

D.U.P. NO. 98-17

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

In the Matter of

C.W.A., LOCAL 1032,

Respondent,

-and-

Docket No. CI-98-1

JANET R. MARTIN,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on a charge filed by Janet R. Martin. Ms. Martin alleged the CWA violated the Act by refusing to reimburse her for agency shop fees which had been deducted from her salary since August 1991, when a dispute began over the designation of her position as a confidential employee.

The Director finds that the CWA was entitled to collect agency shop fees while Martin was a unit member and that it ceased collecting fees when Martin was removed from the unit; thus, the CWA did not violate the Act.

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Appearances:

For the Respondent,  
Weissman & Mintz, attorneys  
(Steven P. Weissman, of counsel)

For the Charging Party,  
Janet R. Martin, pro se

REFUSAL TO ISSUE COMPLAINT

On July 3, 1997, Janet R. Martin filed an unfair practice charge with the Public Employment Relations Commission alleging that the Communications Workers of America, AFL-CIO, violated the New Jersey Employee Relations Act, specifically subsection 5.4(b)(5)<sup>1/</sup> by refusing to reimburse her for agency shop fees which had been deducted from her salary since August 22, 1991, when a dispute began over the designation of her position as a "confidential" employee under the Act.

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<sup>1/</sup> These subsections prohibit employee organizations, their representatives or agents from: "(5) Violating any of the rules and regulations established by the commission."

Janet M. Martin is a Chief Clerk employed by the Sussex County Prosecutor's Office. Ms. Martin was a member of the bargaining unit represented by Local 1032. On April 22, 1991, the county prosecutor made a request to the Sussex County Administrator that Martin be designated as a confidential employee. However, no action was taken on that request. On December 17, 1996, the Sussex County Prosecutor filed a Clarification of Unit Petition with the Commission seeking to exclude her position from the unit on the basis that she is a "confidential" employee<sup>2/</sup> under the Act and thus is not entitled to representation by the CWA. On January 6, 1997, the CWA notified the Prosecutor that it would not dispute the designation of Martin as a confidential employee. It also asked the Prosecutor to notify the County to no longer deduct dues or agency fees from Martin's pay. As of February 4, 1997, agency fees were no longer deducted from her pay.

Martin asks to be reimbursed for \$1,877.73 of agency fees deducted from her salary since August 22, 1991, when the County prosecutor requested the County make Martin confidential. Martin claims that due to her confidential status, the CWA has never been able to represent her interests.

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2/ N.J.S.A. 34:13A-3(g) states: "Confidential employees" of a public employer means employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.

The CWA refuses to reimburse her for the fees. It claims her charge fails to state a violation of the Act and that it is circumscribed by the Commission's six-month statute of limitations. Further, the CWA notes that when Martin was a unit member, she enjoyed all benefits derived from membership, including contractual raises, and was never denied representation.

#### ANALYSIS

Under N.J.S.A. 34:13A-5.6,<sup>3/</sup> the CWA was entitled to collect agency fees while Martin was a unit member. Martin remained a unit member until January 6, 1996, when the CWA notified the Prosecutor that it was not challenging its designation of her as a confidential employee and asked the County to cease deducting agency fees from her pay; the County did so as of February 4, 1996. This is when Martin was removed from the unit and when her agency fee obligation ceased. See Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

The CWA did not violate the Act. The Commission's complaint issuance standard has not been met and I refuse to issue a complaint on the allegations of this charge. N.J.A.C. 19:14-2.3.

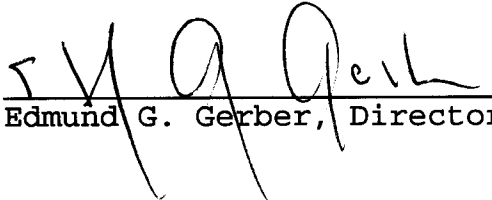
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<sup>3/</sup> This section in pertinent part provides: Where a negotiated agreement is reached, pursuant to section 2 of this act, a majority representative of public employees in an appropriate unit shall be entitled to a representation fee in lieu of dues by payroll deduction from the wages or salaries of the employees in such unit who are not members of a majority representative.

Although Martin submitted a letter contesting my preliminary finding in this matter, she has failed to raise any new facts which would cause me to alter my finding.

The charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: September 5, 1997  
Trenton, New Jersey