

D.U.P. NO. 88-7

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

STNCO ASSOCIATION OF N.J., INC.,

Respondent,

-and-

Docket No. CI-88-4

VARIS K. BABRIS,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a Complaint in a matter brought by an individual against the State Troopers Noncommissioned Officers' Association ("Association"). It was alleged that the Association denied nonmembers and members not fulfilling meeting attendance requirements, the right to vote on contract ratification. It was held that the right to vote on the contract ratification, absent arbitrary, discriminatory or bad faith conduct on the part of the Association, is an internal Union matter and not within the our jurisdiction.

D.U.P. NO. 88-7

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

STNCO ASSOCIATION OF N.J., INC.,

Respondent,

-and-

Docket No. CI-88-4

VARIS K. BABRIS,

Charging Party.

Appearances:

For the Respondent
Robert Martinez, Esq.

For the Charging Party
Thomas Savage, Esq.

REFUSAL TO ISSUE A COMPLAINT

On August 10, 1987, Varis Babris filed an order to show cause and an unfair practice charge alleging that the State Trooper Noncommissioned Officers' Association ("Association") violated subsections 5.4(b)(1), (3) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"),

^{1/} These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit; (5) Violating any of the rules and regulations established by the commission."

by denying non-members and members not fulfilling meeting attendance requirements the right to vote on a contract ratification.

On September 2, 1987, we advised the parties of our intention not to issue a complaint because Babris' allegations involve an internal union matter not within the Commission's unfair practice jurisdiction. We invited Babris to file a position statement within seven days supporting the contention that a complaint should issue. After receiving an extension of time, Babris filed a position statement on September 25, 1987. On October 1, 1987, we invited the Association to file a reply. On October 13, 1987, the Association filed a position statement.

Babris argues that a refusal to issue a complaint would be contrary to the Legislative policy set forth in N.J.S.A. 34:13A-2, 13A-5.2 and 13A-5.3 of the Act.^{2/} Babris also argues that the

^{2/} N.J.S.A. 34:13A-2 provides, in part, that: The public policy of this State that the best interest of the people of the State are served by the prevention or prompt settlement of labor disputes, both in the private and public sector; that...other forms of employer and employee strife, regardless where the merits of the controversy lie, are forces productive ultimately of economic and public waste....

N.J.S.A. 34:13A-5.2 provides, in part, that: This Commission shall make policy and establish rules and regulations concerning employer-employee relations in public employment relating to...enforcement of statutory provisions concerning representative elections and related matters and to implement fully all the provisions of the Act.

N.J.S.A. 34:13A-5.3 provides, in part, that: A majority representative of public employees in an appropriate unit

ratification process involves not internal but external matters because it affects employee property rights, i.e. wages and employment. Babris also asserts that consistent with Lullo v. IAFF, 55 N.J. 409 (1970), the Commission is guided by federal labor law standards and those standards compel review of allegations of discrimination in the ratification process. Finally, Babris argues that N.J.S.A. 34:13A-5.7^{3/} requires that disputes involving discrimination against nonmembers paying representation fees must be treated as unfair practices.

The Association asserts that Babris has failed to allege that, by its by-laws or conduct, the Association has deprived employees of their right to join or refrain from joining a labor organization. It adds that Babris has failed to allege that the Association has discriminated between classes of employees within its negotiations unit in the discharge of its representative functions. It argues that imposing the burden of according

2/ Footnote Continued From Previous Page

shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

3/ This subsection provides: Any action engaged in by a public employer, its representatives or agents, or by an employee organization, its representatives or agents, which discriminates between nonmembers who pay the said representation fee and members with regard to the payment of such fee other than as allowed under the act, shall be treated as an unfair practice within the meaning of subsection 1(a) or subsection 1(b) of this act.

nonmembers full parliamentary status in decision making would undermine the principle of exclusivity that the Court endorsed in Lullo. The Association also submits that no federal statute or common law conveys to nonmembers the right to vote in a contract ratification to nonmembers of the union. The Association argues that the federal legislation cited by Babris, the Labor Management Reporting and Disclosure Act, 29 U.S.C. § 401 et seq., ("LMRDA") has no counterpart in New Jersey law and therefore offers no guidance. The Association adds that the LMRDA, if relied upon, pertains only to the rights of union members, not nonmembers. Finally, the Association argues that N.J.S.A. 34:13A-5.7 deals solely with disputes about the payment of representation fees and does not otherwise broaden the Commission's unfair practice jurisdiction.

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charged.^{4/} The Commission has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may

^{4/} N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice.... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act.^{5/} The Commission's rules provide that we may decline to issue a complaint.^{6/}

Having reviewed Babris' charge and the parties' submissions, we decline to issue a complaint.

In Quinn v. Woodbridge Tp. Fed. of Teachers, Local 822, AFT, AFL-CIO, Middlesex Cty. Chan. Div., Dkt. No. C-2188-75 (6/22/76), nonmembers of a teachers' union sought to set aside a ratification vote on a sick leave agreement negotiated by the union and board of education. The nonmembers claimed that the denial of a right to vote on a ratification constituted a penalty, reprisal or discrimination against them in violation of N.J.S.A. 34:13A-5.3. The Court, rendering judgment for the defendants, held that:

The constitutional validity of collective negotiations in public employment was sustained in [Lullo]. The majority representative is the exclusive representative of all employees within a negotiating unit both for collective negotiations and for the processing of grievances....

The majority representative is obligated to represent nonmembers fairly, in good faith and without discrimination....

The statutory and decision law obligation of fair and nondiscriminatory representation of

^{5/} N.J.A.C. 19:14-2.1.

^{6/} N.J.A.C. 19:14-2.3.

nonmembers was not breached by defendant local union; there is no contention that the sick leave agreement is unfair, in bad faith, or discriminatory.

Indisputably, plaintiffs and other nonmembers have a vital concern with the subject matter of collective negotiations, including sick leave. Nevertheless, in not joining defendant local union they have acquiesced as to its exclusive authority to conduct collective negotiations and to enter a collective agreement concerning terms and conditions of employment with employer Board of Education.

The by-law procedure for a membership vote on a ratification is an internal process of defendant in the formulation of a collective agreement. Membership support is thus assured. Diversionary opposition by nonmembers is avoided, but nonmembers retain their right of substantive review. As nonmembers, plaintiffs were not participants in the collective negotiations leading to the sick leave agreement. Their exclusion from the membership prerogative to vote on ratification deprived them of no right, statutory or otherwise; they cannot be held to have suffered a penalty or reprisal in violation of N.J.S.A. 34:13A-5.3. [Slip op. at 3-4; citations omitted].

N.J.S.A. 34:13A-5.7 merely granted the Commission unfair practice jurisdiction in disputes about the payment of representation fees. Cf. Boonton Bd. of Ed. v. Judith M. Kramer, 99 N.J. 523 (1985), cert den. U.S. Supreme Ct. Dkt. No. 85-684 (3/10/86).

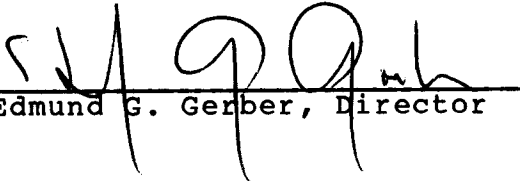
The LMRDA, with its "Bill of Rights" for private sector employees, 29 U.S.C. § 411, has no parallel statute in New Jersey's public sector and protects union members, not nonmembers. Section 411 is enforced through civil action in federal district court, 29 U.S.C. § 412, rather than through unfair labor practice proceedings

before the National Labor Relations Board. While New Jersey has no public sector counterpart to the LMRDA, our courts have exercised jurisdiction over disputes between labor unions and their members in order to enforce a member's contractual right stemming from the union's constitution. See Moore v. Local Union No. 483, 66 N.J. 527 (1975). The Commission lacks jurisdiction to resolve such disputes. City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563, 566 (¶13260 1982). Thus, the LMRDA offers little guidance.

Babris does not allege arbitrary, discriminatory or bad faith conduct on the part of the Association in negotiating the agreement with the State or that the agreement is unfair. Nor does Babris allege that the Association's by-laws deprive nonmembers of the right to join or refrain from joining the Association.

Accordingly, we decline to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: November 24, 1987
Trenton, New Jersey