

H.E. NO. 98-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CERTIFIED SHORTHAND REPORTERS
ASSOCIATION OF NEW JERSEY and
NEW JERSEY STATE JUDICIARY and
OPEIU, LOCAL 32,

Respondents,

-and-

Docket Nos. CI-96-24
CI-96-25
CI-96-26

JOANNE N. YUHASZ,

Charging Party.

SYNOPSIS

A Hearing Examiner grants Respondent CSRA-NJ's motion for summary judgment finding that no genuine issue of material fact exists concerning CSRA-NJ's representative status and that as a matter of law CSRA-NJ was not Charging Party Yuhasz' majority representative at the times of the alleged violations.

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Appearances:

For the Respondent, Certified Shorthand Reporters,
DeVeux & Seidman, attorneys
(Bruce A. Seidman, of counsel)

For the Respondent, New Jersey State Judiciary, Peter
Verniero, Attorney General (R. Brian McLaughlin,
Deputy Attorney General)

For the Respondent, OPEIU Local 32, Spear, Wilderman,
Borish, Endy, Spear & Runckel, attorneys
(Samuel L. Spear, of counsel)

For the Charging Party, McKenna & O'Brien, attorneys
(Keith A. McKenna, of counsel)

HEARING EXAMINER'S RECOMMENDED DECISION
ON MOTION FOR SUMMARY JUDGMENT

On October 24 and 25, 1996, Joanne N. Yuhasz filed
unfair practice charges against the Certified Shorthand
Reporters Association of New Jersey ("CSRA-NJ"), docket number
CI-96-24, the New Jersey State Judiciary, Administrative Office
of the Courts ("AOC"), docket number CI-96-25, and Local 32,

Office and Professional Employees International Union, AFL-CIO ("Local 32"), docket number CI-96-26.^{1/}

In CI-96-24 and CI-96-26, Yuhasz alleges that CSRA-NJ and Local 32, respectively, breached the duty of fair representation by settling her grievance without consulting her on terms she had rejected, failing to represent her and colluding with the employer to create a hostile work environment, to have her transferred to another work site and discourage her from filing grievances.

In CI-96-25, the charging party alleges that the AOC violated the Act by accepting Local 32's settlement of her grievance, by transferring her from the Morris vicinage to the Passaic vicinage and by engaging in a pattern of unfair practices.

An order consolidating all three cases was issued by the Director of Unfair Practices on June 13, 1997. Accordingly, a Complaint and Notice of Hearing was issued on the same date for some, but not all, of the allegations contained in the three charges.^{2/} Notably, a Complaint was

^{1/} Though the named respondent in charge number CI-96-26 is Local 32, CSRA-NJ is treated as a respondent throughout the charge. Except for the named respondent, the allegations contained in charges CI-96-24 and CI-96-26 are identical.

^{2/} Many of the allegations contained in the charges were administratively dismissed. See Certified Shorthand Reporters Assoc. of N.J. et al., D.U.P. No. 97-14, 22 NJPER 336 (¶27175 1996), aff'd in part P.E.R.C. No. 97-137, 23 NJPER ___ (¶ 1997).

issued against CSRA-NJ and Local 32 on only three allegations; the two unions: (1) settled one of Yuhasz' grievances without consulting her and on terms which she had previously rejected, (2) refused to process a grievance filed on June 7, 1995 and (3) colluded with the employer to transfer her by failing to notify her and other union members of a change in the employment contract. I was assigned the hearing examiner.

All three respondents filed Answers by August 27, 1997. As an affirmative defense, Respondent CSRA-NJ asserted that it was not the official majority representative of the charging party at all relevant times complained of, and hence, did not owe her a duty of fair representation.

On November 6, 1997, CSRA-NJ filed a Motion for Summary Judgment with the Commission asserting that as a matter of law it did not violate the Act for it was no longer Yuhasz' labor representative at the times complained of. Pursuant to N.J.A.C. 19:14-4.8, said motion was referred to me for disposition on November 13, 1997.

With the consent of the moving party, I granted Yuhasz' request for an extension to file an answering brief and affidavits by December 1, 1997. I received her opposition papers on December 1, 1997. No other party to this action has opposed the motion.

On December 2, 1997, CSRA-NJ requested an opportunity to file a reply brief. On December 4, 1997, I advised the

parties via telefax and regular mail that the moving party's reply brief was due in my office by December 9, 1997 and the non-moving party's reply papers were due no later than December 16, 1997. No extensions were requested by either party.

In accordance with the deadlines I had set, CSRA-NJ filed reply papers on December 8, 1997. Yuhasz forwarded her reply on December 18, 1997, which I received on December 19, 1997. I do not consider her reply brief in rendering a decision on the motion.

Relying on the briefs and supporting documents, I make the following:

FINDINGS OF FACT

1. Yuhasz is an official court reporter employed by the State of New Jersey Judiciary.

2. CSRA-NJ is the employee organization that represented the official court reporters of New Jersey ("OCRs") in June 1994. On June 28, 1994, the OCRs and Local 32 entered into an agreement entitled, TERMS FOR A POSSIBLE AFFILIATION BETWEEN Official Court Reporters of the State of New Jersey and Local 32, Office and Professional Employees International Union, AFL-CIO. The agreement provided in part:

4. Local 32 shall assist with, and process any and all grievances as requested by the duly authorized representatives of the Official Court Reporters, and provide any and all technical and other assistance necessary for the processing and handling of grievances.

11. Any affiliation between the parties shall be effective for one year from the date of execution. Thirty days prior to the expiration, the Official Court Reporters shall review and assess compliance by O.P.E.I.U. with the agreement, and shall determine by majority vote of Official Court Reporters whether to renew affiliation on a permanent basis.

3. Also on June 28, 1994, Local 32 and CSRA-NJ entered into a separate agreement which provided that the costs of providing legal counsel and professional lobbying services will be borne by Local 32 following the effective date of affiliation; Local 32 will investigate continuing the services of the public relations firm, Issues, Inc., on the current monthly fee basis; and Local 32 will remit \$10 monthly to CSRA-NJ for each member of OCR Local 32.

4. By letter dated July 11, 1994, then president of CSRA-NJ, Kathleen M. Shapiro, informed CSRA-NJ membership that 50 of 51 OCRs in attendance on June 28 voted to change representation by voting to affiliate with Local 32. President Shapiro also wrote that CSRA-NJ "will no longer serve as bargaining agent for official reporters" and "...we respect the decision of the official reporters and withdraw our representation accordingly."

5. I take administrative notice of the following:

(a) On July 22, 1994, the Commission received a timely representation petition filed by Local 32 to be the exclusive majority representative of all OCRs. On the face of the petition, CSRA-NJ is named as the recognized or certified majority representative.

(b) As a result, by letter dated July 28, 1994, the Director of Representation invited CSRA-NJ to intervene in the representation

matter pursuant to N.J.A.C. 19:11-2.7. By letter dated August 8, 1994, CSRA-NJ advised the Director that it had no interest in intervening to represent the OCRs. Consequently, a secret ballot election was arranged without the participation of CSRA-NJ.

(c) The Agreement for Consent Election entered into by the AOC and Local 32, dated August 16, 1994, provided that if a majority of valid ballots cast in the election were in favor of representation by Local 32, then the AOC would grant recognition to Local 32 as the majority representative of all official court reporters employed by the State of New Jersey.

(d) A mail ballot election count was held on September 29, 1994. By a vote of 91 to 3, Local 32 was elected as the majority representative of OCRs. By letter dated December 6, 1994, the AOC, under the signature of Mark Rosenbaum, Chief of Employee Relations, granted recognition to Local 32 as the exclusive representative for all OCRs employed by the State of New Jersey.

6. By letter dated October 11, 1994, Patrick J. Tully, Business Manager of Local 32, advised the court reporters of the result of the representation election. He also enclosed highlights of the tentative labor agreement to cover the period of July 1, 1992 through June 30, 1995, and requested unit members to vote on ratification of the contract by mail ballot. The enclosed highlights of the tentative agreement did not mention any changes to Article VII regarding transfers to other judicial vicinages. In addition, the letter pointed out that Local 32 and "CSRA" were separate organizations requiring separate memberships.

On or about October 30, 1994, the tentative agreement was ratified by unit membership.

7. In a letter to OCRs dated November 28, 1994, Tully again emphasized that Local 32 membership is separate from "CSRA" membership. Tully also advised that reporters who did not join Local 32 as a dues paying member must still pay Local 32 a representation fee.

8. On November 15, 1994, Yuhasz filed two grievances with her employer, the AOC. These grievances were denied at Step 1 of the grievance process on December 7, 1994.

9. Yuhasz also filed four other grievances dated January 4, 1995.

10. By way of memorandum dated January 9, 1995, Yuhasz requested that her union, Local 32, assist her in pursuing various filed grievances including those dated November 15, 1994 and January 4, 1995.

11. On or about March 9, 1995, Yuhasz informed the AOC that she was appealing the Step 2 denials of her grievances to Step 3 of the grievance procedure.

12. By letter dated April 26, 1995, Local 32, in its capacity as majority representative of the OCR bargaining unit and in representing Yuhasz specifically, informed the AOC that it considered certain grievances filed by Yuhasz, including the January 4, 1995 grievances, resolved and withdrawn.

13. In June 1995, Article VII of the labor contract for the period July 1, 1992-June 30, 1995, which pertains to transfers, was changed from the language contained in the labor contract

covering the period immediately preceding, i.e., July 1, 1989-June 30, 1992. This change permitted the AOC to transfer court reporters from one vicinage to another.

14. By letter dated June 2, 1995, from Jeffrey A. Newman, Chief of Reporting Services for the AOC, Yuhasz was advised that she was being transferred to the Passaic vicinage pursuant to Article VII of the 1992-1995 labor contract effective June 19, 1995.

15. On June 7, 1995, Yuhasz filed a grievance contesting the transfer to the Passaic vicinage. She was nevertheless transferred there.

16. The cover sheet to the fully executed labor agreement for the period of July 1, 1992 through June 30, 1995 states:

AGREEMENT
THE JUDICIARY - STATE OF NEW JERSEY

CERTIFIED SHORTHAND REPORTERS
ASSOCIATION AFFILIATED WITH OFFICE
AND PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION
AFL-CIO - LOCAL 32

17. In a memorandum to Supervisors of Court Reporters dated October 18, 1995, Newman referenced the cover sheet of the 1992-1995 labor contract when he stated: "Enclosed please find copies of the Agreement between the Judiciary and the CSRA affiliated with OPEIU, which are to be distributed to all OCRs."

18. By way of an Answer to a Complaint filed by Yuhasz in Superior Court, docket number MRS-L-1452-96, dated July 2, 1996, Local 32 asserted that CSRA-NJ was Yuhasz' "collective bargaining representative until July 1, 1995, when [CSRA-NJ] was merged into

defendant [OPEIU], Local 32, AFL-CIO," and "Local 32 has acted as [Yuhasz'] collective bargaining representative since July 1, 1995."

ANALYSIS

N.J.A.C. 19:14-4.8(d) provides that a motion for summary judgment will be granted:

if it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant...is entitled to its requested relief as a matter of law.

In Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995), the New Jersey Supreme Court enunciated the standard to determine whether a genuine issue of material fact precludes summary judgment. The factfinder must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill at 540. "While 'genuine' issues of material fact preclude the granting of summary judgment,...those that are 'of an insubstantial nature' do not." Brill at 530. If the disputed issue of fact can be resolved in only one way, it is not a "genuine issue" of material fact. Brill at 540.

Nevertheless, a motion for summary judgment should be granted cautiously. The procedure should not be used as a substitute for plenary trial. Baer v. Sorbello, 177 N.J. Super. 182 (App. Div. 1981) and N.J. Dept. of Human Services, P.E.R.C. No. 89-54, 14 NJPER 695 (¶19297 1988).

Yuhasz alleges that CSRA-NJ violated provisions 5.4b(1) and (5) of the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-1 et seq.,^{3/} when it settled a grievance in April 1995 over her objection, refused to process a June 7, 1995 grievance contesting her transfer and by not notifying her and other unit members of a June 1995 change in the contract provision concerning transfers. For her to prevail, CSRA-NJ would have to have been the employee organization representing her at the time of the alleged violations.

To substantiate her claim that CSRA-NJ was her majority representative at the time of the alleged violations, Yuhasz relies on the Terms for a Possible Affiliation [Agreement] Between Official Court Reporters of the State of New Jersey and Local 32, Office and Professional Employees International Union, AFL-CIO, the assertion by Local 32 that it did not become majority representative until July 1, 1995, contained in its Answer to Superior Court action, MRS-L-1452-96, and the fact that Jeffrey A. Newman, Chief of Reporting Services for the AOC, referred to the "CSRA" as affiliated with OPEIU in an October 18, 1995 memorandum.

The moving party, CSRA-NJ, on the other hand, maintains that as a matter of law it was not the majority representative of

^{3/} These provisions 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. (5) Violating any of the rules and regulations established by the commission."

the court reporters at the time of the alleged violations. It relies on the September 29, 1994 representation election conducted by the Commission and subsequent recognition of Local 32 as majority representative by the AOC on December 6, 1994, a July 1994 correspondence by the CSRA-NJ stating it was no longer majority representative, correspondence of October and November 1994 sent by Local 32 indicating that it was the majority representative, letters sent by Yuhasz, herself, after December 6, 1994, to only Local 32 requesting help with her grievances and the fact that Local 32, not CSRA-NJ, was the organization that resolved Yuhasz' grievances over her objection.

For the reasons stated below, I grant CSRA-NJ's motion for summary judgment and dismiss charge CI-H-96-24 in its entirety and any reference to CSRA-NJ in charge CI-H-96-26.

The Commission has primary jurisdiction over the interpretation and implementation of the Act. N.J.S.A. 34:13A-5.2, Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978) and Bergen Cty. Freeholders Bd. v. Bergen Cty. Pros'r., 172 N.J. Super. 363, 369 (App. Div. 1980).

N.J.S.A. 34:13A-6d provides in part that:

The commission, through the Division of Public Employment Relations, is hereby empowered to resolve questions concerning representation of public employees by conducting a secret ballot election or utilizing any other appropriate and suitable method designed to ascertain the free choice of the employees....All of the powers and duties conferred or imposed upon the division that are necessary for the administration of this subdivision...are to that extent hereby made applicable.

Pursuant to this power, the Commission held an election in the instant matter on September 29, 1994 which resulted in Local 32 being elected as the exclusive majority representative of all official court reporters employed by the State of New Jersey. Additionally, in accordance with an Agreement for Consent Election prepared by the Commission and entered into by the parties under the authority of the Commission, the AOC recognized Local 32 as the majority representative on December 6, 1994.

As a matter of law, since at least December 6, 1994, Local 32 has been the exclusive majority representative of all court reporters employed by the AOC.^{4/} All of the acts and omissions complained of by the charging party against CSRA-NJ occurred after December 6, 1994 (Local 32's settlement of grievances occurred in April 1995, the alleged refusal to process a grievance occurred in June 1995 and the Article VII modification and alleged failure to notify union membership also occurred in June 1995.) At those times, CSRA-NJ was no longer the majority representative of Yuhasz' negotiations unit, and therefore, did not owe her a duty of fair representation. The disputed issue of fact of whether CSRA-NJ was the court reporters' majority representative during the times of the alleged violations can be resolved only one way. Thus, there is no "genuine issue" of material fact and summary judgment is granted. Brill at 540.

Both Yuhasz' and CSRA-NJ's submissions illustrating what certain parties thought and how certain parties behaved are not

^{4/} For the purposes of deciding this motion, I need not reach the issue of which labor organization was the majority representative between September 29 and December 6, 1994.

determinative. CSRA-NJ declined to intervene in the representation petitioned filed by Local 32. Once AOC recognized Local 32 as majority representative pursuant to the election, Local 32, and Local 32 alone, became the exclusive majority representative under law.

I note that the "Terms for a Possible Affiliation" agreement relied on by Yuhasz is between OCRs and Local 32, not CSRA-NJ and Local 32. Nowhere in the entire document is CSRA-NJ even mentioned. Whatever the import of this agreement appears to be, it is an internal union matter, analogous to the by-laws and constitution of a union, an area in which the Commission has been historically hesitant to intervene. City of Jersey City, P.E.R.C. No. 83-2, 8 NJPER 563 (13260 1982). Further, I find Local 32's averment that it was not majority representative until July 1, 1995, self-serving and in error as a matter of law. Finally, Newman's reference to CSRA's affiliation with Local 32 was just a way to describe the document he wanted distributed and was not intended to be his opinion on who was the majority representative. Even assuming Newman believed that the court reporters were represented by CSRA and Local 32 jointly, I find that his opinion is not controlling.

DECISION

Accordingly, I grant the motion for summary judgment. All allegations against Respondent CSRA-NJ are dismissed.



Perry O. Lehrer
Hearing Examiner

Dated: December 24, 1997
Trenton, New Jersey