

P.E.R.C. NO. 2007-40

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MORRIS,

Respondent,

-and-

Docket No. CO-2006-119

MORRIS COUNCIL NO. 6A, NJCSA,  
IFPTE, AFL-CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies a motion for summary judgment filed by Morris Council No. 6A, NJCSA, IFPTE, AFL-CIO. Council No. 6A filed an unfair practice charge alleging that the County of Morris violated the New Jersey Employer-Employee Relations Act when it did not automatically deduct representation fees from nonmembers' paychecks as soon as they joined Council No. 6A's negotiations unit. The Commission holds that the County need not deduct fees until Council No. 6A has notified it that a nonmember joining the negotiations unit has received an adequate explanation of the basis for the fee and a period of at least 30 days to request review of the amount of the fee.

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, Ronald Kevitz, Morris County  
Counsel; Fredric M. Knapp, Special County Counsel  
(Stephen E. Trimboli, of counsel and on the brief)

For the Charging Party, Fox and Fox LLP, attorneys  
(Craig Gumpel, on the brief)

DECISION

Morris Council No. 6A, NJCSA, IFPTE, AFL-CIO asserts that the County of Morris violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it did not automatically deduct representation fees from employee paychecks as soon as nonmembers joined the negotiations unit represented by Council No. 6A. We disagree: the County need not deduct fees until Council No. 6A has notified it that a nonmember joining the negotiations unit has received an adequate explanation of the basis for the fee and a period of at least 30 days to request review of the amount of the fee. We therefore deny Council No. 6A's motion for summary judgment.

Council No. 6A's motion is supported by the certification of its president. The County's response is supported by the certification of a labor relations specialist.

Summary judgment will be granted if no material facts are 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). The material facts follow.

Morris Council No. 6A, NJSCA, IFPTE, AFL-CIO is the majority representative of all classified, permanent and provisional supervisory County employees.

On August 20, 2003, a Commission designee ordered the County to deduct representation fees in lieu of dues from the wages or salaries of unit members who are not members of Council No. 6A, after being notified by Council No. 6A that it had complied with the requirements of N.J.A.C. 19:17-3.3 and -4.1. P.D.D. No. 2004-3, 29 NJPER 403 (¶131 2003). Those regulations of the Public Employment Relations Commission Appeal Board require majority representatives that collect representation fees to annually provide all persons subject to the fee with an adequate explanation of the basis of the fee and to have a demand and return system under which each nonmember is afforded a period of at least 30 days after receiving that information to file a request for review of the amount of the fee.

Pursuant to the designee's Order, Council No. 6A notified the County that it had complied with all regulatory requirements and in October 2003, the County began to deduct fees. Council No. 6A has since maintained the required demand and return system.

On February 23, 2005, Council 6A notified the County that Anthony Soriano, a member of Council 6A's negotiations unit, had not joined Council 6A and was not having representation fees deducted.

On May 12, 2005, the County advised Council No. 6A to notify the Personnel Office of any employee who becomes subject to a representation fee. On May 18, Council No. 6A advised the County that it had not addressed Soriano's status in its May 12 response. Further, Council No. 6A rejected the County's contention that the burden was on Council No. 6A to notify the County of employees subject to a fee.

On June 3, 2005, the County again notified Council No. 6A that it was to inform the Personnel Office of employees subject to a fee and that the Council was to request a list of new hires from the Personnel Office to ascertain who was subject to fee deductions.

On August 31, 2005, Council No. 6A notified the County that the Mosquito Commission had hired two employees who did not become members of Council No. 6A. Council No. 6A asked that

deduction of fees begin, but rejected the suggestion that it had to request and review a new hire list each month. As a result of the letter, the County began the deductions. The parties dispute whether fees are now automatically deducted from new hires at the Mosquito Commission.

On October 26, 2005, Council No. 6A provided the County with a list of seven employees, including Soriano, whose representation fees were not being deducted. On November 11, the County began deducting fees for the seven employees.

On May 31, 2006, Council No. 6A notified the County that two additional employees were subject to fee deductions. The parties dispute whether deductions for these employees have commenced.

On November 3, 2005, Council No. 6A filed its unfair practice charge. The charge, as amended, asserts that the County violated 5.4a(1), (2) and (7) of the Act<sup>1/</sup> when it failed to deduct representation fees from eight nonmembers of its negotiations unit.

On August 18, 2006, Council No. 6A moved for summary judgment. The motion has been referred to the Commission for

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<sup>1/</sup> These provisions 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. (7) Violating any of the rules and regulations established by the commission."

disposition. N.J.A.C. 19:14-4.8(a). Council No. 6A requests that we order the County to automatically implement representation fees through payroll deductions no less than 30 days after an employee becomes a member of Council No. 6A's negotiations unit. We must deny the requested relief.

The order in P.D.D. No. 2004-3 requires the County to deduct representation fees only after Council No. 6A notifies the County that it has complied with these requirements: provide all persons subject to the fee with an adequate explanation of the basis of the fee and then give them a period of at least 30 days to file a request for review of the amount of the fee. N.J.A.C. 19:17-3.3 and -4.1. Council No. 6A is also required to comply with these regulations before collecting fees from employees entering its unit after the issuance of each year's annual notice to fee payers. Accordingly, it would be inappropriate for the County to commence fee deductions before being notified by Council No. 6A that it has provided a nonmember with the appropriate notice and 30 days to file an objection. Instead, the County must promptly notify Council No. 6A of all new unit members and Council No. 6A must then notify the County when it has complied with the requirements of N.J.A.C. 19:17-3.3 and -4.1 so that the County may promptly commence fee deductions. In light of our holding, we need not address the County's other grounds for opposing summary judgment.

ORDER

Summary judgment is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners DiNardo, Fuller and Watkins voted in favor of this decision. None opposed. Commissioner Buchanan recused himself.

ISSUED: January 25, 2007

Trenton, New Jersey