

D.U.P. NO. 93-4

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

In the Matter of

STATE OF NEW JERSEY
(DEPARTMENT OF CORRECTIONS),

Respondent,

-and-

Docket No. CI-92-59

PBA LOCAL 105,

Respondent,

-and-

DOUGLAS TINSLEY,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses that portion of an unfair practice charge filed by Douglas Tinsley against PBA, Local 105, claiming that the Local refused to support Tinsley's efforts to campaign against the State's closing of the McCorkle Training School. The Director finds that Tinsley's procedural rights were satisfied when he was given an opportunity to present his grievance to the membership who voted to reject his grievance. The Director also dismisses as an internal union matter, Tinsley's claim that the president of the Local attempted to thwart his attempts to present his concerns to the membership by allowing the consumption of alcohol during a meeting.

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PBA LOCAL 105,

Respondent,

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DOUGLAS TINSLEY,

Charging Party.

Appearances:

For the Respondent State of New Jersey
Robert J. DelTufo, Attorney General
(Stephan M. Schwartz, Deputy Attorney General)

For the Respondent PBA Local 105
Zazzali, Zazzali, Fagella & Nowak, attorneys
(Robert A. Fagella, of counsel)

For the Charging Party
Rosenthal & Popp, attorneys
(Lawrence E. Popp, of counsel)

DECISION

On February 5, 1992, Douglas Tinsley filed an unfair practice charge with the Public Employment Relations Commission alleging that the State of New Jersey and the New Jersey State PBA Local 105 violated N.J.S.A. 34:13A-1.1 et seq., specifically

subsections 5.4(a)(1), (3) and (5)^{1/} and 5.4(b)(1), (3) and (5),^{2/} respectively, when (1) the PBA failed to review, consider and/or support members of Local 105 who are and were employed at the McCorkle Training School for Boys when the State announced the closing of the school; (2) the President of PBA Local 105 "permitted the consumption of alcohol" at a PBA meeting and "thereafter demeaned and belittled the charging party, denying him an opportunity to properly present legitimate union business"; (3) the President of Local 105 intentionally misrepresented documents to the general membership with regard to Tinsley's grievance; (4) the President of Local 105 conspired with the New Jersey Department of Corrections ("Department") so as to "abrogate an agreement on behalf of Tinsley".

1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ 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. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (5) Violating any of the rules and regulations established by the commission."

The Department of Corrections promulgated plans to close the McCorkle Training School and transfer the inmates to community based programs. An agreement was reached between the PBA and the Department permitting guards represented by the PBA with the greatest seniority to have the first choice of transferring to any institution within the Department where vacancies existed. Tinsley objected to being among the first transferred, in accordance with his seniority. He claimed that as a union shop steward, he should not be transferred as long as there were unit employees still employed at the school. Local 105 supported Tinsley's position and entered into an agreement with the Department to allow Tinsley to "lock-in" his selection as to which institution he would transfer into yet still remain at the school until it shut down.

After the agreement was entered into, Tinsley sought to convince the Local to mount a more vigorous campaign to prevent the closure of the McCorkle school. Tinsley claims that he was unsuccessful in addressing both the executive board and the general membership of the Local because the president interfered with his attempts to present his position. Tinsley amended his charge on June 29, 1992, to allege that the president of the Local told the Department that the Local no longer wanted the Department to guarantee Tinsley's transfer choice. Therefore, if Tinsley elected to stay at McCorkle, he had to forego his priority rights as to his selection of a new assignment and drop to the bottom of the seniority list.

Tinsley also objects to conduct at a Local 105 meeting: when the president of the local allegedly unfairly characterized Tinsley's position to the membership and the membership consumed alcoholic beverages.

The Commission has limited jurisdiction to review internal union matters. Calabrese v. PBA Local 176, 157 N.J. Super 147 (App Div. 1978) held that a PBA local, as a private organization, has considerable latitude in its conduct. The Commission will intervene in the internal affairs of an employee organization only when an overriding policy of the Act is affected. West New York Police Supervisors Assn. (Santa Maria), P.E.R.C. No. 89-60, 15 NJPER 21 (¶20027 1988). The consumption of alcoholic beverages at a monthly PBA meeting does not affect an overriding policy of the Act.

Assuming that the Local 105 President did misrepresent Tinsley's position at the meeting, Tinsley was given the opportunity to rebut the president's comments when he addressed the membership at the general meeting. However, the membership declined to support Tinsley. This procedure satisfied Tinsley's procedural rights; nothing alleged in this regard would appear to affect overriding policies of the Act. Accordingly, I dismiss this portion of the charge filed against the Local.

As to the allegation of the June 29, 1992 amendment that the Local retaliated against Tinsley when it rescinded its agreement with the Department concerning his transfer from McCorkle, I am, under separate cover, issuing a complaint and Notice of Hearing regarding those facts contained in the amended charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: July 29, 1992
Trenton, New Jersey