

D.U.P. NO. 94-17

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

In the Matter of

STATE OF NEW JERSEY and
COMMUNICATIONS WORKERS OF AMERICA, LOCAL 1033,

Respondents,

-and-

Docket No. CI-93-72

KAREN PARKER, ET AL.

Charging Parties.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed by Karen Parker and twenty-two co-workers in the Bureau of Risk Management against the State and CWA. Parker alleged that the State had reclassified Risk Management employees as confidential and continued to deduct dues from the employees payable to CWA. Parker alleged that CWA had violated the Act by refusing to process a grievance for a Risk Management employee, and continuing to receive dues from the confidential Risk Management workers.

The Director found that the charge against the State and CWA was timely filed. However, the Director found that the State did not violate the Act because it could not cease dues deductions from employees without the employee's written authorization pursuant to N.J.S.A. 52:14-15.9e. The Director found that CWA's conduct did not violate the Act because they have not refused to represent Risk Management employees; rather, CWA has been actively contesting the State's removal of the employees from the unit through an unfair practice charge filed in 1991 which will soon be heard at hearing. Additionally, employees are eligible for voluntary union membership regardless of unit status so CWA could continue to accept dues from the employees whose unit status is contested. Finally, the Director found that the individuals lacked standing to file a charge contesting their removal from the unit.

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Appearances:

For the Respondent, State of New Jersey
Frederick P. DeVesa, Acting Attorney General
(Michael L. Diller, Deputy Attorney General)

For the Respondent, CWA
Weissman and Mintz, attorneys
(Steven P. Weissman, of counsel)

For the Charging Parties,
Zita and Gusciora, attorneys
(W. Reed Gusciora, of counsel)

REFUSAL TO ISSUE COMPLAINT

On March 17, 1993, Karen Parker et al.^{1/} filed an unfair practice charge against the State of New Jersey alleging it violated 5.4(a)(1), (2), (3), (4), (5), (6) and (7)^{2/} of the New Jersey

^{1/} Twenty-two co-workers in the Dept. of Treasury-Bureau of Risk Management filed this charge.

^{2/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") and against CWA Local 1033 alleging it violated 5.4(b) (1), (2), (3), (4) and (5)^{3/} of the Act. Parker alleges that Bureau of Risk Management employees were reclassified as confidential employees, but the State continued to deduct union dues from these employees and forwarded them to the CWA despite the employees demand for a dues refund.

2/ Footnote Continued From Previous Page

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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act. (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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

3/ 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. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (5) Violating any of the rules and regulations established by the commission."

The charge was amended on April 1, 1993 to allege that Risk Management employees were reclassified as confidential in December 1988, but neither the State nor CWA advised them that they were no longer eligible for union membership. The employees claim they were unaware of their confidential status until employee Geraldine Boston asked the CWA to process her grievance in December 1992 and a CWA representative informed her that they could not represent her. Since December 1992, twelve employees have stopped their dues deduction; however ten others have not. They are seeking a dues refund retroactive to 1988 and an order to cease dues deductions for the remaining affected employees.

The State maintains that N.J.S.A. 52:14-15.9e compels it to honor employee organization dues deduction cards until an employee executes a written withdrawal authorization. To halt dues deduction without the individual's written authorization would be unlawful. Further, CWA knew, at least in 1991, that the State viewed the Risk Management employees as confidential, for CWA filed an unfair practice charge, CO-92-50, challenging the State's unilateral removal of these employees from CWA negotiations units. Therefore, the State argues that CWA's knowledge of the State's action acts as constructive notice to the employees and this 1993 charge is untimely filed.

CWA asserts that it has always treated the Risk Management employees as union members and believes that it still represents these employees. CWA conducted worksite meetings for Risk

Management employees, sent them mailings and newsletters, and assigned shop stewards to their location. In 1991, when CWA learned that the State identified these employees as confidential, CWA filed an unfair labor practice charge, docket no. CO-92-50, challenging the State's unilateral removal of the positions from CWA units. The case is scheduled for hearing before a Commission Hearing Examiner in October 1993. Additionally, CWA contacted the Human Resources section of the Treasury Department in 1992 asserting that even if Boston could not file a grievance under the CWA contract, employees still have a constitutional right to file a grievance.

N.J.S.A. 34:13A-5.4(c) states:

...no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6 months period shall be computed from the day he was no longer so prevented.

See No. Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 955 (¶4026 1977). See also, N.J. Turnpike Employees' Union, Local 194, IFPTE, AFL-CIO, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979).

The six month limitations period runs from the date an employee receives notice of his employer's determination concerning a given matter. See Up. of Berkeley, D.U.P. No. 86-2, 11 NJPER 543 (¶16190 1985); US Postal Service, 271 NLRB No. 61, 116 LRRM 1417 (1984).

The employees were not directly informed by the State of their removal from their negotiations units. They learned of the

State's position from CWA when the CWA told Boston it could not represent her in her grievance in December 1992. The charge against CWA and the State was filed in March and amended in April 1993, well within the six month statute of limitations.

Therefore, it appears that the charge against the State is timely filed.

N.J.S.A. 52:14-15.9e establishes a written authorization procedure for employees seeking to have deductions made from their compensation and specifically prescribes when notices of withdrawal become effective. It provides, in 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 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.

In State of New Jersey (Local 195), P.E.R.C. No. 85-72, 11
NJPER 53 (¶16028 1984), State of New Jersey, P.E.R.C. No. 86-100, 12

NJPER 209 (¶17083 1986), the Commission found that the State violated the Act when it discontinued dues deductions for employees transferred between two negotiations units who did not execute revocation/withdrawal cards. See also Howell Township, P.E.R.C. No. 94-19, 19 NJPER ____ (¶_____ 1993); Greater Egg Harbor Reg. School District, D.U.P. No. 87-19, 13 NJPER 516 (¶18194 1987); Camden Cty Bd. of Chosen Freeholders, D.U.P. No. 79-18, 5 NJPER 58 (¶10038 1979).

The State cannot cease dues deduction authorization until an individual revokes their dues deduction. Therefore, the State has not violated the Act by refusing to discontinue dues deductions for these employees. Employees are eligible for voluntary union membership regardless of whether their union is their unit's exclusive majority representative.

CWA's conduct does not violate the Act. Since 1991, when the issue of the unit status of the Risk Management employees arose, CWA challenged the State's action. CWA contends it still represents these employees and the State's action was improper. See CO-H-92-50. Additionally, CWA requested that the State allow Boston to pursue her grievance under her constitutional right to file a grievance. The CWA has not abandoned its claim that it represents Risk Management employees.

Moreover, since the CWA is contesting the State's unilateral action in removing employees in the Bureau of Risk Management from the CWA unit, these individuals lack standing to

independently contest the State's action. See, New Jersey Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980) aff'd App. Div. Dkt. No. A-1263-80T2 (1981).

Accordingly, the Commission's complaint issuance standard has not been met and I dismiss the unfair practice charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: October 18, 1993
Trenton, New Jersey