

## 'Whistleblower' Act Gets Its First Test

By LEO H. CARNEY

**I**N WHAT is believed to be the first suit filed under a year-old state statute, the former national sales manager of a Japanese-owned electronics company in Mount Laurel has asserted he was dismissed for complaining about defective computer parts that the company knowingly shipped to dealers and sold to the public.

The law is the Conscientious Employee Protection Act, the so-called Whistleblower Law. It was enacted to protect public and private employees from dismissal, demotion or penalties for complaining to employers or outside agencies about illegal or unconscionable practices.

David Smith of Cherry Hill, sales manager for Okidata Group Inc. until he was dismissed last August, alleged in papers filed in State Superior Court here late last month that he was dismissed for repeatedly protesting what the shipping of defective computer printer spools. The defects, he said, caused widespread and prolonged shutdowns of Okidata's Series 290 printers.

(The spools guide a ribbon-like device across the surface of the paper for an even application of ink).

Through the course of his protest, Mr. Smith said in an interview last week, company officials downgraded his employee compensation program, cut his secretary to a part-time assignment and eliminated his administrative assistant's position.

The Okidata Group and Oki America, an affiliated company in Hackensack that is also named in the suit, are wholly owned subsidiaries of Oki Electric, one of Japan's largest and oldest electronics manufacturers.

Last week, the company denied Mr.

Smith's allegations in the strongest terms, saying that there never was a serious defect in the 290 Series and that the difficulties that had appeared had been taken care of during normal warranty periods.

Bernard Herman, president of Okidata, said in a telephone interview that the defect was in a "guide" that directed the computer printers' ribbons. The number of units affected represented less than half of 1 percent of all monthly sales, Mr. Herman

Sales manager for computer concern contends dismissal was over defect.

said, adding that about 200,000 of the Series 290 printers were sold in recent years.

Calling Mr. Smith's suit specious and an attempt to "get back at the company," Mr. Herman said that Mr. Smith had been dismissed "for a variety of reasons having to do with his job performance and nothing to do with the performance of any of our products."

Dennis Flanagan, senior vice president of sales for Okidata and a defendant in the suit, and James M. Penny of Philadelphia, the company's attorney, also said in separate interviews that the dismissal had had nothing to do with product defects.

Mr. Herman called the charges "malicious and false," and said that Mr. Smith "is not immune to any

legal action that we may take against him," for bringing the charges.

Specifically, Mr. Smith says in the suit that he was "admitted" at times by his superiors and told he was "out of line" for questioning the shipments, which went to dealers who were unable to repair or replace the defective spools. The spools, he said in the court papers, were "known to be defective and unfit by the defend-

ants."

In separate interviews last week, Mr. Smith and his attorney, Stephen G. Condon of Cherry Hill, said they had no way of knowing the precise economic consequences for the ultimate purchasers of the printers. These included small retail concerns,

as well as larger businesses such as banks.

However, Mr. Smith said that some 50,000 printers had been manufactured with the flaw and that about 1,200 defective units had been shipped as of early last summer. The redesign and replacement of parts took 90 to 120 days, he said, adding that the eventual consequences of this were "disastrous" for dealers who "could effectively have been put out of busi-

ness."

Mr. Smith says in the suit that ensuing prohibitions contemplated by his former sales staff at Okidata were brought to the attention of Robert Ingham, vice president of sales, and that he asked Mr. Ingham to discuss

them with the sales force last June, but was refused.

In July, Mr. Smith says, he "vehemently complained about the defendant's fraudulent, unethical and deceptive practices of shipping the defective spools to unknown purchasers" and refused to sign an unfavorable sales forecast he had presented to company officials as a result of the problem.

Mr. Smith said he was dismissed on Aug. 3 without a specific reason, but was told the next day by Mr. Flanagan that he had not been a "team" member.

In the suit, Mr. Smith requests that he be reinstated to his former position, be compensated for lost wages

and be awarded punitive damages for the hurt done to his reputation in the computer industry. He also seeks to enjoin Okidata from further violations of the Conscientious Employee Protection Act and the imposing of the prescribed fines of \$1,000 to \$5,000 for each offense.

Senator John H. Doreay, Republican of Boonton, who appeared the measure that put the law on the books, said in a telephone interview last week that the suit was the first he was aware of under the September 1966 statute.

The so-called Whistleblower Law was designed by the Legislature to protect employees who protest unlawful practices to their superiors, or

who provide information to "any public body" concerning unlawful deeds, said Robert Bland, a spokesman for the law section of the State Library in Trenton.

Mr. Bland said that an employee had to provide his employer with a "reasonable opportunity to correct" the inequities, unless the inequities were already known to the employer or the employee feared physical reprisal.

Employers are required by the law to "conspicuously display" the provisions at their workplaces something Mr. Smith contends Okidata did not do.

What is believed to be the only pub-

licized case under the act involved Sgt. Trent Davies, a police employee of the state's Department of Human Services, which administers and enforces social programs.

Sergeant Davies, who lives in Manahawkin, complained to his superior that the department's confidential client files were regularly made available to outsiders.

As a result, Sergeant Davies said, he was placed on irregular shifts of duty and eventually dismissed. The incidents occurred in 1965, but the case fell under the 1966 law's grandfather clause.

A court reinstated Sergeant Davies to his former position and restored his lost wages. ■