

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

June A. Logan, et al.,  
Petitioners,

and

Ohio Education Association,  
Employee Organization.

CASE NUMBERS:

91-RBT-01-0004 92-RBT-12-0015  
92-RBT-01-0006 92-RBT-12-0016  
92-RBT-12-0012 92-RBT-12-0017  
92-RBT-12-0014 92-RBT-12-0020  
92-RBT-12-0021

OPINION

POTTENGER, VICE CHAIRMAN:

June A. Logan, Lou A. Scullion, Frances K. Possage, Oscar W. Davidson, Ona M. Strudthoff, Carole A. Bricker, Virginia L. Campbell, and Mary Jo Byers 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. BACKGROUND

On November 18, 1994, a Hearing Officer's Recommended Determination was issued recommending that the motion be granted. Petitioners filed exceptions to the Hearing Officer's Recommended Determination. The Employee Organization filed a response to the exceptions. The Board reviewed the Hearing Officer's Recommended Determination, exceptions and the response to the exceptions. The Board remanded the motion to dismiss in the cases cited above to the hearing officer for further facts and analysis, by Board Directive dated March 3, 1995.

After the remand, the Hearing Officer's Recommended Determination was issued on April 7, 1995. Petitioners filed exceptions on April 17, 1995. The Employee Organization filed its response to the exceptions on April 19, 1995.

## II. 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 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).

In determining whether to grant the motion to dismiss, the petitions will be evaluated in accordance with the standard announced in In re Heitger, SERB 95-004 (3-28-95):

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.

Id. at 3-20.

The OEA's motion does not allege that any of the Petitioners failed to make a timely demand for a rebate under its procedures. From the record, it appears that each of the Petitioners complied with this requirement.

- A. After the employee organization's rebate determination is issued, a petitioner must file a challenge with SERB within thirty days of the determination date.

One ground for the OEA's motion to dismiss is that each of the Petitioners did not attach a copy of the determination challenged to their petition, or state that one was unavailable. What the Petitioners did attach was the Employee Organization's notice regarding how it calculates its fair share fee advance reduction percentage, chargeable expenditures, non-chargeable expenditures, and the internal procedure for filing objections, all of which the Employee Organization is required to serve upon the Petitioners, pursuant to *Chicago Teachers Union, Local No. 1 AFT, AFL-CIO v. Hudson*, 475 U.S. 292, 106 S. Ct. 1006 (1986). However, none of these documents provide information regarding the actual final rebate determination by the impartial decision maker. These documents do not contain information upon which the Petitioners can make specific objections to the "arbitrary or capricious nature of the rebate determination" since the impartial decision maker's determination had not occurred at the time Petitioners filed their petitions. They are merely *pre-determination* documents. Therefore, the requirements of Ohio Administrative Code Rule 4117-11-01(B) cannot be met by attaching or referring to these documents in the petitions as the basis for challenging the amount of the actual final determination.

The rule requirements exceed the statutory requirements for the content of a petition. The failure to attach a copy of the rebate determination, or to state that one is not available, is a technical defect which is capable of correction. This deficiency alone is not necessarily fatal to the instant petitions, especially given the fact that these petitions were filed *before* the final rebate determination was issued by the impartial decision maker. The premature nature of the petitions is fatal to the petitions. Since the petitions were not filed "within thirty days of the determination date" as required by O.R.C. § 4117.09(C), the motion to dismiss must be granted.

- B. The petitioner's challenge must specify the arbitrary or capricious nature of the determination.

The OEA's motion to dismiss asserts that each of these petitions fails to "specify the arbitrary or capricious nature of the determination." The terms "arbitrary" or "capricious" are not defined within O.R.C. Chapter 4117. "Ordinarily, 'arbitrary' is synonymous with bad faith or failure to exercise honest judgment and an arbitrary act would be one performed without adequate determination of principle and one not founded in nature of things." BLACK'S LAW DICTIONARY 105 (6th ed. 1990). The term "capricious" is defined as "Whim, arbitrary, seemingly unfounded motivation. Disposition to change one's mind impulsively." *Id.* at 211.

June A. Logan (Case Nos. 91-RBT-01-0004 and 92-RBT-01-0006) challenges the determination, stating:

- A. The fair share fee is still a question in the courts.
- B. The rebate procedure does not protect my constitutional rights.
- C. The fee charged is excessive because it exceeds the pro rata share of the union's collective bargaining.

Iou A. Scullion (Case No. 92-RBT-12-0012), Frances K. Possage (Case No. 92-RBT-12-0014), Carole A. Bricker (Case No. 92-RBT-12-0017), Virginia L. Campbell (Case No. 92-RBT-12-0020), and Mary Jo Byers (Case No. 92-RBT-12-0021) challenge the determination, stating:

I feel the rebate amount to be incorrect due to the small percentage that is listed as non-chargeable (percentage on attached sheets). It is my understanding that the Supreme Court recently ruled in "Beck vs. CWA" a much lesser percentage to be an equitable amount. I therefore feel O.E.A. chargeable percentage to be out of line and am requesting your determination.

Oscar W. Davidson (Case No. 92-RBT-12-0015) challenges the determination, stating:  
"I feel that O.E.A. is taking too much percentage for chargeable fees. I also feel that the O.E.A. is giving more to PACs than [sic] is shown."

Ona M. Strudthoff (Case No. 92-RBT-12-0016) challenges the determination, stating: "I feel the rebate amount to be incorrect due to the small percentage that is listed. It is my understanding the Supreme Court recently ruled a much lesser percentage to be an equitable amount. I therefore feel O.E.A. chargeable percentage to be too much and would request your determination."

The Petitioners must specify the arbitrary or capricious nature of the determination. The comments above lack specificity about what is alleged to be wrong with the impartial decision maker's determination. As stated above, this would be impossible to do since all of these petitions were filed prematurely. Thus, the motion to dismiss is granted.

### III. CONCLUSION

The issue presented for review is whether the petitions to challenge rebate determination should be dismissed pursuant to the grounds alleged in the Ohio Education Association's motion to dismiss. The obligations for the petitioner are set forth in O.R.C. § 4117.09(C) and are summarized in *In re Heitger, supra*. These obligations have not been met since the Petitioners filed their challenges prematurely and because they failed to specify the arbitrary or capricious nature of the determination as required by the statute. Therefore, the OEA's motion to dismiss the petitions is granted.

Pohler, Chairman, and Mason, Board Member, concur.