

D.U.P. NO. 94-4

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

In the Matter of

PBA LOCAL 105,

Respondent,

-and-

Docket Nos. CI-93-64 and
CI-93-65

KEVIN MILLER,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses unfair practice charges filed against a majority representative. The Director determined that one charge filed against PBA Local 105 concerned an intra-union dispute over which the Commission does not assert jurisdiction. The other charge concerned an alleged denial of membership rights to vote on an interest arbitration award. The Director also determined that the charge did not justify the issuance of a Complaint.

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Appearances:

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

For the Charging Party,
Kevin Miller, pro se

DECISION

On March 2, 1993, Kevin Miller filed two unfair practice charges alleging that PBA Local 105 violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(b)(1) and (3).^{1/} CI-93-64 alleges that in February 1993, the PBA president, at a membership meeting, "failed to entertain a motion made by the appellant, Kevin Miller"

^{1/} These subsections 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. (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."

and that this act violated PBA by-laws. CI-93-65 alleges that in February 1993, the PBA "by having an arbitration award on agreement, the union engaged in fraud against the membership." He alleges that the PBA denied the membership its rights [to vote] by "having the arbitration award the contract."

On March 8, 1993, the PBA filed a response, denying it engaged in any unfair practice. It also asserts that both charges concern internal union matters, over which the Commission has limited jurisdiction.

A majority representative violates 5.4(b)(1) when its actions tend to interfere with, restrain or coerce employees in the exercise of rights guaranteed them by the Act, provided the actions lack a legitimate and substantial organizational justification. FOP Newark Lodge #12 (Colasanti) PERC No. 90-65, 16 NJPER 126 (¶16212 1985); FMBA Local No. 35 (Carragino) PERC No. 83-144, 9 NJPER 336 (¶14149 1983).

Majority representatives also owe a duty of fair representation to unit employees. A violation of that duty occurs,

only when a union's conduct towards a member of the collective bargaining unit is arbitrary, capricious or in bad faith. [Vaca v. Sipes 386 U.S. 171, 64 LRRM 2369 1967].

The Commission and courts in New Jersey have adopted this standard. Saganario v. Attorney General, 87 N.J. 480 (1981); Fair Lawn Bd. of Ed. PERC No. 84-138, 10 NJPER 351 (¶15163 1984). In negotiating collective agreements, majority representatives are afforded a "wide range of reasonableness." Belen v. Woodbridge Tp. Bd. of Ed., et

al. 142 NJ Super. 486 (App. Div. 1976). certif. den. 72 N.J. 458 (1976).

The court has also ruled that private organizations "must have considerable latitude in rule-making in order to accomplish their objectives, and their private rules are generally binding on those who wish to remain members." Calabrese v. PBA Local 76, 157 N.J. Super. 139, 146 (App. Div. 1978). The Commission has relied on Calabrese in stating it is "reluctant to intercede in what is only an intra-union dispute..." Jersey City Supervisors Assn., PERC No. 83-32, 8 NJPER 563 (¶13260 1982), App. Div. dkt. No. A-768-82T1 (1983). The Director has ruled that a union's failure to follow by-laws is a strictly "internal matter which does not fall under the guise of the Act..." ATU Local 824, DUP No. 85-9, 10 NJPER 600 (¶15279 1984).

Charge docket No. CI-93-64 sets forth nothing more than an allegation that procedural aspects of a union meeting were not followed. This alleges at most a violation of PBA by-laws, an issue over which the Commission will not exercise jurisdiction. Accordingly, I conclude that this charge does not meet the Commission's complaint issuance standard and dismiss the charge. N.J.A.C. 19:14-2.2 and 2.3.

The Director has also declined jurisdiction over disputes concerning contract ratification. See Newark Building Trades Council, D.U.P. No. 82-34, 8 NJPER 333 (¶13151 1982) [the Act fails to prescribe any procedure for contract ratifications and is

considered "...an internal union matter..."]; and Camden County College Faculty Ass'n, D.U.P. No. 87-13, 13 NJPER 253 (¶18103 1987) [ratification process affects all members of the unit and is "...essentially an internal union matter..."].

Miller's second charge (Docket No. CI-93-65) concerns an alleged denial of membership rights to vote on an interest arbitrator's award. Our jurisdiction in this matter is even more remote than in those cases cited above because the parties here had already invoked interest arbitration pursuant to N.J.S.A. 34:13A-16 et seq. and had agreed to be bound by the award. See N.J.S.A. 34:13A-16(5). Accordingly, Docket No. CI-93-65 also does not meet the Commission's complaint issuance standard and is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: July 22, 1993
Trenton, New Jersey