

P.E.R.C. NO. 92-98

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FRATERNAL ORDER OF POLICE,
LODGE NO. 22,

Respondent,

-and-

Docket No. CI-H-90-62

MICHAEL T. MOSER,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Fraternal Order of Police, Lodge No. 22 violated the New Jersey Employer-Employee Relations Act by expelling Michael T. Moser from membership.

STATE OF NEW JERSEY
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MICHAEL T. MOSER,

Charging Party.

Appearances:

For the Respondent, William P. McDonnell, Consultant

For the Charging Party, Simon M. Bosco, Consultant

DECISION AND ORDER

On March 8, 1990, Michael T. Moser filed an unfair practice charge against the Fraternal Order of Police, Lodge No. 22 ("FOP"). The charge alleges that the FOP violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsection 5.4(b)(1),^{1/} by: (1) expelling him from the FOP because he participated in an unfair practice proceeding brought by the Policemen's Benevolent Association, Local No. 127 ("PBA") against the Township of Old Bridge; (2) denying him due process during the expulsion process; and (3) denying him legal assistance against a job-related indictment.

^{1/} This subsection prohibits employee organizations, their representatives or agents from "[i]nterfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

On June 5, 1991, a Complaint and Notice of Hearing issued. On June 18, the FOP filed its Answer generally denying the allegations. On November 14, the FOP moved for summary judgment. The motion was referred to the Hearing Examiner. On December 2, the charging party filed a brief in opposition to the FOP's motion and a cross-motion for partial summary judgment. On December 11, the FOP replied to the cross-motion.

On December 31, 1991, Hearing Examiner Stuart Reichman recommended granting Moser's cross-motion for partial summary. H.E. No. 92-17, 18 NJPER 73 (¶23032 1991). He found that Moser's majority representative violated the Act when it expelled him arbitrarily. The Hearing Examiner also recommended granting the FOP's motion on the remaining allegations in the Complaint. He found that the due process claim was moot in light of the recommended order that the expulsion be rescinded, and that the allegation concerning the denial of legal assistance should be dismissed because the decision by an employee organization to provide legal assistance is an internal organizational matter.

The Hearing Examiner served his decision on the parties. Exceptions were due January 13, 1992. Neither party filed exceptions or requested an extension of time.

The Hearing Examiner's findings of fact (H.E. at 4-8) are accurate. We incorporate them with these additions. On October 1, 1989, Charles Spinola, a sergeant and member of the FOP sent a memorandum to FOP President J.W. Robbins charging Moser with

violating FOP bylaws. On December 19, Moser received a letter from Robbins setting a hearing for January 4, 1990. On February 2, 1990, Moser was informed that the FOP Board of Directors had expelled him and that he could appeal within 10 days.

Based all the circumstances of this case and given the absence of exceptions, we adopt the Hearing Examiner's recommendations and issue this order.

ORDER

FOP Lodge No. 22 is ordered to:

A. Cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act by expelling Michael T. Moser from membership.

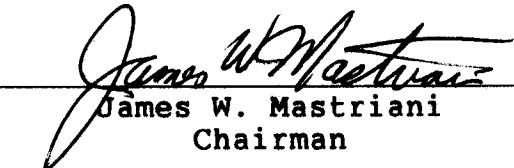
B. Take this action:

1. Restore Michael T. Moser to membership in the majority representative FOP Lodge No. 22 with all rights, benefits and emoluments of membership retroactive to the date of the expulsion. Restoration of Moser's membership is to be effective immediately.

2. Post in all places where notices to unit members are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: March 30, 1992
Trenton, New Jersey
ISSUED: March 31, 1992



NOTICE TO EMPLOYEES



REPRESENTED BY THE
FRATERNAL ORDER OF POLICE, LODGE NO. 22

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

We, hereby notify unit employees that

WE WILL NOT interfere with, restrain or coerce employees in the exercise of the rights guaranteed to them by the Act by expelling Michael T. Moser from membership.

WE WILL restore Michael T. Moser to membership in the majority representative FOP Lodge No. 22 with all rights, benefits and emoluments of membership retroactive to the date of the expulsion. Restoration of Moser's membership is to be effective immediately.

CI-H-90-62

FRATERNAL ORDER OF POLICE LODGE NO.22

Docket No. _____

Dated: _____

By: _____

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, 495 West State Street, CN 429, Trenton, NJ 08625-0429 (609) 984-7372

H.E. NO. 92-17

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

In the Matter of

FRATERNAL ORDER OF POLICE
LODGE NO. 22,

Respondent,

-and-

Docket No. CI-H-90-62

MICHAEL T. MOSER

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that FOP Lodge No. 22 violated Section 5.4 (b)(1) of the New Jersey Employer-Employee Relations Act when it expelled Michael T. Moser from membership in FOP Lodge No. 22 - Union for an arbitrary, capricious or invidious reason. The Hearing Examiner recommends the dismissal of Moser's allegations that he was denied his due process rights to appeal his expulsion on the grounds that the due process issue is now moot in light of the remedial order to rescind Moser's expulsion. The Hearing Examiner also recommends that Moser's allegations that he was wrongfully denied legal assistance by Lodge No. 22 be dismissed because the decision by an employee organization to provide legal aide to a member is an internal organizational matter.

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.

H.E. NO. 92-17

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

In the Matter of

FRATERNAL ORDER OF POLICE
LODGE NO. 22,

Respondent,

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Docket No. CI-H-90-62

MICHAEL T. MOSER

Charging Party.

Appearances:

For the Respondent, William P. McDonnell, Consultant

For the Charging Party, Simon M. Bosco, Consultant

**HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION ON
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND CHARGING
PARTY'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

On March 8, 1990, Michael T. Moser ("Moser" or "Charging Party") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") against the Fraternal Order of Police, Lodge No. 22 ("Lodge No. 22" or "Respondent"). The Charging Party alleges (1) that he was expelled from Lodge No. 22 because he participated in an unfair practice proceeding brought by the Policemen's Benevolent Association, Local No. 127 ("Local No. 127") against the Township of Old Bridge ("Township"); (2) that he was not provided with an appropriate due process expulsion hearing in that he was not afforded the proper means by which to prepare a defense in the expulsion proceeding, that the hearing was biased and unfair,

that he was unable to examine or cross-examine witnesses, that he was unable to hear or question the individual(s) who brought charges against him and that he was never provided with requested information regarding the established FOP appeal process; and (3) that he was disparately treated with regard to requests made for legal assistance to be provided by Lodge No. 22 following a job-related indictment brought against him. Moser contends the above-stated course of action violates the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-5.4(b)(1).^{1/}

On June 5, 1991, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On June 18, 1991, Lodge No. 22 filed its answer generally denying the allegations contained in the unfair practice charge and denying that it violated any provision of the Act. On November 14, 1991, Lodge No. 22 filed a Motion for Summary Judgment pursuant to N.J.A.C. 19:14-4.8. On November 15, 1991, Lodge No. 22's motion was referred to me for disposition. On December 2, 1991, the Charging Party filed a brief in opposition to Lodge No. 22's motion and a Cross-Motion for Partial Summary Judgment. On December 11, 1991, Lodge No. 22 filed a response to the Charging Party's cross-motion.

^{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."

In considering motions for summary judgment, all inferences are drawn against the moving party and in favor of the party opposing the motion and no credibility determinations may be made. The motion must be denied if material factual issues exist. A motion for summary judgment must be granted with extreme caution, and the summary judgment procedure is not to be used as a substitute for a plenary trial. Baer v. Sorbello, 117 N.J. Super 182 (App. Div. 1981); State of N.J., Dept. of Personnel, P.E.R.C. No. 89-67, 15 NJPER 76 (¶20031 1988), aff'd App. Div. Dkt. No. A-3465-88T5 (6/14/90), pet. for certif. den. S. Ct. Dkt. No. 32,331 (10/11/90); AFT Local 481 (Jackson), H.E. No. 87-9, 12 NJPER 628 (¶17237 1986), adopted P.E.R.C. No. 87-16, 12 NJPER 734 (¶17274 1986); Essex County Educational Services Comm., P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982).

Where the party opposing the motion does not submit any affidavits or documentation contradicting the moving party's affidavits or documents, the moving party's facts may be considered as true, and there would necessarily be no material factual issue to adjudicate unless it was raised in the movant's pleadings. Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67 (1974). See also, City of Atlantic City, H.E. No. 86-36, 12 NJPER 160 (¶ 17064 1986), aff'd. P.E.R.C. No. 86-121, 12 NJPER 376 (¶ 17145 1986); CWA, Local 1037, AFL-CIO, H.E. No. 86-10, 11 NJPER 621 (¶ 16217 1985), adopted P.E.R.C. No. 86-78, 12 NJPER 91 (¶ 17032 1985). The Court in Judson held that:

...if the opposing party offers no affidavits or matter in opposition, or only facts which are immaterial or of an insubstantial nature...he will not be heard to complain if the court grants summary judgment, taking as true the statement of uncontradicted facts and the papers relied upon by the moving party, such papers themselves not otherwise showing the existence of an issue of material fact. [Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. at 75.]

Accordingly, I make the following:

FINDINGS OF FACT

1. Lodge No. 22 is an employee representative and Michael T. Moser is an employee within the meaning of the Act.

2. The organizational configuration of police organizations within the Township is as follows:

FOP Lodge No. 22--Fraternal ("Lodge No. 22--Fraternal") - accepts active, honorary and affiliated members and includes ranked police officers from sergeant to chief as eligible participants. Matters pertaining to collective negotiations and grievances are not addressed during Lodge No. 22--Fraternal meetings.

FOP Lodge 22--Union ("Lodge No. 22--Union") - this organization is the recognized majority representative for all superior police officers in the ranks of sergeant, lieutenant and captain.

FOP Lodge No. 32 - This organization is a minority employee organization of non-ranking Township police officers.

PBA, Local No. 127--Fraternal ("Local No. 127--Fraternal") - a fraternal organization which provides for mutual benevolent-type activities such as charities, funeral expenses, fund raisers, sports, etc. Membership in this organization is open to Township police officers from the rank of patrolmen up to and including chief.

PBA, Local 127--Union ("Local No. 127--Union") - This organization is the recognized majority representative of all non-ranking Township patrol officers and includes its own treasury, collective negotiations committee, grievance committee, etc.

PBA, Local 127--Superior Officers Association ("Local No. 127--SOA") - This organization is a minority employee organization which would include Township superior officers only and operates under a separate treasury, collective negotiations committee and grievance committee.

3. Commencing with the negotiations for the 1984-1985 collective agreement between the Township and Local No. 127, Local No. 127--SOA was formed and voluntarily recognized by the Township as the majority representative of superior officers in the ranks of sergeant, lieutenant and captain. Prior to the negotiations for the 1984-85 agreement, Local No. 127 represented all police officers employed by the Township from the rank of patrol officer through captain and had negotiated a long series of collective agreements with the Township.

4. On September 21, 1987, the superior officers organization disaffiliated from Local No. 127--SOA and formed Lodge No. 22. On December 7, 1987, the Township voluntarily recognized Lodge No. 22 as the majority representative of superior officers. The Township has since entered into a three-year collective agreement with Lodge No. 22 covering 1989 through 1991.

5. During the time that Local No. 127 represented both patrol and superior officers, a tax-deferred pension fund, commonly called the Death and Retirement Fund, was established and made available to police officers of all ranks. During the spring, 1987,

Local No. 127--SOA initiated a meeting with Local No. 127 to discuss the ultimate financial separation of the two groups. At issue, among other things, was the fate of the Death and Retirement Fund. It was decided that the Death and Retirement Fund would be placed in trust and held jointly by the fraternal organizations of the two groups.

6. In the fall, 1987, superior officers moved to sever their affiliation with the PBA and sought a charter from the New Jersey State Fraternal Order of Police. As previously indicated, Lodge No. 22 was established and ultimately voluntarily recognized by the Township as the majority representative of superior officers.

7. The issue of whether the Death and Retirement Fund should continue was repeatedly raised at subsequent Lodge No. 22--Fraternal meetings. Finally, a motion was made at a Lodge No. 22--Fraternal meeting to dissolve the Death and Retirement Fund. The motion was defeated by a narrow margin.

8. Lodge No. 22's by-laws provide, in relevant part, that the purpose of the Lodge is:

...to further and encourage a higher degree of skill, efficiency, and discipline among all persons who are employed, on a full-time basis, as a police officer of the rank of sergeant, lieutenant, captain, deputy chief, and chief, within the Township of Old Bridge, New Jersey. We unite together for the protection of the public safety, to cultivate friendship and loyalty, to stimulate intellectual, social and economic conditions of the active membership of the lodge.

The by-laws also provide for the following:

Any member of the lodge or officer of the lodge may be fined, suspended or expelled by the Board of Directors for conviction of a crime, for insubordination to superior officers of the lodge, for failure to remain in good standing by the prompt payment within three months of all fees, dues, fines, and assessments levied by the Board of Directors for the willful, or wantonly negligent infraction of any by-laws, contract, rule, regulation, or order, or for acts or conduct which may be deemed disorderly or injurious to the interests or hostile to the objects of this lodge.

Additionally, the by-laws provide that:

No member of the lodge shall print or cause to be printed, any item concerning the affairs of the lodge without prior approval of the President.

9. Local No. 127--Union filed an unfair practice charge against the Township (Docket No. CO-H-89-32). Moser voluntarily provided an affidavit to Local No. 127--Union to assist it in the preparation of the unfair practice case against the Township. Subsequently, Moser testified during the unfair practice hearing on behalf of Local No. 127--Union. Statements made in the affidavit and through testimony at the hearing disclosed information related to the affairs of Lodge No. 22--Fraternal. Specifically, Moser disclosed information relating to discussions which took place during Lodge No. 22--Fraternal meetings addressing the status of the Death and Retirement Fund; disclosed that certain Lodge No. 22--Fraternal leaders and members were making disparaging remarks about Local No. 127's officers, and disclosed that a motion to dissolve the Death and Retirement Fund was placed before Lodge No. 22--Fraternal's membership and the outcome of the vote taken on that motion. Moser also disclosed that during the course of a Lodge

No. 22 meeting convened for the purpose of discussing the Death and Retirement Fund, a dispute arose regarding the propriety of non-ranking police officers (members of Lodge No. 32) attending such meeting.

10. On September 27, 1989, Moser, along with six other police officers, was indicted and charged with misconduct for failing to adequately investigate a traffic accident involving an off-duty police officer. On September 29, 1989, Moser was suspended from police duties. On January 21, 1990, Moser requested that Lodge No. 22 provide him with legal aid for the purpose of defending the charges brought against him in the indictment. Lodge No. 22 did not provide Moser with legal aid in the form of financial assistance or otherwise. In May, 1989, Lodge No. 22 provided legal aid to the Township's Chief of Police, Jerry Palumbo, in support of a civil suit which the Chief brought against the Township. Since the establishment of Lodge No. 22 in or about 1984, it has never provided legal assistance for any member of the Lodge under criminal indictment.

ANALYSIS

N.J.A.C. 34:13A-5.3 provides, in relevant part, the following:

...[P]ublic employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity...

An employee organization violates subsection 5.4(b)(1) when its action tends 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. N.J. Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550, 551 n. 1 (¶10285 1979). Employee organizations are free to create rules binding upon 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 membership. Calabrese v. Policemen's Benevolent Assn., Local No. 76, 157 N.J. Super. 139 (Law Div. 1978). The Courts and the Commission have traditionally been reluctant to interfere with the internal affairs of private organizations. Id.; Old Bridge Ed. Assn., P.E.R.C. No. 91-7, 16 NJPER 438 (¶21188 1990); State Troopers Non-Commissioned Officers Assn. of N.J., D.U.P. No. 88-7, 14 NJPER 14 (¶19004 1987); Camden Cty. College Faculty Assn., D.U.P. No. 87-13, 13 NJPER 253 (¶18103 1987); Amalgamated Transit Union Local No. 824, D.U.P. No. 85-9, 10 NJPER 600 (¶15279 1984); Jersey City Police Officers Benevolent Assn., D.U.P. No. 85-2, 10 NJPER 475 (¶15212 1984); City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563 (¶13260 1982), app. dism. App. Div. Dkt. No. A-768-82T1 (7/22/83); Council of N.J. State College Locals, D.U.P. No. 81-8, 6 NJPER 531 (¶11271 1980). Review of an organization's by-laws is necessary only when they impair the public welfare or an individual's opportunity for economic success. Calabrese; see also Falcone v. Middlesex Cty. Medical Society, 34 N.J. 582 (1961).

The standard that the Commission has adopted for testing the propriety of an employee organization's expulsion of a member is whether the employee organization's actions were arbitrary, capricious, or invidious. See, FOP Lodge 12 (Colasanti), P.E.R.C. No. 90-65, 16 NJPER 126 (¶21049 1990); 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; PBA Local No. 199 (Rasheed Abdul-Haqq), P.E.R.C. No. 81-14, 6 NJPER 384 (¶11198 1980). The law creates a presumption that the majority representative violates the Act when it denies membership to an employee it represents. In order to rebut this presumption, the employee organization must prove that the rejection was for good cause. If it succeeds, no violation of subsection 5.4(b)(1) exists. FMBA Local No. 35, see also W. Orange PBA, Local No. 25, P.E.R.C. No. 83-6, 8 NJPER 433 (¶13202 1982), mot. for enf. granted, App. Div. Docket No. A-1684-82T3 (3/30/83); Council No. 5, NJCSA; PBA Local No. 199 (Rasheed Abdul-Haqq).

Moser asserts that he was expelled from Lodge No. 22 because he assisted Local No. 127 in preparing and presenting its unfair practice charge against the Township. Lodge No. 22 contends that Moser was expelled from the Lodge because he willfully and voluntarily violated the clear and unambiguous by-laws of the

organization. Lodge No. 22 contends that Moser violated its by-laws by assisting a rival labor organization,^{2/} Local No. 127, in that organization's unfair practice charge against the Township. Lodge No. 22 points to Moser's disclosure of discussions and events pertaining to Lodge No. 22--Fraternal to outside parties without having obtained authorization as required by Lodge No. 22's by-laws. Lodge No. 22 asserts that Moser's actions demonstrated disloyalty on his part toward the Lodge.

It is undisputed that Lodge No. 22--Fraternal and Lodge No. 22--Union are separate entities. Such separation must exist since the fraternal organization also admits managerial executives such as the Chief of Police into membership. See, Egg Harbor Tp., P.E.R.C. No. 85-46, 10 NJPER 632 (¶15304 1984). Lodge No. 22 admits that Moser's disclosures of discussions and events which occurred during closed meetings of Lodge No. 22--Fraternal involved only internal organizational matters and did not pertain to matters involving the employer-employee relationship. The Death and Retirement Fund was a

^{2/} While the parties dispute whether Local No. 127 is a "rival" employee organization with respect to Lodge No. 22, I make the following observations: (1) since Local No. 127 represents the Township's non-ranking police officers it is not in competition with Lodge No. 22 to represent the superior officers, City of Camden, D.R. No. 82-25, 8 NJPER 11 (¶13005 1981), adopted P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982), and (2) the unfair practice charge filed by Local No. 127 named the Township as the only respondent and did not involve Lodge No. 22. In any event, I find that the ultimate resolution of the issue of whether Lodge No. 22 and Local No. 127 are rival employee representatives is not material to the final disposition of this matter.

program instituted initially by Local No. 127 and later administered jointly by Local No. 127's and Lodge No. 22's fraternal organizations. Therefore, to the extent that Lodge No. 22--Fraternal has taken action against Moser for by-law violations, under the facts of this case, such action is divorced from the employer-employee relationship, relates solely to internal organizational concerns and does not fall within the jurisdiction of the Commission. See Old Bridge Ed. Assn.; State Troopers Non-Commissioned Officers Assn. of N.J.; Amalgamated Transit Union Local No. 824; Jersey City Police Officers Benevolent Assn.; City of Jersey City; and Council of N.J. State College Locals.

However, Moser was expelled from Lodge No. 22--Union. Such action on the part of the employee organization is presumed to violate Section 5.4(b)(1) of the Act unless it can be shown such expulsion was not done for an arbitrary, capricious or invidious reason. Moser's comments were limited to matters arising out of Lodge No. 22--Fraternal. Lodge No. 22 does not raise a single allegation that Moser has violated its by-laws in the context of Lodge No. 22--Union.^{3/} Consequently, no rationale exists to establish proper grounds for Moser's expulsion from Lodge No. 22--Union. Since Lodge No. 22--Union, the majority representative, has acted in an arbitrary and capricious manner for expelling Moser

^{3/} While I recognize that Lodge No. 22--Fraternal and Lodge No. 22--Union share the same by-laws, the organizational entities must be separate in light of their respective membership composition. See Egg Harbor Tp.

without good reason, I find that it has violated Section 5.4(b)(1) of the Act.

Moser alleges that Lodge No. 22 violated the Act by denying him his due process rights in accordance with Lodge No. 22's by-laws. Clearly, such due process rights arise from the organization's internally established by-laws and constitute a contract between the Lodge and its members. The Commission lacks jurisdiction with regard to such internal matters. Jersey City. However, the courts have exercised jurisdiction over disputes between employee representatives and its members to enforce contract rights stemming from the organization's constitution. Moore v. Local Union No. 483, 66 N.J. 527 (1975); James v. Camden Cty. Council, 188 N.J. Super. 251 (1982). In any event, in light of my ruling above, the issue regarding Moser's due process rights resulting from his expulsion is moot and should be dismissed. See, Matawan-Aberdeen Reg. School Dist. Bd. of Ed., P.E.R.C. No. 88-52, 14 NJPER 57 (¶19019 1987), aff'd App. Div. Dkt. Nos. A-46-87T1, A-2433-87T1, A-2536-87T1 (1/24/90); State of N.J. (AFT), P.E.R.C. No. 88-2, 13 NJPER 634 (¶18236 1987).

Moser contends that he was disparately treated in violation of the Act when Lodge No. 22 denied his request for legal assistance. The facts establish that Moser was indicted on September 27, 1989, for alleged misconduct for failing to adequately investigate a traffic accident involving an off-duty police officer. On January 21, 1990, Moser requested legal aid from Lodge

No. 22 in order to assist him in his defense of those charges. While Lodge No. 22 had given legal aid to Chief Palumbo in May, 1989, for a civil suit which the Chief filed against the Township, the facts show that Lodge No. 22 had never provided legal aid to any member of its organization under criminal indictment. Accordingly, I find that Lodge No. 22's refusal to extend legal assistance to Moser in defense of his criminal charges does not constitute disparate treatment. Thus, in the absence of evidence of discriminatory, arbitrary or bad faith conduct, Lodge No. 22's decision to furnish or not to furnish legal aid is strictly a matter of internal union concern and beyond the Commission's jurisdiction. Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142 N.J. Super. 486 (App. Div. 1976), citing Vaca v. Sipes, 386 U.S. 171 (1967); State of N.J., D.U.P. No. 91-11, 16 NJPER 571 (¶21250 1990); New Jersey Education Assn. (Esser), D.U.P. No. 90-9, 16 NJPER 161 (¶21065 1990). Therefore, Lodge No. 22's refusal to provide legal assistance does not violate the Act and I find that this portion of the charge should be dismissed.

On the basis of the particular facts in this case, I make the following:

CONCLUSIONS OF LAW

1. FOP Lodge No. 22 violated Section 5.4(b)(1) of the Act by expelling Michael T. Moser from FOP Lodge No. 22--Union.

Accordingly, Moser's Cross-Motion for Partial Summary Judgment on this issue is granted and Lodge No. 22's Motion for Summary Judgment is denied.

2. Moser's allegation that Lodge No. 22 violated his due process rights is moot in light of my finding regarding his expulsion and, therefore, is dismissed. Accordingly, for the reasons set forth in this decision, Lodge No. 22's Motion for Summary Judgment regarding this issue is granted and Moser's Cross-Motion for Partial Summary Judgment is denied.

3. Lodge No. 22 did not violate the Act when it denied Moser's request for legal aid in order to assist him in defending against a criminal indictment. Accordingly, Lodge No. 22's Motion for Summary Judgment regarding this issue is granted.

RECOMMENDED ORDER

I recommend that the Commission **ORDER:**

A. That FOP Lodge No. 22 cease and desist from:

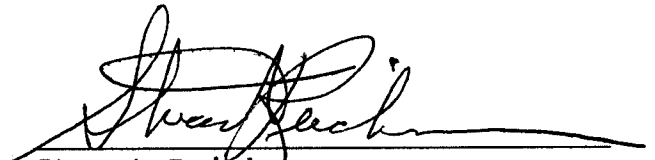
1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act by arbitrarily, capriciously or invidiously expelling Michael T. Moser from membership in FOP Lodge No. 22--Union.

B. That Fraternal Order of Police Lodge No. 22 take the following affirmative action:

1. Restore Michael T. Moser to membership in FOP Lodge No. 22--Union with all rights, benefits and emoluments of membership retroactive to the date of the expulsion. Restoration of Moser's membership is to be effective immediately.

2. Post in all places where notices to unit members are customarily posted, copies of a notice as prepared and required by the Commission. Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.^{4/}



Stuart Reichman
Hearing Examiner

Dated: December 31, 1991
Trenton, New Jersey

^{4/} Pursuant to N.J.A.C. 19:14-4.8(e), a decision on a motion for summary judgment which resolves the complaint in its entirety may be appealed to the Commission in accordance with N.J.A.C. 19:14-7.3(a).