

P.E.R.C. NO. 86-78

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO, LOCAL 1037,

Respondent,

-and-

Docket No. CI-85-69-92

ALLAN SCHUSTER,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge that Allan Schuster filed against the Communications Workers of America, AFL-CIO, Local 1037. The charge had alleged that CWA arbitrarily rejected his application for membership.

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Appearances:

For the Respondent, Steven P. Weissman, Esq.

For the Charging Party, Allan Schuster, Pro Se

DECISION AND ORDER

On October 10, 1984, Allan Schuster filed an unfair practice charge against Communications Workers of America, AFL-CIO, Local 1037 ("CWA"). Schuster alleges that CWA violated subsection 5.4(b)(1)1/ of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), when it rejected his application for membership.

On February 13, 1985, a Complaint and Notice of Hearing issued.

On February 25, 1985, CWA filed its Answer. It admitted rejecting Schuster's application, but contended it did so validly

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."

since Schuster had campaigned to replace CWA as majority representative.

On March 6, 1985, CWA filed a Motion for Summary Judgment with a supporting letter brief and certification.

On August 28, 1985, Hearing Examiner Edmund G. Gerber recommended granting summary judgment. H.E. No. 86-10, 11 NJPER ____ (¶ ____ 1985).

The Hearing Examiner served his report on all parties and advised them that exceptions, if any, were due on or before September 9. Neither party filed exceptions or requested an extension of time.

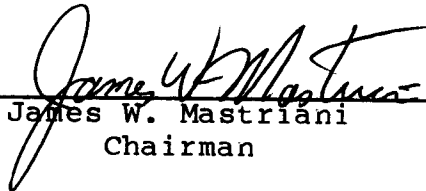
We have reviewed the record. The Hearing Examiner's findings of fact (3-5) and conclusions of law are accurate.

An employee organization only violates the Act when it rejects an application for arbitrary reasons. e.g., PBA Local 134 (Saleem), P.E.R.C. No. 86-38, 11 NJPER 596, 597 (¶16212 1985). Here, Schuster had campaigned to replace CWA as majority representative with another organization and had accused it of being a "rubber stamp for the State bosses," "racist and corrupt" and "literally the front line storm troopers for the bosses." An employee organization has no obligation to admit an employee who seeks to subvert that organization's status as majority representative. Accordingly, we dismiss the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hipp, Johnson, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioner Graves was not present.

DATED: Trenton, New Jersey
December 12, 1985
ISSUED: December 13, 1985

H.E. NO. 86-10

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

In the Matter of

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO, LOCAL 1037,

Respondent,

-and-

Docket No. CI-85-69-92

ALLAN SCHUSTER,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends the granting of the Respondent CWA's Motion for Summary Judgment on a charge of unfair practices, alleging that CWA violated N.J.S.A. 34:13A-5.4(b)(1) when it rejected the Charging Party's application for membership in January 1985. CWA acted on the basis of objective standards and did not base its rejection on arbitrary and capricious grounds.

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
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO, LOCAL 1037,

Respondent,

-and-

Docket No. CI-85-69-92

ALLAN SCHUSTER,

Charging Party.

Appearances:

For the Respondent,
Steven P. Weissman, Esq.

For the Charging Party,
Allan Schuster, Pro Se

HEARING EXAMINER'S DECISION AND RECOMMENDED
ORDER ON MOTION FOR SUMMARY JUDGMENT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on October 10, 1984, by Allan Schuster (hereinafter the "Charging Party" or "Schuster") alleging that the Communications Workers of America, AFL-CIO, Local 1037 (hereinafter the "Respondent" or the "CWA") 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 on September 18, 1984 Schuster completed and gave to the CWA a dues authorization card, and was told that it would be reviewed and possibly rejected due to Schuster's continued criticism of CWA's leadership, and thereafter Schuster's application for membership was rejected; all of which is

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, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on February 13, 1985, which scheduled a hearing for March 11, 1985 in Newark, New Jersey.

CWA filed an answer on February 25, 1985, in which it responded that CWA's Membership Committee met on November 13, 1984 and rejected Schuster's application on the ground that he had urged unit members to "...plan a three-year campaign to replace the CWA with a union chapter of the International Committee Against Racism (INCAR)...," that on November 13, 1984 Schuster was advised of the decision of the Membership Committee; that Schuster exercised his right of appeal which was heard on January 22, 1985 at a membership meeting where Schuster was provided with an opportunity to explain why he should be admitted to membership and was, additionally, permitted to present witnesses in support of his application; and on the same date, January 22, 1985, a majority of the members present voted to deny Schuster's application for membership.

On March 6, 1985, CWA filed a Motion for Summary Judgment with a supporting certification, pursuant to N.J.A.C. 19:14-4.8. On the same date, March 6, 1985, I sent a letter to the parties,

^{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.

advising them of the Motion for Summary Judgment and cancelling the hearing scheduled for March 11, 1985. I further advised Schuster that he had ten days to file and serve answering briefs and affidavits in response to the Motion for Summary Judgment. Schuster has to this date failed to respond to the Motion for Summary Judgment.

The Chairman of the Commission, on June 13, 1985, advised the parties that, pursuant to N.J.A.C. 19:14-4.8, he was referring the instant Motion for Summary Judgment to me for disposition.^{2/}

Upon the record as it exists to date, consisting of the Unfair Practice Charge, the Answer of CWA and the certification of CWA in support of the Motion for Summary Judgment, I make the following:

UNDISPUTED FINDINGS OF FACT

1. The Communications Workers of America, AFL-CIO, Local 1037 is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

2. Allan Schuster is a public employee within the meaning of the Act, as amended, and is subject to its provisions.

^{2/} In order to render a decision on CWA's Motion for Summary Judgment there must be no genuine issue as to any material fact, and the moving party must be entitled to judgment as a matter of law: N.J.A.C. 19:14-4.8(b) and N.J.A.C. 1:1-13.2. See further discussion, infra, pp. 5 & 6.

3. Each local of CWA has a Membership Committee, which is established pursuant to Article V, Section 2, ¶F of the CWA Constitution. On November 13, 1984 the Membership Committee of Local 1037 of CWA met to consider Schuster's application for membership, dated September 18, 1984. As part of the deliberations of the Membership Committee, it reviewed a leaflet circulated by Schuster in early October 1983, which he distributed in Newark, New Jersey, to public employees of the State of New Jersey, represented by CWA. In this leaflet an organization known as the International Committee Against Racism (INCAR) urged members of the CWA unit to "...plan a three-year campaign to replace the CWA with a union chapter of the International Committee Against Racism (INCAR)...."

4. On November 13, 1984 the Membership Committee of CWA concluded that this leaflet, supra, distributed by Schuster, Article XIX Section 2 of the CWA Constitution, specifically provides, under a specification of offenses, that members may be fined, suspended or expelled for willfully supporting or assisting any other labor organization in conflict with CWA or willfully supporting or assisting any person, group of persons, or organizations in any act or activities for the purpose of seeking or obtaining the replacement of CWA as the collective bargaining representative.

5. By letter dated November 13, 1984, Schuster was informed by the Membership Committee of its decision to reject his application for membership and, simultaneously, advised him of his right of appeal.

6. Schuster exercised his right of appeal and on January 22, 1985 at a monthly membership meeting of Local 1037, Schuster was afforded an opportunity to explain why he should be admitted to membership and was permitted to present witnesses in support of his application. Members attending the meeting were afforded the opportunity to question the witnesses presented by Schuster and by Local 1037. At the conclusion of the meeting a majority of the members present voted to deny Schuster's membership application.

DISCUSSION AND ANALYSIS

The Applicable Law On A
Motion For Summary Judgment

It is well settled under the law of this State that, in the granting or denying of a motion for summary judgment, all inferences of doubt are drawn against the moving party and in favor of the party opposing the motion. Additionally, in considering the instant Motion for Summary Judgment, no credibility determinations may be made. The motion must be denied if material factual issues do exist.

However, the New Jersey Supreme Court established in Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 75 (1974), that where the party opposing the motion does not submit any affidavits or documentation contradicting the moving party's affidavits and documents, then the moving party's facts may be considered as true, and there would necessarily be no material

factual issue to adjudicate unless, per chance, it was raised in the movant's pleadings. The Court in Judson held that:

...if the opposing party offers no affidavits or matter in opposition, or only facts which are immaterial or of an insubstantial nature...he will not be heard to complain if the court grants summary judgment, taking as true the statement of uncontradicted facts and the papers relied upon by the moving party, such papers themselves not otherwise showing the existence of an issue of material fact. (17 N.J. at 75).

In the instant case, Schuster has not filed any affidavits or documentation in opposition to or contradicting CWA's certification or answer. I must, therefore, consider as true all of the statements made in the certification of Hetty Rosenstein, including the exhibits attached to the certification.

The undisputed allegations in the certification and exhibits demonstrate conclusively that Schuster's application was duly considered by the Membership Committee on November 13, 1984, which consideration included a review of the leaflet which Schuster distributed to public employees in the unit represented by CWA, urging a three-year campaign to replace CWA as collective negotiations representative. Following the provisions of the CWA Constitution, supra, the Membership Committee concluded on November 13, 1984, that Schuster's application should be denied. Schuster was advised of his right of appeal and this appeal was exercised on January 22, 1985. Schuster was afforded the opportunity to present witnesses on behalf of his application and,

after the questioning of witnesses presented both on Schuster's behalf and on behalf of CWA, a majority of the members present voted to deny Schuster's membership application.

The Motion Of CWA For Summary
Judgment Is Granted.

The Commission has had several opportunities to consider the right of a public employee representative (labor organization) to refuse applications for membership to the organization. The first reported case is that of PBA Local 199, P.E.R.C. No. 81-14, 6 NJPER 384 (1980). In that case, the Commission set forth the standards for exclusion, noting that the language of §5.3 of the Act is sufficient to establish an applicant's right not to be arbitrarily denied membership in his majority representative organization (6 NJPER at 386). The Commission found that the union's action in excluding the applicant for no reason at all had interfered with his ability to exercise a right guaranteed by the Act. The record thus established a prima facie case of a violation of §(b)(1). The Commission also noted that a showing of unlawful intent was unnecessary to sustain a violation of the Act. Accordingly, the Commission ordered the offending union to admit the applicant to membership, there having been no good and sufficient reason demonstrated by the union to support its denial of the application.

In a subsequent case, NJCSA Council No. 5, P.E.R.C. No. 82-75, 8 NJPER 123 (1982) the Commission sustained its Hearing

Examiner's conclusion that the union lawfully rejected an employee's membership application where the evidence showed that the rejection was based on objective evidence that the applying employee had displayed a handgun and threatened its use to intimidate a personnel clerk and, additionally, threatened the union president (H.E. No. 82-23, 8 NJPER 63). The Commission held that since the rejection of the membership application was not arbitrary or capricious, the union did not violate the Act. The Hearing Examiner, in reciting the applicable law from the Commission's decision in Local 199, supra, stated:

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' Assn., 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...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. (8 NJPER at 65).

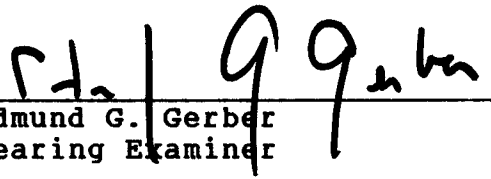
Finally, in F.M.B.A. Local 35, P.E.R.C. No. 83-144, 9 NJPER 336 (1983) the conduct of an applicant for membership in a labor organization was deemed antithetical to the organization and afforded a legitimate basis for rejection. There, the applicant had sought to have the Deputy Chief positions eliminated against the interest of his fellow members and, also, attempted to form a rival organization such as is involved in the instant case. The Commission in F.M.B.A. Local 35, supra, found entirely reasonable the labor organization's rejection of the application for admission to membership, it having been grounded "for good cause."

The instant record supports a finding and conclusion consistent with F.M.B.A. Local 35 that the CWA did not act arbitrarily or capriciously when it denied the membership application of Schuster. Plainly, Schuster was advocating the replacement of the CWA by his distribution of the leaflet on behalf of "INCAR" in October 1983 in the face of the CWA Constitution specifying as an offense, for which expulsion could result, the willful supporting or assisting of any organization for the purpose of seeking or obtaining the replacement of CWA as the collective bargaining representative.

CWA not having acted arbitrarily or capriciously in its denial of Schuster's application in January 1985, the undersigned recommends the granting of CWA's Motion for Summary Judgment.

RECOMMENDED ORDER

The motion of CWA for summary judgment should be granted and the Complaint against CWA by Schuster alleging a violation of N.J.S.A. 34:13A-5.4(b)(1) should be dismissed in its entirety.


Edmund G. Gerber
Hearing Examiner

Dated: August 28, 1985
Trenton, New Jersey