

P.E.R.C. NO. 85-72

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-84-187-1

LOCAL 195, IFPTE,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the State of New Jersey improperly discontinued union dues deductions from the paycheck of a member of Local 195, IFPTE when it transferred that employee from one negotiations unit represented by Local 195 to another negotiations unit represented by Local 195.

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Appearances:

For the Respondent, Hon. Irwin I. Kimmelman,
Attorney General of New Jersey
(Michael L. Diller, Deputy Attorney General)

For the Charging Party, Oxfeld, Cohen & Blunda, Esqs.
(Sanford R. Oxfeld, Of Counsel)

DECISION AND ORDER

On January 27, 1984, Local 195, IFPTE ("Local 195") filed an unfair practice charge against the State of New Jersey ("State") with the Public Employment Relations Commission. The charge alleges that the State violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1), (2), (3), (5), and (7),^{1/}

^{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; (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; and (7) Violating any of the rules and regulations established by the commission."

when, after it transferred an employee from a position in one unit represented by Local 195 to a position in another unit represented by Local 195, it stopped deducting Local 195 dues from that employee's paycheck even though the employee had never revoked his membership in Local 195.^{2/}

On July 2, 1984, the Administrator of Unfair Practices issued a Complaint. On July 12, 1984, the State filed its Answer. It admitted that when it transfers an employee out of a collective negotiations unit, it stops that employee's union dues deductions until the employee reauthorizes dues deductions. It further averred that after an employee is transferred into a position in a different negotiations unit, N.J.S.A. 52:14-15.9e prohibits the continued deductions of union dues until the employee reauthorizes deductions in writing.

On July 24, 1984, the parties stipulated certain facts and exhibits. On September 13, 1984, the Administrator of Unfair Practice Procedures confirmed that the parties had agreed to stipulate certain other exhibits. The parties then waived a hearing and a Hearing Examiner's report and requested that the Commission decide this matter based upon the charge, the Complaint, the Answer, the stipulated facts and exhibits, and the parties' briefs.

The parties have stipulated that:

1. The State of New Jersey (State) is a public employer within the meaning of the New Jersey Employer-Employee Relations Act ("Act") and at all

^{2/} Paragraph 4 of the charge also contained other allegations which Local 195 later withdrew.

relevant times herein has been the employer of Joseph Ash.

2. Local 195, IFPTE, AFL-CIO ("Local 195") is an employee representative within the meaning of the Act. Local 195 is the exclusive representative of employees in a negotiations unit consisting of Operations, Maintenance and Services employees (Operations Unit) of the State of New Jersey. Local 195 and Local No. 518, N.J. State Motor Vehicle Employees Union, SEIU, AFL-CIO ("Local 518") are joint employee representatives of a unit of Inspection and Security employees (Inspection and Security Unit) of the State of New Jersey. The relevant contractual document is attached hereto and is made a part hereof in its totality. [3]

3. In or about 1972, Joseph Ash became employed as an Equipment Operator within the State Department of Transportation. The Equipment Operator title is a title that has been placed within the Operations Unit since the creation of that unit on April 27, 1971 with the attendant certification of Local 195. Ash, a member of the Operations Unit, was also a member of Local 195. Pursuant to a dues deduction authorization made in or about 1968 under N.J.S.A. 52:14-15.9, the State has deducted regular dues payments from the salary of Ash for transmittal to Local 195.

4. On October 1, 1983, Ash was promoted within the Department of Transportation to the nonsupervisory position of Highway Inspector. This position is in the Inspection and Security Unit. At the time of his promotion, the State ceased deducting dues payments to Local 195. Upon Ash's promotion, Ash was neither the subject of dues deductions nor agency fee assessments for a period of approximately six weeks. Thereafter, the State commenced deducting agency fee assessments from Ash's salary.

5. At no time relevant herein has Ash revoked his initial dues authorization request to have the State transmit dues to Local 195. Upon his promotion, Ash did not execute a dues deduction authorization with respect to membership in any employee representative. Pursuant to a new dues authorization executed by Ash, on or about January 20, 1984, the State later resumed Ash's dues deductions to Local 195.

6. In the Inspection and Security Unit dues deductions of Highway Inspectors are transmitted by the State

[3] The contractual Booklet also covers employees in the Craft Unit represented by Local 195.

to Local 195, and not to Local 518.

The parties have introduced as exhibits the certifications and contracts referred to in the stipulated facts. One contract covers all employees represented in both the operations unit and the inspection and security unit. Article VI, entitled Dues Deduction, provides:

A. The State agrees to deduct from the pay of any employee in the Operations, Maintenance and Services and Crafts Unit, the dues of Local 195, International Federation of Professional and Technical Engineers, AFL-CIO, and from the pay of any employee in the Inspection and Security Unit the dues of Local No. 195, International Federation of Professional and Technical Engineers, AFL-CIO, or Local No. 518, New Jersey State Motor Vehicle Employees Union, SEIU, AFL-CIO, provided the employee makes such request, in writing, on proper form to the Office of the Treasurer of the State.

Dues so deducted by the State shall be transmitted to Local No. 195, International Federation of Professional and Technical Engineers, AFL-CIO or Local No. 518, New Jersey State Motor Vehicle Employees Union, SEIU, AFL-CIO, as may be appropriate.

The Union shall certify to the State the amount of Union dues and shall notify the State of any change in dues structure thirty (30) days in advance of the requested date of such change. The change shall be reflected in payroll deduction at the earliest time after receipt of the request.

Where an employee's dues deduction is discontinued, the Union shall be provided with the State's reason for this discontinuance.

B. Dues deductions for any employee in this negotiating unit shall be limited to the exclusive majority representative. Employees shall be eligible to withdraw such authorization only as of July 1 of each year provided the notice of withdrawal is filed timely with the responsible payroll clerk.

In addition, the parties have introduced as exhibits a Local 195 membership application and an employee organization dues deduction

authorization card (Treasury Form DDF 20148). The latter provides, in part:

I hereby authorize the State of New Jersey to make biweekly deductions from my salary in the amount of \$_____, (or for such other amounts as may be authorized by amendment to the dues schedule of the organization) for dues payable to the Treasurer of the employee organization designated below. I understand that this authorization shall remain in effect unless cancelled by me in writing and that such cancellation shall become effective either on the first pay day following January 1 or July 1, in accordance with my current negotiated contract. 4/

Local 195 has filed a brief in which it asserts that N.J.S.A. 52:14-5.9e does not authorize the State, in the absence of a written authorization from the affected employee, to stop dues deductions simply because that employee, who continues to belong to and be represented by the same employee organization, has been transferred from one negotiations unit to another.

The State has filed a brief and reply in which it asserts that N.J.S.A. 52:14-5.9e obligates it, even in the absence of a written authorization from the affected employee, to stop dues deductions when an employee is transferred from one negotiations unit to another and the two units are separately certified units with contracts containing exclusivity clauses applying to each unit individually.

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

4/ The parties further stipulated that the current dues deduction authorization card contains the same language as the card used in 1972.

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.

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.

We believe, under all the circumstances of this case, that the failure to withhold dues in this case violated this statute.

Under the first paragraph of N.J.S.A. 52:14-15.9, Joseph Ash held employment for the State and was paid by the New Jersey Department of the Treasury. He made known to the Treasury Department his desire to have deductions made from his compensation for the purpose of paying dues to Local 195, a bona fide employee organization of which Ash is a member. The State was therefore obligated to make the requested deductions and did so until Ash

was transferred.

Under the second paragraph of N.J.S.A. 52:14-15.9e, a written authorization may be withdrawn if the employee files a notice of withdrawal with the disbursing officer. Ash, however, never filed such a notice with the Department of the Treasury.

Based on the first two paragraphs of N.J.S.A. 52:14-15.9e, it appears that the State had an obligation to deduct, and Local 195 had a right to receive, membership dues from Ash's paycheck in the absence of an express written revocation from Ash. The nub of this case is whether the third paragraph of N.J.S.A. 52:14-15.9e operates to revoke by law Ash's previous authorization.

The third paragraph of N.J.S.A. 52:14-15.9e was added in 1977. The Senate Committee on State Government Federal and Interstate Relations and Veterans Affairs issued a statement concerning the bill (A-2125) leading to this paragraph. That statement provided in part:

This bill amends Article 14 of Title 52 which provides for the deduction of dues for employee organizations from the payroll of public employees upon the written authorization of such employees. The present language of the statutes permits public employees to designate, in writing, to the proper disbursing officer "a bona fide employee organization" which shall be the recipient of dues deducted from their pay. The law does not explicitly require that the organization so designated actually be the recognized bargaining representative of the employees. It has been the case, that some public employees have assigned their dues to organizations that don't represent them at the bargaining table.

The purpose of this bill is to amend the present language to permit the specific designation, in a collectively negotiated agreement, of the "duly certified majority representative" as the sole recipient of dues deducted from the employees' payroll.

Any payment of dues to an employee organization other than the "duly certified majority representative" would be terminated as of the July 1 next succeeding the date on which the notice of withdrawal is filed.

Under the circumstances of this case, we reject the State's contention that the third paragraph of N.J.S.A. 52:14-15.9e obligated it to stop deducting dues from Ash's paycheck. It is true that the contract covering employees in Ash's new unit -- the inspection and security unit -- limits dues deductions in that unit to the majority representative and implicitly requires the cessation of deductions to other employee negotiations. Had Ash, for example, previously authorized payroll dues deductions on behalf of CWA, his transfer to the inspection unit represented by Local 195, IFPTE/Local 518, SEIU might have terminated, in accordance with N.J.S.A. 52:14-15.9e and the negotiated exclusivity clause, his dues deductions to CWA.^{5/} Here, however, Ash's previous dues deductions in his former unit went to precisely the same organization that is his majority representative, and the recipient of all dues deductions from highway inspectors, in the new unit. Indeed, the same collective negotiations agreement covers employees in Ash's old and new units and contemplates Local 195's exclusive right to receive dues deductions from employees in both units.^{6/} Under these circumstances, it would be a strained interpretation of N.J.S.A. 52:14-15.9e to hold that a majority representative was not entitled to continue to receive dues deductions from one

^{5/} We express no opinion on the timing of such a termination under the last sentence of N.J.S.A. 52:14-15.9's third paragraph.

^{6/} Local 518, of course, may also receive dues deductions from some employees in the inspection unit, but the parties have stipulated that Local 195 is entitled to all dues deductions from highway inspectors such as Ash.

of its members because it had negotiated protection against dues deductions favoring other employee organizations.

Further, union membership is not synonymous with unit placement and dues deduction authorizations run to the union, not to the negotiations unit. Thus, in Union Council No. 8, NJCSA v. Housing Auth. of City of Elizabeth, 124 N.J. Super. 584 (L. Div. 1973), the Court held that the employer was obligated, upon the request of supervisory employees, to deduct and transmit their union dues to an organization that represented non-supervisory employees. The third paragraph of N.J.S.A. 52:14-15.9e does not change the Court's interpretation of the first two paragraphs of N.J.S.A. 52:14-15.9e and only bars continued dues deductions when an exclusivity clause exists and the recipient union is not the majority representative. Here, Joseph Ash worked for the same employer, belonged to the same union, was represented by that union at the negotiations table, and had a dues deduction card on file at all times. Under N.J.S.A. 52:14-15.9e, and Union Council No. 8, supra, his transfer from one negotiations unit to another did not automatically terminate his dues deductions and these dues deductions had to continue absent the occurrence of one of the two conditions for termination specified in the statute. Again, neither statutory condition occurred: Ash did not revoke his authorization in writing, and the exclusivity clause in Local 195's contract did not preclude it (rather than other organizations) from continuing to receive Ash's dues deduction. Accordingly, we hold that the State violated subsection 5.4(a)(1) and (2)

of the Act when it stopped deducting dues from Ash's paycheck.^{7/}

We now consider the appropriate remedy: The parties stipulated that following Ash's October 1, 1983 transfer, the State stopped dues deductions from Ash's paycheck for approximately six weeks and then deducted representation fees from Ash's paycheck until January 20, 1984 when Ash reauthorized dues deductions to Local 195. Local 195 represents that Ash paid to Local 195 the dues the State withheld. Given this representation, it appears that Local 195 has not suffered any economic harm requiring Commission action beyond a declaration of the parties' rights and obligations.^{8/}

ORDER

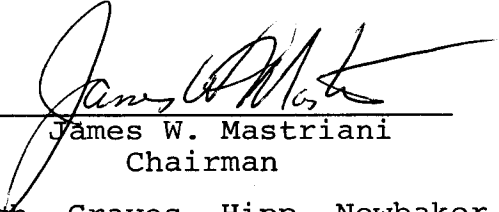
The Public Employment Relations Commission declares that Local 195, IFPTE had a right to receive, and the State of New Jersey had an obligation to deduct, dues from the paycheck of Joseph Ash when it transferred him from a position in one nego-

^{7/} The Complaint also alleged violations of subsections 5.4(a) (3), (5), and (7). There is no evidence to support these alleged violations and we dismiss them. We also note that the State's brief alludes to another case pending before a Hearing Examiner and to other unit configurations of State employees. We express no opinion concerning the facts of that case or the propriety of dues deductions following transfers to and from other State units.

^{8/} Local 195's representation does not make this case moot. The parties have a fundamental dispute about the interpretation of N.J.S.A. 52:14-15.9e and this dispute, in the absence of immediate resolution, may recur whenever there is a transfer of a Local 195 member between units represented by Local 195. We also point out that we will not exercise unfair practice jurisdiction over cases in which an employer, in an isolated case or cases, inadvertently and in good faith fails to withhold dues it should have withheld.

tiations unit represented by Local 195 to a position in another negotiations unit represented by Local 195.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Graves, Hipp, Newbaker and Wenzler voted in favor of this decision. None opposed. Commissioner Suskin was not present at the time of the vote.

DATED: Trenton, New Jersey
December 19, 1984
ISSUED: December 21, 1984