

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Ellen D. Gibney, et al.,

Petitioners,

and

Toledo Federation of Teachers,

Respondent.

CASE NUMBER: 86-REPF-11-0358

DIRECTIVE
(Opinion attached.)

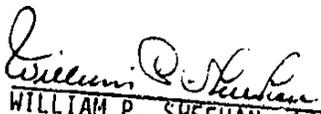
Before Chairman Sheehan, Vice Chairman Davis, and Board Member Latané;
July 6, 1989.

On February 23, 1989, the Toledo Federation of Teachers (Respondent) filed a motion for reconsideration and clarification of the Board's February 2, 1989, determination in the instant case. The Board on April 5, 1989, voted to grant reconsideration. Motions were filed by Ohio Education Association (amicus curiae) on April 7, 1989, and by Ohio Civil Service Employees Association, AFSCME (amicus curiae) on April 10, 1989, to file briefs in support of reconsideration and clarification. In response to these motions, the Board granted the opportunity to file briefs.

The Board has reviewed the briefs and the remedy in the directive and opinion issued (In re Gibney, SERB 89-004 (2/2/89)). The directive issued on February 2, 1989, is amended to provide that the Respondent is to refund all assessed fair share fees collected during the 1986-87 school year, with interest, to only those employees who had filed objections to the fair share fee.

It is so directed.

SHEEHAN, Chairman; DAVIS, Vice Chairman; and LATANE, Board Member,
concur.


WILLIAM P. SHEEHAN, CHAIRMAN

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You are hereby notified that an appeal may be perfected, pursuant to Ohio Revised Code Section 119.12, by filing a notice of appeal with the Board at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, and with the Franklin County Common Pleas Court within fifteen days after the mailing of the Board's directive.

I certify that this document was filed and a copy served upon each party on this 23rd day of August, 1989.

Cynthia L. Spanski
CYNTHIA L. SPANSKI, CLERK

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OPINION

Sheehan, Chairman:

On February 23, 1989, the Toledo Federation of Teachers (Respondent) filed a motion for the Board to reconsider and set aside, in part, its Opinion and Directive dated February 9, 1989, in the above-styled case. The motion was granted on March 30, 1989, and extension was granted until May 19, 1989, to a file brief in support of the motion for reconsideration. Motions by American Federation of State, County and Municipal Employees, AFL-CIO, and District 1199 WV/KY/OH, National Union of Hospital and Health Care Workers to file amicus curiae briefs were also granted. Extension until May 19, 1989, was granted these motions.

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Essentially, the Respondent raises three assignment of errors:

- 1) The Board erred in granting relief to all employees who paid fair share fees during the 1986-87 school year.
- 2) The Board erred in directing Respondent to return all fair share fees collected during the 1986-87 school year.

3) The Board erred in addressing the issue of properly chargeable expenditures.

On assignment of error No. 1, the motion for reconsideration is well taken. Inadvertently, the Board ruled that the Respondent must refund the fee to all non-union employees (fee payers) in the bargaining unit. The Board amends its previous directive and hereby rules that the Respondent shall refund the fair share fee only to those bargaining unit employees who filed objections to the fair share fee procedures.

Assignment of error No. 2, the Board does not change its prior ruling. The Board's ruling that all money should be returned to the non-union employee objector because a constitutionally accepted fair share fee rebate provision was not in place at the time the fair share fee deductions were made is consistent with the ruling of the Sixth Circuit Court of Appeals¹ which, with respect to federal law, is controlling in this area. Pursuant to O.R.C. Chapter 4117, the Board is bound by federal law on the fair share fee issue.

Assignment of error No. 3, the Board acknowledges that the issue of properly chargeable expenditures was not before the Board. However, footnote 21 is no more than what it seems to be, which is dicta and a summary of the case it cites. Determination of chargeable and non-chargeable expenditures will be made if and when the appropriate case raising such issues is presented to this Board.

Davis, Vice Chairman, and Latané, Board Member, concur.

¹Damiana v. Matish, 830 F. 2d 1363, 1369 (6th Cir. Mich. 1987).
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