

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

In the Matter of

CAMDEN COUNCIL #10, NEW JERSEY CIVIL SERVICE
ASSOCIATION and MILDRED DI FANTE, PRESIDENT,

Respondent,

-and-

Docket No. CO-79-104-91

REGISTERED PROFESSIONAL NURSING UNIT #1;
R.P.N.U. a/w CAMDEN COUNCIL #10,

Charging Party.

BOARD OF CHOSEN FREEHOLDERS, COUNTY OF CAMDEN,

Respondent,

-and-

Docket No. CO-79-105-92

REGISTERED PROFESSIONAL NURSING UNIT #1;
R.P.N.U. a/w CAMDEN COUNCIL #10,

Charging Party.

ERRATA

The Hearing Examiner's Decision on Motion for Default Judgment in the above matter which issued on November 16, 1979, is hereby corrected as follows:

<u>Page</u>	<u>Line</u>	<u>Delete</u>	<u>Substitute</u>
4	10	Council #10	County


Edmund G. Gerber
Hearing Examiner

DATED: December 13, 1979
Trenton, New Jersey

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SYNOPSIS

In an unfair practice hearing brought by the Registered Professional Nursing Unit #1, affiliated with Camden Council #10 (R.P.N.U.), a Hearing Examiner grants a Motion for Default Judgment and orders a hearing to determine an appropriate remedy.

The R.P.N.U. filed this action against Camden Council #10 of the New Jersey Civil Service Association and the Board of Chosen Freeholders, County of Camden. Neither the County nor Council #10 made an appearance at the hearing. The County apprised the Hearing Examiner that they believed the action concerned an internal matter within Council #10 and would not participate in the hearing. The attorney for Council #10 never contacted the Hearing Examiner nor could he be reached on the day of hearing. Accordingly the motion was granted.

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Charging Party.

Appearances:

For Camden Council #10, NJCSA and Mildred DiFante, President
~~Joseph A. Ca...~~ Esq.

For the Registered Professional Nursing Unit #1
~~For the Board of Chosen Freeholders, Camden County~~
(Mary ~~Frank~~ Esq.), Esq.)

For the Board of Chosen Freeholders, County of Camden
Gladden, Brierley & Paglione
(Vincent J. Paglione, Esq.)

DECISION ON MOTION FOR DEFAULT JUDGMENT

A hearing was scheduled in the above-captioned matter on August 20, 1979. On the scheduled date of hearing neither New Jersey Civil Service Association, Camden Council #10 nor the Board of Chosen Freeholders, Camden County made an appearance. Accordingly, this Motion for Default Judgment was made by the charging party. Before ruling on this motion, a short procedural history of the matter is in order.

On October 27, 1978, the charging party, the Registered Professional Nursing Unit #1 (RPNU), affiliated with Camden Council #10, filed two unfair practice charges

alleging that both the County ^{1/} and Council #10 ^{2/} committed unfair practices within the meaning of the Public Employer-Employee Relations Act (Act) during the course of collective negotiations with the RPNU. A series of exploratory conferences were then held with the parties by an employee of PERC in order to attempt to resolve this matter. When no resolution was made a Complaint and Notice of Hearing was issued on May 16, 1979. Copies of this complaint were sent by registered mail to Vincent Paglione, as attorney for the County, and Joseph A. Carmen, Esq., as attorney for the Camden County Council #10. Included in that Complaint and Notice of Hearing was a notice for a prehearing conference scheduled for June 15, 1979. Prior to the scheduled prehearing conference the undersigned received a call from Vincent Paglione asking that the prehearing conference in this matter be cancelled and that we proceed directly to hearing. Paglione informed me that he had spoken to Joseph Carmen and Carmen joined in this request. Subsequent to this conversation with Paglione I made several attempts to contact Mr. Carmen by phone but was always told that Mr. Carmen was not in his office. Carmen never returned any of my calls.

On the scheduled date of hearing when neither Paglione for the County, nor Carmen for Council #10, appeared, I called their respective offices. In both cases I was told that the attorneys were out. Paglione's office then responded and informed me that they had been in contact with ~~Paglione~~. Paglione took the position that the gravamen of the complaint in this matter involved an intra-association matter between the RPNU and Council #10. Accordingly, the County would not take a formal position and did not wish to appear. I attempted to call Carmen later that day and again I explained to Carmen's secretary that it was urgent that Mr. Carmen contact me concerning the scheduled hearing but, again, Mr. Carmen never returned my call that day or subsequent thereto. It was at this time that the attorney for the

1/ It was specifically alleged that Council 10 violated N.J.S.A. 34:13A-5.4(b)(1), (2) and (4). These subsections prohibit 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) interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances; and (4) refusing to reduce a negotiated agreement to writing and to sign such agreement.

2/ It was specifically alleged that Camden County violated N.J.S.A. 13A-5.4(a)(1), (2), (5) and (6). These subsections prohibit employers, 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) dominating or interfering with the formation, existence or administration of any employee organization; (5) refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative; and (6) refusing to reduce a negotiated agreement to writing and to sign such agreement.

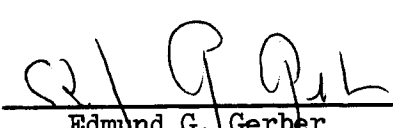
final agreement. However, when the representative of the nurses received the final document it was (according to an affidavit submitted in conjunction with the Motion for Default Judgment) materially and substantively altered from the tentative agreement reached and was signed by Mildred DiFante in her capacity of President of Council #10. When the RPNU requested the reinsertion of all those agreed upon articles, the representatives of the County said that the contract was signed and would not be altered. The RPNU then brought this action claiming that DiFante's dual positions created a conflict of interest and asking that the original contract be reformed to reflect the agreement which was originally negotiated between the RPNU and Camden Council #10.

Neither the affidavit submitted by the charging party nor the original pleadings state the exact agreements originally entered into and absent additional evidence it would be impossible to reconstruct the original agreement.

In addition, there are allegations that there was an agreement which recognized the RPNU as a bargaining agent for the registered nurses in the County. It must be noted that although an agreement between Council #10 and the RPNU granting RPNU the right to negotiate on their own may be a valid agreement, such an agreement does not relieve Council #10 of its obligations as exclusive bargaining agent for the registered nurses and absent the agreement of Council #10, the County of Camden cannot unilaterally grant exclusive rights of representation to the RPNU. Exclusive rights to representation can only be voluntarily recognized if the parties act in compliance with N.J.A.C. 19:11-3.1. There is nothing in the submissions to the undersigned to indicate that said rules were complied with. ^{3/}

Accordingly, the undersigned finds that the County of Camden is in violation of N.J.S.A. 34:13A-5.4(a)(1), (2), (5) and (6) and Camden Council #10 and Mildred DiFante are in violation of N.J.S.A. 34:13A-5.4(b)(1), (2) and (4). However, a hearing to reconstruct the exact nature of the original agreement must be scheduled in order to determine an appropriate remedy in this matter. A hearing will be set down for January 7, 1980, at 10 a.m. at the P.E.R.C. Office, 429 East State Street, Trenton, New Jersey.

DATED: November 16, 1979
Trenton, New Jersey


Edmund G. Gerber
Hearing Examiner

^{3/} Absent a voluntary recognition the RPNU could still submit a Petition for Certification of Representation with P.E.R.C. to seek formal certification for representation from the Commission.