

P.E.R.C. NO. 2022-12

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GLOUCESTER COUNTY,

Respondent,

-and-

Docket No. CO-2020-008

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO, LOCAL 1085,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants a motion for summary judgment filed by the Communications Workers of America, AFL-CIO, Local 1085 (CWA) on its unfair practice charge alleging that the County of Gloucester (County) encouraged CWA members to withdraw their authorization for union dues deductions, in violation of the New Jersey Employer-Employee Relations Act, as amended by the the Workplace Democracy Enhancement Act (WDEA). The Commission finds that the County's June 5, 2019 memorandum at issue could encourage CWA members to revoke their authorizations because it was narrowly directed at those who might wish to withdraw, and further directed them to do so "before the July 1 deadline," without further explanation; and that the County neither stated nor established a legitimate operational justification for issuing the memo. However, the Commission finds that CWA's requested remedy, the reimbursement of dues it alleges it would have received through July 1, 2020, from 24 employees who, but for the June memorandum, allegedly might have revoked their authorizations after July 1, 2019, was not fully supported by the record, which contained no certified facts or documents establishing same beyond the revocation emails of three CWA members. As such, pursuant to N.J.S.A. 34:13A-5.14(c), the Commission orders the County to make whole the CWA for dues deductions equivalent to those of three CWA members, between June 30, 2019 and July 1, 2020.

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, Brown & Connery, LLP (Michael J.
DiPiero, of counsel)

For the Charging Party, Weissman & Mintz, LLC (Ira W.
Mintz, of counsel)

DECISION

On July 10, 2019, the Communications Workers of America, AFL-CIO, Local 1085 (CWA) filed an unfair practice charge (UPC) against the County of Gloucester (County) alleging that the County violated the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq. On November 5, 2020, the Director of Unfair Practices issued a Complaint and Notice of Pre-Hearing on CWA's allegations that the County violated sections 5.4a(1), (2), (5) and (7) of the Act,^{1/} and N.J.S.A.

^{1/} 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
(continued...)

34:13A-5.14,^{2/} by encouraging CWA members to withdraw their authorization for union dues deductions. On November 12, 2020, the County filed an Answer to the Complaint.

On July 8, 2021, CWA filed a motion for summary judgment, supported by a brief and the certification of its president, Michael Blaszczyk, listing and identifying attached exhibits. On July 19, 2020, the County filed opposition to the motion, supported by a brief.^{3/} On July 28, 2020, CWA filed a reply brief.

We have reviewed the record, and we summarize the undisputed material facts as follows.

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- 1/ (...continued)
interfering with the formation, existence or administration of any employee organization; . . . (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; . . . (7) Violating any of the rules and regulations established by the commission."
- 2/ This provision, in pertinent part, states: "(a) A public employer shall not encourage negotiations unit members to resign or relinquish membership in an exclusive representative employee organization and shall not encourage negotiations unit members to revoke authorization of the deduction of fees to an exclusive representative employee organization."
- 3/ N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certifications based upon personal knowledge. The Board did not file a certification in support of its opposition brief or disputing the facts set forth in Blaszczyk's certification or the exhibits attached thereto.

SUMMARY OF FACTS

- The CWA is the majority representative of certain County employees.
- CWA and the County are parties to a collective negotiations agreement (CNA) effective from January 1, 2019 through December 31, 2023.
- Article 4.2 of the CNA provides:

Withdrawal of Dues Checkoff. In the event any employee withdraws his or her authorization for dues deduction by notice to the County Treasurer, such dues shall be halted as of July 1 next following the date on which notice of withdrawal was filed, pursuant to N.J.S.A. 52:14-15.9e.
- On October 18, 2018, Blaszczyk wrote to the County's human resources department, as follows:

This letter sets forth CWA's position with respect to the withdrawal of authorization for dues deduction by a CWA member. Written requests for the withdrawal of authorization for dues deduction received from a CWA member should be honored by you as follows:

 1. Dues deduction should cease effective July 1, 2019, if written requests from union members are received between July 2, 2018 and June 30, 2019.
 2. Dues deduction should cease thirty (30) days after an employee's anniversary date of employment, provided the written request is received during the ten (10) days following his/her anniversary date of employment, the deduction of union dues should cease either thirty (30) days after the

employee's anniversary date of employment, or on July 1, 2019, whichever date is the earliest.

With[in] five (5) days of receipt, please forward to CWA via email all requests you receive from union members to withdraw authorization for the payroll deduction of union dues.

- On November 27, 2018, the County payroll department issued a memorandum to CWA members, stating:

In response to questions we have received from some CWA members, after consulting with the Union, this is the procedure we will follow when in receipt of an employee's notification of intention to withdraw authorization for dues deduction:

1. Dues deduction should cease effective July 1, 2019, if written requests from union members are received between July 2, 2018 and June 30, 2019.
2. Dues deduction should cease thirty (30) days after an employee's anniversary date of employment, provided the written request is received during the ten (10) days following his/her anniversary date of employment, the deduction of union dues should cease thirty (30) days after the employee's anniversary date of employment, or on July 1, 2019, whichever date is the earliest.

For further information, please see the attached correspondence.

The above-quoted memorandum from payroll attached Blaszczyk's letter of October 18, 2018.

- On June 5, 2019, the County payroll department issued a memorandum to CWA members, stating:

If any CWA member wishes to withdraw his/her authorization for dues deduction, please notify our department before the July 1 deadline. (Per Article 4.2 Withdrawal of Dues Checkoff).

- No memorandum similar to the above-quoted was distributed to the employees of any other negotiations unit.^{4/}
- The record contains copies of emails from three CWA members who responded during the month of June to the payroll department's above-quoted June 5, 2019 memo.^{5/} One stated: "As per the memo on June 5, 2019, I am giving you my authorization to stop the deduction of CWA Member Dues." Another stated: "Regarding the memo about CWA dues: I wish to withdraw my authorization for dues deductions." A third stated: "I understand the deadline is July 1st. I am not sure if I can still request to opt out of the union dues?"^{6/}

^{4/} The County, in its brief, admits the memo only went to CWA members, but contends that this was because CWA was the only unit that sought to negotiate a procedure for employees to withdraw from the union following the U.S. Supreme Court's decision in Janus v. AFSCME, Council 31, 585 U.S. ___, 138 S. Ct. 2448 (2018)(holding deductions of representation or agency fees from non-union members are unlawful).

^{5/} The County, in its brief, denies this while conceding that the email documents "speak for themselves."

^{6/} CWA also states, in its statement of undisputed material facts, that 26 of 34 individuals who revoked their CWA membership dues authorizations before July 1, 2019 did so during the 25 days between the issuance of the County payroll department's June 5, 2019 memo and June 30, 2019. The County, in its brief, denies this, without further explanation. Except with regard to three employees, the

(continued...)

STANDARD OF REVIEW

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. 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). N.J.A.C. 19:14-4.8(e) provides:

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 that the movant or cross-movant is entitled to its requested relief as a matter of law, the motion or cross-motion for summary judgment may be granted and the requested relief may be ordered.

In determining whether there exists a "genuine issue" of material fact that precludes summary judgment, we 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 fact finder to resolve the alleged disputed issue in favor of the non-moving party." Brill, 142 N.J. at 540. We "must grant all the favorable inferences to the non-movant." Id. at 536. The summary judgment procedure is

6/ (...continued)
record otherwise contains no certified facts or supporting documents establishing the CWA's contentions in this regard. Therefore, in the absence of competent supporting evidential materials, and viewing the record in a light most favorable to the non-moving party, we do not regard the remainder as undisputed.

not to be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 183 (App. Div. 1981), certif. denied, 87 N.J. 388 (1981).

ANALYSIS

The central focus of this dispute is whether the County payroll department's June 5, 2019 memo to CWA members violated our Act as amended by P.L. 2018, c.15, the Workplace Democracy Enhancement Act (WDEA). Enacted on May 18, 2018, the WDEA, among other things, was intended by the Legislature to:

[P]rohibit[...] a public employer from encouraging employees to resign, relinquish membership in an employee organization, or revoke authorization of the deduction of fees to an employee organization, or encouraging or discouraging employees from joining, forming or assisting an employee organization. Violations are regarded as an unfair practice, and, upon a finding that the violation has occurred, the Public Employment Relations Commission, is directed to order the public employer to make whole the employee organization for any losses suffered by the organization as a result of the unfair practice.

[Assembly Labor Committee Statement to Assembly, No. 3686, 2018 Legis. Bill Hist. NJ A.B. 3686 (Mar. 19, 2018).]

As codified in our Act at N.J.S.A. 34:13A-5.14, the relevant section of the WDEA states:

- a. A public employer shall not encourage negotiations unit members to resign or relinquish membership in an exclusive representative employee organization and shall not encourage negotiations unit members to revoke authorization of the

deduction of fees to an exclusive representative employee organization.

- b. A public employer shall not encourage or discourage an employee from joining, forming or assisting an employee organization.
- c. A public employer that violates any provision of subsection a. or b. of this section shall be regarded as having engaged in an unfair practice in violation of subsection a. of section 1 of P.L.1974, c.123 (C.34:13A-5.4), and, upon a finding that the violation has occurred, the Public Employment Relations Commission, in addition to implementing any other remedies authorized by that section, shall order the public employer to make whole the exclusive representative employee organization for any losses suffered by the organization as a result of the public employer's unlawful conduct and any other remedial relief deemed appropriate.

[N.J.S.A. 34:13A-5.14a-c.]^{7/}

^{7/} We note that since the WDEA's enactment on May 18, 2018, the Commission has not, until now, had occasion to directly address a dispute concerning an alleged unfair practice within the meaning of N.J.S.A. 34:13A-5.14 in a final agency decision. Cf., Rutgers, the State University of New Jersey, P.E.R.C. No. 2020-44, 46 NJPER 442 (¶98 2020) (affirming Director of Unfair Practice's decision refusing to issue a complaint which found, inter alia, that alleged failures by employer and union to process a member's revocation of union membership and continued dues deduction, in violation of N.J.S.A. 52:14-15.9e, did not state unfair practices, where that statute's procedural provisions pertaining to the deduction of fees contain no language establishing violations as unfair practices, unlike the WDEA's explicit prohibition, in N.J.S.A. 34:13A-5.14, against encouraging revocation).

The June 5, 2019 memo at issue is addressed to "CWA Members" and states, as noted supra:

If any CWA member wishes to withdraw his/her authorization for dues deduction, please notify our department before the July 1 deadline. (Per Article 4.2 Withdrawal of Dues Checkoff).

CWA argues in support of its motion for summary judgment that with the enactment of the WDEA, and in particular N.J.S.A. 34:13A-5.14, the Legislature made clear that whether or not a union member chooses to revoke their membership in their union is a matter between the union and the member; and that a public employer has no legitimate business reminding a union member of their statutory right to revoke membership. CWA contends that here the County did not just remind members of their right to revoke membership (which standing alone, it asserts, would be a violation), but the County also falsely told CWA members that they had a July 1 deadline to do so because, CWA asserts, there was and is no statutory or contractual deadline to revoke membership.

Invoking pre-WDEA Commission precedent to assess N.J.S.A. 34:13A-5.14(c)'s specification that a violation of sections 5.14 (a) or (b) is regarded as an unfair practice in violation of subsection 5.4a(1) of the Act, CWA argues that an independent violation of subsection 5.4a(1) will be found if an employer's action tends to interfere, restrain or coerce an employee's

statutory rights and lacks a legitimate and substantial business justification. CWA contends that neither illegal motive nor actual interference need to be proven to establish a violation; it is the tendency to interfere and not motive or consequences that is essential. CWA argues that a consideration of motive or consequences is likewise unnecessary to find a violation of the WDEA provisions set forth in section 5.14. CWA also relies on Woodland Tp. Bd. of Ed., I.R. No. 2019-3, 45 NJPER 91 (¶24 2018), an interim relief decision in which a Commission Designee, applying a 5.4a(1) analysis to an alleged violation of N.J.S.A. 5.14, found that an employer's letter "having a tendency to interfere with protected rights, would violate the WDEA and section 5.4a(1) of the Act." CWA also argues that the County's announcement of a deadline to revoke union membership evidences bad faith bargaining, in violation of subsection 5.4a(5) of the Act.

Finally CWA asks, as a remedy allowed by N.J.S.A. 34:13A-5.14(c), that we order the County to reimburse CWA the dues it would have been paid through July 1, 2020,^{8/} had the County's

^{8/} The WDEA provides that a CNA may "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." N.J.S.A. 52:14-15.9e. The dues checkoff provision in Article 4.2 of the parties' CNA is consistent with this WDEA provision.

memorandum not "accelerated" certain employees' revocations of their dues authorization to a pre-July 1, 2019 date.^{9/}

The County, citing the Merriam Webster dictionary's definition of "encourage" as an "attempt to persuade," argues that it is a factual issue as to whether or not the County's June 5, 2019 memo was an "attempt to persuade" CWA members to revoke their authorizations, and is not appropriate for summary judgment. The County asserts that employees' reactions to the memo are highly relevant, as the question of why they revoked raises a genuine issue of fact material to whether the County violated the Act, requiring testimony to resolve.

The County further asserts that it simply provided employees with information related to their statutory and constitutional rights. While conceding that CWA members were, and are, able to revoke their membership after July 1, 2019, the County contends the memo's use of the word "deadline" was accurate and truthful for those who wished to have their dues deductions cease effective July 1, 2019, whose "deadline" to provide the County with notice was June 30, 2019. The County, citing Commission decisions addressing employer communications during contract

^{9/} CWA contends in its brief addressing the requested relief that there were 24 such employees, which differs from its statement of material facts claiming there were 26. In any case, as noted supra, the record contains no certified facts or documents establishing same, beyond the revocation emails of three CWA members.

negotiations, argues that the Act does not prohibit the County from providing employees with accurate, truthful information regarding their contractual, statutory or constitutional rights, so long as its communication contains no threat of reprisal or force or promise of benefit.

The County also contends that this matter is distinguishable from the interim relief decision in Woodland, supra, in that there the Designee found that the employer's letter (unilaterally issued after the U.S. Supreme Court's decision in Janus, supra) to all union members requiring them to re-authorize membership dues deductions regardless of whether or not they had previously done so, could prompt employees to reconsider or discourage their membership in the union.

Our Act guarantees that "public employees shall have, and shall be protected in the exercise of, the right . . . to form, join and assist any employee organization or to refrain from any such activity." N.J.S.A. 34:13A-5.3 (emphasis supplied).

N.J.S.A. 34:13A-5.4a(1) prohibits public employers from "[i]nterfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act." The WDEA prohibits public employers from encouraging "negotiations unit members to resign or relinquish membership in an exclusive representative employee organization," and from encouraging them "to revoke authorization of the deduction of fees to" such

organizations. N.J.S.A. 34:13A-5.14(a). The WDEA provides that a violation of this section shall be regarded as an unfair practice, in violation subsection 5.4a(1) of the Act. N.J.S.A. 34:13A-5.14(c).

As our Designee in Woodland, supra, correctly stated:

A public employer violates 5.4a(1) of the Act if its actions tend to interfere with an employee's statutory rights and lack a legitimate and substantial business justification. New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421, 422 (¶4189 1978); N.J. Sports Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550, 551 (¶10285 1979). In Fairview Free Public Library, P.E.R.C. No. 99-47, 25 NJPER 20, 21 (¶3007 1998), the Commission explained:

[W]e must first determine whether the disputed action tends to interfere with the statutory rights of employees. . . . If the answer to that question is yes, we must then determine whether the employer has a legitimate operational justification. If the employer does have such a justification, we will then weigh the tendency of the employer's conduct to interfere with employee rights against the employer's need to act.

The Commission need not determine whether an action actually interfered or was intended to interfere with employee rights. Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), *aff'd* 10 NJPER 78 (¶15043 App. Div. 1983).

[Woodland Tp. Bd. of Ed., I.R. No. 2019-3, 45 NJPER 91, 94 (¶24 2018).]

Nothing in the WDEA suggests that 5.4a(1) violations stemming from WDEA violations should be analyzed under different standards than those already established in pre-WDEA Commission cases, as quoted above.

Here, the County's November 27, 2018 memorandum to CWA members (which the CWA does not challenge) states that it was issued in "response to questions we have received from some CWA members, [and] after consulting with the Union." The November 27 memo announced the County's acceptance, and verbatim adoption, of CWA's proposal regarding the exact procedures to be followed by the County "when in receipt of an employee's notification of intention to withdraw authorization for dues deduction."

In sharp contrast, the County's June 5, 2019 memorandum was also addressed to CWA members, but in substance it was narrowly directed at those members who might "wish[...] to withdraw his/her authorization for dues deduction". The June memo further directed such members to notify the County of same "before the July 1 deadline," without further explanation.

The County does not contend, nor does the record reflect, that the June memorandum was issued in response to its receipt of notification[s] from unit members of their intent to withdraw, or in response to queries from unit members or the CWA, or as a result of discussions with the CWA, unlike the November memo. Nor did the June memo mention, incorporate in full, or otherwise

refer to the agreed-upon procedures outlined in the November memo. The June memo did reference the dues checkoff provision in Article 4.2 of the parties' CNA. However, that provision addresses the "event" of "any employee [who] withdraws his or her authorization for dues deduction." The June memo bears no indication, nor does the County contend, that it was issued in response to or prompted by any such "event."

In short, even viewing it in a light most favorable to the non-moving party, we find no competent evidential materials in the record establishing that the County had any reason for issuing the unsolicited June memo, let alone a legitimate and substantial business reason.

We are not persuaded by the County's defense, citing Middletown Tp., D.U.P. No. 89-7, 15 NJPER 84 (¶20035 1988), City of Camden, P.E.R.C. No. 82-103, 8 NJPER 309 (¶13137 1982), and State of New Jersey (Trenton State College), P.E.R.C. No. 88-19, 13 NJPER 720 (¶18269 1987), that the June memorandum simply conveyed accurate and truthful information, and that it was entitled to communicate such information without violating the Act, in the same manner that employers may express their views and accurate, truthful information during contract negotiations, that is, unaccompanied by threat or promise. Unlike in those cases, here there are no competent evidential materials in the

record establishing that the June memo had anything to do with ongoing negotiations between the County and CWA.^{10/}

Based on the foregoing, we find as a matter of law that the County's issuance of the June 5, 2019 memorandum could encourage CWA members to revoke their dues deduction authorizations, in violation of N.J.S.A. 34:13A-5.14(a). As such, the WDEA requires that we must regard the issuance of the memo as an unfair practice, in violation of N.J.S.A. 34:13A-5.4a(1). Specifically, we regard the June memo as having a tendency to interfere with employees in the exercise of the rights guaranteed to them by the Act, including their right to refrain from joining or assisting an employee organization. We further find that the County has neither stated nor established a legitimate operational justification for doing so. Accordingly, we grant CWA's motion for summary judgment.

^{10/} The parties' current CNA does not expire until 2023, and nothing in the record suggests they are presently in negotiations for a successor agreement. To the extent that the County's November 27, 2018 memo was a result of negotiations or agreement between the parties as to the procedures to be followed by the County "when in receipt of an employee's notification of intention to withdraw authorization for dues deduction," those negotiations appear to have been concluded by the time the November memo was issued. Nothing in the record indicates, nor does either party contend, that some six months later either party sought to reopen or renegotiate the terms of the November memo, or that the County's June 5, 2019 communication had its genesis in such negotiations.

However, we also find that CWA's requested remedy, the reimbursement of dues it alleges it would have received through July 1, 2020, from 24 employees who, but for the County's June 5, 2019 memorandum, allegedly might have revoked their authorizations after July 1, 2019, is not fully supported by competent, credible evidence in the record. CWA presented documentation (emails that the County does not credibly refute) from just three employees who sought to revoke their authorizations in response to the June 5 memorandum. As such, pursuant to N.J.S.A. 34:13A-5.14(c), as a remedy we shall order the County to make whole the CWA for dues deductions equivalent to those of three CWA members, between June 30, 2019 and July 1, 2020.

ORDER

Gloucester County is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act, particularly by encouraging CWA unit members to revoke authorization of the deduction of fees to the CWA.

B. Take the following action:

1. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as

Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

2. Make whole the CWA for dues deductions equivalent to those of the three identified CWA members for the period between June 30, 2019 and July 1, 2020.

3. Notify the Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this ORDER.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford, Jones, Papero and Voos voted in favor of this decision. None opposed.

ISSUED: September 30, 2021

Trenton, New Jersey



RECOMMENDED



NOTICE TO EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

AND IN ORDER TO EFFECTUATE THE POLICIES OF THE

**NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,**

We hereby notify our employees that:

Gloucester County:

WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act, particularly by encouraging CWA unit members to revoke authorization of the deduction of fees to the CWA.

WILL make whole the CWA for dues deductions equivalent to those of the three identified CWA members for the period between June 30, 2019 and July 1, 2020.

Docket No. CO-2020-008

Gloucester County
(Public Employer)

Date: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, NJ 08625-0429 (609) 292-9830