

P.D.D. NO. 2004-5

STATE OF NEW JERSEY
BEFORE A DESIGNEE OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GLOUCESTER COUNTY SPECIAL SERVICES
SCHOOL DISTRICT,

Public Employer,

-and-

Docket No. PD-2004-001

GLOUCESTER COUNTY SPECIAL SERVICES
EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

Gloucester County Special Services Education Association filed a petition for payroll deduction determination pursuant to N.J.S.A. 34:13A-5.5 and N.J.A.C. 19:19-2.2 requesting that the Commission order the Gloucester County Special Services School District to deduct a representation fee in lieu of dues from the salaries of employees who are not voluntary dues paying members of the majority representative. The Commission Designee found that the Association's petition met all of the requirements under the statute and rules and that the Association was entitled to a Commission order directing the District to institute the deduction of the representation fee.

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Appearances:

For the Public Employer, Brown & Connery, attorneys
(Susan M. Leming, of counsel)

For the Petitioner, Selikoff & Cohen, attorneys (Carol
H. Alling, of counsel)

DECISION

On July 11, 2003, the Gloucester County Special Services Education Association (Association) filed a Petition for Payroll Deduction Determination with the Public Employment Relations Commission (Commission) seeking an order directing the Gloucester County Special Services School District (District) to deduct representation fees in lieu of dues from the salaries of non-member employees in a negotiations unit consisting of all regularly employed professional and non-professional personnel under 10, 11 or 12 month contracts working at least two days per week employed by the District; but excluding employees in the

positions of tutors, contractors, support staff, administrators, supervisors, managers, confidential employees, consultants, occupational and physical therapists, part time employees who are not regularly employed, managerial executives, confidential employees and supervisors with in the meaning of the Act; craft employees, police employees, casual employees and all other employees of the Gloucester County Special Services School District. The petition was filed pursuant to N.J.S.A. 34:13A-5.5 and N.J.A.C. 19:19-2.2. Proper service was effected upon the District.

The law authorizes the Commission to conduct an investigation and to order a payroll deduction of representation fees in lieu of dues if a majority of employees in the negotiations unit are voluntary dues paying members of the majority representative and the majority representative maintains a demand and return system as required by N.J.S.A. 34:13A-5.6. The Association has filed documents in support of its claim that a majority of employees in the unit are voluntary dues paying members of the Association and that it maintains the required demand and return system.

On September 23, 2003, the District filed its response pursuant to N.J.A.C. 19:19-3.2(a). The District confirmed that the Association proposed instituting the collection of representation fees in lieu of dues for non-member unit employees

but no agreement had been reached at the time the instant petition had been filed. The District also asserts that during the course of negotiations, the Association withdrew its proposal regarding representation fees, and the final collective agreement executed on March 24, 2003, does not contain a provision requiring the deduction of representation fees in lieu of dues. The District concludes that in light of the negotiations history, the Association has waived its right to now petition for representation fee deduction.

The investigation has revealed the following:

1. The District and the Association have negotiated concerning the subject of representation fees in lieu of dues, but no agreement has been reached requiring such payments.

N.J.S.A. 34:13A-5.5a provides, in relevant part, the following:

If no agreement is reached, the majority representative may petition the commission to conduct an investigation. If the commission determines during the investigation that a majority of the employees in the negotiations unit are voluntary dues paying members of the majority representative and that the majority representative maintains a demand and return system as required by section c. of this section and section 3 of P.L. 1979, c.477 (C.34:13A-5.6), the commission shall order the public employer to institute a payroll deduction of the representation fee in lieu of dues from the wages or salaries of the employees in the negotiations unit who are not members of the majority representative.

In Hunterdon County, P.E.R.C. No. 2003-24, 28 NJPER 433 (¶33159 2002), app. pending, the Commission recited the

legislative history of L.2002, c.46 enacting Assembly Bill 2372.

The Commission noted that the bill's original statement provided:

This bill permits a majority representative for a public employee bargaining unit to petition the New Jersey Public Employment Relations Commission ("commission") to conduct an investigation when no agreement can be reached between the majority representative and the public employer regarding the payment by all non-member employees in the bargaining unit of a representation fee in lieu of dues for services rendered by the majority representative. If petitioned, the bill requires the commission to determine whether a majority of the employees in the bargaining unit designated the majority representative and whether the majority representative maintains a demand and return system. If the commission determines that the conditions have been met, the bill requires the commission to order the public employer to institute a payroll deduction of the representation fee in lieu of dues from the wages or salaries of the non-member employees in the bargaining unit.

The bill was amended to replace the term 'bargaining unit' with 'negotiations unit' and to clarify that the majority representative shall represent a majority of the employees in the negotiations unit who are voluntary dues paying members. [Id. at 435.]

In this case, there is no dispute that the parties did not reach agreement in negotiations to institute a representation fee in lieu of dues. Such lack of agreement resulted in the filing of the petition by the Association and serves to trigger the conduct of an investigation by the Commission. Once an investigation is triggered, it focuses on two issues: (1) whether a majority of employees in the unit are voluntary dues paying members of the majority representative and (2) whether the

majority representative maintains an adequate demand and return system. When these two issues are answered in the affirmative, an order to institute deduction of fees in lieu of dues from employees' wages is entered. Thus, the lack of an agreement in negotiations to deduct agency shop fees is not the determining factor in deciding whether the majority representative is eligible to collect such fees, it merely triggers the conduct of an investigation to determine whether the majority representative is otherwise qualified to obtain an order directing the employer to begin involuntary deductions of representation fees in lieu of dues. Accordingly, in this case, I find that the withdrawal of the Association's agency shop proposal during the course of negotiations, does not result in a waiver to file a petition for payroll deduction determination.

2. The Association is the majority representative of a collective negotiations unit consisting of all regularly employed professional and non-professional personnel under 10, 11 or 12 month contracts working at least two days per week including, but not limited to, teachers, librarians, guidance counselors, nurses, social workers, speech-language specialists, LDTC specialists, psychologists, teacher assistants and all regularly employed full and part-time classroom assistants including certified occupational therapy assistants, classroom assistants-alternative education, classroom assistants-special education and

specialized program assistants, and one-on-one classroom assistants employed by the District; but excluding tutors, contractors, support staff, administrators, supervisors, managers, confidential employees, consultants, occupational and physical therapists, part time employees who are not regularly employed, managerial executives, confidential employees and supervisors with in the meaning of the Act; craft employees, police employees, casual employees and all other employees of the Gloucester County Special Services School District.

3. The parties have stipulated that the negotiations unit consists of 331 employees, of which 231 (69.8%) are currently voluntary dues paying members of the Association.

4. The Association maintains a demand and return system as required by N.J.S.A. 34:13A-5.5(c) and 5.6.

Consequently, having found that the Association has satisfied the conditions mandated in N.J.S.A. 34:13A-5.5 and N.J.A.C. 19:19-2.2, I find that it is entitled to the receipt of a representation fee in lieu of dues from unit employees who are not dues paying members of the Association, subject to compliance with the Public Employment Relations Commission Appeal Board rules, N.J.A.C. 19:17-1.1 to -4.5.


ORDER

The Gloucester County Special Services School District is ORDERED to institute a payroll deduction of the representation

fee in lieu of dues from the wages or salaries of the negotiations unit employees who are not members of the Gloucester County Special Services Education Association after being notified by the Association that it has complied with the requirements of N.J.A.C. 19:17-3.3 and -4.1.

The County must post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced, or covered by other materials.

Within twenty (20) days of receipt of this decision, notify the Commission Chair of the steps the Respondent has taken to comply with this order.


Stuart Reichman
Commission Designee

DATED: November 13, 2003
Trenton, New Jersey



RECOMMENDED



NOTICE TO EMPLOYEES

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF THE NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT, AS AMENDED,

We hereby notify our employees that:

Pursuant to N.J.S.A. 34:13A-5.5, the Public Employment Relations Commission must order a public employer to institute a payroll deduction of a representation fee in lieu of dues from the wages or salaries of employees in a negotiations unit who are not members of the majority representative if a majority representative petitions the Commission to conduct an investigation and the investigation shows that a majority of negotiations unit employees are voluntary dues paying members of the majority representative and that the majority representative maintains a demand and return system as required by N.J.S.A. 34:13A-5.5(c) and 5.6.

On July 11, 2003, the Gloucester County Special Services Education Association filed a Petition for Payroll Deduction Determination-Representation Fees. The Commission conducted an investigation and determined that a majority of employees in the unit consisting of all regularly employed professional and non-professional personnel under 10, 11 or 12 month contracts working at least two days per week including, but not limited to, teachers, librarians, guidance counselors, nurses, social workers, speech-language specialists, LDTTC specialists, psychologists, teacher assistants and all regularly employed full and part-time classroom assistants including certified occupational therapy assistants, classroom assistants-alternative education, classroom assistants-special education and specialized program assistants, and one-on-one classroom assistants employed by the District; but excluding employees in the positions of tutors, contractors, support staff, administrators, supervisors, managers, confidential employees, consultants, occupational and physical therapists, part time employees who are not regularly employed, managerial executives, confidential employees and supervisors with in the meaning of the Act; craft employees, police employees, casual employees and all other employees of the Gloucester County Special Services School District, are voluntary dues paying members of the Association and that the Association maintains a demand and return system as required by N.J.S.A. 34:13A-5.5(c) and 5.6. Accordingly, the Commission has ordered the public employer to institute a payroll deduction of the representation fee in lieu of dues from the wages or salaries of the negotiations unit employees who are not members of the Association after being notified by the Association that it has complied with the requirements of N.J.A.C. 19:17-3.3 and -4.1.

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Gloucester County Special Services
School District
(Public Employer)

Date: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, NJ 08625-0429 (609) 984-7372