

P.D.D. NO. 2004-8

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

In the Matter of

COUNTY OF HUNTERDON,

Public Employer,

-and-

Docket No. PD-2004-005

CWA LOCAL 1034 (SUPERVISORS),

Petitioner.

SYNOPSIS

CWA Local 1034 (supervisors) 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 County of Hunterdon 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 CWA's petition met all of the requirements under the statute and rules and that CWA was entitled to a Commission order directing the County to institute the deduction of the representation fee.

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Appearances:

For the Public Employer, Gaetano M. De Sapio, attorney

For the Petitioner,
Weissman & Mintz, attorneys, James M. Cooney, of
counsel

DECISION

On November 19, 2003, the CWA Local 1034 (Supervisors) (CWA) filed a Petition for Payroll Deduction Determination with the Public Employment Relations Commission (Commission) seeking an order directing the County of Hunterdon (County) to deduct representation fees in lieu of dues from the salaries of non-member employees in a negotiations unit consisting of certain supervisory employees employed by County; but excluding employees listed in the "exceptions" paragraph of Article I set forth in the 2001-2003 collective agreement. 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 County. 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 CWA has filed documents in support of its claim that a majority of employees in the unit are voluntary dues paying members of the union and that it maintains the required demand and return system.

On December 22, 2003, the County filed its response pursuant to N.J.A.C. 19:19-3.2(a). The County asserts that the collective agreement between it and the CWA expired on December 31, 2003. The parties have been engaged in successor negotiations. The County contends that during the current successor negotiations the CWA has not demanded negotiations over the issue of agency fee implementation. The County does not dispute the CWA's claim stated on the Payroll Deduction Determination Representation Fee Petition that during prior negotiations which occurred in or about September 2000, the parties had not reached agreement for the deduction of representation fees from the paychecks of non-members.

Additionally, the County points out that it is pursuing a challenge to the constitutionality of P.L. 2002, c. 46, in regard to another County collective negotiations unit. (Hunterdon

County, P.E.R.C. No. 2003-24, 28 NJPER 433 (¶33159 2002), app. pending, App. Div. Dkt. No. A-001869-02T5. The County urges that a decision on the implementation of the agency fee in this unit should be pended until the constitutionality of the statute is determined by the Court.

The investigation has revealed the following:

1. The County and the CWA have negotiated concerning the subject of representation fees in lieu of dues, albeit, perhaps, not during their current successor negotiations, and no agreement has been reached regarding such payments. In Hunterdon County, the Commission found that P.L. 2002, c. 46, did not require that new negotiations concerning the institution of an agency fee take place after passage of that statute if the parties had previously negotiated on that topic. The Commission said that the new law linked the negotiations duty with the entitlement to deductions through the use of the transitional phrase: "If no agreement is reached." Id. at 435. Thus,

[t]hat language evinces a legislative intend that there be negotiations and a lack of agreement before a majority representative petitions for an investigation, but it does not specify a time-frame for negotiations or require that negotiations occur after the effective date of the statute. [footnote omitted]. [Id.]

Applying the concepts of Hunterdon to the facts here, I find that the negotiations which took place in December 2000, where the topic of agency shop was addressed but no agreement was reached

is adequate to invoke our jurisdiction and warrants the processing of this petition.

2. The CWA is the majority representative of a collective negotiations unit consisting of supervisors (foreman) of the roads, bridges, traffic construction and mechanics crews, Buildings and Maintenance Departments, supervising communications operators and supervising librarians, principal librarian and principal library assistant; Division of Social Services supervising clerk transcriber, Division of Social Services family service supervisors; County Jail head nurse and food service manager employed by the County; and excluding all employees in the Division of Social Services except as specifically included as stated above, but excluding the Division of Social Services supervisor of accounts; Board of Elections, Board of Parks and Recreation Commissioners, Jail employees (except for the head nurse and food service manager), senior training technician Division of Social Services; Sheriff's officers-law enforcement, County detectives-Prosecutor's office, department heads, any appointed or elected officials, assistant county engineer, road supervisor, assistant county road supervisor(s), assistant director of maintenance services, chief sanitary inspector or any employee the parties agree is in a confidential position whose work solely involves the labor relations process; also specifically excluded are all employees who are covered by the

who are covered by the collective negotiations agreements between the County and the non-supervisory units represented by the CWA and the County and other units covered by other unions.

3. The parties have stipulated that the negotiations unit consists of 33 employees, of which 26 (78.8%) are currently voluntary dues paying members of the CWA.

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

5. I find no grounds to hold the processing of this petition pending a determination on the constitutionality of P.L. 2002, c. 46. The appellate division has not stayed further application of the statute. The Commission directed that its order in Hunterdon County be implemented and the County has complied with that order notwithstanding its appeal. Consequently, I find no basis to defer the decision in this matter pending a ruling on the constitutionality of the statute.

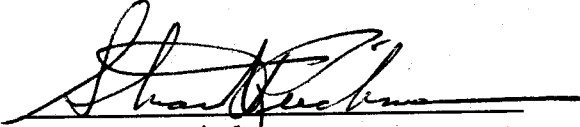
Consequently, having found that the CWA has satisfied the conditions mandated in N.J.S.A. 34:13A-5.5 and N.J.A.C. 19:19-2.2, I find that it is entitled to the receipt of a representation fee in lieu of dues from unit employees who are not dues paying members of the CWA, subject to compliance with the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

ORDER

The County of Hunterdon 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 CWA Local 1034 (Supervisors) after being notified by the CWA that it has complied with the requirements of N.J.A.C. 19:17-3.3 and -4.1.

The Respondent 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: January 9, 2004
Trenton, New Jersey



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 November 19, 2003, CWA Local 1034 (Supervisors) filed a Petition for Payroll Deduction Determination-Representation Fees. The Commission conducted an investigation and determined that a majority of employees in the collective negotiations unit consisting of supervisors (foreman) of the roads, bridges, traffic construction and mechanics crews, Buildings and Maintenance Departments, supervising communications operators and supervising librarians, principal librarian and principal library assistant; Division of Social Services supervising clerk transcriber, Division of Social Services family service supervisors; County Jail head nurse and food service manager employed by the County are voluntary dues paying members of the CWA and that CWA 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 CWA after being notified by the CWA that it has complied with the requirements of N.J.A.C. 19:17-3.3 and -4.1.

Docket No.

PD-2004-005

County of Hunterdon

(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