

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY and
NEW JERSEY STATE CORRECTIONS
OFFICERS ASSOCIATION/FOP
LODGE 200,

Respondents,

-and-

Docket No. CO-2005-092

STATE CORRECTIONS OFFICERS PBA
LOCAL 105 and NEW JERSEY STATE
PBA and INDIVIDUALS,

Charging Parties.

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CI-2005-014

JOSEPH MARTIN,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants the State of New Jersey's motion for summary judgment and dismisses a Complaint with regard to the allegation that the August 12, 2004 representation fees were deducted before the establishment of a demand and return system. The Commission grants the summary judgment motion of certain named Individuals as to the requirement that nonmembers be afforded the information described in N.J.A.C. 19:17-3.3 at least 30 days prior to the commencement of fee deductions. The motion is otherwise denied. The Commission orders the New Jersey State Corrections Officers Association/FOP Lodge 20 to refund the August 12 and August 26 and September 9, 2004 representation fees to the named charging parties.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, State of New Jersey, Peter C. Harvey, Attorney General (George N. Cohen, Deputy Attorney General)

For the Charging Parties (CO-2005-092), Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys (Robert A. Fagella, of counsel; Colin M. Lynch, on the brief)

For the Charging Party (CI-2005-014), Joseph Martin, pro se

DECISION

The case comes to us on renewed cross-motions for summary judgment. In June 2004, New Jersey State Corrections Officers Association/FOP Lodge 200 replaced State Corrections Officers PBA Local 105 as the majority representative of certain law enforcement officers employed by the State of New Jersey. On July 29 and August 12, 2004, the public employer deducted representation fees from the paychecks of nonmembers of the new majority representative and transmitted the fees to the FOP. An earlier decision ordered the return of the July 29 fees to the named charging parties. P.E.R.C. No. 2006-2, 31 NJPER 236 (¶90 2006). These motions address subsequent fee deductions. The August 12 fees are being held in escrow.

Local 105 and the New Jersey State PBA and 28 named individuals have filed an unfair practice charge alleging that the employer and the FOP violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when fees were deducted from paychecks and transmitted to the FOP without a negotiated agreement authorizing these deductions, a demand and return system allowing employees to object to the amount of the fees, or an adequate explanation to employees of the basis for the fees. In addition, Joseph Martin has filed a charge against the State (CI-2005-014) making similar allegations.

On July 28, 2005, we granted partial summary to Joseph Martin and the other named individual charging parties and ordered the State and the FOP to stop collecting and distributing representation fees without first complying with all statutory and regulatory requirements for the collection of such fees. We also ordered the State and the FOP to refund to Joseph Martin and the other named charging parties the representation fees collected on July 29, 2004. We denied the motion for summary judgment concerning the August 12 representation fees without prejudice to the parties refiling their motions within 21 days with supporting certifications and documents that specify when the employer and the FOP entered into an agreement for the collection of representation fees, and when the FOP complied with all the other statutory and regulatory requirements associated with the development of a demand and return system. We denied the respondents' cross-motions for summary judgment.

On August 26, 2005, the charging parties in CO-2005-092 and the State refiled their motions. No responses have been filed.

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8(d); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954). The undisputed facts in the

following chronology are derived from our prior decision and the certifications filed in support of these motions.

June 4, 2004 - FOP replaces PBA as majority representative.

July 28, 2004 - PBA counsel notifies FOP and the Director of the employer's Office of Employee Relations that fees cannot be legally deducted until there is a written agreement to do so and until a demand and return system is in place.

July 29, 2004 - Employer deducts fees from bi-weekly paychecks and transmits them to FOP.

August 4, 2004 - Employer convenes a meeting with FOP and PBA. FOP agrees to place August 12 fees in escrow. Employer tells FOP that if a demand and return system is not in place by August 12, centralized payroll will discontinue payroll deductions.

Prior to August 12, 2004 - Employer is informed by FOP counsel that demand and return system is in place.

August 12, 2004 - FOP counsel notifies PBA counsel in writing that Demand and Return System, Formula for Fee, Escrow Account Information, and Budget are being sent to all nonmembers. FOP Counsel states that FOP is now in compliance and that any possible unfair practice charge can address only the July 29 deductions. Attached Notice To Nonmembers dated August 6, 2004 includes amount of fee, location of escrow account and interest rate, a list of budgeted expenses dated June 30, 2005 that sets forth 31 categories of excludable and non-excludable expenses, and the name of the CPA firm that prepared the budget.

August 12, 2004 - Employer deducts fees from bi-weekly paychecks and transmits them to FOP which places them in escrow pursuant to agreement between PBA and FOP. PBA President asserts that nonmembers did not receive the notice prior to the August 12 deduction.

June 24, 2005 - Charging parties' counsel sends letter to FOP counsel invoking demand and return system and requesting treasurer's report providing actual expenditures compared to projected expenditures in August 6 notice.

July 11, 2005 - FOP counsel notifies charging parties' counsel that he met with FOP accountant on July 8 and will

forward final computations applicable to PBA counsel's clients.

July 29, 2005 - Charging parties' counsel sends final request for audited statement of all expenditures made in last year.

N.J.A.C. 19:17-3.3 is a regulation of the PERC Appeal Board.

It governs the collection of representation fees and requires that:

(a) Prior to the commencement of payroll deductions of the representation fee in lieu of dues for any dues year, the majority representative shall provide all persons subject to the fee with an adequate explanation of the basis of the fee, which shall include:

1. A statement, verified by an independent auditor or by some other suitable method of the expenditures of the majority representative for its most recently completed fiscal year. The statement shall set forth the major categories of expenditures and shall also identify expenditures of the majority representative and its affiliates which are in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment or applied toward the cost of benefits only available to members of the majority representative.

2. A copy of the demand and return system established by the majority representative pursuant to N.J.S.A. 34:13A-5.6, including instructions to persons paying the representation fee in lieu of dues as to how to request review of the amount assessed as a representation fee in lieu of dues.

3. The name and address of the financial institution where the majority representative maintains an account in which to escrow portions of representation fees in lieu of dues which are reasonably in dispute. The interest rate of the account in effect on the date the notice required by (a) above is issued shall also be disclosed.

4. The amount of the annual representation fee in lieu of dues, or an explanation of the formula by which the representation fee is set, and the schedule by which the fee will be deducted from pay.

(b) The majority representative shall provide a copy of the demand and return system referred to in (a)2 above to the public employer.

In addition, N.J.A.C. 19:17-4.1 provides, in relevant part:

(a) Each nonmember shall be afforded a period of at least 30 days after the majority representative has provided the information described in N.J.A.C. 19:17-3.3(a) within which to file a request for review of the amounts assessed by the majority representative as the nonmember's representation fee in lieu of dues.

It is an unfair practice for a majority representative to fail to comply with these requirements. Camden Lodge No. 35 (Rodriguez), P.E.R.C. No. 95-42, 21 NJPER 40 (¶26025 1994).

We first address the employer's motion for summary judgment. Both charges allege that the employer deducted representation fees before a demand and return system was in place in violation of N.J.S.A. 34:13A-5.6. It is now undisputed that the demand and return system was established by the time of the August 12, 2004

fee deduction. The charging parties still challenge the validity of the system. However, a public employer is obligated to ensure only the existence, not the validity of a demand and return system. See District 65, UAW and Cumberland Cty., P.E.R.C. No. 87-72, 13 NJPER 57 (¶18025 1986), aff'd NJPER Supp.2d 196 (¶173 App. Div. 1988), certif. den. 114 N.J. 308 (1988). We therefore grant the employer's motion for summary judgment and dismiss the Complaint as to the public employer with regard to this issue.

We next address the charging parties' motion for summary judgment. They argue that:

- The FOP has failed to distribute a notice detailing the basis of its fee calculation for the current year based upon actual expenditures.

The regulations of the Public Employment Relations Commission Appeal Board require that the statement of expenditures that is sent to nonmembers be of the majority representative's most recently completed fiscal year. N.J.A.C. 19:17-3.3(a)(1). For most representatives, that is the prior year. A new representative such as the FOP does not have a prior year so the fee calculation need not be based upon actual expenditures. Accordingly, a reasonable projection is permitted. See In re Baran, A.B.D. No. 91-2, 16 NJPER 502 (¶21221 1990) (new representative that bases fee on experience of predecessor or its own estimate of chargeable expenses does not per se violate act).

The FOP properly based its initial year of fee deductions on projected expenditures.^{1/}

- The FOP has failed to establish a fiscal or dues year, as required by Commission regulations, for purposes of permitting fee payers to object to the amount of the fee.

Appeal Board regulations require a majority representative that collects fees to establish a fiscal year and a dues year.

The dues year may be the calendar year or any other 12 month period that is not prior to the start of the fiscal year.

N.J.A.C. 19:17-3.1 and 3.2. While the FOP's notice does not state the period it covers, it is labeled "Fiscal budgeted expenses June 30, 2005." Implicitly this covers a fiscal year from July 1, 2004 to June 30, 2005. For purposes of this motion, we will assume a dues year covering the same period. We do not believe that the lack of a more specific announcement of a dues year necessarily precluded the FOP from receiving fees for its first year of representation, so long as nonmembers were given a right to request review of the amounts assessed pursuant to N.J.A.C. 19:17-4.1.

^{1/} The charging parties contend that in June and July 2005, they requested that the FOP supply them with a statement of its actual prior year expenditures. We have concluded that the notice sent out by August 12, 2004 was properly based on the projected expenditures during the FOP's first year as a representative. The FOP did not need to later supplement that notice for the first year. Whether the FOP has fulfilled the requirements for fee deductions for a dues year commencing in July 2005 is the subject of another unfair practice charge (CO-2006-084).

- The Notice to Nonmembers fails to provide sufficient information to nonmembers to enable them to decide whether to object to the amount of the fee.

In its annual notice to nonmembers, a majority representative must provide enough information to allow a nonmember to decide whether to file a challenge. Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986), held that a union need not provide nonmembers with an exhaustive and detailed list of all its expenditures, but must include the major categories of expenses. Hudson at 307 n.18; High Bridge Teachers Ass'n (Daly), A.B.D. No. 89-2, 15 NJPER 139, 140 (¶20059 1989) (notice must include understandable description of and allocation between chargeable and non-chargeable activities). The FOP's initial notice met those standards.

- The Demand and Return System fails to provide for review of the fee by a neutral and independent arbitrator.

The FOP's demand and return system informs nonmembers of their right to appeal any determination to the PERC Appeal Board. That body meets the requirement of an impartial decision maker.

See Robinson v. New Jersey, 806 F.2d 442 (3d Cir. 1986).

- The FOP received the August 12 fees before it provided a proper notice to nonmembers.

In addition to the requirements in N.J.A.C. 19:17-3.3, N.J.A.C. 19:17-4.1 requires that each nonmember be afforded a period of at least 30 days after the majority representative has provided the annual notice described in N.J.A.C. 19:17.3.3 within

which to request review of fees assessed. When these rules were proposed, we explained that they would:

implement court mandates that employees who pay a representation fee in lieu of dues be provided, prior to the collection of the fee: (1) with an adequate explanation of the basis of the fee charged by the majority representative showing expenditures for its most recently completed fiscal year; (2) with a statement describing the demand and return system established and maintained by the majority representative by means of which an employee paying a representation fee in lieu of dues can obtain review of the amounts assessed; and (3) a period of at least 30 days in which to review the statement received from the majority representative and its affiliates and decide whether to request review of the amounts assessed in the majority representative's demand and return system. [19 N.J.R. 196; emphasis supplied]

The FOP sent out its notice to nonmembers on or about August 12. Payroll deductions were commenced before the expiration of the required 30-day review period. Accordingly, we will order the return of the fees collected during that 30-day period to the named charging parties in CO-2005-092.

ORDER

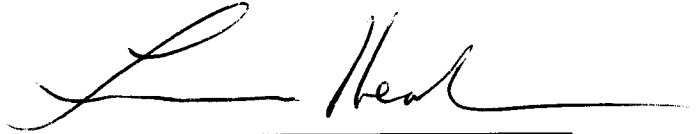
The State of New Jersey's motion for summary judgment is granted and the Complaint is dismissed with regard to the allegation that the August 12, 2004 representation fees were deducted before the establishment of a demand and return system.

The summary judgment motion of the named charging parties in CO-2005-092 is granted as to the requirement that nonmembers be

afforded the information described in N.J.A.C. 19:17-3.3 at least 30 days prior to the commencement of fee deductions. The motion is otherwise denied.

New Jersey State Corrections Officers Association/FOP Lodge 200 is ordered to refund the August 12 and 26 and September 9, 2004 representation fees to the named charging parties. Within twenty (20) days of receipt of this decision, the FOP shall notify the Chairman of the Commission of the steps it has taken to comply with this order.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "L Henderson", written over a horizontal line.

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed. Commissioner Katz was not present.

DATED: October 27, 2005
Trenton, New Jersey
ISSUED: October 27, 2005