

D.U.P. NO. 2001-4

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

In the Matter of

TEAMSTERS LOCAL 331,

Respondent,

-and-

Docket No. CI-2000-44

HOWARD CHARLES MCLAUGHLIN,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge asserting violations of 5.4b(1), (2) and (5) of the Act. The allegations of the charge concerning the Teamsters' contract ratification process, dues structure and composition of its negotiations committee are internal union matters over which the Commission lacks jurisdiction. The allegation of favoritism did not evidence a breach of the duty of fair representation. No facts were alleged to support a 5.4b(2) or (5) violation.

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Appearances:

For the Respondent  
Weissman and Mintz, attorneys  
(Mark A. Rosenbaum, of counsel)

For the Charging Party  
Howard Charles McLaughlin, pro se

REFUSAL TO ISSUE COMPLAINT

On May 25, 2000, Howard Charles McLaughlin (McLaughlin) filed an unfair practice charge alleging that his majority representative, Teamsters Local 331 (Local 331), violated 5.4b(1), (2) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. On June 13, 2000, McLaughlin filed an

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<sup>1/</sup> These provisions 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. (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances. (5) Violating any of the rules and regulations established by the commission."

amended charge seeking to clarify his original allegations. McLaughlin alleges that Local 331 failed to give "reasonable notice" to its members of a contract ratification meeting, failed to ensure that "agency shop" fee payers did not vote on the ratification of the contract, increased union dues in violation of union by-laws, favored a segment of the white-collar employees in the unit and negotiated with the employer without the presence of shop stewards who are members of the negotiations committee.<sup>2/</sup>

Local 331 denies engaging in any unfair practices. It asserts that the charge should be dismissed, as the Commission does not inquire into internal union matters where, as here, there is no showing of retaliation or hostility toward an employee.

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. Based upon the following, I find that the Complaint issuance standard has not been met.

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<sup>2/</sup> Two additional statements in the amended charge -- allegations number 6 and 7 -- are not clear and concise statements of facts constituting an alleged unfair practice as required by N.J.A.C. 19:14-1.3. I dismiss those allegations on procedural grounds as well as the fact that, as written, they do not support a claim that Local 331 violated the Act.

### ANALYSIS

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 Lodge 12 (Colasanti) PERC No. 90-65, 16 NJPER 126 (¶21049 1990); FMBA Local 35 (Carragino) PERC No. 83-144, 9 NJPER 336 (¶14149 1983).

Section 5.3 of the Act empowers an employee representative to represent employees in the negotiation and administration of a collective agreement. With that power comes the duty to represent all unit employees fairly. A violation of that duty occurs

only when a union's conduct towards a member of the collective bargaining unit is arbitrary, capricious or in bad faith. [Vaca v. Sipes 386 U.S. 171, 64 LRRM 2369 (1967)].

The Commission and the New Jersey courts have adopted this standard. Saginario v. Attorney General, 87 N.J. 480 (1981); Lullo v. International Ass'n of Fire Fighters, 55 N.J. 409 (1970); Fair Lawn Bd. of Ed. PERC No. 84-138, 10 NJPER 351 (¶15163 1984); OPEIU Local 153, P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983).

The court has also ruled that private organizations "must have considerable latitude in rule-making in order to accomplish their objectives, and their private rules are generally binding on those who wish to remain members." Calabrese v. PBA Local 76, 157 N.J. Super. 139, 146 (Law Div. 1978). The Commission has relied on Calabrese in stating it is "reluctant to intercede in what is only an intra-union dispute...." City of Jersey City, PERC No. 83-32, 8

NJPER 563 (¶13260 1982). We have found that a union's alleged failure to follow its own by-laws 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).

The Director has also declined jurisdiction over disputes concerning contract ratification procedures. See Newark Building Trades Council, D.U.P. No. 82-34, 8 NJPER 333 (¶13151 1982) (the Act fails to prescribe any procedure for contract ratifications and it is considered "...an internal union matter..."); Camden County College Faculty Ass'n (Zaleski), D.U.P. No. 87-13, 13 NJPER 253 (¶18103 1987) (ratification process affects all members of the unit and is "...essentially an internal union matter...").

McLaughlin alleges Local 331's contract ratification procedures were flawed and it increased dues in violation of its own union by-laws. McLaughlin does not allege that Local 331 has acted in an arbitrary or discriminatory manner toward McLaughlin. The allegations concerning the manner in which the union ratified its collective agreement and increased its dues are internal union matters, over which we lack jurisdiction, and, therefore, do not establish a violation of 5.4b(1). Additionally, I find that the claim that Local 331 negotiated with the employer without the presence of the full negotiations committee also constitutes an internal union decision. The employee representative is obligated to negotiate with the public employer in good faith with honesty of purpose, and without discrimination. Belen v. Woodbridge Tp. Bd. of

Ed., 142 NJ Super. 486 (App. Div. 1976). certif. den. 72 N.J. 458 (1976). It is the organization's choice to designate negotiations representatives as it sees fit.

McLaughlin's allegation that Local 331 favors certain white collar employees also does not support a finding of a 5.4b(1) violation. In negotiating collective agreements, majority representatives are afforded a "wide range of reasonableness." Id. at 491. See also Ford Motor Co. v. Huffman, 45 U.S. 330, 337-338 (1953). The fact that a segment of a negotiations unit may have received greater benefits under a contract does not, by itself, evidence discrimination or bad faith under Vaca. See Belen.

Subsection 5.4b(2) of the Act prohibits employee organizations from interfering with, restraining, or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances. Assuming arguendo that McLaughlin even has standing to assert this claim, no facts alleged suggest that Local 331 interfered with, restrained or coerced the employer's selection of its representative in negotiations or grievance processing.

McLaughlin also has alleged that the Teamsters violated 5.4b(5) of the Act. However, he has not specified the rule or regulation established by the Commission which he alleges has been violated.

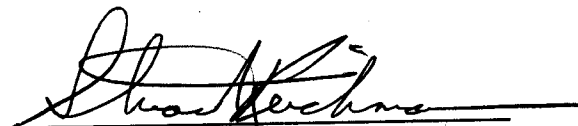
The facts alleged in the charge, even if true, would not be violations of the Act. Therefore, I find that the Commission's

complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.

ORDER

The unfair practice charge is dismissed.<sup>3/</sup>

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Stuart Reichman, Director

DATED: July 24, 2000  
Trenton, New Jersey

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<sup>3/</sup> N.J.A.C. 19:14-2.3.