

D.U.P. NO. 92-21

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

In the Matter of

HOBOKEN POLICE SUPERIOR OFFICERS
ASSOCIATION,

Respondent,

-and-

Docket No. CI-92-58

JAMES MANCUSO and ANTONIO JULVE,

Charging Parties.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by two individual police sergeants alleging that their majority representative violated the Act by suspending them from membership because they refused to pay a union assessment. The officers contended that the assessment was contrary to the union's constitution/by-laws.

The Director finds that the allegations in the charge are internal union matters and do not involve violations of the Act. Accordingly, the Director declined to issue a complaint.

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Appearances:

For the Respondent
Schneider, Cohen, Solomon, Leder & Montalbano, attorneys
(David S. Solomon, of counsel)

For the Charging Parties
Ira Karasick, attorney

REFUSAL TO ISSUE COMPLAINT

On January 29, 1992, James Mancuso and Antonio Julve ("Charging Parties"), police sergeants with the City of Hoboken, filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") against their employee representative, the Hoboken Police Superior Officers Association ("PSOA"). They allege that the PSOA violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), specifically subsections

5.4(b)(1), (2), (3), (4) and (5)^{1/} by suspending them from PSOA membership.

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charged.^{2/} The Commission has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act.^{3/}

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. (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment 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."

2/ N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice.... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof...."

3/ N.J.A.C. 19:14-2.1.

The Commission's rules provide that I may decline to issue a complaint.^{4/}

The charging parties allege that in the summer of 1990, the PSOA advised its members that it would assess each member a fee for legal expenses in conjunction with the union's challenge to a political referendum vote. Charging parties refused to pay the assessment and on January 30, 1991, Mancuso gave a statement to the local newspaper. In February, 1991, the PSOA charged Mancuso and Julve with failure to pay the assessment and violation of the union's by-laws.

On January 2, 1992, the PSOA suspended charging parties until they paid the assessment. Additionally, Mancuso was suspended for three months for "trying to adversely affect the advisory board's decision by threatening the PSOA membership."^{5/} Pursuant to the PSOA constitution, Mancuso and Julve were given sixty days to appeal this determination to the general membership. However, charging parties apparently failed to appeal the advisory board's decision to the general membership.

Charging parties assert that their suspension was "illegal" and in violation of PSOA by-laws. The PSOA's constitution/by-laws provide, in part,

4/ N.J.A.C. 19:14-2.3.

5/ It is not asserted that Julve was also given this second suspension.

Article 4, Section 2: This association shall be entirely divorced from politics and shall not in any way participate, directly or indirectly...except that it may use its influence and endeavor to obtain such legislation from time to time legitimately as may be necessary, urgent, proper and appropriate for the best interests of this association, the advancement and improvement of its condition, aid and protection of its members.

Article 5: The president, whenever necessary, shall have the power to levy an assessment sufficient in amount to meet the requirement of this association. Assessments shall be due and payable within sixty days from the date of such levy unless otherwise provided.

Article 10: Any member of the association who knowingly or willfully violates...the constitution and by-laws...shall be tried and punished as hereinafter provided....Should a member be charged...with conduct injurious to the good order, peace or interest of the association or violation of the constitution, by-laws or resolutions of the association, the advisory board shall inform him thereof in writing...giving him at least seven days notice to attend a meeting before the advisory board....If upon inquiry and hearing, the advisory board shall be satisfied of the truth of the charge, it may censure, suspend or expel such member.

Anytime within sixty days of the expulsion or suspension of a member by the advisory board, such member may appeal to the association against the decision of the advisory board and a member may be restored to his membership....

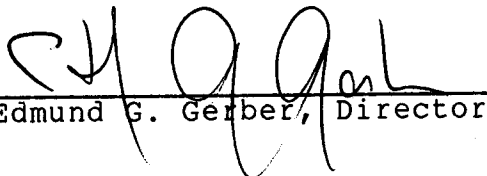
An employee organization has a right to assess fees on its members. The charging parties are not contending that the assessment was discriminatorily imposed--in fact, the fee was imposed on all PSOA members. See Calabrese v. PBA Local 76, 157 N.J. Super 147 (App. Div. 1978), which held that a private

organization (such as a PBA local) must have considerable latitude in rule making in order to accomplish its objectives and private rules are generally binding on those who wish to remain members.^{6/} Julve and Mancuso contend that their refusal to pay the assessment was justified because the assessment was contrary to the PSOA constitution.

The propriety of Mancuso's and Julve's suspensions from SOA membership are matters of interpretation of the provisions of the union constitution. Their allegations concern internal union matters over which the Commission lacks jurisdiction.^{7/}

Based upon the foregoing, I conclude that the Commission's complaint issuance standard has not been met. Accordingly, I decline to issue a complaint and dismiss the charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: May 28, 1992
Trenton, New Jersey

^{6/} Compare, West New York Police Supervisors Association (Santa Maria), P.E.R.C. No. 89-60, 15 NJPER 21 (¶20027 1988), where the Commission held it was an unfair practice for a union to require as a precondition of membership that employees pay a penalty for their earlier failure to become members of the union.

^{7/} The facts are somewhat unclear concerning Mancuso's three-month suspension for "trying to adversely affect the advisory board's decision by threatening the PSOA membership." However, without more, we are unable to discern how this suspension may violate the Act or involve anything more than an internal union matter.