

D.U.P. No. 2019-1

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

In the Matter of

NEW JERSEY LAW ENFORCEMENT
COMMANDING OFFICERS ASSOCIATION,

Respondent,

-and-

Docket No. CI-2015-022

ANTHONY McRAE,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by a collective negotiations unit employee against his majority representative. The charge alleges that the majority representative unfairly suspended him from his position as Secretary of the employee organization in retaliation for his filing of internal union charges against other members of the union's Executive Board. The charge also alleges that those members violated the union's constitution and bylaws.

The Director determined that the charge alleges only that procedural aspects of the union's appointment of officers and its subsequent handling of internal union charges arising out of those appointments were not followed and were retaliatory. The Director also determined that these allegations concern at most violation(s) of the union's bylaws, a matter over which the Commission will not exercise jurisdiction. The charge was dismissed.

D.U.P. No. 2019-1

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

In the Matter of

NEW JERSEY LAW ENFORCEMENT
COMMANDING OFFICERS ASSOCIATION,

Respondent,

-and-

Docket No. CI-2015-022

ANTHONY McRAE,

Charging Party.

Appearances:

For the Respondent,
Mets, Shiro and McGovern, LLP, attorneys
(James Mets, of counsel)

For the Charging Party,
(Anthony McRae, pro se)

REFUSAL TO ISSUE COMPLAINT

On November 12, 2014, Anthony McRae filed an unfair practice charge against his majority representative, New Jersey Law Enforcement Commanding Officers Association (NJLECOA). McRae alleges that on October 21, 2014, NJLECOA unfairly suspended him from his position as Secretary of that employee organization in retaliation for his filing of internal union charges against other members of NJLECOA's Executive Board. McRae contended that those members violated NJLECOA's constitution and bylaws. McRae

alleges that NJLECOA's actions violate section 5.4b(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act).

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. These facts are set forth in the charge:

On October 13, 2014, McRae filed internal union charges against Matthew F. Kyle, William J. Moleins, Wimson J. Crespo, Gregory T. Paul and Tracey Shimonis-Kaminski, all members of NJLECOA's Executive Board, alleging that they violated NJLECOA's constitution and bylaws. McRae complained that they, ". . . were involved in conspiring to manipulate" NJLECOA's constitution and bylaws, ". . . by making appointments that were in violation" of the constitution and bylaws. He also complained that they, ". . . failed to give proper notice to the general membership of appointments to the executive board;" "failed to

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

allow for ratification after appropriate notice;" and "made appointments to the executive board that were in conflict to the interests of NJLECOA." McRae alleges that on an unspecified date after he filed the internal union charges, Matthew Kyle told him that he, ". . . would regret filing the charges."

On October 21, 2014, Kyle allegedly issued McRae an email advising that he "was suspended from [his] elected position of Secretary after a determination from the Executive Board."

McRae alleges that his suspension from office, ". . . was in retaliation for the charges [he] submitted," and that the suspension ". . . violated [his] due process because [he] was never served with specific written notice of the charges lodged against [him]," nor was he ". . . afforded a hearing in accordance with Article IX of the [NJLECOA] Constitution and Bylaws."

On October 22, 2014, McRae received another email from Kyle advising that his complaint was forwarded to the NJLECOA Judiciary Committee, which is allegedly comprised of members Kyle selects. Kyle's conduct allegedly violates Article IX, Section D of the NJLECOA Constitution and bylaws because he was obligated to recuse himself from the NJLECOA Judiciary Committee.

ANALYSIS

N.J.S.A. 34:13A-5.3 provides in 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 interests of all such employees without discrimination and without regard to employee organization membership.

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 Newark Lodge #12 (Colasanti), P.E.R.C. No. 90-65, 16 NJPER 126 (¶16212 1985); FMBA Local No. 35 (Carragino), P.E.R.C. No. 83-144, 9 NJPER 336 (¶14149 1983).

It is well settled that the Commission has been “. . . reluctant to intercede in what is only an intra-union dispute.” Calabrese v. PBA Local No. 76, 157 N.J. Super. 139, 146 (Law Div. 1978); Jersey City Supervisors Assn., P.E.R.C. No. 83-32, 8 NJPER 563 (¶13260 1982), App. Div. Dkt. No. A-768-82T1 (1983). We have found that a union's failure to follow bylaws is a strictly “internal matter which does not fall under the guise of the Act...” ATU Local 824, D.U.P. No. 85-9, 10 NJPER 600 (¶15279 1984). Indeed, the Commission has held that it, “does not have power to enforce union constitutions and bylaws . . . [and] a violation of their provisions does not generally constitute an unfair practice under our Act.” Jersey City Housing Authority, P.E.R.C. No. 2015-70, 41 NJPER 477 (¶148 2015), aff'd App. Div. A-4836-14T1 (1/26/17); Probation Assn. of New Jersey (Tortoreto

and Ghee), P.E.R.C. No. 2014-31, 40 NJPER 254 (¶97 2013), rev'd and rem'd, 42 NJPER 105 (¶29 App. Div. 2015). This standard has been followed even in matters involving the expulsion of union members from their union, a more egregious circumstance than McRae's alleged suspension from serving as union Secretary.^{2/} See New Jersey State PBA and PBA Local 199, P.E.R.C. No. 2011-83, 38 NJPER 56 (¶8 2011) (Commission held that it did not have jurisdiction over alleged violations of union constitution and bylaws in matter where union president removed from position as president and expelled from membership).

The charge alleges only that procedural aspects of the union's appointment of officers and its subsequent handling of McRae's internal union charges arising out of those appointments were not followed and were retaliatory. These allegations concern at most violation(s) of NJLECOA's bylaws, an issue over which the Commission will not exercise jurisdiction.

Accordingly, I find that this charge does not meet the

^{2/} Calabrese held that a union may expel discordant elements in order that harmony may prevail. 157 N.J. Super. at 154. The standard for testing such expulsions is whether they were arbitrary, capricious, or invidious. Cf. 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, P.E.R.C. No. 83-32, 8 NJPER 563 (¶13260 1982); PBA Local No. 199 (Rasheed Abdul-Haqq), P.E.R.C. No. 81-14, 6 NJPER 384 (¶11198 1980).

D.U.P. No. 2019-1

6.

Commission's complaint issuance standard and dismiss the charge.

N.J.A.C. 19:14-2.2 and 2.3.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

/s/ Jonathan Roth
Jonathan Roth
Director of Unfair Practices

DATED: November 14, 2018
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 November 26, 2018.