

MALDEN EDUCATION ASSOCIATION V. JOSEPH W. ANGELO, MUPL-2671, 2722, 2787, 2795, 2810, 2825 (7/8/88).

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Commissioners participating:

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

Appearances:

Brian A. Riley, Esq. - Representing the Malden Education Association
 Joseph W. Angelo - Pro se

DECISION

STATEMENT OF THE CASE

On December 23, 1983, April 2, 1984, October 24, 1984, November 7, 1984, December 21, 1984 and February 11, 1985, Joseph W. Angelo (Angelo) filed several charges with the Labor Relations Commission (Commission) alleging that the Malden Education Association (Association) had engaged in prohibited practices in violation of Section 10(b)(1) of Massachusetts General Laws, Chapter 150E (the Law) relative to the Association's demands that Angelo pay service fees to the Association.

On June 26, 1985, the Commission issued a Complaint in Case Nos. MUPL-2671 and MUPL-2722, and a Complaint in Case Nos. MUPL-2787, MUPL-2795, MUPL-2810 and MUPL-2825.¹ On June 26 and August 20, 1985, the Commission notified the parties that it had consolidated, for purposes of hearing, those allegations in both Complaints concerning the validity of various demands made by the Association for payment of service fees, and that it was deferring hearing on the remaining allegations of the Complaints relating to the amounts of the service fees demanded by the Association.² The Association filed Answers wherein it admitted most of the

¹ An Amended Complaint in these cases later issued on August 20, 1985.

² On November 18, 1987, Angelo and the Association executed a settlement agreement concerning the allegations in the Complaints challenging the amounts of the service fees, to take effect "if and when a final decision in the

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factual and jurisdictional allegations of the Complaints but denied that it had violated the Law as alleged.³

The Complaint in Case Nos. MUPL-2671 and MUPL-2722 makes the following allegations: 1) the Association's demands upon Angelo for payment of service fees for the 1982-83 and 1983-84 school years were invalid because the collective bargaining agreement pursuant to which the Association demanded payment of the service fees had not been ratified as required by Section 17.03 of the Commission's Rules; 2) the Association's demands for payment of the fees for the 1982-83 and 1983-84 school years were invalid because the Association had not complied with Section 13 and 14 of the Law at the times it demanded payment of the service fees; and 3) the demands for payment of the 1982-83 fee were invalid because they were made while Angelo had a charge pending with the Commission contesting the amount and validity of the 1982-83 service fee. The Complaint also alleged that the 1983-84 service fee exceeded the amount permitted by Section 12 of the Law.

The Complaint in Case Nos. MUPL-2787, 2795, 2810 and 2825 contains the following allegations: 1) the Association's demands that Angelo pay service fees for the 1982-83 and 1983-84 school years were invalid because they were made while Angelo had charges pending with the Commission challenging the validity and/or the amount of those service fees; 2) the Association's demands that Angelo pay service fees for the 1982-83, 1983-84, and 1984-85 school years were invalid because the collective bargaining agreement containing the service fee provision had not been ratified in compliance with Section 17.03 of the Commission's Rules; 3) the Association's demands for payment of the 1984-85 service fee were invalid because the Association had not complied with Section 13 and 14 of the Law when the demands were made; 4) the Association unlawfully sought Angelo's suspension without pay for nonpayment of service fees which were the subject of pending charges by Angelo at the Commission; and 5) the amounts of the service fees demanded are in excess of the amount permitted by Section 12 of the Law.

On August 21, 1985, a formal hearing was conducted by Diane M. Drapeau, a duly designated agent of the Commission. At the hearing the parties were afforded a full opportunity to be heard, to examine and cross-examine witnesses and otherwise present evidence to support or defend the Complaints. The parties subsequently

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[Association's] favor is rendered on the validity issues raised in the Complaints² in the instant cases.

³Angelo argues that the Association's Answers to the Complaints were untimely filed and should therefore not be considered. Although the Commission's Rules require that the respondent's answer be filed within seven days from the date of service of the Complaint, 456 CMR 15.06, the Association did not file its Answer until July 15, 1985. Since the hearing did not take place until August 21, fully one month after the filing of the Association's Answer, we consider that Angelo had sufficient time to prepare for the hearing and that he did not demonstrate any prejudice because of the Association's late-filed Answer. Had Angelo raised this issue prior to the hearing in this case the Commission could have entertained a motion to postpone the hearing.



filed post-hearing briefs. In March 1986 the Commission requested the parties to file supplementary briefs to address any issues affected by the Supreme Court's Hudson decision.⁴ In response to the Commission's request both parties filed supplementary briefs which have also been considered.

ISSUES

At the hearing, the parties stipulated on the record that they would not litigate the allegation that the Association had unlawfully sought Angelo's suspension for nonpayment of fees which were the subject of pending charges filed by Angelo at the Commission, or the allegations in the Complaints challenging the invalidity of the Association's demands for payment of service fees on the ground that Angelo had pending charges at the Commission challenging the fees and had escrowed the amount of the fees as required by Commission Rules. The parties also stipulated that the following issues were the only issues to be considered in this case:

1. Whether the Association's demands upon Angelo for the 1982-83, 1983-84 and 1984-85 fees are invalid because the extensions of the collective bargaining agreement after 1979 were not ratified in compliance with the Commission's Rules.
2. Whether the demands upon Angelo for the 1982-83, 1983-84 and 1984-85 fees were invalid because the Association had not complied with Sections 13 and 14 of the Law when it demanded the fees.
3. Whether the Association's demands upon Angelo for payment of the 1983-84 and 1984-85 fees were invalid because the contract ratification notices posted by the Association did not satisfy the Commission's Rules.⁵

FACTS

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

⁴Chicago Teachers Union, Local 1 v. Hudson, 475 U.S. 292, 121 LRRM 2793 (1986).

⁵At the hearing the parties agreed to litigate this issue although it was not included in the charges filed by Angelo, or authorized by the Commission as an allegation in the Complaints in this case. Only the Commission may authorize or amend a complaint in a Section 11 proceeding and therefore we will treat the parties' agreement to litigate this issue as a joint Motion to Amend the Complaints herein. At the hearing, however, the parties never did litigate the issue and therefore we must deny the "Motion." See n.15 infra.



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The Association and the School Committee were parties to a collective bargaining agreement effective from September 1, 1978 through August 31, 1979. Each year from August 31, 1979 to October 1984, the parties to the collective bargaining agreement executed separate agreements to extend the terms of the 1978-79 agreement for one year. Article 29 of the 1978-79 agreement contains the following language:

The Committee will require as a condition of employment that each member of the bargaining unit pay an agency service fee. The fee shall be set pursuant to law and to the regulations of the State Labor Relations Commission. The fee shall be due no later than forty-five (45) calendar days following the first day of the work year or forty-five (45) calendar days following the first day worked in the bargaining unit. If, after the 45th calendar day that the fee was due, the fee has not been paid to the Association or the fee has not been placed in escrow pending a challenge of the fee before an appropriate tribunal, the Association shall so notify the Committee. The Committee shall notify the unit member that unless the fee is paid within forty-five (45) calendar days the Committee will suspend the teacher without pay and seniority until the fee is paid; up to a maximum of ten (10) work days suspension.

In its Answers to the Complaints, the Association admitted that it made the following demands upon Angelo for payment of service fees for the school year(s) indicated:

<u>Date of demand</u>	<u>School year(s) for which fee demanded</u>
September 19, 1983	1983-84
November 18, 1983	1982-83 1983-84
February 29, 1984	1982-83 1983-84
September 26, 1984	1984-85
November 9, 1984	1982-83 1983-84 1984-85

Angelo spoke at the hearing but called no other witnesses, and he submitted one document into evidence. The document, which was prepared by Angelo, lists, *inter alia*, the dates he alleges that the Association made service fee demands upon him and lists the dates he alleges that the Association's Forms 1 and 2 were filed at the Commission.⁶ Angelo stated on the record at the hearing that he had checked

⁶Section 13 of the Law mandates that an employee organization "shall file with the commission a statement of its name, the name and address of its secretary or other officer to whom notices may be sent, the date of its organization, and its affiliations, if any, with other organizations." The statute does not specify that

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the Commission's records, in the presence of several Commission agents, to determine which year's Forms 1⁷ and 2 were then on file and the date of receipt stamped on each by the Commission. However the record does not indicate the date or dates when Angelo made his inspection. The document he submitted also purportedly contains the results of this record search, and contains an entry for the fiscal years 1982 through 1985 under the categories "Maximum filing date for receipt by Commission"⁸ and "Date filing received by Commission." Angelo's entries under the latter category for fiscal years 1982 and 1983 correspond to the dates of receipt stamped on the Association's Forms 2 for those years in the Commission's records,⁹ but the entry for fiscal year 1984 states only "not received."

The Association presented two witnesses: Brian Riley, the Association's attorney and Maria Sentance, financial secretary of the Association. Riley testified that the usual practice of the Massachusetts Teachers Association (MTA) in filing Form 2 for the local associations is to hand deliver it to the Commission no later than the end of the week in which they are received by the MTA.

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the information must be annually filed. Rather it appears that the intent of the requirement is to secure accurate information and, therefore, the information should be updated when necessary. Angelo seems to argue that the information should have been updated during the period at issue in this case, but has offered no evidence that information previously filed by the Association was outdated and thus required revision.

Section 14 of the Law provides: "No person or association of persons shall operate or maintain an employee organization under this chapter unless and until there has been filed with the Commission a written statement signed by the president and secretary of such employee organization setting forth the names and addresses of all of the officers of such organization, the aims and objectives of such organization, the scale of dues, initiation fees, fines and assessments to be charged to the members, and the annual salaries to be paid to the officers.

Every employee organization shall keep an adequate record of its financial transactions and shall make annually available to its members and to nonmember employees who are required to pay a service fee under section twelve of this act, within sixty days after the end of its fiscal year, a detailed written financial report in the form of a balance sheet and operating statement. Such report shall indicate the total of its receipts of any kind and the sources of such receipts, and disbursements made by it during its last fiscal year. A copy of such report shall be filed with the commission."

To facilitate enforcement of these provisions and to standardize its record-keeping the Commission developed a form known as the "Employee Organization Information Report," or Form 1, and a form known as "Employee Organization Annual Report," or Form 2, for reporting the information required by Sections 13 and 14. See Commission Rule 16.05(1), 456 CMR 16.05(1).

⁷As noted in fn.6, above, there is no requirement that Form 1 be filed annually. Although, for the purposes of clarity we have included references to Form 1, the record does not establish that the Association failed to comply with
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The Association's Form 2 for fiscal 1982 was filed at the Commission on February 6, 1984. The fiscal year 1983 Form 2 appears to have been signed by the Association's officers on August 15 and 20, 1983, and stamped "MTA FEB 14, 1984." The parties further stipulated that it was received and date-stamped at the Commission on February 14, 1984.

Sentance is responsible for collecting dues from the members and sending communications to members. She testified that on August 21, 1985, the day of the hearing in this case, she reviewed the Commission files and found that the Association's Form 2 for fiscal year 1984 (7/1/83-6/30/84) was on file at the Commission but had not been date-stamped by the Commission. Sentance testified that the fiscal year 1984 Form 2 was signed by the Association's officers on August 15, 1984; Riley testified that it was received by the MTA on September 18, 1984. The Commission's date-stamp does not appear on the forms.

OPINION

In Malden Education Association, 11 MLC 1500 (1985), the Commission ruled that a union's demand for payment of a service fee will be considered invalid if the union has not complied with Sections 13 and 14 of the Law, and Commission Rule 17.05(3), 456 CMR 17.05(3), at the time it made the demand for the fee. To establish that a particular demand is invalid a fee payer must prove by a preponderance of the evidence presented that at the time the union demanded payment of the fee, it had not filed with the Commission all of the information then required to be filed pursuant to Sections 13 and 14 of the Law.¹⁰

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the Form 1 filing requirements.

⁸ Angelo's entries under this former category, for the Association's fiscal years 1982 through 1985, are the last date of the sixty-day period by which the Section 14 information must be filed. Section 14 of the Law requires that the information be filed with the Commission "within sixty days after the end of [the employee organization's] fiscal year." Angelo argues that if the Association failed to file its Forms 1 and 2 by the end of the statutory sixty-day period, any demand it makes for a service fee for the subsequent school year should be considered invalid. We disagree. Noncompliance with Commission Rule 17.05 only renders invalid demands which are made prior to the union's compliance with the Rule. Malden Education Association, 11 MLC 1500 (1985).

⁹ Any party may request that we take administrative notice of the date of receipt stamped by the Commission on the Forms 1 and 2 which are on file in our office. Any party may file with the Commission pursuant to G.L. c.66, Section 10 a written request to inspect or copy public documents filed with the Commission. If the Commission has received the requested Section 13 or 14 information, the requesting party may obtain a copy of it. If the Commission has no record of the document, the Commission will certify that fact in writing at the request of the party.

¹⁰ For the purposes of Rule 17.05(3), in the instant case compliance with Sections 13 and 14 of the Law would necessitate that as of the date of the demand, (continued)



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The Association's September 19, 1983, demand upon Angelo for payment of the 1983-84 service fee was made more than 60 days after the close of the Association's 1983 fiscal year,¹¹ and therefore the Form 2 for that fiscal year was required to be on file at the time of the demand.¹² Since the information contained in the form for that fiscal year was relevant to the period for which the fee was being assessed, and since the form was not on file as of that date, the September 19, 1983 demand for the 1983-84 fee was not in compliance with Rule 17.05(3) and therefore was invalid. The demand made on November 18, 1983 for payment of both the 1982-83 and 1983-84 service fees is similarly invalid. The required Forms 2 for fiscal years 1982 and 1983 were filed on February 6, 1984 and February 14, 1984, respectively; therefore, the Association was not in compliance with Rule 17.05(3) when it demanded the fees, and the demand is invalid. However, by the time the Association later redemanded the 1982-83 and 1983-84 service fees from Angelo on February 29, 1984, it had filed the forms for fiscal years 1982 and 1983. Therefore, the February 29, 1984 demand for payment of the 1982-83 and 1983-84 service fees was made after the Association had complied with the Rule and was valid.

The last two demands involved in this case are a demand on September 26, 1984 for the 1984-85 fee, and a renewed demand on November 9, 1984 for the still unpaid fees for the 1982-83, 1983-84 and 1984-85 school years. To the extent that the latter demand redemands the 1982-83 and 1983-84 fees, we have already concluded that the relevant forms for those fees were filed during February 1984; and therefore the demand is valid as to the 1982-83 and 1983-84 fees. Thus the only remaining issue is whether the demands are valid insofar as they seek payment of the 1984-1985 fee. Critical to our determination of this issue is whether the Form 2 (or its equivalent) for fiscal 1984 was on file when the demands were made. That issue turns on whether the evidence establishes that the Association had filed its Form 2 for fiscal year 1984 either by September 26, 1984, or by November 9, 1984, in view of the fact that the form contained in the Commission's files is not date-stamped. The record establishes that the Association's officers signed the form on August 15, 1984, that it was received by the MTA on September 18, 1984, and that it is the regular practice of the MTA to hand deliver Forms 1 and 2 to the Commission within one week after they are received by the MTA. The Association argues that, based upon these facts, the Commission should deem the Form 2 for fiscal year 1984 to have been filed on or within the week after September 18, 1984.

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the Union have filed all of the Forms 1 and 2 (or their equivalent) which were then required to be on file for all relevant fiscal years. (See also fn. 12, *infra*.)

¹¹The Association's 1983 fiscal year ended June 30, 1983 and therefore the Association's Section 14 information should have been filed within sixty days thereafter. See 456 CMR 16.05 and Section 14 of the Law.

¹²We note that the Association had not requested permission of the Commission to file the Section 14 information late and therefore we need not decide whether a union which has received permission to file the Section 14 information late is in "compliance" for the purposes of Rule 17.05(3).



As noted above, a fee payer seeking to invalidate a union's demand for payment of a service fee based upon alleged noncompliance with Rule 17.05(3) bears the burden of proving invalidity by direct evidence that the required Form 2 (or its equivalent) was not filed with the Commission when the demand was made. If the form was filed with the Commission but the date stamped thereon by the Commission upon receipt postdates the date of the demand, the fee payer may of course establish a prima facie case either by submitting a copy of the stamped forms into evidence or by asking that the Commission take administrative notice of the date stamped on the specified form in its files. If, subsequent to the date of the demand, the fee payer requests and receives a written certification from the Commission that the form was not on file on the date of his or her search for the form, this submission also will satisfy the fee payer's initial burden of proof.

A fee payer may also offer witness testimony to establish that the form was not filed by the date of the demand, including testimony of a person, other than a Commission agent, who checked the Commission's records on a certain date but did not find the form on file. When the form has been filed but was not date-stamped by the Commission upon receipt, a witness's testimony that the form was not on file as of a given date may be rebutted, however, by other evidence establishing that the form was filed before that date, including proper testimony concerning the union's routine custom or business practice in filing such forms at the Commission.¹³

In the present case, Angelo has failed to establish even a prima facie case that the Form 2 for fiscal year 1984 was not filed on either of the dates on which the Association demanded the 1984-85 fee. Although he testified that the form was not on file when he checked the Commission's records, his testimony did not establish the date(s) when he checked the files. Thus, there is no evidence that Angelo's search occurred after either September 26, 1984 or November 9, 1984, the dates of the demands involving the 1984-85 fee.¹⁴ Moreover, Association witness Sentance testified that, as of the date of the hearing, the form was on file but had not been date-stamped by the Commission when received. The Association also presented evidence that its customary business practice would have caused the form to have been filed with the Commission by September 25, 1984 (within one week after receipt by the MTA on September 18, 1984). Filing by that date would render valid under Rule 17.05(3) the first demand of September 26, 1984, as well as the second demand of November 9, 1984. Finally, even assuming that Angelo had testified that he checked the Commission records after he received the November 1984 demand but failed to find the form, the Association's rebuttal evidence of business practice establishing that the form was filed by September 25, 1984 would overcome that

¹³ Circumstantial evidence that the forms were filed according to a union's custom or business practice will not, without more, serve to rebut a written certification by a Commission agent that the forms were not on file on a given date.

¹⁴ G.L. c.150E and the Commission's Rules require that the Section 13 and 14 information be filed in order that member and nonmember employees, as well as other interested parties, have access to that information for any purpose. We note that a fee payer might have occasion to check a union's compliance with Sections 13 and 14 in connection with more than one demand for payment of a service fee. It is not possible, therefore, to infer when Angelo might have checked the files and no party has requested such an inference.



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testimony, as discussed above. Accordingly, we conclude that the Association's demand on September 26, 1984 for payment of the 1984-85 service fee and its demand on November 9, 1984 for payment of the 1982-83, 1983-84 and 1984-85 service fees were made at a time when the Association was in compliance with Commission Rule 17.05(3).

In sum, therefore, we conclude that insofar as the Association had not satisfied the filing requirements of Section 13 and 14 of the Law when it made written demands upon Angelo on September 19, 1983 for payment of a service fee for the 198-84 school year, and on November 18, 1983 for payment of service fees for the 1982-83 and 1983-84 school years, those demands were invalid¹⁵ and the Association is barred from collecting or attempting to collect the fees pursuant to those demands. Further, the Association's attempts to collect the fees pursuant to those demands constituted interference with, restraint and coercion of Angelo by the Association in the exercise of his rights under Section 2 of the Law, in violation of Section 10(b)(1) of the Law.

We dismiss the allegations in the Complaints that the demands for service fees were invalid because the collective bargaining agreements requiring payment of the fees were not ratified in accordance with Commission Rule 17.03, 456 CMR 17.03. In its Answers to the Complaints, the Association denied these allegations, and the record contains no evidence supporting these allegations.¹⁶

We also dismiss the allegations that the Association violated Section 10(b)(1) of the Law either by seeking Angelo's suspension while Angelo maintained unfair labor practice charges at the Commission or by later demanding payment for the fees at issue in those charges. The parties stipulated on the record that they would not litigate these allegations, and we treat such a stipulation as a joint request to dismiss the allegations, which we hereby grant.

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

1. Cease and desist from:
 - a) Seeking to enforce either the demand of September 19, 1983 for an agency service fee for the school year 1983-84, or the demand of November 18, 1983 for an agency service fee for the 1982-83 and 1983-84 school years, or in any like manner interfering with, restraining or coercing Angelo in violation of Section 10(b)(1) of the Law;

¹⁵As noted above, we also conclude that the remaining demands for payment of service fees for various years were not invalid because of noncompliance with Rule 17.05(3), and we dismiss those allegations of the Complaints.

¹⁶Angelo attached to his post-hearing brief several unidentified documents which appear to be notices of contract ratification meetings held in 1983, 1984 and 1985. These documents were not introduced into evidence at the hearing.



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- b) Seeking either the suspension of Angelo or any other sanction for failure to comply with the agency service fee demands of September 19, 1983 and November 18, 1983.
2. Take the following affirmative action which will effectuate the purposes of the Law:
 - a) Post in all conspicuous places where employees represented by the Association usually congregate and where notices are usually posted, and display for a period of thirty (30) consecutive days thereafter, signed copies of the attached Notice to Employees;¹⁷
 - b) Notify the Commission, in writing, within thirty (30) days of service of this decision and order of the steps taken to comply herewith.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

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

¹⁷ If the Association has no access to bulletin boards on the Employer's premises it shall request permission in writing of the Employer to post the notice on the Employer's bulletin boards. If the Association is unable to secure permission to post the notice on the Employer's premises the Association shall promptly notify the Commission. Upon receipt of such notice the Commission shall set alternative publication requirements.

¹⁸ The thirty (30) day posting period is to occur during the school year in order to promote the likelihood of ample notice to employees. If the school year ends before the completion of the thirty (30) day posting period the Association is required to repost the notice for the remainder of the thirty (30) day period at the start of the next school year.



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

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

Section 2 of the Law guarantees employees the right to join or refrain from joining unions or to otherwise engage in collective activity. Non-members may be required to pay a valid agency service fee. By making demands that Angelo pay certain service fees when it had not filed the necessary reports, however, the Association interfered with, restrained and coerced Angelo in the exercise of his rights to refrain from joining or supporting a union as guaranteed by Section 2 of c.150E, in violation of Section 10(b)(1) of c.150E.

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

President
Malden Education Association

