

H.E. NO. 2013-12

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

In the Matter of

PROBATION ASSOCIATION OF NEW JERSEY,

Respondent,

-and-

Docket No. CI-2011-045

PETER TORTORETO AND ROBYN GHEE,

Charging Parties.

SYNOPSIS

A Hearing Examiner grants the respondent's Motion to Dismiss on an unfair practice charge filed against the Probation Association of New Jersey (PANJ) by unit members Peter Tortoreto and Robyn Ghee. Tortoreto and Ghee alleged that PANJ violated the 5.4(b) 1 of the Act when it brought disciplinary charges against Tortoreto and Ghee resulting in suspensions, fines, and other penalties. The Hearing Examiner finds that Charging Parties did not allege any facts which would amount to unfair practices within the meaning of the Act; rather, all of the allegations were based on PANJ's alleged failures to follow its own procedures and bylaws, which are internal union matters outside of the Commission's jurisdiction.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent,
Fox and Fox, attorneys
(Craig Gumpel, of counsel)

For the Charging Parties,
Law Offices of C. Gregory Stewart, attorneys
(Clifford G. Stewart, of counsel)

MOTION FOR SUMMARY JUDGEMENT

On April 4, 2011, Peter Tortoreto and Robyn Ghee (Charging Parties), public employees, filed an unfair practice charge with the Public Employment Relations Commission against their majority representative, the Probation Association of New Jersey (PANJ). The charge alleges that PANJ violated section 5.4b(1)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) when, on or about January 24, 2011, PANJ brought

^{1/} This subsection 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."

disciplinary charges against Charging Parties that resulted in suspensions, fines and other penalties - Tortoreto was suspended from membership for three years, barred from union-related activities and fined; and Ghee was suspended, barred from union-related activities for six months, and relieved of her position as vice president of PANJ Local 109.

On June 1 and 14, 2011, Charging Parties filed an application for interim relief which was denied on July 22, 2011. A Complaint and Notice of Hearing was issued on February 24, 2012, and a hearing was scheduled.

PANJ filed an Answer on March 28, 2012. On May 31, 2012, before the hearing, PANJ filed this Motion for Summary Judgment, along with a certification by PANJ President George Christie ("Christie cert."), a brief and exhibits A through G.^{2/} On June 14, 2012, the hearing was stayed and an extension granted for the Charging Parties' response to the Motion. Charging Parties filed a response to the Motion on July 30, 2012, including a brief, certifications by Charging Parties Tortoreto and Ghee ("Tortoreto cert." and "Ghee cert.", respectively) and exhibits A through Y. On August 14, 2012, PANJ filed a letter brief in response to Charging Parties' submission. The record on the Motion closed on

^{2/} Respondent PANJ's exhibits are referred to as "R-A through G, and Charging Parties' exhibits are referred to as CP-A through Y.

that date. On September 17, 2012, the Commission referred the Motion to me. N.J.A.C. 19:14-4.8.

I have reviewed both parties' briefs and supporting exhibits. Based upon a review of the entire record, the competent evidence, viewed in the light most favorably to the Charging Parties, establishes the following undisputed facts.

FINDINGS OF FACT

1. PANJ is the majority representative of certain professional and supervisory employees employed by the State of New Jersey Judiciary (Judiciary). George Christie is the President of PANJ.

2. Charging Party Peter Tortoreto has been employed as a senior probation officer in the Judiciary's Camden County Vicinage for more than 34 years, and is a longstanding member of PANJ. He was 1st vice president and executive assistant of the statewide union for the most recent ten years and served on many of PANJ's committees. Charging Party Robyn Ghee has been employed by the Judiciary for 17 years and is a senior probation officer in the Camden County Vicinage. Ghee is a PANJ member and was vice president of PANJ's Camden vicinage.

Constitution, Bylaws and Disciplinary Procedures

3. PANJ members are expected to comply with the Union's Constitution and Bylaws. Articles II and VI of the Bylaws authorize the Executive Committee to interpret and decide

compliance issues. Its decisions are final. (Christie cert., ¶4).

4. Article V, Section 2 of the Bylaws provides that any member may be disciplined for certain offenses (Christie cert., ¶3 through 5; Charging Parties' brief, at 4-6). Prohibitions include, in relevant part,

a. Violating any provision of the Constitution or By-laws of the Association or failure to perform duties or functions specified or required therein.

b. Engaging in any activity or course of conduct contrary or detrimental to the welfare or best interest of the Association or member.

c. Committing any unlawful, dishonest, dishonorable or discreditable act. . .

g. Making known the business of the Association to persons not entitled to such knowledge. . .

i. Slandering or libeling an officer or member of the Association, or willfully circulating false statements or reports concerning such officers or members, or concerning the activities of the Association. . .

k. Willfully engaging in any acts or course of conduct which are inconsistent with the duties, obligations and fealty of the members of the Association and which violate sound union principles or which constitute a breach of an existing collective bargaining agreement. . .

n. Mishandling, misappropriating or otherwise misusing union funds or properties.

o. Willfully making any false or fraudulent report required under this Constitution

p. Failure to exercise responsibility toward the Association or engaging in conduct which would interfere with the Association's performance of its obligations. . .

s. Dealing with this Association as an adverse party in any manner connected with his/her duties

t. Holding or acquiring any pecuniary or personal interest which conflicts with the interest of the association. . .

w. Other sufficient causes

5. Any active member of PANJ may submit a written allegation of wrongdoing on the part of another member to the Executive Board ("Board"). The Board then assigns a discipline committee to conduct a hearing and recommend whether the member should receive discipline. Charges against a case-related unit member are to be heard by a committee comprised of case-related unit members, and charges against a professional supervisors unit member are to be heard by professional supervisors unit members (Christie cert., ¶ 6; Charging Parties' brief at 6).

6. The discipline committee schedules the hearings. The accused member is given the charges ten days prior to the hearing, and may be represented by a member in good standing or a personal attorney. The discipline committee is expected to impartially hear the charges and render a written report of its findings and recommendations to the Board. The report and

recommendation serve as a guide to the Board in its final decision to impose discipline, and it may accept, reject or modify the discipline committee's findings (Christie cert., ¶6-7).

7. The discipline of members under Article V has occurred previously against Members Paul Grayson and Sam Richter (R-A, B). I take administrative notice of the fact that on September 14, 2006, Grayson filed an unfair practice charge against PANJ, Docket No. CI-2007-005, which he withdrew on December 12, 2006 (R-E).

Imposition of Discipline on Charging Parties

8. Between October 22 and November 19, 2010, PANJ held elections for statewide offices. The American Arbitration Association ("AAA") conducted the election. PANJ officers had little involvement in running the election other than to provide AAA with the list of eligible voters. Tortoreto and Ghee ran for statewide office on the same ticket: Tortoreto ran for second vice president against incumbent Stephanie Hennessey and Ghee ran for financial secretary against incumbent Susan Ormsby-Cuozzo.

9. In recent years, Tortoreto had expressed concerns about the costs of legal services procured by the Union, its legislative spending and the infrequency of financial committee meetings (Tortoreto cert. ¶ 6-7).

10. During the campaign, Tortoreto and Ghee published a campaign flyer, entitled "The Secret Society of PANJ Finances" that advocated financial accountability and raised questions about PANJ's president's compensation, legislative spending, legal bills and the meetings held by the financial (CP-A). The two candidates also published a flyer titled "PANJ Pride" which identified the themes on which they were running for office and included a logo depicting a symbol of New Jersey with the letters PANJ PRIDE set forth therein (CP-B; Ghee cert., ¶ 4).

11. AAA counted the ballots on November 19, 2010.^{3/}

12. On October 31, 2010, November 9, 2010, and November 15, 2010, PANJ members Stuart Martinsen, Susan Ormsby-Cuozzo and Stephanie Hennessey, respectively, submitted requests to the Board for disciplinary charges against Tortoreto and Ghee concerning their conduct during the PANJ statewide elections (Christie cert., ¶ 35).

13. On November 21, 2010, at an executive Board meeting, Christie announced that charges were filed against Tortoreto and Ghee and appointed a disciplinary committee (CP-V). Five (5) PANJ members, Deneen Hohman, Anthony Persico, Don Elfrehnt, Drew

^{3/} The parties disagree about who won the election: Charging Parties claim that they received a larger number of votes; PANJ claims that the Charging Parties were defeated (Christie cert., ¶ 34, Charging Parties' Brief, page 13). This fact is not material to the Motion.

Celentano and Susan Smith, and one alternate, Thea Fitzpatrick, were appointed to the committee, with Hohman as committee chair (CP-V).

14. On January 14, 2011, Tortoreto and Ghee received the formal disciplinary charges by letter, advising that their hearings were scheduled for Saturday, January 29, 2011, at the PANJ office in Brielle, N.J.; that they could be represented by a PANJ member in good standing or by an attorney of their choice and at their expense; and that while their presence was mandatory, failure to appear would not halt the proceeding (CP-F). The charges against Ghee and Tortoreto included making and disseminating false or misleading allegations against the Association and its officers, or pertaining to the activities of the Association, knowingly making business information available to non-members, making false statements accusing Board members of dishonesty and perpetuating mistrust of the executive board and misuse of the PANJ trademark logo (CP-F). Tortoreto was also accused of unauthorized use of funds, but this charge was dropped or withdrawn (CP-F).

15. By letter dated January 26, 2011, PANJ's Camden Vicinage President Sophia Peele requested an initial meeting to informally discuss the matter (CP-F). On January 27, 2011, Hohman advised Tortoreto and Ghee that the hearings were rescheduled to February 5, 2011, at 10:00 a.m. On January 28,

2011, Peele wrote to the discipline committee reiterating her desire to resolve the discipline charges discreetly, and on February 2, 2011, Peele emailed Christie advising that Charging Parties agreed to have the process proceed less formally, and that any formal proceeding should be scheduled jointly. Christie responded that the February 5, 2011, hearing had not been postponed or changed (Christie cert., ¶ 42; CP-G). On February 3, 2011, Peele formally requested a postponement of the February 5, 2011, hearing, because both Tortoreto and Ghee would have difficulty attending. On the same date, Tortoreto and Ghee communicated directly with Committee Chair Hohman that it was impossible for them to attend the February 5 hearing because of the illness of Tortoreto's close family member and because of Ghee's child care issues on that date (Tortoreto cert., ¶11; CP-E). On February 3, 2011, Hohman denied the request to reschedule and advised Peele, Tortoreto and Ghee that the hearing would proceed as scheduled (CP-E, F).

16. On February 3, 2011, Tortoreto and Ghee retained attorney Gregory Stewart. He contacted Committee Chair Hohman to request a postponement of the discipline hearing and to obtain discovery (CP-O; CP-N, Tortoreto cert. ¶, Ghee cert. ¶ 8-10). On February 4, Hohman denied Stewart's request for a postponement.

17. On February 5, 2011, the committee reviewed the charges, heard witnesses and reviewed documents. It recommended to the executive committee that Tortoreto and Ghee be disciplined. Neither the Charging Parties nor attorney Stewart appeared at the hearing.

18. On February 24, 2011, Stewart again requested a continuation of the hearing and discovery materials (CP-N).

19. On February 24, 2011, the Board met and voted to sustain most of the charges filed against Ghee and Tortoreto. The committee also determined that Tortoreto's and Ghee's failure to appear at the discipline hearing showed contempt of PANJ's processes. It ordered Tortoreto suspended from membership for three years, barred from union-related activities and fined. Ghee was suspended, barred from union-related activities for six months, and relieved of her position as vice president of PANJ Local 109. It ordered that they could apply to the Union for reinstatement after their suspensions.^{4/} Ghee attended the meeting but was not permitted to challenge the way she and Tortoreto had been charged or the conduct and scheduling of their disciplinary proceeding (Ghee cert. ¶ 11; CP-R).

^{4/} Ghee applied for and was reinstated as a member in good standing in March 2012 (CP-R; R-G).

ANALYSIS

Tortoreto and Ghee argue that PANJ unlawfully interfered with their rights to participate in collective activity by violating and misapplying its own bylaws, by improperly constituting the discipline committee by mixing supervisors and non-supervisory employees and improperly appointing the chair; by denying charging parties' reasonable requests to reschedule the discipline committee's hearing; by failing to supply them or their attorney with documents, answers to questions and other information; and by mistreating Charging Party Ghee during an executive committee meeting - refusing to allow her to speak or vote. Charging Parties also object to the fact that PANJ officers notified all PANJ members about their discipline, and argue that the Union's actions have a chilling effect on their and other members' rights to criticize PANJ's management, spending and other financial matters.^{5/} Charging Parties appear to argue that PERC should conduct or order an investigation into the financial affairs of the Union.

To remedy the alleged violations, Charging Parties ask the Commission to reinstate both as members in good standing

^{5/} Charging Parties submitted affidavits and certified statements by a number of other PANJ members (CP-P, CP-Q, CP-Y) in support of their contention that PANJ has mismanaged its finances and chilled the free expression critical of PANJ officers; however these facts are not material to this Motion.

retroactive to their suspensions; reinstate Ghee to the position of vice president of Camden County Local 109; clarify or order the Judiciary or PANJ to initiate a petition for unit clarification to clarify PANJ's negotiations units so that they remain independent of each other in union business affairs; invalidate the internal union election and order a new election with new rules; enter an order of "no retaliation" of Charging Parties by PANJ; place PANJ and PANJ EF^{6/} accounts in trusteeship; audit all PANJ accounts; notify all members of these orders and "place a hold" on PANJ's President's 401(k) account.

PANJ argues that all the facts Charging Parties have alleged concern their dispute with PANJ over PANJ's decision to discipline them. Therefore, it argues, neither Tortoreto nor Ghee has alleged facts, which, even if proven true, would violate the Act because the Commission does not have jurisdiction over internal union disputes. It asserts no material facts are in dispute.

I agree with PANJ that Charging Parties do not allege any facts which would amount to unfair practices within the meaning of the Act and, thus, for the reasons below I grant PANJ's Motion.

^{6/} "PANJ EF" refers to the PANJ Education Fund.

Summary Judgment

Summary judgment will be granted:

If it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and that the movant or cross-movant is entitled to its requested relief as a matter of law, the motion or cross-motion for summary judgment may be granted and the requested relief may be ordered. [N.J.A.C. 19:14-4.8(e)]

Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520 (1995)

("Brill") establishes the standard to be used in deciding whether a genuine issue of material fact precludes summary judgment. We must:

consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. Brill at 540.

A motion for summary judgment should be granted cautiously and not used for a substitute for a plenary hearing. Baer v. Sorbello, 177 N.J. Super. 182 (1981); Essex Cty. Ed. Serv Comm., PERC No. 83-65, 9 NJPER 19 (¶14009 1982); N.J. Dept. of Human Services, PERC No. 89-54, 14 NJPER 695 (¶19297 1988).

Duty of Fair Representation

N.J.S.A. 34:13A-5.3 gives public employees the right to form, join and participate in union activities. An employee organization violates N.J.S.A. 34:13A-5.4b(1) when its actions tend to interfere with, restrain or coerce employees in the

exercise of the rights guaranteed them by the Act, provided the actions lack a legitimate and substantial organizational justification. Employee organizations are free to create rules binding on their members to accomplish organizational objectives. These rules, often in the form of constitutions and bylaws, are part of the contract between the organization and its members. See Calabrese v. PBA Local 76, 157 N.J. Super. 139 (Law Div. 1978). Courts have traditionally been reluctant to interfere with the internal affairs of private organizations. Higgins v. Amer. Society of Clinical Pathologists, 51 N.J. 191 (1968) aff'd after remand 53 N.J. 547 (1968); Falcone v. Middlesex Cty. Medical Society, 34 N.J. 582 (1961). Review of an organization's bylaws is only necessary when they impair the public welfare or an individual's opportunity for economic success. Falcone at 592.

The U.S. Supreme Court articulated the standard for determining when a union violates its duty of fair representation to members in Vaca v. Sipes, 386 U.S. 171 (1967) ("Vaca"):

. . . [A] breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the collective bargaining unit is arbitrary, discriminatory or in bad faith. [Id. at 386].

New Jersey has adopted the Vaca standards in deciding fair representation charges arising under the Act. See, Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of Teachers, 142

N.J. Super. 146 (App. Div. 1976); see also, Lullo v. International Ass'n. of Firefighters, 55 N.J. 409 (1970); Saginario v. Attorney General, 87 N.J. 480 (1981); OPEIU Local 153 (Johnstone), P.E.R.C. 84-60, 10 NJPER 12 (¶15007 1983).

Recently, the Commission discussed the standard for determining whether a Union has violated section 5.4b(1) of the Act in New Jersey State PBA (Rinaldo), P.E.R.C. 2011-083, 38 NJPER 53 (¶8 2011) ("Rinaldo"). There, the Commission outlined the limits of its jurisdiction over disputes between a union and its members:

We do not have power to enforce union constitutions and by-laws. These documents may establish judicially enforceable contractual rights, but a violation of their provisions does not generally constitute an unfair practice under our Act. Teamsters Local 331 (McLaughlin), P.E.R.C. No. 2001-30, 27 NJPER 25, 27 P.E.R.C. NO. 2011-83 5 (¶32014 2000); Calabrese v. PBA Local 76, 157 N.J. Super. 139 (Law Div. 1978). Nor do we have authority to referee or resolve internal union disputes unconnected to allegations and proof that an unfair practice has been committed. City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563, 565-566 (¶13260 1982); cf. Danese v. Ginesi, 280 N.J. Super. 17, 25 (App. Div. 1995) (unions are entitled to considerable latitude in making membership rules). Nor do we have jurisdiction to enforce the New Jersey Constitution as opposed to the statutory rights specifically granted by the New Jersey Employer-Employee Relations Act.

. . . our unfair practice jurisdiction over membership matters is statutorily confined under the Act we administer to two instances. The first instance is where a majority

representative violates its duty to represent its members fairly in contract negotiations and grievance processing, N.J.S.A. 34:13A-5.3; OPEIU Local 153 (Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983). The second instance is where a majority representative arbitrarily, discriminatorily, or invidiously excludes or expels a negotiations unit employee seeking to participate in majority representative affairs affecting his or her employment conditions. FOP Lodge 12 (Colasanti), P.E.R.C. No. 90-65, 16 NJPER 126 (¶21049 1991); PBA Local 199 (Abdul-Hagq), P.E.R.C. No. 81-14, 6 NJPER 384 (¶11198 1980). Rinaldo, 38 NJPER at 56.

Charging Parties do not raise any issue with regard to PANJ's failure or refusal to represent them in contract negotiations or grievance processing, and none of their supporting documents support such a finding. For the reasons that follow, I find that the undisputed facts support the grant of summary judgment to PANJ on the second prong of the Rinaldo standard - whether PANJ arbitrarily, discriminatorily, or invidiously excluded or expelled Tortoreto and Ghee, as negotiations unit employees seeking to participate in majority representative affairs affecting their employment conditions.

Here, the undisputed facts show that Charging Parties were suspended as members in good standing for disseminating campaign literature and pamphlets, particularly for the information contained therein, during an internal union election. After receiving complaints by members who apparently believed the pamphlets contained damaging and false information, the union

executive board convened a disciplinary committee. The committee invited Charging Parties to attend, hear the witnesses and other evidence and defend themselves. The disciplinary committee refused their request to postpone the hearing. Neither Charging Parties nor their representative appeared at the disciplinary committee hearing. The committee held the hearing, reviewed the evidence, and made a recommendation to the executive board, which voted to discipline both members. Other members had been disciplined in the past. On its face this conduct is not arbitrary, discriminatory or invidious.

Charging Parties essentially assert that the following material facts are in dispute: whether PANJ had a legitimate basis for finding that Tortoreto and Ghee published false and misleading information about the salary and 401K of President Christie in the Secret Society pamphlet; whether Tortoreto published a certain PANJ member's name in the PRIDE Candidates flyer against her will and with knowledge that the flyer contained incorrect information; and whether Tortoreto and Ghee inappropriately utilized the PANJ logo on the PRIDE Candidate flyer. Charging Parties' brief at 46-47. All of these facts concern the substance of the disciplinary charges against Tortoreto and Ghee; specifically, the truth of the matters asserted in the campaign documents over which they were charged. As such, they concern internal union matters over which this

Commission lacks jurisdiction. It is irrelevant to this case whether Charging Parties' pamphlets were the truth, partly true or untrue. That judgment is for those authorized within PANJ (or a court) to decide and not for the Commission.

Likewise, Charging Parties' issues with the alleged improper composition of the discipline committee are also internal union matters. The Commission will not consider the correctness of the individual procedural steps taken by PANJ members in this or any other internal union matter, nor will the Commission substitute its judgment for those authorized within PANJ to make those determinations.

Finally, even if the Charging Parties' accusations Charging Parties about PANJ's alleged mismanagement and financial malfeasance were true, any remedies thereto, such as audits and the placement of "holds" on accounts, are outside the Commission's jurisdiction.

Charging Parties were suspended as members in good standing and Tortoreto was fined. Both were temporarily barred from participating in union-related activities, events and functions, including elections. Ultimately, Charging Parties were temporarily excluded - not expelled - from PANJ. As of the filing date of the instant Motion, Ghee's six-month suspension has been completed, and she has been reinstated and can participate in all activities and functions, including elections.

Thus, charging parties have not provided facts giving rise to an examination of PANJ's internal membership matters through the Commission's unfair practice jurisdiction. See Rinaldo, 38 NJPER at 56.

In sum, all of Charging Parties' allegations against PANJ are based on PANJ's alleged failures to follow the union's written procedures, and misinterpretations of its own bylaws. Their numerous allegations amount to no more than complaints about the way PANJ officers brought disciplinary charges against them, managed their hearing and decided their punishment, including the asserted harshness of the punishment they received. Charging Parties' arguments and documents submitted in response to PANJ's motion appear to seek to re-try those issues and in fact, tend to underscore the internal nature of the disputes. As the Commission clearly stated in Rinaldo and McLaughlin, it will not enforce unions' written constitutions and bylaws. As this is outside the Commission's jurisdiction, I decline to do so.

PANJ is a private organization and "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 157 N.J. Super. at 147. PANJ has authority to discipline its members, and allegations that it is failing to follow its own rules are outside the Commission's unfair practice

jurisdiction. See Communications Workers of America (Badini), H.E. 2013-008, ___ NJPER ___, aff'd by silence, (2012) citing Hoboken Police SOA (Mancuso and Julve), D.U.P. No. 92-21, 18 NJPER 319 (¶23136 1992) (in dismissing charge brought by two suspended police sergeants, Director of Unfair Practices found that the suspension from union membership involved "matters of interpretation of the provisions of the union constitution" over which the Commission lacked jurisdiction).

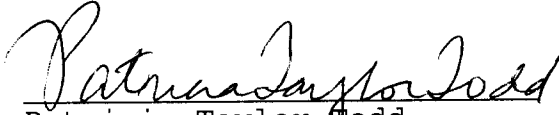
I find that even if all the allegations were proven true they would amount to internal union disputes. None of the alleged facts support even a potential violation of 5.4b(1) of the Act.

Finally, Charging Parties argue that a clarification of the PANJ negotiations units is necessary; however, this unfair practice charge is not the appropriate methodology for a clarification of the negotiations units - moreover, as individuals, Charging Parties do not have standing to file such a petition. See State of New Jersey (Dept. of Corrections), D.R. 98-7, 23 NJPER 526 (¶28254 1997) (only the exclusive representative or the public employer may file a petition for clarification of unit). Accordingly, individual employees do not have standing to file such petitions. N.J.A.C. 19:11-1.5(a).

For all of the foregoing reasons, I grant the Motion and dismiss the unfair practice charge in its entirety.

CONCLUSION

The Complaint is dismissed.


Patricia Taylor Todd
Hearing Examiner

DATED: January 23, 2013
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by February 4, 2013.