

D.U.P. NO. 84-19

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF UNFAIR PRACTICE PROCEEDINGS

In the Matter of

TOMS RIVER EDUCATION ASSOCIATION,

Respondent,

-and-

DOCKET NO. CI-84-33

PETER P. CARROZZA,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to challenges by an individual to a representation fee collected by the Toms River Education Association. Relying on Commission precedent, the Administrator holds that constitutional challenges to the agency shop legislation (N.J.S.A. 34:13A-5.5 et seq.) must be addressed to a court of competent jurisdiction and that questions concerning the appropriateness of the amount of the representation fee must be addressed to the Public Employment Relations Commission Appeal Board.

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Appearances:

For the Respondent
Ruhlman, Butrym & Friedman, P. A.
(Barbara G. Rapkin of counsel)

For the Charging Party
Peter P. Carrozza, pro se

REFUSAL TO ISSUE COMPLAINT

On October 26, 1983, an Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") by Peter P. Carrozza ("Charging Party") against the Toms River Education Association ("Association") alleging that the Association was engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), by assessing a representation fee which is automatically deducted from Charging Party's salary.

The charge alleges that the Association has committed an unfair practice because:

1. Joining the association or paying a non member fee was not "a condition of employment" when I signed a contract to work at Toms River.
2. I have "a right to work" without being made to support an organization which spends a major portion of its monies on items not directly connected to the security of my employment.
3. In July 1983, Judge Debevoise, a United States District Court Judge in Newark, declared a similar agency shop dues assessment against non-union members unconstitutional.

The Commission has delegated authority to the undersigned to issue complaints with respect to the unfair practice charges and has established a standard for complaint issuance. This standard provides that a complaint shall issue where a charge, if true, may constitute unfair practices under the Act. The undersigned may decline to issue a complaint where the above standard has not been met. See N.J.A.C. 19:14-2.1 and 2.3.

For the reasons below, the undersigned declines to issue a complaint.

In a matter recently decided, the Commission determined that it would not pass upon attacks on the constitutionality of the agency fee legislation. N.J.S.A. 34:13A-5.5 et seq. is incorporated within the New Jersey Employer-Employee Relations Act which the Commission is required to administer. The Commission

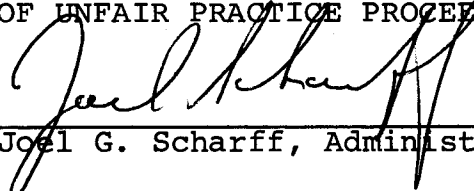
presumes the constitutionality of the statute and will continue to do so until such time as a final court order rescinds or modifies the legislation. Bd. of Ed. of the Town of Boonton and Judith Kramer, P.E.R.C. No. 84-3, 9 NJPER 472 (¶ 14199 1983), appeal pending App. Div. Docket No. A-29-83T2. Although the constitutionality of this State's agency shop legislation is being questioned in Federal Court litigation, the determinations issued to date are interlocutory in nature and are not final. ^{1/}

The Charging Party has not asserted in this matter that the Respondent is not entitled to receive representation fees under clauses embodied in its collective negotiations agreement with the public employer. Notwithstanding his first allegation, the Charging Party's individual contract with the Board of Education cannot supplant the requirements of the collective negotiations agreement. If the Charging Party questions the appropriateness of the amount of the fee assessed by the Respondent, this question may be addressed to the Public Employment Relations Commission Appeal Board. Otherwise, issues relating to the constitutionality of the agency shop legislation should be addressed to a court of competent jurisdiction.

^{1/} In re Olsen, et al. v. CWA, et al., 559 F. Supp. 754, 112 LRRM 3812 (1983) appeal pending, 3rd Cir. Docket Nos. 83-5403, 83-5459; In re Robinson v. New Jersey, 565 F. Supp. 943, LRRM (D.N.J. 6/15/83); In re Robinson v. New Jersey, 547 F. Supp. 1297, 112 LRRM 2308 (D.N.J. 1982) appeal pending 3rd Cir. Docket Nos. 82-5698, 82-5750.

Accordingly, inasmuch as the Charging Party has not alleged matters within the Commission's jurisdiction, the undersigned declines to issue a complaint with respect to the instant charge.

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICE PROCEEDINGS



Joel G. Scharff, Administrator

DATED: January 25, 1984
Trenton, New Jersey