D.U.P. No. 2021-11

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

In the Matter of

STATE OF NEW JERSEY
(ROWAN UNIVERSITY),

Respondent,

-and- Docket No. CO-2020-077

IFPTE LOCAL 195,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by IFPTE Local 195 (Local) against Rowan University (University) alleging violations of section 5.4a(5) of the New Jersey Employer-Employee Relations Act. The charge alleged that the University paid certain security officers a salary lower than the salary set forth in the collective negotiations agreement between the University and the Local. The charge alleged that the University voluntarily recognized the Local as the majority representative of the security officers when it processed their dues authorization cards. The Director finds that the Local had no standing to claim that the University violated section 5.4a(5) of the Act because the facts as alleged did not establish that the University ever voluntarily recognized the Charging Party as the majority representative of the officers.

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Appearances:

For the Respondent,
Gurbir S. Grewal, Attorney General
(Ryan J. Silver, Deputy Attorney General)

For the Charging Party,
Oxfeld Cohen, attorneys
(Arnold S. Cohen, of counsel)

REFUSAL TO ISSUE COMPLAINT

On September 24, 2019, and on October 4, 2019, the IFPTE Local 195 (the Charging Party or Local) filed an unfair practice charge and an amended charge, respectively, against Rowan University (Respondent or University). The charge, as amended, alleges that since June 28, 2019, the University paid two security officers, Christine Aguilar and Thomas Flail, a salary lower than the salary set forth in the collective negotiations agreement (CNA) between the University and the Local. It further alleges that since September 6, 2019, the University paid another security officer, Mike Williams, a salary lower than the one set forth in the CNA between the parties. Critical to the

disposition of the instant matter, the Local alleges that the University voluntarily recognized the Local as the majority representative for those three security officers when the University deducted dues from their paychecks and remitted them to the Local. The Charging Party alleges that by processing the dues authorization cards from the three security officers, the University voluntarily recognized it as their majority representative, and therefore, the failure to pay the contractual wage salaries constitutes a repudiation the parties' CNA, in violation of Section 5.4a(5)[1/] of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq.

The Commission has authority to issue a complaint where it appears that a charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3; CWA Local 1040, D.U.P. No. 2011-9, 38 NJPER 93 (¶20 2011), aff'd P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012).

I find the following facts.

The University, more specifically, the State of New Jersey

1/ This provision prohibits public employers, their representatives or agents from: "(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."

(State), is a public employer within the meaning of the Act. According to the Charge, the University and the Local are parties to a collective negotiations agreement extending from July 1, 2019 through June 30, 2023. The University has multiple campuses, including one in Stratford (hereinafter RowanSOM[2/] Campus) and one in Camden (hereinafter Camden Campus). The Local represents employees in various titles in a state-wide unit, including security officers.

It is undisputed that a different union, OPEIU Local 153, ("OPEIU") was the majority representative for security officers Flail and Aguilar in a separate unit[3/] and that they were members of OPEIU. Both parties agree that on or around January 14, 2019, OPEIU disclaimed interest in that unit. At the time of the disclaimer of interest, Security Officer Williams had not yet been hired and would not be for several more months.

On January 31, 2019, both Officers Aguilar and Flail signed dues authorization cards for the Local. Both cards contained the

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2/ By way of background, Stratford RowanSOM is the campus for the School of Osteopathic Medicine, which was initially established under the University of Medicine and Dentistry of New Jersey (UMDNJ). The school merged with Rowan University following the dissolution of UMDNJ.

3/ The amended charge claims that Security Officers Aguilar and Flail worked at the Camden campus and were members of the OPEIU, but then in February 2019 were transferred to RowanSOM's campus. The University in its position statement, which was shared with the Charging Party, claims that since their hiring in 2016, Aguilar and Flail have always worked exclusively at the RowanSOM campus. This factual dispute is immaterial for the purposes of this dismissal as there is no dispute that these officers were represented by OPEIU in a separate unit.

following language:

> Authorization for Employee Organization Deduction
> I hereby authorize the State of New Jersey to make Bi-Weekly deductions from my base salary in the amount of 1% (or such other amounts as may be authorized by amendment to the Dues Schedule of the Organization) for dues Payable to the Treasurer of the Employee Organization Designated Below. I understand that this Authorization shall remain in effect unless cancelled by me in writing and that such cancellation shall become effective on the first pay day following July 1, in accordance with the current negotiated contract.

Officer Williams was hired on August 5, 2019, and signed a card containing identical language on July 7, 2019.[4/]

According to the Employer's November 15, 2019, position statement and its December 9, 2019, correspondence to the Charging Party, dues were deducted for Aguilar and Flail beginning on February 3, 2019. However, the charge as amended claims that Aguilar and Flail had dues deducted beginning on June 28, 2019 and that Williams had dues deducted beginning on

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4/ I note that the charge as amended, alleges that Security Officer Williams signed his dues authorization card on August 7, 2019. However, in a letter dated December 9, 2019, to the Charging Party, the University provided copies of the dues authorization cards, which show the dates on which the officers signed them. The date on Security Officer William' card is July 7, 2019. It is not clear why the dues authorization for Williams predated his hiring on August 5, 2019 by about a month, although it is possibly an error. Ultimately, the date of Security Officer Williams' signature on his dues authorization card is not material to the disposition of this dispute. I also note that the spelling of the names of the security officers is derived from how the names appeared on the dues authorization cards rather than how they appear in the amended charge.

September 26,2019. In the amended charge, the Local ties both the University's alleged voluntary recognition and implementation of the lower salaries to the dates it claims dues deduction began. Specifically, it claims that "the Employer first announced and implemented the lower salary for Christi [sic] Aguillar [sic] and Thomas Flail, when they became Local 195 members on June 28, 2019." Similarly, it claims that "the Employer first announced and implemented the lower salary for Michael Williams, when he became a Local 195 member on September 6, 2019." The Charging Party also inconsistently alleges that Security Officers Flail and Aguilar were paid a lower salary after they were transferred to different campuses in February, 2019.

The University maintains that at no time did it ever voluntarily recognize the Local as the majority representative of the three security officers who were included in a unit previously represented by OPEIU, and that the processing of dues authorization cards does not constitute a voluntary recognition. Instead, it contends that the employees were no longer represented following OPEIU's disclaimer and that it continued to pay them pursuant to the terms of the expired OPEIU agreement. It further claims that Rowan did not have any authority to recognize the Local as the majority representative because by statute, the Governor of the State functions as the public employer of the University's employees. Lastly, the University submits that the charge is untimely because the Local either knew

or should have known the salaries paid to Aguilar and Flail on February 3, 2019, when dues deductions began for those security officers, but the Local did not file the charge until September 24, 2019.

ANALYSIS

N.J.S.A. 34:13A-5.4a(5) of the Act makes it an unfair practice for a public employer to refuse to negotiate in good faith with a majority representative or to refuse to process grievances presented by the majority representative. Although the Commission does not exercise jurisdiction over allegations constituting mere breaches of contract, allegations establishing the repudiation of a clear contract term fall within its unfair practice jurisdiction arising under Section 5.4a(5) of the Act. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419, 422-23 (¶15191 1984). Such conduct constitutes a failure to negotiate in good faith under Section 5.4a(5).

As a public employer's obligation to negotiate in good faith only arises under the Act where there is a majority representative,[5/] a threshold legal question regarding standing arises in this matter concerning whether the processing of dues authorization cards, as alleged in the amended charge, establishes the University's voluntary recognition of the Local

5/ By its plain terms, the employer's duty to negotiate in good faith pursuant to Section 5.4a(5) runs only to the majority representative. N.J. Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980).

as the majority representative of the security officers previously represented by OPEIU. Accordingly, the parties were invited to submit position statements on this issue. The Local filed its response on February 21, 2020 and the University filed its response on March 30, 2020. Both parties provided a copy of their respective submissions to one another.

In its position statement, the Charging Party contends that the University ". . . voluntarily recognized [sic] Local 195 as the majority representative when it agreed to deduct union dues from the salaries of the three security officers and remit payment directly to Local 195." It avers that case law establishes that recognition can be inferred from the employer's conduct and that a signed agreement is not required to prove voluntary recognition. It claims that in Doctors Hospital, 185 NLRB 147 (1970), the NLRB has determined that when an employer honors deduction of dues to a union, it constitutes a voluntary recognition of the union. It also cites PBA Local 53 v. Town of Montclair, 131 N.J. Super. 505 (App. Div. 1974), vacated, 70 N.J. 130 (1976), for the proposition that employers must act promptly to question a majority representative's status and cannot act in a way that would lead a union to conclude it obtained recognition.

The Local maintains that a hearing must be held to determine if the University's conduct constituted a recognition. It claims that the three security guards voted to make the Local their majority representative and that the University "was aware of

this election." I note that the allegation that the University was aware of a vote by employees is not included in the amended charge. The Local further asserts that since January, 2019, the Local has served as the majority representative for the security officers and that the University created a confidence that it conferred recognition by never questioning the status of the Local. Instead, the University "agreed" to the deduction of dues.

Lastly, the Local argues that the University violated the recent Workplace Democracy Enhancement Act (WDEA) and that the "legislative intent of the WDEA requires that the employees must be found to be members of Local 195 in order to maximize their union rights." The Local claims that the University could not have believed that ". . . the employees, seemingly out of the kindness of their own hearts, donated monthly to Local 195 without any expectation of representation" because the "security guards actually voted to join Local 195 with Rowan's knowledge and subsequently requested that their union dues be remitted directly to Local 195." It contends that the University violated the WDEA's prohibition under N.J.S.A. 34:13A-5.14(b) against taking actions that would harm a union or its members by treating the security officers as having no representative.

Although the University acknowledges that certain employer conduct can constitute a voluntary recognition of a majority representative, it maintains that case law establishes that such recognition only occurs where the employer's statements or

conduct clearly demonstrates an intention to negotiate with the purported majority representative. It explains that in cases where voluntary recognition was found, the employer engaged in a course of conduct that indicated it accorded recognition to the majority representative rather than a singular act. It notes that the amended charge does not allege any facts indicating the parties ever sought to engage in negotiations regarding the three employees, or that the Union ever filed any grievances on behalf of them or otherwise spoke or advocated on their behalf. The University notes that even the statements set forth on the dues authorization cards it received did not inform that the employees were seeking to be represented by the Local for purposes of collective negotiations. It contends that it was legally obligated to commence te deductions that alone allegedly comprise the basis for recognition. The University maintains that it could not have refused to process the officers' dues authorization cards without running afoul of Commission law and the WDEA.[6/]

The University correctly notes that the claim in the Local's position statement regarding the University's knowledge of the

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6/ Quoting the Commission designee's decision in City of Atlantic City, I.R. No. 2004-3, 29 NJPER 376 (¶118 2003), the University explains that generally "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."

three security officers' vote to make the Local their majority representative was never pled in the original or amended charge. It further notes that the claim is factually impossible under specific facts included in the amended charge. Although the Local does not identify a date of the purported election in its position statement, it does assert that the vote occurred before the members submitted their dues authorization cards. The University avers that Security Officer Williams was not hired until August 5, 2019, and therefore, could not have possibly voted in the purported election. The University also contends that no specific facts indicate how it possibly knew of any vote by the security officers.

The charge, as amended, fails to meet the complaint-issuance standard because the facts do not sufficiently indicate that the University ever voluntarily recognized the Charging Party as the security officers' majority representative. When OPEIU disclaimed interest, the officers were no longer represented for purposes of negotiations. Although an employer's voluntary recognition may be inferred from its conduct, there is simply no legal support for the proposition that the mere processing of dues deductions at the request of employees, (which is the sole act attributable to the University in the instant charge), could constitute a voluntary recognition.

None of the cases cited by the Charging Party favor its claim. In Doctors Hospital, 185 NLRB 147 (1970), the NLRB did

not hold that when an employer honors deduction of dues to a union, it constitutes a voluntary recognition of that union, as the Charging Party asserts. To the contrary, the hospital's grant of a dues checkoff to a union that was not the exclusive bargaining representative designated by the majority of its employees constituted unlawful assistance to a union and unlawful interference, in violation of Section 8(a)(2) and 8(a)(1) of the NLRA. The Administrative Law Judge had found that there had been no meeting of the minds on the subject of recognition when a union representative of the hospital's blue-collar employees along with unrepresented licensed practical nurses (LPNs) appeared at the office of the director of the hospital, presented designation cards signed by LPNs to the director, and demanded that he execute a recognition agreement, even though the director indicated he would sign off on the agreement the following day and management representatives had verified the signatures of the LPNs who signed the cards. Id. at 150. Ultimately, the hospital was ordered to withdraw the recognition it afforded to the blue-collar union when it signed the recognition agreement it had proffered to the director because at the time of execution there had been a question concerning representation with a rival union that was also seeking to represent the LPNs. Id. at 155.

PBA Local 53[7/] is similarly unhelpful to the Local. The

7/ The Appellate Division had concluded that a majority (continued...)

Township in that case had agreed to meet with the union for purposes of negotiations; the union had provided a copy of its proposal, and the parties conducted three negotiations sessions all before the Township raised for the first time in its Answer to the union's Complaint that the union had not been certified by this agency. The series of affirmative actions and representations undertaken by the employers in those cases provide clear evidence of an intent to grant recognition and stand in stark contrast to the mere processing of dues deductions requests.

The University had no basis upon which it could justify a refusal to process the dues deductions requests of these employees. Absent a dues exclusivity agreement, employees have a statutory right under N.J.S.A. 52:14-15.9(e)[8/] to pay dues to any

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7/ (...continued)
representative had been selected and that the employer's failure to question the status of the union lulled it into a false sense of security. However, our Supreme Court vacated the judgment of the Appellate Division because while the appeal was pending this agency had been given jurisdiction to decide unfair practice charges, and it concluded those amendments should have retroactive effect. It directed the trial court to enter an order transferring the matter to PERC, and identified as a threshold question for the agency whether the union was the majority representative. Patrolmen's Benevolent Ass'n v. Montclair, 70 N.J. 130(1976).

8/ N.J.S.A. 52:14-15.9(e) provides, 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,

(continued...)

other employee organization, and the employer does not have discretion to determine whether to deduct and transmit the funds accordingly. State of New Jersey, P.E.R.C. No. 85-72, 11 NJPER 53 (¶16028 1984). "The law does not explicitly require that the organization so designated actually be the recognized bargaining representative of the employees." Id. at 11. (quoting the statement from the Senate Committee on State and Government Federal and Interstate Relations and Veterans Affairs concerning amendments to the statute permitting a dues exclusivity clause).

8/ (...continued)

> 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.....
>
> 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 ....

See also Union Council No. 8, NJCSA v. Housing Auth. of City of Elizabeth, 124 N.J. Super. 584, 589-90 (1973) (employer required to deduct and transmit dues of supervisory employees to an organization representing non-supervisors and such "collection of the Council's dues will not in any way entitle [Council] to act as the bargaining agent for employees of the Authority"). An employer's performance of its mandatory statutory obligation to direct funds to the organization chosen by an employee clearly cannot qualify as evidence of its intent to grant recognition to that particular organization.

Given the absence of any legally operative facts that could establish the Charging Party as the majority representative of the officers, I find that it has no standing to claim that the University violated its statutory obligation to negotiate in good faith under the Act. Therefore, I find that the Commission's complaint-issuance standard has not been met and decline to issue a complaint on the allegations of this charge.

/s/ Jonathan Roth
Jonathan Roth
Director of Unfair Practices

DATED: June 23, 2021
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.

Any appeal is due by July 6, 2021.