

I.R. No. 2012-5

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PROBATION ASSOCIATION OF
NEW JERSEY,

Respondent,

-and-

Docket No. CI-2011-045

PETER TORTORETO AND ROBYN GHEE,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief based upon an unfair practice charge alleging that a majority representative unlawfully suspended from membership two unit employees for three years and six months, respectively, and unlawfully imposed other punishments. The charge alleges that the punishments were in retaliation for the employees' publication of campaign literature issued in their bid for union elective offices. The charge alleges that the union's conduct violates 5.4b(1) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The application seeks an Order reinstating the employees to membership and requiring a new union election, among other things.

The Designee cited caselaw creating a presumption that a majority representative violates the Act when it denies membership to an employee it represents which is rebuttable if the representative proves that the rejection was for good cause. FMBA Local No. 35 (Carrigino), P.E.R.C. No. 83-144, 9 NJPER 336 (¶14149 1983). The Designee determined that the majority representative presented sufficient facts creating material issues about its "good cause" for its actions. The Designee concluded that the charging party had not demonstrated by a substantial likelihood of success that the representative's conduct was arbitrary, capricious or invidious. FOP Lodge 12 (Colasanti), P.E.R.C. No. 90-65, 16 NJPER 126 (¶21049 1990).

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Appearances:

For the Respondent, Fox and Fox, LLP (Craig S. Gumpel,
of counsel)

For the Charging Party, Clifford G. Stewart, attorney

INTERLOCUTORY DECISION

On April 4, 2011, Peter Tortoreto and Robyn Ghee, public employees, filed an unfair practice charge against their majority representative, the Probation Association of New Jersey (PANJ). The charge alleges that on February 24, 2011, a PANJ executive committee voted in favor of charges brought against Tortoreto and Ghee, resulting in their suspensions from membership in PANJ for three years and six months, respectively and other punishments. The charge alleges that PANJ's actions were ". . . improper discrimination and denial of first amendment rights and due process rights since the publication of campaign literature involving the November, 2010 PANJ election of officers which raised questions about the activities of the PANJ financial

committee during several prior years." PANJ's conduct allegedly violates 5.4b(1)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).

On June 1 and 14, 2011, Tortoreto and Ghee filed an application for interim relief, certifications, an Order to Show Cause, exhibits and a brief. The application seeks an order reinstating Tortoreto and Ghee to membership in good standing with PANJ; directing a new union election; ceasing the imposition of fines on them; and reinstating Ghee to the office of vice-president of PANJ Local 109.

On June 16, 2011, I issued an Order to Show Cause specifying July 13, 2011 as the return date for argument on the application in a telephone conference call. I also directed PANJ to file a response by July 6, 2011. On June 23, I issued a letter advising that the format for argument was changed from a telephone conference call to a formal in-person hearing, upon request of the charging party. On July 12, I issued a letter, postponing the hearing until July 20, upon another request from the charging party and over the objection of PANJ. On the return date, the parties argued their cases. I denied the request for interim

^{1/} This provision prohibits 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."

relief on the record, and advised that I will also issue a written decision to the same effect. The following facts appear.

Tortoreto and Ghee have been PANJ members for many years. In November, 2010, they competed on a slate for the union offices of second vice president, financial chairman and financial secretary, respectively. During their campaign, Tortoreto and Ghee wrote and distributed among the membership a pamphlet entitled, "Secret Society of PANJ Finances." The document questions and is critical of wage increases paid to PANJ President George Christie; the number of meetings held by various PANJ committees; financial practices of the President, Financial Chairperson; and payments to PANJ counsel. In the first paragraph (and continuing throughout), Tortoreto revealed his reason ". . . for raising alleged impropriety with respect to PANJ finances" (Christie cert., para no. 10). Only the final sentence of the memo reveals that Tortoreto and Ghee (by the word, "we") authorized the document.

Christie has certified that the pamphlet sets forth "factual inaccuracies" and "false allegations" about the budgeting process; legal billings; legislative spending procedures; and preparation of monthly financial statements.

In October, 2010, Tortoreto and Ghee wrote and distributed to PANJ members a "PRIDE Candidate Flyer." Christie certified

that "information in the document was false, with reckless disregard for the truth" and that Tortoreto and Ghee, ". . . engaged in acts which are inconsistent with the duties, obligations and fealty of the members of the Association."

On October 31, 2010, and November 9 and 15, 2011, PANJ members Martinson, Ormsby-Cuozzo and Hennessy "submitted requests" that disciplinary charges be brought against Tortoreto and Ghee concerning their conduct during the PANJ elections conducted from October 22, 2010 through November 19, 2010.

On November 19, 2010, PANJ election ballots were counted under the auspices of the American Arbitration Association. Candidates Tortoreto and Ghee lost by an "overwhelming majority" of votes cast.

On November 21, 2010, Christie announced in an executive board meeting that charges had been filed against two PANJ members and that a Discipline Committee, comprised of five named members and an alternate member and chaired by Deneen Hohman, was appointed.

On January 14, 2011, Tortoreto and Ghee were served formal disciplinary charges, alleging they had violated a specified article of PANJ bylaws and specifying acts comprising the violations. The notice also advised Tortoreto and Ghee that disciplinary hearings would be conducted at a specified PANJ office on January 29, 2011 at 10 a.m. They were advised of their

right to representation at their expense. Finally, they were advised that their failure to appear would not halt the proceedings.

On January 26, 2011, Sophia Peele, President of the Camden County Probation Officers Association requested a meeting about the pending disciplinary matter. The Discipline Committee Chairperson advised Tortoreto and Ghee that the disciplinary hearings were rescheduled to Saturday, February 5, 2011 at 10 a.m. Other requests for an adjournment of the hearings were denied.

On or about February 3, 2011, Tortoreto and Ghee retained counsel for the purpose of representation at the disciplinary hearings. Counsel requested and was denied an adjournment of the hearings. On February 5, the disciplinary hearings proceeded at 10:30 a.m., in the absence of Tortoreto and Ghee. They certify that they did not have adequate time to prepare a defense and could not otherwise attend the proceedings.

The Discipline Committee convened in the presence of PANJ counsel. Named witnesses testified and numerous exhibits were entered on the record. The Committee was guided by "Robert's Rules of Order," in accordance with PANJ bylaws. After hearing hours of testimony and reviewing documents, the Committee sustained 8 of 9 charges filed against Tortoreto and 4 of 8 charges filed against Ghee. The Discipline Committee recommended

that Tortoreto be suspended from membership for 3 years, barred from all union-related activities and pay a \$1000 fine. The Committee recommended that Ghee be suspended from membership for 6-months, barred from all union-related activities during that period, and be relieved of her office as vice president of PANJ Local 109 during that period.

ANALYSIS

A charging party may obtain interim relief in certain cases. To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

An employee organization violates subsection 5.4(b)(1) when its action tends 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. N.J. Sports and Exposition Auth.,

P.E.R.C. No. 80-73, 5 NJPER 550, 551 n. 1 (¶10285 1979).

Employee organizations are free to create rules binding upon 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 membership.

Calabrese v. Policemen's Benevolent Assn., Local No. 76, 157 N.J. Super. 139 (Law Div. 1978). The Courts and the Commission have traditionally been reluctant to interfere with the internal affairs of private organizations. Id.; Old Bridge Ed. Assn., P.E.R.C. No. 91-7, 16 NJPER 438 (¶21188 1990); State Troopers Non-Commissioned Officers Assn. of N.J., D.U.P. No. 88-7, 14 NJPER 14 (¶19004 1987); Camden Cty. College Faculty Assn., D.U.P. No. 87-13, 13 NJPER 253 (¶18103 1987); Amalgamated Transit Union Local No. 824, D.U.P. No. 85-9, 10 NJPER 600 (¶15279 1984); Jersey City Police Officers Benevolent Assn., D.U.P. No. 85-2, 10 NJPER 475 (¶15212 1984); City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563 (¶13260 1982), app. disp. App. Div. Dkt. No. A-768-82T1 (7/22/83); Council of N.J. State College Locals, D.U.P. No. 81-8, 6 NJPER 531 (¶11271 1980). Review of an organization's by-laws is necessary only when they impair the public welfare or an individual's opportunity for economic success. Calabrese; Falcone v. Middlesex Cty. Medical Society, 34 N.J. 582 (1961); FOP Lodge 22, H.E. No. 92-17, 18 NJPER 73, 75

(¶23032 1991), aff'd P.E.R.C. No. 92-98, 18 NJPER 170 (¶23082 1992).

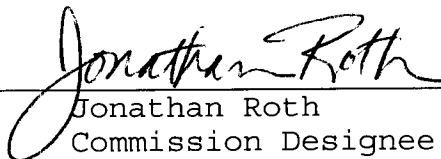
The standard that the Commission has adopted for testing the propriety of an employee organization's expulsion of a member is whether the employee organization's actions were arbitrary, capricious, or invidious. See, FOP Lodge 12 (Colasanti), P.E.R.C. No. 90-65, 16 NJPER 126 (¶21049 1990); CWA Local 1037 (Schuster), P.E.R.C. No. 86-78, 12 NJPER 91 (¶17032 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); City of Jersey City; PBA Local No. 199 (Rasheed Abdul-Haqq), P.E.R.C. No. 81-14, 6 NJPER 384 (¶11198 1980). The law creates a presumption that the majority representative violates the Act when it denies membership to an employee it represents. In order to rebut this presumption, the employee organization must prove that the rejection was for good cause. If it succeeds, no violation of subsection 5.4(b)(1) exists. FMBA Local No. 35, see also W. Orange PBA, Local No. 25, P.E.R.C. No. 83-6, 8 NJPER 433 (¶13202 1982), mot. for enf. granted, App. Div. Docket No. A-1684-82T3 (3/30/83); Council No. 5, NJCSA; FOP Lodge 22; PBA Local No. 199 (Rasheed Abdul-Haqq).

I assume for purposes of this decision that Tortoreto's suspension from membership for 3 years and Ghee's for 6 months are either a "denial of membership" or an "expulsion."

Considering the legal presumption in such cases, I find that PANJ has presented sufficient facts creating material issues about its "good cause" for its actions. At this early stage in the processing of this charge, I find that Tortoreto and Ghee have not demonstrated by a substantial likelihood of success that PANJ's conduct was arbitrary, capricious or invidious.

ORDER

The application for interim relief is denied. The case shall be processed in the normal course.



Jonathan Roth
Commission Designee

DATED: July 22, 2011
Trenton, New Jersey