

P.E.R.C. No. 90-100

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

STATE LAW ENFORCEMENT CONFERENCE,

Docket No. CO-H-89-273

Charging Party,

-and-

NEW JERSEY STATE POLICEMEN'S
BENEVOLENT ASSOCIATION,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by the State Law Enforcement Conference against the State of New Jersey. The charge alleged that the employer violated the New Jersey Employer-Employee Relations Act when it refused to negotiate with SLEC over the terms and conditions of employment of law enforcement personnel. The Commission finds that the New Jersey State Policemen's Benevolent Association is the certified majority representative of the law enforcement unit and that it is willing and able to represent unit employees.

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Intervenor.

Appearances:

For the Respondent, Peter N. Perretti, Jr., Attorney
General (Richard D. Fornaro, Deputy Attorney General)

For the Charging Party, Loccke & Correia, attorneys
(Richard D. Loccke, Leon B. Savetsky, of counsel)

For the Intervenor, Zazzali, Zazzali, Fagella & Nowak,
attorneys (Paul A. Kleinbaum, of counsel)

DECISION AND ORDER

On March 22, 1989, the State Law Enforcement Conference ("SLEC") filed an unfair practice charge against the State of New Jersey. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(5) and (7),^{1/} when it refused to

^{1/} These subsections prohibit public employers, their representatives or agents from: "(5) Refusing to negotiate in good faith with a majority representative of employees in an

negotiate with SLEC over the terms and conditions of employment of law enforcement personnel.

On June 16, 1989, a Complaint and Notice of Hearing issued. On June 26, the New Jersey State Policemen's Benevolent Association ("PBA") intervened.^{2/}

On July 13, 1989, the PBA filed a motion for summary judgment. On August 17, SLEC replied. On September 12, the employer submitted a statement of position and affidavit. Further replies and documents were filed by September 27.

On August 22, 1989, the Chairman referred the motion to Hearing Examiner Charles A. Tudduni. On December 22, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 90-30, 16 NJPER 72 (¶21031 1989). He found that the PBA is the certified majority representative of the law enforcement unit and that therefore the employer had no obligation to negotiate with SLEC.

On January 19, 1990, SLEC filed exceptions. It claims that the Hearing Examiner erred in finding that: (1) a valid informal recognition may not occur where more than one employee organization contends it is the majority representative; (2) if two organizations

Footnote Continued from Previous Page

appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

^{2/} A Commission designee denied SLEC's request for interim relief. I.R. No. 89-24, 15 NJPER 428 (¶20178 1989).

are competing to be the majority representative, an employer must remain neutral; (3) the PBA is the majority representative by virtue of its 1972 certification; (4) the various SLEC submissions are consistent with the PBA delegating authority to run the day-to-day business of the unit; (5) the PBA did not clearly relinquish its representational rights, and (8) this case is analogous to Hoboken Bd. of Ed., P.E.R.C. No. 90-53, 16 NJPER 27 (¶21013 1989); recon. den. P.E.R.C. No. 90-72, 16 NJPER 140 (¶21055 1990), app. pending App. Div. Dkt. No. _____. It argues that it has raised sufficient facts supporting a conclusion that the PBA has abdicated its majority status to warrant a plenary hearing.

On January 29, 1990, the PBA filed a reply urging adoption of the recommended decision and asserting that there are no issues of material fact requiring a plenary hearing.

We have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 5-12) are accurate. We incorporate them here.

We also agree with the Hearing Examiner's conclusions of law. The PBA is the certified majority representative of the law enforcement unit. It has not relinquished that status. Nor has the employer de facto recognized SLEC as the PBA's replacement.

The PBA had the right to delegate authority to an affiliated entity. See Rath Packing Co., 275 N.L.R.B. No. 42, 119 LRRM 1063 (1985); Yates Industries, Inc., 264 N.L.R.B. No. 161, 112 LRRM 1231 (1982). It did so---for more than a decade SLEC has negotiated and administered agreements covering the law enforcement unit. But the PBA did not, by that delegation, relinquish its

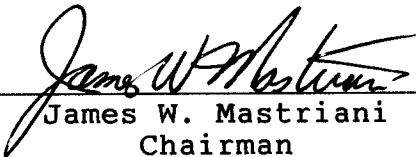
majority representative status to SLEC. It had a reserved right to revoke that delegation. Whisper Soft Mills v. NLRB, ___ F.2d ___, 118 LRRM 3022 (9th Cir. 1985); Rath.

We do not judge the wisdom or equity of the PBA's action. We find only that the PBA is still the certified majority representative and that it is willing and able to represent unit employees. SLEC has not provided any precedent for the proposition that de facto recognition should be permitted where there is already a certified majority representative.^{3/} In the absence of such support and any material disputed facts, we grant the PBA's motion for summary judgment.^{4/}

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Ruggiero and Wenzler voted in favor of this decision. None opposed. Commissioner Smith abstained.

DATED: May 14, 1990
Trenton, New Jersey
ISSUED: May 15, 1990

^{3/} Neither Essex Cty. Educational Services Comm'n, P.E.R.C. No. 86-68, 12 NJPER 13 (¶17004 1985) nor Barnegat Bd. of Ed., P.E.R.C. No. 88-79, 14 NJPER 223 (¶19081 1988) supports that proposition. Both cases concerned the rights of unions voluntarily recognized. Neither addressed SLEC's claim that an employer can voluntarily recognize a union despite the existence of a different certified majority representative.

^{4/} We agree with the Hearing Examiner that there are no facts to support finding a violation of subsections 5.4(a)(5) and (7).

H.E. NO. 90-30

STATE OF NEW JERSEY
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NEW JERSEY STATE POLICEMEN'S
BENEVOLENT ASSOCIATION,

Intervenor.

SYNOPSIS

A Commission Hearing Examiner grants a Motion for Summary Judgment and recommends that the Commission dismiss the Complaint in its entirety. The State Law Enforcement Conference (SLEC) alleges that the State of New Jersey (State) has refused its repeated requests to negotiate a successor to their expired collective negotiations agreement, in violation of subsection 5.4(a)(5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The Intervenor, New Jersey State Policemen's Benevolent Association (PBA), contends that it is the certified majority representative and therefore, the State is not obligated to negotiate with any other employee representative. The PBA asserts that the State has been negotiating with it and has properly refused to negotiate with SLEC. The PBA filed the motion and argues that there are no material facts in dispute and that it is entitled to judgment as a matter of law. The State maintains that the PBA is the certified majority representative, that it has been negotiating with the PBA and therefore, that it has not violated subsection 5.4(a)(5).

The Hearing Examiner finds that absent a clear and unequivocal waiver by the PBA, its certified majority representative status cannot be stripped away based upon the course of conduct alleged by SLEC. The Hearing Examiner finds the PBA certification was never amended, the PBA vigorously opposes SLEC's attempt to wrest majority representative status from it and it is ready and willing to represent the law enforcement unit. Finally, citing the Commission's recent decision on a summary judgment motion in Hoboken Bd. of Ed., P.E.R.C. No. 90-53, NJPER (¶ 1989), the Hearing Examiner concluded that under all the circumstances of this case, the State had sufficient reasons to believe the PBA was the statutory majority representative of the law enforcement unit and that it did not violate its duty to negotiate when it refused to negotiate with SLEC.

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Appearances:

For the Respondent,
Hon. Peter N. Perretti, Jr., Attorney General of New Jersey
(Richard D. Fornaro, Deputy Attorney General, of counsel)

For the Charging Party,
Loccke & Correia, Esqs.
(Richard D. Loccke, Leon B. Savetsky, of counsel)

For the Intervenor,
Zazzali, Zazzali, Fagella & Nowak, Esqs.
(Paul A. Kleinbaum, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

The State Law Enforcement Conference ("Charging Party" or "SLEC") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") on March 22, 1989 alleging that the State of New Jersey ("Respondent" or "State") violated subsections 5.4(a)(5) and (7) of the New Jersey Employer-Employee

Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act")^{1/} when it refused to negotiate with the Charging Party for the negotiations unit of law enforcement personnel employed by the State.

On June 15, 1989, the Charging Party submitted an application for an Order to Show Cause. A Complaint and Notice of Hearing was issued on June 16, 1989. On June 26, 1989, the New Jersey State Policemen's Benevolent Association ("Intervenor" or "PBA") submitted its request to intervene in this case. On June 26, 1989, a Commission designee conducted a hearing on the order to show cause. The PBA's request to intervene was then granted. Also on June 26, 1989, the State submitted its Answer to the Complaint. On June 29, 1989, the Commission designee issued his decision denying Charging Party's request for interim relief. I.R. No. 89-24, 15 NJPER 428 (¶20178 1989). I conducted a prehearing conference in July 1989 and two hearing dates were scheduled in August 1989.

On July 13, 1989, the Intervenor, PBA, filed a Motion for Summary Judgment with the Commission Chairman, accompanied by an affidavit, supporting documents and a brief. After receiving an extension of time to reply, the Charging Party submitted a reply brief, certification and supporting documents on August 17, 1989;

^{1/} These subsections prohibit public employers, their representatives or agents from: "(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. (7) Violating any of the rules and regulations established by the commission."

the State submitted a letter-statement of position and supporting affidavit on September 12, 1989. Second reply briefs and further supporting documents were submitted by the PBA and SLEC by September 27, 1989. Pursuant to N.J.A.C. 19:14-4.8, the Chairman referred the motion for summary judgment to me for decision.

SLEC contends that it and the State are parties to the most recently expired collective bargaining agreement covering the unit of law enforcement employees employed by the State. SLEC claims that the State has refused its repeated requests to negotiate.

The State denies all the allegations in the Complaint, leaves Charging Party to its proofs concerning the contents of the Novello affidavit dated March 20, 1989, and asserts two affirmative defenses: (1) it is not obligated to negotiate with any employee organization or person other than the certified majority representative of the law enforcement unit; and (2) it has commenced negotiations with the PBA, the current certified majority representative of the law enforcement unit.

The PBA contends that it is the certified majority representative of the unit of law enforcement employees employed by the State. It stresses that the contract identifies the majority representative as "the State Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association," and does not limit the designation of the unit representative to only SLEC. Inasmuch as it asserts that it is the certified majority representative, the

PBA maintains that the State is not obligated to negotiate with any other employee representative. It contends that the State has been negotiating with it and has properly refused to negotiate with SLEC or SLEC's designee. The PBA has moved for summary judgment, contending that no material facts are in dispute and that it is entitled to judgment as a matter of law.

While admitting that the PBA was certified by the Commission as the majority representative of the law enforcement unit, SLEC contends that the PBA has never functioned as the majority representative of the unit. SLEC alleges that for the past 13 years, it has functioned as the majority representative of the law enforcement unit in contract negotiations, administration and in other forums. SLEC argues that the PBA is merely a fraternal association and not an employee organization. SLEC contends that the State's informal recognition of it as the majority representative and the PBA's acquiescence to that de facto role make it the majority representative of the law enforcement unit.

SLEC notes that a summary judgment must be denied where genuine issues of material fact exist. It argues that several issues of material fact exist here and require resolution at plenary hearing: e.g., who actually negotiated, executed and administered the contracts and the PBA's knowledge of and acquiescence in SLEC's representation of the law enforcement unit over the last 13 years.

The PBA argues that an organization may achieve majority representative status only by PERC certification after an election,

N.J.A.C. 19:11-9.2, or by formal recognition from the employer pursuant to N.J.A.C. 19:11-3.1. The PBA argues that it cannot lose its status as the certified majority representative because it permitted a local entity to handle the day-to-day business of the law enforcement unit. The PBA also contends that it has represented the unit in collective negotiations. Finally, the PBA argues that if SLEC wishes to supplant it as the majority representative of the law enforcement unit, it should do so by filing a representation petition seeking an election among unit employees.

Following are the undisputed material facts.

Louis Novello has been employed by the State in the Alcoholic Beverage Control Division since 1974. He is a member of PBA Local 104 and has been chairman of the State Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association since 1987. From 1983-87, he served as PBA Local 104's delegate to SLEC. The State and State Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association are parties to a collective negotiations agreement covering law enforcement employees for the period from July 1986 through June 1989. Several times in late 1988 and early 1989, SLEC requested the State to negotiate for a new contract for the law enforcement unit. The State refused to negotiate with SLEC, Mr. Novello or their attorneys. This charge ensued.

Sam Love is the president of PBA Local 105. The employees in the New Jersey Department of Corrections subdivision of the law enforcement unit belong to PBA Local 105. Approximately 4500 corrections officers are included in the State law enforcement unit. PBA Local 105 is the largest of the PBA locals whose members are in the law enforcement unit. On May 5, 1989, the president of the PBA, Frank Genesi, designated Mr. Love as the representative of the PBA for collective negotiations with the State for a successor contract to the 1986-89 agreement. As of July 5, 1989, the State and the PBA had held two negotiations sessions.

The PBA is a state-wide labor organization. In 1972, the Commission certified it as the majority representative of a state-wide unit of law enforcement employees. Among other activities, it charters locals which represent police employees in collective negotiations.

The collective negotiations unit at issue is a state-wide unit of all non-supervisory law enforcement employees, excluding State Troopers. The collective negotiations unit is frequently referred to as "the State law enforcement unit" or "the Sleu unit" (sic).

The employees in this unit are employed in the following areas of State government: Palisades Interstate Park Police; State Police Alcoholic Beverage Control Inspectors; State Corrections Officers; Human Services Police; Fish, Game & Wildlife Conservation Officers; State Police Marine Bureau; Park Police (Rangers); State

Capital Police; Weights & Measures Inspectors; Campus Police; and Treasury Special Agents & Aeronautical Inspectors.^{2/} The employees from each of the above-listed police groups belong to separate PBA locals -- 12 in all. This collection of 12 PBA locals comprises the State Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association.

On December 9, 1970, the PBA filed a Petition for Certification of Public Employee Representative with the Commission seeking to become the certified majority representative of all employees of the State of New Jersey having law enforcement powers. A mail ballot election was conducted in January 1972. No other employee organizations intervened in that case; the PBA appeared alone on a yes-no election ballot. The PBA won the election and was certified by the Commission on February 9, 1972, as the exclusive majority representative of "all employees of the State of New Jersey having law enforcement and police powers" (Commission Certification of Representative, Docket No. RO-219).^{3/} Since February 1972, no petition for certification has been filed challenging the PBA's status as the certified majority representative of the law

^{2/} It appears that State Parole Officers were recently added to the law enforcement unit, but that fact is not clear in this record; their inclusion in or exclusion from the unit is not essential to this determination.

^{3/} I have taken administrative notice of official documents contained in the Commission's files of cases concerning the law enforcement unit. N.J.A.C. 19:14-6.6, N.J.A.C. 1:1-15.2 and N.J. Evid R.9(2).

enforcement unit and no amendment of certification has ever been issued amending the certification issued to the PBA. The State has never formally recognized another employee organization as the statutory majority representative of the State law enforcement unit. SLEC does not contend that the State gave it formal recognition.

SLEC asserts that the PBA did not "actively participate" in the negotiations of the first contract (1973-1975) negotiated for this unit and states that the first contract "was negotiated by a committee of the delegates from the various component [PBA] locals and executed by them." (Novello affidavit, dated August 14, 1989). Sometime between 1973 and 1976, the representatives from these several PBA locals "came together and organized the State Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association (SLEC) for the purpose of henceforth representing the said locals and administering the resulting contracts with the OER." (Novello affidavit, August 14, 1989.) The delegates elected a chairman and vice-chairman. In 1988, SLEC incorporated and adopted by-laws.

SLEC conducted negotiations for each successor contract after the 1973-76 agreement. The SLEC negotiations committee consisted of the SLEC chairman and vice-chairman and one or two representatives from each of the 12 PBA locals whose members are included in the law enforcement unit. SLEC has also administered each of the last six collective negotiations agreements covering the law enforcement unit.

SLEC submitted the contract cover pages, the preamble/recognition pages and the signature pages from the seven contracts covering the law enforcement unit during the period from 1973 through 1989 (Exhibits A-G, Novello affidavit, August 14, 1989). The 1973-75 contract cover page states:

AGREEMENT

THE STATE OF NEW JERSEY

New Jersey State Policemen's Benevolent Association

Law Enforcement Unit

The cover pages of all the subsequent contracts (1976 through 1979) state:

AGREEMENT

THE STATE OF NEW JERSEY

**State Law Enforcement Conference of the
New Jersey State Policemen's Benevolent Association**

Law Enforcement Unit

All of the cover pages contain the insignia of the State of New Jersey on the upper left of the page and the insignia of the New Jersey State Policemen's Benevolent Association on the upper right of the page.

The preamble of the first contract (1973-75) states:

This agreement entered into by the State of New Jersey, Office of Employee Relations in the Governor's Office and hereinafter referred to as the "State" and the New Jersey State Policemen's Benevolent Association, hereinafter referred to as "PBA", has as its purpose.... (emphasis added).

The preambles of the second through the seventh contracts (covering 1976 through 1989), state:

This agreement entered into by the State of New Jersey, Office of Employee Relations in the Governor's Office and hereinafter referred to as the "State" and the State Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association, hereinafter referred to as the "PBA", has as its purpose.... (emphasis added).

The recognition clauses from each of the contracts state:

The State recognizes the PBA as the sole and exclusive representative of those employees in the law enforcement unit for the purpose of collective negotiations.... (emphasis added).

On the signature pages of all of the contracts, the "In witness whereof" paragraphs state:

In witness whereof, the State and the Association have caused this agreement to be signed by their duly authorized representatives.... (emphasis added)

In the 1979-81 contract, the "In witness whereof" paragraph, states:

In witness whereof, the State and the Policemen's Benevolent Association have caused this agreement to be signed by their duly authorized representatives.... (emphasis added)

In the 1973-75 contract, the signatures for the union appear under the heading

FOR THE NEW JERSEY STATE POLICEMEN'S BENEVOLENT ASSOCIATION:

For the other six contracts covering the period from 1976 through 1989, the signatures for the union appear under the heading:

**FOR THE STATE LAW ENFORCEMENT CONFERENCE OF THE
NEW JERSEY STATE POLICEMEN'S BENEVOLENT
ASSOCIATION:**

Generally, each of the contracts is signed by either one or two representatives from each one of the twelve component PBA locals. The first contract (1973-75) is also signed by the "State PBA Atty."

SLEC also submitted examples of correspondence between it and the Governor's Office of Employee Relations and the New Jersey Department of Personnel further indicating its activities on behalf of the law enforcement unit. The correspondence concerns a variety of subjects: grievances, promotional programs, DOP rule amendments, requests to excuse employee representatives from work to attend SLEC "planning" meetings, etc.

The letterhead used by SLEC bares the insignias of the New Jersey State Policemen's Benevolent Association and the State of New Jersey. In bold caps across the top center of the page appears: "N.J. STATE POLICEMEN'S BENEVOLENT ASSOCIATION". In smaller print on the next line appears: "STATE LAW ENFORCEMENT CONFERENCE". Listed on the top left side of the letterhead are the various PBA locals and the corresponding subdivisions of State government in which the members of each local are employed.

Since 1972, several cases have been filed with the Commission concerning the law enforcement unit. They have been

filed under a variety of organizational names: the New Jersey State Policemen's Benevolent Association; the State Law Enforcement Conference; the State Law Enforcement Unit; PBA Local ~~XXX~~; SLEC of the New Jersey State PBA; SLEU of the New Jersey State PBA; and PBA Local ~~XXX~~ of SLEU.

No facts are alleged in the charge to support a violation of subsection 5.4(a)(7) of the Act.

The standards for considering a motion for summary judgment are:

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 the movant...is entitled to its requested relief as a matter of law, the motion...for summary judgment may be granted....

N.J.A.C. 19:14-4.8(d). See also R.4:46-1 and Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67 (1954).

A motion for summary judgment must be carefully considered; the moving papers are to be considered in the light most favorable to the party opposing the motion, all doubts are to be resolved against the movant and the summary judgment procedure is not to be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 182 (App. Div. 1981); Essex Cty. Educ. Services Comm'n, P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982). In Judson, the Court stated:

...Nor is summary judgment to be denied if other papers pertinent to the motion show palpably the absence of any issue of material fact, although the allegations of the pleadings, standing alone,

may raise such an issue. Summary judgment procedure pierces the allegations of the pleadings to show that the facts are otherwise than as alleged. Wade v. Six Park View Corp., 27 N.J. Super 469 (App. Div. 1953).

Judson, at p. 75.

The gravaman of the Complaint here is that the State violated subsections 5.4(a)(5) and (a)(7) of the Act when it refused to negotiate with the Charging Party. The State's answer and the parties' submissions on the motion for summary judgment identify a key issue in this case to be whether SLEC has standing to litigate the charge. In Essex County College, P.E.R.C. No. 87-81, 13 NJPER 75, 76 (¶18034 1986), the Commission stated:

Our law is settled that only the majority representative can litigate such a charge. See e.g., New Jersey Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd App. Div. Docket No. A-1263-80T2. This principle is not a mere matter of procedure. To the contrary, it is predicated on the exclusive representation principle, the cornerstone of our Act. See Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122, 138-139 (1978); Lullo v. International Association of Firefighters, 55 N.J. 409 (1970). In New Jersey Dept. of Higher Education, P.E.R.C. No. 85-77, 11 NJPER 74 (¶16036 1985), aff'd App. Div. Dkt. Nos. A-2920-84T7 and A-3124-84T7 (4/7/86), we stated:

A public employer only violates 5.4(a)(5) when it refuses to negotiate in good faith with a majority representative. Thus, individual employees and minority organizations do not have standing to litigate such a charge because the exclusive right to negotiate is vested in the majority representative. See, e.g., New Jersey Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980); Newark Board of Education, D.U.P. No. 84-7, 9 NJPER

555 (¶14230 1983). See also, Red Bank Regional Education Ass'n v. Red Bank Reg. High School Board of Education, 78 N.J. 122, 138-139 (1978); Lullo v. Intern Assoc. of Fire Fighters, 55 N.J. 409 (1970). As we said in New Jersey Turnpike Authority (citing State of New York and Frank S. Robinson, et al., PERB Case No. U-4537, 13 PERB 3105 (¶3063 1980)):

...a charge must allege a violation of a right of the Charging Party protected by the statute. Since the right to negotiate is that of the majority representative, not an individual employee or even a group of individual employees, only the majority representative may charge the employer with a violation of the duty to negotiate. [Id. at 561, n. 7]

[11 NJPER at 78; footnote omitted]

Accordingly to litigate this case, SLEC first must be deemed the statutory majority representative. N.J.S.A. 34:13A-5.3, 5.4(a)(5).

Under our law, there are three ways for an employee organization to become an exclusive majority representative: (1) through a petition for certification of employee representative, Commission election and certification of representative, N.J.S.A. 34:13A-5.3 and N.J.A.C. 19:11-1.1 et seq. ("certification"); (2) through a public employer's recognition of the employee organization as the majority representative, pursuant to N.J.A.C. 19:11-3.1 ("formal recognition"); and (3) through informal recognition which may be inferred from conduct and circumstances. Collingswood Bd. of Ed., P.E.R.C. No. 86-50, 11 NJPER 694 (¶16240 1985); New Jersey

Transit, P.E.R.C. No. 86-21, 11 NJPER 520 (¶16182 1985); Salem City Bd. of Ed., P.E.R.C. No. 81-6, 6 NJPER 371, (¶11190 1980); accord, PBA Local 53 v. Town of Montclair, 131 N.J. Super 505 (App. Div. 1974).

In Whisper Soft Mills v. NLRB, 118 LRRM 3024 (9th Cir. 1985), the International Ladies Garment Workers Union, AFL-CIO ("ILGWU" or "International") was certified by the NLRB as the exclusive majority representative in November 1979. During the next year, the employer and the Pacific Northwest Council of the ILGWU ("Council" or the "Local") had approximately 20 bargaining sessions during which time the employer stated the concern that the Council was not the certified majority representative and that it wanted the ILGWU to sign the agreement (when reached); the employer refused to sign the agreement unless the ILGWU signed it. The Council said the ILGWU did not wish to be bound by the contract. In December 1980, the employer withdrew recognition from the ILGWU, on the grounds that it had a good faith doubt as to whether a majority of the unit employees supported the ILGWU. The Board found that by insisting that the ILGWU first sign the agreement and by refusing to sign an agreement with the Council, the employer had refused to bargain in good faith in violation of the National Labor Relations Act, USC § 158(a)(5) and (1). The Court reversed, stating:

The duty of an employer to bargain with the chosen representatives of his employees in respect to...conditions of employment is an obligation only to the certified bargaining representative. The obligation, being exclusive, exacts a "negative duty to treat with no other."

In order to assert that Whisper Soft had a duty to bargain with the Council, the Council must...cloak itself in the authority of an authorized bargaining representative. The certified representative was, however, not the Council, but the ILGWU.

For purposes of determining the identity of the authorized representative, the local union is distinguishable as a legal entity from its international parent. (citations omitted).

Id., at 3025.

The Court then cited United Auto Workers v. NLRB, 394 F.2d 757, 67 LRRM 2695 (DC Cir. 1968), wherein the District of Columbia Circuit stated:

...where the international has been certified, an employer could hardly be held guilty of an unfair labor practice for failing to recognize a local union which was not certified. And we think this rule must apply even if the local acts as an integral part of the single joint representative of the employees at the bargaining table. An uncertified organization cannot...inject itself...into a labor relationship where there is a certification...in the face of the statutory provisions as to the exclusiveness....

Id., at 2698.

An international union may delegate authority to negotiate to an affiliated local union or some other entity either directly, or indirectly by acquiescence or ratification. Such authority may also be revoked upon timely notice. Whisper Soft; Rath Packing Co., 275 NLRB No. 42, 119 KRRM 1063 (1985); Spriggs Distributing Co., 219 NLRB No. 165, 90 LRRM 1332 (1975) and Independent Stove Co., 148 NLRB No. 49, 57 LRRM 1025 (1964).

In Yates Industries and Aluminum Workers International Union, AFL-CIO, 264 NLRB No. 161 (1982), the Board affirmed all of the findings and conclusions of an Administrative Law Judge who found that employer Yates had violated subsection (a)(5) of the NLRA when it withdrew recognition from the certified majority representative -- the International -- and recognized a newly formed, unaffiliated local to represent a unit of its employees. The AWIU was certified to represent certain employees of Yates. A local union affiliated with AWIU was later formed to conduct the day-to-day business for the unit. The local sometimes negotiated and executed contracts without the International; sometimes the contract named only the employer and the local as parties. After voicing its objection to how the International was handling grievances, the new local sought to disaffiliate from the International and demanded that the employer recognize and negotiate with it (the new, unaffiliated local) and not the International. When the employer recognized the new local, the International filed a charge. The Board found that the International union did not relinquish its status as the certified majority representative to the new local union, inasmuch as (a) there was no indication that the International ever took any overt steps to relinquish its representative status and (b) a collective negotiations agreement, negotiated and executed by the employer and the local and stating that it is an agreement between them, is insufficient to establish a relinquishment of the International's certified majority

representative status. Noting that the certification was never amended, that the certified majority representative (International) was present, ready and willing to represent the unit and that it opposed the attempt of the local union to substitute itself as the collective negotiations representative, the Board concluded that the case involved more than a mere disaffiliation. Rather, it was an attempt to change the certified majority representative, which thus implicated a question concerning representation. Accordingly, having found that the withdrawal of recognition of the International and recognition of the newly-formed local was a unfair labor practice, the employer was ordered to cease negotiations with the local and to recognize and negotiate with the International.

In Cape Local 1983, P.E.R.C. No. 85-80, 11 NJPER 91 (¶16039 1985), Civil and Public Employee Local 1983 filed petitions for amendment of certification through which it sought to amend several certifications to eliminate references to Local 1983's affiliation with the International Brotherhood of Painters and Allied Trades. Most of the certifications were issued to International Brotherhood of Painters and Allied Trades, AFL-CIO, Local 1983. The Commission found the International was a functioning, viable entity and that it vigorously opposed the proposed amendments. The Commission determined that the case raised a question concerning representation, not merely a change of the representative's name. The Commission concluded:

In short, there is a struggle between two labor organizations over which will represent the

employees in these units. Under all these circumstances, it is clear that Local 1983's petition seeks to oust the International...and thus to change the representative itself, not merely the representative's name. Accordingly, the petitions for amendment of certification are inappropriate and must be dismissed. In order to accomplish its objectives, Local 1983 must instead file representation petitions and win elections.

Cape Local 1983, at 93.

In order to maintain a charge alleging a violation of subsection (a)(5) of the Act, a charging party must establish that the employer refused to negotiate with the statutory majority representative of an appropriate collective negotiations unit. Here, the State refused to negotiate with SLEC. SLEC, however, is not the statutory majority representative of the law enforcement unit -- it was never certified by the Commission as the majority representative of the law enforcement unit; it was never formally recognized by the State as the majority representative of the unit; and, under all the circumstances of this case, it could not, as a matter of law, have been informally recognized by the employer as the majority representative of the law enforcement unit.

Initially, I note that in several cases the Commission has sanctioned informal recognition as a means by which an employee organization may achieve status as the majority representative of an

appropriate negotiations unit.^{4/} However, the Commission has never sanctioned an informal recognition where more than one employee organization was present and contending that it was the majority representative of the unit; under our Act, it cannot. N.J.S.A. 34:13A-6(d) and 5.3; Red Bank Reg. Ed. Assn. v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122 (1978). A valid informal recognition of an employee organization as the statutory representative of an appropriate unit may occur only when no other employee organization is in place as the majority representative or is claiming to be the majority representative. If two organizations are vying to be the majority representative, the Commission will find that a question concerning representation is raised and, under such circumstances, an employer must remain neutral. N.J.S.A. 34:13A-5.3, 5.4(a)(2) and (5) and 6(d); County of Middlesex (Roosevelt Hosp.) P.E.R.C. No. 81-129 7 NJPER 266 (¶12118 1981); New Jersey Transit, P.E.R.C. No. 86-21, 11 NJPER 520 (¶16182 1985); Whisper Soft.

In New Jersey Transit, the employer granted de facto recognition to the ATU as the statutory majority representative of certain New Jersey Transit employees. At that time, no other employee organization held a certification to represent the

4/ Collingswood, N.J. Transit, Salem City Bd. of Ed., PBA Local 53 v. Town of Montclair, Atlantic Cty. Sewerage Auth., P.E.R.C. No. 81-91, 7 NJPER 99 (¶12041 1981) and Essex Cty. Ed. Services Comm. P.E.R.C. No. 86-88. 12 NJPER 13 (¶17004 1985).

employees in question and no other organization asserted to the employer that it was the majority representative of the employees. Subsequently, without notice, the employer recognized TWU Local 225 as the new representative of the employees in question. The Commission found that the employer had properly given de facto recognition to the ATU as the majority representative of the disputed employees and that it violated the Act when it withdrew that recognition and recognized TWU Local 225.

By analogy, if SLEC's claim of informal recognition is valid, no other employee organization could have been present -- either already in place or contending to be the statutory majority representative of the law enforcement unit. Here, there was a representative in place -- the PBA was certified as the majority representative of the law enforcement unit in 1972; accordingly, under these circumstances, no valid informal recognition could be effected.

However, SLEC further asserts that the PBA has never functioned as the majority representative and that since 1976, SLEC has functioned as the majority representative of the law enforcement unit.

We start here with a Commission certification issued to the PBA. Inasmuch as certified majority representative status is statutorily conferred, it cannot be easily undone. The PBA never directly relinquished its statutory majority representative status. No clear and unequivocal statement from the PBA waiving its status was submitted or alleged by SLEC.

SLEC's submissions -- the contracts, the letterhead, the fact that the SLEC is comprised of employee organizations chartered and governed by the New Jersey State Policemen's Benevolent Association -- are at least consistent with the circumstance of the PBA being the majority representative. See Yates, where the NLRB found that contracts running only to the local were insufficient to show that the certified international union had relinquished its certified majority representative status. I note that here the contracts do not run to the SLEC exclusively but to "the State Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association." None of this undermines the PBA's certified majority representative status. As to SLEC's negotiations and administration of contracts, I note that as the certified majority representative, the New Jersey State Policemen's Benevolent Association was able to delegate authority -- either directly or by acquiescence -- to a local or locals to run the day-to-day business of the unit. Whisper Soft; United Auto Workers; Rath Packing Co.; and Spriggs Distributing Co.

Absent a clear and unequivocal waiver by the PBA, its certified majority representative status cannot be stripped away based upon the course of conduct asserted here. The certification was never amended, the PBA vigorously opposes SLEC's attempt to wrest majority representative status from it and it is ready and

willing to represent the law enforcement unit. See Yates; United Auto Workers; Cf. Cape Local 1983.^{5/}

Finally, in ruling on a motion for summary judgment in Hoboken Bd. of Ed., P.E.R.C. No. 90-53, __ NJPER __ (¶_____ 1989), the Commission addressed a circumstance analogous to this matter. In Hoboken, the Board rescinded a memorandum of agreement which it had earlier signed and ratified. After the Board ratified the agreement, the Association President called a special meeting of the Association at which it ratified the memorandum of agreement. Subsequently, however, the Association's Executive Committee notified the Board that it had voted to set aside the Association's ratification due to voting irregularities and to remove the Association President from office. The Association's Executive Committee also requested that negotiations be reopened. Based upon this information, the Board voted to rescind its ratification. The Commission stated:

We are reluctant to intercede in what is predominantly an intra-union dispute. See City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563 (¶13260 1982). We do so here only to the extent necessary to determine whether the Board violated the Act when it rescinded its ratification of the memorandum of agreement....

^{5/} To the extent that SLEC wishes to replace the PBA as the certified majority representative of the law enforcement unit, it raises a question concerning representation which may be resolved only through the filing of a timely representation petition and Commission-conducted election. N.J.S.A. 34:13A-6(d). N.J.A.C. 19:11-1.1 et seq.; Cape Local 1983.

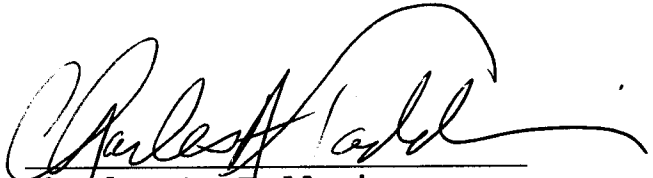
Under all these facts, we grant the Board's motion for summary judgment. We need not resolve what person or body speaks for the Association. That is an internal matter best resolved through internal means. We need only examine the Board's conduct in light of the circumstances it faced. Under those circumstances we find that it did not violate its duty to negotiate in good faith by rescinding its ratification vote. Cf. Mt. Olive Bd. of Ed., P.E.R.C. No. 84-73, 10 NJPER 34 (¶15020 1983) (no violation where employer reasonably believed it was dealing with duly authorized representatives of union); Essex Cty. College P.E.R.C. No. 87-81, 13 NJPER 75 (¶18034 1986) (Commission considered series of factors including membership vote to determine what entity spoke for majority representative). Contrast Matawan-Aberdeen Reg. Sch. Dist., P.E.R.C. No. 89-130, 15 NJPER 411 (¶20168 1989) (violation for direct dealing despite awareness of officially designated representative). The Board had sufficient reasons to believe that the Executive Committee was the officially designated representative of the Hoboken Teachers Association. Accordingly, the Complaint is dismissed. (footnote omitted).

Hoboken, slip op. at 6-7.

A similar analysis may be made here: under all these circumstances, I find the State did not violate its duty to negotiate in good faith when it refused to negotiate with SLEC and instead negotiated with the PBA. Under the circumstances it faced, the State had sufficient reasons to believe that the PBA was the statutory majority representative of the law enforcement unit.

Inasmuch as the PBA is the certified majority representative of the law enforcement unit and has not relinquished that status, SLEC's claim of informal recognition must fail. Under these circumstances, the State had no obligation to negotiate with

SLEC. See Hoboken Bd. of Ed. Accordingly, SLEC's §(a)(5) charge alleging that the State refused to negotiate with it cannot be maintained. There are no facts alleged to support the §(a)(7) charge. Under all these facts, I grant the PBA's motion for summary judgment and recommend that the Commission dismiss the Complaint in its entirety.



Charles A. Tadduni
Hearing Examiner

DATED: December 22, 1989
Trenton, New Jersey