

D.U.P. No. 2011-4

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

In the Matter of

NEW JERSEY STATE PBA and
PBA LOCAL 199,

Respondent,

-and-

Docket No. CI-2010-050

JAMES EDWARD RINALDO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on an unfair practice charge filed by James Rinaldo against the State PBA and PBA Local 199. Rinaldo primarily alleges that the PBA violated the Act by expelling him from membership and removing him as president of Local 199A. Rinaldo further asserted that he was disparately treated by the PBA and that the PBA interfered with the right of members of 199A to choose their representative. The Director held that Rinaldo lacked standing to bring a duty of fair representation claim against an employee organization in which he was not a member; that the charge was moot, as he seeks money damage but has shown no economic harm and because he is now a member of the FOP, the current majority representative; that the manner in which he was expelled from the PBA is an internal union matter; and that he lacks standing to bring a claim on behalf of Local 199A members.

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Appearances:

For the Respondent, New Jersey State PBA
Zazzali, Fagella, Nowak, Kleinbaum & Friedman,
attorneys
(Robert A. Fagella, of counsel)

For the Respondent, PBA Local 199
Mets Schiro & McGovern, attorneys
(James Mets, of counsel)

For the Charging Party
Rinaldo and Rinaldo, attorneys
(Grant S. Ellis, of counsel)

REFUSAL TO ISSUE COMPLAINT

On June 11, 2010, James Edward Rinaldo (Rinaldo) filed an unfair practice charge against the New Jersey State Policemen's Benevolent Association (State PBA) and Union County Correction Officers Policemen's Benevolent Association Local 199 (PBA Local 199). Rinaldo's charge alleges the Respondents violated 5.4b(1),

(2) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), by expelling him from membership in the State PBA, Local 199 and Superior Officers Association, Union County Correction Officers Policemen's Benevolent Association Local 199A (Local 199A) and removing him as president of Local 199A for actions Rinaldo took as disciplinary lieutenant and as Local 199A President.

Rinaldo alleges that Respondents' violated 5.4b(1) by the manner in which he was expelled from membership in contravention of the State PBA constitution and by-laws, thereby, denying him due process - e.g. the charges against him were brought in the wrong venue, were illegal, invalid and preempted by the PBA by-laws, and he was prevented from calling witnesses and cross-examining his accusers and not given proper notification of the charges; that Respondents' treated him disparately in that they did not bring similar charges seeking to expel others who filed LAD-like claims against Local 199 members; that Respondents' actions interfered with the rights of Local 199A members to choose their collective negotiations representative by expelling and removing Rinaldo as Local 199A president; and that

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

Respondents' actions in expelling him from PBA membership deprived him of due process rights under the New Jersey Constitution to organize and join a union.

Rinaldo contends that Local 199 violated 5.4b(2) when it filed charges against him demanding his removal as disciplinary lieutenant, thereby, interfering with the County's right to select him as its representative for purposes of adjusting grievances. Finally, Rinaldo asserts that Respondents' violated 5.4b(5) by circumventing the County's rules and regulations for the adjustment of grievances, when it filed union disciplinary charges against him for his actions as disciplinary lieutenant.

The State PBA and PBA Local 199 deny engaging in any unfair practices. They argue that the charge should be dismissed because it is an internal union matter and the Commission does not inquire into a union's internal affairs.

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. Based upon the following, I find that the complaint issuance standard has not been met.

Rinaldo is a supervisory corrections officer, a lieutenant, employed by Union County (County) in its Department of

Corrections. From 1997 and until his expulsion on January 12, 2010, Rinaldo was a member and President of Local 199A.

Pursuant to the parties' collective negotiations agreement, Local 199A was the exclusive representative for all superior corrections officers with the rank of captain, lieutenant and sergeant. Under the State PBA by-laws, Local 199A members are also non-voting members of Local 199, the majority representative of all corrections officers below the rank of sergeant employed by the County. Both Local 199 and Local 199A are subdivisions of the State PBA.

Neither Local 199 nor the State PBA was Rinaldo's majority representative during the operative times of this charge. As of May 27, 2010, Fraternal Order of Police Lodge 213 (FOP) was certified as the majority representative for all superior corrections offices employed by the County, replacing Local 199A as the majority representative of that unit.

When Local 199A was majority representative, there were long-running disputes between Local 199A and Local 199 over various issues, including, among others, the amount of dues to be paid by Local 199 to Local 199A and Rinaldo's conduct as disciplinary lieutenant in filing disciplinary charges against Local 199 members. These disputes resulted in Local 199 filing charges against Rinaldo with the State PBA seeking his expulsion and removal as Local 199A president. Among the accusations leveled by Local 199 were charges that Rinaldo improperly denied

Local 199 members the right to union representation in disciplinary discussions, displayed an FOP folder on his desk to taunt PBA members, coerced Local 199 members into agreeing to settle disciplinary charges without union representation and filed a civil suit against individual Local 199 members.

After a hearing, the State PBA Judiciary Committee issued its report on October 14, 2009 finding Rinaldo guilty of violating State PBA by-laws, Article XVI, Section 1 for instituting court proceedings against members of Local 199 and against Local 199, although the civil complaint does not name Local 199 as a defendant. The judiciary committee expelled Rinaldo from membership in Local 199 and Local 199A and removed him as president of Local 199A.

On January 12, 2010, Rinaldo's appeal was heard and rejected by the State PBA Board of Delegates which expelled him as of that date.

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 (Collasanti), 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 states in pertinent part:

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership.

With the authority to exclusively represent employees comes the duty to represent all unit employees fairly. Thus, the duty of fair representation is interwoven with the principal of exclusive representation and arises from duties owed by the majority representative to unit members. 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) (emphasis added). 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).

In the instant matter, Rinaldo a County superior officer, was included in a unit represented by Local 199A until May 27, 2010 when FOP Lodge 213 was certified as the exclusive majority representative of that unit. Neither Local 199 nor the State PBA was Rinaldo's exclusive majority representative, and, therefore,

no duty existed under the Act by either Association to represent him. Accordingly, Rinaldo lacks standing to bring a duty of fair representation claim under N.J.S.A. 34:13A-5.4b(1) against those organizations. See generally, Oakcrest-Absegami Teachers Assn., D.U.P. No. 97-35, 23 NJPER 261 (¶28125 1997) (employee lacked standing to maintain duty of fair representation claim against an employee organization that represented a collective negotiations unit to which that employee did not belong); Bergen Cty. Vocational Bd. of Ed., D.U.P. No. 2002-6, 28 NJPER 82 (¶33029 2001) (unit employee transferred to position outside Association's negotiations unit triggered no duty by Association to file grievance over his layoff from non-unit position); Fort Lee Education Assoc. and N.J. Education Assoc., and Williams, D.U.P. No. 2003-6, 28 NJPER 566 (¶33175 2002), (Association had no duty to represent employee whose position was eliminated even though Association acquiesced in elimination of position, inasmuch as she was no longer included in unit).

Even if Rinaldo asserted a valid claim under the Act against Local 199A for actions taken against him while it was majority representative, the matter is moot. A case will be found moot where "continued litigation over past allegations of misconduct which have no present effects unwisely focuses the parties' attention on a divisive past rather than a cooperative future." Ramapo Indian Hills Bd. of Ed., P.E.R.C. No. 91-38, 16 NJPER 581, 582 (¶21255 1990). Other considerations are whether there remain

open issues which have practical significance; whether there is a continuing chilling effect from the earlier conduct which has not been erased; whether, after a respondent's corrective action, a cease and desist order is necessary to prevent other adverse action against the same or other employees; and, whether the offending conduct is likely to recur. Wayne Township, and PBA Local 136, and Barry Weiser, H.E. No. 2005-12, 31 NJPER 51 (¶24 2005).

Here, Rinaldo seeks money damages for allegedly being improperly expelled from membership in the State PBA and Locals 199 and 199A without specifying the economic harm caused by his expulsion and removal as president of Local 199A. None can be gleaned from these facts. Neither Respondent is the current majority representative of the County's superior corrections officers. Rinaldo is now a member of the FOP, the current majority representative. Since neither Respondent owed a duty of fair representation to Rinaldo under these circumstances, and since the Respondents' actions involved the application of their internal rules and regulations, this charge appears moot.

Regarding Rinaldo's assertion that the Respondents inappropriately expelled him from membership under State PBA internal by-laws and constitution, employee organizations are free to create rules affecting 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 Calabrese, 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. Thus, the Court determined that a union may expel discordant elements in order that harmony prevails and labor relations are not disrupted by members campaigning against a majority representative while being privy to negotiations strategies and tactics as a member belonging to both the majority representative and a rival organization.

In N.J. State P.B.A. and Vitale, D.U.P. No. 2001-16, 27 NJPER 269 (¶32096 2001), Martin Vitale filed an unfair practice charge against the PBA alleging, among other things, that the PBA violated its constitution and by-laws in the manner in which he was expelled from membership in PBA Local 152A. Vitale contended that his hearing was improper because no recordings, transcripts or testimony were taken. He argued, generally, that he was denied due process rights, that his expulsion was based on false statements and half truths, and that the entire disciplinary process was conducted in violation of the State PBA constitution and by-laws.

Relying on Calabrese and Teamsters Local 331 (McLaughlin), P.E.R.C. No. 2001-30, 27 NJPER 25 (¶32014 2000), the Director of

Unfair Practices found that Vitale's claims that the manner in which he was expelled violated the PBA's constitution and by-laws were an internal union matter. The Director explained that "Courts have jurisdiction to enforce a union's constitution or by-laws; we do not." Id. at 270. Therefore, even if Rinaldo had standing to assert a b(1) claim against Respondents, the Commission has no jurisdiction to entertain his claim that the manner in which he was expelled violated the PBA's constitution and by-laws.

Rinaldo also asserts that Respondents treated him differently than others who also filed LAD-like claims against Local 199 members but were not expelled. In Vitale, the Director, citing FOP Lodge 12 (Colasanti), P.E.R.C. No. 90-65, 16 NJPER 126 (¶21049 1990), recited the standard for testing the legality of expulsions from union membership. The test is whether the expulsions were arbitrary, capricious or invidious. The expulsions from membership considered in Colasanti and cases cited therein involved a majority representative expelling a member who worked against its interests by campaigning for a rival organization. The essence of those cases is that the majority representative violates 5.4b(1) if it expels a unit member in an arbitrary, capricious or invidious manner, thus, depriving him of organizational rights protected by 5.3 of the Act.

Here, however, there is no allegation that Local 199A, the majority representative at the time of Rinaldo's expulsion, sought to expel him or that it treated Rinaldo in an arbitrary, capricious or invidious manner. Rinaldo has alleged only that the State PBA and Local 199, minority organizations, acted improperly in this regard.^{2/} Therefore, this allegation does not establish a violation under 5.4b(1) of the Act.^{3/}

Rinaldo further alleges that Respondents' actions in expelling and removing him as president of Local 199A interfered with and chilled the 5.3 rights of Local 199A members to choose their collective negotiations representatives. The Commission has previously found that majority representatives and employers have a right under 5.3 to choose their own negotiations representatives. Neither party has a right to interfere with the others' choice of representative. Boqota Bd. of Ed., P.E.R.C. No. 91-105, 17 NJPER 304 (¶22134 1991). Since Local 199A had the exclusive right to represent unit members at the time of Rinaldo's expulsion, it was Local 199A's right to choose its negotiations representatives and, therefore, their right to

^{2/} The Commission has held that a union's by-laws may legitimately prohibit a member from belonging to a rival organization. See, 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).

^{3/} Even if expulsion from the State PBA resulted in expulsion from Local 199A, since Local 199A is no longer the majority representative, this allegation is moot.

assert this claim, not Rinaldo's as an individual. Rinaldo's expulsion from Local 199A as a union member and his removal as president did not prevent Local 199A from selecting Rinaldo as a unit member to represent members of the unit in the processing of grievances or contract administration. The Commission has determined that representatives can be terminated employees or non-employees. Bogata.^{4/} Even if his expulsion prevented Rinaldo from being chosen to represent Local 199A members in collective negotiations, Rinaldo has no standing to make a claim on behalf of Local 199A members. Any such claim belonged exclusively to Local 199A and now to FOP Lodge 213 as current majority representative. Under these circumstances, the facts do not support a violation of subsection 5.4b(1).

Finally, Rinaldo alleges generally that Respondents violated 5.4b(1) in that their actions in expelling and removing him as Local 199A president deprived him of due process rights under the New Jersey Constitution, Article I, paragraph 19, as codified by our Act, to organize and join a union. In Lullo v. International Ass'n of Firefighters, 55 N.J. 409 (1970), the New Jersey Supreme

^{4/} It is unclear from the charge whether Rinaldo is asserting that the actions of Respondents interfered with his ability to perform his job as disciplinary lieutenant representing the County in grievances filed by Local 199 which challenge disciplines against its unit members. This would also not be a violation of the Act. Any alleged interference with the County's ability to pick its representatives in grievance processing have to be asserted by the County and would be asserted against the majority representative, not a minority organization.

Court upheld the validity of section 5.3 and recognized the distinction between a private sector employees' right to bargain collectively protected by the New Jersey Constitution and the more limited rights of public employees to organize and collectively negotiate under our Act. Rinaldo has not asserted any organizational rights that have been violated under our Act. Unit members selected Local 199A to represent them as majority representative, and then chose FOP Lodge 213 to act as their majority representative. Rinaldo's expulsion and removal as president did not interfere with those rights. Moreover, as discussed previously, Rinaldo's due process claims relate to violations of union by-laws and constitution, internal union matters, that are not normally within the Commission's jurisdiction.

Rinaldo's allegation of a 5.4b(2) violation of the Act, is a right belonging to a public employer, not to individual employees. Thus, Rinaldo lacks standing to assert such a charge. Newark Teachers Union and Sykes, H.E. 2002-8, 28 NJPER 73 (¶33024 2001).

Rinaldo also alleges a violation 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. In High Point Reg. Bd. of Ed., D.U.P. No. 80-23, 6 NJPER 214, 215 (¶111105 1980), the Director determined that under 5.4a(7), the Commission will not issue a complaint where the charging party does not cite

to a specific Commission rule or regulation alleged to have been violated. Since subsections 5.4a(7) and b(5) mirror each other, I find no violation of 5.4b(5).

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.^{5/}

ORDER

The unfair practice charge is dismissed.

Arnold H. Zudick
Director

DATED: October 12, 2010
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.

Any appeal is due by October 22, 2010.

^{5/} N.J.A.C. 19:14-2.3.