

D.U.P. NO. 93-22

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

In the Matter of

NATIONAL EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-93-9

MARIE HAKIM,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on a charge filed by Marie Hakim against the National Education Association alleging that the NEA violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(b)(1), when it terminated Hakim's NEA membership in accordance with a by-law which mandates the denial of membership to individuals who are members of negotiating teams representing school boards. The Director found that the by-law does not constitute an unfair practice because it is reasonably related to the Association's objectives and did not unlawfully interfere with Hakim's protected rights. The Director did not find that the by-law was applied in an arbitrary or capricious manner.

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Appearances:

For the Respondent,
Robert Chanin, General Counsel

For the Charging Party,
Carlin & D'Elia, attorneys
(Anthony V. D'Elia, of counsel)

REFUSAL TO ISSUE COMPLAINT

On July 16, 1992, Marie Hakim filed an unfair practice charge against the National Education Association with the Public Employment Relations Commission alleging that the NEA violated the New Jersey Public Employer-Employee Relations Act, N.J.S.A.

34:13A-5.4(b)(1),^{1/} when it terminated Hakim's NEA membership in June 1992. The NEA terminated Hakim's membership under its by-law number 2-3d., as applicable in New Jersey, because she is a member of the Clifton Board of Education's negotiations team. That by-law states:

^{1/} That subsection prohibits public 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."

"An individual who is a member of a negotiating team, representing a school board or representing a board of trustees of a higher education institution, shall be denied membership in the Association."

The charge alleges that this by-law constitutes an unfair practice because it is not reasonably related to the Association's objectives. It is further alleged that the by-law was applied in an arbitrary or capricious manner and unlawfully interferes with Hakim's protected rights.

The NEA admits that it terminated Hakim's membership under by-law 2-3d, but denies that it engaged in an unfair practice. It asserts that the by-law is valid, that Hakim's expulsion was reasonably related to organizational objectives and was neither arbitrary nor capricious.

Employee organizations are free to create rules binding on their members to accomplish or further 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. Policeman's Benev. Ass'n, Local No. 76, 157 N.J. Super. 139 (Law Div. 1978). The courts have traditionally been reluctant to interfere with the internal affairs of private organizations. 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; see also, Falcone v. Middlesex Cty. Medical Society, 34 N.J. 582 (1961). The standard for testing such expulsions is whether they were arbitrary, capricious, or

invidious. CWA Local 1037 (Schuster), P.E.R.C. No. 86-78, 12 NJPER 91 (¶17032 1985) (complaint dismissed; not arbitrary to reject membership application where employee sought to subvert that organization's status).

In Franklin Bor. Bd. of Ed., P.E.R.C. No. 91-104, 17 NJPER 302 (¶22133 1991), the Commission considered similar conduct. Specifically, a different, prior rule permitted an NEA affiliate to request that members of their school boards' negotiating teams be denied membership in the NEA. Two Franklin Board members who were employed as teachers in other districts were expelled from the NEA. The Commission found that the conduct violated the Act since the expulsion was not automatic but rather was imposed only upon the request of the local affiliates. Accordingly, it:

...could be used to penalize board members whose actions are not perceived to be in accord with a local affiliates negotiations interest. Also, the threat of expulsion could influence a union member's decisions while negotiating on behalf of a board. Such influence affects a board's statutory right to select its negotiations representative without union interference.

[17 NJPER 303].

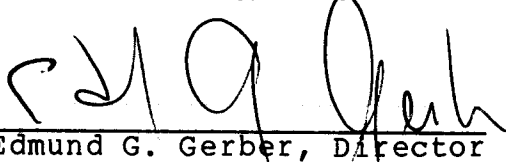
Here, Hakim knew she would automatically be removed from the Association if she accepted a position on the negotiations team. There was no discretion in this action and the Association could not otherwise influence Hakim because she would no longer be a member. National Ass'n of Letter Carriers, AFL-CIO v. U.S. Postal Service, 240 NLRB No. 68, 100 LRRM 1315 (1915).

Accordingly, I find that the application of the NEA's by-law to Marie Hakim was not arbitrary, capricious, or invidious and does not impermissibly interfere with Hakim's rights under the Act. This by-law is analogous to the Act's prohibition against the inclusion of managerial employees in any negotiations unit; the aim is to prevent divided loyalty when employees find themselves on opposite sides in negotiations disputes.

On balance, any interference with Hakim's protected rights would appear to be outweighed by the NEA's legitimate organizational interest, i.e., it may protect itself from the inevitable divisiveness resulting from members aligning themselves with management interests. Hakim must still be properly represented by the local negotiations representative. Accord, FOP Newark Lodge #12 (Colasanti).^{2/}

Therefore, I do not believe that the Commission's complaint issuance standard has been met and decline to issue a complaint on the allegations of this charge.^{3/} Accordingly, the charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: January 14, 1993
Trenton, New Jersey

^{2/} Compare, Local 1104, CWA v. NLRB, 520 F.2d 411 (2d Cir. 1985) cert. den. 473 U.S. 1041 (1976). Accord, Civil Service Employees Ass'n, Inc., 17 PERB 3072 (NY 1984).

^{3/} N.J.A.C. 19:14-2.3.