

IN THE MATTER OF THE 2013--2014)	
)	
FAIR SHARE DETERMINATION)	
)	DISCUSSION AND AWARD
BETWEEN)	
)	OF ARBITRATOR
COALITION OF GRADUATE)	
EMPLOYEES, AFT LOCAL 6069,)	2013--2014 FAIR SHARE
)	
Union,)	DETERMINATION
)	
and)	
)	
JONATHAN KING AND MALACHI BUNN,)	
)	
Challengers.)	

HEARING SITE:	Corvallis Senior Center Corvallis, Oregon
HEARING DATE:	May 21, 2014
POST-HEARING BRIEFS DUE:	Postmarked June 6, 2014
RECORD CLOSED ON RECEIPT OF BRIEFS:	June 10, 2014
REPRESENTING THE UNION:	Michael J. Tedesco Tedesco Law Group 3021 NE Broadway Portland, OR 97232
CHALLENGERS ON THEIR OWN BEHALF:	Jonathan King Malachi Bunn
ARBITRATOR:	Gary L. Axon P.O. Box 190 Ashland, OR 97520

I. INTRODUCTION

The Coalition of Graduate Employees, AFT Local 6069 (CGE or Union) represents a bargaining unit composed of Graduate Teaching Assistants and Graduate Research Assistants employed by Oregon State University (University). The Union is a party to a Collective Bargaining Agreement with Oregon State University. Article 8 - Union Rights, includes Section 5 - Union Dues. On written authorization from the employee, the University agreed to deduct Union dues from the employee's regular monthly salary. The Union also agreed in Section 5(b) that Union dues for each membership category would be either a flat dollar amount or a single percentage of pay.

In December 2013, the Union sent a "NOTICE TO ALL NON-MEMBER FAIR SHARE FEE PAYERS" informing the fair share fee payers of their rights and options. Un. Ex. 2. The notice advised represented non-Union members of the fair share percentage and instructions on how to challenge the fair share calculation by the Union. For the fiscal year October 2013--October 2014, the Union calculated the fair share rate at 74.48% of the current dues rate for Union members set at 2% of the member's salary. The current fair share payment translates to 1.49% of a non-member's monthly salary/stipend. Un. Ex. 2.

Two challenges were received by the Union to the fair share fee calculation. Jonathan King (Challenger) wrote in his challenge letter demanding "reimbursement of all funds withheld from my paycheck not falling within your chargeable rate." Un. Ex. 9. Malachi Bunn (Challenger) challenged the deduction of the fair share percentage as a percentage of income and also objected to the calculation of fair share. Un. Ex. 8. The Challengers requested the right to object to

the expenditures used to determine the chargeable rate before a neutral arbitrator appointed by the American Arbitration Association. The American Arbitration Association appointed this Arbitrator to conduct a hearing and issue an award in the matter of the 2013--2014 fair share determination.

A hearing was held at which time the parties were offered the full and complete opportunity to present evidence, testimony, and argument in support of their respective positions. The Union offered the Arbitrator a notebook containing documentary evidence, which was supplemented by testimony and a post-hearing brief. The Union called two witnesses to testify concerning the decision-making process used to determine chargeable and non-chargeable expenses. Other than Challengers King and Bunn, the Challengers called no additional witnesses to testify. Post-hearing briefs were timely filed by the Union and Challenger Bunn. The matter is now properly before the Arbitrator for a final and binding decision on the merits.

II. STATEMENT OF THE ISSUE

The Union correctly formulated the issue in a fair share determination hearing as follows:

Did the Union properly calculate and assess the fair share fee assessment for the current year?

III. CGE's PROCEDURES

The Challengers raised no procedural objections to the process set forth in the notice to fair share payers (Notice or A Guide to Fair Share Procedures published by the American Federation of Teachers (AFT)). Un. Ex. 4. The notice sent to fair share fee payers properly explained to non-members how to object to the Union's calculation

of the fair share fee as an appropriate percentage for non-chargeable expenses. The fair share fee payers received additional information to judge the propriety of the fee, including various documents related to the financial operation of CGE. The documents made clear the method CGE used to categorize expenditures in the budget as “chargeable” or as “non-chargeable” to objecting fee payers.

The Arbitrator concludes the CGE procedure established for determining the 2013-2014 fair share fee complies with the guidelines set forth by the United States Supreme Court in *Chicago Teachers Union, Local No. 1, AFT, AFL-CIO v. Hudson*, 106 S. Ct. 1066 (1986). The notice letter sent to non-members explained the basis on which the Union calculated the fair share fee, and defined the difference between chargeable and non-chargeable expenses. The notice gave instructions for making objections or challenges with a deadline for filing several weeks after the notification.

When the efforts of CGE and Challengers failed to resolve the problems informally, the Union contacted the American Arbitration Association to appoint a neutral arbitrator. The Arbitrator finds the Union fully complied with the notification procedures for the 2013--2014 fiscal year.

IV. POSITIONS OF THE PARTIES

A. The Union

The Union argues it has met its obligations to fair share members. The bulk of the Union’s expenses went to negotiating and enforcing the Collective Bargaining Agreement for its members. None of the Union’s budget is designated for political events, which are funded through a political action fund that receives no money

from membership dues or fees. CGE has carefully segregated its political activity funds from those expenses related to collective bargaining and contract administration.

The Union next argues that it met all of its procedural obligations. CGE has an independent membership committee to review its expense records. This committee spent a considerable amount of time reviewing CGE financial records to assure that these records accurately reflected CGE's activities. This review showed CGE's records were accurate. The committee relied on "A Guide to Fair Share Procedures" that is published by the American Federation of Teachers for assistance in determining non-chargeable and chargeable expenditures. The committee is instructed to wait for audits of both the affiliated AFT National Union as well as the AFT State Federation in order to compute the appropriate chargeable rate. Through all of these actions, CGE submits it met all legal obligations to its fair share members.

CGE responded to the Challengers' objections that neither Challenger raised an objection that warrants reducing their fair share assessment. The arbitration hearing was held in Corvallis instead of Salem for the convenience of the parties. Further, the Union replied to the Challengers' claim that the Union may not require members to renew fee objections annually. According to the Union, annual renewal requirements are lawful so long as the Union has a legitimate justification for requiring yearly renewal and the Union minimizes the burden that such renewal imposes on potential objectors. The Union properly set its own rules regarding whether objections must be filed annually or are permanent and continuous.

The Union responded to the Challengers' assertion that in calculating the fair share percentage, it should not include AFT Oregon and AFT National dues by

pointing to the legal authority that allows for AFT Oregon and AFT National dues as properly a part of the chargeability computations. The same holds true with AFT convention expenses where overall policy and Union governance issues are discussed and have been held chargeable to fair share payers.

The Challengers also objected to charging office expenses at the full rate by asserting that CGE's predominant purpose is to provide collective bargaining services to their membership. The uncontroverted testimony was that the office space and its associated costs, such as electricity, insurance, rent, and other utilities must be paid to provide these services irrespective of what other activities the Union may be engaged in. There was no evidence elicited that any non-chargeable activity went on at the Union office.

The Challengers also objected to the fact that the Union calculated the fair share fee as a percentage of income. According to the Union, it is simply a matter of self-governance and Union democracy, whereby the Union membership makes decisions as to how it would like to fund the organization. Thus, under controlling law, it is permissible for the fair share fee to vary along with income.

B. The Challengers

Challenger King, in his written statement to the Union, demanded reimbursement of all funds withheld from his paycheck not falling within the chargeable rate. In the event he was not reimbursed, Challenger King asserted he would like to officially challenge the Union's chargeable rate calculation. Un. Ex. 9.

Challenger Bunn alleged the Union is engaged in several unfair and illegal practices regarding fair share calculations. Challenger Bunn alleged the practice of withholding a full membership fee for non-members was unfair and illegal.

Challenger Bunn next pointed to the fact that CGE staff activities were listed as 88.1% chargeable. However, the chargeable 88.1% for staff does indicate that this stands in stark contrast with the 100% rate that is applied to the category of Union expenses. According to Bunn, the office expenses cannot reasonably be assumed to be more than 88.1%.

It is also the position of Challenger Bunn that no rational argument has been made to justify charging a percentage of income rather than the fixed dollar amount to compensate the Union for the benefits it has won through collective bargaining. The employees receiving the greatest benefits from collective bargaining are those who pay the least under the current scheme, which forces higher wage earners to subsidize Union activities for lower wage earners. Challenger Bunn submits there is nothing fair about charges made inversely proportional to the benefit received.

Challenger Bunn's final point of contention was that withholding of full membership dues from non-member paychecks, subject to reimbursement is "a predatory practice stealing 0.5% of around 650 peoples' paychecks which must be stopped."

Challenger Bunn concluded that the Union did not properly calculate and assess the fair share fee for the current year.

V. THE LAW TO BE APPLIED

ORS 243.650(10) specifically permits union security agreements between the exclusive representative and the public employer so long as the agreement protects association rights of non-members. ORS 243.650(10) defines fair share as a system "... whereby employees who are not members of the employee organization are required to make an in-lieu-of-dues payment to an employee organization" ORS 243.650(18) states that: "Payment-in-lieu-of-dues means an assessment to defray the cost for services by the exclusive representative in negotiations and contract administration of all persons in an appropriate bargaining unit who are not members of the organization serving as exclusive representative of the employees."

When the Employment Relations Board certifies a labor organization, the union becomes the exclusive representative for all employees of the public employer who are included within the bargaining unit. Unions have the duty to fully and fairly represent all members of the bargaining unit regardless of whether or not they belong to a labor organization. Because all members of the bargaining unit receive the benefits of the collective bargaining system, whether they belong to the union or not, fair share represents the system by which non-members of the union are required to make their contribution to the support of collective bargaining and contract negotiation.

In *Carlson v. AFSCME*, 73 Or App 755, 700 P.2d 260 (1985), the Court of Appeals held that an expenditure of fair share fees is authorized for any activity that is "germane to" or "supportive of" negotiations or contract administration. The Court went on further to state that an individual may not withdraw his financial support merely because the employee disagrees with the group strategy. A union is not allowed to use

fair share payment of those who have chosen not to join the union for the support of the union's political or ideological activities, which are not germane to collective bargaining and contract administration. This is not an issue in the present case because CGE does not budget for political events. The political action fund receives no money from membership dues or fees. CGE has carefully segregated its political activity from those expenses related to collective bargaining.

The United States Supreme Court has held in a series of cases that employees in a bargaining unit who reap the benefits of the exclusive representative's collective bargaining efforts may be required to pay their fair share of the cost of collective bargaining and contract administration. The United States Supreme Court in so deciding was attempting to eliminate the so-called "free rider" problem.

The tension between the right of the union to spend fair share money in support of collective bargaining activities, and the right of employees who have chosen not to join the union, to see that their monies were not used by the union to support its political and ideological activities which were unrelated to collective bargaining has been the subject of numerous judicial decisions.

The cases of significance concerning fair share payments are identified as follows:

Lehnert v. Ferris Faculty Assoc., 111 S.Ct. 1950, 137 LRRM 2321 (1991); *Communication Workers v. Beck*, 108 S.Ct. 2641, 128 LRRM 2729 (1988) (construing the National Labor Relations Act); *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 121 LRRM 2793 (1986); *Ellis v. Brotherhood of Railway Clerks*, 466 U.S. 435, 116 LRRM 2001 (1984); *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). See also, *Railway Clerks v. Allen*, 373 U.S. 113 (1963) (construing the Railway Labor Act); *Machinists v. Street*, 367

U.S. 740 (1960) (also construing the Railway Labor Act) and an Oregon case, *Carlson v. AFSCME*, 73 Or. App. 755 (1985).

In *Lehnert*, the Court then applied that standard to various types of expenditures to determine whether or not each was chargeable. The Guide to Fair Share Procedures published by AFT followed the *Lehnert* model.

VII. ARBITRATOR'S DISCUSSION AND FINDINGS ON UNION'S CALCULATION OF CHARGEABLE AND NON-CHARGEABLE EXPENDITURES

As explained in the Notice to Fair Share Fee Payers, CGE has established several budget categories by which to guide its operation. The major categories are then broken down into subcategories by the Union according to established operating procedures. CGE presented extensive documentary and verbal evidence to explain the workings of its budget and accounting system so as to demonstrate how the Union arrived at the 2013--2014 fee it expected to charge non-members. Union witnesses and documentary evidence included in the hearing notebook explained in detail the process by which CGE came to its conclusions regarding chargeable and non-chargeable expenses. Two witnesses called by the Union elaborated on the documentary evidence in the hearing notebook. Because CGE's case is clear and convincing in all respects, I find it unnecessary to burden this Award with a programmatic analysis of the expenditures by CGE in this discussion. I further find that the Challengers did not discredit the evidence offered by CGE.

The extensive documentation and testimonial evidence presented by the Union compels a conclusion by this Arbitrator, the Union was not arbitrary or capricious in reviewing its financial status. The independent membership committee reviewed

CGE's financial records to assure that the records accurately reflected CGE's activities. In sum, I conclude the Challengers failed to demonstrate the guidelines used by CGE were defective under applicable statutory requirements, as set forth in the judicial decisions.

VIII. ISSUES RAISED BY CHALLENGERS

The following discussion is the Arbitrator's holding on the issues raised by the Challengers in the written challenge and arguments presented in the post-hearing brief. The evidence reflects the claimed percentages were calculated by the Union in a careful, conscientious, and trustworthy manner. The evidence offered by the Union was un rebutted by any factual evidence presented by the Challengers. The evidence offered by the Union proved the organization goes to great lengths to see that Challengers are not charged for any non-chargeable expenditure under the judicial guidelines. The evidence shows the Union was conservative in allocating employee work time between chargeable and non-chargeable expenses.

No credible evidence or argument concerning CGE's fee calculations or recordkeeping practices persuaded this Arbitrator the calculations should be modified or overturned. Several arguments of the Challengers are best characterized as general and philosophical objections, addressing issues of the proper role of a public employee union that are not properly a part of an agency fee determination. Finally, several of the issues raised by Challenger Bunn were beyond the scope of an agency fee determination hearing.

The purpose of an agency fee hearing is not to address Challenger Bunn's complaints about CGE's performance or the allegation that the Union's method of

collecting full membership dues from non-member paychecks, subject to reimbursement "is a predatory practice stealing 0.5% of around 650 peoples' paychecks which must be stopped." Further, Challenger Bunn's unsubstantiated assertions as to why other members of the bargaining unit did not opt out because they were confused about their status with the Union, and what rights they have to any of the held funds is irrelevant to the proceeding before this Arbitrator.

CGE is affiliated with AFT Oregon and AFT National. There is no dispute that affiliation fees are chargeable. *Lehnert and Ellis*. I hold that per the AFT Oregon audit, the chargeable rate of 70.34% was appropriate. Further, per the AFT National audit, the chargeable rate of 71.46% was an appropriate determination for the CGE to adopt. Likewise, the cost of attending conventions concerning the overall policy and Union governance are chargeable to fair share payers.

The Challengers also objected to charging office expenses at the full rate. CGE exists for the predominant purpose of providing bargaining and contract administration services to Graduate Teaching Assistants and Graduate Research Assistants. The total office expense for CGE for the 2012--2013 fiscal year was \$11,472.90. The expenses in this category such as rent, electricity, insurance, and other utilities must be paid to provide services to the entire bargaining unit, irrespective of what other activities the Union may engage in. Absent from this record is any evidence that non-chargeable activity went on at the CGE office. Based on the facts of this case, I hold the Union proved it was proper to allocate the office expense at 100%.

The Challengers next objected to the fair share fee being charged as a percentage of income. I agree with the Union that this is an issue of the Union's self-

governance. Pursuant to the judicial decisions, unions are granted a wide range of discretion in determining the manner or method used to calculate and assess representational fees. The broad scope of union discretion applies to the manner and method CGE used to determine and calculate representational fees. I hold that controlling judicial authority and the longstanding practice of unions charging dues--based on a percentage of income--support CGE's decision to assess the fair share fee based on a percentage of income.

Challenger Bunn also objected to the practice of withholding full membership dues from non-members' paychecks, subject to reimbursement. Challenger Bunn described this as a predatory practice stealing 0.5% of around 650 peoples' paychecks, which must be stopped. The Collective Bargaining Agreement between the CGE and OSU requires that only one dues amount may be deducted from bargaining unit members. CGE came up with a system wherein it had given objectors the option to get their "rebate" check either quarterly or monthly by either mail or in person after the University has made its deductions. The unrebutted testimony was that it takes the University about a week to process the dues deposit to CGE and another week for CGE to get the checks prepared for delivery to Challengers Bunn and King. The end result is that Challenger Bunn has had to wait for two weeks for a less than \$10 check each month. I find that there is nothing arbitrary or discriminatory in the system by which CGE distributes its rebate checks to the Challengers. Therefore, I must reject Challenger Bunn's claim that the system amounts to "stealing" from employees' paychecks.

I hold CGE may require members to renew fee objections annually. Requiring members to renew fee objections annually does not constitute an arbitrary and capricious burden on the renewal for potential objectors. CGE has broad discretion to determine whether objections must be filed annually, or are permanent and continuous. Thus, I must reject any claim from the Challengers that an annual renewal requirement of fee objectors is improper.

CGE is the certified and exclusive representative for all employees in the bargaining unit for the purpose of collective bargaining concerning wages, hours of work, and other terms and conditions of employment. CGE as the exclusive bargaining representative has great responsibility. Unions must negotiate and administer collective bargaining agreements, and represent the interest of all employees in settling disputes and processing grievances. CGE is authorized by law to collect from fair share payers, fees that are "germane" to collective bargaining activity.

In sum, I hold that CGE used an accurate method of calculating the proportion of representational and non-representational expenditures, and provided non-member employees with a neutral forum for processing challenges.

Based on the totality of the evidence, your Arbitrator concludes the Union met its burden of proof that the process was fair and reasonable, that the Union's calculations which resulted in a chargeable rate of 74.48% of the current dues rate for CGE members to be appropriate and in accordance with established legal and judicial standards.

AWARD

The Arbitrator finds CGE has sustained the burden of proof that the ratio of non-chargeable expenses to total expenses for fiscal year October 2013--October 2014 is 74.48% of the current dues rate for CGE members. The current dues rate is 2% of a CGE member's salary. The current fair share rate translates to a 1.49% of a non-member's monthly salary/stipend. Therefore, the Arbitrator Awards CGE's calculation of the fair share fee at 74.48% of the current dues rate for CGE members to be properly allocated as a chargeable expense.

Respectfully submitted,



Gary L. Axon
Arbitrator

Dated: July 9, 2014