

D.U.P. NO. 91-25

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

In the Matter of

BOONTON BOARD OF EDUCATION and
BOONTON EDUCATION ASSOCIATION,

Respondents,

-and-

Docket Nos. CI-91-20
CI-91-21

JUDITH M. KRAMER,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses unfair practice charges filed by Judith Kramer against the Boonton Board of Education and Boonton Education Association. The charges alleged that the Association improperly collected agency fees and that the Board had improperly deducted the fees.

The Director dismissed the charges because they were untimely.

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Appearances:

For the Respondent Board of Education
Vogel, Chait, Schwartz & Collins, attorneys
(Aron Schwartz, of counsel)

For the Respondent Education Association
Bredhoff & Kaiser, attorneys
(Bruce R. Lerner, of counsel)

For the Charging Party
Henry S. Kramer, attorney

REFUSAL TO ISSUE COMPLAINT

On October 16, 1990, Judith Kramer filed unfair practice charges against the Boonton Board of Education ("Board") and the Boonton Education Association ("Association"). Kramer alleges that in April, May and June 1990, the Association violated its duty of fair representation and N.J.S.A. 34:13A-5.8^{1/} by collecting an

1/ This section states:

Payment of the representation fee in lieu of

Footnote Continued on Next Page

agency fee from her paychecks for the September 1989 - February 1990 period, when no current collective negotiations agreement authorized the deductions; that it violated section 5.4(b)(1)^{2/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") by collecting the fees "during periods in which [the Association waived in writing] its claim to an agency fee...."; that it violated section 5.6^{3/} of the Act by "levying a representation

1/ Footnote Continued From Previous Page

dues shall be made to the majority representative during the term of the collective negotiation agreement affecting such nonmember employees and during the period, if any, between successive agreements so providing, on or after, but in no case sooner than the thirtieth day following the beginning of an employee's employment in a position included in the appropriate negotiations unit, and the tenth day following reentry into the appropriate unit for employees who previously served in a position included in the appropriate unit who continued in the employ of the public employer in an excluded position and individuals being reemployed in such unit from a reemployment list. For the purposes of this section, individuals employed on a 10-month basis or who are reappointed from year to year shall be considered to be in continuous employment.

2/ This subsection prohibits 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."

3/ This section states in part:

Where a negotiated agreement is reached, pursuant to section 2 of this act [Section 34:13A-5.5], a majority representative of public employees in an appropriate unit shall be entitled to a representation fee in

fee when membership was not available to all [unit] employees on an equal basis"; that it violated 5.3, 5.4, 5.5^{4/} and 5.6 of the Act

3/ Footnote Continued From Previous Page

lieu of dues by payroll deduction from the wages or salaries of the employees in such unit who are not members of a majority representative; provided, however, that membership in the majority representative is available to all employees in the unit on an equal basis and that the representation fee in lieu of dues shall be available only to a majority representative that has established and maintained a demand and return system which provides pro rata returns as described in section 2(c). The demand and return system shall include a provision by which persons who pay a representation fee in lieu of dues may obtain review of the amount returned through full and fair proceedings placing the burden of proof on the majority representative. Such proceedings shall provide for an appeal to a board consisting of three members to be appointed by the Governor,....

4/ N.J.S.A. 34:13A-5.5(a) and (b) states:

a. Notwithstanding any other provisions of law to the contrary, the majority representative and the public employer of public employees in an appropriate unit shall, where requested by the majority representative, negotiate concerning the subject of requiring the payment by all nonmember employees in the unit to the majority representative of a representation fee in lieu of dues for services rendered by the majority representative. Where agreement is reached it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.

b. The representation fee in lieu of dues shall be in an amount equivalent to the regular membership dues, initiation fees and assessments charged by the majority

by deducting more than 85% of regular membership dues from her paychecks; and by "enforcing collection of monies" for organizations other than the Association; that it violated 5.3 and 5.4(b)(1) of the Act by "refusing to calculate and provide information regarding [her] pay and pay comparisons, while [providing the information to] members of the Association." She also alleges that the Association violated its duty of fair representation by "refusing to honor its written commitment [dated January 4, 1984]...which...exempt[s] [her] from the agency shop provision of the agreement." She asserts that the Association is "absolute[ly] and permanent[ly]" bound by "five years of past practice."

Kramer alleges that the Board breached "its own duty of fair representation" and "assisted" the Association in its breaches of the Act.

On November 5, 1990, the Board filed a letter denying that it engaged in any unfair practice. It asserted that fees were properly deducted under the terms of the current agreement, that other portions of the charge are inapplicable to it as a public employer, and that a dispute over the proper deductible amount is

4/ Footnote Continued From Previous Page

representative to its own members less the cost of benefits financed through the dues, fees and assessments and available to or benefitting only its members, but in no event shall such fee exceed 85% of the regular membership dues, fees and assessments.

not an unfair practice. It also asserts that Kramer's claims were previously adjudicated by the Commission and therefore barred by the doctrine of res judicata; that her claims concerning the proper fee are not unfair practices but are matters for the Public Employment Relations Commission Appeal Board ("Appeal Board"); that Kramer failed to file a request for review under N.J.A.C. 19:17-4.1 and has therefore not exhausted administrative remedies; and that her claims are barred by the statute of limitations.

On November 21, 1990, the Association filed a letter denying it has engaged in any unfair practice and asserting statutory and contractual defenses. It also asserts that Kramer alleges violations of individual contractual agreements only; that a two-tiered dues structure is permissible; that 5.5(b) of the Act authorizes a fee based on "regular membership dues..." which includes amounts transmitted to parent organizations; that Kramer's exclusive remedy is before the Appeal Board; that non-members may be barred from ratification of collective agreements and that Kramer was provided the information requested; and that her charge is untimely filed.

Settlement efforts between January 7 and 14, 1991 failed.

On February 5, 1991, we issued a letter tentatively dismissing the charge.

On February 13, 1991, Kramer filed a response including additional factual allegations.

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charged.^{5/} The Commission has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act.^{6/} The Commission's rules provide that I may decline to issue a complaint.^{7/}

Our Act requires that an unfair practice charge be filed within six months of the occurrence of the alleged unfair practice unless the charging party was "prevented" from filing. N.J.S.A. 34:13A-5.4(c). The Appeal Board requires that a petition seeking a review of a representation fee, "shall be filed within six months after payroll deductions to collect the petitioner's fee have commenced." N.J.A.C. 19:17-4.5.

^{5/} N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice.... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

^{6/} N.J.A.C. 19:14-2.1.

^{7/} N.J.A.C. 19:14-2.3.


Kramer alleges that "since on or about" April 12, 1990, the Association and Board violated the Act in part by deducting an agency fee from her paychecks for the September 1989 to February 1990 period. In contesting our tentative decision finding her charge untimely filed, she asserts that both Respondents received the charge on October 15, 1990, and that under N.J.A.C. 19:10-2.1, the six month period began on April 15, 1990.^{8/}

Assuming that these allegations are true, I find that the charge is still untimely filed because we received and date stamped the charge on April 16, 1990, six months and two days after the alleged unlawful conduct occurred. Kramer also asserts that additional monies were taken from her paychecks on May 15 and June 15, 1990. This effort to change an untimely charge into a timely one must also fail because it is not a "continuing violation." This case concerns the allegedly unlawful commencement of the agency fee deduction -- it is that act alone which could have constituted an unfair practice. Since that deduction occurred on April 12, 1990, and the last day of the six month period was October 14, 1990, the charge was untimely filed on October 16. See Local Lodge No. 1424, Int'l Assn. of Machinists v. NLRB, 362 U.S. 411, 45 LRRM 3212 (1960); Salem Cty. Bd. of Freeholders, P.E.R.C. No. 87-159, 13 NJPER 584 (¶18216 1987).

^{8/} April 12 was a Friday. In computing the time period, the day of the act is not computed. The following day was Saturday. Weekends are not counted, so the time period would begin to run on Monday, April 15.

Having concluded that the charge is untimely filed, I will not address other issues and allegations raised by Kramer's amended charge and initially addressed in our February 5, 1991 letter. Accordingly, the charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: April 11, 1991
Trenton, New Jersey