

D.U.P. No. 2005-9

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

STATE OF NEW JERSEY (CORRECTIONS)
AND STATE CORRECTION OFFICERS
LOCAL 105, PBA,

Respondents,

-and-

Docket No. CO-2005-132

NEW JERSEY STATE CORRECTIONS
ASSOCIATION, FOP LODGE 200,

SYNOPSIS

The Director of Unfair Practices refused to issue a complaint on a charge filed by the FOP which alleged that the State and PBA illegally deducted agency fees from non-dues paying unit members.

D.U.P. No. 2005-9

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

STATE OF NEW JERSEY (CORRECTIONS)
AND STATE CORRECTION OFFICERS
LOCAL 105, PBA,

Respondents,

-and-

Docket No. CO-2005-132

NEW JERSEY STATE CORRECTIONS
ASSOCIATION, FOP LODGE 200,

Charging Party.

Appearances:

For the Respondent - State,
Kevin P. McGovern, Director, Office of Employee
Relations

For the Respondent - PBA,
Zazzali, Fagella, Nowak, Kleinbaum & Friedman,
attorneys
(Robert A. Fagella, of counsel)

For the Charging Party,
Joseph A. Carmen, attorney

REFUSAL TO ISSUE COMPLAINT

On November 19, 2004, New Jersey State Corrections Association, FOP Lodge 200 (FOP) filed an unfair practice charge against the State of New Jersey (State) and State Correction Officers Local 105, PBA (PBA). The charge alleges the State and PBA violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4a(1), (3) and (7); and b(1) and (5) respectively, when the State deducted agency fees from employee

paychecks and forwarded them to the PBA without complying with the requirements of N.J.S.A. 34:13A-5.5. That statute provides:

a. Notwithstanding any other provisions of law to the contrary, the majority representative and the public employer of public employees in an appropriate unit shall, where requested by the majority representative, negotiate concerning the subject of requiring the payment by all nonmember employees in the unit to the majority representative of a representation fee in lieu of dues for services rendered by the majority representative. Where agreement is reached it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.

b. The representation fee in lieu of dues shall be in an amount equivalent to the regular membership dues, initiation fees and assessments charged by the majority representative to its own members less the cost of benefits financed through the dues, fees and assessments and available to or benefitting only its members, but in no event shall such fee exceed 85% of the regular membership dues, fees and assessments.

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. The pro rata share subject to refund shall not reflect, however, the costs of support of lobbying activities designed to foster policy goals in collective negotiations and contract administration or to secure for the employees represented advantages in wages, hours, and other conditions of employment in addition to those secured through collective negotiations with the public employer.

The FOP seeks the "refunds of all monies illegally taken from non-members of the unit."

The State has denied any wrongdoing. The PBA defends against this action by asserting that not once during its long history as majority representative has an agency fee payer ever filed a claim questioning the appropriateness of agency fee deductions. The lack of such claims over the years, the PBA contends, is proof that it has been in compliance with the agency fee statutes and rules. The PBA also maintains that the FOP does not have standing to file such a charge because it has not named or identified any individual negotiations unit members who are seeking to recoup agency fees paid to the PBA. Finally, the PBA asserts that the FOP should be estopped from making such a claim at the end of its (The PBA's) thirty (30) year tenure as majority representative. Even if not estopped, the PBA argues based on the time the charge was filed and the six-month statute of limitations, that the FOP can only be claiming a violation for the last one or two pay periods in which the PBA was majority representative.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance

standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. In correspondence dated February 17, 2005, I advised the parties that I was not inclined to issue a complaint in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. No party filed a response. Based upon the following, I find that the complaint issuance standard has not been met.

The PBA represented certain non-supervisory law enforcement officers employed by the State for approximately thirty years. During most of that time, the State deducted and forwarded agency fees to the PBA. After a representation election conducted by the Commission, the FOP was certified as the new majority representative on June 4, 2004.

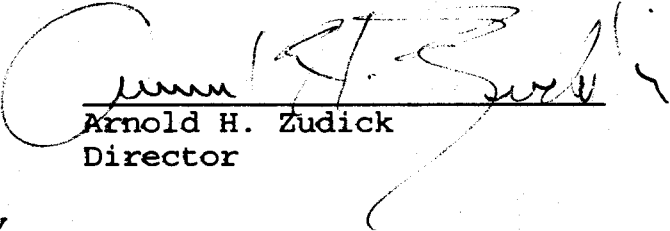
The allegations raised by the FOP concern the rights of individual employees, not those of the FOP organization. Tr. of Union, D.U.P. No. 84-20, 10 NJPER 163 (¶15080 1984), City of Camden, H.E. No. 88-64, 14 NJPER 485 (¶19205 1988). The charge was filed in the organization name only. The charge was not brought in the name of any aggrieved, individual employee(s). Compare Camden Lodge No. 35, PBA (Rodriguez et al.), P.E.R.C. No. 95-42, 21 NJPER 40 (¶26025 1994), where a charge was brought by a labor organization on behalf of and in name of injured individuals.

The FOP has not alleged how it suffered any injury as a result of the State's and PBA's alleged failure to comply with N.J.S.A. 34:13A-5.5 et seq., or Representation Fee Rules N.J.A.C. 19:17-3.1 et seq. As the hearing examiner noted in City of Camden, "A minority union does not have standing to allege a violation of those rules unless perhaps it alleges how its protected rights were adversely affected by the majority representative's conduct." 14 NJPER at 486. Consistent with Top. of Union, I do not believe the Commission's complaint issuance standard has been met, and I decline to issue a complaint on the allegations of this charge.^{1/}

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE
DIRECTOR OF UNFAIR PRACTICES



Arnold H. Zudick
Director

DATED: March 10, 2005
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.

Any appeal is due by March 23, 2005.

^{1/} N.J.A.C. 19:14-2.3.