

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matters of

LOCAL 32, OPEIU/OFFICIAL COURT REPORTERS,

Respondent,

-and-

Docket No. CI-98-12

JOANNE N. YUHASZ,

Charging Party.

NEW JERSEY STATE JUDICIARY,

Respondent,

-and-

Docket No. CI-98-13

JOANNE N. YUHASZ,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an Unfair Practice Charge alleging that the public employer had made a financial arrangement with an individual member of a negotiations unit. The Director notes that at the time the employer is alleged to have dealt with the individual he was not a member of the negotiations unit. Finally, the allegations do not support a claim that §(a)(4) of the Act had been violated.

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matters of

LOCAL 32, OPEIU/OFFICIAL COURT REPORTERS,

Respondent,

-and-

Docket No. CI-98-12

JOANNE N. YUHASZ,

Charging Party.

NEW JERSEY STATE JUDICIARY,

Respondent,

-and-

Docket No. CI-98-13

JOANNE N. YUHASZ,

Charging Party.

Appearances:

For the Respondent, Certified Shorthand Reporters
DeVeux & Seidman, attorneys
(Bruce A. Seidman, of counsel)

For the Respondent, OPEIU, Local 32
Spear, Wilderman, Borish Endy, Spear & Runckel, attorneys
(Samuel L. Spear, of counsel)

For the Respondent, New Jersey State Judiciary
Peter Verneiro, Attorney General
(R Brian McLaughlin, Deputy Attorney General)

For the Charging Party
Ambrosio, Kyreakakis, DiLorenzo, Moraff & McKenna
(Keith A. McKenna, of counsel)

REFUSAL TO ISSUE COMPLAINT

On August 22, 1997, Joanne Yuhasz, an individual, filed two unfair practice charges with the Public Employment Relations

Commission alleging that the Judiciary of the State of New Jersey, Administrative Office of the Courts, OPEIU Local 32, AFL-CIO and Certified Shorthand Reporters Association (CSR) engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act; specifically, N.J.S.A. 34:13A-5.4. Yuhasz also filed an amendment to the charges on December 19, 1997.

I take administrative notice that on July 22, 1994, Local 32 OPEIU, AFL-CIO filed a representation petition seeking to represent all official court reporters of the Judiciary of the State of New Jersey with the Commission, Docket No. RO-95-7. Prior to the filing of the petition, shorthand reporters were represented by the Certified Shorthand Association of New Jersey (CSR). Pursuant to a consent election agreement on September 29, 1994, a Commission agent conducted an election wherein 91 employees voted in favor of representation by OPEIU Local 32 and 3 voted against representation. On December 6, 1994, the Judiciary, through the Administrative Office of the Courts (AOC) voluntarily recognized OPEIU as the exclusive majority representative.

My investigation of this matter revealed that effective with recognition in December 1994, Local 32 administered the 1992-1995 contract negotiated between CSR and AOC. Article VII of the 1992-1995 collective negotiations agreement was altered in June 1995 to permit the AOC to transfer court reporters from one vicinage to another. Local 32 negotiated a new agreement for 1995-1999.

Yuhasz is a certified shorthand reporter who is employed by the Judiciary of the State of New Jersey. In 1995, she was transferred from Passaic County to Morris County. She objects to her transfer and this unfair practice charge stems from that transfer.

Yuhasz, in CI-98-12 and CI-98-13, makes the following allegations.^{1/}

1. Respondent, AOC recognized Local 32 and/or CSR with the knowledge that Local 32 and/or CSR failed to submit and file a copy of the signed and agreed upon "Terms for a possible affiliation" at the time the respondent filed a representation petition with the Commission.

2. The AOC voluntarily recognized the Respondent Local 32 while the AOC knew the respondent employee organization violated the agreed upon "Terms for a possible affiliation".

3. Respondent Unions breached the agreed upon "Terms for a possible affiliation."

4. The Respondents knowingly and intentionally did not advise or provide charging party with a written and signed copy of the agreement for "Terms of a Possible Affiliation".

5. AOC recognized Respondent Union as exclusive majority representative with the intent of assisting Respondent Union.

^{1/} The paragraph numbers in this decision do not correspond to the paragraph numbers contained in the charges or amendments.

Said voluntary recognition denied unit members the right to express dissatisfaction with Local 32 and seek affiliation with another union. The recognition further interfered with memberships right to ratify a one-year probationary affiliation pursuant to "Terms for a possible affiliation."

6. Article VII of the 1992-1995 collective bargaining agreement was intentionally altered with the intent of discriminating against the charging party.

7. Respondent's knowingly and intentionally did not advise and/or provide charging party and/or OCR membership with a copy of any article or clause contained within the 1995-1999 collective negotiations agreement permanently ratifying OPEIU Local 32/OCR as the exclusive negotiations representative.

8. AOC colluded with Local 32 and/or CSR by forcing employees to be represented by OPEIU Local 32/CSR thereby creating a "conflict" since Local 32 represents both official court reporters and clerks of the Superior Court, State of New Jersey.

9. AOC either failed to notify or falsely represented to charging party the contents of the 1995-1999 collective bargaining agreement before ratification and AOC altered Article VII of the 1992-1995 agreement seven months after it was ratified; specifically, the charging parties were not notified of this alteration until Yuhasz was permanently transferred from her seniority position in Morris County.

10. Respondents failed to advise, notify and/or provide charging party with documentary information pertaining to Article VII of the 1992-1995 collective negotiations agreement. (Yuhasz characterizes this information as "scoping procedure in P.E.R.C.")

11. Respondents failed to process grievances filed by the charging party.

12. Respondents failed to provide Yuhasz with a copy of the 1992-1995 agreement prior to the ratification vote.

13. The OPEIU and AOC failed to provide Yuhasz with a copy of the unfair practice charge filed by OPEIU on March 12, 1997, Docket No. CO-97-310, as well as the AOC response to that charge and failed to notify Yuhasz of the withdrawal of the unfair practice charge.

14. Respondent Unions coerced charging party into ratifying the one-year probationary affiliation with OPEIU and deceitfully forcing charging party into permanently being represented by OPEIU.

15. The OPEIU "misrepresented the conflict of being the exclusive bargaining representative of the Official Court Reporters and Clerks of the Superior Court."

16. The AOC refused to negotiate in good faith with Local 32 and CSR concerning terms and conditions of employment.

17. Respondent misrepresented or altered the 1995-1999 collective negotiations agreement and specifically the grievance procedure of that contract with the intent of preventing Yuhasz

and other certified shorthand reporters from filing and processing grievances.

18. Yuhasz alleges that a letter dated August 12, 1997 from Patrick Tully to the charging party was deceitful and fraudulent in that it provided misrepresentation. (However, the charge did not allege what was contained in that letter nor did the charging party submit a copy of this letter with the charge.)

ANALYSIS

N.J.S.A. 34:13A-5.4c of the Act provides in pertinent part:

c. ...no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6-month period shall be computed from the day he was no longer so prevented.

Charges listed in paragraphs 1 through 6, 8, 10, 12 and 14 are untimely. The agreement it references in paragraph 1 through 5, "Terms for a Possible Affiliation", was entered into in July 1994. This agreement, which was provided by Yuhasz, was to last for one year. Similarly, the 1992-1995 contract expired by its term in 1995. The charge was not filed until August 1997.

Local 32, OPEIU, was recognized by the AOC as exclusive majority representative on December 6, 1994, after the Commission conducted an election among all certified shorthand reporters. No objection was ever filed as to the conduct of the election. See

N.J.A.C. 19:11-10.3. Any irregularity as to the election or the failure of the Commission to give an employee organization the opportunity to appear on the ballot had to be raised in accordance with N.J.A.C. 19:11-10.3h (within five days).

Although the charging party alleges it was a conflict of interest for Local 32 to simultaneously represent reporters and clerks, paragraph 8 and 15, it is not apparent how this is a conflict of interest. Significantly, no facts were alleged in support of this allegation. See N.J.A.C. 19:14-1.3. In any event, this allegation is out of time.

Yuhasz, an individual, has no standing to allege the AOC has refused to negotiate in good faith with Local 32 and/or CSR. Essex County College, P.E.R.C. No. 87-81, 13 NJPER 75 (¶18034 1986); Woodbridge Tp., D.U.P. No. 94-14, 19 NJPER 523 (¶24243 1993). The allegations stated in paragraph 15 are dismissed.

I find that the allegations of 7 and 17 which concern the 1995-1999 contract fail to specify a date when the alleged unfair practices occurred. Accordingly, this allegation is defective.

The allegations of paragraphs 11 and 16 are also out of time. In addition, these allegations are already being litigated by the charging party before the Commission in CI-H-96-24, CI-H-96-25 and CI-H-96-26. Accordingly, paragraphs 11 and 16 are dismissed.

Paragraph 13 alleges that the respondent failed to provide Yuhasz with copies of papers filed in CO-97-310. That

unfair practice charge was brought by Local 32, OPEIU against the Judiciary and alleged that the Judiciary has refused to "negotiate in good faith by refusing to resolve the outstanding issues of Article VII of the labor agreement, i.e., managements right of transfer from one vicinage to another for other than disciplinary reasons."

The issue raised in this unfair practice charge had a direct impact on Yuhasz; she was transferred against her will. Nevertheless, the failure of the OPEIU and AOC to provide copies of filed papers is not, by itself, an unfair practice.^{2/}

The allegation of paragraph 7 concerns the current collective negotiations contract (1995-1999); however, neither allegation specifies a date when the alleged unfair practice occurred.

Failure to disseminate information to unit members is not a violation of the duty of fair representation provided Local 32's conduct otherwise does not violate the duty of fair representation. Gloria Rubin v. Woodbridge Tp. Federation of Teachers, P.E.R.C. No. 81-66, 6 NJPER 565 (¶11286 1980). Here, the underlying issue is the viability of a contract clause limiting an employer's right to transfer.

Since an employer has a non-negotiable right to make non-disciplinary transfers, Local 32 could not have violated its

^{2/} The Commission did provide Yuhasz with a copy of the charge and the AOC did not file an answer to the charge.

duty of fair representation in abandoning this unfair practice charge. Ridgefield Park EA v. Ridgefield Park Bd. of Ed., 78 N.J. 144.

N.J.A.C. 19:14-1.3a(3) requires a charge shall contain the following:

A clear and concise statement of the facts constituting the alleged unfair practice. The statement must specify the time and place the alleged acts occurred, the names of the persons alleged to have committed such acts and the subsection(s) of the Act alleged to have been violated.

Allegations of paragraphs 7 and 17 do not satisfy this rule. Since these allegations might be timely, I will not dismiss them at this time. The charging party may amend its charge to allege when Yuhasz first requested that the respondent first requested a copy of the current collective negotiations agreement. Similarly, the charging party may submit documentation and/or allegation in support of its allegation in paragraph 18 that the August 12, 1997 letter from Patrick Tully was fraudulent and a misrepresentation. Such an amendment must be received within seven days of this decision.

The unfair practice charges are dismissed as to all other allegations.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: January 16, 1998
Trenton, New Jersey