

H.E. No. 2013-8

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COMMUNICATIONS WORKERS OF AMERICA,

Respondent,

-and-

Docket No. CI-2010-007

GREG BADINI,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission grant the CWA's motion to dismiss the complaint in this matter. The Hearing Examiner found that the Commission lacks jurisdiction over the claim that the CWA violated its own constitution, bylaws and internal rules when it suspended the charging party, Badini, from membership for one year. The Hearing Examiner did not find that the CWA's prosecution of Badini was arbitrary, discriminatory or invidious toward him.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COMMUNICATIONS WORKERS OF AMERICA,

Respondent,

-and-

Docket No. CI-2010-007

GREG BADINI,

Charging Party.

Appearances:

For the Respondent,
Weissman and Mintz, attorneys
(Molly Richardson, of counsel)

For the Charging Party,
Greg Badini, pro se

**HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION**

On September 28, 2009, and on February 16, 2010, Greg Badini filed an unfair practice and amended charge with the Public Employment Relations Commission (Commission). The charge alleges that Communications Workers of America (CWA) violated 5.4b(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), when it suspended him from membership in the local for one year.

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

On August 5, 2010, a Complaint and Notice of Hearing issued (C-1).^{2/} By letter the same date (C-2), the Commission's Director of Unfair Practices advised the parties that the Complaint was issued only on the allegation that Badini was improperly denied membership in CWA Local 1034.^{3/} All other allegations in Badini's charge were found not to meet the Commission's complaint issuance standard as set forth in N.J.S.A. 34:13A-5.4(c), and were dismissed (C-1 and C-2). On August 20, 2010, CWA filed an Answer to the Complaint (C-3), admitting that Badini was suspended from membership in CWA, but denying certain other factual allegations in the charge and asserting affirmative defenses. CWA denies that it violated the Act and requests that the Complaint be dismissed.

I conducted a hearing on July 14, 2011. Badini introduced exhibits and testified. He was the only witness. CWA had the opportunity to cross-examine Badini and introduce exhibits as part of its cross-examination. At the conclusion of Badini's case in chief, CWA moved to dismiss the Complaint. On the record, I granted CWA's request to file a formal motion to dismiss (T212-T214).

^{2/} Exhibits are marked respectively "C", "CP" and "R" for Commission, Charging Party and Respondent. "J" refers to exhibits jointly submitted. Transcript references to the hearing are "T" with the page number following the "T".

^{3/} Since the filing of the charge, CWA Local 1034 has been dissolved and replaced by CWA Local 1036.

On September 9, 2011, CWA filed a motion to dismiss the Complaint. By letter dated September 12, 2011, I advised Badini of his opportunity to oppose the motion and referred him to the applicable Commission rules. I received Badini's answering papers on October 31, 2011.

Based upon the record I make the following:

FINDINGS OF FACT

1. Greg Badini is a public employee within the meaning of the Act, and CWA is an employee representative within the meaning of the Act (T10).

2. Badini is a full-time, permanent employee of Hunterdon County. CWA Local 1034 (later known as Local 1036) is the exclusive majority representative of Hunterdon County rank and file employees. Badini is a member of that bargaining unit (T60-T61).

3. Badini served as branch president of the local from 1999 through 2008. He also served on the Executive Board of Local 1034 from September 1999 through July 2008 (T61).

4. On October 16, 2007, the Executive Board of Local 1034, including Badini, voted to suspend Jonathan Berg from his position as Vice President of the local (R-2 and R-5). On October 30, 2007, CWA Local 1034 members Berg; Linda Kukor, Vice President Branch 3; and Dan Antonellis, Shop Steward; charged 7 of the 15 members of the Executive Board - Local 1034 President

Carla Katz, Local 1034 Secretary Doris Ruffin, Local 1034 Treasurer Robert Mueller and Local 1034 Officers Kevin Tauro, Mary Hrenda, Greg Badini and Anna Curtis-Stephens - under Article XIX of the Constitution of the CWA (R-2). Specifically, the parties charged the named Executive Board members with "willfully violating the CWA Constitution, Article XIX, Section 1(c), 1(I), 2, 3 and Article XX, Sections 1, 2 and 3 by suspending Berg from his position as an officer of the local without charges and in direct violation of the Constitution" (R-2).

Berg, Kukor and Antonellis asked the National Union to place Local 1034 under the supervision of a Temporary Administrator (TA) in accordance with Article XIII, Section 8 of the CWA Constitution, pending the outcome of the charges, "until such time as the Local can be fully functional and the democratic processes required under the Local's bylaws and National Constitution are restored and to prevent the destruction of financial, electronic, time, political reporting, personal, payroll records and other documents" (R-2).

5. In November 2007, a petition signed by 565 members of Local 1034 was submitted to the CWA National President and Executive Board, requesting the appointment of a Temporary Administrator to conduct the affairs of the Local (CP-5).

6. Berg also filed a complaint in federal court on November 19, 2007 against Katz, Ruffin, Hrenda, Curtis-Stephens,

Mickle, Tauro and Badini (R-3). The complaint sought declaratory and injunctive relief, and damages to redress violations of Section 101(a)(2) of the Labor Management Reporting and Disclosure Act (LMRDA) of 1959, 29 U.S.C. 411(a)(2), Section 301 of the LMRDA of 1947, 29 U.S.C. 185 and New Jersey law.

7. On January 24, 2008, CWA's Local 1034 members Berg, Kukor and Antonellis amended the charge against Badini, Katz, Ruffin, Mueller, Tauro, Hrenda and Curtis-Stephens, adding Local 1034 Executive Board members Ben Manhas and Fred Mickle; and included the charge of willfully violating Article XIII, Section 9; Article XV, Section 3 and 4; and Article XX, Section 2 and 3 of the CWA Constitution (R-2).

8. On April 8, 2008, Berg, Kukor and Antonellis again amended the charges against Katz, Ruffin, Mueller, Tauro, Hrenda, Badini, Curtis-Stephens for reasons of misappropriating union funds, violating the CWA Constitution and Local 1034 Bylaws and with "such other charges equally serious which bring the Union into disrepute." These amendments were not asserted against Manhas and Mickle (R-2).

9. Pursuant to the CWA Constitution, the CWA referred the matter to appointed Prosecutor Linda Foley to investigate the charges and recommend their dismissal or adjudication (T72; CP-1). On July 2, 2008, Foley made probable cause findings with regard to the charges brought by Berg, Kukor and Antonellis. In

the summary of the "Accusers and the Charged Officers", Foley references the three sets of charges contained in R-2. She found that there was probable cause to believe that a violation punishable under the CWA Constitution was committed by Katz, Ruffin, Mueller, Tauro, Hrenda, Badini, Curtis-Stephens, Manhas and Mickle when they voted to suspend Berg (CP-1 at p. 7). She further added that there was probable cause to find that the charged officers violated the CWA Constitution and Local Bylaws by converting a conference call among certain members of the Local 1034 Executive Board into a formal meeting, by suspending Berg without any disciplinary charges having been filed with the Local secretary, and by failing to communicate to Berg that he was suspended in any formal or official manner (CP-1 at p. 7).

Foley found probable cause to believe that Katz, Ruffin, Tauro, Hrenda, Badini, Curtis-Stephens and Mueller violated Article XIII, Section 9(e) of the CWA Constitution and Article X, Section C of the Local's bylaws by failing to ever convene a meeting of the Local 1034's legislative-political committee, and probable cause that these individuals violated Article XIX of the constitution by allowing thousands of dollars in political contributions to be made without oversight (CP-1 at p. 7). She found further that there was probable cause to believe that Katz violated Article XIX of the CWA Constitution by misappropriating the Local's funds by contributing more than \$70,000 to the Bergen

County Democratic Organization. She also found that there was probable cause to believe that Ruffin, Tauro, Hrenda, Badini, Curtis-Stephens and Mueller permitted such contributions to be made without oversight (CP-1 at p. 8).

10. Foley published the probable cause findings, which were made available to all parties involved (CP-1). Badini reviewed the report in August 2008 (T133-T134, T137-T138).

11. Like Badini, six of the eight other Executive Board members charged with violations were public employees (Ruffin, Manhas, Mickle, Hrenda, Curtis-Stephens and Mueller) (T64, T72-T73, T153). The only non-public employees who were accused of violations were Katz and Tauro (T65).

12. Prior to the trial on the charges, Mickle, Ruffin, Hrenda and Curtis-Stephens settled the charges by resigning their membership in Local 1034 (T102, T165-T168)^{4/}. Because these four were no longer members of the CWA, there was no basis to move forward with the charges against them (T183-T186, T208, T210-T211).

13. On July 7, 2008, the CWA National Executive Board voted to place Local 1034 under Temporary Administration and it

^{4/} Badini testified that he was not aware that Prosecutor Foley found that there was no basis to prosecute those four individuals based on the withdrawal of their membership nor did he have any personal knowledge that the four individuals accepted voluntary punishments that were more severe than a one-year suspension (T182-T187).

appointed Seth Rosen as the Hearing Officer. Rosen found there were ample grounds to impose a Temporary Administrator (TA) for Local 1034 (R-5).

14. In advance of the trial, the parties charged with violations were given an opportunity to review the documents and evidence the prosecution was planning to use at trial (T146-T148). From March 16-19, 2009, the CWA Trial Court held the trial in the matter of charges brought by Antonellis, Berg and Kukor against Katz, Badini, Tauro, Mueller and Manhas (J-2). All of the accused had an opportunity to present their respective case at trial including examining witnesses (T175). The Trial Court first considered the procedural defenses asserted by the charged individuals. The Trial Court found that each procedural defense lacked merit for the reasons detailed in its decision (J-2 at pgs. 1-6).

The Trial Court next considered the merits of each charge brought against the Executive Board members. With regard to the Berg suspension, it found that Tauro, Badini and Manhas did not willfully violate the CWA Constitution because they relied on the advice of Local 1034's attorney (J-2 at p. 6; T193).

The Trial Court did find Tauro and Badini guilty of failing to exercise oversight responsibility regarding political expenditures (J-2 at p.7). While there was evidence that some political contributions and other expenditures were approved by

the Executive Board, the majority were not. Accordingly, the Trial Court found Tauro and Badini guilty of the charge and imposed upon them a one-year suspension from CWA membership (J-2 at p.7).

Mueller was charged with violating the Local Bylaws by allowing the use of a rubber stamp for his signature for checks drawn on the Local's accounts without appropriate control and for failing to carry out his duties of Local Treasurer (J-2 at p.7). He also was charged with violating the Local Bylaws by failing to exercise any oversight regarding political contributions made by the Local (J-2 at p. 8). He was found guilty of both charges which were considered so egregious he was permanently expelled from the CWA (J-2 at pgs. 8 and 9).^{5/}

The Trial Court found Katz guilty of failing to oversee Local expenditures and other charges, and permanently expelled her from Local 1034. It ordered her to reimburse the Local for costs of \$133,205 associated with her unlawful use of union funds to campaign for her office and \$5,112 for the improper reimbursement of law school expenses (J-2 at pgs. 12-14; T199).

15. Badini appealed his suspension (J-3; T119-T124). CWA considered and denied his appeals at each step. The appeals

^{5/} Mueller was also charged with the willful violation of the Constitution in voting to suspend Berg before charges were filed or a trial held. For the same reasons the court exonerated Tauro, Badini and Manhas of this charge, it found Mueller not guilty (J-2 at p.8)

process ended with a vote by CWA Convention Delegates to affirm Badini's suspension (T199-T124, T200-T201).

16. Badini completed his one-year suspension. In the meantime, CWA Local 1034 was replaced by CWA Local 1036. In August 2010, Local 1036 offered to reinstate Badini's membership (J-4). Since September 2010, Badini has been a member in good standing (T201-T202).

ANALYSIS

Motions to dismiss are properly made at the conclusion of charging party's case. N.J.A.C. 19:14-4.7. Union City, P.E.R.C. No. 2006-77, 32 NJPER 116 (¶55 2006). When such a motion is made before a hearing examiner, the hearing examiner has the authority to decide it. N.J.A.C. 19:14-4.7 and 6.3. Id.

In deciding a motion to dismiss after the charging party presents its case, the hearer of fact must accept as true all of the evidence supporting the charging party's allegations and afford the charging party the benefit of all inferences that can reasonably be deduced from that evidence. Dolson v. Anastasia, 55 N.J. 2 (1969); New Jersey Turnpike Auth., P.E.R.C. No. 79-81, 5 NJPER 197 (¶10112 1979). Dismissal of a claim is appropriate when a rational fact-finder could not conclude from the evidence that each essential element of that claim is present. Pitts v. Newark Bd. of Ed., 337 N.J. Super. 331, 340 (App. Div. 2001).

Applying these standards to the evidence introduced during the hearing, I recommend that the Commission grant CWA's motion to dismiss the Complaint in its entirety.

N.J.S.A. 34:13A-5.3 gives public employees the right to form, join and participate in union activities. Section 34:13A-5.4(b) makes it a violation for an employee organization to interfere with those rights.

Badini argues that the CWA illegally interfered with his right to be a member of the CWA and participate in its activities. More specifically, he maintains that he was improperly tried by the CWA for an action he was never charged with, namely failing to exercise oversight responsibility over political expenditures. Additionally, he claims he was singled out as the only full time public employee to be prosecuted and suspended for one year. Badini also argues that his selective prosecution and suspension was in direct contravention of the LMRDA Bill of Rights and CWA's Constitution. To remedy the alleged violations, Badini requested that the Commission order CWA to reverse the suspension and immediately restore his membership in the CWA. He additionally requested that any and all references to wrongdoing be stricken.

In its defense, the CWA argues that Badini has not presented any facts which would give rise to a violation of the Act. CWA asserts that the evidence demonstrates that it followed and

adhered to its constitution, bylaws and internal rules in prosecuting and suspending Badini. It contends that the dispute is purely an internal union matter over which the Commission does not have jurisdiction. Lastly, the CWA argues that the evidence presented at hearing does not support the claim that Badini was singled out and punished as the only public employee on the Executive Board.

In their briefs, both parties relied on New Jersey State PBA (Rinaldo), P.E.R.C. No. 2011-83, 38 NJPER 56 (¶8 2011). There, the Commission reviewed the limits on its jurisdiction over disputes involving the relationship between a union and its members and stated:

We do not have power to enforce union constitutions and by-laws. These documents may establish judicially enforceable contractual rights, but a violation of their provisions does not generally constitute an unfair practice under our Act. Teamsters Local 331 (McLaughlin), P.E.R.C. No. 2001-30, 27 NJPER 25, 27 (¶32014 2000); Calabrese v. PBA Local 76, 157 N.J. Super. 139 (Law Div. 1978). Nor do we have authority to referee or resolve internal union disputes unconnected to allegations and proof that an unfair practice has been committed. City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563, 565-566 (¶13260 1982); cf. Danese v. Ginesi, 280 N.J. Super. 17, 25 (App. Div. 1995) (unions are entitled to considerable latitude in making membership rules). Nor do we have jurisdiction to enforce the New Jersey Constitution as opposed to the statutory rights specifically granted by the New Jersey Employer-Employee Relations Act. In contradistinction to all these broader disputes, our unfair practice jurisdiction

over membership matters is statutorily confined under the Act we administer to two instances. The first instance is where a majority representative violates its duty to represent its members fairly in contract negotiations and grievance processing, N.J.S.A. 34:13A-5.3; OPEIU Local 153 (Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983). The second instance is where a majority representative arbitrarily, discriminatorily, or invidiously excludes or expels a negotiations unit employee seeking to participate in majority representative affairs affecting his or her employment conditions. FOP Lodge 12 (Colasanti), P.E.R.C. No. 90-65, 16 NJPER 126 (¶21049 1991); PBA Local 199 (Abdul-Hagg), P.E.R.C. No. 81-14, 6 NJPER 384 (¶11198 1980).

To the extent that Badini has argued that the CWA violated its constitution, bylaws and other internal rules in the handling of his case, I agree with the CWA that the Commission lacks jurisdiction. In dismissing the charge brought by two suspended police sergeants, the Director of Unfair Practices found that the suspension from union membership involved "matters of interpretation of the provisions of the union constitution" over which the Commission lacked jurisdiction. Hoboken Police SOA (Mancuso and Julve), D.U.P. No. 92-21, 18 NJPER 319 (¶23136 1992). Additionally, New Jersey courts and the Commission have consistently held that employee organizations can create rules affecting their members to accomplish organizational objectives. Danese v. Ginesi; Calabrese; New Jersey State PBA (Rinaldo). I am not persuaded by this aspect of Badini's argument that the CWA has violated the Act in light of the above-cited principles of

law. Similarly, I find his claim that the CWA violated the LMRDA Bill of Rights to be beyond our jurisdiction.

In reviewing all of the evidence introduced at the hearing and affording Badini the benefit of all inferences that can reasonably be deduced, the record simply does not support a finding that the CWA arbitrarily, discriminatorily or invidiously prosecuted and suspended him. Therefore, I conclude that the CWA did not violate subsection 5.4b(1) of the Act as Badini has alleged.

Three members of Local 1034, Berg, Kukor and Antonellis, brought charges against other Local 1034 members. Pursuant to its constitution, the CWA appointed a prosecutor to make probable cause findings. The prosecutor, Foley, made those determinations and pursued those charges upon which she found probable cause. Nine members were charged with varying degrees of improprieties. Seven of the nine members were public employees including Badini. The charged members were given copies of Foley's probable cause findings and therefore had notice of the charges. Badini testified that he reviewed the report in August 2008. All of the documents upon which the prosecutor was going to rely were made available to the charged members before trial so that they could prepare their respective defense(s). Prior to trial, four of the charged public employee members settled their charges by voluntarily resigning their membership in the CWA - a result far

greater than the one year suspension imposed upon Badini. Foley did not take to trial the four members who had settled their charges.

Foley continued to prosecute and try the five remaining charged parties: Katz, Tauro, Badini, Mueller and Manhas. Badini, Mueller and Manhas were public employees. The accused had an opportunity to be heard, introduce evidence and examine witnesses at trial. In the end, Manhas was exonerated from his charge regarding the Berg suspension; as was Tauro and Badini. Tauro and Badini were found guilty of failing to provide oversight for political expenditures. Each received a one year suspension from CWA membership. The remaining public employee member, Mueller, was found to be derelict in his duties as Local Treasurer and guilty of failing to provide oversight of political contributions made by the Local. He was permanently expelled from the CWA - a much harsher penalty than that received by fellow public employee member Badini. Local President Katz was found guilty of certain charges and was also permanently expelled from CWA membership.

Badini was permitted to appeal his suspension in accordance with the CWA's Constitution and Bylaws. His suspension was upheld at each step of the appeals process.

The evidence does not demonstrate that Badini was denied due process during the investigation or trial. The facts do not

support that he was singled out for prosecution or received a harsher punishment than other public employee members who were found guilty of violations. In short, I do not find that the CWA's conduct in this matter was arbitrary, discriminatory or invidious toward Badini. Consequently, I conclude that the CWA did not violate N.J.S.A. 34:13A-5.4b(1) when it suspended Badini from membership for one year.

RECOMMENDATION

I recommend that the CWA's motion be granted and the Complaint be dismissed.



Perry O. Lehrer
Hearing Examiner

DATED: October 18, 2012
 Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by October 31, 2012.