

P.E.R.C. NO. 82-75

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNCIL NO. 5, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

Respondent,

-and-

Docket No. CI-81-51-23

NICHOLAS J. LABRIOLA,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint issued on an unfair practice charge filed by Nicholas Labriola ("Labriola") against Council No. 5, NJCSA ("Council No. 5"). The charge had alleged that Council No. 5 violated subsection N.J.S.A. 34:13A-5.4(b)(1) when it declined to admit Labriola to membership. The Commission holds that Council No. 5 did not act arbitrarily, capriciously, or invidiously in declining the membership application since the Charging Party had persistently threatened co-employees and Association members with physical violence.

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Appearances:

For the Respondent, Hogan and Palace, Esqs.
(Thomas A. Hogan, of Counsel)

For the Charging Party, Nicholas J. Labriola, Pro Se

DECISION AND ORDER

On January 20 and June 11, 1981, Nicholas J. Labriola ("Charging Party") filed, respectively, an unfair practice charge and amended charge against Council No. 5, New Jersey Civil Service Association ("Respondent") with the Public Employment Relations Commission. The charge, as amended, alleged that Respondent violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsection N.J.S.A. 34:13A-5.4(b)(1),^{1/} when it rejected the Charging Party's application for organizational membership.^{2/}

^{1/} This subsection 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."

^{2/} The amendment added the particular subsection of the Act the Respondent allegedly violated.

On August 27, 1981, the Director of Unfair Practices, determining that the allegations of the amended charge, if true, might constitute unfair practices within the meaning of the Act, issued a Complaint and Notice of Hearing. Respondent's Answer asserted that its membership voted to reject the Charging Party's membership application because he had threatened several co-employees.

On November 10, 1981, Commission Hearing Examiner Alan R. Howe conducted a hearing and afforded both parties the opportunity to examine witnesses, present relevant evidence, and argue orally. Both parties waived oral argument.

On December 9, 1981, Respondent filed a post-hearing brief. The Charging Party waived his right to file a post-hearing brief.

On December 15, 1981, the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 82-23, 8 NJPER ____ (¶ ____ 1981), a copy of which is attached hereto and made a part hereof. The Hearing Examiner found that the Charging Party had threatened several employees and that this behavior justified Respondent's rejection of his membership application. Accordingly, he recommended that the Commission dismiss the Complaint in its entirety. The Hearing Examiner served his report on both parties.

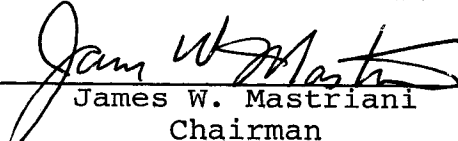
N.J.A.C. 19:14-7.3 states that exceptions to a Hearing Examiner's report must be filed within 10 days of service or such further period as the Commission may allow. Neither party filed exceptions or asked for an extension of time in which to do so.

We have carefully reviewed the entire record. Based on this review, and in the absence of exceptions, we adopt the Hearing Examiner's findings of fact and conclusions of law.^{3/} Specifically, we agree that the case is distinguishable from In re Rasheed Abdul-Haqq (Bradford G. Reed), P.E.R.C. No. 81-14, 6 NJPER 384 (¶111198 1980). There, an employee organization acted arbitrarily when it denied a membership application without proffering any reasons. Here, by contrast, the Association has successfully rebutted the Charging Party's prima facie case: an employee organization does not act arbitrarily, capriciously, or invidiously when it rejects the membership application of an individual who has persistently threatened co-employees and Association members with physical violence. Accordingly, the Respondent did not violate N.J.S.A. 34:13A-5.4(b)(1).^{4/}

ORDER

IT IS HEREBY ORDERED that the Complaint is dismissed in its entirety.

BY ORDER OF THE COMMISSION



 James W. Mastriani
 Chairman

Chairman Mastriani, Commissioners Hipp, Newbaker, Suskin and Butch voted for this decision. None opposed. Commissioners Graves and Hartnett were not present.

DATED: February 9, 1982
 Trenton, New Jersey
 ISSUED: February 10, 1982

^{3/} We do correct one typographical error in the report; the Charging Party first submitted an application card in June 1979, not 1971 (pp. 2-3).

^{4/} We emphasize, however, that N.J.S.A. 34:13A-5.3 still obligates the Association to represent the interests of all unit employees, including the Charging Party and all non-Association members, without discrimination and without regard to employee organization membership.

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

In the Matter of

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ASSOCIATION,

Respondent,

-and-

Docket No. CI-81-51-23

NICHOLAS J. LABRIOLA,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent did not violate Subsection 5.4(b)(1) of the New Jersey Employer-Employee Relations Act when it rejected the application for membership of Labriola in Council No. 5 in the latter part of 1979. The Hearing Examiner found that the Respondent had not acted arbitrarily and capriciously in rejecting the membership application. During at least a four-month period prior to consideration of his application Labriola had engaged in threatening conduct toward members of Council No. 5 including the physical threatening of its President at a membership meeting in October 1979. Thus, the case was distinguishable from PBA Local 199 (Bradford G. Reed), P.E.R.C. No. 81-14, 6 NJPER 384 (1980).

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

STATE OF NEW JERSEY
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Appearances:

For the Respondent
Hogan & Palace, Esqs.
(Thomas A. Hogan, Esq.)

For the Charging Party
Nicholas J. Labriola, Pro se

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on January 20, 1981, and amended on June 11, 1981, by Nicholas J. Labriola (hereinafter the "Charging Party" or "Labriola") alleging that Council No. 5, New Jersey Civil Service Association (hereinafter the "Respondent" or "Council No. 5") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that the Respondent, notwithstanding the Charging Party's application for membership therein, has refused to admit the Charging Party to membership thereby denying him voting privileges, and further, that the Respondent requires him to pay an agency shop fee under a collectively negotiated agreement providing therefor, all of which was alleged to be a

violation of N.J.S.A. 34:13A-5.4(b)(1) of the Act.^{1/}

It appearing that the allegations of the Unfair Practice Charge, as amended, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on August 27, 1981. Pursuant to the Complaint and Notice of Hearing, a hearing was held on November 10, 1981 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and the Respondent alone filed a post-hearing brief by December 9, 1981.

An Unfair Practice Charge, as amended, having been filed with the Commission a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the post-hearing brief of the Respondent, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. Council No. 5, New Jersey Civil Service Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
2. Nicholas J. Labriola is a public employee within the meaning of the Act, as amended, and is subject to its provisions.
3. Labriola has been an employee of the Bergen County Roads Department since March 5, 1979. He was a probationary employee for ninety (90) days, after which he became a permanent full-time employee.
4. Upon completion of his probationary period Labriola contacted the Respondent's Shop Steward, John Battaglia, regarding application for membership in the Respondent. Labriola first completed an application card (see, e.g., CP-1) and submitted it to

1/ This Subsection prohibits public employee representatives, their representatives or agents from:

"(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act."

Battaglia in June 1971. Thereafter, due to an error in the applicant's name on the card, Labriola submitted a second application card to Battaglia, which was processed by the Financial Secretary, Gertrude Santora.^{2/}

5. Labriola acknowledged on cross-examination that in the Summer of 1979 he had brought a .38 calibre handgun, for which he had a permit, into the Bergen County Roads Department yard where he displayed the gun to several employees. Battaglia observed this incident.

6. In September 1979 Labriola worked overtime without proper payment. He first went to the Respondent's Shop Steward, Battaglia and, upon receiving no satisfaction, thereafter went to the Bergen County office at 29 Linden Street in Hackensack where he spoke with Carol Pellecchio, a Senior Clerk in Personnel, who processes the payroll for the Roads Department. Upon learning from Labriola that he claimed two hours' overtime pay, Pellecchio checked the overtime authorization slips in her office and, upon finding none for Labriola, so informed him. Labriola became visibly upset. Pellecchio then telephoned Labriola's supervisor regarding the overtime slip but he provided no information at that time. Labriola then "threw down" a gun permit on Pellecchio's desk and said: "Do you see this? I'll come down here and wave my .38 in front of you and see how fast I get paid overtime" (Tr.49). Pellecchio immediately left her office and went to her supervisor, who contacted Labriola's supervisor. Labriola was later told not to go to Pellecchio's office again.^{3/}

7. The President of Council No. 5, Agnita Hastings, testified credibly on behalf of the Respondent regarding the events that transpired between September and December 1979 as follows:

^{2/} The Hearing Examiner does not credit Labriola's testimony that he applied for membership in the Respondent five times between June and November 1979. Rather, the Hearing Examiner credits the Respondent's witnesses that Labriola made only the two applications herein before referred to.

^{3/} Notwithstanding this directive, about four or five months later Labriola went to Pellecchio's office on another matter and again raised the overtime problem.

a. There was a large turnout at the September 1979 membership meeting of Council No. 5 for a report on contract negotiations. At one point in the meeting, a person in the back of the room, whom Hastings later learned was Labriola, started complaining that "this wasn't any good, that wasn't any good" (Tr.56). Thereafter, someone mentioned the possibility of a strike, at which point Labriola said the "there has to be a strike" and that "legs will be broken if they try and cross the picket line" (Tr.57,58). Contrary to Labriola's testimony, he was not asked by Hastings to leave the meeting.

b. At the October 1979 membership meeting of Council No. 5 Hastings, prior to the meeting, asked anyone who was not a member to leave. Labriola left the room and immediately said in a loud voice "dictatorship, bosses" (Tr.59). After the meeting Labriola approached Hastings and called her a "dictator" and a "boss." When Hastings said that she had no problems with the membership, Labriola said "If you come outside with me, man to man I'll show you who the boss is" (Tr.60). Hastings was later escorted to her car by the Sergeant-at-Arms, Scott Sutherland, and the 1st Vice-President, George Gallagher.^{4/}

c. In late 1979, at a meeting of the Board of Directors of Council No. 5, the application of Labriola was discussed in the light of the above events and the Board of Directors voted unanimously to reject Labriola's application. Thereafter this recommendation was presented to a membership meeting of Council No. 5. After considerable discussion, the membership voted unanimously to reject Labriola's application.

d. In November 1979 there were approximately 1500 members in Council No. 5. The rejection of Labriola's application for membership was the first in the history of Council No. 5.

^{4/} Labriola acknowledged on cross-examination that at the second membership meeting he attended he threatened the Sergeant-at-Arms and invited him out to the parking lot to "settle it like men" (Tr.39). Thus, the only discrepancy in the testimony is who Labriola threatened. The Hearing Examiner credits Hastings' testimony that Labriola threatened her and not the Sergeant-at-Arms.

8. Since July 11, 1980 Labriola has been paying an agency shop representation fee equivalent to 85% of Council No. 5's dues.

9. The Constitution of Council No. 5 provides in Article III that, after filing an application for membership, "New members must be elected at a regular meeting of the Council by a majority vote of the members present" (R-1, p.3). There are no other provisions pertaining to the attaining of membership status in Council No. 5.

THE ISSUE

Did the Respondent violate Subsection(b)(1) of the Act when it rejected the application for membership of Nicholas J. Labriola in the latter part of 1979?

DISCUSSION AND ANALYSIS

The Respondent Did Not Violate Subsection
(b)(1) Of The Act When It Rejected The
Membership Application Of Nicholas J.
Labriola In 1979

The Hearing Examiner finds and concludes that the Respondent Council No. 5 did not violate Subsection(b)(1) of the Act when it rejected the application for membership of Nicholas J. Labriola in the latter part of 1979.

In reaching this conclusion the Hearing Examiner must necessarily distinguish the Commission's decision in PBA Local 199 (Bradford G. Reed), P.E.R.C. No. 81-14, 6 NJPER 384 (1980) where the Commission held, inter alia, that "The language of N.J.S.A. 34:13A-5.3, is sufficient to establish Charging Party's right to membership in his majority representative organization ..." (6 NJPER at 386). There the Commission also said that since it had found that PBA Local 199's action in excluding Reed from membership had interfered with his ability to exercise a right guaranteed by the Act, the record established a prima facie case that PBA Local 199 had violated N.J.S.A. 34:13A-5.4(b)(1). The Commission noted that the record indicated no reasons for the rejection of Reed's application and that therefore "Local 199 has acted arbitrarily." Finally, the Commission noted that a showing of unlawful intent was unnecessary to sustain a violation of Subsection(b)(1) of the Act.

In the instant case the facts are completely different from PBA Local 199, supra. Admittedly, if the Respondent herein had merely rejected Labriola's membership application with no factual record to support the reasons for so doing, then Respondent Council No. 5 would have necessarily violated Subsection(b)(1) of the Act. However, the record is replete with negatives in the conduct of Labriola during the period when his application was pending.

Labriola first applied for membership in or around June 1979. During the summer of that year he displayed a handgun in the yard of the Bergen County Roads Department to other employees. In September he clearly threatened a clerical employee, Carol Pellecchio, in her office, regarding his overtime pay problem. To compound matters, he then engaged in clear misconduct at two membership meetings of Council No. 5 in September and October 1979. At the September meeting he spoke of the necessity for "strike," clearly illegal, and predicted that legs would be broken if persons crossed the "picket line" (Finding of Fact No. 7a, supra). At the October meeting he physically threatened the Council President, Agnita Hastings (Finding of Fact No. 7b, supra).

The record establishes that at the meeting of the Board of Directors in late 1979 Labriola's application for membership was discussed in the light of the above events and the Board voted unanimously to reject his application. The membership subsequently reached the same decision after having been apprised of Labriola's misconduct. It is noted that Labriola admitted on cross-examination practically all of the incidents testified to by Respondent's witnesses.

Under the foregoing facts and circumstances, the Hearing Examiner concludes that Council No. 5 has successfully rebutted the otherwise prima facie case that Labriola made upon making application for membership. Plainly, the conduct of Council No. 5 in rejecting Labriola's membership application was not arbitrary or capricious.

It has long been the law in New Jersey that a voluntary organization has the right to establish rules for the admission of new members: Mayer v. Journeymen

Stonecutters' Association, 47 N.J. Eq. 519 (1890). In later decisions there has evolved a refinement that the rules regarding admission be devoid of arbitrariness and capriciousness (see 33 A.L.R. 3rd 1305). A statement of the current view of the New Jersey Courts is found in the Supreme Court's decision in Moore v. Local No. 483, 66 N.J. 527 (1975), relied upon by the Commission in its holding in PBA Local 199, supra.

The Hearing Examiner has no hesitation in concluding that his decision herein is in harmony with the decisions of the Courts and the decision of the Commission in PBA Local 199, supra. Council No. 5 had good reason to exclude Labriola from membership and did so with the due deliberation of its Board of Directors and membership which had knowledge of all of the incidents of misconduct by Labriola prior to its actions. Finally, it is noted that Council No. 5 had 1500 members in 1979 that it had never denied an application for membership prior thereto.

Finally, the Hearing Examiner finds nothing inconsistent in his decision with the fact that Council No. 5 will continue to collect from Labriola the agency representation fee, notwithstanding that Labriola has been denied membership. The agency fee is to defray representation expenses of non-members, whom Council No. 5 must fairly represent under its duty of fair representation.

For all of the foregoing reasons, the Hearing Examiner will recommend dismissal of the Unfair Practice Charge filed by Labriola.

* * * *

Upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSION OF LAW

The Respondent Council No. 5 did not violate N.J.S.A. 34:13A-5.4(b)(1) when it rejected the application for membership of Nicholas Labriola in 1979.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entirety.



Alan R. Howe
Hearing Examiner

Dated: December 15, 1981
Trenton, New Jersey