

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

In the Matter of

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO, COUNCIL 71, LOCAL 2305,

Respondent,

-and-

DOCKET NO. CI-84-3

EARLE MOORE, DON MANUELE,
JAMES PIERCE, JOE DAVIS, AND
ELMER CLARK,

Charging Parties.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to allegations raised by the Charging Parties that their majority representative discriminated against them, as "agency shop" employees, by not allowing them to vote for its shop stewards. Neither the agency shop provisions contained in the New Jersey Employer-Employee Relations Act nor any other provision thereof, removes from the sole discretion of the majority representative membership, the determination as to how it will select the representatives, officers and agents. The Charging Parties have not alleged that employees who choose to join the majority representative would be denied the opportunity to vote for shop stewards.

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Appearances:

For the Respondent
John P. Hemmy, Associate Director

For the Charging Party
Earle Moore, pro se

REFUSAL TO ISSUE COMPLAINT

On July 26, 1983, an Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") by Earle Moore, et al, ("Charging Parties") against the American Federation of State, County and Municipal Employees, Council 71, Local 2305 ("Local 2305") alleging that Local 2305 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"). The Charging Parties assert that Local 2305 discriminated against "agency shop" employees by not allowing nonunion members to vote

for shop stewards who service the negotiations unit in which the Charging Parties are included. The Unfair Practice Charge was subsequently amended on August 3, 1983, to allege, specifically, a violation of N.J.S.A. 34:13A-5.7. ^{1/}

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. ^{2/} 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. ^{3/} The Commission rules provide that the

^{1/} N.J.S.A. 34:13A-5.7 provides: "Any action engaged in by a public employer, its representatives or agents, or by an employee organization, its representatives or agents, which discriminates between non-members 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 the subsection 1(a) or subsection 1(b) of this Act."

N.J.S.A. 34:13A-5.4(b) prohibits employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

^{2/} 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 and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

^{3/} N.J.A.C. 19:14-2.1

undersigned may decline to issue a complaint. ^{4/}

The Unfair Practice Charge alleges that on July 12, 1983, Local 2305 conducted an election for new shop stewards but all unit members who were not members of the union were prohibited from participating in the vote. Since the employees who were denied the ability to vote were agency shop fee payers, the Charging Parties allege that this denial was discrimination under both N.J.A.C. 34:13A-5.7 and the collective negotiations agreement, which states that: "The County and the Union agree that there shall be no discrimination or favoritism shown for reasons of ... Union membership of Union activities."

On August 25, 1983, Local 2305 filed its response. It stated that the local president was abiding by the Act in not allowing nonunion members to vote in the election.

For the foregoing reasons, the undersigned declines to issue a complaint, inasmuch as Local 2305 has not interfered with the Charging Parties' exercise of statutory rights. Under N.J.S.A. 34:13A-5.6, majority representatives may collect an agency shop fee from nonunion members only if membership in the majority representative is available to all employees on an equal basis. In the present case, the Charging Parties do not allege that nonmembers who chose to become union members are still precluded

^{4/} N.J.A.C. 19:14-2.3

from voting for shop stewards. ^{5/}

A closer look at N.J.S.A. 34:13A-5.7, the section of the Act alleged to be in violation, is also helpful. It states that:

Any action engaged in by a public employer, its representatives or agents, or by an employee organization, its representatives or agents, which discriminates between non-members 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(c) or subsection 1(b) of this act.
(Emphasis added).

In the present matter, the Charging Parties do not allege that there is discrimination "with regard to the payment of such fee," in the manner described by the Commission in In re Kramer v. Bd. of Ed. of the Town of Boonton, P.E.R.C. No. 84-3, 9 NJPER 472 (¶ 14199 1983). Accordingly, the Charging Parties' reliance upon § 5.7 as the source of an unfair practice is misplaced.

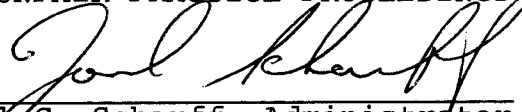
The undersigned has also considered N.J.S.A. 34:13A-5.4(b) which lists various unfair practices which may be engaged in by a majority representative, and more particularly, N.J.S.A. 34:13A-5.4(b)(1), which incorporates actions raised under the duty of fair representation. There is nothing in the Act, other than

^{5/} Contrast: In re City of Jersey City, P.E.R.C. No. 82-32, 8 NJPER 563 (¶ 13260 1972), where CETA employees who were unit members became subject to agency shop assessments. The CETA employees were Civil Service temporary employees who could never become classified as permanent employees. Because union bylaws prevented temporary employees from holding union office, the CETA employees could never achieve membership on an equal basis. Therefore, their subjection to agency shop payments violated the Act.

as previously discussed with respect to agency shop requirements under § 5.6, which suggests that a majority representative improperly represents nonmembers by not allowing them to vote in internal union matters. Under § 5.3, a majority representative has the responsibility to represent all unit members without discrimination. In an early decision, the Commission drew the parameters of this responsibility. "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." In re Bd. of Ed. of Tp. of West Milford, P.E.R.C. No. 56 (1971). The facts alleged herein do not, in the judgment of the undersigned, place into question Local 2305's fulfillment of this responsibility. Further, although § 5.3 vests unit employees with the right to designate the majority representative, it does not remove from that representative's dues paying membership the sole decision as to how they will designate officers and agents. ^{6/}

Accordingly, for the above reasons, the undersigned declines to issue a complaint.

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICE PROCEEDINGS


Joel G. Scharff, Administrator

DATED: January 4, 1984
Trenton, New Jersey

^{6/} In discussing the rights of union membership the Commission in Jersey City quoted from an article entitled "Toward a Right to Union Membership" by Jonathan Long, Volume 12, Howard Civil Rights-Civil Liberties Law Review 33 in which it states, "Only through membership may an employee attend union meetings, elect officers, run for union office, ratify collective bargaining agreements and set overall policy ..." In re Jersey City, supra, at 565.