P.E.R.C. NO. 86-100

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and- Docket No. CO-85-293-17

LOCAL 195, IFPTE,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the State of New Jersey violates the New Jersey Employer-Employee Relations Act when, after it transfers an employee either from a craft unit into a noncraft unit, both of which are represented by Local 195, or vice-versa, it stops deducting Local 195 dues from that employee's pay check even though the employee has not revoked his membership in Local 195. The Commission finds this practice violates N.J.S.A 52:14-15.9e.

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Appearances:

For the Respondent, Hon. W. Cary Edwards, Attorney General (Barbara A. Pryor, Deputy Attorney General)

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

DECISION AND ORDER

On May 6, 1985, 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 violates the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1) and (2),[1/] when, after it transfers an employee either

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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."

from the craft unit into a noncraft unit, both of which are represented by Local 195, or vice-versa, it stops deducting Local 195 dues from that employee's pay check even though the employee has not revoked his membership in Local 195.

On July 22, 1985, the Director of Unfair Practices issued a Complaint. On August 6, 1985, the State filed its Answer. It admits that when it transfers an employee out of a collective negotiations unit, it stops that employee's union dues deduction until that employee reauthorizes dues deductions. It asserts that since the craft and noncraft titles are represented in different units, N.J.S.A. 52:14-15.9e prohibits deductions after a transfer until the employee reauthorizes deductions in writing. The State also relies on an unpublished letter from the Chairman recommending a settlement of a dispute between the Communications Workers of America and the State on a related issue.

On August 17, 1985, the parties stipulated facts, waived a hearing and a Hearing Examiner's report, and requested the Commission decide this matter based upon the stipulated record. These are the stipulated facts.

> 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 relevant times herein has been the employer of the employees involved.
>
> 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 the following separate units: (1) Operations, Maintenance and Service employees (Operations Unit); (2) Inspection and Security

employees (Inspection and Security Unit),[2/] and crafts employees (Crafts Unit). The relevant contractual documents and certificates of representative are attached hereto and made a part hereof.

3. In 1971 pursuant to N.J.S.A. 34:13[sic]-6(d), an election was held among craft employees at which time they voted to maintain a unit separate from the Operations, Maintenance and Service Unit.

4. Pursuant to a dues deduction authorization made by each employee under N.J.S.A. 52:14-15.9, the State deducts regular dues payments from the employee's salary for transmittal to Local 195.

5. It is the practice of the State of New Jersey that when an employee transfers from either of the noncrafts units listed above to the crafts unit or from the crafts unit to either of the two units listed above the State unilaterally ceases deducting dues payments to Local 195. Dues payments begin when an employee executes the dues deduction card authorizing dues payments in the new unit. If no such authorization is made, agency fee assessment commences six weeks later.

6. The Department of Treasury maintains one account for dues deductions for all three units represented by Local 195, #025. Local 195 employs the same membership card and dues deduction card for all three units.

The parties have introduced as exhibits the certifications and contract referred to in the stipulated facts. One contract covers all employees represented in the craft and noncraft units. 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,

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2/ Local 195 and Local No. 518, N.J. State Motor Vehicle Employees Union, SEIU, AFL-CIO (Local 518), are joint employee representatives of the Inspection and Security Unit.

> 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 a Local 195 membership application.

Local 195 asserts that N.J.S.A. 52:14-15.9 does not authorize the State to stop dues deductions simply because an employee, who continues to belong to and be represented by the same employee organization, has been transferred from or to the crafts unit. It relies on State of New Jersey (Local 195), P.E.R.C. No. 85-72, 11 NJPER 53 (¶16028 1984).

The State asserts that State of New Jersey is factually distinguishable. It further asserts that separate bargaining units were established because of each unit's unique community of interests. Therefore, employees of separate units expect their dues will be used to foster only their special interests.

We turn now to the merits of this case. We believe, under the circumstances of this case, that the State's failure to withhold dues violates N.J.S.A. 52:14-15.9(e) and therefore N.J.S.A. 34:13A-5.4(a)(1) and (2).

In State of New Jersey, we held that failure to withhold dues after an employee's transfer between noncraft units violated N.J.S.A. 52:14-15.9e. That statute 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 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.

In interpreting this statute, we said:

> 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 [the employee's] paycheck....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. 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 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 nonsupervisory 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.
> [Id. at 55]
> (emphasis added)

These same considerations are present here. Neither of the two conditions for termination specified in the statute occurred.

This case differs from State of New Jersey only in that these transfers are between craft and noncraft units rather than between two noncraft units. This, standing alone, does not warrant a different result. The Act treats craft and noncraft employees differently only in section 6(d) which provides, in part:

> The Commission, through the Division of Public Employment Relations...shall decide in each instance which unit of employees is appropriate for collective negotiations, provided that, except where dictated by established practice, prior agreement, or special circumstances, no

> unit shall be appropriate which includes...(3) both craft and noncraft employees unless a majority of such craft employees vote for inclusion in such unit.

Pursuant to section 6(d), an election was held among craft employees and they voted to maintain a separate unit. Thus, three separate units were created: two noncraft and one craft with Local 195 as the exclusive representative of all three units.[3/] Neither section 6(d) nor any other part of the Act prohibits the same employee organization from representing employees in both craft and noncraft units.

The affected employees from craft and noncraft units then signed Local 195 dues authorization cards. Dues deduction authorizations run to the employee organization, not to the negotiations unit. State of New Jersey. Therefore, dues deductions for both craft and noncraft employees can legally go to Local 195. Further, N.J.S.A. 34:13A-6(d) has no effect on either the authorization or termination of those deductions.

Thus, as in State of New Jersey, continued deductions have been authorized under N.J.S.A. 52:14-15.9e. Accordingly, we hold that the State violated subsections 5.4(a)(1) and (2) of the Act when it stopped deducting dues from employees merely because they transferred from a craft unit into a noncraft unit, both of which were represented by Local 195, or vice-versa.

3/ Local 195 and Local No. 518 are joint representatives of the Inspection and Security employees.

We now consider the appropriate remedy. We have noted that the State has claimed reliance on a settlement recommendation from our Chairman to the State and CWA on a related issue. We do not read this letter to support the State's position under the facts of this case.[4/] However, we do believe that, under all the circumstances of this case, the State's decision to discontinue dues deductions was made in good faith. We therefore order only that the State discontinue its practice and that it arrange with Local 195 for a mechanism to deduct dues owing but not collected from affected employees.

ORDER

The State of New Jersey 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 the Act by stopping dues deductions from employees merely because they transferred from a craft unit to a noncraft unit or vice-versa.

2. Dominating or interfering with the formation, existence or administration of any employee organization, by stopping dues deductions from employees merely because they transferred from a craft unit to a noncraft unit or vice-versa.

4/ We note that the CWA dispute included potential movement between non-supervisory and supervisory units.

B. Take the following affirmative action:

1. Arrange with Local 195 for a mechanism to deduct dues owing but not collected from affected employees.

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

BY ORDER OF THE COMMISSION

O. F. Wenzler
Acting Chairman

Commissioners Johnson, Reid, Smith and Wenzler voted in favor of this decision. Chairman Mastriani abstained. Commissioners Hipp and Horan were not present.

DATED: Trenton, New Jersey
February 19, 1986
ISSUED: February 20, 1986