

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW MILFORD EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-84-63-147

DR. BERNARD FIDEL,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission grants the Association's Motion to Dismiss the Charging Party's Charge alleging a violation of subsections 5.5(b) and 5.5(c) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The Hearing Examiner found that the PERC Appeal Board, and not the Commission itself, had jurisdiction to hear those allegations.

The Hearing Examiner, however, denied the Motion to Dismiss allegations of a violation of subsections 5.6 and 5.7 of the Act. Issues of discrimination of representation fee payers, and of the existence of demand and return systems are within the jurisdiction of the Commission.

A Hearing Examiner's decision on a Motion to Dismiss which does not finally resolve the issues in the Complaint shall not be appealed directly to the Commission except by special permission of the Commission pursuant to N.J.A.C. 19:14-4.6.

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Appearances:

For the Respondent

Ruhlman, Butrym and Friedman, Esqs., P.A.
(Richard A. Friedman, of Counsel)

For the Charging Party

Dr. Bernard Fidel (pro se)

HEARING EXAMINER'S DECISION AND ORDER
ON RESPONDENT'S MOTION TO DISMISS

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on February 9, 1984, and amended on March 1, 1984, by Dr. Bernard Fidel ("Charging Party") alleging that the New Milford Education Association ("Association") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). In particular, the Charging Party alleged that the representation fee in lieu of dues collected from him as a non-member should have been less than 85% of the full dues and was a violation of 34:13A-5.5(B); that he should have received a return of that portion of his representation fee used to support lobbying which was a violation of 34:13A-5.5(C); that the demand and return system was not

implemented despite his requests to obtain a review of how the 85% was arrived at and how the money was utilized which was alleged to violate 34:13A-5.6; and, that the Association discriminated against him because of his non-member status by failing to provide him with information pertaining to his unit rights, and by ignoring the requests and needs of non-members all of which was alleged to violate 34:13A-5.7 of the Act. 1/

1/ These subsections provide:

34:13A-5.5(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.

34:13A-5.5(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.

34:13A-5.6

Where a negotiated agreement is reached, pursuant to section 2 of this act [Section 34:13A-5.5], 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; provided, however, that membership in the majority representative is available to all employees in the unit on an equal basis and that the representation fee in lieu of dues shall be available only to a majority representative that has

(continued)

It appearing that since at least some of the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 5, 1984 setting a hearing for July 11 and 12, 1984. However, pursuant to the Charging Party's request, and his unavailability during the summer, the hearing was rescheduled on June 18, 1984 for October 22 and 23, 1984.

Thereafter, by letter dated July 26, 1984, the Association moved to dismiss most of the unfair practice charge arguing that the PERC Appeal Board ("Appeal Board") created by N.J.S.A. 34:13A-5.6, and not this Commission, had jurisdiction over most of the charges advanced by the Charging Party. The Association relied upon the Commission's decision in In re Boonton Bd.Ed and Boonton Ed.Assn. (Judith Kramer), P.E.R.C. No. 84-3, 9 NJPER 472 (¶14199 1983), appeal pending App. Div. Docket No. A-29-83T2, where the Commission set forth the parameters of its, and the Appeal Board's, jurisdiction over representation fee matters. On August 14, 1984, the Association advised the undersigned that it was relying upon its statement of position dated March 5, 1984, and its July 26

1/ (continued) established and maintained a demand and return system which provides pro rata returns as described in section 2(c). The demand and return system shall include a provision by which persons who pay a representation fee in lieu of dues may obtain review of the amount returned through full and fair proceedings placing the burden of proof on the majority representative. Such proceedings shall provide for an appeal to a board consisting of three members...

34:13A-5.7

Any action engaged in by a public employer, its representatives or agents, or by an employee organization, its representatives or agents, which discriminates between nonmembers who pay the said representation fee and members with regard to the payment of such fee other than as allowed under this act, shall be treated as an unfair practice within the meaning of subsection 1(a) or subsection 1(b) of this act.

Motion, as its Answer to the Charge. In its letter of March 5, the Association specifically denied violating the Act.

The Charging Party responded to the Motion to Dismiss by letter dated September 6, 1984. He indicated that he was not challenging the constitutionality of the representation fee, but he alleged that he was discriminated against because of his non-member status. He admitted that he was questioning the percentage of dues required to be paid by non-members, but he argued that it was necessary for him to pursue his allegations of overcharging in order to demonstrate discrimination.

The procedural history of this matter also shows that on February 7, 1983 the Charging Party filed a similar matter with the Appeal Board, Docket No. AB-83-5, which was transferred to the Office of Administrative Law ("OAL") on December 24, 1983 and assigned to Administrative Law Judge Stephen Weiss as OAL Docket No. PRB-10116-83. An Order of Inactivity was issued on March 14, 1984.

Analysis

Perhaps the first opportunity to consider the Appeal Board's jurisdiction took place in In re Twp. of Teaneck, D.U.P. No. 82-16, 8 NJPER 5 (¶13002 1981) where the Commission's Director of Unfair Practices held that the Appeal Board, and not the Commission, had jurisdiction to resolve claims regarding the amount of the representation fee and allegations concerning member-only benefits.

The Commission essentially expanded upon Teaneck, supra, when it issued In re Boonton, supra, which further clarified the jurisdiction of the Commission and Appeal Board. The Commission

therein held that the Appeal Board had jurisdiction to determine challenges concerning the amount of any representation fee; to review and determine the amount of any representation fee refund; and to review the fairness of any representation fee proceeding leading to a refund determination. Finally, the Commission held that the Appeal Board had jurisdiction over the relationship of particular union expenditures to terms and conditions of employment and the definition of member-only benefits.

The Commission in Boonton also indicated that it had jurisdiction to determine whether a demand and return system was established and was in place when representation fees were collected; whether notice was provided of rebate procedures and the demand and return system; whether the dues deduction was administered fairly; whether full membership in the union was available to all unit members; whether representation fee payers were discriminated against; and, whether the statutory and structural conditions for representation fees were in place.

Subsequent to Boonton, the Director again held that the appropriateness of any representation fee must be litigated before the Appeal Board. In re Toms River Ed.Assoc. (Peter Carrozza), D.U.P. No. 84-19, 10 NJPER 146 (¶15071 1984).

Consequently, pursuant to the above cases the jurisdiction of the Appeal Board and the Commission regarding representation fee matters has been clearly established. The Commission cannot hear matters concerning the amount of the representation fee or the amount of any refund, or for what activities the fee may be used.

By applying the above case law to the instant matter it

is clear that the Charging Party's allegations of a violation of 34:13A-5.5(b) and (c) must be dismissed. The Charging Party's allegation that his representation fee should have been less than 85%; his demand for a return of part of his fee; his request to learn how the Association determined the representation fee; and, his demand as to how the dues was allocated is within the jurisdiction of the Appeal Board and is therefore dismissed from the instant Charge. The Charging Party may seek to pursue those issues in its Charge now before the Office of Administrative Law.

The undersigned, however, denies the motion to dismiss with respect to issues of discrimination and the existence of a demand and return system. Specifically, the Charging Party may proceed on his 5.6 allegation that the demand and return system had not been implemented at the time of the collection of the fee, or that no notice of its existence was provided, or that the Charging Party was prevented from utilizing such a system if it did exist; and, the Charging Party may proceed on his 5.7 allegation that he was discriminated against because he was a non-union member; and that the Association failed to provide him with information regarding his rights; and, that it ignored his requests.

ORDER

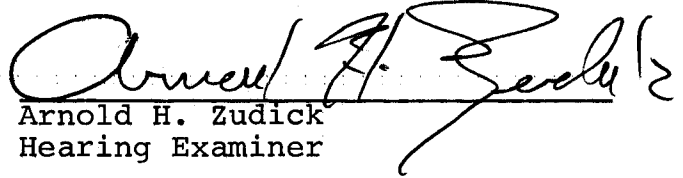
Accordingly, pursuant to the above discussion, it is hereby ORDERED that:

1. the 5.5(b) and (c) allegations of the Charge, and that part of the 5.6 allegation concerning the allocation of dues and the determination of the representation fee, are dismissed. ^{2/}

^{2/} The dismissal of the 5.5(b) and (c) allegations herein does not necessarily mean that the Charging Party will be prevented from presenting evidence regarding those allegations in order to prove a violation of 5.6 and 5.7. Any issue that may arise regarding an attempt to present such evidence to prove a violation of the remaining charges will be treated as an evidentiary matter and ruled upon at hearing.

2. The remaining 5.6 allegations, and the 5.7 allegations may proceed to hearing.

3. The hearing shall commence on October 22, 1984.


Arnold H. Zudick
Hearing Examiner

Dated: September 24, 1984
Trenton, New Jersey