for bargaining unit members, and leave posted for a period of not less than thirty (30) days, copies of the attached Notice to Employees.
6. Notify the Commission within thirty (30) days of receipt of this Decision and Order of the steps taken to comply herewith.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, CHAIRMAN
MARIA C. WALSH, COMMISSIONER
ELIZABETH K. BOYER, COMMISSIONER

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

After a hearing before the Labor Relations Commission, the Commission determined that the Woburn Teachers Association violated Section 10(b)(1) of G.L. c.150E (the Law) by demanding an agency service fee for 1981-82 from Ellen Dailey that exceeds the amount permitted by Section 12 of the Law.

WE WILL NOT demand an agency service fee from Ellen Dailey for 1981-82.

WE WILL NOT enforce the agency service fee provision contained in any collective bargaining agreement between the Woburn School Committee and the Woburn Teachers Association that was in effect in 1981-82 to the extent that that agency service fee provision required Ellen Dailey to pay an agency service fee for that year.

WE WILL NOT seek the discharge of or any other sanction against Ellen Dailey for failing to pay an agency fee for 1981-82.

WE WILL refund to Ellen Dailey a sum equal to the 1981-82 agency service fee from monies held in escrow by the Association, plus all interest accrued to the date of the dissolution of the escrow account.

President
Woburn Teachers Association

