

P.E.R.C. NO. 94-19

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOWELL TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-93-315

TRANSPORT WORKERS UNION OF
AMERICA, AFL-CIO, LOCAL 225-4,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Howell Township Board of Education violated the New Jersey Employer-Employee Relations Act when it refused to forward dues deducted from unit members' salaries to Local 225-4 after the Local had lost a representation election and a new union was certified as a majority representative. The Commission dismisses an allegation that the Board violated the Act when it refused to forward agency fees deducted from other unit members.

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TRANSPORT WORKERS UNION OF
AMERICA, AFL-CIO, LOCAL 225-4,

Charging Party.

Appearances:

For the Respondent, Bathgate, Wegener, Dugan & Wolf,
attorneys (Nancy G. Wright, of counsel)

For the Charging Party, Susan Resch, Secretary-Treasurer

DECISION AND ORDER

On March 8, 1993, the Transport Workers Union of America, AFL-CIO, Local 225-4 filed an unfair practice charge against the Howell Township Board of Education. Local 225-4 alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2) and (3),^{1/} when it refused to forward dues and agency fees

^{1/} These subsections prohibit public employers, their representatives or agents from: " (1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed 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."

deducted from unit members salaries to Local 225-4 after the Local had lost a representation election and a new union was certified as the majority representative.

On April 28, 1993, a Complaint and Notice of Hearing issued. On May 11, the Board filed an Answer. Although the Board admits that it refused to forward the dues and fees, it denies committing an unfair practice. According to the Board, the December election of a new majority representative constituted notice, pursuant to N.J.S.A. 52:14-15.9e,^{2/} that no dues or fees were owed to Local 225-4 as of January 1, 1993.

2/ N.J.S.A. 52:14-15.9e 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 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.

On June 9, 1993, Hearing Examiner Edmund G. Gerber conducted a hearing. The parties submitted documents, stipulated facts, and waived oral argument and the right to file post-hearing briefs.

On June 11, 1993, the Hearing Examiner recommended that the Complaint be dismissed with the exception of the allegation that the Board violated subsection 5.4(a)(1) when it refused to forward dues to Local 225-4. H.E. No. 93-29, 19 NJPER ____ (¶____ 1993). Citing State of New Jersey, P.E.R.C. No. 85-72, 11 NJPER 53 (¶16028 1984), he found that an employee has the right to have dues deducted on behalf of a minority organization. Consequently, he held that the Board violated this right by allowing the election of a new majority representative to serve as an employee's notice that dues were no longer to be deducted on behalf of Local 225-4. However, the Hearing Examiner concluded that the Board did not violate the Act when it refused to forward agency fee deductions to Local 225-4 after a new union had become the majority representative since it was no longer the majority representative and the agency shop clause in its contract was nullified. See FOP (Baran), A.B.D. No. 91-2, 16 NJPER 502 (¶21221 1990). Finally, the Hearing Examiner recommended that the remaining allegations in the Complaint be dismissed for lack of evidence.

The Hearing Examiner served his decision on the parties and informed them that exceptions were due on June 24, 1993. Neither party filed exceptions or requested an extension of time.

We have reviewed the record. The Hearing Examiner's undisputed findings of fact (H.E. at 2-4) are accurate. We incorporate them here.

We hold that the Board violated subsection 5.4(a)(1) of the Act when it refused to forward dues to Local 225-4. In light of this holding, we need not reach the subsection 5.4(a)(2) allegation. The subsection 5.4(a)(3) allegation is dismissed.

ORDER

The Howell Township Board of Education is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of their rights under the Act by refusing to forward dues deducted from its employees' salaries to Local 225-4.

B. Take this action:


1. Forward all dues withheld from employees' salaries to Local 225-4 until such time as dues deductions to Local 225-4 are properly deauthorized.

2. Post in all places where notices to employees are customarily posted copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Board's authorized representative, be posted immediately and be maintained by the Board for at least sixty (60) consecutive days. Reasonable

steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

The subsection 5.4(a)(3) allegation is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Regan was not present.

DATED: August 24, 1993
Trenton, New Jersey
ISSUED: August 25, 1993



NOTICE TO EMPLOYEES

PURSUANT TO

AN ORDER OF THE



PUBLIC EMPLOYMENT RELATIONS COMMISSION

AND IN ORDER TO EFFECTUATE THE POLICIES OF THE

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED,

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of their rights under the Act by refusing to forward dues deducted from our employees' salaries to Local 225-4.

WE WILL forward all dues withheld from employees' salaries to Local 225-4 until such time as dues deductions to Local 225-4 are properly deauthorized.

CO-H-93-315

HOWELL TOWNSHIP BOARD OF EDUCATION

Docket No. _____

(Public Employer)

Dated: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, CN 429, Trenton, NJ 08625-0429 (609) 984-7372

H.E. NO. 93-29

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

In the Matter of

HOWELL TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-93-315

TRANSPORT WORKERS UNION OF AMERICA,
AFL-CIO, LOCAL 225-4,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission find the Howell Township Board of Education committed an unfair practice in a matter brought by the Transport Workers Union, Local 225-4. The TWU was the majority representative of certain employees of the Board. It lost its majority status after a representation election to the Howell Education Association. The Board refused to forward dues deductions and agency fees deducted from unit members' salaries to the TWU. The TWU claims that such conduct violated the Act. Pursuant to N.J.S.A. 52:14-15.9e, the TWU's status as a majority representative is not controlling and when the Board failed to forward collected dues to the TWU, it violated the Act. However, TWU's ouster as the majority representative nullified the agency shop clause of the contract. Therefore, the employer properly suspended forwarding agency fees to the TWU.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

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

In the Matter of

HOWELL TOWNSHIP BOARD OF EDUCATION,

Respondent,

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Docket No. CO-H-93-315

TRANSPORT WORKERS UNION OF AMERICA,
AFL-CIO, LOCAL 225-4,

Charging Party.

Appearances:

For the Respondent,
Bathgate, Wegener, Dugan & Wolf, attorneys
(Nancy G. Wright, of counsel)

For the Charging Party,
Susan Resch, Secretary-Treasurer

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On March 8, 1993, the Transport Workers Union of America, Local 225-4 filed an unfair practice charge with the Public Employment Relations Commission alleging that the Howell Township Board of Education engaged in an unfair practice within the meaning of N.J.S.A. 34:13A 5.4(a) (1), (2) & (3)^{1/} of the New Jersey

^{1/} These subsections 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. (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."

Employer-Employee Relations Act when after the TWU lost a representation election on December 22, 1992 to the Howell Education Association the Board refused to forward dues and agency fees deducted from unit members salaries to the TWU as required by N.J.S.A. 52:14-15.9e.

On April 28, 1993, as Director of Unfair Practices I issued a Complaint and Notice of Hearing. On May 11, 1993 the Board filed an Answer to the Complaint in which it denied the allegations of the unfair practice charge but admitted that it refused to forward the dues it deducted from the salaries of employees to the TWU. The Board asserts that the results of the December 22 election constituted notice within the meaning of N.J.S.A. 52:14-15.9e to the Board's disbursing officer that no dues were owed to the TWU by any of the Board's employees effective January 1, 1993.

A hearing was conducted on June 9, 1993. The parties were given the opportunity to present testimony and evidence and argue orally. The parties agreed the facts in this matter were not in dispute; they declined to call witnesses and each submitted documents in support of their respective positions into evidence without objection. One factual stipulation was received (see below). The parties waived oral argument and the right to file briefs.

FINDINGS OF FACT

The TWU was the exclusive majority representative of all Board employees in the Transportation, Maintenance, Custodial,

Security and Food Service Departments of the Board. These employees are covered by an agreement between the parties which runs from July 1, 1991 to June 30, 1993.

The contract, at Article 18 provides for "Union Dues Deductions":

A. The Board shall deduct from the wages of employees the first pay day of each and every calendar month and remit to the Secretary-Treasurer of the Union regular membership dues, assessments or fines, for those employees who sign authorization cards permitting such payroll deductions.

Article 19 provides for "Agency Fee":

A. If an employee does not become a member of the Union during any membership year (i.e. from September 1st to the following August 31) which is covered in whole or in part by this Agreement, said employee will be required to pay a representation fee to the Union for that membership year. The purpose of this fee will be to offset the employee's per capita cost of services rendered by the Union as majority representative.

Pursuant to a petition for representation brought by the Howell Township Education Association, the Commission conducted a representation election between the TWU and the Association on December 22, 1992, (the employees also had an opportunity to vote for no representation). The Association received a majority of the votes cast and on December 31, 1992 the Education Association was certified by the Commission as the majority representative.

From the time of the election to the present, the Board has continued to deduct dues and fees from the unit employees salary but has kept those funds in an escrow account and refuses to forward them to the TWU.

The parties have stipulated that from the date of the election, December 22, 1992, to the day of the hearing, the TWU has not received a notice from any unit members that they no longer wish to have their dues deducted on behalf of the TWU.

ANALYSIS

N.J.S.A. 52:14-15.9e 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.

This authorization for negotiation of exclusive dues deduction provisions shall not apply to any negotiating unit which includes employees of any local school district or county college.

The employer here is a local school district so the provisions of paragraph three of the statute do not apply.

The Board argues that the election results serve as notice pursuant to 52:14-15.9e that employees wish to suspend their authorized dues deduction on behalf of the TWU. Based on the election results of December 22, 1992, the unit employees, "...elected not to have the Union as majority representative of the Board's employees. The election was well in advance of January 1, 1993 and served as actual, constructive, sufficient, timely notice to the Board's disbursing officer that no dues were owed to the Union by any of the Board's employees effective January 1, 1993. Despite the vote of the Board's employees on December 22, 1992, the Union was seeking to continue to collect dues and fees for 1993."

In State of New Jersey (Local 195, IFPTE) P.E.R.C. 85-72, 11 NJPER 53 (¶16028 1984), the Commission held that dues deduction authorizations run to the union and not the negotiations unit. Dues deductions may be terminated by the employer only when an employee revokes his dues authorization. Employees may have dues deducted on behalf of an organization which does not represent a majority of employees. Subsection 5.3 of the Act grants to employees the right to "assist any employee organization", including a minority organization. The Board's reliance on the election results to refuse to forward dues deductions to the TWU after the election violates its employees right to have dues deducted on behalf of a minority organization. See also, State of New Jersey (Local 195) P.E.R.C. 86-100, 12 NJPER 209 (¶17083 1986), Greater Egg Harbor School District D.U.P. No. 87-19, 13 NJPER 516 (¶18194 1987), Camden County Board of Freeholders (Lakeland Hospital), D.U.P. NO. 79-18, 5 NJPER 59 (¶10038 1979).

The Board has stated it is awaiting the Commission's determination to release the dues it is now holding in escrow. Nevertheless, I believe the Board has failed to state any compelling rationale which justifies its action. Accordingly, I will recommend that the Commission find the Howell Township Board of Education violated subsection (a) 1 of the Act when it failed to forward the deducted dues to the TWU. I will further recommend the Commission order the Board to immediately forward the dues money to TWU Local 225-4.

However, the Board did not violate the Act when it refused to forward agency fee deductions to the TWU. The TWU's defeat in the election nullified the agency shop clause of the agreement. In FOP (Baran) A.B.D. No. 91-2 16 NJPER 502 (21221 1990) the Commission Appeal Board held that:

(An incumbent Union's) ouster as the majority representative nullified the agency shop clause of the agreement, which had already expired. See Modine Manufacturing Co. 216 F. 2d. 326, 329 (6th Cir. 1954) and Milk Drivers, etc. Local 680 v. Cream-O-Land Dairy, 39 N.J. Super. 163, (App. Div. 1956). Modine holds that after employees change their majority representative, the union security provisions of the existing agreement become inoperative ["(the ousted union) could not insist on compensation, namely the membership dues, for the service which it could not continue to give."] Cream-O-Land considered an ousted union's demand to arbitrate five claims after contract expiration, three of which alleged breaches during the term of the agreement of provisions on wages, pension contributions and holiday compensation and two of which demanded adherence to union security provisions. 39 N.J. Super. at 169. The Appellate Division (which cited Modine at 173) barred arbitration over the union security issues. Id. at 177. Thus the courts have distinguished between terms of an agreement which involve recognition of the majority representative and those setting the working conditions of employees. Those contract terms which depend on the right of the contracting union to continue as the majority representative of employees in the unit are nullified when the majority representative is changed, regardless of whether the contract has expired.

I note that the successor Association is not entitled to receive agency fees authorized in the TWU's contract, FOP (Baran). Accordingly, the agency fees held by the Board should be returned to the agency fee payers.

No evidence has been introduced into the record in support of the allegations that the Board violated subsection (a)(2) or (3) of the Act. It is recommended that those allegations be dismissed.

RECOMMENDATION

I recommend the Commission ORDER:

A. The Board cease and desist from:

1. Interfering with restraining, or coercing employees in the exercise of their rights under the Act by refusing to forward dues deducted from its employees salaries to the TWU Local 224-5.

B. The Board take the following affirmative action:

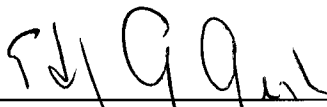
1. Forward all dues withheld from employees salaries to TWU Local 224-5.

2. Return all agency fees collected since December 31, 1992 to the fee payers.

3. Post in all places where notices to employees are customarily posted copies of the attached notice marked as "Appendix A." Copies of such notice shall, after being signed by the Board's authorized representative, be posted immediately and be maintained by the Board for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

4. Notify the Chairman of the Commission within twenty (20) days of receipt of notice what steps the Board has taken to comply with this order.

C. That the remaining allegations be dismissed.



Edmund G. Gerber
Hearing Examiner

Dated: June 11, 1993
Trenton, New Jersey

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from restraining or coercing its employees in the exercise of the rights under the Act by refusing to forward dues deducted from its employees salaries to the TWU Local 224-5; and

WE WILL forward all dues withheld from employees salaries to TWU Local 224-5.

Docket No. CO-H-93-315

Howell Township Board of Education
(Public Employer)

Dated _____

By _____
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

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