

D.U.P. NO. 2001-16

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

In the Matter of

NEW JERSEY STATE P.B.A.,

Respondent,

-and-

Docket No. CI-2001-34

MARTIN VITALE,

Charging Party.

**SYNOPSIS**

The Director of Unfair Practices declined to issue a complaint on an unfair practice charge filed by an individual against his former majority representative, the New Jersey State PBA (PBA). The individual claimed the PBA violated his various rights by expelling him from membership. The Director found the expulsion was an internal union matter and the Commission lacked jurisdiction to enforce a union's constitution or bylaws.

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Appearances:

For the Respondent,  
Zazzali, Fagella & Nowak, attorneys  
(Paul L. Kleinbaum, of counsel)

For the Charging Party,  
Dato, Sico & Sica, attorneys  
(Robert F. Dato, of counsel)

**REFUSAL TO ISSUE COMPLAINT**

On November 1, 2000 and March 21, 2001, Martin Vitale filed an unfair practice charge and amended charge alleging that the New Jersey State PBA (PBA) violated 5.4b(1) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), by expelling him from PBA membership. Vitale also alleges that the State PBA violated its constitution and by-laws by the manner in which he was expelled from membership.

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<sup>1/</sup> 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."

The State PBA denies engaging in any unfair practices. It argues that the charge should be dismissed as the Commission does not inquire into a union's internal affairs. It asserts that it expelled Vitale based upon his membership in a rival organization, which has been permitted by the courts and the Commission.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. In correspondence dated May 23, 2001, I advised the parties that I was not inclined to issue a complaint in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. Neither party filed a response. Based upon the following, I find that the complaint issuance standard has not been met.

Vitale is a supervisory corrections officer employed by the Middlesex County Department of Corrections. In 1998, Vitale won an election as president of PBA Local 152A, but after certain members complained to the State PBA about election conduct, he was directed to conduct a new election. In early 1999, Vitale refused and the State PBA Judiciary Committee removed him as president of PBA Local 152A. A new election was conducted and a new president elected.

Vitale then asserted to the County that the Middlesex County Superior Corrections Officers' Association (a non-PBA Association) was the exclusive representative of superior correction officers and claimed that PBA Local No. 52A was not a legal entity. The County was then faced with two organizations - PBA Local 152A and the non-PBA Association represented by Vitale - each claiming that it was the majority representative of the County's corrections superior officers. The County apparently believed that the non-PBA Association was the proper majority representative.

On September 29, 1999, PBA Local 152A filed an unfair practice charge and application for interim relief with the Commission claiming the County violated the Act by refusing to recognize or negotiate with it as the majority representative. On October 22, 1999, the County was restrained from recognizing or engaging in collective negotiations with any employee organization other than PBA Local 152A. County of Middlesex (Dept. of Adult Corrections), I.R. No. 2000-3, 26 NJPER 38 (¶31011 1999).<sup>2/</sup>

On March 7, 2000, Vitale was charged by PBA Local 152A with violating Article VIII Section 1 of the State PBA constitution and by-laws which prohibits dual membership. On June 7, 2000, the State PBA Judiciary Committee conducted a hearing. Although disciplinary charges are generally heard at the local level, the State PBA determined, in accordance with its by-laws and prior practice, that

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<sup>2/</sup> I take administrative notice of certain facts involved in this interim relief proceeding.

because the local had not complied with various State PBA directives concerning nominations and elections of officers, the hearing would be conducted at the State level. On June 25, 2000, Vitale was expelled from PBA Local 152A. He appealed the expulsion on July 16, 2000. His appeal was heard and rejected September 19, 2000, by the State PBA Board of Delegates.

Vitale contends the June 7, 2000 hearing was improper because no recordings, transcripts or testimony were taken. He contends the expulsion was based on false statements and half truths. He argues that the September 19, 2000 hearing violated his due process rights because a PBA representative displayed a folder "of unrelated incidents" and stated, "Look at this guy's file. He doesn't get it. He has to go."<sup>3/</sup> before delegates voted on his appeal. Finally, he contends the entire disciplinary process was conducted in violation of the State PBA constitution and by-laws.

#### ANALYSIS

A majority representative violates 5.4b(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 Lodge 12 (Colasanti), P.E.R.C. No. 90-65, 16 NJPER 126 (¶21049 1990); FMBA Local 35 (Carragino), P.E.R.C. No. 83-144, 9 NJPER 336 (¶14149 1983). Section 5.3 of the Act empowers an employee representative

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<sup>3/</sup> No further information was provided regarding the contents of the folder.

to represent employees in the negotiation and administration of a collective agreement. With that power comes the duty to represent all unit employees fairly. 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 the New Jersey courts have adopted this standard. Saginario v. Attorney General, 87 N.J. 480 (1981); Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); Fair Lawn Bd. of Ed. (Solomons), P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984); OPEIU Local 153 (Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983).

Vitale alleges that the State PBA violated his rights by expelling him from membership. Employee organizations are free to create rules binding on 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 members. Calabrese v. PBA Local 76, 157 N.J. Super. 139 (Law Div. 1978). In that matter, the court found 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, 157 N.J. Super. at 146.

Here, Article VIII Section 1 of the State PBA Constitution prohibits dual membership in another labor organization. In FOP Lodge 12 (Colasanti), the Commission stated that the standard for

testing the legality of expulsions from union membership is whether such expulsions were arbitrary, capricious or invidious. Id. at 127. The Commission has previously found that a union's by-laws may legitimately prohibit a member from belonging to a rival organization. N.J. State PBA (Franklin), P.E.R.C. No. 91-92, 17 NJPER 245 (¶22111 1991); Bergen Cty. Sheriff and PBA Local 134 (Neely), P.E.R.C. No. 88-9, 13 NJPER 645 (¶18243 1987). Moreover, in Calabrese, the court held that a union may expel discordant elements in order that harmony may prevail. The court stated:

[t]he advocacy of dual unionism and sponsorship or creation of a rival organization has been held to be activity clearly in violation of membership responsibilities and disruptive of contractual relations; otherwise the members could campaign against the union while remaining a member and therefore, privy to union strategy and tactics. [157 N.J. Super. at 154].

Vitale has not asserted facts which establish that the PBA's actions in this case were arbitrary, capricious or invidious. Vitale offers no evidence of prior similarly situated members receiving differential treatment. Instead, Vitale seems to suggest that since the non-PBA Association was ultimately found not to be the majority representative for superior corrections officers, the State PBA can not properly claim that he was a member of a rival labor organization. Based on his conduct (refusing to conduct a new election in 1998 and holding himself out as the president of a rival, minority employee organization) which gave rise to the interim relief proceeding in County of Middlesex, it is apparent that Vitale was actively contesting the authority of PBA Local

152A. Therefore, I hold that the State PBA's actions were legitimate and based on substantial, appropriate organizational concerns. I find no reason to interfere with this purely internal union matter.

Vitale also claims that the manner in which he was expelled violated the PBA's constitution and by-laws. Courts have jurisdiction to enforce a union's constitution or by-laws; we do not. See Teamsters Local 331 (McLaughlin), P.E.R.C. No. 2001-30, 27 NJPER 25 (¶32014 2000).

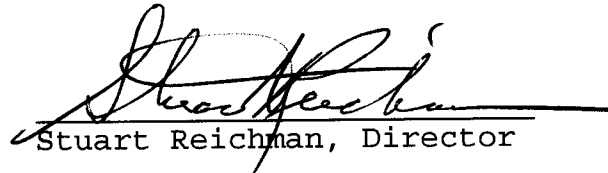
Vitale has also alleged violations of 5.4b(5) of the Act, however, he has not specified the rule or regulation established by the Commission which he alleges has been violated.

Based on the foregoing, the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.<sup>4/</sup>

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Stuart Reichman, Director

DATED: June 14, 2001  
Trenton, New Jersey

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