

D.U.P. NO. 93-10

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

In the Matter of

CITY OF ATLANTIC CITY,

Respondent,

-and-

IAFF LOCAL 198,

Docket Nos. CI-92-56
CI-92-57

Respondent,

-and-

WAYNE JOHNSON,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed by a unit employee against the majority representative and issues a Complaint and Notice of Hearing on a charge filed against the public employer.

The Director determines that an allegedly unlawful memorandum issued by the majority representative did not tend to interfere with, restrain or coerce employees in violation of subsection 5.4(b)(1).

The Director also determines that a Complaint and Notice of Hearing shall issue on allegations that the public employer violated subsections 5.4(a)(1) and (3) when it retaliated against a unit employee who engaged in protected activity.

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Appearances:

For the Respondent City of Atlantic City
Braun D. Littlefield, Assistant City Solicitor

For the Respondent IAFF
John F. Pilles, Jr., attorney

For the Charging Party
Hubert U. Barbour, Jr., attorney

DECISION

On January 21, 1992, Wayne Johnson filed unfair practice charges against Atlantic City Fire Fighters, Local #198, IAFF ("IAFF") and the City of Atlantic City. Johnson is president of the Atlantic City Vulcans ("Vulcans"), affiliated with the International Association of Black Professional Fire Fighters. Johnson alleges that in or around August 1991, the IAFF issued a document which "evidence[s] an intent to chill or suppress the Vulcans' right to

engage in protected conduct...." Johnson also alleges that he filed a "formal grievance concerning [IAFF] tolerance of a substantive breach of the negotiations agreement..., which grievance was denied." The breach allegedly concerns the retention of journeymen fire fighters acting out of title as captains. The IAFF's conduct "denies the Vulcans individually and collectively the right of fair representation...." These acts allegedly violate subsections 5.4(b)(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

Johnson also alleges that on or about July 22, 1991, he was admonished by the Atlantic City mayor for "misdirecting" a letter he wrote on behalf of the Vulcans concerning a proposed "table of organization and equipment."

Johnson also alleges that on or about November 14 and 19, 1991, the Atlantic City Fire Chief first informed and then disciplined him for "alleged insubordination" for conduct on behalf of the Vulcans. These acts allegedly violate subsections 5.4(a)(1), (2), (3) and (7)^{2/} of the Act.

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

^{2/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

On September 4, 1992, we issued a letter tentatively dismissing the charge filed against the IAFF and tentatively concluding that a complaint and notice of hearing shall issue on the charge filed against the City. Subsequently, no other letters or documents were filed by the parties.

The allegedly unlawful document, a three-page memorandum signed by the IAFF president, was issued in reference to a notice distributed by the Vulcans entitled "Who are the Vulcans"^{3/} The IAFF president writes that the Vulcans have "changed into a rival organization attempting to stop brother union members from being promoted, simply because they're not black." He refers to the Vulcan notice as a "cleverly worded deception and misrepresentation of truths intended to deceive lay persons not familiar with the inner-workings of the fire department." The memorandum then

2/ Footnote Continued From Previous Page

rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (7) Violating any of the rules and regulations established by the commission."

3/ The "Who are the Vulcans" memorandum describes the organization as a "fraternity," "community active", and specifies "what we are not" -- "a union," "a bargaining agent," "union busters" and "racist or separatist." It states that the Vulcans "want to recruit competent minorities..." to take the fire fighters examination. It further states that "many actions taken by the IAFF are detrimental to minority fire fighters..." but that it does not wish the local "ill will."

discusses the merits of an issue concerning promotions to the rank of captain. The IAFF president urges Mr. Johnson to leave the "...representing of all fire fighters to the union" and states that alleged contract violations "will be dealt with by the Board and recommendation will be brought before the next membership meeting...on August 14, 1991."

An employee organization violates subsection 5.4(b)(1) when its actions tend to interfere with, restrain or coerce employees in the exercise of the rights guaranteed them by the Act, provided the actions lack a legitimate and substantial organizational justification. FOP Newark Lodge #12 (Colasanti), P.E.R.C. No. 90-65, 16 NJPER 126 (¶21049 1990). Cases litigated under this subsection typically concern the lawfulness of a union's expulsion of discordant elements; see Bergen Cty. PBA (Saleem), P.E.R.C. No. 86-38, 11 NJPER 596 (¶16212 1985); FMBA Local No. 35 (Carrigino), P.E.R.C. No. 83-144, 9 NJPER 336 (¶14149 1983); Council No. 5, NJCSA (Labriola), P.E.R.C. No. 82-75, 8 NJPER 123 (¶13053 1982); PBA Local No. 199 (Rasheed Abdul-Haqq), P.E.R.C. No. 81-14, 6 NJPER 384 (¶11198 1980).

The IAFF has not engaged in conduct which interferes with Johnson's right to form, join or assist an employee organization or refrain from such activity. The charge contains no allegations of expulsion or threatened expulsion from the union; the worst that may be said of the IAFF memorandum is that its derisive tone may worsen rather than ease tensions between the IAFF and the Vulcans.

The IAFF is entitled to aggressively pursue its position on mandatorily negotiable issues. It has taken a position on the disputed promotion-to-captain issue, in part relying on a negotiability ruling in City of Long Branch, P.E.R.C. No. 92-102, 18 NJPER 175 (¶23086 1992). The Vulcans may disagree with the IAFF's position, but the two organizations' disagreement does not necessarily implicate a duty of fair representation issue and is not a basis upon which a complaint may issue. Furthermore, under N.J.S.A. 34:13A-5.3, no minority organization may prosecute a grievance to a public employer on behalf of negotiations unit members.

By analogy...the majority representative is not compelled to process grievances simply because the minority organization has made such a request upon the majority representative. The initiation of a group grievance on behalf of negotiations unit members is solely within the province of a majority representative.

Tp. of Cherry Hill v. FOP Cherry Hill Lodge 28,
D.U.P. No. 81-18, 7 NJPER 286 (¶12128 1981).

In this case, there is no reason to distinguish between a minority labor organization and a fraternal organization like the Vulcans.

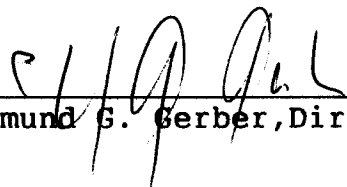
Accordingly, based upon the allegations in the charge, we decline to issue a complaint and Notice of Hearing on Johnson's charge against the IAFF.^{4/}

^{4/} Johnson also alleged that the IAFF violated subsection 5.4(b)(5) of the Act. No facts alleged in the charge suggest that the IAFF violated any "rules and regulations of the Commission." Accordingly, we are not inclined to issue a complaint concerning this allegation.

N.J.S.A. 34:13A-5.3 protects the rights of public employees to "...freely and without fear of penalty or reprisal, form, join and assist any employee organization or to refrain from any such activity."

Johnson has alleged that he was admonished and disciplined by the City in retaliation for his efforts on behalf of the Vulcans. Such acts may violate subsections 5.4(a)(1) and (3). Accordingly, we will issue a Complaint and Notice of Hearing on this allegation and dismiss all others.^{5/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: September 21, 1992
Trenton, New Jersey

^{5/} None of the facts alleged in the charge against the City indicate that subsections 5.4(a)(2) and (7) were violated.