

P.E.R.C. No. 86-43

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY, DEPARTMENT
OF LABOR AND INDUSTRY,

Respondent,

-and-

Docket No. CI-82-12-125

BARBARA SACHAU,

Charging Party.

SYNOPSIS

The Chairman of the Commission, pursuant to authority delegated by the full Commission and in the absence of exceptions to a Hearing Examiner's decision granting summary judgment, dismisses a complaint based on an unfair practice charge filed by Barbara Sachau against the State of New Jersey, Department of Labor and Industry alleging that that State and NJSEA violated the New Jersey Employer-Employee Relations Act. The charge alleged that the State and NJSEA violated the Act by deducting dues for NJSEA from Sachau's paycheck prior to her dismissal on August 14, 1981 and NJSEA's receiving such dues; by the State and NJSEA conspiring to prevent her from receiving fair representation at a pre-disciplinary hearing in July 1981; and by NJSEA's accepting her dues and promising to provide representation when it no longer held majority representative status.

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Appearances:

For the Respondent, Hon. Irwin I. Kimmelman, Attorney
General (Michael L. Diller, Deputy Attorney General)

For the Charging Party, Barbara Sachau, pro se

DECISION AND ORDER

Barbara Sachau, a former employee of the State of New Jersey ("State"), filed an unfair practice charge and an amended charge against the State and the New Jersey State Employee Association - American Federation of Teachers ("NJSEA"). The charge alleges that the State and NJSEA violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by the State's deducting dues for NJSEA from Sachau's paycheck prior to her dismissal on August 14, 1981 and NJSEA's receiving such dues; by the State and NJSEA conspiring to prevent her from receiving fair representation at a pre-disciplinary hearing in July 1981; and by NJSEA's accepting her dues and promising to provide representation when it no longer held majority representative status.

On August 5, 1984, a Complaint and Notice of Hearing issued against the State pursuant to N.J.A.C. 19:14-2.1. The State then filed an Answer asserting that the Complaint lacked specificity and failed to assert a cause of action. The Answer further asserts that Sachau never withdrew her authorization to deduct dues on behalf of NJSEA and that the State properly denied Sachau NJSEA representation at her pre-disciplinary hearing because CWA, not NJSEA, was the majority representative then.

On August 3, 1984, the State moved for summary judgment and filed a brief, documents and certifications.

On August 10, 1984, the Chairman referred this motion to the Hearing Examiner pursuant to N.J.A.C. 19:14-4.8. Sachau then filed a response.

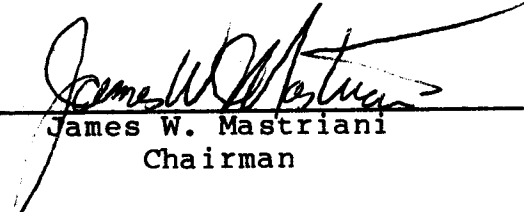
On June 28, 1985, Hearing Examiner Judith E. Mollinger granted the motion for summary judgment. H.E. No. 85-54, 11 NJPER ____ (¶ ____ 1985). She found that Sachau had not withdrawn her dues deduction authorization and that the State properly declined to permit Sachau to have NJSEA representation at her pre-disciplinary hearings since CWA had become the majority representative.

The Hearing Examiner served her report on the parties and advised them that exceptions, if any, were due by July 17. Neither party filed exceptions or requested an extension of time.

I have reviewed the record. The Hearing Examiner's finding of fact (7-9) are accurate and I adopt and incorporate them here. I also adopt her conclusions of law. Accordingly, acting pursuant to authority delegated to me by the full Commission, I dismiss the Complaint.

ORDER

The Complaint against the State is dismissed.



James W. Mastriani
Chairman

DATED: Trenton, New Jersey
September 25, 1985

STATE OF NEW JERSEY
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Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission, acting pursuant to authority delegated by the Commission Chairman, grants a Motion for Summary Judgment filed by the State of New Jersey and dismisses a complaint based on an unfair practice charge filed by Barbara Sachau, a member of the State's Professional collective negotiations unit.

The charge alleged that the State violated the New Jersey Employer-Employee Relations Act by deducting and transmitting dues from Sachau's pay to NJSEA for a period beginning in 1977 through August 14, 1981 and by denying her NJSEA representation at her pre-disciplinary hearing in July 1981.

The State correctly argued first that Ms. Sachau was not entitled to NJSEA representation in July 1981 because effective June 25, 1981, CWA became Ms. Sachau's majority representative and CWA in fact represented her at the July 1981 hearing. Secondly, the State correctly argued that it deducted Sachau's dues from 1977 through August 14, 1981 (when she terminated State employment) because Sachau failed to file a timely request to stop dues deduction pursuant to the NJSEA collective negotiations agreement for Professional unit employees or pursuant to N.J.S.A. 52:14-15.9e.

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Appearances:

For the Respondent
Irwin I. Kimmelman, Attorney General
(Michael L. Diller, D.A.G.)

For the Charging Party
Barbara Sachau, pro se

REPORT AND RECOMMENDED DECISION

This is a decision on the Respondent's motion for summary judgment and a request that the Complaint be dismissed in its entirety.

I

On September 17, 1981, as amended October 13, 1981, Barbara Sachau filed an Unfair Practice Charge with the Public Employment Relations Commission against the New Jersey State Employees Association-American Federation of Teachers ("NJSEA-AFT") and the

State of New Jersey, Department of Labor and Industry (now known as the Department of Labor). The charge alleged that the State violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., ("Act") by deducting, from Sachau's pay, dues for NJSEA for a period beginning in 1977 through August 14, 1981 and transmitting those monies to NJSEA; and by denying her NJSEA representation in a pre-disciplinary hearing held July 1, 1981, prior to her dismissal on August 14, 1981. Sachau also alleges that the NJSEA violated the Act by accepting her dues and by promising to provide representation during a period when NJSEA no longer held majority representation status. Finally Sachau alleges that the State and NJSEA conspired to prevent her from receiving fair representation at her pre-disciplinary hearing in July, 1981. The instant charge was held in abeyance pending the outcome of Sachau's Civil Service appeal regarding her August 14, 1981 termination. On December 13, 1983 the New Jersey Civil Service Commission issued its final decision.

On April 5, 1984, the Administrator of Unfair Practice Proceedings issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1 against the State of New Jersey as Respondent. On April 13, 1984, the State filed its answer, denying that it committed any violation of the Act. The State alleges that the Complaint lacks specificity and that it fails to assert any cause of action upon which relief may be granted. The answer avers, as a

separate defense, that on June 25, 1981, the CWA not the NJSEA/AFT was the certified majority representative for employees in the State's professional collective negotiations unit -- Sachau's unit -- and that only CWA was legally recognized to represent Sachau at her pre-disciplinary hearings. Therefore, The State contends it committed no violation of the Act when it denied Sachau NJSEA representation at her July pre-disciplinary hearing. (Citing, In re Bayonne Board of Education, P.E.R.C. No. 78-60, 4 NJPER 160 (para. 4077 1978))("Bayonne"). Finally, the State contends that it had no authority to discontinue Sachau's dues deductions for the NJSEA because she had failed to timely file the appropriate withdrawal notices pursuant to either the professional unit's collective agreement or N.J.S.A. 52:14-15.19e.

On August 3, 1984, the State filed a Motion for Summary Judgment with supporting brief, documents and certifications. In its Motion, the State contends that it is entitled to summary judgment on the representation issue because: 1) the charge fails to specify particular provisions of the Act alleged breached by the State's acts (N.J.A.C. 19:14-1.3(a)3); 2) the Charging Party does not have standing to claim a §5.3(a)(3) violation of the Act where the State does not recognize the representational status of an employee organization -- that right attaches only to the aggrieved employee organization; 3) that on July 20, 1981, the State was legally precluded from recognizing the New Jersey Civil Service

Association/New Jersey State Employees Association (CSA/SEA) as Sachau's representative. (In re Bayonne); 4) that CWA became the certified majority representative for professional unit employees on June 25, 1981 and that the CWA did represent Sachau in a pre-disciplinary hearing held July 20, 1981; and 5) that in any case, the representation matter is moot because the disciplinary action including the due process aspect was fully litigated before the New Jersey Civil Service Commission.

In its motion, concerning the dues deduction issue, the State argues 1) that the Complaint fails to present a cause of action; 2) that the dues deduction authorized pursuant to N.J.S.A. 52:14-15.9e,^{1/} does not cease simply because a representational

1/ Subsection 14-15.9e reads:

Deduction from compensation to pay dues to employee organization; written authorization; withdrawal; negotiation of exclusive dues deduction provisions

Whenever any person holding employment, whose compensation is paid by this State or by any county, municipality, board of education or authority in this State, or by any board, body, agency or commission thereof shall indicate in writing to the proper disbursing officer his desire to have any deductions made from his compensation, for the purpose of paying the employee's dues to a bona fide employee organization, designated by the employee in such request, and of which said employee is a member, such disbursing officer shall make such deduction from the compensation of such person and such disbursing officer shall transmit the sum so deducted to the employee organization designated by the employee in such request.

(Footnote continued on next page)

dispute exists, 3) that failing a timely withdrawal request, dues may be transmitted to any bona fide labor organization not only to

(Footnote continued from previous page)

Any such written authorization may be withdrawn by such person holding employment at any time by the filing of notice of such withdrawal with the above-mentioned disbursing officer. The filing of notice of withdrawal shall be effective to halt deductions as of the January 1 or July 1 next succeeding the date on which notice of withdrawal is filed.

Nothing herein shall preclude a public employer and a duly certified majority representative from entering into a collectively negotiated written agreement which provides that employees included in the negotiating unit may only request deduction for the payment of dues to the duly certified majority representative. Such collectively negotiated agreement may include a provision that existing written authorizations for payment of dues to an employee organization other than the duly certified majority representative be terminated. Such collectively negotiated agreement may also include a provision specifying the effective date of a termination in deductions as of the July 1 next succeeding the date on which notice of withdrawal is filed by an employee with the public employer's disbursing officer.

This authorization for negotiation of exclusive dues deduction provisions shall not apply to any negotiating unit which includes employees of any local school district or county college.

As used in this section, dues shall mean all moneys required to be paid by the employee as a condition of membership in an employee organization and any voluntary employee contribution to a committee or fund established by such organization, including but not limited to welfare funds, political action committees, charity funds, legal defense funds, educational funds, and funds for donations to schools, colleges and universities. (Emphasis in original)

Amended by L.1971, c. 275, Sec. 1; L.1977, c. 295, Sec. 1, eff. Dec. 12, 1977; L. 1981, c. 345, Sec. 1, eff. Dec. 22, 1981.

the certified majority representative pursuant to the Act and that in this case, Sachau failed to timely withdraw authorization for dues deduction pursuant to either the statute or the collective agreement;^{2/} and 4) that the contract's exclusivity clause for dues deduction was not in effect for CWA from June 30, 1981 until October 19, 1981 when a new agreement was executed. In conclusion, the State requests that Summary Judgment be granted in its favor and that the Complaint be dismissed.

On August 10, 1984, the State's Motion for Summary Judgment was referred to the Hearing Examiner for disposition pursuant to N.J.A.C. 19:14-4.8.

On October 3, 1985, following Hearing Examiner Tadduni's grant of an extension to file an Answer, Sachau filed an Answer to the State's Motion for Summary Judgment. The Answer asserts that the SEA did not meet "the definition of" a bona fide employee organization as of July 1, 1981 because it was unable to represent employees as a majority representative. Sachau also alleges that she did not receive a fair hearing before the Labor Department because she was denied representation by the SEA/AFT.

2/ Article II, Sec. B(b) states as follows:

Dues deductions for any employee in this negotiating unit shall be limited to the Association. Employees shall be eligible to withdraw such authorization only as of July 1 of each year provided the notice of withdrawal is filed timely after May 15 with the responsible payroll clerk.

On September 21, 1982 the instant matter was transferred to this Hearing Examiner for disposition of the Motion for Summary Judgment.

Pursuant to N.J.A.C. 19:14-4.8, a Motion for Summary Judgment may be granted if it appears from the pleadings, together with briefs, affidavits, and other documents filed, that there exists no genuine issue of material fact and that the movant is entitled to its requested relief as a matter of law. A Motion for Summary Judgment is to be granted with extreme caution. The moving papers are to be considered in the light most favorable to the party opposing the motion, all doubts are to be resolved against the movant; and the Summary Judgment procedure is not to be used as a substitute for plenary trial. Bear v. Sorbello, 177 NJ Super 182, 185 (App. Div. 1981); Ocean County Board of Chosen Freeholders and Ocean County Sheriffs, P.E.R.C. 85-38, 10 NJPER 574 (¶15267 1984); In re Essex County, P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982).

II

The following facts are undisputed.

For the period June 1, 1981 through August 14, 1981, Sachau was employed by the State Department of Labor and Industry (now Department of Labor) as a Claims Examiner, Unemployment and Disability Insurance. (ALJ, decision AOL, Docket No. CSV 7272-81). This position was included within a collective negotiations unit of professional employees of the State.

From 1977 until August 14, 1981, Sachau paid dues to the SEA pursuant to her authorization for dues deduction. During the same period, the State transmitted Sachau's dues directly to the SEA, which for the same period of time was the certified majority representative for the State professional employees unit.

In the latter part of 1980 and the beginning of 1981, the Commission conducted representation elections in response to petitions filed by various employee organizations challenging the majority status of the CSA/SEA, the then certified majority representative for those groups of employees. One of the challenging organizations was the SEA/AFT. On June 25, 1981, the CWA was certified as the majority representative for a unit of State professional employees (Commission case Docket Numbers RE-81-3 and RO-81-127).

Sometime in May 1981, Sachau received a preliminary notice of unsatisfactory performance from the Department of Labor. On June 17, 1981, Sachau attended a departmental appeal hearing concerning her unsatisfactory performance. At this hearing, she was represented by Harry Ritchings, a representative of SEA. On July 10, 1981, John Bock, Director, Division of Administration, wrote Sachau concerning her continued appeal. In his letter he advised as follows:

As a result of the certification of the Communications Workers of America being the recognized bargaining agent for your employed classification, Mr. Harry Ritchings may no longer continue to represent you in your departmental disciplinary hearing. Please

contact CWA and make immediate arrangements for representation since your hearing is to be continued on Thursday, July 16, 1981. Due to your extended vacation, we have been unable to get this information to you. If representation cannot be accomplished please immediately notify this office so that a new date can be set.

On July 14, 1981, Edwin Gniewkowski, Chief, Personnel Services, Division of Administration, Department of Labor, wrote Sachau as follows:

This will confirm the verbal information given you today by Mrs. Zenobia Smith of my staff that your Departmental Disciplinary Hearing will be convened at 9:30 a.m. on Monday, July 20, 1981 at the East Orange Unemployment Insurance Office. All effort has been made to assist you toward representation; no further postponement requests will be honored.

On July 20, 1981, a meeting took place at which Sachau was represented by John Loos, CWA Representative. Harry Ritchings also attended, but not in a representational capacity.

On August 14, 1981, Sachau wrote Frank Mason, Governor's Office of Employee Relations. She wrote:

I enclose a paycheck dated August 14, 1981 showing a union dues deduction of \$2.00. These union dues are, I suppose for SEA/AFT, and I have been paying these dues for three years. Since I pay these dues, I expect union representation for these dues at hearings, etc.

I had a separation hearing in June-July (a two-day period necessitated by State scheduling problems). The first part of my hearing I was represented by NJSEA-AFT. My understanding when I left that first hearing is that my representation would be continued by NJSEA-AFT (Harry Ritchings will confirm this). However, the state switched the rules. When the hearing continued, I was told CWA would have to represent me although I was not a member. I protested and my protest of this is on record. My hearing was continued by CWA.

III

The allegations in this matter will be discussed seriatim.

A. I first consider the contention that Sachau was entitled to representation by SEA/AFT at her July 20, 1981 disciplinary hearing. In Bayonne, the Commission determined, consistent with considerable national private sector precedent that:

...an employee organization does not retain any rights under a collective negotiations agreement, or otherwise, to administer a contract by presenting and/or processing grievances once that organization is decertified or otherwise loses its status as the majority representative of particular employees. We conclude that in this regard it is irrelevant whether the deposed majority representative initiated a particular grievance prior to the date that it was replaced by another organization as the majority representative. Once a particular employee organization is certified by the Commission as the majority representative of a unit of employees it is the only employee organization that may present or process grievances, regardless of the origin of those grievances. To rule otherwise, we find, would be to ignore the concept of exclusivity of representation in labor relations and compromise the statutory right of public employees to designate or select an exclusive representative for the purpose of collective negotiations and grievance processing and presentation -- a right that is constitutionally based.

It is clearly established Federal private sector precedent that no union other than the duly recognized or certified collective bargaining representative retains any rights, however limited under a collective bargaining agreement, e.g., it has no right to continue processing grievances, regardless of the circumstances, filed pursuant to a contract that it had negotiated once it has been deposed as majority representative and succeeded by another union. (Citations omitted)^{3/}

^{3/} See N.J.S.A. 34:13A-5.3; Article I, Para. 19 of the New Jersey Constitution of 1947; e.g. Modine Manufacturing Co. v. Association of Machinists, 216 F.2d, 326, 35 LRRM 2003 (1954).

* * *

Moreover, as alluded to before, Section 5.3 of the Act [N.J.S.A. 34:13A-5.3] affirms in apposite part that

'...nothing herein shall be construed to prevent any official from meeting with an employee organization for the purpose of hearing the views and requests of its members in such unit so long as (a) the majority representative is informed of the meeting; (b) any changes or modifications in terms and conditions of employment are made only through negotiations with the majority representative and (c) a minority organization shall not present or process grievances. (Emphasis in text.)' p. 162.

The facts in Bayonne are analogous to the facts in the instant matter. In Bayonne, the Federation of Teachers, the majority representative of the effected employees prior to November 3, 1977, had initialed grievances on behalf of unit employees. On November 3, 1977, the IBTA, charging party in Bayonne, was certified as the exclusive majority representative for the effected employees. After November 3, 1977, the IBTA demanded that the Bayonne Board recognize it as the exclusive representative for the purpose of processing grievances, including those initiated by the Federation prior to November 3, 1977. However, the Board and the Federation continued to process those grievances at the various levels of the existing contract grievance procedure including at least one at the arbitration level. The Board again announced on January 10, 1978, that it would continue to process the Federation's pending grievances and would proceed with an arbitration appeal presented by the Federation, despite the fact that the Federation

had been decertified November 3, 1977. In Bayonne the Commission determined that both the Board's and the Federation's actions were violative of the Act.

In the instant matter, CSA/SEA, which represented Sachau at her first disciplinary hearing on June 17, 1981, was deposed on June 25, 1981, by the CWA. Sachau was represented by CWA at her continued disciplinary hearing held on July 20, 1981.

I find that the holding and principles enunciated in Bayonne are dispositive of this matter. If the State had allowed CSA/SEA to represent Sachau on July 20, 1981 when CSA/SEA was no longer the majority representative of professional employees, the State would have risked committing an unfair practice under the rule of Bayonne. In the State's opinion, as expressed in a letter to Sachau from Mr. Reichman on August 24, 1981, "the State had no legal alternative with respect to which organization it could meet with in order to pursue your disciplinary hearing." I agree. I conclude that the State's action in recognizing the exclusive representation status of CWA not CSA/SEA on July 20, 1981, was consistent with our decisional law. Therefore, I find that Sachau's allegations concerning denial of SEA representation in July 1981 do not constitute violations of the Act.

B. Next I address Sachau's contention that the State should have automatically ceased the payroll deduction and transmittal of dues from Sachau to SEA.^{4/}

^{4/} Sachau does not allege that dues deductions for CSA/SEA continued in the face of a timely filed withdrawal.

Subsection 52:14-15.9e provides that:

Any such written authorization may be withdrawn by such person holding employment at any time by the filing of notice of such withdrawal with the above-mentioned disbursing officer. The filing of notice of withdrawal shall be effective to halt deductions as of the January 1 or July 1 next succeeding the date on which notice of withdrawal is filed.

The collective agreement between the State and CSA/SEA for professional employees effective from July 1, 1979 through June 30, 1981 provides that:

...Employees shall be eligible to withdraw such authorization only as of July 1 of each year provided the notice of withdrawal is filed timely after May 15 with the responsible payroll clerk.

In the instant matter, absent a withdrawal authorization from Sachau, the State acted consistent with its contractual obligations and existing statutory law when it continued Sachau's dues deductions and transmitted the deducted amount to SEA. To have done otherwise, that is to cease dues deduction and transmittal of dues to CSA/SEA, would be to risk allegations of unfair practices under the Act and violations of subsection 52 of the Code.

IV

For the foregoing reasons, I find, as a matter of law, that the CWA and not the CSA/SEA, was the exclusive majority representative as of

June 25, 1981 for Sachau as a member of the unit of professional State employees. I also find, as a matter of law, that the State was obligated to continue to deduct and transmit dues from Sachau to SEA pursuant to the collective agreement covering professional employees and statutory law in subsection 52 of the Code.

V

The State's Motion for Summary Judgment is granted.

Respectfully submitted,



Judith E. Mollinger
Hearing Examiner

DATED: June 28, 1985
Trenton, New Jersey