

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FIREMEN'S MUTUAL BENEVOLENT  
ASSOCIATION LOCAL #35,

Respondent,

-and-

Docket No. CI-82-47-126

WILLIAM CARRAGINO,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, dismisses a Complaint based on an unfair practice charge that William Carragino had filed against the Firemen's Mutual Benevolent Association Local #35. Carragino had alleged that Local #35 violated subsection 5.4(b)(1) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it refused to readmit him to membership, but the record showed that Local #35 acted reasonably in rejecting his application.

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Appearances:

For the Respondent, Rinaldo and Rinaldo, Esqs.  
(Gerald J. Martin, of Counsel)

For the Charging Party, Capro & Hilliard, Esqs.  
(William T. Hilliard, of Counsel)

DECISION AND ORDER

On March 30, 1982, William Carragino filed an unfair practice charge against the Firemen's Mutual Benevolent Association Local #35 ("FMBA") with the Public Employment Relations Commission. The charge alleged that the FMBA violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsection 5.4(b)(1),<sup>1</sup> when it refused to readmit William Carragino as a member.

On May 18, 1982, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On May 24, 1982, the FMBA filed an Answer claiming that it did not unreasonably reject Carragino's reapplication for membership. In an October 11, 1982 letter supplementing its Answer, the FMBA provided

<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."

detailed reasons explaining why it denied Carragino membership.

On October 13, 1982, Commission Hearing Examiner Edmund G. Gerber conducted a hearing. The parties examined witnesses, presented evidence and waived oral argument. Both parties submitted post-hearing briefs by November 5, 1982.

On March 10, 1983, the Hearing Examiner issued his report and recommendations, H.E. No. 83-28, 9 NJPER 203 (¶14093 1983) (copy attached). Based upon Carragino's attempts to have the Deputy Chief position eliminated against the interests of his fellow members, his attempts to form a rival organization composed of superior officers, and his unsuccessful suit against the FMBA to obtain monies held in the Special Death and Retirement Fund, the Hearing Examiner held that it was reasonable for the FMBA to reject Carragino's application for readmittance. Accordingly, the Hearing Examiner recommended that the Commission dismiss the Complaint.

Both parties were served with the Hearing Examiner's report on March 14, 1983. Exceptions were due by March 24, 1983. Carragino's attorney received an extension of time until April 7, 1983, but no Exceptions have been filed.<sup>2/</sup>

It must be determined whether the FMBA arbitrarily, capriciously, or invidiously rejected Carragino's application for readmittance. The law creates a presumption that the majority representative violates the Act when it denies membership to an

<sup>2/</sup> Carragino's attorney also requested oral argument. In the absence of specific Exceptions, I deny this request.

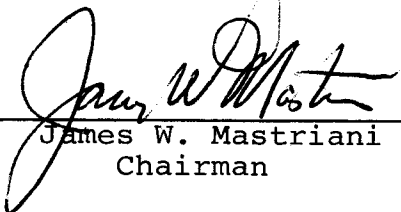
employee it represents. In order to rebut this presumption, the employee organization must prove that the rejection was for good cause. If it succeeds, no violation of subsection 5.4(b)(1) exists. In re West Orange PBA, Local No. 25, P.E.R.C. No. 83-6, 8 NJPER 433 (¶13202 1982), motion for enforcement granted, App. Div. Docket No. A-1684-82T3 (3/30/83); In re Council No. 5 New Jersey Civil Service Assn., P.E.R.C. No. 82-75, 8 NJPER 123 (¶13053 1982); and In re Rasheed Abdul-Haqq, P.E.R.C. No. 81-14, 6 NJPER 304 (¶11198 1980).

The full Commission has delegated to the Chairman the authority to act on its behalf in deciding this dispute. Based on my review of the record, and in the absence of any Exceptions, I conclude that substantial evidence supports the Hearing Examiner's findings of fact and conclusions of law. I adopt and incorporate them here. Accordingly, the Complaint is dismissed.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

DATED: Trenton, New Jersey  
May 18, 1983

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

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SYNOPSIS

A Hearing Examiner recommends that the Commission find that Local 35 F.M.B.A. did not violate the Public Employer-Employee Relations Act when it denied membership to William Carragino.

Mr. Carragino had been a member of Local 35 but was disruptive in his conduct, resigned his membership from the Local, attempted to establish a new union and sued the Local. After his suit was unsuccessful he applied for readmittance into the Local. It was found that the totality of Carragino's conduct was sufficient to warrant the Local's denial of Carragino's application for readmittance into the Local.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

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For the Respondent, Rinaldo and Rinaldo, Esqs.  
(Gerald J. Martin, Esq.)

For the Charging Party, Capro & Hilliard, Esqs.  
(William T. Hilliard, Esq.)

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

On March 30, 1982, William Carragino, an individual, filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the Firemen's Mutual Benevolent Association, Local #35 ("FMBA" or "Respondent") violated N.J.S.A. 34:13A-5.1 et seq. (the "Act") when it failed to readmit William Carragino to membership. It was specifically alleged that said action violated §5.4(b)(1) <sup>1/</sup> of the Act.

It appearing that the allegations of the charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 18, 1982.

1/ This subsection prohibits 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."

A hearing was conducted on October 13, 1982, at which time both parties were given an opportunity to present evidence, examine and cross-examine witnesses and argue orally. Briefs were submitted by November 5, 1982.

William Carragino is a Captain in the Hillside Fire Department and until 1978 was a member of F.M.B.A. Local 35, at which time he resigned. In 1981 Carragino applied for readmission to Local 35 but his application was refused. It is on the basis of the Local's refusal to readmit Carragino that the instant action was brought.

In 1977 the Hillside Fire Department had 12 captains and five deputy chiefs. A position of Deputy Chief opened up and a Civil Service test was scheduled for the position.

It was generally believed within the fire department that one of two men were likely to receive the promotion, either Capt. Dill or Capt. Kimmel for they both did very well on examinations.

During this time period, Carragino had a run-in with Capt. Dill's father, who is himself a Deputy Chief.

While Carragino was supposed to be on duty he went into City Hall to take care of personal business without his radio. (He therefore could not be reached in the event of fire, etc.) Chief Dill saw Carragino and accused him of leaving his duty post. Dill and Carragino had an argument. Carragino ultimately received a penalty of the loss of 20 hours of holiday pay.

Carragino thereupon went to the Respondent Local 35 and filed a grievance. The Grievance Committee went before the Chief

to discuss the penalty. The chief was adamant that Carragino behaved improperly and would not alter the penalty. Carragino in turn told the Grievance Committee that he wanted an apology from Chief Dill.

Carragino then withdrew the grievance, stating that he would "work behind the scenes" with the Township Committee; Carragino's cousin was on the committee. At this time Carragino began making statements that the Deputy Chief positions are unnecessary and he would recommend to the Township Committee that these positions be eliminated. (The Respondent argued that Chief Dill's son, Capt. Dill, was a likely candidate for the Deputy Chief position and Carragino was getting back at Chief Dill through his son by the elimination of the position.)

At the hearing Carragino testified that he only recommended that one of the Deputy Chief positions be eliminated, but the three FMBA witnesses, all forthright and credible, testified that Carragino simply stated that the Deputy Chief positions should be eliminated. After observing the demeanor of all witnesses I find that Carragino's statements were not limited to the one Deputy Chief position.

Carragino was unsuccessful in getting the Township Committee to lift the penalty. He then went back to the FMBA and asked them to renew the grievance, which it did. The Grievance Committee met with the chief who offered to change the penalty to loss of ten hours of compensatory time. <sup>2/</sup> The Grievance Committee accepted the offer.

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<sup>2/</sup> Compensatory time is non-reimbursable time off.



When the Grievance Committee explained the settlement to Carragino he objected and, on his own, called a meeting of Local 35. He asked for a vote on whether to accept the Grievance Committee's settlement. The Local voted to reject the settlement. The President of the Local and several members of the Grievance Committee resigned for they believed the rejection of the settlement constituted a non-confidence vote. The Local then represented Carragino before the Township Committee and ultimately a lesser penalty was imposed.

In the meantime, although Capt. Dill came in first on the promotional test, the Town never promoted anyone to the Deputy Chief position. Instead, the Town created a new position of Battalion Chief at a lower pay scale. Deputy Chiefs received a pay differential of 35% over firefighters but Battalion Chiefs received a pay differential of 28%. Up to the date of the hearing no new Deputy Chiefs have been appointed by the town although positions have become available through attrition. Instead the vacant positions are filled by new Battalion Chiefs.

Shortly after his grievance was finally resolved Carragino resigned from the F.M.B.A. and became president of a group of superior officers who attempted to negotiate on their own.

Apparently simultaneously, Carragino along with several other former FMBA members who also resigned, instituted a civil action against the F.M.B.A. Said action sought to obtain monies held in the F.M.B.A.'s Special Death and Retirement fund. Carragino's group was unsuccessful in the litigation. Shortly thereafter Carragino sought readmission into Local 35 but the Local refused.

Analysis

The law creates a presumption that it is a violation of subsection 5.4(b)(1) for a majority representative to deny membership to a public employee it represents. Rasheed Abdul-Haqg and P.B.A. Local #199 Inc. and New Jersey State PBA, P.E.R.C. No. 81-14, 6 NJPER 384 (¶11197 1980). This presumption is rebuttable. An employee does not have an absolute right of membership. An association may refuse membership to an employee for good cause. That is, when the denial is not arbitrary, capricious or invidious. Council No. 5, N.J.C.S.A. and Nicholas Labriola, P.E.R.C. No. 82-75, 8 NJPER 123 (¶13053 1982).

When one views Carragino's totality of conduct, one cannot say that the Respondent's actions were arbitrary, capricious or invidious.

Based on the totality of the record I find that Local 35 had good reason to infer that Carragino attempted to have the position of Deputy Chief eliminated because of his antagonism to Capt. Dill.

Carragino unquestionably had the right to aggressively seek redress of his grievance, but when he, out of spite, attempted to have the Deputy Chief position eliminated, he was working against the interests of his fellow FMBA members.

He then left the Respondent to form a rival organization and at the same time brought suit against the Respondent. Carragino became the Respondent's antagonist. He sought to rejoin only when he was unsuccessful in litigation. Given this history of outright hostility, Local 32 had good reason to deny Carragino membership.

On the basis of the entire record, I find that the Respondent Local 35, FMBA has overcome the presumption that it violated §5.4(b)(1).

Accordingly it is hereby recommended that the complaint in this matter be dismissed in its entirety.

  
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Edmund G. Gerber  
Hearing Examiner

DATED: March 10, 1983  
Trenton, New Jersey