

D.U.P. NO. 85-9

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE ADMINISTRATOR OF UNFAIR PRACTICE PROCEEDINGS

In the Matter of

AMALGAMATED TRANSIT UNION  
LOCAL #824,

Respondent,

-and-

Docket No. CI-84-79

FRANCIS E. BOYLE,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to an Unfair Practice Charge filed against the Charging Party's majority representative. The charge raises questions as to the majority representative's assessment of an initiation fee. The Administrator concludes the issue is an internal union matter.

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Appearances:

For the Respondent  
Weitzman & Rich, attorneys  
(Richard Weitzman of counsel)

For the Charging Party  
Francis E. Boyle, pro se

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on May 7, 1984, by Francis E. Boyle ("Charging Party") against the Amalgamated Transit Union, Local #824 ("Local 824") alleging that Local 824 was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). <sup>1/</sup>

1/ The Charging Party failed to include those portions of the Act he alleges to have been violated by Local 824 as required by N.J.A.C. 19:14-1.3(a)(3). Although the Charging Party was made aware of this deficiency and was asked to amend his Charge, he has not done so.

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge. <sup>2/</sup> The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act, and that formal proceeding in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. <sup>3/</sup> The Commission's rules provide that the undersigned may decline to issue a complaint. <sup>4/</sup>

For the reasons stated below the undersigned has determined that the Commission's complaint standards have not been met.

The Unfair Practice Charge alleges that approximately 75 drivers and mechanics previously employed by the Lincoln Transit Company were hired by the New Jersey Transit Company after Lincoln went bankrupt in February 1983. The union representing the New Jersey Transit employees was Local 824. The 75 employees were

<sup>2/</sup> N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

<sup>3/</sup> N.J.A.C. 19:14-2.1

<sup>4/</sup> N.J.A.C. 19:14-2.3

informed that a \$300 initiation fee was required in order to become a Local 824 member.

The Charge further alleges that the amount of the fee was higher than "other drivers" were required to pay and that after writing a letter to Local 824's International, each of the 75 was awarded a \$150 rebate. The Charge further alleges that Charging Party "recently" came into possession of a copy of Local 824's by laws which revealed that the amount of the initiation fee was \$75. Upon inquiry to the International, the employees were informed that a 90 day appeal period of its earlier action has expired.

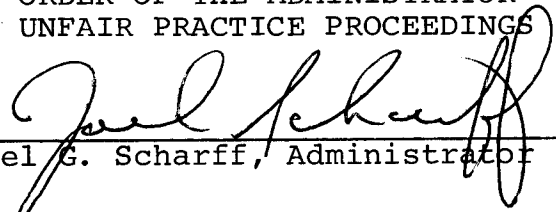
For the foregoing reasons, the undersigned declines to issue a complaint. Although the Charging Party has failed to specify the portion or portions of the Act alleged to have been violated by Local 824, the undersigned has considered the various unfair practices which may be committed by an employee representative under N.J.S.A. 34:13A-5.4(b) and more particularly, N.J.S.A. 34:13A-5.4(b)(1) which prohibits interference with employee rights under the Act and which also incorporates actions raised under a majority representative's duty of fair representation. There is nothing in the Act which directly and indirectly regulates union membership fees, <sup>5/</sup> and there is nothing in the Act that suggests

<sup>5/</sup> Contrast, however, rights of agency fee employees under N.J.S.A. 34:13A-5.6.

that a majority representative violates its duty of fair representation by failing to supply its members with a copy of its bylaws or by improperly assessing membership fees. <sup>6/</sup> The instant dispute is strictly an internal union matter which does not fall under the guise of the Act.

Accordingly, for the above reasons, the undersigned declines to issue a complaint. <sup>7/</sup>

BY ORDER OF THE ADMINISTRATOR  
OF UNFAIR PRACTICE PROCEEDINGS

  
Joel G. Scharff, Administrator

DATED: October 5, 1984  
Trenton, New Jersey

<sup>6/</sup> In In re Bd. of Ed. of Tp. of West Milford, P.E.R.C. No. 56 (1971), the Commission held that, "The measure of fair representation is ultimately found at the negotiating table, in the administration of the negotiated agreement and in the processing of grievances."

<sup>7/</sup> Pursuant to N.J.S.A. 34:13A-5.4(c), the Commission is precluded from issuing a complaint where the unfair practice charge has not been filed within six months of the occurrence of the alleged unfair practice. More specifically, N.J.S.A. 34:13A-5.4(c) provides: "...provided that no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the six months period shall be computed from the day he was no longer so prevented."

The charge was filed on May 7, 1984, and alleges that Local 824 failed to issue a copy its bylaws to the charging party which would have disclosed that he had paid a higher membership initiation fee than was required. The only two dates mentioned in the charge are February and September 1983, both dates are more than six months prior to the filing of the charge. The Charging Party was notified that it was incumbent upon him to allege the occurrence of unfair practices within the six month limitation requirement and was asked to specify exact dates of the claimed unfair practice or discovery thereof. No response has been received. Therefore, the timeliness of this charge is seriously in question.