

L.D. NO. 99-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION
LITIGATION ALTERNATIVE PROGRAM

In the Matter of

NEPTUNE TOWNSHIP BOARD OF EDUCATION,

-and-

Docket No. CO-L-98-429

NEPTUNE TOWNSHIP EDUCATION ASSOCIATION

Appearances:

For the Board, Hundley and Parry, P.C.
(James T. Hundley, Esq.)

For the Association, Klausner, Hunter & Rosenberg, Esqs.
(Stephen B. Hunter, Esq.)

LAP DECISION

On October 23, 1998, the Neptune Education Association ("Association") and the Neptune Board of Education ("Board") jointly requested that an unfair practice charge dispute be resolved through the Commission's Litigation Alternative Program. The issue presented concerns the Board's duty to provide home addresses and social security numbers of representation fee payers to the Association. The parties mutually agreed that this decision is binding upon both parties. By December 7, 1998, the parties each submitted their own statements of facts and legal argument

pertaining to the disputed issue. On March 23, 1999, additional facts were gathered by telephone conference call.^{1/}

The Association alleges that the Board violated sections 5.4a(1), (2) and (5)^{2/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") when, in December 1997, the Board ceased providing the home addresses and social security numbers of agency fee payers employed at the Board.

The facts in this case are as follows:

For years, the parties had followed a procedure where the Association supplied the names of nonmember employees and then the Board provided the nonmembers' home addresses and social security numbers. The information was entered onto forms which were sent to the State New Jersey Education Association ("NJEA") offices in Trenton. The NJEA notified the fee payers, processed the information, and returned the "authorization" forms to the Board.

^{1/} The facts were developed from the entire record: the charge, the position statements and attachments, and the collective negotiations agreement.

^{2/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) Dominating or interfering with the formation, existence or administration of any employee organization; or, (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

The process was completed by the Board's implementation of deductions from nonmembers' paychecks and transmittal of these monies to the Association.

From the early 1980s until December 8, 1997, the Board provided the Association with the home addresses and social security numbers of representation fee payers and followed the above procedure. However, by letter dated December 8, 1997, Business Administrator David Mooij notified Association Membership Chair Ray Misner that the Board would cease providing the home addresses and social security numbers of nonmember employees.

The Board and Association are parties to a succession of collective negotiations agreements, the most recent of which was effective from July 1, 1994 through June 30, 1997. Among the provisions are:

Article V- Association Rights and Privileges

A. The Board agrees to furnish to the Association information in the public domain which may be required by the Association in performing its representation function. This information shall be made available as soon as is possible after receipt of the request from the Association.

E. The rights and privileges of the Association and its Representatives as set forth in this Agreement, shall be granted only to the Association as the exclusive representative of the members of NTEA and to no other organization.

Article XXIII- Representation Fee

1. The Association shall, on or before September 30, deliver to the Board, a written statement containing the following:

a. A statement that the Association had determined the amount of representation fee in accordance with the formulated requirements of NJSA 34: 13A-5.4.

b. A statement that the Association has established a "demand and return" system in accordance with the requirements of NJSA 34:13A-5.4.

c. A statement establishing the amount of yearly representation fees to be deducted from the salary of each non-member. Such representation fee shall not exceed eighty-five (85%) percent.

d. A list of all individuals covered under this Contract, who have failed to arrange for and become members of the Association and a request that the representation fee of such non-member be deducted in accordance with the Agreement.

2. Beginning with the first full pay period in November, the Board will commence deductions from salaries of such individuals in accordance with Paragraph 3 below, of the full amount of the representation fee and will promptly transmit the amount so deducted to the Association.

It is alleged that the Association has not received monies owed to it under the representation fee provisions of the agreement because of the Board's refusal to supply home addresses and social security numbers. The record does not identify the amount alleged to be due to the Association, or those nonmember employees from whom fees should have been deducted.

ANALYSIS

The issue is whether the Board violated the Act when it ceased giving the home addresses and social security numbers of agency fee payers to the Association. N.J.S.A. 34:13A-5.5 provides:

c. Any public employee who pays a representation fee in lieu of dues shall have the right to demand and receive from the majority representative, under proceedings established and maintained in accordance with section 3 of this act, a return of any part of that fee paid by him which represents the employee's additional pro rata share of expenditures by the majority representative that is either in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment or applied toward the cost of any other benefits available only to members of the majority representative.

N.J.S.A. 34:13A-5.6 provides:

Where a negotiated agreement is reached, pursuant to section 2 of this act, a majority representative of public employees in an appropriate unit shall be entitled to a representation fee in lieu of dues by payroll deduction from the wages or salaries of the employees in such unit who are not members of a majority representative;..

N.J.S.A. 34:13A-5.8 provides:

Payment to majority representative

Payment of the representation fee in lieu of dues shall be made to the majority representative during the term of the collective negotiation agreement affecting such nonmember employees and during the period, if any, between successive agreements so providing, on or after, but in no case sooner than the thirtieth day following the beginning of an employee's employment in a position included in the appropriate negotiations unit,..

N.J.A.C. 19:17-3.3 provides:

(a) Prior to the commencement of payroll deductions of the representation fee in lieu of dues for any dues year, the majority representative shall provide all persons subject to the fee with an adequate explanation of the basis of the fee,...

The case which controls the release of home addresses to a majority representative is Burlington Cty., P.E.R.C. No. 88-101, 14 NJPER 327 (¶19121 1988). There, the Commission found that the employer violated sections 5.4a(1) and (5) of the Act when it refused to provide the majority representative with home addresses of representation fee payers. The Commission held that a public employer must supply information that may help a majority representative carry out its statutory duties.

The Commission stated:

We agree with the Hearing Examiner that the County was obligated to release the names and home addresses of representation fee payers. An employer must supply information that may help a majority representative carry out its statutory duties. State of New Jersey (Office of Employee Relations), P.E.R.C. No. 88-27, 13 NJPER 752 (¶18284 1987), app. pending App. Div. Dkt. No. A-2047-87T7; Shrewsbury Bd. of Ed., P.E.R.C. No. 81-119, 7 NJPER 235, 236 (¶12105 1981). Names and home addresses are relevant to enable the majority representative to communicate with the employees it represents. As the Court held in Prudential Ins. Co. of America v. NLRB, 412 F.2d 77, 84, 71 LRRM 2254 (2d. Cir. 1969), cert. den. 396 U.S. 928, 72 LRRM 2695 (1969), "it seems manifest beyond dispute that the union cannot discharge its obligation unless it is able to communicate with those in whose behalf it acts." See also other cases cited in Hearing Examiner's report at 10-11; Navy Dept., v. FLRA, ___ F.2d ___, 127 LRRM 3010 (3d Cir. 1988).

We decline to create an exception for employees who objected to the release of their home addresses. The case relied upon by the County, U.S. Dept. of Agriculture, was based on a federal statute not applicable here. In any event, that holding is a minority view. Compare Air Force Dept. v. FLRA, ___ F.2d ___, 127 LRRM 2710 (7th Cir. 1988); Dept. of Health and Human Services v. FLRA, 833 F.2d 1129, 1131-32, 126 LRRM 3235 (4th

Cir. 1987); AFGE, Local 1760 v. FLRA, 786 F.2d 554, 122 LRRM 2137 (2d Cir. 1986). We agree with the later 7th Circuit Court of Appeals case that carving out an exception for objecting employees is not required. Air Force.

We consider all the circumstances of a case in deciding the extent of an employer's duty to supply information, including an employee's privacy interest, the union's need for the information and the employer's business reasons for not supplying requested information. Here the scales tip to the union's needs. The union requires the information to comply with its obligation to notify employees under the representation fee statute, N.J.A.C. 19:17-3.3, as well as to communicate with the employees it represents.

The above reasoning applies here. Nonmember employees have the right to a demand and return system under section 5.5 of the Act and N.J.A.C. 19:17-3.3. In order to effectively provide a demand and return system, majority representatives have to be able to communicate with nonmembers. In order to communicate with the employees they represent, majority representatives have to be able to obtain home addresses from employers.

The balance of privacy rights, the Association's need for the information and the Board's business reasons for not supplying the information is the same here as in Burlington Cty. I disagree with the Board's view that the Association must first show "that the information is necessary for the Association to discharge its duties." Burlington Cty. states otherwise:

Names and home addresses are relevant to enable the majority representative to communicate with the employees it represents. As the Court held in Prudential Ins. Co. of America v. NLRB, 412 F.2d 77, 84, 71 LRRM 2254 (2d. Cir. 1969), cert.

den. 396 U.S. 928, 72 LRRM 2695 (1969), 'it seems manifest beyond dispute that the union cannot discharge its obligation unless it is able to communicate with those in whose behalf it acts.' Id. at 328

The Board has also argued that home addresses are not information "in the public domain," under Article V of the parties' agreement. That language should not be construed as the Association's waiver of its right to obtain nonmembers' addresses from the Board. A waiver must be clear and unequivocal to be effective. See, Elmwood Park Bd. of Ed., P.E.R.C. No. 85-115, 11 NJPER 366 (¶16129 1985) A contractual provision which operates to interfere with a union's statutory obligation to provide a demand and return system and to communicate about it to nonmembers would be ultra vires. There is no evidence that past releases of home addresses to the Association have resulted in harm to nonmember employees.

Accordingly, I find that the Board is obligated to provide the home addresses of all nonmember employees to the Association for the period December 8, 1997 to the present.

The Association believes that it was improper for the Board to unilaterally change the longstanding practice of supplying social security numbers without first negotiating the change with the Association. It is well settled that a public employer violates sections 5.4a(1) and (5) of the Act when it unilaterally changes negotiable terms or condition of employment. Section 5.3 of the Act states: "Proposed new rules or modifications of existing rules

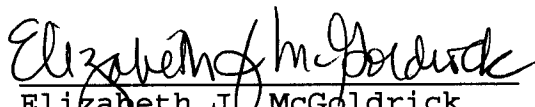
governing working conditions shall be negotiated with the majority representative before they are established." However, the provision of social security numbers is not a term or condition of employment, but information which appears to be used by the state NJEA. The NJEA is not a party to this agreement and no information was provided explaining why the NJEA needs the information or how it is used. Unlike the issue of home addresses, the Association has not demonstrated that it needs the social security numbers of nonmember employees in order to communicate with nonmembers or to receive fees from the Board.

Social security numbers present different privacy issues than do home addresses. For example, in enacting the Privacy Act of 1974, Congress recognized the privacy interest in social security numbers by making unlawful the denial of rights or benefits by a government agency because of an individual's refusal to disclose his social security number. The Senate Committee report identified the extensive use of social security numbers as universal identifiers as "one of the most serious manifestations of privacy concerns in the Nation." S.Rep. No.1183, 93rd Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Admin. News 6916, 6943. And, in IBEW Local No.5 v. United States Dept. of Housing and Urban Development, 852 F.2d 87, 128 LRRM 3110, (3d. Cir. 1988), a case involving the right to social security numbers under the Davis-Bacon Act, the Third Circuit held that the Freedom of Information Act requires a balancing of the public interest served by disclosure against the harm resulting from the invasion of privacy.

The facts here do not show how the use of social security numbers facilitates the Association's ability to obtain agency fees, but I assume there is an administrative advantage to the use of these numbers. These facts do not compel a conclusion that the Association is dependent on this information in fulfilling its duty. In contrast, there is a risk of serious harm should the information be improperly disclosed or inappropriately secured. Therefore, I conclude that the nonmembers' privacy interest outweighs the Association's need for the information. Based on all of the above, the Board is not obligated to supply the social security numbers of nonmembers.

Accordingly, the Board is ordered to supply the home addresses of all nonmember employees to the Association for the period December 8, 1997 to the present, but it is not required to supply their social security numbers. The Board is also ordered to forward any monies due to the Association for nonmembers' representation fees not previously sent to the Association during the same period. Since the record before me does not permit any

more specific order, I will retain jurisdiction to assist the parties in developing the information necessary to effectuate this order.^{3/}


Elizabeth J. McGoldrick
LAP Umpire

DATED: May 14, 1999
Trenton, New Jersey

^{3/} The parties' agreement provides a procedure whereby the Association identifies by name those new employees who have failed to sign up as members. The Association must also notify the Board of the amount of agency fees which must be transmitted to it. (Article XXIII, c. and d.) The Board must then initiate the deductions and send the money to the Association. If the Association has not provided the Board with the information required under Article XXIII, it must do so as an initial step.