

D.U.P. NO. 79-18

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

CAMDEN COUNTY BOARD OF CHOSEN  
FREEHOLDERS [LAKELAND HOSPITAL],

Respondent,

-and-

Docket No. CO-78-31

LICENSED PRACTICAL NURSE  
ASSOCIATION OF NEW JERSEY, INC.,

Charging Party.

Appearances:

For the Respondent  
Vincent J. Paglione, Assistant County Counsel

For the Charging Party  
Craner & Nelson, Esqs.  
(John A. Craner, of Counsel)

**REFUSAL TO ISSUE COMPLAINT**

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on August 15, 1977 by the Licensed Practical Nurse Association of New Jersey, Inc. (the "Charging Party") against the Camden County Board of Chosen Freeholders [Lakeland Hospital] (the "Respondent") alleging that the Respondent 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. (the "Act"), specifically N.J.S.A. 34:13A-5.4(a)(1), (3) and (7).<sup>1/</sup>

Charging Party alleges that the Respondent's continuing practice of checking off dues deductions to Civil Service Association, Council #10 ("Council #10") from the pay checks of individual employees constitutes an unfair practice inasmuch as the Charging Party, through a Commission conducted election, replaced Council #10 as the exclusive majority representative of unit employees. The Charging Party contends that the election "terminated all rights of Council #10 to represent the employees involved including the check off of dues and that it was the intent of the Legislature under N.J.S.A. 52:14-15.9(e) to permit withdrawals from check off in January and July of each year only as to a bona fide certified collective bargaining representative."

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

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<sup>1/</sup> These subsections prohibit employers, their representatives and agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act. (7) Violating any of the rules and regulations established by the commission."

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.<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 issuance standards have not been met.

N.J.S.A. 34:13A-5.3 provides that individual public employees may assist any employee representative. This right extends to the support of a minority organization notwithstanding the existence of a collectively chosen majority representative of employees. N.J.S.A. 52:14-15.9(e) provides a method for an

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<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 in 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 and including a notice of hearing containing the date and place of hearing before the commission or any named 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.

individual to exercise this protected right by setting forth a procedure for dues deduction through payroll deduction by the public employer. This statute provides a specific procedure for authorizing and implementing dues deduction. In relevant part, the procedure provides that only the individual may authorize a deduction of dues and a withdrawal of such authorization. The individual effectuates this procedure by preparing his or her request in accordance with the statutory prescription and by submitting the request to the employer's disbursing officer.<sup>5/</sup>

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<sup>5/</sup> The text of N.J.S.A. 52:14-15.9(e) as amended L.1977, c.295 (effective December 12, 1977) is as follows:

Whenever any person holding employment whose compensation is paid by this State or by any county, municipality, board of education or authority in this State, or by any board, body, agency or commission thereof shall indicate in writing to the proper disbursing officer his desire to have any deductions made from his compensation, for purposes of paying the employee's dues to a bona fide employee organization, designated by the employee in such request, and of which said employee is a member, such disbursing officer shall make such deduction from the compensation of such person and such disbursing officer shall transmit the sum so deducted to the employee organization designated by the employee in such request.

Any written authorization may be withdrawn by such person holding employment at any time by the filing of notice of such withdrawal with the above-mentioned disbursing officer. The filing of notice of withdrawal shall be effective to halt deductions as of the January 1 or July 1 next succeeding the date on which notice of withdrawal is filed.

Nothing herein shall preclude a public employer and a  
(continued...)

An employer violates the law when it fails to comply with the specific desire of the individual public employee when properly exercised in accordance with the statutory procedure, unless, after December 12, 1977, the employer is a party to a "collectively negotiated written agreement which provides that employees included in the negotiating unit may only request deduction for the payment of dues to the duly certified majority representative." [n.5, supra].

The Charging Party herein argues that the vote of a majority of unit members in a secret ballot Commission election which resulted in the "selection of Charging Party as the majority representative and which rejected the continued majority status of Council #10," terminated council #10's rights to the

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5/ (...continued)

duly certified majority representative from entering into a collectively negotiated written agreement which provides that employees included in the negotiating unit may only request deduction for the payment of dues to the duly certified majority representative. Such collectively negotiated agreement may include a provision that existing written authorizations for payment of dues to an employee organization other than the duly certified majority representative be terminated. Such collectively negotiated agreement may also include a provision specifying the effective date of a termination in deductions as of the July 1 next succeeding the date on which notice of withdrawal is filed by an employee with the public employer's disbursing officer.

This authorization for negotiation of exclusive dues deduction provisions shall not apply to any negotiating unit which includes employees of any local school district or county college.

individual's dues deductions. However, Charging Party does not assert that it is a party with the County to a collective negotiations agreement which provides, under the statutory amendment to N.J.S.A. 52:14-15.9(e),<sup>6/</sup> that individuals may only have the employer deduct dues to the majority representative. Absent such provision, an employer continues to be obligated to deduct dues pursuant to individual authorizations under the procedure set forth in N.J.S.A. 52:14-15.9(e).

Accordingly, the undersigned refuses to issue a Complaint herein.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

/s/Carl Kurtzman, Director

DATED: January 30, 1979  
Trenton, New Jersey

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<sup>6/</sup> The amended language of this provision is the entirety of the last two paragraphs of N.J.S.A. 52:14-15.9(e), supra, n.5.