

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Raymond A. Heitger, et al.,
Petitioners,

and

Ohio Education Association,
Employee Organization.

Case Numbers:

90-RBT-02-0051 91-RBT-01-0001
91-RBT-01-0002 91-RBT-01-0003
91-RBT-01-0005 91-RBT-01-0007
91-RBT-01-0008 92-RBT-01-0004
92-RBT-01-0005

OPINION

POTTENGER, Vice Chairman:

Raymond A. Heitger, Jerome E. Zetts, Billie S. Lynch, Michael D. Steirer, Rae Jeanne Mollica, Stephen A. Graf, Erven C. Robinson, and Sandra I. Williams filed petitions to challenge rebate determinations made by the same employee organization, the Ohio Education Association (OEA). The OEA subsequently filed a motion to dismiss each of these petitions. The issue presented for review is whether the petitions should be dismissed pursuant to the grounds alleged in the OEA's motion to dismiss.

I. DISCUSSION

Ohio Revised Code (O.R.C.) § 4117.09(C) provides in pertinent part:

. . . Any public employee organization representing public employees pursuant to this chapter shall prescribe an internal procedure to determine a rebate, if any, for nonmembers which conforms to federal law, provided a nonmember makes a timely demand on the employee organization. Absent

arbitrary and capricious action, such determination is conclusive on the parties except that a challenge to the determination may be filed with the state employment relations board within thirty days of the determination date specifying the arbitrary or capricious nature of the determination and the board shall review the rebate determination and decide whether it was arbitrary or capricious. The deduction of a fair share fee by the public employer from the payroll check of the employee and its payment to the employee organization is automatic and does not require the written authorization of the employee.

The internal rebate procedure shall provide for a rebate of expenditures in support of partisan politics or ideological causes not germane to the work of employee organizations in the realm of collective bargaining.

(Emphasis added.)

Thus, the statute sets forth certain requirements a petitioner must meet:

1. A petitioner must make a timely demand on the employee organization for a rebate of nonchargeable expenditures under the employee organization's internal procedure.
2. After the employee organization's rebate determination is issued, a petitioner must file a challenge with the State Employment Relations Board (SERB):
 - a. Within thirty days of the determination date, and
 - b. The challenge must specify the arbitrary or capricious nature of the determination.

If a petitioner does not comply with each of these requirements, then the petition will be dismissed. These requirements will be addressed separately below.

1. **A petitioner must make a timely demand on the employee organization for a rebate of nonchargeable expenditures under the employee organization's internal procedure.**

The OEA alleges Sandra I. Williams (Case No. 91-RBT-01-0001), Billie S. Lynch (Case Nos. 91-RBT-01-0002 and 92-RBT-01-0004), and Rae Jeanne Mollica (Case No. 91-RBT-01-0007) failed to make a "timely demand" for a rebate upon the employee organization by not applying to the employee organization for a rebate, contrary to the requirements of O.R.C. § 4117.09(C). The OEA supports its contention with the affidavit of Debra Wroe, an OEA employee.

Ms. Wroe states her job duties include various administrative functions pursuant to OEA's Fair Share Fee Advance Reduction Procedure. She also states in her affidavit that each of these petitioners were sent the "financial disclosure" packet for the appropriate school years, including a copy of the rebate procedure. The packet provided information regarding when and where to file written objections to the fair share fee. The documents also explained if a timely objection is not filed, the full amount of the fair share fee will be collected. Ms. Wroe further states the employee organization received no objections from the petitioners for the school years at issue. Petitioners do not challenge the veracity of Ms. Wroe's affidavit.

The OEA cites Weaver v. University of Cincinnati, 970 F.2d 1523, (6th Cir. 1992), cert denied, 122 L.Ed.2d, 668 (1993), for the proposition that if a petitioner fails to file an objection pursuant to the employee organization's procedure, the petition is to be declared invalid and must be dismissed. The argument advanced by the plaintiffs in Weaver was that nonunion employees' silence cannot be construed as a waiver of their right to dissent from paying for the union's ideological expenditures with their agency shop fees. The court in Weaver rejected the plaintiffs' arguments, holding dissenting union and nonunion members must inform the union that they oppose the use of their funds for ideological expenditures.

Petitioners assert they met this requirement when they made their initial contact with the OEA. This contact triggered Ms. Wroe's mailing of the "financial disclosure" packet. The petitioners claim they have no duty to exhaust the OEA's rebate procedure. They also claim exhaustion should not be required as a prerequisite for filing a petition with SERB.

In order to make a "timely demand," the petitioners do have an obligation to file an objection with the employee organization under the employee organization's rebate procedure, before filing a petition with SERB.¹ Each of these petitioners failed to file a written objection with the OEA under its "Fair Share Fee Advance Reduction Procedure." Consequently, the

¹Ohio Administrative Code Rule 4117-11-01(B) provides in pertinent part: "An employee who has applied to an employee organization for a rebate may challenge the employee organization's determination of the rebate within 30 days of the date of the determination by filing a petition with the Board. . . ."

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issue of whether internal union remedies must be exhausted prior to petitioning SERB is not before SERB in these cases. Based upon the facts herein, the petitioners have not made a "timely demand" for a rebate, as required by O.R.C. § 4117.09. Thus, the motion to dismiss these petitions must be granted.

2. **After the employee organization's rebate determination is issued, a petitioner must file a challenge with the State Employment Relations Board (SERB):**
 - a. **Within thirty days of the determination date.**

In Case No. 90-RBT-02-0051, the date of the rebate determination was December 15, 1989. Raymond A. Heitger's petition was filed with SERB on February 2, 1990. In Case No. 91-RBT-01-0003, Erven C. Robinson's petition challenged a rebate determination dated October 11, 1990. The petition was filed with SERB on January 14, 1991.

OEA contends the petitions were untimely filed. The facts support this contention. Since the petitions were filed beyond the thirty-day limit contained in O.R.C. § 4117.09(C), the motion to dismiss must be granted.

2. **After the employee organization's rebate determination is issued, a petitioner must file a challenge with the State Employment Relations Board (SERB):**
 - b. **The challenge must specify the arbitrary or capricious nature of the determination.**

In Case No. 90-RBT-02-0051, Petitioner Raymond A. Heitger states in the petition his reason for claiming the rebate determination is arbitrary or capricious as follows: "The procedures used to collect the fee are inadequate and the amount of the rebate is insufficient."

In Case No. 91-RBT-01-0003, Petitioner Erven C. Robinson provides no statement specifying the arbitrary or capricious nature of the determination.

In Case No. 91-RBT-01-0005, Petitioner Stephen A. Graf's statement specifying the arbitrary or capricious nature of the determination is as follows: "I believe the procedures surrounding the agency fee, including the rebate procedure, are unconstitutional. In addition, I believe the amount of the fee is excessive."

In Case No. 91-RBT-01-0008, Petitioner Michael B. Steirer's reason, as stated in the petition, for challenging the fair share fee is as follows: "I was a school administrator in the Elyria schools when my position was abolished. In due course, I was reassigned to a teaching position within the district-against my wishes. I don't belong to the OEA nor do I subscribe to its policies, goals, and procedures. Furthermore, I have never belonged to the Ohio Education Association and I have no intentions of joining."

In Case No. 92-RBT-01-0005, Petitioner Jerome E. Zetts states, "The information furnished and other procedures are inadequate and unconstitution (sic). Also, the amount of the rebate is inadequate. The union has retained and is using portions of my fees for purposes other [than] collective bargaining, contract administration and grievance processing."

The foregoing statements do not specify the "arbitrary or capricious nature of the rebate determination." As a result, these petitioners have failed to comply with this requirement of O.R.C. § 4117.09(C). Thus, the motion to dismiss these petitions must be granted.

II. CONCLUSION

The issue presented for review is whether the petitions to challenge rebate determinations should be dismissed pursuant to the grounds alleged in the Ohio Education Association's motion to dismiss. O.R.C. § 4117.09(C) sets forth certain obligations a petitioner must meet when filing such a petition:

1. A petitioner must make a timely demand on the employee organization for a rebate of nonchargeable expenditures under the employee organization's internal procedure.
2. After an employee organization's rebate determination is issued, a petitioner must file a challenge with the State Employment Relations Board (SERB):
 - a. Within thirty days of the determination date, and
 - b. The challenge must specify the arbitrary or capricious nature of the determination.

A review of the facts herein indicates the petitioners have not met each of these statutory requirements. Therefore, the OEA's motion to dismiss the petitions is granted.

POHLER, Chairman, and MASON, Member, concur.