

I.R. NO. 2004-3

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ATLANTIC CITY,

Respondent,

-and-

Docket No. CO-2003-324

ATLANTIC CITY WHITE-COLLAR
PROFESSIONAL ASSOCIATION,

Charging Party,

-and-

TEAMSTERS LOCAL NO. 331,

Intervenor.

SYNOPSIS

A Commission Designee denies an application for interim relief where the newly certified union charged that the employer was violating the Act by continuing to forward dues deductions to the employees' former employee representative. The Designee found that, in the absence of a dues exclusivity clause, employees are permitted under N.J.S.A. 52:14-15.9(e) to have union dues deducted from their wages for the organization of their choice.

The Designee issues an interim order requiring the employer to maintain the existing terms and conditions of employment, including the grievance procedure. The employer is restrained from denying employees the right to initiate and process grievances under the existing grievance procedure.

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Appearances:

For the Respondent,
Obermayer, Rebmann, Maxwell & Hippel, attorneys
(Louis Magazzu, of counsel)
(Todd Glassman, of counsel, on the brief)

For the Charging Party,
O'Brien, Belland & Bushinsky, attorneys
(Michael O'Brien, of counsel)
(Nancy Sokol, of counsel, on the brief)

For the Intervenor,
Szaferman, Lakind, Blumstein, Blader, Lehmann &
Goldshore, P.C., attorneys
(Sidney H. Lehmann, of counsel)

INTERLOCUTORY DECISION

On June 23 and July 2, 2003, the Atlantic City White-Collar Professional Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the City of

Atlantic City violated 5.4a(1), (2), (5) and (6) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{1/} by refusing to recognize it as the newly certified majority representative of the City's white-collar employees, by refusing to honor the previous collective agreement until a new agreement can be reached, and by continuing to deduct and forward union dues to Local 331.

On June 30, 2003, the Association filed a request for interim relief with temporary restraints pursuant to N.J.A.C. 19:14-9. The Association asks that the Commission order that the City (a) recognize the Association as the collective negotiations representative; (b) recognize and abide by the terms of the collective negotiations agreement in effect until a replacement agreement is negotiated by the parties; and (c) cease and desist from sending dues to the predecessor union. I denied the application for temporary restraints, but issued an Order to Show Cause on July 3, 2003, scheduling the return date on the interim

^{1/} These provisions prohibit public 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."

relief application for July 23, 2003. Local 331 was permitted to intervene in this matter since its rights may be affected by proposed restraining order. The parties submitted briefs and affidavits in accordance with Commission Rules and argued orally on the scheduled return date.^{2/} The following facts appear:

For many years, the City's white-collar employees were represented for collective negotiations by Local 331, International Brotherhood of Teamsters. Local 331 had a collective negotiations agreement with the City which covered the period January 1, 2000 through December 31, 2002. That contract included a dues deduction clause at Article V that provided:

Section 1. The City shall deduct dues and initiation fees from the wages of all personnel covered by this Agreement who have filed with the City a proper dues deduction authorization card as required by the laws of the State of New Jersey. The Union shall advise the City of the fixed and standard dues and initiation fees of its members and the payments shall be made to the Union on the 10th day of each month.

Also included in the dues check off article were provisions for agency shop deductions, an indemnification clause, and a provision for employees to contribute to Local 331's political action and social fund and a union scholarship fund. Nothing in Article V limits dues deductions to only Local 331 or prevents dues to another organization.

^{2/} Local 331's participation was limited to the issue of the dues deductions.

The contract also contains a grievance procedure at Article VIII consisting of a 4-step "standard procedure" and an alternative "judiciary procedure," which appears it may be for court employees.

In September 2002, the Association filed a Petition for Certification seeking to represent the white-collar unit. Following a secret ballot election conducted among the unit employees in December 2002, we certified the Association as the new majority representative of the white-collar unit on March 4, 2003.

The Association submitted with its charge an affidavit from its President Robin Shamsiddeen. She states that since receiving its certification of representative from the Commission in March, 2003, the Association has attempted to get the City to "recognize [it] as the collective negotiations representative which has acceded to the rights of the Teamsters in terms being a party to the [expired] collective agreement" Shamsiddeen further states that the City has "insisted that the collective negotiations agreement does not apply . . . and refused [the Association's] continued request to [be] recognized as party to the contract."

The City acknowledges that it refuses to recognize the Association as a successor party to Local 331's expired contract. However, the City asserts that all employee terms and conditions

of employment remain in effect. The City attorney has offered dates for negotiations to begin. In April 2003, the City offered an "interim agreement" to the Association, which would provide an interim mechanism to deal with certain issues prior to the adoption of a successor contract. The interim agreement included a grievance procedure that is identical to that contained in the expired Local 331 contract, and a dues deduction clause which provides that unit employees may exclusively pay dues to the Association, and terminates dues to all other employee organizations, effective on a date to be agreed upon. However, the "interim agreement" did not incorporate any of the existing contractual terms or benefits. The Association refused to agree to the interim agreement.

On June 26, 2003, City Administrator Benjamin Fitzgerald wrote a letter to Shamsiddeen stating that,

...no agreement exists between your collective bargaining unit and the City of Atlantic City. The Administration attempted to enter into an agreement whereby a procedure for grievances would be satisfactory to all parties. However, the agreement was rejected by your association. Therefore, please inform your members that this Administration will not recognize any grievances filed by your membership until an agreement is executed.

The City acknowledges that it is continuing to deduct union dues from white-collar unit employees and transmitting such dues to Local 331.

ANALYSIS

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

**Refusal to Recognize the Association
As the Majority Representative**

The Association claims by affidavit of its President Robin Shamsiddeen that the City is refusing to recognize the Association as the majority representative of the white-collar employees. On the other hand, the City has apparently offered dates for negotiations to begin and has made a proposal for an "interim agreement" to provide procedures while the parties are negotiating a successor contract. Therefore, the Association has not demonstrated that it has a substantial likelihood of prevailing on the merits of its claim that the City has refused to recognize it as the majority representative. Accordingly, this request for interim relief is denied.

**Continuation of the Terms
of the Contract**

The Association requests that I enter an interim order requiring the City to recognize and abide by the terms of the collective negotiations agreement in effect until the parties negotiate a successor agreement.

It is well settled that an employer must maintain existing terms and conditions of employment while negotiating with the majority representative for a successor agreement. Any change in existing benefits during negotiations violates 5.4a(5) of the Act. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978). As the newly certified majority representative, the Association now has the exclusive right^{3/} to enforce the existing terms and conditions of employment, including those memorialized in the expired contract. One such existing employee benefit is the grievance procedure, as set forth in Article VIII of the expired agreement. As the new majority representative, the Association has a statutory right to present employees' grievances. N.J.S.A. 34:13A-5.3; Bayonne Bd. of Ed., P.E.R.C. No. 78-60, 4 NJPER 160 (¶4077 1978).

3/ N.J.S.A. 34:13A-5.3 provides, "Representatives designated or selected by public employees for the purposes of collective negotiation . . . shall be the exclusive representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit."

Moreover, the suspension of the grievance procedure so chills employees' rights to be represented for collective negotiations, that irreparable harm would occur if the City is not restrained from such conduct. The City stated at the Order to Show Cause proceeding that it was willing to rescind the administrator's letter advising the Association that it would not accept employee grievances until a new agreement was executed. Accordingly, I will enter a consent order restraining the City from denying employees the right to initiate and process grievances under the existing contractual grievance procedure. The Association has not demonstrated that any other existing terms and condition has been affected.

Dues Deductions

The Association argues that the City violated the Act by continuing to send dues to Local 331 even though it is no longer the majority representative.

N.J.S.A. 52:14-15.9(e) states in pertinent part:

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.

Any such written authorization may be withdrawn by such person holding employment at any time by the filing of such 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. (Emphasis added).

Citing City of Newark, P.E.R.C. No. 95-80, 21 NJPER 166

(¶26103 1995), the Association argues that it has assumed the rights of the predecessor Local 331 to enforce the contract dues deduction provision.

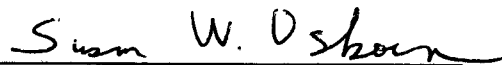
Title 52 requires a public employer to deduct union dues from the wages of a public employee when the employee individually so authorizes the deduction. It further provides that the dues shall continue until the employee revokes the authorization. Thus, union dues run to the union the employee so

authorizes, not necessarily to the majority representative. The exception is when the majority representative succeeds in negotiating a dues exclusivity clause, which provides that dues may only be deducted to the majority representative. Here, Article V of the expired contract does not contain such an exclusivity clause. Rather, there is nothing in that clause that prevents an employee from paying dues to any organization. Thus, even assuming, as the Association argues, that it is entitled to assume and enforce the provisions of the old Local 331 contract, this clause does not give the majority representative the exclusive right to collect employees' dues. Accordingly, absent a dues exclusivity agreement, the employees have a right to continue to pay dues to a minority organization. State of New Jersey, P.E.R.C. No. 85-72, 11 NJPER 53 (¶16028 1984). Thus, it appears that the City is required to continue to deduct and forward dues to Local 331. Howell Bd. of Ed., P.E.R.C. No. 94-19, 19 NJPER 452 (¶24213 1993), aff'g H.E. No. 93-29, 21 NJPER 1 (¶26000 1993). Accordingly, the Association's request for interim relief with regard to the dues deductions is denied.

ORDER

Interim relief is granted to the extent that the City is ordered to maintain the existing terms and conditions of employment, including the grievance procedure. The City is restrained from denying employees the right to initiate and

process grievances under the existing grievance procedure. The remaining application for interim relief is denied. This interim order will remain in effect pending a final Commission order in this matter.



Susan Wood Osborn
Commission Designee

DATED: July 28, 2003
Trenton, New Jersey