

P.E.R.C. NO. 82-121

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF HAMILTON,

Respondent,

-and-

Docket No. CO-82-124-111

COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO, LOCAL 1042,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Township of Hamilton violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq, specifically subsections 5.4(a)(1) and (5), when it insisted upon negotiating the amount of a representation fee in lieu of dues and stopped deducting representation fees as required by its collective agreement with the Communications Workers of America, AFL-CIO, Local 1042.

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Appearances:

For the Respondent, Department of Law,  
Hamilton Township  
(Renee C. Ricciardelli, Esq.)

For the Charging Party, Steven P. Weissman, Esq.

DECISION AND ORDER

On December 1, 1981, Communications Workers of America, AFL-CIO, Local 1042 ("Local 1042") filed an unfair practice charge against the Township of Hamilton (the "Township") with the Public Employment Relations Commission.<sup>1/</sup> The charge alleged that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a) (1) and (5),<sup>2/</sup> when it insisted on negotiating what percentage of the Local's regular membership dues would be deducted from the

<sup>1/</sup> The Local represents a unit of white collar employees employed by Hamilton Township.

<sup>2/</sup> 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; and (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."

paychecks of all unit members who were not members of Local 1042, as a representation fee in lieu of dues. The parties currently have an agreement which provides for the deduction of a representation fee in lieu of dues in an amount equal to 85% of the present union dues. This amount was to be renegotiated starting May 1, 1981, as per the agreement, and the new amount was to be deducted as of July 1, 1981. In those renegotiation meetings, the Township has insisted that the proper amount to be deducted is only 60% of the union dues.

Prior to April 26, 1982, the date upon which the Director of Unfair Practices issued a Complaint, the parties submitted a Stipulation of Facts pursuant to N.J.A.C. 19:14-6.7, and waived both an evidentiary hearing and a Hearing Examiner's recommended report and decision. The Township had previously filed a statement of position concerning the unfair practice charge, which the Director of Unfair Practices treated as an Answer to the Complaint. In its statement the Township, citing Aboud v. Detroit Board of Education, 431 U.S. 209 (1977), declared that a representation fee could only be collected for the purposes

3/ Section 34:13A-5.5(b) provides:

The representation fee in lieu of dues shall be in an amount equivalent to the regular membership dues, initiation fees and assessments charged by the majority representative to its own members less the cost of benefits financed through the dues, fees and assessments and available to or benefitting only its members, but in no event shall such fee exceed 85% of the regular membership dues, fees and assessments.

of collective negotiations, contract administration and grievance adjustment, and that it is the Township's responsibility to ensure that its employees pay no sums of money as representation fees in lieu of dues which will be spent for anything else. Additionally, the Township stated that section 34:13A-5.5(c) of our Act, which creates an employee's right to demand and receive a return of any part of the fee paid by that employee which represents a majority representative's expenditures 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 any benefits available only to members of the majority representative," was unacceptable as a means of protecting employees paying the fee.

A summary of the pertinent stipulated and documented facts follows. Article V of the parties' current collective agreement, entitled "Agency Shop", **reads** in part:

The Township further agrees to deduct from the pay of each employee covered by this Agreement who does not furnish a written authorization for deduction of union dues, an amount equal to 85 percent of the present union dues. Starting May 1, 1981 the Township and the Union will meet to renegotiate the amount to be deducted as of July 1, 1981. The Township agrees to deduct said dues each month commencing with the third (3rd) month of employment of such employee.

The intent of this Article was that the agency shop provision would remain for the duration of the agreement and that negotiations would be reopened only as to the amount of the representation fee.

At the initial renegotiation meeting, the Township requested that Local 1042 provide financial information to substantiate its claim that an 85% representation fee was needed to serve the entire negotiations unit. Local 1042 provided its financial information, but the Township insisted that Local 1042 was only entitled to a 60% representation fee.

After several negotiations sessions were held between May 15 and June 16, 1981, during which the Township adhered to its 60% position, on June 23, 1981 a Notice of Impasse was filed with the Commission. On July 1, 1981, the Township ceased collecting any representation fees in lieu of dues from employees in Local 1042's unit and has not made any deductions for such fees to the present.

The parties met with a Commission mediator on August 5, 1981. The Township, despite being apprised of our decision in In re Woodbridge Twp. Bd. of Ed., P.E.R.C. No. 81-131, 7 NJPER 330 (¶12147 1981), maintained its position.

Pursuant to N.J.S.A. 34:13A-5.5(c), the Local has a demand and return system enabling non-members to seek a return of certain portions of the fee.

In re Woodbridge Twp. Bd. of Ed., supra controls this case. There, we found that the percentage amount of representation fee was not mandatorily negotiable. We reasoned that the Legislature did not intend to embroil the public employer "...in disputes between majority representatives and the employees

they represent as to the amounts to be paid as membership dues or representation fees in lieu of dues." Supra at p. 331. Instead, public employees may challenge the amount of the fee through the procedures contemplated by N.J.S.A. 34:13A-5.6.<sup>4/</sup>

Additionally, in Woodbridge, we stated that even though the amount of a representation fee is not negotiable, it is not a violation for an employer to request information on the organization's financial condition in order to ascertain the need for a representation fee provision. These parties stipulated, however, that the issue in dispute does not concern negotiation over a representation fee provision, but rather negotiation over the amount of the fee. The amount is to be established by the majority representative and any challenges to that amount are to be made by the affected employees.

Based upon the stipulated record, we find the Township violated N.J.S.A. 34:13A-5.4(a)(1) and (5), when it insisted, to the point of impasse, even after receiving our decision in Woodbridge, supra, on negotiating the percentage amount of the representation fee in lieu of dues.<sup>5/</sup>

Moreover, even assuming arguendo that the amount of the fee was mandatorily negotiable, the Township violated these same

<sup>4/</sup> N.J.S.A. 34:13A-5.6 provides in part that the demand and return system established by an organization "...shall include a provision by which persons who pay a representation fee in lieu of dues may obtain review of the amount returned through full and fair proceedings placing the burden of proof on the majority representative," and that these proceedings shall provide for an appeal to a three member Board.

<sup>5/</sup> Thus, the agreement to reopen negotiations on the amount of the fee became unenforceable, because contrary to a specific statute, and therefore nonnegotiable. State of New Jersey v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978).

subsections of the Act, when it unilaterally changed terms and conditions of employment on July 1, 1981 by ceasing all representation fee deductions from the salaries of unit members. We have held that after an employer has negotiated to impasse over a term and condition of employment it may take action on that subject consistent with its position in negotiations. See, In re City of Jersey City, P.E.R.C. No. 77-58, 2 NJPER 122 (1977).

Here, however, the Township completely suspended representation fee deductions, which had never been its position in the negotiations meetings held in May and June of 1981. If the Township was permitted to act after reaching an impasse, it would have been authorized only to implement its portion of a representation fee of 60% of the dues, fees and assessments charged by the CWA to its members beginning July 1, 1981. Thus, its action in suspending all deductions is an unlawful unilateral change in the terms and conditions of employment. See, Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25 (1978).

Under these circumstances, we find that the Township violated N.J.S.A. 34:13A-5.4(a)(1) and (5) when it insisted upon negotiating the percentage amount of a representation fee in lieu of dues, and failed to continue to make representation fee deductions from the paychecks of the non-member employees as the collective agreement required.

ORDER

A. The Respondent Township is ordered to cease and desist from:

1. Interfering with, restraining or coercing its employees represented by Local 1042 by unilaterally suspending the collection of representation fees in lieu of dues from the paychecks of employees who are not members of Local 1042 and by insisting that Local 1042 negotiate the amount to be assessed as a representation fee in lieu of dues.

2. Refusing to negotiate in good faith with Local 1042 concerning the terms and conditions of employment of employees represented by Local 1042 by unilaterally suspending the collection of representation fees in lieu of dues from the paychecks of employees who are not members of Local 1042 and by insisting that Local 1042 negotiate the amount to be assessed as a representation fee in lieu of dues.

B. The Respondent Township is ordered to take the following affirmative action which is necessary to effectuate the policies of the Act:

1. Pay to Local 1042 the amount in representation fees in lieu of dues Local 1042 would have received had the Township been deducting said dues at the rate of 85% from July 1, 1981 until the present, together with interest at the rate of 12% per annum.

2. Implement the representation fee clause presently found in the collective negotiations agreement between Local 1042 and the Township at the rate of 85%.

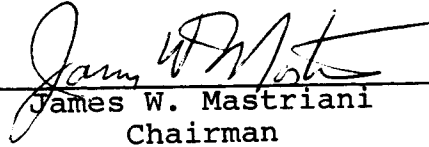
3. Post at all places where notices to employees are customarily posted, copies of the attached Notice marked as Appendix "A." Copies of such notice, on forms to be provided by



the Commission, shall be posted immediately upon the receipt thereof, and after being signed by the Respondent's authorized representative, shall be maintained for a period of at least sixty (60) consecutive days. Reasonable steps shall be taken by the Respondent to make sure that such notices are not altered, defaced or covered by other material.

4. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Butch, Hartnett, Hipp and Newbaker voted in favor of this decision. Commissioner Graves was not in attendance. Commissioner Suskin was not present at the time of the vote.

DATED: Trenton, New Jersey  
June 3, 1982  
ISSUED: June 4, 1982

APPENDIX A

# NOTICE TO ALL 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:

WE WILL NOT interfere with, restrain or coerce our employees represented by Local 1042 by unilaterally suspending the collection of representation fees in lieu of dues from the paychecks of employees who are not members of Local 1042 and by insisting that Local 1042 negotiate the amount to be assessed as a representation fee in lieu of dues.

WE WILL NOT refuse to negotiate in good faith with Local 1042 concerning the terms and conditions of employment of employees represented by Local 1042 by unilaterally suspending the collection of representation fees in lieu of dues from the paychecks of employees who are not members of Local 1042 and by insisting that Local 1042 negotiate the amount to be assessed as a representation fee in lieu of dues.

WE WILL pay to Local 1042 the amount in representation fees in lieu of dues Local 1042 would have received had we been deducting said dues at the rate of 85% from July 1, 1981 until the present, together with interest at the rate of 12% per annum.

WE WILL implement the representation fee clause presently found in the collective negotiations agreement between Local 1042 and the Township at the rate of 85%.

TOWNSHIP OF HAMILTON

(Public Employer)

Dated \_\_\_\_\_

By \_\_\_\_\_

(Title)

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,  
429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.