

D.U.P. NO. 95-6

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

In the Matter of

PBA LOCAL 75 (SOA),

Respondent,

-and-

Docket No. CI-95-3

JOSEPH CRIES, ET AL.,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging that the majority representative, PBA Local 75, violated its duty of fair representation by preventing the Charging Party from attending a meeting concerning an "amendment" to a proposed collective negotiations agreement.

The Director noted that Charging Party conceded his dual membership in the PBA and FOP; did not deny his expulsion from the PBA and concluded that no fact indicated that the union violated the duty of fair representation.

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Appearances:

For the Respondent  
S.M. Bosco Associates  
(Dr. Simon M. Bosco)

For the Charging Party  
A.J. Fusco, Jr. attorney

REFUSAL TO ISSUE COMPLAINT

On July 1, 1994, Joseph Cries filed an unfair practice charge against PBA Local 75, Superior Officers Association. The charge alleges that on June 28, 1994, Cries and other named employees were prevented from attending a meeting to "discuss amending the terms and conditions of the 1992-95 agreement between the Township of Edison and [Local 75]" (of which he is a "member"). Cries alleges that the union's action is "based upon [his] political affiliation and dual membership in the Fraternal Order of Police." Cries contends that the PBA's action is contrary to various articles of the collective negotiations agreement and violates 5.4(b)(1) and

(5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

PBA Local 75 denies it engaged in any unfair practice. It admits that on June 28, 1994, several members of the unit were excluded from the meeting. It further asserts that the charging party has been expelled from Local 75 because of his membership in a rival labor organization and that he is not being assessed a representation fee. PBA Local 75 further asserts that the law permits it to expel unit employees who join rival organizations and that it did not violate the duty of fair representation.

On August 26, 1994, I issued a letter tentatively dismissing the charge. On September 6, 1994, Cries filed a response seeking the issuance of a Complaint and Notice of Hearing. Cries maintains that "the issue" is whether PBA Local 75 violated the duty of fair representation by "preventing members of the recognized bargaining unit from expressing their right to vote on an economical issue...." He further asserts that he was permitted to vote in the "ratification process" but not the "amendment process."

Cries concedes in his charge that he and other named charging employees have (or had) dual memberships in the FOP and PBA. This fact is relevant to a determination on whether the

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<sup>1/</sup> 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. (5) Violating any of the rules and regulations established by the commission."

respondent engaged in unfair practices, notwithstanding Mr. Cries' desire to frame the legal "issue."

Cries does not deny he was expelled from Local 75 for dual membership. Such expulsions are lawful. Calabrese v. Policeman's Benevolent Ass'n, Local No. 76, 157 N.J. Super. 139 (Law Div. 1978). However, Cries maintains he nevertheless has a "right to vote on an economical issue."

In Quinn v. Woodbridge Tp. Fed. of Teachers, Local 822, AFT, AFL-CIO, Middlesex Cty. Chan. Div., Dkt. No. C-2188-75 (6/22/76), non-members claimed that the denial of a right to vote on a ratification constituted discrimination in violation of the Act. The Court disagreed, ruling that, "their exclusion from the membership prerogative to vote on ratification deprived them of no right, statutory or otherwise; they cannot be held to have suffered a penalty or reprisal in violation of N.J.S.A. 34:13A-5.3." [Slip. op. at 3-4]. See also, State Trooper NCO Ass'n (Varis Babris), D.U.P. No. 88-7, 14 NJPER 14 (¶19004 1987). No facts have been alleged showing that Cries, as an expelled member of Local 75, should have a greater entitlement to vote than one who merely elects not to be a member of the majority representative organization.

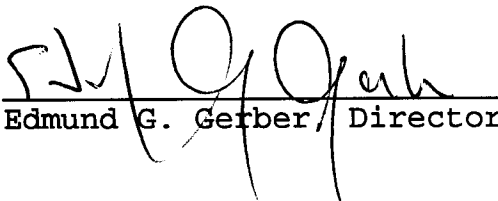
Nor has Cries alleged that any particular harm has befallen him because he was not allowed to vote on some "economic" issues. A breach of the duty of fair representation occurs only when a union's conduct toward a unit member is arbitrary, discriminatory or in bad faith. Belen v. Woodbridge Tp. Bd. of Ed. and Woodbridge Fed. of

Teachers, 142 N.J. Super. 486 (App. Div. 1976), citing Vaca v. Sipes, 386 U.S. 171 (1967).

Finally, New Jersey Courts have exercised jurisdiction over disputes between unions and their members in order to enforce a member's contractual rights stemming from the union's constitution. See Moore v. Local Union No. 483, 66 N.J. 527 (1975). The commission lacks jurisdiction to resolve such disputes. City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563, 566 (13260 1982).

Accordingly, I decline to issue a complaint and dismiss the charge.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: September 21, 1994  
Trenton, New Jersey