

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

In the Matter of

DISTRICT 65, UNITED AUTO WORKERS,

Respondent,

-and-

DOCKET NO. CI-83-18

FLORENCE DiPRIMIO,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint concerning the allegations of a former representation fee payer that the Respondent failed to comply with the procedural requirements for the collection of agency shop fees as provided in the New Jersey Employer-Employee Relations Act. Noting that the parties previously entered into a Consent Order in a related matter before the Public Employment Relations Commission Appeal Board whereby the Charging Party no longer pays a representation fee to the Respondent, the Administrator determines that the matter is now moot and the Charging Party lacks standing to challenge the Respondent's representation fee procedures. Based upon dispositive actions taken by Respondent, the Administrator also determines that there is minimal likelihood of occurrence of the aggrieved conduct in the future.

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

In the Matter of

DISTRICT 65, UNITED AUTO WORKERS,

Respondent,

-and-

DOCKET NO. CI-83-18

FLORENCE DiPRIMIO,

Charging Party.

Appearances:

For the Respondent
Ira Katz, attorney

For the Charging Party
Stein & Shapiro, attorneys
(Jeffry Mintz of counsel)

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on September 23, 1982 by Florence DiPrimio ("Charging Party") against District 65, United Auto Workers ("Respondent") alleging that the Respondent 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").

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. ^{1/} 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. The 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 and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. ^{2/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{3/}

For the reasons stated below it appears to the undersigned that the Commission's complaint issuance standards have not been met.

The Charge arises in the context of amendments to the Act, effective July 1, 1980 (Laws of 1979, Chapter 477), which permit public employers and majority representatives to negotiate with respect to representation fees in lieu of dues for services

^{1/} 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..."

^{2/} N.J.A.C. 19:14-2.1

^{3/} N.J.A.C. 19:14-2.3

rendered by the majority representative to nonmember unit employees (i.e., agency shop). In pertinent part, the amendments state 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...."

N.J.S.A. 34:13A-5.6. In this context, the Charging Party alleges that the Respondent failed to respond to her request for a copy of Respondent's demand and return system. Charging Party also avers that Respondent failed to maintain a demand and return system.

On the same date the charge was filed, DiPrimio filed a Petition with the Public Employment Relations Commission Appeal Board ("Appeal Board") alleging identical facts, as well as objecting to the amount of the representation fee. The instant charge was held in abeyance while DiPrimio proceeded before the Appeal Board and its designated Administrative Law Judge. On September 23, 1983, the parties entered into a consent order before the Administrative Law Judge who issued an Initial Decision incorporating a settlement agreement. By decision of November 15, 1983, the Appeal Board affirmed the Initial Decision, thereby approving the agreement reached by the parties. (A.B.D. No. 84-1).

The agreement provided that District 65 would return to DiPrimio all representation fees previously collected, and that it would cease the collection of representation fees from DiPrimio for as long as it remained her representative for the purpose of collective negotiations with Cumberland County. The agreement

also provided that "[t]his tribunal does not pass upon any other remedies in any other tribunals which [DiPrimio] may have."

By letter to the parties of December 13, 1983, the undersigned noted the issuance of the Appeal Board Decision No. 84-1 and inquired as to whether or not the Charging Party sought to proceed with the instant charge. By letters of December 22, 1983, January 12, February 7 and February 13, 1984, Charging Party indicated her desire to proceed with the matter in order to seek interest on monies returned, a posting of corrective notices and a remedy for an allegedly continuing violation of the Act "...with regard to an unknown number of other employees in the bargaining unit."

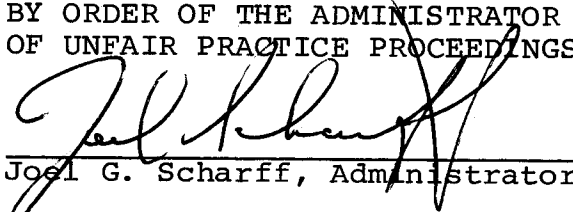
By letters of January 8 and February 9, 1984, Respondent urged the dismissal of the charge due to mootness and lack of standing. Citing Union Cty. Reg. H.S. Bd. of Ed., D.U.P. No. 79-23, 5 NJPER 158 (¶ 10099 1979), Respondent argued that the Commission does not order hearings for the sole purposes of awarding interest and posting notices of unfair practices. Citing Bergen Cty. Bd. of Voc. Ed., D.U.P. No. 80-25, 6 NJPER 274 (¶ 11129 1980), Respondent argued that since DiPrimio is no longer affected by the alleged violation of the Act, she lacks standing to assert the instant charge. By letter of April 12, 1984, Respondent emphasized that it was making a good faith effort to comply with its responsibilities, as required by In re Town of Boonton Bd. of Ed. and Boonton Ed. Assn., P.E.R.C. No. 84-3, 9 NJPER 472 (¶ 14199 1983), appeal pending App.

Div. No. A-29-83-T2, to mail copies of its demand and return system to all unit agency fee payers. The Respondent has forwarded a copy of a reformulated Demand and Return System to the Commission ^{4/} and, on May 14, 1984, confirmed its distribution of same to employees.

As a result of the settlement reached by the parties before the Appeal Board, DiPrimio does not pay a representation fee to District 65. Her interest in receiving a copy of Respondent's Demand and Return System is now moot. ^{5/} Moreover, since she is no longer harmed by the alleged misconduct, Charging Party lacks standing to bring the charge on behalf of unknown persons who might claim to be affected by Respondent's conduct. Bergen Cty. Bd. of Voc. Ed., supra. The undersigned is convinced by the dispositive actions taken by the Respondent before the Appeal Board as well as subsequent actions taken including the formulation and distribution of a new demand and return system, that there is minimal likelihood of occurrence of the aggrieved conduct by the Respondent in the future.

For the reasons stated above, the undersigned declines to issue a complaint herein.

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICE PROCEEDINGS


Joel G. Scharff, Administrator

DATED: June 26, 1984
Trenton, New Jersey

^{4/} Respondent initially asserted that its demand and return system was embodied in its constitution.

^{5/} The charge, as indicated supra, was filed on September 23, 1982 at a time when the question as to whether agency fee payers must personally be served with copies of the majority representative's demand and return system had not yet been resolved. The Commission decision in Boonton was issued in July 1983.