

P.E.R.C. NO. 99-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PBA LOCAL 152,

Respondent,

-and-

Docket No. CI-H-97-52

KENNETH C. SMITH,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that P.B.A. Local 152 violated the New Jersey Employer-Employee Relations Act when it gave Kenneth C. Smith a letter indicating that internal union charges were being brought against him because he filed an unfair practice charge against the Union. The Commission orders the PBA to cease and desist from interfering with, restraining, or coercing Smith in the exercise of rights guaranteed to him by the Act.

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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In the Matter of

PBA LOCAL 152,

Respondent,

-and-

Docket No. CI-H-97-52

KENNETH C. SMITH,

Charging Party.

Appearances:

For the Respondent, Zazzali, Zazzali, Fagella & Nowak
(Robert A. Fagella, of counsel)

For the Charging Party, Kenneth C. Smith, pro se

DECISION

On February 24 1997, Kenneth C. Smith filed an unfair practice charge against PBA Local 152. The charge alleged that the employee organization violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4b(1) and (5),^{1/} when it held a biased hearing on Smith's charge that another officer was engaged in conduct unbecoming a State official and Smith's concerns about the current union elections.

^{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. (5) Violating any of the rules and regulations established by the commission."

On April 1, 1997, Smith filed an amendment alleging that Local 152 violated the Act when, on March 1, 1997, its president gave him a letter stating that Smith would be kicked out of the union because he had filed his unfair practice charge.

On September 5, 1997, the Director of Unfair Practices refused to issue a Complaint on the initial allegations. D.U.P. No. 98-15, 23 NJPER 531 (¶28257 1997). He found the allegations untimely. However, he issued a Complaint on the allegations in the April 1 amendment.

On October 30, 1997, a Complaint and Notice of Hearing issued. On November 14, Local 152 filed an Answer denying that it violated that Act. It claims that the letter was intended to indicate the PBA's displeasure with Smith's conduct over the several months before Smith filed the charge. It denies that Smith's filing of a charge motivated its proposed action.

On March 3, 1998, Hearing Examiner Regina A. Muccifori conducted a hearing. The parties examined witnesses, introduced exhibits, and filed post-hearing briefs.

On May 28, 1998, the Hearing Examiner issued her report and recommendations. H.E. No. 98-29, 24 NJPER 304 (¶29146 1998). She concluded that Local 152 violated 5.4b(1), but not 5.4b(5), by issuing the March 1, 1997 letter.

On June 10, 1998, Local 152 filed exceptions. It did not specify any questions of procedure, fact, law or policy to which exception is taken. It did, however, argue that the evidence

proves that there were compelling reasons for it to bring internal union charges against Smith and that this Commission should not interject itself into its internal affairs. On June 15, Smith filed an answering brief urging adoption of the Hearing Examiner's recommendations.

We have reviewed the record. We incorporate the Hearing Examiner's findings of fact (H.E. at 3-8).

Kenneth C. Smith has been a member of Local 152 for approximately eight years. He took a membership oath that included a promise not to injure fellow members.

In August 1996, Smith circulated a petition expressing discontent with the union's executive board and requesting a new election. At the time, Eugene Conlon was Local 152's vice-president. He believed that Smith was sincere in his efforts to gain access to the executive board.

Although not stated in the union bylaws, union officials claim that there is an understanding that a union meeting not be tape-recorded. In 1996, Smith placed a tape recorder on a desk and recorded a union meeting. At that meeting, Smith made a remark about some union members being prejudiced. According to Smith, a state delegate showed Smith a picture of that delegate in a Ku Klux Klan Halloween costume. Smith stated at the meeting that it was inappropriate for a state delegate to wear that type of outfit. Some union officials testified that Smith had accused the delegate of being a Klan member. The Hearing Examiner credited

Smith's testimony and we have no basis to reject that finding. After the meeting Smith brought charges against the Local with the State PBA regarding the delegate wearing the Klan costume. On February 24, Smith filed his unfair practice charge.

On March 1, 1997, Conlon wrote a letter to the State PBA asking its assistance on whether charges could be brought against Smith. The letter stated, in part:

PBA 152 requests assistance on the issue noted below. On February 18, 1997, Brother Ken Smith filed an unfair practice charge against our Local....

Also included is our letter of intention to remove Mr. Smith from the union. It is at this juncture we seek your advise [sic]. As you can see in the unfair labor charge Mr. Smith has also implicated the State PBA as "bias" due to an informal hearing held there in which he felt he was treated unfairly. His purpose at that time was, and is, to challenge the elections of Local PBA 152, June 1996....

From our perspective we are unsure if we can proceed with a judiciary hearing against Mr. Smith as we are the very electorate he is challenging. A committee placed by this Local would of course be appealed. Also, as he has challenged the State PBA as "bias". It appears there [sic] would be appealed. We are unsure of the appropriate action in these matters, please advise. Thank you.

On March 1, 1997, Conlon handed Smith a letter. The letter stated, in part:

On or about February 8, 1997, you presented an unfair practice charge to the Executive Board of PBA #152.

Your conduct and activities in the past and present have lead us to the point where you are hereby formally charged with breaking the brotherhood and violating the oath.

You will be notified in the near future of judiciary proceedings. I will be seeking your removal. You also have the option of resigning your membership at which point your union dues would drop to agency shop non-member level. Shields and Dues Card would also be required to be submitted to state delegate Aube. Should you choose this option.

The Hearing Examiner found that Conlon's March 1 letter to Smith tended to interfere with Smith's protected right to file an unfair practice charge against his union. Local 152 acknowledges that, on its face, the letter could be interpreted as a response to his unfair practice charge, but argues that the testimony at the hearing demonstrates that Local 152 had legitimate reasons to bring disciplinary charges against Smith. Local 152 contends that Conlon's letter made an "ambiguous reference to the PERC charges, but the evidence is overwhelming that it was driven by totally unrelated issues."

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).

One of the reasons Local 152 notified Smith that it intended to bring internal disciplinary charges against him was because he filed an unfair practice charge against the union.

Whether or not Local 152 had other legitimate reasons to bring charges against Smith is irrelevant to our determination that the March 1 letter's reference to Smith's having filed an unfair practice charge against the union tended to interfere with his protected rights and lacked a legitimate and substantial organizational justification. If Local 152 had wanted to bring disciplinary charges against Smith for legitimate reasons only, as it claims in this proceeding, it would not have needed to refer to his unfair practice charge in the letter notifying him of its intent. We make no judgment about the legitimacy of those other reasons. We simply uphold the narrow determination that 5.4b(1) was violated by sending Smith a letter which indicated that disciplinary charges were being brought because he filed an unfair practice charge against the union.

Absent exceptions, the 5.4b(5) allegations is dismissed.

ORDER

PBA Local 152 is ordered to:

A. Cease and desist from interfering with, restraining, or coercing Kenneth C. Smith in the exercise of the rights guaranteed to him by the Act, particularly by giving him a letter indicating that internal union charges were being brought against him because he filed an unfair practice charge against the union.

B. Take this action:

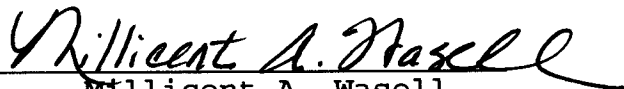
1. Post in all places where notices to unit members are customarily posted, copies of the attached notice marked as

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.

2. Within twenty (20) days of receipt of this decision, notify the Chair of the Commission of the steps the Respondent has taken to comply with this order.

The remaining allegations in the Complaint are dismissed.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn and Ricci voted in favor of this decision. None opposed. Commissioners Klagholz and Wenzler were not present.

DATED: August 20, 1998
Trenton, New Jersey
ISSUED: August 20, 1998



NOTICE TO 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 P.B.A. Local 152 that:

WE WILL cease and desist from interfering with, restraining or coercing Kenneth C. Smith in the exercise of the rights guaranteed to him by the Act, particularly by giving him a letter indicating that internal union charges were being brought against him because he filed an unfair practice charge against the union.

Docket No. CI-H-97-52

P.B.A. LOCAL 152
(Public Employee Organization)

Date: _____

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, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"

H.E. NO. 98-29

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

In the Matter of

PBA LOCAL 152,

Respondent,

-and-

Docket No. CI-H-97-52

KENNETH C. SMITH,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends the Commission find that PBA Local 152 violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4b(1) of the Act with respect to a March 1, 1997 letter to union member Kenneth C. Smith.

The Hearing Examiner further recommends that Smith's 5.4b(5) allegation be dismissed.

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. If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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

In the Matter of

PBA LOCAL 152,

Respondent,

-and-

Docket No. CI-H-97-52

KENNETH C. SMITH,

Charging Party.

Appearances:

For the Respondent, Zazzali, Zazzali, Fagella & Nowak
(Robert A. Fagella, of counsel)

For the Charging Party, Kenneth C. Smith, pro se

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On February 24 and April 1, 1997, Kenneth C. Smith filed an unfair practice charge and amendment with the New Jersey Public Employment Relations Commission, against PBA Local 152 (C-1).^{1/} On September 5, 1997, the Director of Unfair Practices dismissed the charge, with the exception of its April 1 amendment (C-2). The amendment alleges that the Respondent violated subsections 5.4b(1) and (5) of the New Jersey Employer-Employee Relations Act,

^{1/} "C" refers to Commission exhibits received into evidence at the hearing in this matter. "CP" and "R" refer to Charging Party's exhibits and Respondent's exhibits, respectively, received into evidence at the hearing. The transcript of the hearing is referred to as "T".

N.J.S.A. 34:13A-1 et seq.^{2/} when on or about March 1, 1997, its President, Eugene Conlon, presented Smith with a letter stating that Smith would be removed from the union because he filed charges with the Commission. On October 30, 1997, the Director issued a Complaint and Notice of Hearing with respect to this allegation (C-1).

On November 14, 1997, Local 152 filed an Answer, denying it violated the Act (C-3). Specifically, it claims that Smith was not, and was not intended to be, disciplined for filing an unfair practice charge. Rather, the letter to Smith was intended to indicate the PBA's displeasure with his conduct over the several months prior to the filing of the charge. According to the Respondent, the charge itself was neither directly nor indirectly a component of the proposed action to be taken against Smith and in fact no adverse action was taken against him.

A hearing in this matter was conducted on March 3, 1998. Both parties were given an opportunity to present evidence and examine and cross-examine witnesses.^{3/} Post-hearing briefs were filed by the parties by April 28, 1998.

Based upon the record, I make the following:

-
- ^{2/} 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. (5) Violating any of the rules and regulations established by the commission."
- ^{3/} After the hearing closed, Smith made a March 7, 1998 motion to enter evidence. On April 8, 1998, I denied the motion.

FINDINGS OF FACT

1. Local 152 represents corrections officers employed by the Middlesex County Adult Correction Center. There are approximately 200 members in the union (T75).

Eugene Conlon is the President of Local 152. He has also served as executive board trustee, financial secretary and vice president during the fifteen years he has been a Local 152 member (T74-T75).

2. Corrections Officer Kenneth C. Smith has been a member of Local 152 for approximately seven to eight years (T42). Smith took an oath when he joined the union (T50). The oath that Smith and all new members at the time took included a promise and declaration not to injure any fellow union member (T51, T76-T79, T120, T131-T133; R-1).

THE PETITION

3. In August 1996, Smith prepared a petition for fellow employees to sign (R-2). Its purpose was to notify state PBA officials that Local 152 members were discontented with the union's executive board and to request a new election. (T52-T54, T59-T60; R-2). Smith asked both union members and non-members to sign it (T59). The petition was notarized, but the notary did not witness every individual's signature (T61-T65).

4. Conlon, who was then the union vice-president, saw Smith with the petition. He and Smith had a brief discussion about it. Smith explained to Conlon that the petition was not to

be taken personally, that he felt it was time for new leadership, and for Conlon not to take it too hard (T80, T112-T113).

5. Conlon had conversations with several individuals who signed the petition. According to Conlon, they apologized for signing it because they felt a misrepresentation had been made; they thought they signed a petition to protest the mandatory overtime at the jail (T84-T85). Conlon also received complaints from some union members about the petition being circulated in the jail on work time (T86-T87).

Conlon believed Smith was sincere in his efforts to gain access to the union executive board (T114-T115). Conlon did not initially have a problem with Smith's petition (T80-T81, T113). However, non-members and civilians signed the petition and according to Conlon, it is violative of the PBA constitution and by-laws for a union member to disclose union business to a non-member (T87-T89). Also, falsifying a petition could justify charges against a member (T89). Conlon never told Smith he acted inappropriately with respect to the petition (T113).

THE UNION MEETING

6. Smith has attended two or three union meetings in the past year (T90). These meetings can only be attended by members, and Conlon claims the information discussed there is to be kept within the union, because it could be detrimental to have the union's business disclosed to outsiders (T91, T121-T122). However, there is a "grapevine" at the jail through which

civilians may hear union business. Also, because of the close working relationship between civilians and officers, civilians may hear union business (T109-T111).

Although not stated in the by-laws and constitution, union officials claim there is a verbal understanding that these meetings should not be taped, because such tapes could be brought to outsiders and confidential union business could be disclosed (T92-T93, T122-T125). Charges can be brought against union members for conduct that is not expressly prohibited in the by-laws and constitution (T124).

7. In 1996, Smith placed a tape recorder on a desk and taped a union meeting. Although Conlon heard a rumor through the "grapevine" shortly after the meeting that Smith may have taped it, Conlon did not definitely know Smith did so until he read about it in Smith's unfair practice charge (T67, T93, T108-T109, T117-T118; C-1). Conlon was concerned about the tape being made, due to the fact it could be brought outside of the union (T92-T93).

At the meeting, Smith made a remark about some union members being prejudiced (T68). According to Smith, state delegate Lowell Aube showed Smith a picture of Aube in a Ku Klux Klan Halloween costume (T68-T69). Smith opined that it was inappropriate for a state delegate representing him to wear that type of outfit (T69).

8. According to Conlon, Smith commented that Aube should step down from office because of the costume. Smith claimed to

have a picture of Aube in it. Aube challenged Smith to prove it and questioned Smith's motive (T94-T95, T119).

Anthony Pagano, Local 152 President from 1991 through August 1996, recalls Smith's statement differently. He claims Smith made a comment about Aube being a member of the Ku Klux Klan. Smith said that Aube, while laughing, showed him a picture of Aube being in the Klan (T118).

Smith denies saying anyone was a member of the Klan (T68). He did not believe Aube was in the Klan (T69). I credit Smith's version of the statements. Conlon also corroborated this account (T94-T95).

After the meeting, Smith brought charges against Local 152 with the State PBA regarding Aube's wearing the Klan outfit. A hearing was held; the charges were denied by the State PBA (T135-T136, T143).

9. Conlon believed that if Smith was right that if Aube, a white man, wore the costume, he (Aube) would have to resign from office because many union members would be offended by anyone, even jokingly, wearing such an outfit (T96-T97). On the other hand, if Smith's statement was false, Smith could possibly face charges for the statement (T96-T97, T120).

THE LETTERS

10. On March 1, 1997, Conlon wrote a letter to the State PBA asking its assistance on whether charges could be brought

against Smith (T34-T35; CP-1). The letter in pertinent part states:

PBA 152 requests assistance on the issue noted below. On February 18, 1997, Brother Ken Smith filed an unfair practice charge against our Local...

Also included is our letter of intention to remove Mr. Smith from the union. It is at this juncture we seek your advise (sic). As you can see in the unfair labor charge Mr. Smith has also implicated the State PBA as "bias" due to an informal hearing held there in which he felt he was treated unfairly. His purpose at that time was, and is, to challenge the elections of Local PBA 152, June 1996....

From our perspective we are unsure if we can proceed with a judiciary hearing against Mr. Smith as we are the very electorate he is challenging. A committee placed by this Local would of course be appealed. Also, as he has challenged the State PBA as "bias". It appears there would be appealed. [sic]. We are unsure of the appropriate action in these matters, please advise. Thank you.

Also, around March 1, 1997, Smith was handed a letter from Conlon (CP-2) stating in pertinent part:

On or about February 8, 1997, you presented an unfair practice charge to the Executive Board of PBA #152.

Your conduct and activities in the past and present have lead us to the point where you are hereby formally charged with breaking the brotherhood and violating the oath.

You will be notified in the near future of judiciary proceedings. I will be seeking your removal. You also have the option of resigning your membership at which point your union dues would drop to agency shop non-member level (sic). Shields and Dues Card wuould (sic) also be required to be submitted to state delegate Aube. Should you choose this option.

11. According to Conlon, the conduct referenced in the letter which the union perceived to be conduct that constituted breaking the brotherhood and violating the oath, includes the way Smith handled his petition, his complaints at the PBA meeting about the Klan, and the tape recording of the meeting (T98).

Conlon claims Smith's February 1997 unfair practice charge was not the reason the union was going to discipline Smith (T98-T99). Union Vice President Thomas Kaminski also asserts Conlon told him Smith's charge had nothing to do with him wanting to bring charges against Smith; rather, Conlon wanted to bring charges based on the taping of the meeting by Smith, the slanderous remarks against Aube, and the fact that Smith did not handle the petition correctly (T138-T141).

12. Local 152 made no documentation in support of its contention that it was considering charges against Smith for these activities (T107-T108). Smith was never told he acted inappropriately with respect to the petition (T113). Conlon may be able to initiate charges against a union member, even though the member may not realize he did anything wrong (T73). According to Conlon, no documentation is necessary for the union to bring charges against a member (T107-T108).

Conlon ultimately decided not to bring disciplinary charges against Smith because of a conversation he had with him, leading Conlon to believe Smith was sincere in his efforts to challenge the election of Local 152 officers (T101-T102, T106-T107).

ANALYSIS

Local 152 Violated 5.4b(1) Of
The Act With Respect To Its
March 1, 1997 Letter To Smith.

N.J.S.A. 34:13A-5.4b(1) of the Act prohibits employee organizations, their representatives or agents from "interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by the Act."

An employee organization violates this subsection when its action "tend" to interfere with, restrain or coerce employees in the exercise of protected rights, provided the actions lack a legitimate and substantial organizational justification. See Merchantville Bd. of Ed., D.U.P. No. 92-18, 18 NJPER 280 (¶23119 1992); Camden County College (Porreca), P.E.R.C. No 88-28, 13 NJPER 755 (¶18285 1987), affing. H.E. No. 87-66, 13 NJPER 443 (¶18170 1987).

Here, I find that Local 152 violated 5.4b(1) of the Act with respect to its March 1, 1997 letter to Smith (CP-2). Smith engaged in protected activity in filing his unfair practice charge. This protected activity is referenced in the first paragraph of CP-2; the letter then states that his "conduct and activities in the past and present have lead us to the point where you are hereby formally charged with breaking the brotherhood and violating the oath." The final paragraph of the letter notifies Smith that he will be removed from the union or he can resign. I find that this letter tends to interfere with, restrain or coerce Smith in the exercise of protected rights in violation of the Act. See Merchangeville Bd. of Ed.; Camden County College.

This conclusion is further supported by CP-1, the letter also dated March 1, 1997, which Conlon sent to the State PBA. That letter again references Smith's unfair practice charge in its first paragraph, then states that it is the union's intention to remove Smith from the union. It clearly appears that Smith's protected activity--the filing of his charge--triggered Local 152's desire to remove him from the union.

Local 152 claims that Smith's unfair practice charge had nothing to do with its desire to bring charges against him. It claims that the "past and present conduct" referred to in CP-2 that the union found objectionable was: 1) Smith's false and misleading petition; 2) his allegation at a union meeting that a State delegate was a Ku Klux Klan member and; 3) the fact that Smith had taped a union meeting, in violation of a longstanding rule against such conduct.

However, Local 152 provided no documentation in support of its contention. Although Conlon testified that no documentation is necessary for the union to bring charges against a member, Local 152 failed to present evidence that it has actually taken such action in the past without documentation, particularly in instances like Smith's, where numerous alleged offenses were committed. Further, I find it implausible that, if the union was truly considering action against Smith for his alleged misconduct, it would not have any documentation on him, in light of the fact the alleged misconduct occurred over a period of several months and was allegedly serious enough to warrant his removal from the union.

Further, the record reveals that Smith was not aware that Local 152 was considering any action against him for any of the three above-listed activities. In fact, Conlon admitted that he initially did not have a problem with the petition and that although he could have done so, Conlon never told Smith he acted inappropriately with respect to it (T80-T81, T113). Moreover, as Smith points out in his post-hearing brief, Local 152, even though it could have, never objected to any of Smith's actions at his hearing before the State PBA, held after the union meeting at which the Klan remarks were made.

Upon review of the record, it appears that Smith's unfair practice charge caused the March 1, 1997 letter indicating Local 152 would remove Smith from the union. Other than its argument, there is no reliable evidence that the union would have sought his removal if it were not for the charge. Although Local 152 cites three prior activities as the reasons it sought his removal, it was not until Smith filed his charge months after the asserted improper activities that it sought to take action against him. This makes the timing of Local 152's action clearly suspect. While it is true that under certain circumstances, a union may lawfully seek to expel one of its members (See e.g. Smith, D.U.P. No. 92-28, 18 NJPER 370 (¶23163 1992); Calabrese v. Policemen's Benev. Ass'n., 157 N.J.Super. 139 (Law Div. 1978), holding that a union may expel a member because of his activities on behalf of a rival organization), it simply cannot lawfully do so based on a member engaging in the protected activity of filing an unfair practice under the Act.

Based on the foregoing, I find that Local 152 violated 5.4b(1) of the Act with respect to its March 1, 1997 letter to Smith.

Finally, I recommend that Smith's 5.4b(5) allegation be dismissed, since he failed to show what rule or regulation of the Commission was violated.

CONCLUSIONS OF LAW

PBA Local 152 violated 5.4b(1) of the Act with respect to its March 1, 1997 letter to Kenneth C. Smith.

PBA Local 152 did not violate 5.4b(5) of the Act.

RECOMMENDED ORDER

I recommend that the Commission ORDER:

A. That PBA Local 152 cease and desist from:

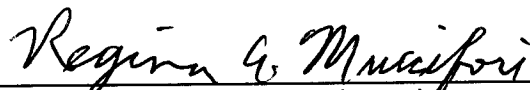
1. Interfering with, restraining, or coercing Kenneth C. Smith in the exercise of the rights guaranteed to him by the Act, particularly by threatening to remove him from the union because he filed an unfair practice charge against it.

B. That PBA Local 152 take the following action:

1. 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, 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.

2. Notify the Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this Order.

C. That the 5.4b(5) allegation be dismissed.



Regina A. Muccifori
Hearing Examiner

Dated: May 28, 1998



RECOMMENDED



NOTICE TO 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,

H.E. No. 98-29

We hereby notify our unit members that:

WE WILL cease and desist from interfering with restraining or coercing Kenneth C. Smith and all other unit members in the exercise of rights guaranteed to them by the Act.

WE WILL NOT interfere with, restrain, or coerce Kenneth C. Smith in the exercise of the rights guaranteed to him by the Act, particularly, by threatening to remove him from the union because he filed an unfair practice charge against it.

Docket No. _____

(Public Employee Representative)

Date: _____

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, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"