

P.E.R.C. NO. 83-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST ORANGE POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL #25,

Respondent,

-and-

Docket No. CI-81-52-142

JERRY RACANIELLO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the West Orange PBA, Local #25 violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsection 5.4(b)(1), when it arbitrarily rejected an employee's application for membership. The Commission also dismissed an Exception claiming that the unfair practice charge was untimely.

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JERRY RACANIELLO,

Charging Party.

Appearances:

For the Respondent, Schneider, Cohen, Solomon &
DiMarzio, Esqs. (David Solomon, of Counsel)

For the Charging Party, Jerry Racaniello, Pro Se

DECISION AND ORDER

On January 22, 1981, Jerry Racaniello ("Racaniello") filed an unfair practice charge, which he amended on March 19, 1981, against the West Orange Policemen's Benevolent Association, Local #25 ("Local #25"). The charge alleged that Local #25 violated the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically subsection N.J.S.A. 34:13A-5.4(b)(1),^{1/} when it rejected Racaniello's application for union membership without good cause.

On April 28, 1981, the Director of Unfair Practices issued a Complaint and Notice of Hearing. Local #25 filed an Answer on May 8, 1981 in which it contended that it is not an

^{1/} This subsection 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."

unfair practice to deny membership for good faith reasons and that the charge was not timely filed.^{2/}

On July 21, 1981, Commission Hearing Examiner Joan Kane Josephson conducted a hearing. The parties examined witnesses, presented evidence, and waived oral argument. They filed post-hearing briefs by November 9, 1981.

On April 29, 1982, the Hearing Examiner issued her report and recommendations, H.E. No. 82-49, 8 NJPER ____ (¶ ____ 1982) (copy attached). She concluded that the charge was timely filed and that Local #25 violated subsection 5.4(b)(1) when it arbitrarily rejected Racaniello's application because of his friendship with the Town's business administrator and because he had once been an FOP member during his employment on the Orange police force. She recommended that the Commission order Local #25 immediately to admit Racaniello to full membership.

On June 3, 1982, Local #25 filed an Exception and a supporting brief. It asserts that the Hearing Examiner erred in finding that Racaniello's charge had been submitted within six months of the alleged violation. Racaniello has not responded.

Having reviewed the record, we find the Exception to be meritless. Racaniello submitted his initial application for membership on May 19, 1980. The membership rejected his application on June 24, 1980. On June 25, 1980, Local #25's president, detective Richard Buoye, orally notified Racaniello

^{2/} N.J.S.A. 34:13A-5.4(c) provides that "...no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge..."

of his rejection. Racaniello appealed to the State PBA. He received a letter from the Chairman of the State PBA's Judiciary Committee which stated that if a member is in good standing in one PBA local^{3/} and transfers to a new police department, his request for membership in the new department's local should be granted. Upon receipt of this letter, Racaniello again applied for membership in a letter dated October 10, 1980. That same day, Buoye told him that Local #25 would not follow the recommendation of the State PBA.^{4/}

Local #25 contends that Racaniello's rejection occurred on June 26, 1980, and that the six month statute of limitations had run before the filing of Racaniello's unfair practice charge on January 22, 1981. We disagree. This is a case of continuing violation. With each denial of membership, for the same reasons as originally stated by Buoye in June 1980, there is a new violation. Racaniello's unfair practice charge filed on January 22, 1981 and his amended charge filed on March 19, 1981 were both filed within the six month statute of limitations period which began on the date of the last rejection: October 10, 1980. Thus, we dismiss Local #25's Exception.

3/ Prior to becoming a police officer for the Township of West Orange on April 17, 1980, Racaniello had been a police officer in Orange from 1969 to April 1980. He was a member in good standing with the Orange PBA Local #89 during his employment with the Orange Police Department except for a period of two months in 1974 when he quit the PBA to join the FOP.

4/ Nothing in Local #25's Constitution and By-Laws requires the membership to notify an applicant in writing of his rejection.

Local #25 has not excepted to the Hearing Examiner's finding that it arbitrarily and capriciously denied Racaniello membership and thus violated subsection 5.4(b)(1).^{5/}

Local #25's primary reasons for rejecting Racaniello were that he had been an FOP member and was a friend of the Town's business administrator. Racaniello's membership in the FOP was 7 years earlier and had only been for two months. Further, he had been a member in good standing in the Orange PBA just prior to his transfer, and had received a strong recommendation from the president of that Local for membership in the new Local. These facts do not raise the spectre of conflict arising from dual membership in rival labor organizations. Calabrese v. Local 76 Inc., Township of Springfield, 157 N.J. Super. 139 (Law Div. 1978). Additionally, Racaniello's relationship with the Town's business administrator arose simply because the business administrator's secretary was his friend. He may have been on friendly terms with the business administrator, but there is no evidence that this relationship would represent a conflict which would tend to disrupt the unity of Local #25.

Upon a review of the record, and in the absence of an Exception on the merits, we affirm the Hearing Examiner's conclusion that the Local arbitrarily and capriciously denied Racaniello's

4/ Although an employee organization is not required to admit every applicant into its membership, it violates N.J.S.A. 34:13A-5.4 (b)(1) when it arbitrarily, capriciously, or invidiously rejects an application. See In re Rasheed Abdul-Hagq (Bradford Reed), P.E.R.C. No. 81-14, 6 NJPER 304 (¶11198 1980) and In re Council No. 5, New Jersey Civil Service Association (Labriola), P.E.R.C. No. 82-75, 8 NJPER ____ (¶____ 1982).

membership application in violation of subsection 5.4(b)(1).

ORDER

IT IS ORDERED that Respondent West Orange Policemen's Benevolent Association Local #25

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act by refusing to admit Jerry Racaniello to full membership on the same basis as all other members in good standing.

B. Take the following affirmative action:

1. Effective immediately, admit the Charging Party, Jerry Racaniello, to full membership in the West Orange Policemen's Benevolent Association, Local #25, on the same basis as all other members in good standing. Charging Party shall tender membership dues in accordance with the same procedure in effect to collect or deduct dues of employees of the unit for membership in the organization.

2. Post the attached "Notice to Employees" represented by the West Orange Policemen's Benevolent Association, Local #25 in all locations where Local #25 normally posts notices to employees represented by it. Copies of said notice, on forms to be provided by the Commission, shall, after being signed by Respondent's representative, immediately upon receipt thereof, be posted and maintained by it for a period of sixty (60) days thereafter in conspicuous places at the aforementioned locations. Reasonable steps shall be taken by the West Orange Policemen's Benevolent Association, Local #25 to insure that such notices are

not altered, defaced or covered by any other material.

3. Notify the Chairman of the Commission, in writing, within twenty (20) days of receipt of this Order what steps have been taken to comply herewith.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Newbaker and Hipp voted for this decision. Commissioner Graves abstained. None opposed. Commissioners Hartnett and Suskin were not present.

DATED: Trenton, New Jersey
July 20, 1982
ISSUED: July 21, 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 employees represented
by the West Orange Policemen's Benevolent
Association, Local #25 that:

WE WILL NOT interfere with, restrain or coerce employees in the
exercise of the rights guaranteed to them by this Act by refusing
to admit Jerry Racaniello to full membership on the same basis
as all other members in good standing.

WE WILL, effective immediately, admit the Charging Party,
Jerry Racaniello, to full membership in the West Orange Policemen's
Benevolent Association, Local #25, on the same basis as all other
members in good standing. Charging Party shall tender membership
dues in accordance with the same procedure in effect to collect
or deduct dues of employees of the unit for membership in the
organization.

WEST ORANGE POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL #25

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.

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST ORANGE POLICEMEN'S
BENEVOLENT ASSOCIATION
LOCAL #25,

Respondent,

-and-

Docket No. CI-81-52-142

JERRY RACANIELLO,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent violated subsection 5.4(b)(1) of the New Jersey Employer-Employee Relations Act when it rejected the application for membership of Racaniello in the West Orange PBA Local #25. The Hearing Examiner found the charge timely filed based on Kaczmarek v. N.J. Turnpike Auth., 7 N.J. 329 (1978). The Hearing Examiner also found that the Respondent acted arbitrarily in rejecting Racaniello. The Hearing Examiner found that Racaniello established a prima facie case that rejection on this basis was arbitrary and that the Respondent had not successfully rebutted that case. This case is distinguishable from both PBA Local 199 (Bradford G. Reed), P.E.R.C. No. 81-14, 6 NJPER 384 (1980) and In re Council No. 5 New Jersey Civil Service Association (Labriola), P.E.R.C. No. 82-75, 8 NJPER (¶ 1982).

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

STATE OF NEW JERSEY
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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Docket No. CI-81-52-142

JERRY RACANIELLO,

Charging Party.

Appearances:

For the Respondent
Schneider, Cohen, Solomon & DiMarzio, Esqs.
(David Solomon, Esq.)

For the Charging Party
Jerry Racaniello, Pro Se

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on January 22, 1981 and amended on March 19, 1981, by Jerry Racaniello (hereinafter the "Charging Party" or "Racaniello") alleging that the West Orange Policemen's Benevolent Association Local #25 (hereinafter the "Respondent" or "PBA Local #25") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), specifically N.J.S.A. 34:13A-5.4(b)(1), ^{1/} when it rejected the

1/ This subsection 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."

Charging Party's application for organizational membership without good cause.

On April 28, 1981, the Director of Unfair Practices determining that the allegations, if true, might constitute unfair practices within the meaning of the Act issued a Complaint and Notice of Hearing. Respondent's answers asserted that nothing in the charge alleges the PBA acted in bad faith or in an arbitrary or capricious manner in denying membership to Racaniello and further that the charge was not filed within six months of the alleged violation. ^{2/}

A hearing was held on July 21, 1981 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Post-hearing memoranda of law were submitted by November 9, 1981.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act exists and, after hearing and consideration of briefs, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

The West Orange Policemen's Benevolent Association Local #25 is a public employee representative within the meaning of the Act and is subject to its provisions. Jerry Racaniello is a public employee within the meaning of the Act and is subject to its provisions.

Racaniello became a police officer for the Township of West Orange on April 7, 1980. From 1969 until April 1980 he had been a police officer in Orange, New Jersey. He was a member of

^{2/} N.J.S.A. 34:13A-5.4(c) provides that "...no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge..."

PBA #89 in Orange.

In 1974 Racaniello quit the PBA and became a charter member of the Fraternal Order of Police (the "FOP"). About 35 of 99 police officers in Orange dropped out of the PBA and joined the FOP at that time. The FOP faction was organized and split from the PBA during an investigation of the Orange Police Department by the Essex County Prosecutor. The two distinct factions evolved during the investigation. Subsequently, Racaniello applied to rejoin the Orange PBA and, according to Detective Richard O'Malley, Orange PBA #89 president, the application was unanimously accepted. At the time Racaniello left Orange to join the West Orange Department, he was chairman of the PBA grievance committee.

On May 19, 1980 Officer Racaniello applied for membership in the West Orange PBA Local #25 by writing to the PBA President, Detective Richard Buoye. ^{3/} President Buoye appointed a screening committee to investigate Racaniello's application. On June 24, 1980, Buoye read the Screening Committee report to the PBA general membership. ^{4/} The Committee recommended that Racaniello be rejected because he had formerly been a member of the FOP and because of his personal friendship with the West Orange Business Administrator Marvin Corwick, with whom the PBA was engaged in an "on-going dis-

^{3/} Orange PBA President O'Malley had written to Buoye on March 25, 1980 "strongly" recommending Racaniello for membership noting "...You, too, will find that he is dependable and he can be relied upon to support the actions of your local." (CP-1 in Evidence)

^{4/} The composition of the screening committee is secret. They report their findings directly to the President but this report was not submitted to the undersigned at the hearing. The committee never contacted Racaniello; it has never been the practice of a Local #24 screening committee to contact an applicant (Tr. pp. 91, 92).

pute" (Tr. p. 47). ^{5/} Buoye testified the Committee also recommended that Racaniello not be admitted at that time because there had not been sufficient time to evaluate his character. ^{6/} The membership accepted the recommendation of the screening committee and rejected Racaniello.

On June 25, 1980, the next morning, Buoye met Racaniello in front of Racaniello's home and Buoye informed him that he had been rejected for membership the prior night. Buoye told Racaniello that the PBA discussed the FOP issue, the Corwick friendship and the traffic summons issue. Buoye told Racaniello that under Local #25's Constitution there was a six-month waiting period before a member's name would be resubmitted for membership but that Buoye would ask the members in August to waive the six months' waiting period. On September 3, 1980 Buoye advised Racaniello by letter that the membership refused to waive the six-month waiting period and suggested Racaniello resubmit his application in December 1980.

On September 3, 1980, Racaniello instituted an appeal of Local 25's decision with the State PBA. On October 10, 1980, Racaniello presented another application to Buoye enclosing a letter from

^{5/} Racaniello's personal friendship with Corwick is not disputed and has evolved through Corwick's secretary, Lois Levy. Lois Levy has been Racaniello's girl friend for ten or eleven years. She has worked for Corwick for five years.

^{6/} According to Buoye, these were the reasons cited by the committee. There was also a discussion at the PBA meeting concerning Racaniello issuing a traffic summons in West Orange to a driver who held a PBA courtesy card. Racaniello cited the three reasons in his subsequent appeal to the State PBA (CP-4 in Evidence). Buoye testified that while this issue was not part of the Screening Committee report, it was discussed at the general meeting prior to the vote.

the State PBA Judiciary Committee to Racaniello stating that a member in good standing in one PBA should be granted membership in another PBA on transferring to a new department (CP-5 and 6 in Evidence). Buoye told Racaniello he would not follow the State's recommendation and accept him as a member. ^{7/}

On December 18, 1980 the State PBA Judiciary Committee officially found that membership in one local is not automatically transferable to another local but the Committee was critical of Local #25's screening committee investigation, noting that in the committee's opinion a "bargaining agent cannot deny any applicant membership without valid reasons." (CP-7 in Evid.) In view of this, they recommended that the West Orange PBA Local #25 reconsider the Racaniello decision. The decision was issued on December 10, 1980; the charge was filed on January 22, 1981.

Did the Respondent violate sub-section (b)(1) of the Act when it rejected the membership application of Jerry Racaniello?

The Respondent argues that the charge should be dismissed as untimely since the alleged unfair practice occurred on June 25, 1980, which was more than six months prior to the filing of the charge. They argue that the Charging Party's appeal of Local #25's

^{7/} While I am aware that this conversation might not constitute a formal PBA proceeding, I credit Racaniello's unrefuted testimony that the conversation occurred (Buoye remembered the meeting with Racaniello but could not recall the details of the conversation) and that to Racaniello it constituted notice to him of rejection of his application on October 10, 1980. To Racaniello it was also notice that PBA #25 would not be bound by the State PBA's decision. When Racaniello was rejected the prior June, that rejection had been communicated to him by President Buoye in the same manner.

decision should not be allowed to toll the statute since the appeal is analogous to pursuing a contractual grievance procedure which would not toll the statute of limitations. Racaniello responds to this argument by saying "the six-month clock restarts each time there is a repeat of the violation."

In Kaczmarek v. N. J. Turnpike Authority, 77 N.J. 329 (1978), the Supreme Court allowed the filing of an unfair practice charge seven months and three days after a cause of action had arisen, since the Charging Party had immediately looked for a forum in which to pursue his legal remedies. The court noted it "would be derelict for the court to apply strictly and uncritically a statutory period of limitations without considering conscientiously the circumstances of the individual case..." (at 338). The court noted that statutes of limitations are designed to "assure fairness to defendants" and that this policy should be weighed against whether a plaintiff has "slept on his rights." (at 340) In Kaczmarek the plaintiff had not pursued his action in the proper forum but the court found in the context of that case that the statute contemplated "a reasonable error on the part of an employee as to the proper forum to adjudicate his claim;..." (at 342)

Like Kaczmarek, Racaniello searched for the proper forum in which to adjudicate his claim. He diligently pursued his case before the State PBA ^{8/} and reapplied for local membership on October 10,

^{8/} The Respondent cites Calabrese v. P.B.A. Local 76, 157 N.J. Super. 139 (Law Div. 1978) in support of their substantive argument. In that case the court found it had jurisdiction to hear the matter because the plaintiffs had "exhausted their administrative remedies in the local and State PBA," (p. 146) before taking judicial action to attempt to force the local PBA to admit them.

during the course of his State appeal. ^{9/} Buoye told Racaniello that Local #25 would not be bound by a state decision (Tr. p. 41), and Racaniello then went to the Commission. In view of the circumstances of this case, I believe the filing was timely.

The Commission has held that denial of membership in the majority representative's organization may be a violation of N.J.S.A. 34:13A-5.4(b)(1) when the employee organization acts arbitrarily, capriciously or invidiously in rejecting membership of an individual. In re Rasheed Abdul-Haqq (Bradford Reed), P.E.R.C. No. 81-14, 6 NJPER 304 (¶111198 1980); In re Council No. 5 New Jersey Civil Service Association (Labriola), P.E.R.C. No. 82-75, 8 NJPER (¶ 1982).

The Charging Party argues that membership rejection on the basis of a personal friendship (the Corwick issue) is arbitrary as well as is rejection for membership seven years previously in the FOP.

The Respondent argues that there has been no arbitrary denial since membership was not denied, merely held "in abeyance"; since Racaniello was told of the reasons; and since the dispute between the PBA and Corwick was "bitter." They argue in their brief that the Supreme Court has held that membership in a rival labor

^{9/} Respondent considers the application rejected on June 25 to be the Charging Party's only application proceeding. PBA President Buoye communicated rejection verbally both times. As noted above, the October 10 conversation with Buoye constituted to Racaniello notice of rejection, even if it was not formal rejection. I consider the October 10 local application as part of the course of the State PBA appeal which is alleged. The gist of the action remains the same. It sets forth the same claim.

organization is sufficient grounds for expulsion from membership. Calabrese v. P.B.A. Local 76 Inc. of the Twp. of Springfield, N.J., 157 N.J. Super. 139 (Law Div. 1978). They also argue that a labor organization has the right to establish rules for membership under N.J.S.A. 34:13A-5.4(b)(1) and 29 U.S.C.A. § 158(b)(1)(A) and that the unfair practice claim cannot infringe on that right.

In Bradford Reed, supra, the Commission found it had jurisdiction to hear disputes concerning admission to membership because of a "critical difference in the language of N.J.S.A. 34:13A-5.4(b)(1) and its federal counterpart, 29 U.S.C.A. § 158(b)(1)(A)." The Commission went on to say:

While both enactments prevent labor organizations from abridging the rights of employees granted by the respective Acts, the federal statute contains the following proviso:

Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

29 U.S.C.A. § 158(b)(1) then goes on to prohibit, in subsection (b), the same conduct proscribed by N.J.S.A. 34:13A-5.4(b)(2): interference by an employee organization with an employer's selection of his negotiations and grievance adjustment representatives.

Recognizing that the National Labor Relations Act served as a model for our Act, Galloway Twp. Bd/Ed v. Galloway Twp. Ass'n of Educ'l Secys, 78 N.J. 1 (1978), the omission of the proviso from our Act must be viewed as intentional, especially where the language appearing before and after it was specifically adopted. While the failure to adopt specific language from the NLRA may not, in itself, indicate that our Act should be construed differently from the federal Act, Galloway, supra, such is

not the case where the omitted proviso has been cited in numerous cases as the basis for a union's ability to control who is on its membership rolls and regulate its own internal affairs. See e.g., NLRB v. Int'l Union of Marine and Shipbuilding Workers, 391 U.S. 418, 424 (1968). Thus, we reject the Intervenor's contentions that the federal cases should be applied by us to rule that we lack jurisdiction over this case and that Local 199 has unfettered discretion over admission of unit members to the organization.

The Commission went on to acknowledge that while voluntary organizations have the right to establish rules for admission, that right is not unfettered and may not be done in an arbitrary, capricious or invidious manner. Bradford Reed, p. 9.

In Bradford Reed the Commission found that an employee organization had acted arbitrarily when it denied a membership application without proffering any reasons. On the other hand, in the Labriola case, supra, the Commission found the Association had not acted arbitrarily, capriciously or invidiously when it rejected the membership application of an individual who persistently threatened co-employees and Association members with physical violence. The Commission upheld Hearing Examiner Alan Howe who found the majority representative had good reason to exclude an individual who threatened Association members with physical violence and did so with the "due deliberation of its Board of Directors and membership."

The case of Jerry Racaniello is distinguishable from both Reed and Labriola. I find it to be closer to Reed than Labriola. Local #25 has not successfully rebutted Racaniello's prima facie case that the employee organization acted arbitrarily, capriciously

or invidiously when it rejected the membership application of an individual because of membership in a rival organization seven years previously and because of a personal friendship. 10/

In the Springfield case cited by the Respondent the court found the PBA could expel members for joining the FOP noting that a conflict could arise by the advocacy of dual membership in a rival labor organization. Racaniello left the FOP and rejoined the PBA and had not been a member of the FOP for seven years. 11/ The letter Orange PBA President O'Malley had written "strongly" recommending Racaniello and praising his PBA activities was not presented to the membership prior to the vote because, President Buoye felt this letter was not "pertinent" in evaluating Racaniello's application (Tr. p. 109). He testified the Screening Committee "didn't think it was pertinent...[they] knew of the letter, but they didn't have it. I kept it." (Tr. pp. 106, 107)

Racaniello had been an active PBA member in Orange for years and was praised by the local leadership. 12/ There is no

10/ Respondent's argument that Racaniello was not "officially rejected" and that the application was held in abeyance is not consistent with the record. On direct examination President Buoye testified, "I told him the men rejected him..." (at p. 79) He was asked: "Is there anything in your constitution and by-laws that require the membership to notify, in writing, an applicant of his rejection in writing? A: No." (at p. 84)

11/ About three months after the rejection of Racaniello, another police officer was accepted for PBA membership who left the Newark Police Department as an FOP member and joined the West Orange Local PBA. By-laws in Newark allow dual membership and this employee selected the FOP (Tr. 95). The PBA Screening Committee apparently did not find this situation objectionable. When President Buoye was asked how the committee arrived at their recommendation in this case he refused to testify responding: "It's a secret." (Tr. p. 97)

12/ Buoye was present at a PBA Local #89 awards dinner on June 28 or 29 when Racaniello was given an award (Tr. p. 60).

evidence of his advocating dual unionism. I find PBA Local #25's rejection of Racaniello on the basis of the FOP incident insufficient to rebut Racaniello's prima facie case.

Racaniello has a personal friendship with Business Administrator Corwick's secretary and with Corwick himself. It predates by many years his employment in West Orange. It is difficult to find that a purely personal relationship should be sufficient to rebut Racaniello's prima facie case, even given the difficult relationship the PBA has had with Corwick, the representative of the public employer. 13/

The PBA argues that Racaniello "would be a discordant element" and is taking precautions to "assure organization harmony," yet they make it impossible for Racaniello to rebut this concern because of the secret nature of their membership investigation. Respondent wants more time to investigate him but would not continue the investigation unless he reapplied for membership. Racaniello's case has not been rebutted, he should be admitted to membership. A labor organization may prescribe rules for persons admitted to membership. They are not without remedy if a member becomes a discordant element.

A union...has the right to provide by its constitution and by-laws for expulsion of members transgressing their reasonableness. Barnhart v. United Auto, etc., Local 669, 12 N.J. Super. 147, 153 (App. Div. 1951). (emphasis added) Calabrese at 156.

Based on the above the undersigned Hearing Examiner recommends that the Commission find that the facts alleged and proven herein constitute arbitrary denial of membership and that the Re-

13/ The son of the West Orange mayor is a member of the PBA (Tr. p. 111).

spondent committed an unfair practice in violation of N.J.S.A. 34:13A-5.4(b)(1) when it arbitrarily excluded Charging Party from membership in PBA Local #25. The undersigned will recommend that the Commission order that PBA Local #25 admit Charging Party to full membership. This remedy is consistent with the remedy the Commission ordered in the Reed case wherein the Commission ordered that Reed be admitted as an appropriate remedy for a violation of N.J.S.A. 34:13A-5.4(b)(1).

Upon the foregoing and upon the entire record in this case the Hearing Examiner makes the following

CONCLUSIONS OF LAW

The Respondent West Orange Policemen's Benevolent Association #25 violated N.J.S.A. 34:13A-5.4(b)(1) when it rejected the membership application of Jerry Racaniello.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission
ORDER:

Respondent West Orange Policemen's Benevolent Association,
Local #25 shall:

1. Cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act by refusing to admit Jerry Racaniello to full membership on the same basis as all other members in good standing.

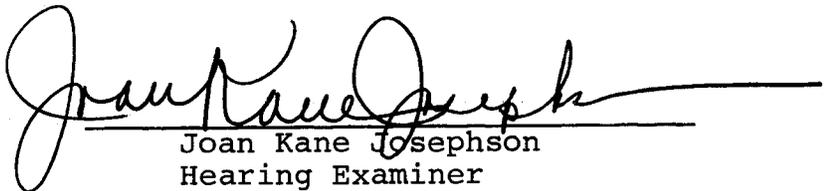
2. Take the following affirmative action deemed necessary to effectuate the purposes of the Act:

a. Effective immediately, admit the Charging Party Jerry Racaniello to full membership in the West Orange Policemen's

Benevolent Association, Local #25, on the same basis as all other members in good standing. Charging Party shall tender membership dues in accordance with the same procedure in effect to collect or deduct dues of employees of the unit for membership in the organization. ^{14/}

b. Post the following "Notice to Employees" represented by the West Orange Policemen's Benevolent Association, Local #25 in all locations where Local #25 normally posts notices to employees represented by it. Copies of said notice, on forms to be provided by the Commission, shall, after being signed by Respondent's representative, immediately upon receipt thereof, be posted and maintained by it for a period of sixty (60) days thereafter in conspicuous places at the aforementioned locations. Reasonable steps shall be taken by the West Orange Policemen's Benevolent Association, Local #25 to insure that such notices are not altered, defaced or covered by any other material.

c. Notify the Chairman of the Commission, in writing, within twenty (20) days of receipt of this Order what steps have been taken to comply herewith.


Joan Kane Josephson
Hearing Examiner

DATED: April 29, 1982
Trenton, New Jersey

^{14/} Local #25 is to fully cooperate in the processing of whatever documents are necessary to reflect Charging Party's admission to full membership. Membership is, as previously stated, to be accorded immediately with all rights and obligations pursuant thereto.

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 hereby notify all employees represented for purposes of collective negotiations by the WEST ORANGE POLICEMEN'S BENEVOLENT ASSOCIATION, LOCAL #25, that:

WEST ORANGE POLICEMEN'S BENEVOLENT ASSOCIATION, LOCAL #25 will cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act by refusing to admit JERRY RACANIELLO to full membership on the same basis as all other members in good standing.

WEST ORANGE POLICEMEN'S BENEVOLENT ASSOCIATION, LOCAL #25 will effective immediately, admit the Charging Party JERRY RACANIELLO to full membership in WEST ORANGE POLICEMEN'S BENEVOLENT ASSOCIATION, LOCAL #25 on the same basis as all other members in good standing. Charging Party shall tender membership dues in accordance with the same procedure in effect to collect or deduct dues of employees of the unit for membership in the organization.

WEST ORANGE POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL #25 (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 James Mastriani, Chairman, Public Employment Relations Commission, 429 E. State State Street, Trenton, New Jersey 08608 Telephone (609) 292-9830.