

MASSACHUSETTS LABOR CASES

CITE AS 14 MLC 1241

MELVIN A. BROWN AND CHICOPEE FIRE FIGHTERS LOCAL 1710, IAFF, MUPL-2470, MUPL-2474
(10/26/87).

72.3 agency service fee
82.1 affirmative action
82.111 interest
91.8 standard of proof

Commissioners participating:

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

Appearances:

Melvin A. Brown	- <u>Pro Se</u>
Paul A. Matte	- Representing Chicopee Fire Fighters,
Henry L. Moran	Local 1710, IAFF

DECISION

Statement of the Case

In this case, we consider whether agency service fees that Chicopee Fire Fighters, Local 1710, IAFF (Local 1710) demanded of Melvin Brown (Brown) for the period of April 1, 1979 to June 30, 1983 were in excess of the amounts permitted by Section 12 of G.L. c.150E (the Law).

On January 28 and February 5, 1982, Brown, a fire fighter employed by the City of Chicopee, filed charges with the Labor Relations Commission alleging that Local 1710 had violated Section 10(b)(1) of the Law by demanding that he pay excessive service fees. In December 1982, after promulgating its current service fee regulations, the Commission requested that Brown resubmit his charges on the Commission's newly-adopted charge form. He complied with the request on December 27, 1982.

Following an investigation, the Commission issued its Complaint and Notice of Hearing on April 10, 1984 alleging that Local 1710 had violated Section 10(b)(1) of the Law by: 1) imposing agency service fees on Brown from April 1, 1979 to June 20, 1983 in excess of the amounts permitted by Section 12 of the law; and 2) imposing a special service fee of \$150.00 on Brown on October 20, 1981.

A Commission hearing officer conducted a formal hearing on the complaint on September 21, 1984. Both parties appeared pro se and had a full opportunity to present documentary evidence, to examine and cross-examine witnesses, and to offer argument. Neither party filed a post-hearing brief.

On March 27, 1986, the Commission sent a notice to all parties requesting



them to submit memoranda addressing the applicability of Chicago Teachers Union, Local 1 v. Hudson, 106 S. St. 1006 (1986) to the facts of this case. Brown responded, arguing that Hudson applied to the case and that Local 1710 had not followed the constitutional requirements for collecting a service fee because it had not given him: 1) an adequate explanation of the basis of the fee; 2) a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision-maker; or 3) an escrow of the amount in dispute. Local 1710 responded, in effect, that Hudson should not be applied retroactively to the facts of this case.

Facts¹

Local 1710 is an employee organization with state and national affiliates. It is affiliated with the Professional Fire Fighters of Massachusetts (PFFM), headquartered in Boston, and the International Association of Fire Fighters (IAFF), AFL-CIO, CLC, which has offices in Washington, D.C. Local 1710 also belongs to the Springfield, Chicopee and Westfield Labor Council (SCW). Local 1710 is governed by a Board of Directors and the following officers: president, vice-president, treasurer and secretary. Henry Moran, Local 1710's treasurer, serves as its book-keeper.

Local 1710 and the City of Chicopee were parties to a collective bargaining agreement that was in effect from July 10, 1978 through June 30, 1980. (Agreement I.) That Agreement set the terms of employment of a bargaining unit of fire fighters employed by the City of Chicopee, including Brown. Agreement I required that all bargaining unit members who were not members of Local 1710 pay Local 1710 an agency service fee as a condition of continued employment.

Local 1710 and the City of Chicopee were also parties to a collective bargaining agreement setting the terms of employment for fire fighters employed by the City that was in effect from July 1, 1980 to June 30, 1983. (Agreement II.) Like Agreement I, Agreement II contained a provision requiring fire fighters who were not members of Local 1710 to pay an agency service fee.

On April 1, 1979, Brown ceased to be a member of Local 1710, and he was not a member of Local 1710 during any subsequent period of time covered by Agreement I and Agreement II. Therefore, Brown was required to pay a service fee during that period. The following is a breakdown of the sums Brown either paid to Local 1710 or placed in an escrow account jointly held with the union between April 1, 1979 and June 30, 1983:²

¹ Neither party contests the jurisdiction of the Commission in this matter.

² The record does not reveal clearly the amount of the service fees Local 1710 demanded of Brown during the period in question. It shows conclusively only that dues in 1978 were \$2.00 and \$3.00 in 1981. However, Local 1710 presented no evidence or argument to suggest that the amounts it demanded differed from the amounts paid by Brown. Therefore, we will infer that the amounts paid by Brown to local 1710 or placed in escrow equalled the amounts demanded of him by Local 1710.



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<u>Year</u>	<u>Assessments Paid</u>	<u>Service Fee Paid</u>	<u>Deposits to Escrow Account</u>	<u>Total</u>
April - Dec. 1979	\$ 45.00	\$ 58.00		\$ 103.00
1980	40.00	106.00		146.00
1981	150.00	118.00		268.00
1982		51.00	\$ 105.00	156.00
Jan. - June 1983			78.00	78.00
Totals ³	\$ 235.00	\$ 333.00	\$ 183.00	\$ 751.00

On October 22, 1981, Local 1710 refunded \$21.43 to Brown, which represents the only undisputed portion of his service fees for the years at issue.

In 1978-79, Local 1710 represented approximately 152 fire fighters. The record does not disclose the number of individuals who were represented by, or who were members of, the PFFM or the IAFF during that period. There is no record evidence about the number of individuals represented by Local 1710, the PFFM or the IAFF from 1979 to 1983.

Summaries of Local 1710's expenses for the five fiscal years between 1978 and 1983 show the following:

April 1, 1978 to June 30, 1979

<u>EXPENSES</u>	
Salaries	\$ 2,180.00
<u>PER CAPITA</u>	
I.A.F.F.	4,555.51
P.F.F.M.	2,813.32
S.C.W.	230.00
	<u>7,599.43</u>

³There is inconsistent evidence in the record about the exact amount of the fees and assessments Brown paid to Local 1710 from 1979-1982. These figures were provided by Brown at the Hearing and Local 1710 stated that it did not dispute them. Therefore, we will treat them as a stipulation by the parties that they are the sums paid by Brown between April 1, 1979 and May 11, 1982.



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CONVENTIONS

Las Vegas	\$ 456.00
Plaza Tours	540.00
Eastover	929.00
S.C.W.	30.00
P.F.F.M.	40.00
	<u>2,015.00</u>

TRAVEL

State Meetings	482.00
Boston - "100" Club	175.00
Dorchester - Funeral	40.00
Legislative Night	155.00
Boston - L.R.B.	100.00
	<u>952.00</u>

ADMINISTRATIVE

Printing	215.28
Typewriter	154.21
Tapes, Ribbons	44.68
Postage	46.92
Decals	5.00
	<u>466.09</u>

LEGAL FEES

Buckley, Richardson	7,768.10
Robert O'Brien F.F.	632.00
Peter Blum	668.05
Daniel Keyes	250.00
	<u>9,318.15</u>

OTHER

Dir. Reimbursement	504.00
H. Tabbot - Gift	125.00
W. Mullins - Tickets	20.00
C.H.S. - Ad	25.00
IAFF Defense Fund	100.00
F. Lapointe - Tickets	50.00
Bank Charge	10.09
	<u>834.09</u>

TOTAL EXPENSE \$23,364.76

July 1, 1979 to June 30, 1980EXPENSES

Salaries	\$ 2,450.00
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MASSACHUSETTS LABOR CASES**CITE AS 14 MLC 1245****Melvin A. Brown and Chicopee Fire Fighters Local 1710, IAFF, 14 MLC 1241**

<u>PER CAPITA</u>	
I.A.F.F.	\$ 3,756.45
P.F.F.M.	3,001.35
S.C.W.	182.90
	<u>6,940.70</u>

<u>CONVENTIONS</u>	
Toronto	376.00

<u>TRAVEL</u>	
State Meetings	440.00
L.R.B.	100.00
	<u>540.00</u>

<u>ADMINISTRATIVE</u>	
Printing	165.10
Telephone	7.20
Postage	2.90
Supplies	20.00
	<u>195.20</u>

<u>LEGAL FEES</u>	
Buckley, Richardson, etc.	7,104.44

<u>COMMITTEE</u>	
Wage	122.00

<u>OTHER DISBURSEMENTS</u>	
Muscular Dystrophy	410.00
Proposition 2.5	300.00
Dir. Reimbursement	504.00
Agency Service Fee	42.00
S.C.W. - Ad	25.00
General Meeting	20.10
Fr. E. Walsh - Chaplin	50.00
W. McClennan - Retirement	30.00
M. Pierce - 2 Tickets	50.00
W. Mullins - 4 Tickets	40.00
K. Lemanski - 5 Tickets	37.50
J. Whalen - 5 Tickets	60.00
	<u>1,568.60</u>

TOTAL EXPENSES	\$19,296.94
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July 1, 1980 to June 30, 1981

<u>EXPENSES</u>	
Salaries	\$ 2,335.00



MASSACHUSETTS LABOR CASES**CITE AS 14 MLC 1246****Melvin A. Brown and Chicopee Fire Fighters Local 1710, IAFF, 14 MLC 1241****PER CAPITA**

I.A.F.F.	\$ 4,762.94
P.F.F.M.	3,085.50
S.C.W.	187.00
	<u>\$ 8,035.44</u>

TRAVEL

Boston - Funeral	55.00
State Meetings	456.44
Gas. Tolls	80.00
	<u>561.44</u>

CONVENTIONS

Toronto (Bus)	260.00
Expense (3 Delegates)	450.00
I.A.F.F. Registration	165.00
Sheraton Center	648.22
Eastover (Room)	987.00
Eastover (6 Delegates)	190.19
	<u>2,700.41</u>

ADMINISTRATIVE

Printing	148.60
Ribbons, Etc.	27.51
Decals	10.00
	<u>186.11</u>

LEGAL FEES

Buckley, Richardson	17,495.33
S. Jacks - Arbitrator	172.02
	<u>17,667.35</u>

OTHER

S.C.W. (Picnic)	20.00
S.C.W. (Ad.)	25.00
Sen. Burke (Tickets)	50.00
P.A.V. (Ad.)	100.00
Prop. 2.5	190.00
Xmas Gifts	194.33
Bonding	25.00
Dir. Reimbursement	624.00
Officer's Expense	240.00
	<u>1,468.33</u>

TOTAL EXPENSES**\$32,954.08****July 1, 1981 to June 30, 1982****EXPENSES****Salaries****\$ 2,265.00**

MASSACHUSETTS LABOR CASES**CITE AS 14 MLC 1247****Melvin A. Brown and Chicopee Fire Fighters Local 1710, IAFF, 14 MLC 1241****PER CAPITA**

I.A.F.F.	\$ 4,345.62
P.F.F.M.	3,246.75
S.C.W.	166.50
	<u>7,758.87</u>

CONVENTIONS

Plane Fare (Chicago)	752.00
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TRAVEL

Boston - L.R.B.	50.00
State Meetings	405.00
Gas, Tolls	110.75
	<u>565.75</u>

LEGAL FEES

Buckley, Richardson	23,402.96
J. Curran (Arbitrator)	237.40
	<u>23,640.36</u>

ADMINISTRATIVE

Printing	537.71
Postage	15.25
Cleaning Typewriter	22.50
	<u>575.46</u>

OTHER

Dir. Reimbursement	624.00
Officer's Expense	150.00
Bonding	25.00
M. Brown - Pro Rata	21.83
M. Pierce - Rickets	150.00
D. Alward - Tickets	100.00
R. Cebula - Xmas	25.00
	<u>1,195.83</u>

TOTAL EXPENSES \$36,753.27**July 1, 1982 to June 30, 1983****EXPENSES**

Salaries	\$ 2,350.00
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PER CAPITA

I.A.F.F.	4,767.20
P.F.F.M.	3,349.70
S.C.W.	163.40
	<u>8,280.30</u>



MASSACHUSETTS LABOR CASES

CITE AS 14 MLC 1248

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CONVENTIONS

Registration - Chicago	\$ 150.00
Hotel - Chicago	851.94
Expense - Chicago	400.00
Registration - Eastover	200.00
Expense - Eastover	235.55
Rooms - Eastover	1,152.00
	<u>2,989.49</u>

TRAVEL

State Meetings	594.00
L.R.B.	100.00
Gas, Tolls, Repairs	162.95
	<u>856.95</u>

LEGAL FEES

Buckley, Richardson	4,480.01
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ADMINISTRATIVE

Printing	108.98
Check Books	64.86

OTHER

Dir. Reimbursement	1,071.00
Officer's Expense	200.00
Bonding	25.00
Wage Committee	127.00
Donation - Elms College	100.00
	<u>1,523.00</u>

TOTAL EXPENSES

\$20,653.61

Seven categories of expenses appear on Local 1710's expense summaries for each fiscal year from 1978 to 1983. For example, the "Salaries" expenditure referred to in each of Local 1710's annual expenditures refers to the amounts paid to its president, treasurer, secretary and vice president. However, the record does not disclose the duties of any of those officers or how much of their time was spent on union business. "Per Capita" expenses were the payments Local 1710 made each year to its state and national affiliates and to the regional labor council of which it was a member. There is no record evidence of how each of those organizations spent the payments received from Local 1710.⁴ The notation "Boston - L.R.B." under the category of "travel" expenses refers to expenses incurred in

⁴Local 1710 did introduce a letter from Paul M. Lestage, the Secretary-Treasurer of the PRRM that described generically the kinds of services the IAFF and the PFFM provide to the individuals they represent. For example, they assist local unions with collective bargaining, conduct work-related seminars, arbitrations and research, and lobby against legislation like Proposition 2.5. However, the record

(continued)



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attending Commission proceedings. "Eastover" in the "Convention" category is where the PFFM has its conventions in alternate years when there are no IAFF conventions. The testimony of Union witnesses establishes that all supplies under the "Administrative" category were related to collective bargaining and contract administration. "Legal Fees" included: all collective bargaining, grievance, and arbitration expenses. "Buckley, Richardson" was the law firm that handled negotiations and grievances for Local 1710, and Daniel Keyes, Peter Blum, Robert O'Brien, S. Jacks and J. Curran were arbitrators who heard either grievance or interest arbitration cases involving Local 1710. The reference to "Director Reimbursement" under the category of "Other" pertains to the amounts Local 1710 paid each year to its directors as dues reimbursement. There was no evidence about the composition of Local 1710's Board of Directors or whether its members spent time on union business.

Some individual expense items on Local 1710 expense summaries were clarified through testimony. Among the 1978-1979 expenses, the following were clarified as noted. "Plaza Tours" and "Las Vegas" in the "Convention" category referred to travel expenses incurred to attend an IAFF convention. The IAFF Defense Fund listed under "Other" was a fund established to defeat a legislative change in the retirement system. The "C.H.S. Ad" was a goodwill contribution to the Chicopee High School Boosters Club for an advertisement in a publication. "W. Mullins - Tickets" and "F. LaPointe - Tickets" refer to tickets purchased to attend functions for Massachusetts State Representatives. The "Boston-100 Club" listed under "Travel" exists to "benefit every fire fighter" fatally injured, regardless of whether they are injured on duty.⁵

The Union offered the following clarification of certain 1979-1980 expenses, as noted. The "Wage Committee" listed among Local 1710's 1979-80 expenses was the Union's bargaining committee. The category of "Other" expenses for that fiscal year included "Proposition 2.5." However, all funds for that expenditure were obtained from voluntary contributions and no part of the service fee or dues collected by Local 1710 was used for that purpose. The reference to "Fr. Walsh - Chaplain" denotes a payment to Local 1710's chaplain in recognition of his fiftieth year in the priesthood. "Tickets" for Mullins, Lemanski, and Whalen were purchased for functions in connection with positions sought or held by those individuals as political candidates or public office holders. "M. Pierce" was the Secretary-Treasurer of the IAFF, and tickets were purchased for a fund-raising event for his benefit.

Local 1710 clarified its summary of 1980-81 expenses with the following information. The notation "Boston - Funeral" under the category of "Travel" refers to the cost of travelling to a fire fighter's funeral in Boston. The notation "P.A.V. (Ad.)" under the "Other" category was for an advertisement in a booklet

⁴ (continued)

contains no specific evidence about how much money each of those organizations spent on particular activities.

⁵ The record does not disclose further the nature of the benefit available from this organization.



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of the Polish American Veterans, an expression of goodwill. The "Christmas Gifts" reference related to gifts to the Chicopee Fire Chief and the three clerical workers in his office. Local 1710 purchased "tickets for Senator Burke" for a fund-raising event conducted in connection with his campaign for the Massachusetts State Senate.

Local 1710 clarified its summary of the 1981-82 expenses with the following explanations. Tickets were purchased to functions held to benefit M. Pierce and D. Alward, who were candidates for office in the IAFF. Also listed as an expense for that year was "R. Cebula - Xmas." Ms. Cebula was the Secretary to the Chicopee Fire Chief and the notation refers to a Christmas gift to her from Local 1710. The expense for "J. Krumsiek" that year was a contribution to St. Mary's Church in memory of the late Mr. Krumsiek, Local 1710's attorney and chief negotiator.

Among the 1982-83 expenses, the following items were clarified. "Wage Committee" was the Union's negotiating committee. The donation to Elms College was a contribution to the college's building fund. The expense for gas, tolls and repairs listed under the category of "Travel" represents vehicle expenses incurred, and repairs to a van damaged at Logan Airport while picking up conventioners returning from Chicago.

Opinion

It is now well-settled that a public employee union that imposes an agency service fee on the non-members whom it represents in excess of their pro rata share of collective bargaining, contract administration, and grievance expenses commits a prohibited labor practice within the meaning of G.L. c.150E, Section 10 (b)(1). School Committee of Greenfield v. Greenfield Education Association, 385 Mass. 70, 76 (1982); Woburn Teachers Association, 13 MLC 1555 (1987). When an employee files a charge challenging the amount of an agency service fee, the union has the burden of proving that the fee reflects the employee's pro rata share of permissible expenses. Aboud v. Detroit Board of Education, 431 U.S. 209, 225-26 (1977); School Committee of Greenfield at 85; Woburn Teachers Association at 1563.

In four cases issued earlier this year,⁶ we concluded that there is certain evidence a union must produce to meet its burden of proving the permissibility of an agency service fee. It must show either: 1) the amounts that it and its affiliates have spent permissibly and the total number of employees represented; or 2) that its membership dues represented the members' pro rata share of anticipated union expenses and that a specific percentage of those expenses was permissible. Woburn Teachers Association at 1564.

⁶Woburn Teachers Association, 13 MLC 1555 (1987); Milford Teachers Association, 13 MLC 1568 (1987); Education Association of Worcester, 13 MLC 1580 (1987); Newton Teachers Association, 13 MLC 1589 (1987) (herein referred to collectively as the "Agency Service Fee Quartet").



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Further, for a union to satisfy its burden of proving that an agency service fee is based on permissible expenses, its evidence should demonstrate how the expense relates to the categories in 456 CMR 17.04. Id. As we observed in Woburn Teachers Association, it is not enough for a union merely to list expenses like "legal fees" that are not on their face inherently related to collective bargaining. Rather, it must demonstrate by detailed documentary or reliable testimonial evidence why those expenses fall within one of the permissible categories in 456 CMR 17.04.

Here, Local 1710 relies on summaries of its expenditures between 1978 and 1983 and the testimony of its president and treasurer to prove that the service fees and assessments it levied on Brown during that time period were permissible. In Milford Teachers Association, 13 MLC 1508 (1987), we identified four requirements that union summaries must meet if they are to have any probative value in determining whether the expenses listed are permissible: 1) they must be based on audited or other reliable financial records;⁷ 2) they must be organized in accordance with the categories in 456 CMR 17.04; 3) they must be introduced through a witness who can knowledgeably testify about the nature and accuracy of the underlying expense data; and 4) the underlying data must be made available to an objecting employee who requests the opportunity to examine it. Id. at 1577. We conclude that Local 1710's summaries satisfied these criteria. Their summaries were based on actual bills and cancelled checks, which Local 1710 made available to Brown at the hearing. Further, Local 1710 introduced its summaries through its president and treasurer, who both testified about the nature of the expenses listed. Although the categories listed on 1710's summaries do not conform precisely with those in 456 CMR 17.04, most are either sufficiently detailed or explained through testimony to enable us to determine whether each of the listed expenses is permissible.

Applying the above principles to the seven categories of expenses listed on Local 1710's summaries, we have identified the permissible expenditures for which Brown can be required to pay his proportional share. Because other listed expenditures are either impermissible or not sufficiently proven, Brown cannot be charged for them. We will discuss each of the seven categories separately.

1. Expenses

The only expense listed under this category on each of Local 1710's summaries is "Salaries." In Newton Teachers Association, 13 MLC 1589, 1596 (1987), we noted that, in the absence of contrary evidence, administrative salaries will be presumed permissible in the same proportion as a union's activities are found to be allocable to permissible categories. Because the record in Newton lacked sufficient evidence about the Union's personnel and their activities, we were

⁷The summaries could be audited, be based on available audited records, or be based on other available records that could establish the accuracy of the summary.



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unable to determine to what extent they engaged in permissible activities, and we were unable to apportion their salaries accordingly. Similarly, we lack the necessary evidence here to apportion the "Salaries" listed on Local 1710's summaries. The supporting testimony demonstrated only that they were the amounts paid to Local 1710's president, vice president, treasurer and secretary. There is no record evidence about the duties of the officers or how much time they spent on permissible activities. Thus, as in Newton Teachers Association, Local 1710 has not met its burden of establishing that the salaries paid to its officers were a permissible expenditure.

2. Per Capita

Each of the summaries submitted by Local 1710 listed "per capita" payments to the IAFF, the PFFM and the SCW, the national, state and regional affiliates of Local 1710. To determine the permissibility of payments to affiliate organizations, we must examine how those payments were spent by the affiliates.⁸ Here, the evidence is insufficient to establish how the three organizations spent the payments they received from Local 1710. We know only in general terms that the IAFF and the PFFM assist locals with collective bargaining and lobbying against legislation like Proposition 2.5. Although we may take administrative notice of the fact that the PFFM, for example, has performed many tasks for the benefit of fire fighters, the letter from the PFFM Secretary-Treasurer fails to meet the minimum evidentiary standards necessary to establish the permissibility of an expense. See the Agency Service Fee Quartet. We do not have sufficient evidence from which to conclude that any of Local 1710's per capita payments to the IAFF, the PFFM, or the SCW between 1978 and 1983 were spent permissibly by them.

3. Conventions

Under this category, Local 1710 includes various references to cities like Las Vegas or Toronto, and to plane fares, hotels, and registration expenses. Also listed for every other year is "Eastover." This refers to the location where the PFFM has its biennial conventions. We do not have any evidence about the purpose or the content of the meetings for which these expenses were incurred.

In Ellis v. Brotherhood of Railway Employees, 466 U.S. 435 (1984), the United States Supreme Court considered whether a railway union could charge dissenting agency service fee payers for conventions at which the members elect officers, establish bargaining priorities and formulate union policy. Reasoning that conventions of this kind are essential to a union's discharge of its duties as bargaining agent, the Court concluded that a union may constitutionally charge dissenting employees the expenses associated with those conventions. We believe

⁸ Similarly, when a state or national affiliate makes a grant to a local union, we will look to the point of the expenditure, the local union's financial records, to see if the monies were spent permissibly.



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that the Court's reasoning applies with equal force to public employee unions.

Unlike Ellis, however, the record here does not disclose whether the conventions listed by Local 1710 were held to elect officers or establish union policies and bargaining priorities. It is equally plausible, for example, that they were held for the sole purpose of establishing a political agenda. Because no evidence was offered to demonstrate that the convention expenses were for the purposes outlined in Ellis, they are not chargeable to Brown.

4. Travel

The entries under "Travel" on Local 1710's summaries give little insight into the nature of its travel expenses. However, explanatory testimony indicates that "L.R.B." under that category denotes the expense of attending Commission proceedings. Further, there was testimony that the "Boston-100 Club," referenced on the 1978-79 summary, benefits every fire fighter and that the "Boston-Funeral" listed on the 1980-81 summary was an expense incurred in attending the funeral of a fellow fire fighter. We find that any expenses Local 1710 incurred travelling to the Commission were related to its role as collective bargaining representative and thus are permissible expenses. Further, the costs of travelling to the Boston 100 Club and the funeral of a fellow fire fighter are analogous to the expenditures for social activities that the Ellis court found to be permissible under both the relevant statute and the United States Constitution. As the Court observed, social activities are related to collective bargaining because they bring about harmonious working relationships and promote closer ties among employees. Similarly, we conclude that expenses that promote those relationships, like attending a fellow worker's funeral, are permissible expenses for which Brown can be required to pay a proportional share. However, all of the other travel expenses listed by Local 1710 must be disallowed because they are not supported by evidence demonstrating their relationship to Local 1710's permissible activities.

5. Administrative

We observed in Newton Teachers Association, 13 MLC 1589 (1987) that certain administrative expenses, like telephones, administrative salaries, postage, and supplies could be directly affected by the amount of permissible activity undertaken by a union. Absent contrary evidence, we will presume that those expenses are permissible in the same proportion as the rest of a union's activities are allocable to permissible categories.⁹

⁹This kind of administrative expense must be distinguished from the overhead expenses necessary to maintain an organization's existence like rent, maintenance, insurance and accounting costs. Those administrative expenses will be presumed to be fully permissible, provided the union demonstrates that they are incurred in connection with the union's existence as collective bargaining agent. Newton Teachers Association at 1596.



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Here, Local 1710 has given un rebutted testimony that all supplies listed under the "Administrative" category of its expense summaries were related to collective bargaining and contract administration. Although we would normally presume those expenses to be permissible in the same proportion as the Union's activities were permissible, that presumption is outweighed by the uncontroverted testimony that 100% of Local 1710's administrative expenses were related to bargaining. We conclude, therefore, that those expenses are fully chargeable to Brown.

6. Legal Fees

Because legal fees are not inherently related to collective bargaining, a union wishing to include those expenses in calculating an agency service fee must do more than merely list them. It must demonstrate why they are permissible. See, e.g., Woburn Teachers Association at 1565.

The legal expenses listed by Local 1710 include payments to five arbitrators or fact-finders employed by Local 1710: Daniel Keyes, Peter Blum, Robert O'Brien, S. Jacks, and J. Curran. We have no difficulty concluding that the arbitration and fact-finding expenses incurred by Local 1710 were permissible. By their nature, those expenses are inherently related to collective bargaining and grievance adjustment. Woburn Teachers Association at 1564.

Also listed under "Legal Fees" on each of Local 1710's summaries are annual payments in varying amounts to "Buckley, Richardson...", the law firm that represented Local 1710 in connection with collective bargaining and grievance adjustment. The record reflects that Local 1710's payments to Buckley, Richardson during 1981 included \$7,944.62 it received from the IAFF to put toward legal expenses it incurred in connection with an earlier agency service fee challenge brought by Brown. We have no other record evidence about the nature of the legal representation provided by Buckley, Richardson during the years at issue.

On this record, we can conclude only that \$7,944.62 paid by Local 1710 to Buckley, Richardson in 1981 to defend a prohibited practice charge filed by Brown is permissible. When a union is called upon to defend its good faith actions as a collective bargaining representative, including defending charges filed with the Commission, it should be permitted to pass along a proportional share of those legal expenses to the agency service fee payers who benefit from the union's status as their bargaining representative. Because we have no specific evidence about what other work Buckley, Richardson did for Local 1710 or what percentage of it was for permissible purposes, however, we must disallow the remainder of the payments to Buckley, Richardson. The testimony that Local 1710 used the law firm for all of its collective bargaining and contract administration work does not, without more, demonstrate that all payments to the firm were made for collective bargaining and contract administration.

7. Other

Under this category, each of Local 1710's summaries lists "Director Reimbursement," the cost of reimbursing its directors for their Union dues payments.



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Absent evidence about the employees or their activities, we cannot determine to what extent they engaged in permissible activities. Accordingly, we are unable to apportion these costs as we would other administrative expenses. Similarly, we have insufficient evidence about the duties of Local 1710's officers to determine whether the "Officer's Expense" listed on the 1980-1981, 1981-1982 and 1982-1983 summaries was permissible. Therefore, those expenses cannot be included in determining Brown's agency service fee.

The expenses of Local 1710's Wage Committee, which is its bargaining committee, however, are permissible. Unlike the officers dues reimbursement, we have record evidence that Local 1710's Wage Committee engaged in bargaining in the Union's behalf, a permissible activity. Therefore, we find the expenses associated with that bargaining activity to be permissible.

Several activities under the category "Other" on Local 1710's summaries referred to tickets purchased for political fund raising events and are clearly impermissible under the Commission's regulations. 456 CMR 17.04(1)(a). Those entries included tickets for W. Mullins, F. Lapointe, K. Lemanski, J. Whalen, and Sen. Burke. However, we conclude that expenditures for tickets for M. Pierce and D. Alward are permissible. These tickets were purchased in connection with two candidates for union office, and we believe that union elections, like the conventions to elect officers discussed in Ellis, are necessary for a union to maintain its associational existence. In reaching this conclusion, we must balance the partisan political nature of the campaign against a union's need to elect officers to govern the organization. Because a union's ability to perform its role as bargaining representative depends on the perpetuation of the organizational structure, we conclude that the legitimate purpose of this expense outweighs any partisan aspects of it.

Several other items listed as "Other" expenses pertain to expenses that promote goodwill and positive working relationships among the employees represented by the Union. They can be compared to the social activity expenses the Ellis Court found to be incidental expenses incurred by unions in running their operations. Among them are: the "C.H.S. Ad," a goodwill contribution to the Chicopee High School Booster Club; the "S.C.W." Picnic and Ad expenses; the "P.A.V. (Ad)," a goodwill advertisement in a Polish American Veterans booklet; and various Christmas gifts to the Chicopee Fire Chief and his administrative staff. Accordingly, we find each of those expenses to be permissible.

Also permissible is the "I.A.F.F. Defense Fund," a fund established to lobby against a change in the fire fighters retirement system. Lobbying to preserve a retirement system is inherently related to the fire fighters' terms and conditions of employment. Therefore, on its face, that expense is permissible under 456 CMR 17.04(2)(j). See, also, Robinson v. New Jersey, 741 F.2d 598 (3rd Cir. 1984) (lobbying expenses pertinent to Union's duties as bargaining agent and not used to advance political or ideological positions permissible).

In the absence of contrary evidence from Brown, we presume the expenses for bank charges and bonding to be permissible. They are essentially overhead expenses



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required for the continued existence of Local 1710. See, **Newton Teachers Association** at 1596.

Some "Other" expenses listed on Local 1710's summaries do not obviously relate to collective bargaining or contract administration and are not sufficiently explained in the record to permit us to categorize them as permissible. Thus, we cannot include them in calculating Brown's agency service fee. They are: "H. Tabbot-Gift," "General Meeting," "W. McClennan-Retirement" and "Agency Service Fee."

Finally, Local 1710 has listed expenses in the "Other" category that must be classified as impermissible under one of the subsections of 456 CMR 17.04(1). The contributions to Muscular Dystrophy and the Elms College building fund are impermissible under 17.04(1)(d). Similarly, the gift to Father Walsh in recognition of his retirement from the priesthood, and the donation to a church upon the death of Local 1710's lawyer, J. Krumsiek, are the kind of religious expenditures classified as impermissible under 17.04(1)(d).

We need not consider the remaining two expenses under this category on Local 1710's summary. The first expense, "Proposition 2.5," was money spent to defeat Proposition 2.5. All the funds expended on this effort were donated voluntarily and derived neither from dues nor agency service fees. Therefore, those expenses were never charged to Brown and we need not consider them in calculating Brown's service fee. Further, the "M. Brown - Pro Rata" entry pertains to a refund of part of Brown's agency service fee and should not be included in determining whether the remainder of the fees demanded of him were permissible.

Based on the above analysis of each of the individual expenses listed on Local 1710's summaries, we conclude that Local 1710 has proven that the following expenses were permissible expenses and thus could properly be included in the agency service fees demanded of Brown for the years in question:

April 1, 1978 to June 30, 1979

TRAVEL

Boston-"100" Club	\$ 175.00
Boston-L.R.B.	100.00

ADMINISTRATIVE

Printing	215.28
Typewriter	154.21
Tapes, Ribbons	44.68
Postage	46.92
Decals	5.00

LEGAL FEES

Robert O'Brien (Fact-finder)	632.00
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MASSACHUSETTS LABOR CASES

CITE AS 14 MLC 1257

Melvin A. Brown and Chicopee Fire Fighters Local 1710, IAFF, 14 MLC 1241

Peter Blum (Arbitrator)	668.05
Daniel Keyes (Arbitrator)	250.00
<u>OTHER</u>	
C.H.S.-Ad	25.00
Bank Charge	10.09
IAFF Defense Fund	100.00

TOTAL PERMISSIBLE EXPENSE \$ 2,426.23

Because Brown was a member of Local 1710 until April 1, 1979, and therefore obligated to pay dues until that date, we will pro rate Local 1710's permissible expenses from April 1, 1978 to June 30, 1979 and include only the April through June 1979 portion to calculate Brown's service fee. Thus, the Union's permissible FY 1979 expenses equal 3/15 of \$2,426.23, or \$485.25. The Union may charge Brown his proportionate share of \$485.25 of Local 1710 expenses for April through June 1979.

July 1, 1979 to June 30, 1980

<u>TRAVEL</u>	
L.R.B.	\$ 100.00
<u>ADMINISTRATIVE</u>	
Printing	165.00
Telephone	7.20
Postage	2.90
Supplies	20.00
<u>COMMITTEE</u>	
Wage	122.00
<u>OTHER DISBURSEMENTS</u>	
S.C.W.-Ad	25.00
M. Pierce-2 Tickets	50.00
TOTAL PERMISSIBLE EXPENSES	\$ 492.10

July 1, 1980 to June 30, 1981

<u>TRAVEL</u>	
Boston-Runeral	55.00
<u>ADMINISTRATIVE</u>	
Printing	148.60
Ribbons, Etc.	27.51
Decals	10.00



MASSACHUSETTS LABOR CASES**CITE AS 14 MLC 1258****Melvin A. Brown and Chicopee Fire Fighters Local 1710, IAFF, 14 MLC 1241****LEGAL FEES**

Buckley, Richardson	\$ 7,944.62
S. Jacks-Arbitrator	172.02

OTHER

S.C.W. (Picnic)	20.00
S.C.W. (Ad.)	25.00
P.A.V. (Ad.)	100.00
Xmas Gifts	194.33
Bonding	25.00

TOTAL PERMISSIBLE EXPENSES \$ 8,722.08**July 1, 1981 to June 30, 1982****TRAVEL**

Boston-L.R.B.	50.00
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LEGAL FEES

J. Curran (Arbitrator)	237.40
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ADMINISTRATIVE

Printing	537.71
Postage	15.25
Cleaning Typewriter	22.50

OTHER

Bonding	25.00
M. Pierce-Tickets	150.00
D. Alward-Tickets	100.00
R. Cebula-Xmas	100.00

TOTAL PERMISSIBLE EXPENSES \$ 1,237.86**July 1, 1982 to June 30, 1983****TRAVEL**

L.R.B.	100.00
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ADMINISTRATIVE

Printing	108.98
Check Book	64.88

OTHER

Bonding	25.00
Wage Committee	127.00

TOTAL PERMISSIBLE EXPENSES \$ 425.86

Melvin A. Brown and Chicopee Fire Fighters Local 1710, IAFF, 14 MLC 1241

Therefore, the total of Local 1710's permissible expenses for the period from April 1, 1979 to June 30, 1983 was:

April 1 - June 30, 1979	\$ 485.25
July 1, 1979 - June 30, 1980	492.10
July 1, 1980 - June 30, 1981	8,722.08
July 1, 1981 - June 30, 1982	1,722.08
July 1, 1982 - June 20, 1983	425.86

TOTAL \$ 11,363.15

When this figure is divided by 152, the number of employees in the bargaining unit represented by Local 1710 during the relevant time period,¹⁰ we can determine Brown's proportionate share of the Union's permissible costs. The aggregate amount of the agency service fees that Local 1710 could lawfully charge Brown for the period from April 1, 1979 through June 20, 1983 is \$74.76.

The record reveals that Brown either paid or deposited into an escrow account \$751.00 from April 1979 to June 1982. When this is reduced by the \$21.43 Local 1710 refunded to Brown on October 22, 1981, the total agency service fees demanded from and paid by Brown during the relevant time period was \$729.57. This exceeds the \$74.76 that Local 1710 has proven it could lawfully demand from Brown by \$654.81.

CONCLUSION

Because Local 1710 has proven only that \$74.75 of the \$729.57 in agency service fees and assessments it demanded of Brown from April 1, 1979 to June 30, 1983 was permissible, we conclude that Local 1710 has violated Section 10(b)(1) of the Law by demanding service fees in excess of the amounts permitted by Section 12 of the Law.¹¹ Therefore, we direct that Local 1710 shall refund to Brown and release from the joint escrow account all but \$74.76 of the monies paid by him between April 1, 1979 and June 30, 1983, in satisfaction of the Union's demand for payment of an agency service fee.

¹⁰ Local 1710 introduced evidence showing that it represented 152 fire fighters in 1977-79. There was no evidence that this figure changed materially in the succeeding four years. Therefore, we will infer that the number of local members remained constant from 1978 to 1983.

¹¹ Brown also argued that Local 1710 did not comply with Chicago Teachers Union Local 1 v. Hudson, 106 S. Ct. 1006 (1986) when it demanded that he pay assessments and service fees. However, because there is no evidence on the record about whether Local 1710 gave Brown any explanation for the basis for the fees, we find no support for his argument.

Further, we reject Brown's argument that Local 1710 waived its right to collect any service fees from him because it did not establish a joint escrow account prior to May 1982. The Commission's regulation requiring a joint escrow did not take effect until May 9, 1982, so Local 1710 had no obligation to establish a joint account prior to that date.



Melvin A. Brown and Chicopee Fire Fighters Local 1710, IAFF, 14 MLC 1241

Because this case involves small sums of money that Brown paid to Local 1710 between April 1, 1979 and June 30, 1983, the task of tracing the permissible amount of each of those separate payments and calculating the interest due on each under the formula we have adopted, see Everett School Committee, 10 MLC 1609 (1984) would be unduly burdensome to all concerned. Rather, we believe that a more practical approach to calculating the interest is warranted in this case. Therefore, we order that: 1) all accrued interest on the monies due Brown from the joint escrow account be paid to him; and 2) Local 1710 shall pay Brown interest on all amounts it received directly from him between April 1, 1979 and June 30, 1983 at the same rate of interest as that paid by the escrow account. The net effect of our ruling is that Brown will receive a flat rate of interest on the entire sum due to be refunded to him for the years at issue at the same rate paid by the escrow account.

ORDER

WHEREFORE, based on the foregoing, we ORDER that Local 1710 shall:

1. Cease and desist from demanding that Melvin A. Brown pay agency service fees or assessments for the time period between April 1, 1979 and June 30, 1983 in excess of \$74.76.
2. Not attempt to enforce the agency service fee provisions in any collective bargaining agreement between the City of Chicopee and Local 1710 that was in effect between April 1, 1979 and June 30, 1983 to the extent that those agency service fee provisions required Melvin A. Brown to pay agency service fees or assessments for that time period in excess of \$74.76.
3. Not seek the discharge of or any other sanction against Melvin A. Brown for failing to pay agency service fees or assessments in excess of \$74.76 for the time period of April 1, 1979 to June 30, 1983.
4. Refund to Melvin A. Brown all agency service fees and assessments paid by him to Local 1710 between April 1, 1979 and June 30, 1983 less \$74.76, plus interest on all amounts in excess of \$74.76 at the same rate paid by the joint escrow account.
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



MASSACHUSETTS LABOR CASES

CITE AS 14 MLC 1261

Melvin A. Brown and Chicopee Fire Fighters Local 1710, IAFF, 14 MLC 1241

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 Chicopee Fire Fighters Local 1710, IAFF (Local 1710) violated Section 10(b)(1) of G.L. c.150E (the Law) by demanding agency service fees for the period of April 1, 1979 to June 30, 1983 from Melvin A. Brown that exceeds the amount permitted by Section 12 of the Law.

WE WILL NOT demand agency service fees from Melvin A. Brown for the period of April 1, 1979 to June 30, 1983 in excess of \$74.76.

WE WILL NOT enforce the agency service fee provision contained in any collective bargaining agreement between the City of Chicopee and Local 1710 that was in effect between April 1, 1979 and June 30, 1983 to the extent that those agency service fee provisions required Melvin A. Brown to pay an agency service fee in excess of \$74.76 for that period of time.

WE WILL NOT seek the discharge of or any other sanction against Melvin A. Brown for failing to pay agency fees for the period of April 1, 1979 and June 30, 1983.

WE WILL refund to Melvin A. Brown all monies held in escrow by Local 1710 plus all interest accrued to the date of the dissolution of the escrow account and all other service fees paid by him between April 1, 1979 and June 30, 1983 in excess of \$74.76 plus interest at the same rate paid by the escrow account.

President
Chicopee Fire Fighters, Local 1710, IAFF

