

P.E.R.C. NO. 2024-16

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL 334,

Respondent,

-and-

Docket No. CI-2022-015

JUAN MENDOZA

Charging Party

SYNOPSIS

The Public Employment Relations Commission grants the Charging Party's request for special permission to appeal from the decision of the Director of Unfair Practices partially refusing to issue a Complaint on his unfair practice charge against his majority representative, PBA Local 334, on his claim that its suspension of him from the union violated N.J.S.A. 34:13A-5.4b(1) of the New Jersey Employer-Employee Relations Act. The Commission finds that the Charging Party's amended unfair practice charge provided sufficient allegations of retaliation for his protected activity including a previous unfair practice charge filed against Local 334 which, if true, may constitute an unfair practice and warrant the issuance of a Complaint.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Detzky, Hunter & DeFillippo,
attorneys (Stephen B. Hunter, of counsel)

For the Charging Party, Juan Mendoza, pro se

DECISION

On June 29, 2023, the Charging Party (Mendoza) filed for special permission to appeal from the June 22, 2023 decision of the Director of Unfair Practices (Director) partially refusing to issue a complaint on Mendoza's unfair practice charge against the Policemen's Benevolent Association, Local 334 (Local 334).

D.U.P. No. 2023-28, 50 NJPER 27 (¶9 2023). Mendoza's January 11, 2022 charge, as amended, alleged that Local 334 violated subsections 5.4b(1), (2), (3), (4), and (5)^{1/} of the New Jersey

^{1/} These provisions 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; (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or
(continued...)

Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1, et seq., by filing internal union charges against him on May 24, 2021 and suspending him from Local 334 on August 13, 2021 in retaliation for his "protected concerted activity" following his filing of an unfair practice charge and "after the additional disclosure of misuse of union funds." The charge also alleged that Local 334 breached its duty of fair representation by not processing a grievance on Mendoza's behalf concerning charging him sick leave for a service-connected injury.

The Director's decision found that a complaint was warranted on Mendoza's 5.4b(1) claim that Local 334 breached its duty of fair representation by not processing his grievance. The Director declined to issue a complaint on Mendoza's remaining allegations, finding that Mendoza failed to provide specific factual allegations to support his contention that Local 334's July 27, 2021 three-year suspension of him was in retaliation for his previous October 21, 2020 unfair practice charge (Docket No. CI-2021-008) filed against PBA Local 109 (Local 109) after Local 109 had been assigned to administer the affairs of Local 334.

1/ (...continued)
the adjustments of grievances; (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; (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement; (5) Violating any of the rules and regulations established by the commission."

The Director also found that because Mendoza's charge did not specify that he had a role in disclosing the financial audit reports allegedly showing misuse of union funds, he failed to link such disclosures to Local 334's decision to suspend him. The Director also found this aspect of Mendoza's charge untimely based on the May 24, 2021 date that internal union charges filed against him being more than six months prior to his January 11, 2022 unfair practice charge.

We incorporate the Director's findings of fact and summarize them as follows. Mendoza is employed by Hudson County (County) as a Sheriff's Officer and is represented by Local 334, the majority representative for the County's non-supervisory Sheriff's Officers. Local 334 and the County are parties to a collective negotiations agreement (CNA) effective January 1, 2016 through December 31, 2020, which the parties recently extended through a Memorandum of Agreement (MOA) effective January 1, 2021 through December 31, 2025.

On October 21, 2020, Mendoza filed a prior unfair practice charge (Docket No. CI-2021-008) against Local 109 alleging that it restricted him from collective negotiations and contract administration when, after he had been Local 334 President, it suspended him and other officers on January 21, 2020 and took over administration of Local 334. This prior charge was dismissed as untimely on May 12, 2021.

On May 24, 2021, internal union charges were filed against Mendoza by the VP of Labor Relations of the New Jersey State Policemen's Benevolent Association (NJSPBA). On June 15, 2021, the NJSPBA Judiciary Committee held a hearing on the charges against Mendoza for allegedly violating several by-laws. On July 27, 2021, the NJSPBA Judiciary Committee unanimously voted to suspend Mendoza from the NJSPBA for three years during which he is to be considered a member not in good standing and must forfeit any rights and benefits of membership. On August 13, 2021, Local 334 e-mailed its membership notifying them of the July 27 decision to suspend Mendoza for three years. During his suspension, Local 334 has excluded Mendoza from union meetings, negotiations, and communications.

On January 1, 2022, Mendoza requested assistance from Local 334 to file a grievance on his behalf concerning a service-connected injury he allegedly sustained on December 15, 2021. Mendoza alleged that the County violated Article XVIII of the parties' CNA by charging his sick leave for absences related to his service-connected injury. Local 334 did not file a grievance on Mendoza's behalf. On February 2, 2022, Mendoza filed his own grievance after not receiving a response from Local 334.

In his request for special permission to appeal the partial refusal to issue a complaint, Mendoza asserts that his January 11, 2022 charge was not untimely because it was filed less than

six months after his July 27, 2021 suspension. He argues that the Director should not have started the statute of limitations from the May 24, 2021 date that internal charges were filed, but should have calculated six months from when the adverse retaliatory action was officially taken on July 27, 2021.

Next, Mendoza asserts that his factual allegations that Local 334 suspended him in retaliation for his unfair practice charge and his criticism of the union support a finding that the suspension was arbitrary and in bad faith. Mendoza argues that his protected activity involved, among other things, sending e-mails and/or meeting with representatives of the NJSPBA in December 2019, January 2020, February 2020, September 2020, January 2021, and May 2021 in order to discuss the investigation of and/or provide financial statements concerning the alleged misuse of Local 334 funds. Mendoza also alleges protected activity related to his previous unfair practice charge filed against Local 334, which the NJSPBA allegedly sought to have him withdraw in April 2021 and which the NJSPBA cited to in its May 24, 2021 union charges against him.

Mendoza's appeal includes the submission of many additional documents which he claims support his retaliation claims and which he states are newly discovered and could not with reasonable diligence have been discovered in time to be presented with his unfair practice charge. These documents include the e-

mails he sent to NJSPBA representatives containing allegations and financial records concerning the alleged misuse of Local 334 funds. These documents also include the NJSPBA's May 24, 2021 letter outlining the internal union charges filed against Mendoza and the July 27, 2021 NJSPBA letter explaining the reasons for the three-year suspension of Mendoza.

The May 24, 2021 letter of charges (Charges Letter) from the NJSPBA's VP of Labor Relations provided, in pertinent part (emphasis added):

On my oath and affirmation, I attest that Brother Mendoza did knowingly violate the established principles, Bylaws, rules and regulations of this Association and committed an act that may be considered detrimental to this Association, specifically by filing an Unfair Labor Practice Charge with the NJ Public Employment Relations Commission against [H.E.], contrary to Article XVI, Section 1(A) - COURT PROCEEDINGS.

The Charges Letter continued with the following allegation:

Moreover, Mendoza did violate Article X, Section 1, C - STATE ASSOCIATION DIRECTIVE, specifically by divulging information pertaining to the business of this Association and matters currently debated to an outside organization by including those details included in his improper filing with PERC. Mr. Roth and the employees at PERC are not members of the Association and should not be made aware of any of the actions taken by the President of the State Association as it pertains to any Local Association.

Finally, the Charges Letter alleged a third Bylaw violation "specifically by filing this baseless charge" and alleging that

"[t]his action was not taken in the best interest of this Association and it stems to injure Brother [E.] by damaging his reputation with the Public Employment Relations Commission."

The July 27, 2021 letter of suspension (Suspension Letter) concerned the following issues which were heard during the NJSPBA Judiciary Committee's June 15, 2021 hearing: the revocation of the Local 334 Charter and the suspension of its Executive Board in January 2020; the appeal of 2021 nominations and the Local 334 election process; and the charges brought against Mendoza by the NJSPBA's VP of Labor Relations. Regarding the internal union charges filed against Mendoza, the Suspension Letter stated, in pertinent part (emphasis added):

With Judiciary proceedings delayed, you made a conscious choice to seek redress from outside of our organization by filing an Unfair Labor Practice Charge at PERC against [H.E.] who was only working at the direction of our State PBA President, Patrick Colligan. This violated our State Constitution and By-Laws, as well as postponed any hearings related to this matter further, as Judiciary Hearings are not heard while there is [sic] implied or open investigations and litigation. Not only did you file an Unfair Practice Charge, which was also delayed by the COVID Pandemic, but once it was dismissed by PERC as being untimely, you attempted to appeal the dismissal, which was subsequently also dismissed. . . . [Y]ou went outside of this Organization to seek redress and in turn tarnished the reputation of [H.E.] with the Public Employment Relations Commission by filing an Unfair Labor Practice Charge against him, when he was only performing duties outlined by the State PBA President. . . . The NJSPBA Judiciary Committee

unanimously voted to suspend you from the NJSPBA for a period of three (3) years and upon conclusion of your suspension, you are permanently prohibited from holding an Executive Board position with PBA Local 334. For a period of three years, you are considered a member not in good standing and must forfeit any rights and benefits of membership. This includes all NJSPBA Shields, PBA Cards, PBA License Plates, Legal Protection, etc.

Local 334 did not submit a response to Mendoza's appeal.

Where the Director of Unfair Practices has issued a complaint on a portion of an unfair practice charge, a party may appeal the decision to issue a complaint or the decision to refuse to issue a complaint to the Commission by filing for special permission to appeal pursuant to N.J.A.C. 19:14-4.6. See N.J.A.C. 19:14-2.3(c).

After a careful review of the record and arguments before the Director, as well as Mendoza's arguments and submissions on appeal, we reverse the Director's decision not to issue a 5.4b(1) complaint on the allegation that Local 334's suspension of Mendoza was retaliation for his protected activity, including his pursuit of an unfair practice charge filed in October 2020. We note that this reversal relates only to the issuance of a complaint (see discussion infra for complaint issuance standards) and is not a finding on the substantive elements of the charge.

We concur with the Director's findings and conclusions concerning the allegation that Local 334 may have breached its

duty of fair representation to Mendoza by refusing to support his grievance concerning his service-connected injury and sick leave. Local 334 has not appealed the Director's determination to issue a 5.4b(1) complaint on that claim. We also concur with the Director's determination to dismiss Mendoza's 5.4b(2), b(3), and b(4) claims based on lack of standing as an individual and to dismiss his 5.4b(5) claim because there was no allegation that any rule or regulation of the Commission had been violated.

We next address Mendoza's procedural challenge to the Director's finding that his charge was untimely. N.J.S.A. 34:13A-5.4c establishes a six-month statute of limitations period for the filing of unfair practice charges. "The Act does not rigidly bar relief on all causes of action arising more than six months before a charge was filed." State of New Jersey (Juvenile Justice) and Judy Thorpe, P.E.R.C. No. 2014-71, 40 NJPER 512 (¶164 2014), aff'd 43 NJPER 353 (¶100 App. Div. 2017), certif. den. 231 N.J. 211 (2017). Included among the "relevant considerations bearing upon the fairness of imposing the statute of limitations" is when a charging party knew or should have known the basis for its claim and whether a charging party sought timely relief in another forum. Kaczmarek, 77 N.J. at 340; State of N.J. (Juvenile Justice). "[I]t 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 and assessing the Legislature's objective in prescribing the time limitation as related to the particular claim." Kaczmarek, 77 N.J. at 338. Applying these standards, we find that the most appropriate date from which to start the statute of limitations in this case is the July 27, 2021 date on which the NJSPBA informed Mendoza that it had voted to suspend him for three years, rather than the May 24, 2021 date that it informed him it had filed internal charges against him. On May 24, 2021, when internal union charges were filed against Mendoza and the investigation was ongoing and still subject to a hearing, Mendoza did not yet know whether he would ultimately be disciplined by his union, so the statute of limitations had not yet begun on his retaliation claim. See, e.g., Lakewood Tp. (Schulman), P.E.R.C. No. 2020-25, 46 NJPER 234 (¶55 2019) (employee's charge against union was not ripe until he knew of the CSC's final determination in the case where the union allegedly misrepresented him). Mendoza could not have known until July 27, 2021, when he was suspended from the union, that he might have a basis for an unfair practice claim related to that action.^{2/} Therefore, Mendoza's January 11, 2022 unfair practice charge was timely filed less than six months after the alleged misconduct by his union.

^{2/} Although not necessary for a finding of timeliness here, we also note that Mendoza submitted evidence that he filed an appeal of his suspension on August 10, 2021.

Next, we turn to the substance of Mendoza's appeal of the partial dismissal of his unfair practice charge. N.J.S.A. 34:13A-5.4b(1) prohibits an employee organization from "interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by the Act." An employee organization violates this proscription when its action tends to interfere with protected rights and lacks a legitimate and substantial organizational justification. FOP, Lodge No. 12 (Colisanti), P.E.R.C. No. 90-65, 16 NJPER 126 (¶21049 1990).

Employee organizations are free to create rules binding on their members to accomplish organizational objectives, often in the form of constitutions and by-laws. Calabrese v. PBA Local 76, 157 N.J. Super. 139 (Law Div. 1978); Danese v. Ginesi, 280 N.J. Super. 17, 25 (App. Div. 1995). These documents may establish judicially enforceable contractual rights, but a violation of their provisions does not generally constitute an unfair practice under our Act. Teamsters Local 331 (McLaughlin), P.E.R.C. No. 2001-30, 27 NJPER 25, 27 (¶32014 2000). The Commission will not intercede in intra-union disputes unless they are connected to allegations that an unfair practice has been committed. NJ State PBA & PBA Local 199 (Rinaldo), P.E.R.C. No. 2011-83, 38 NJPER 56 (¶8 2011); City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563, 565-566 (¶13260 1982).

The Commission's unfair practice jurisdiction over

membership matters can include an employee organization's decision to deny union membership or to exclude, suspend, or expel a negotiations unit employee seeking to participate in majority representative affairs. In re Probation Ass'n (Tortoreto), 442 N.J. Super. 185 (App. Div. 2015). The standard for testing the propriety of an employee organization's decision to suspend, expel, or deny membership is whether the employee organization's actions were arbitrary, capricious, discriminatory, or invidious. In re Probation Ass'n (Tortoreto), 442 N.J. Super. at 195-96; NJ State PBA (Rinaldo); FOP, Lodge 12 (Colisanti); FMBA Local 35 (Carragino), P.E.R.C. No. 83-144, 9 NJPER 336 (¶14149 1983); PERC and Racaniello v. W. Orange PBA, Local No. 25, P.E.R.C. No. 83-6, 8 NJPER 433 (¶13202 1982), enf. granted, App. Div. Dkt. No. A-1684-82T3 (3/30/83); and PBA Local 199 (Abdul-Hagq), P.E.R.C. No. 81-14, 6 NJPER 384 (¶11198 1980).

Here, we find that Mendoza's amended unfair practice charge, provided sufficient allegations of retaliation for protected activity which, if true, may constitute an unfair practice. N.J.A.C. 19:14-2.1(a). Mendoza's charge was not drafted with the sophistication of an attorney or labor relations professional. However, it did articulate the following basic factual assertions that were indicative of the temporal proximity between his filing of an unfair practice charge, correspondence with Local 334 concerning that charge, and his suspension from the union

(emphasis in original):

On August 13, 2021, PBA 334 imposed discipline toward me by excluding me from any PBA meetings, contract updates, and refusal to represent me in any union matters. PBA 334 Members are advised by the PBA 334 Executive Board not to openly to discuss any working conditions or updates with me. I was also removed from the membership email list which also provided me with union updates.

The discipline imposed was suspension from the PBA 334. This occurred after the additional disclosure of misuse of union funds and the dismissal of the UFLP Charge (CI-2021-008) on May 12, 2021. Listed below are some of Timeline of events.

April 13, 2021, I provided an additional copy of UFLP charge to PBA 334 (send by email)
April 14, 2021, I was advised by a member that the UFLP was going to be dismissed after meetings were held in PERC (advised).

May 10, 2021, Financial Audit reports were released to the PBA displaying misuse of union finances by certain members of the Union. This was done by email.

May 12, 2021, I received dismissal from PERC on previously filed charge (as stated by member) (email).

May 24, 2021, Union retaliated against me by filing Union Charges against me and used UFLP as leverage in attempt to remove me from the union. This was done to prevent in addressing the misuse of funds and investigation to the misuse was placed on a pending state (will not be addressed by the union). Retaliation by union will continue as items are addressed. These were union charges of discipline, suspension was imposed on August 13, 2021, by the union (Local PBA 334).

These claims allege that Mendoza was suspended from Local 334, in

part, for his filing of an unfair practice charge against the union and that the internal union charges were filed against him less than two weeks after his unfair practice charge was dismissed.^{3/} "Timing is an important factor in assessing motivation and understanding the context of events." Warren Hills Reg. Bd. of Ed., P.E.R.C. No. 2005-26, 30 NJPER 439, 442 (¶145 2004), aff'd, 2005 N.J. Super. Unpub. LEXIS 78 (App. Div. 2005), certif. den., 186 N.J. 609 (2006); see also Belleville Bd. of Ed., 455 N.J. Super. 387 (App. Div. 2018) ("PERC was entitled to focus on the timing of the disciplinary charges against Mignone to infer the Board's retaliatory motive.")

We also find that Mendoza's references to emails and disclosures of alleged misuse of union funds in this timeline, along with his assertions that the suspension was, in part, retaliation for such disclosures and done to prevent such financial allegations from being investigated and addressed, should reasonably be read to imply that Mendoza made these financial disclosures. Although Mendoza did not initially supply the emails referenced in his charge, he has submitted documents in support of this appeal that clarify that he emailed allegations and financial documents concerning misuse of Local

^{3/} We note, as the Director recognized in D.U.P. No. 2023-28, that although the unfair practice charge in question, Docket No. CI-2021-008, was filed by Mendoza against PBA Local 109, PBA Local 109 was in charge of Local 334 at the time.

334 funds to the PBA during the period referenced in the charge.

In In re Probation Ass'n (Tortoreto), the Appellate Division held that the Commission should consider employees' "claims that they were arbitrarily and invidiously suspended by [their union] and prohibited from participation in their union's affairs in retaliation for their truthful allegations of mismanagement and fiscal irregularities in the course of their unsuccessful election campaign" because "the allegations in the charge, if true, may constitute unfair practices and not internal union disputes that do not support even a potential violation of N.J.S.A. 34:13A-5.4(b)(1)." 442 N.J. Super. at 196. In PBA (Smith), P.E.R.C. No. 99-18, 24 NJPER 450 (¶29208 1998), the Commission held that a majority representative violated subsection 5.4b(1) of the Act when it filed internal union charges and sought to remove a negotiations unit employee based, in part, on the fact that he had filed an unfair practice charge against the union. The Commission held that the letter's reference to the employee having filed an unfair practice charge against the union "tended to interfere with his protected rights and lacked a legitimate and substantial organizational justification." PBA (Smith), 24 NJPER at 451. Given this precedent, we find that the allegations of retaliation set forth in Mendoza's amended unfair practice charge, if true, could potentially support a claim that his suspension was arbitrary,

capricious, discriminatory, or invidious.

Furthermore, while not necessary for our determination that a complaint may issue on Mendoza's retaliation claims concerning his suspension, his appeal provided additional factual support for his charge. Both the May 24, 2021 Charges Letter and the July 27, 2021 Suspension Letter quoted above find that Mendoza violated PBA By-laws "by filing an Unfair Labor Practice Charge" with the Commission against PBA Local 109 and its Delegate, H.E., who was then in charge of Local 334. See PBA (Smith), P.E.R.C. No. 99-18, supra (union's reference to unfair practice charge as a reason for internal union charges violated the Act). We note that the Commission generally will not consider new arguments, factual assertions, and documentary exhibits which were not presented below.^{4/} Here, the documents Mendoza submitted on appeal are not new factual allegations, but are newly submitted evidence in support of the allegations made in his amended charge.

Based on the foregoing, we remand to the Director for the issuance of a complaint on Mendoza's 5.4b(1) allegation that PBA Local 334 suspended him in retaliation for his protected conduct.

^{4/} N.J.A.C. 19:14-2.3(b) provides: "An appeal must be a self-contained document enabling the Commission to rule on the basis of its contents. An appeal may not allege any facts not previously presented, unless the facts alleged are newly discovered and could not with reasonable diligence have been discovered in time to be presented."

ORDER

The unfair practice charge is remanded to the Director of Unfair Practices for issuance of a Complaint on Mendoza's 5.4b(1) allegation that PBA Local 334 suspended him in retaliation for his protected conduct.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford, Higgins, Papero and Voos voted in favor of this decision. None opposed.

ISSUED: October 26, 2023

Trenton, New Jersey