

D.U.P. NO. 98-28

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

In the Matter of

COMMUNICATIONS WORKERS OF
AMERICA,

Respondent,

-and-

Docket No. CO-98-200

NEW JERSEY PUBLIC EMPLOYEES
ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses, in part, an unfair practice charge brought by the New Jersey Public Employees Association against the Communications Workers of America. The PEA alleges the CWA committed an unfair practice when it instituted procedures which could result in the expulsion of certain PEA members from the CWA as well as impose a fine on those PEA members. The Director held it is not an unfair practice for a union to expell members who support a rival organization. That portion of the charge was dismissed. However, the Commission has not ruled on the whether an employee organization could fine someone it also expelled. This allegation was not dismissed.

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Appearances:

For the Respondent,
Weissman and Mintz, attorneys
(Steven P. Weissman, of counsel)

For the Charging Party,
Steven P. Kook, Organizer

DECISION

On December 5, 1997, the New Jersey Public Employees Association filed an unfair practice charge alleging the Communications Workers of America committed unfair practices within the meaning of N.J.S.A. 34:13A-5.4b (1)^{1/} when it announced that a prosecutor is to be appointed by the CWA to investigate charges filed by the president of CWA Local 32. These charges are against New Jersey Public Employees Association (PEA) members who organized a petition drive for an election within the state employee negotiations units to select a majority representative. It is

^{1/} This provision prohibits 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."

alleged that the investigation can result in the loss of membership in the CWA and the imposition of a fine.

I take administrative notice that the PEA filed representation petitions, Docket Nos. RO-98-61 through RO-98-67, through which the PEA sought to represent employees in a number of State employee units including those represented by the CWA.

An employee organization violates subsection 5.4b (1) when its actions tend to interfere with, restrain or coerce employees in the exercise of the rights guaranteed them by the Act, provided the actions lack a legitimate and substantial organizational justification. Employee organizations are free to create rules binding on their members to accomplish organizational objectives. These rules, often in the form of constitutions and by-laws, are part of the contract between the organization and its members. Calabrese v. Policeman's Benev. Ass'n, Local No. 76, 157 N.J. Super. 139 (Law Div. 1978).

In Calabrese, the Court held that a union may expel "discordant elements." The Court stated:

The advocacy of dual unionism and sponsorship or creation of a rival organization has been held to be activity clearly in violation of membership responsibilities and disruptive of contractual relations; otherwise the members could campaign against the union while remaining a member and therefore, privy to union strategy and tactics. [Id. at 154]

The standard for testing whether a union's expulsion of one of its members violates the employee's rights under the Act is whether the union's actions were arbitrary, capricious, or invidious. Cf. CWA Local 1037 (Schuster), P.E.R.C. No. 86-78, 12 NJPER 91 (¶17032 1985); FMBA Local No. 35 (Carrigino), P.E.R.C. No.

83-144, 9 NJPER 336 (¶14149 1983); Council No. 5, NJCSA (Labriola), P.E.R.C. No. 82-75, 8 NJPER 123 (¶13053 1982); City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563 (¶13260 1982); PBA Local No. 199 (Rasheed Abdul-Hagq), P.E.R.C. No. 81-14, 6 NJPER 384 (¶11198 1980).

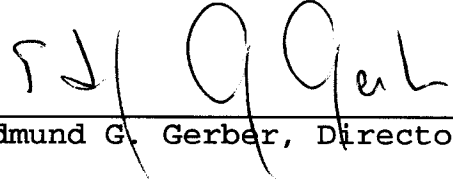
An employee organization's decision to expel a member because of his activities on behalf of a rival organization is reasonable -- it may lawfully expel "discordant elements". See F.O.P. Newark Lodge 12 (Colasanti), P.E.R.C. No. 90-65, 16 NJPER 126 (¶21049 1990); Calabrese.

Accordingly, I find that the PEA does not state facts on which I might conclude that CWA's expulsion of the PEA members from membership was arbitrary, capricious or invidious.

However, I will not dismiss the allegation that the CWA might impose a fine on PEA members who are also CWA members for having filed a representation petition seeking to displace the CWA as exclusive majority representative. There is no Commission precedent which governs this allegation. The PEA charge will be processed on this allegation.

Accordingly, the allegation that the CWA is seeking to expel PEA members is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: January 7, 1998
Trenton, New Jersey