

P.E.R.C. NO. 86-25

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

P.B.A. LOCAL NO. 277,

Respondent,

-and-

Docket No. CO-84-74-71

BROTHERHOOD OF SHERIFF'S
AND CORRECTION OFFICERS
AND EARL WILSON,

Charging Party.

SYNOPSIS

The Chairman of the Commission, pursuant to authority delegated by the full Commission and in agreement with a Commission Hearing Examiner and in the absence of exceptions, concludes that P.B.A. Local No. 277 violated subsection 5.6 of the New Jersey Employer-Employee Relations Act, when it failed to notify Earl Wilson personally of his rights under the demand and return system and when its president refused to answer Wilson's inquiries concerning the fee.

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Charging Party.

Appearances:

For the Respondent, Ralph Henry Colflesh, Jr., Esq.

For the Charging Party, Earl W. Wilson

DECISION AND ORDER

On September 13, 1983, Earl W. Wilson, an employee of the Camden County Sheriff's Department, filed an unfair practice charge on behalf of the Brotherhood of Sheriff's and Correction Officers ("BOSCO") against his majority representative, P.B.A. Local No. 277 ("PBA"), with the Public Employment Relations Commission. The charge alleged that the PBA violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(b)(5), 5.5(c) and 5.6^{1/} when it

^{1/} Subsection 5.4(b)(5) prohibits employee organizations, their representatives or agents from: "Violating any of the rules and (Footnote continued on next page)

deducted dues from Wilson and other BOSCO members who had resigned from the PBA without first complying with the protections of these subsections and without complying with certain provisions in the

(Footnote continued from previous page)

regulations established by the commission."

Subsection 5.5(c) provides:

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;

Section 5.6 provides:

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 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 to be appointed by the Governor, by and with the advice and consent of the Senate, . . ."

County-PBA collective negotiations agreement concerning representation fees.

On November 29, 1984, a Complaint and Notice of Hearing issued. The PBA then filed an Answer denying the charge's allegations and asserting, as an affirmative defense, that BOSCO had no standing to process a charge and that Wilson could only represent himself.

On February 20, 1985, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties examined witnesses and introduced exhibits. Wilson waived oral argument, but the PBA exercised that privilege. Neither party filed a post-hearing brief.

On July 11, the Hearing Examiner issued his report and recommended decision. H.E. No. 86-1, 11 NJPER ____ (¶ ____ 1985). He concluded that the PBA violated the Act when it failed to notify Wilson personally of his rights under the demand and return system and when its president refused to answer Wilson's inquiries concerning the fee. He recommended a remedial order requiring the PBA to provide Wilson personally with a copy of the demand and return system; to notify him of the procedures for obtaining a rebate; to permit Wilson to file a demand for an accounting for 1983 and 1984; and to post a notice of its violation and remedial action taken. He recommended dismissal of the remaining allegations of the Complaint since he found that Wilson had not proved these allegations by a preponderance of the evidence.^{2/}

^{2/} He specifically declined to answer the PBA's standing contentions since Wilson personally filed the charge and could process it on his own behalf.

The Hearing Examiner served his report on all parties and notified them that exceptions, if any, were due on or before July 24. Neither party filed exceptions or requested an extension of time in which to do so.

I have reviewed the record. The Hearing Examiner's findings of fact (pp. 4-9) are accurate. I adopt and incorporate them here. Under all the circumstances of this case and acting under authority delegated to the Chairman by the full Commission, I agree with the Hearing Examiner's analysis and conclusions of law and adopt and incorporate them here. I add only that the New Jersey Supreme Court has affirmed Boonton Bd. of Ed., P.E.R.C. No. 84-3, 9 NJPER 472 (¶14197 1983), ___ N.J. ___ (1985).

ORDER

P.B.A. Local No. 277 is ordered to:

I. Cease and desist from:

A. Interfering with, restraining and coercing Earl Wilson from exercising his right not to join the Association by failing or refusing to respond to reasonable inquiries regarding the amount of the representation fee.

B. Failing to give personal notice to Wilson (and each non-member since July 1983) of the demand and return system which has been established and the procedures for obtaining a rebate.

II. Take the following affirmative action:

A. Personally provide Earl Wilson with a copy of the demand and return system and advise him of the procedures for

obtaining a rebate.

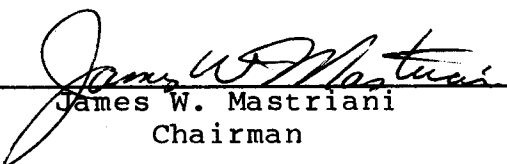
B. Waive any timeliness provisions in the demand and return system which would otherwise prevent Wilson from filing for an accounting under the system for 1983 and 1984.

C. Post at all places where it normally posts notices to unit employees a copy of the attached notice marked as "Appendix A." Copies of such notice on forms to be provided by the Commission, and signed by the PBA's representative, shall be posted immediately upon receipt thereof, and, shall be maintained by the PBA's authorized representative 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.

D. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the PBA has taken to comply herewith.

The portions of the Complaint alleging violations of subsections 5.4(b)(5) and 5.5(c) are dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
August 16, 1985

NOTICE TO ALL 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:

WE WILL cease and desist from interfering with, restraining and coercing Earl Wilson from exercising his right not to join the Association by failing or refusing to respond to reasonable inquiries regarding the amount of the representation fee.

WE WILL cease and desist from failing to give personal notice to Wilson (and each non-member since July 1983) of the demand and return system which has been established and the procedures for obtaining a rebate.

WE WILL personally provide Earl Wilson with a copy of the demand and return system and advise him of the procedures for obtaining a rebate.

WE WILL waive any timeliness provisions in the demand and return system which would otherwise prevent Wilson from filing for an accounting under the system for 1983 and 1984.

P.B.A. LOCAL NO. 277

(Public Employer)

Dated _____

By _____

(Title)

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,
429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

H. E. No. 86-1

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

In the Matter of

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Respondent,

-and-

Docket No. CO-84-74-71

BROTHERHOOD OF SHERIFF'S
AND CORRECTION OFFICERS
AND EARL WILSON,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that PBA Local No. 277 violated subsections 5.6 and derivatively 5.4(b)(1) of the New Jersey Employer-Employee Relations Act when it failed or refused to respond to reasonable inquiries concerning the amount of the representation fee, and by failing to personally notify employee Earl Wilson of the demand and return system and of rebate procedures therein.

The Hearing Examiner recommended dismissal of the §5.4(b)(5) and 5.5(c) allegations.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H. E. No. 86-1

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
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AND EARL WILSON,

Charging Party.

Appearances:

For the Respdent
Ralph Henry Colflesh, Jr., Esq.

For the Charging Party
Earl W. Wilson

HEARING EXAMINER'S
RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on September 13, 1983 by Earl W. Wilson ("Charging Party") on behalf of the Brotherhood of Sheriff's and Correction Officers ("BOSCO") alleging that P.B.A. Local No. 277 ("PBA") had 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"). The Charging Party alleged that the PBA violated N.J.S.A. 34:13A-5.4(b)(5) and 5.5(c) and 5.6, by unlawfully deducting dues from BOSCO members who had resigned from the PBA,

without first complying with the requirements established under 5.5(c) and 5.6.^{1/} The Charging Party also alleged that the PBA

1/ These subsections prohibit employee organizations, their representatives or agents from:

"5.4(b)(5) Violating any of the rules and regulations established by the commission;

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;

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 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 to be appointed by the Governor, by and with the advice and consent of the Senate,...

violated the Act by violating its collective agreement with Camden County.

It appearing that the allegations of the Unfair Practice Charge may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on November 29, 1984. The PBA submitted an Answer (Exhibit C-2) on December 24, 1984 denying the Charge and raising certain affirmative defenses. The PBA asserted that BOSCO had no standing to process the Charge because it had no legal interest in the application of agency shop deductions, and no standing to enforce the provisions of the contract between the PBA and the County. The PBA further asserted that only individual employees would have standing to allege the violations herein.

Pursuant to the Notice of Hearing a hearing was held in this matter on February 20, 1985 in Trenton, New Jersey, at which time the parties were given the opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. Neither party filed a post-hearing brief. The transcript was received on March 5, 1985.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act exists, and after hearing, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

At the beginning of the hearing--prior to any testimony--the PBA renewed its affirmative defenses and moved that

BOSCO should not be allowed to proceed, and that Wilson, as an individual, could not represent anyone other than himself since no other names were listed in the Charge. Although I reserved on deciding, at that time, whether BOSCO could pursue the Charge, or whether it could only be pursued by Wilson as an individual, I did hold that if Wilson pursued the Charge as an individual he could not represent unnamed employees (Transcript "T" pp. 11-13). I further held that if BOSCO pursued the Charge it did not have standing to pursue an alleged contract violation between the PBA and Camden County (T p. 18).

Upon the entire record I make the following:

Findings of Fact

1. P.B.A. Local 277 is a public employee representative within the meaning of the Act and represents a unit of police employees (sheriffs and/or correction officers) employed by the Camden County Sheriff's Department.
2. Earl Wilson is a public employee within the meaning of the Act, and is employed by the Camden County Sheriff's Department, and is in the negotiations unit represented by the PBA.
3. No facts were evident to demonstrate that BOSCO is an employee representative within the meaning of the Act.^{2/}

^{2/} I am not requiring here that the Charging Party or "BOSCO" must "prove" that BOSCO is an employee representative.
(Footnote continued on next page)

4. The facts show that a representation fee in lieu of dues ("agency shop fee" or "representation fee") as provided for in §5.5 of the Act was implemented on the PBA's behalf in late 1982 or early 1983 (T pp. 42, 43). In February 1983 PBA President Esau Washington, and Chief Grievance Chairman John Todoro, handed out copies of the PBA's demand and return system (Exhibit R-1C), a notice of eligibility for rebate (Exhibit R-1B), and a memorandum (Exhibit R-1A) to all non-PBA members at that time who were in the unit represented by the PBA (T pp. 43, 78-79). Both Washington and Todoro testified that R-1A, B, and C were stapled together and distributed as one package (T pp. 44, 79). In addition, Washington testified that R-1 was posted on bulletin boards where employee notices are posted at three work areas, the transportation admissions area, the ID area, and at the road patrol department where Wilson worked (T p. 79). Stephen Gable, PBA Vice President and Health and Welfare Chairman, testified that he saw the notices in admissions and the ID areas (T pp 65-66).

5. The facts show that the PBA represented employees up through the rank of sergeant (T pp. 32-33). However, it was clearly established that all employees in the Sheriff's Department

(Footnote continued from previous page)

However, I have no basis of knowledge--either through the taking of administrative notice or through the existence of any facts--to suggest that BOSCO is an employee representative rather than purely a fraternal organization.

(including non-PBA unit members) were recipients of a dental plan co-paid by the County, the employee, and the PBA (T pp. 47, 71). The dental plan cost approximately \$23.00 per month per employee (T p. 55). Beginning in early 1983 the County paid \$10.00 per month per employee for the plan, the employee paid \$10.00 per month, and the PBA paid approximately \$3.00 per month per Department employee whether or not they were in the unit it represented (T pp. 47-48, 51). The employees' \$10.00 co-payment for dental coverage was deducted from their paychecks as part of their dues deduction (T pp. 47-48). The County could not, or would not, separate the dental deduction from the otherwise regular dues deduction (T p.71). Thus the dues deduction included the \$10.00 dental deduction which every department employee paid.

6. Beginning in January 1983 the dues checkoff deduction on employees' checks reflected a \$20.00 deduction per month for PBA members, and a \$17.00 deduction per month for non-PBA members who were in the PBA unit and subject to an agency shop fee (T pp. 35, 48). However, as Todoro and Gable testified, since \$10.00 of the \$20.00 and \$17.00 deductions, respectively, were for dental coverage, only \$10.00 and \$7.00, respectively, was PBA dues (T pp. 48, 72). In fact, Gable testified that the non-member agency shop dues of \$7.00 per month was only 70%, not 85%, of the full member dues of \$10.,00 per month (T p. 67).

7. The record shows that Wilson was a full PBA member until July 1, 1983 at which time he dropped his PBA membership (T

pp. 24, 26). Prior to July 1983 the dues deduction on Wilson's pay checks reflected a \$20.00 per month deduction (\$10.00 for dental and \$10.00 for dues), and after July 1, 1983 Wilson's deduction was \$17.00 per month (\$10.00 for dental and \$7.00 for dues)(T p. 35).

Wilson testified that he never received a copy of the demand and return system, R-1C, and that he never saw R-1 (including R-1A, B and C)(T p. 37). He further testified that he did not know whether a demand and return system had been established or that it existed (T pp. 21-22).

Wilson also testified that the PBA did not comply with Article 2A Section 2 and Section 5 of the collective agreement between the PBA and the County. Wilson did not offer a copy of that agreement into evidence, but he read the following information into the record:

Art. 2A Sec. 2

The County agrees to deduct a fair share of fee from the earnings of those employees who elect not to become members of the Association and transmit the fee to the majority representative.

The deduction shall commence for each employee who elects not to become a member of the Association during the month following written notice from the Association of the amount of the fair share assessment. A copy of the written notice of amounts of the fair share assessment must also be furnished to the New Jersey Public Employment Relations Commission. (T pp. 22-23)

Art. 2A Sec. 5

Prior to January 1 and July 31 of each year the Association shall provide advance written notice to the New Jersey Public Employment Relations Commission,

the County and to all employees within the unit, information necessary to compute the fair share fee for services enumerated above. (T p. 23)^{3/}

Wilson testified that he never received a copy of the written notice of the amount of his fair share assessment, nor any information necessary to compute the fair share fee for services enumerated above (T p. 23).

8. In July or August 1983, just after Wilson became a non-PBA member, he asked Esau Washington, and Lt. Cox, to show him why and how they determined to charge him 85% for agency shop dues, and to tell him the amount of the dues (T pp. 27-29).^{4/} Wilson testified that both Washington and Cox told him that they did not have to explain that information to him (T p. 32). Wilson admitted that Cox was not included in the PBA unit, and that he (Wilson) only asked Washington for that information one time (T pp. 33, 36). Wilson further testified that his real concern was over the 85% representation fee, how that amount was determined, and how the money was used (T pp. 27-29, 31, 34).

^{3/} Since the contract was not provided it was not possible for me to verify the language in Article 2A Sections 2 and 5, nor was it possible for me to review any other sections of Article 2A, or any other Article to determine what relationship it, or they may have had to the above sections.

^{4/} Wilson's actual testimony was that he asked Washington and Cox to "show us" why 85% was being taken as agency shop dues. Although Wilson referred to "us," he never offered the name of other employees, and there is no indication that he was "representing" any other employees.

Washington could not recall Wilson ever asking him about the agency shop fee, but he did not deny it, and he admitted that he often spoke with Wilson on a variety of matters (T p. 83). Washington further admitted that he did not hand out copies of R-1 to unit members who resigned after July 1, 1983 (T p. 86)

9. There was no showing that BOSCO played any role in representing any employees, or that Wilson was an officer of BOSCO, or that BOSCO had any bases to challenge the PBA's determination of the agency shop dues. In addition, there was no showing whether other employees became representation fee payers after July 1983.

Analysis

After consideration of all of the facts, and the law, I find that although the alleged violation of §§5.4(b)(5) and 5.5(c) of the Act should be dismissed, there was a violation of §5.6 of the Act because the PBA failed to provide personal notice to Wilson of the demand and return system.

Regarding the 5.4(b)(5) allegation, no rule or regulation of the Commission was alleged to have been violated. The 5.5(c) allegation should be dismissed because the demand and return system was in place and available at the time Wilson began paying an agency shop fee. Finally, the Charging Party failed to prove by a preponderance of the evidence that the PBA violated the Act by failing to comply with its own collective agreement.

The Charging Party

The PBA seeks a finding that BOSCO had no standing to pursue the instant charge because §§5.5 and 5.6 of the Act provide

rights to employees, not employee representatives. The issue of whether employee representatives as opposed to individual employees have standing to pursue charges under §§5.5 or 5.6 of the Act has not been officially considered by the Commission or the Public Employment Relations Appeals Board ("Appeals Board"). The determination of that issue could have major implications affecting employee rights, and requires a major policy decision (interpreting the statute) which must be decided by the Commission or the Appeal Board to become effective. In this case it is not necessary to decide that issue. Since Wilson personally filed the Charge, whether BOSCO or Wilson is the Charging Party is immaterial. The Charge can proceed, at the very least, as a Charge by Wilson on his own behalf.

The 34:13A-5.4(b)(5) Allegation

Subsection 5.4(b)(5) of the Act prohibits employee organizations from violating any rules or regulations established by the Commission. The Commission's Rules and Regulations are set forth in N.J.A.C. 19:10-1.1 et seq. A violation of one provision of the Act does not necessarily establish a violation of 5.4(b)(5) of the Act. A violation of 5.4(b)(5) (or 5.4(a)(7)) can only be established by proving that a Respondent violated N.J.A.C. 19:10-1.1 et seq.

In the instant case the Charging Party did not present any evidence that any Commission rule or regulation was violated. Consequently, that allegation must be dismissed.

The 34:13A-5.5 and 5.6 Allegations

Subsection 5.5 of the Act gives an employer and a majority representative the right to include a representation fee in lieu of dues into their collective agreement up to a maximum of 85% of the regular dues. That same section gives the employees the right to utilize a demand and return system regarding the amount and use of the representation fee. Subsection 5.6 requires a majority representative to establish and maintain a demand and return system. In addition, the Commission in In re Boonton Bd.Ed., P.E.R.C. No. 84-3, 9 NJPEER 472 (¶14199 1983), appeal pending Supreme Court Docket No. 23,330, held that a majority representative has an affirmative obligation to personally notify all non-members paying representation fees of their rights under the demand and return system. The Commission held that:

...the majority representative has an affirmative obligation to notify personally all non-member paying representation fees of their rights under a demand and return sytem and the procedures for invoking these right. 9 NJPER at 480.

The Commission further held that:

The statutory rights afforded by N.J.S.A. 34:13A-5.6 may be meaningless if an affected non-member never learns in the first place of those rights and the applicable procedures. The burden on the majority representative of personally notifying each non-member of such rights and procedures is minimal compared to the amount of representation fees paid by each non-member and is outweighed by the risk that non-members will not learn of their rights in the absence of personal notification. 9 NJPER at 480.

The evidence clearly shows that R-1C was in existence by February 1983, and was posted where employee notices are normally

posted. The PBA, therefore, did not violate that part of 5.6 requiring the existence of a demand and return system prior to deducting a representation fee from Wilson. However, the PBA did violate the Act by not providing Wilson with a copy of the demand and return system on or about July 1, 1983. Wilson did not receive a copy of R-1C when it was first distributed because the PBA only provided copies to non-members, and did not provide copies to full members, and Wilson was a full member at that time. But when Wilson became a non-member on July 1, 1983, the PBA had an obligation pursuant to Boonton, supra, to personally notify him of his demand and return rights. The posting of R-1 in February 1983 does not satisfy the Boonton requirement for personal notice that Wilson should have received in July 1983.

Additionally, the PBA's failure to respond to Wilson's inquires regarding the amount of the representation fee was a violation of the Act. I credit Wilson's testimony that he asked Washington to explain how the fee was determined, and how it was spent, and that Washington refused. Cox's alleged refusal was not a violation because Cox was not even in the unit represented by the PBA, and there was no showing that he was an officer of the PBA or had any role vis-a-vis the demand and return system. However, Washington did decline to verbally explain how the amount of the agency shop fee was determined, and that refusal was a violation herein. Boonton, supra.

Finally, Wilson admitted that his real concern was how the amount of the fee was determined, and how and for what the money was

used. The Commission in Boonton, supra, set forth the parameters of its, and the Appeals Board jurisdiction over representation fee matters. The Commission held that the Appeals Board had jurisdiction to determine, among other authority, 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. The Commission held that it had the jurisdiction to determine, among other authority, whether a demand and return system was established and was in place when representation fees were collected; and whether notice was provided of rebate procedures and the demand and return system.

The issues in this case over which the Commission has jurisdiction are whether the PBA had a demand and return system in place when Wilson's agency shop fee was deducted on July 1, 1983, and whether adequate notice, and reasonable response to inquiries was provided of the demand and return procedures. The PBA met the first element but violated the second and third elements.

The issue as to the amount of the representation fee, and how the amount is determined, and how the money is spent, therefore, is not within the Commission's jurisdiction. Rather, those issues are within the jurisdiction of the Appeals Board. Wilson need only follow the demand and return system procedures for an accounting of the fee and how it was spent.^{5/}

^{5/} Although the instant facts appear to show that Wilson and other agency fee payers paid only 70% and not 85% of full
(Footnote continued on next page)

Remedy

In addition to the posting of a notice, it is necessary for the PBA to personally advise Wilson (and all other agency fee payers who became non-members after July 1, 1983) of his (their) demand and return rights, and to give him (them) a copy of the demand and return system. Additionally, since Wilson might have been prevented from utilizing the demand and return system in 1983 and 1984 because of lack of notice in 1983, the PBA is required to waive any timeliness provisions in its demand and return system (R-1C) that would otherwise prevent Wilson from filing for an accounting under that system for 1983 and 1984. That would provide Wilson with the rights he would have had had the PBA personally provided him with a copy of R-1C in July 1983.

Accordingly, based upon the entire record and the above analysis, I make the following:

Concluions of Law

1. PBA Local No. 277 violated N.J.S.A. 34:13A-5.6 and derivatively 5.4(b)(1) by failing to give Wilson personal notice of the demand and return system, and by failing to provide reasonable responses to inquiries regarding the agency shop fee.
2. The PBA did not violate N.J.S.A. 34:13A-5.4(b)(5) or 13A-5.5(c) because there were no Commission Rules or Regulations

(Footnote continued from previous page)

dues, since the Appeals Board and not the Commission has jurisdiction over the amount of the fee, it is unnecessary--and indeed inappropriate--for me to make any official determination as to the percentage of the dues that Wilson paid as an agency fee.

alleged to have been violated, and because a demand and return system was in place on July 1, 1983.

Recommended Order

I recommend that the Commission ORDER:

A. That the PBA cease and desist from:

1. Interfering with, restraining and coercing Earl Wilson from exercising his right not to join the Association by failing or refusing to respond to reasonable inquiries regarding the amount of the representation fee.

2. Failing to give personal notice to Wilson (and each non-member since July 1983) of the demand and return system which has been established and the procedures for obtaining a rebate.

B. Take the following affirmative action:

1. Personally provide Earl Wilson with a copy of the demand and return system and advise him of the procedures for obtaining a rebate.^{6/}

2. Waive any timeliness provisions in the demand and return system which would otherwise prevent Wilson from filing for an accounting under the system for 1983 and 1984.


3. Post at all places where it normally posts notices to unit employees a copy of the attached notice marked as "Appendix A." Copies of such notice on forms to be provided by the

^{6/} The Charging Party did not provide the names or prove that any other non-members were not personally provided with the demand and return system. Consequently, only Wilson can be specifically listed.

Commission, and signed by the PBA's representative, shall be posted immediately upon receipt thereof, and, shall be maintained by the PBA's authorized representative 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.

4. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the PBA has taken to comply herewith.

C. That the Complaint be dismissed regarding the allegation(s) that the PBA violated §§5.4(b)(5) and 5.5(c) of the Act.


Arnold H. Zudick
Hearing Examiner

Dated: July 11, 1985
Trenton, New Jersey

NOTICE TO ALL 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:

WE WILL NOT interfere with, restrain or coerce Earl Wilson (or other unit members) from exercising his (their) right not to join the Association by failing or refusing to respond to reasonable inquiries regarding the amount and use of the representation fee.

WE WILL NOT refuse to give personal notice of the demand and return system to Earl Wilson.

WE WILL forthwith personally provide Earl Wilson with a copy of the PBA demand and return system and advise him of the procedures for obtaining a rebate.

WE WILL respond to reasonable inquiries regarding the amount of the representation fee.

WE WILL waive any timeliness provisions in the demand and return system in order to allow Earl Wilson to file for an accounting under that system for 1983 and 1984.

P.B.A. LOCAL NO. 277

(Public Employer)

Dated _____

By _____

(Title)

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 James Mastriani, Chairman, Public Employment Relations Commission, 495 W. State State Street, Trenton, New Jersey 08618 Telephone (609) 292-9830.