

D.U.P. NO. 94-43

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

In the Matter of

PBA LOCAL 240,

Respondent,

-and-

Docket No. CI-93-55

ROBERT GRIES, ET AL.,

Charging Parties.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Robert Gries on behalf of himself and 16 other Middlesex County corrections officers against their majority representative, PBA Local 240. The charge alleges that the PBA violated subsections (b)(1) and (2) by continuing to collect membership dues and agency shop fees after expelling the 17 employees solely because of their membership in a minority organization, the FOP Lodge 73.

The Director rejects Gries' argument that each deduction of dues or agency fee constitutes a continuing violation. He finds that the charge is untimely filed, based upon the fact that the expulsions occurred more than two years before the charge was filed.

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Appearances:

For the Respondent
S.M. Bosco Associates
(Dr. Simon M. Bosco, Labor Relations Specialist)

For the Charging Parties
A.J. Fusco, Jr., Esq.

REFUSAL TO ISSUE COMPLAINT

On February 8, 1993, Robert Gries and 16 other individuals filed an unfair practice charge against their majority representative, PBA, Local 240, alleging violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(b)(1) and (5).^{1/} Gries alleges that on March 25, 1990, he and 16 other Middlesex County corrections officers who are members of FOP Lodge 73, were expelled from the PBA solely because of their membership in the FOP. In addition, the

^{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."

Charging Parties assert that the PBA ignored their subsequent demands to cease deducting membership dues and agency shop fees from them.

The parties exchanged position statements and supporting documents. It is not disputed that Gries and other correction officers were expelled from membership in the PBA. The 17 bargaining unit members were all given notice of their expulsion in a letter from the PBA president dated June 8, 1990.

Gries argues that each deduction of agency fees or dues by the PBA constitutes a continuing violation and is not time barred.

The PBA argues that the charge is untimely filed as the expulsions occurred more than two years before the charge was filed and could not be a continuing violation.^{2/}

N.J.S.A. 34:13A-5.4(c) states:

...no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such

^{2/} The PBA also asserts that it did not expell the 17 officers merely because they held dual membership in the FOP and the PBA; it only expelled those officers it knew were either actively engaged in an organizational campaign in December 1989 or were known to be members of the FOP's executive board. It further asserts that the FOP continued its organizational efforts against it after filing this charge. While it admits that agency fees were collected from some of the expelled officers, the PBA asserts that under FOP, Lodge 12 and Colasanti, P.E.R.C. No. 90-65, 16 NJPER 126 (¶210149 1990), the agency fees were appropriately deducted because of the FOP members' involvement in the representation efforts challenging the PBA. Finally, the PBA claims that membership dues were collected from the remaining expelled FOP members because the officers authorized it.

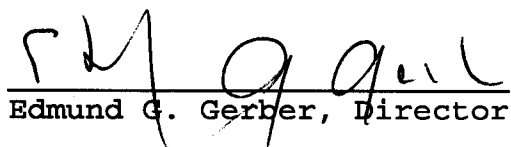
charge in which event the 6 months period shall be computed from the day he was no longer so prevented.

See No. Warren Bd. of Ed., D.U.P. No. 78-7, 4 NJPER 955 (¶4026 1977). See also, N.J. Turnpike Employees' Union, Local 194, IFPTE, AFL-CIO, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979).

Gries filed this charge more than six months after he and the other FOP members were expelled from the PBA. There is no allegation that Gries was prevented from filing the charge in a timely manner. Nor is there an allegation that the PBA's actions violate the statutory agency fee provision, N.J.S.A. 34:13A-5.5. Therefore, I find that charge is untimely filed.

Accordingly, the Commission's complaint issuance standard has not been met and I refuse to issue a complaint on the allegations of this charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: April 19, 1994
Trenton, New Jersey