

D.U.P. NO. 84-20

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ADMINISTRATOR OF UNFAIR PRACTICE PROCEEDINGS

In the Matter of

TOWNSHIP OF UNION,

Respondent,

-and-

POLICEMENS BENEVOLENT
ASSOCIATION #69,

DOCKET NOS: CO-83-276
CO-83-277

Respondent,

-and-

FRATERNAL ORDER OF POLICE
LODGE #35,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to unfair practice charges filed by the FOP Lodge #35 against the PBA #69 and the Township of Union. The Administrator finds that the Charging Party failed to allege sufficient facts to support its allegations that its members are denied the right to join the PBA or to attend PBA meetings addressed to negotiations unit business. The Administrator therefore finds that the allegation that the Township improperly deducted agency fee assessments is also without foundation.

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Appearances:

For the Respondent Township
Gerald L. Dorf, P.A.
(Steven S. Glickman of counsel)

For the Respondent PBA
Zazzali, Zazzali & Kroll, attorneys
(James R. Zazzali of counsel)

For the Charging Party
LaCorte, LaCorte, Gillespie & Walters, attorneys
(John A. Gillespie of counsel)

REFUSAL TO ISSUE COMPLAINT

On April 18, 1983, two unfair practice charges were filed with the Public Employment Relations Commission ("Commission") by the Fraternal Order of Police Lodge #35 ("FOP") alleging that

the Township of Union ("Township") and the Policemens Benevolent Association #69 ("PBA") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). Docket No. CO-83-276 alleges that the Township violated §§ 5.4(a)(1), (2), (3) and (7). ^{1/} Docket No. CO-83-277 alleges that the PBA violated §§ 5.4(b)(1) and (5). ^{2/}

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge. ^{3/} The Commission has delegated its authority to issue complaints to the undersigned

^{1/} N.J.S.A. 34:13A-5.4(a) prohibits 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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. (7) Violating any of the rules and regulations established by the commission."

^{2/} N.J.S.A. 34:13A-5.4(b) 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. ... (5) Violating any rules and regulations established by the commission."

^{3/} N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

and has established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act. ^{4/} The Commission's rules provide that the undersigned may decline to issue a complaint. ^{5/}

For the reasons stated below, the undersigned determines that the Commission's complaint standards have not been met.

The PBA is the majority representative of certain police employees of the Township. The FOP is a minority representative organization. The PBA, by virtue of an agency fee provision in its collective negotiations agreement with the Township, collects a representation fee from non-PBA members and, therefore, has a statutory responsibility to make membership in the majority representative "available to all employees in the unit on an equal basis." N.J.S.A. 34:13A-5.6.

According to the FOP, the PBA has stated that its organizational meetings are to be separated into two components: (1) a "PBA Union" component which is open to all unit members; and (2) a "PBA Fraternal" component at which attendance is limited to PBA members. Notwithstanding the above representation, the FOP claims that this separation has not transpired. FOP asserts that at one meeting, conducted February 15, 1983, "No opportunity was provided

^{4/} N.J.A.C. 19:14-2.1

^{5/} N.J.A.C. 19:14-2.3

to open the meeting to at any point to non-members of respondent."
[sic] At this meeting, FOP alleges, discussions were held concerning grievances presented by fourteen non-PBA members. Based on the above, FOP asserts:

The exclusion of members of the charging party for membership in the respondent and specifically their denial of right of members of charging party to join and participate on the same basis as other unit members violates the provisions of the New Jersey Employer Employee Relations Act as amended as heretofore described herein. The respondent has deducted and continues to deduct representation fees from the pay checks of members of the charging party despite permitting members of the charging party membership on an equal basis within the unit. [sic]

Wherein the charging party seeks the following:

- (a) That the respondent cease and desist from continuing to receive representation fees in lieu of dues from members of the charging party.
- (b) that the respondent take affirmative action to refund all representation fees in lieu of dues paid by members of the charging party from the outset through the present.

The FOP alleges that the Township is improperly deducting agency fee assessments from FOP members notwithstanding notification by the FOP of the above alleged violation of the agency shop amendments to the New Jersey Employer-Employee Relations Act by the PBA.

For the reasons stated below, the undersigned declines to issue a complaint. This determination is predicated on the undersigned's determination that the unfair practice charge fails

to develop a nexus between the facts, as alleged, and a violation of the agency shop provisions of the Act. First, it is not alleged that any FOP member applied for membership in the PBA and has been denied same because of his FOP membership, nor is it alleged that there is any impediment to membership in the PBA under its constitution and bylaws. The charge herein solely raises allegations that the PBA has conducted organizational meetings which apparently combine a "Union" and a "Fraternal" agenda. Further, it is not alleged that FOP members have been denied attendance at PBA meetings either by direct action of the PBA or by provisions in the PBA constitution and bylaws. The statement that no opportunity was provided to open the meeting to non-PBA members does not rest upon a factual foundation that establishes that PBA meetings were closed to all but PBA members.


Accordingly, in order for the undersigned to consider for complaint issuance claims of unfair practice under the Act, either by virtue of the operation of the agency shop provisions or otherwise under N.J.S.A. 34:13A-5.3, the Charging Party must assert facts which specify conduct by the PBA which either denies FOP members rights to join the PBA or rights to attend PBA meetings addressed to negotiations unit business. Such facts have not been provided notwithstanding the additional opportunity provided to the Charging Party, through correspondence dated December 15, 1983, to file an amended charge.

Moreover, the undersigned fails to perceive a basis for FOP's standing as a party to assert violations of the Act under

§§ 5.4(b)(1) and (5) herein. Subsection (b)(1) refers to the statutory rights of individuals. There is no factual allegation in the charge describing any "injury" the FOP has suffered as a result of PBA actions. Additionally, the FOP has not identified the particular rule(s) of the Commission which it perceives has been violated under § 5.4(b)(5).

As stated above, on December 15, 1983, the undersigned advised the FOP that unless the Charges were amended to allege with specificity facts which, if true, would constitute violations of the Act, the undersigned would be inclined not to issue a complaint either as to the PBA or the Township. Accordingly, there being no further proffers by the FOP, the undersigned declines to issue a complaint in the instant matter.

BY ORDER OF THE ADMINISTRATOR
OF UNFAIR PRACTICE PROCEEDINGS


Joel G. Scharff, Administrator

DATED: February 8, 1984
Trenton, New Jersey