

P.E.R.C. NO. 90-65

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FRATERNAL ORDER OF POLICE,  
NEWARK LODGE NO. 12,

Respondent,

-and-

Docket No. CI-89-83

JOHN COLASANTI, ET AL,

Charging Parties.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by eight employees represented by the Fraternal Order of Police, Newark Lodge No. 12. The charge alleged that the FOP violated the New Jersey Employer-Employee Relations Act by expelling the charging parties from the FOP because they assisted PBA Local 3 in a representation election challenging the FOP and by collecting representation fees from the charging parties after their expulsions. The Commission finds that the charging parties failed to prove that the expulsions were arbitrary, capricious or invidious. In assessing whether the collection of agency fees from the expelled members violated the Act, the Commission finds that any interference with protected rights is outweighed by the legitimate organizational interest in collecting fees to help pay for the representation that the FOP is obligated to provide.

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JOHN COLASANTI, AL BERTELIN,  
JOE FARINA, CALVIN LARKINS,  
WILFREDO RODRIGUEZ, SALVATORE CAPONE,  
DARRYL ARMSTRONG AND ANTHONY BUONO,

Charging Parties.

Appearances:

For the Respondent, Markowitz & Richman, Esqs.  
(Stephen C. Richman, of counsel)

For the Charging Parties, Zazzali, Zazzali, Fagella &  
Nowak, Esqs. (Paul L. Kleinbaum, of counsel)

DECISION AND ORDER

On March 10, 1989, John Colasanti, Al Bertelin, Joe Farina, Calvin Larkins, Wilfredo Rodriguez and Salvatore Capone filed an unfair practice charge against the Fraternal Order of Police, Newark Lodge No. 12 ("FOP").<sup>1/</sup> The charge, as amended, alleges that the FOP violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsection 5.4(b)(1) and sections 5.5 and 5.6,<sup>2/</sup> by (1) expelling the charging parties from

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<sup>1/</sup> On March 30, 1989, the charge was amended to add Darryl Armstrong and Anthony Buono as charging parties.

<sup>2/</sup> Subsection 5.4(b)(1) prohibits employee organizations from: "(1) Interfering with restraining or coercing employees in the exercise of the rights guaranteed to them by this act." Sections 5.5 and 5.6 provide for the collection of representation fees if certain prerequisites are met, including that the majority representative provide membership to all employees in the unit on an equal basis.

the FOP because they assisted PBA Local 3 ("PBA") in a representation election challenging the FOP and (2) attempting to collect representation fees from the charging parties after their expulsions.

On May 3, 1989, a Complaint issued. The FOP filed an Answer admitting that it had expelled the charging parties from membership and had placed them on representation fee status. It denied that these actions violated the Act.

The parties stipulated certain facts and exhibits, waived a hearing and a Hearing Examiner's report, and submitted this case to us pursuant to N.J.A.C. 19:14-6.7. We have reviewed the record. We accept the factual stipulations and summarize the most relevant ones here.

The FOP represents all rank-and-file police officers employed by the City of Newark. The charging parties are in the FOP's negotiations unit. Before their expulsion, they were members of the FOP and the PBA.

On September 15, 1988, the PBA filed a representation petition seeking to replace the FOP as majority representative. The FOP won an election and was recertified as the majority representative.

After the election, each of the charging parties was charged with violating Article 9, Section 1 of the FOP's by-laws. That provision provides:

Section 1. Any member of the Lodge or officer of the Lodge may be fired, suspended or expelled by the Board of Directors for conviction of a crime, for insubordination to superior officers of the Lodge, for failure to remain in good standing by the prompt payment, within three (3) months, of all fees, dues, fines, and assessments levied by the Board of Directors, for the willful, or wantonly negligent infraction of any By-Laws, contract, rule, regulation or order, or for acts or conduct which may be deemed disorderly or injurious to the interests or hostile to the objects of this Lodge.

Specifically, the charging parties were charged with handing out PBA literature, serving as PBA election challengers, and campaigning for the PBA.<sup>3/</sup> They were scheduled to appear before the FOP Executive Board. Only Farina, Larkins, Armstrong and Buono appeared. They gave statements about their activities on election day. When asked by the Executive Board, they stated that they would assist the PBA again.<sup>4/</sup> After reviewing the evidence, the Board voted by secret ballot to expel the charging parties for their activity on behalf of the PBA in the representation election.<sup>5/</sup>

The City was notified that the dues authorization deduction list should be changed to reflect that the charging parties were

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<sup>3/</sup> Buono was charged with tearing down FOP literature.

<sup>4/</sup> Armstrong did not recall what was said but the FOP contends that he denied that he would work for the PBA again.

<sup>5/</sup> Two other members were charged and found not guilty. One denied that he assisted the PBA and the FOP could not prove the allegation; the other testified that he assisted the PBA out of a sense of obligation because of a fundraiser the PBA conducted to raise money for his legal fees, and that he would not get involved in any future election.

removed from the membership list and placed on the representation fee list. The FOP does not prohibit expelled members from reapplying for membership. Any such application is considered in accordance with the application process set forth in the FOP's by-laws.

There are two questions before us. First, did the FOP violate subsection 5.4(b)(1) by expelling unit members who assisted the PBA in the November 28 representation election? Second, did the FOP violate subsection 5.4(b)(1) and sections 5.5 and 5.6 by collecting agency fees from the expelled unit members?

The charging parties admit they helped the PBA in its representation challenge and would do so again. They contend, however, that section 5.3 protects those actions.<sup>6/</sup> They claim that by expelling them from membership, the FOP is chilling the exercise of protected rights.

The FOP contends that a majority representative has the right to defend itself against those who would destroy it. It claims that membership in the FOP was available to the charging parties on a full and equal basis. However, as members, they were subject to the FOP by-laws and were expelled for violating those

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<sup>6/</sup> Section 5.3 provides, in part, that:

public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity....

by-laws. The FOP maintains that the expulsions were neither arbitrary nor capricious.

An employee organization violates subsection 5.4(b)(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. Cf. New Jersey Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550, 551 n.1 (¶10285 1979). Employee organizations are free to create rules binding on their members to accomplish organizational objectives. These rules, often in the form of constitutions and by-laws, are part of the contract between the organization and its members. Calabrese v. Policeman's Benev. Ass'n, Local No. 76, 157 N.J. Super. 139 (Law Div. 1978). The courts have traditionally been reluctant to interfere with the internal affairs of private organizations. Review of an organization's by-laws is necessary only when they impair the public welfare or an individual's opportunity for economic success. Calabrese; see also Falcone v. Middlesex Cty. Medical Society, 34 N.J. 582 (1961).

Calabrese held that a union may expel discordant elements in order that harmony may prevail. The Court stated:

The advocacy of dual unionism and sponsorship or creation of a rival organization has been held to be activity clearly in violation of membership responsibilities and disruptive of contractual relations; otherwise the members could campaign against the union while remaining a member and therefore, privy to union strategy and tactics. [Id. at 154]

The standard for testing such expulsions is whether they were arbitrary, capricious, or invidious. Cf. CWA Local 1037 (Schuster), P.E.R.C. No. 86-78, 12 NJPER 91 (¶17032 1985); FMBA Local No. 35 (Carrigino), P.E.R.C. No. 83-144, 9 NJPER 336 (¶14149 1983); Council No. 5, NJCSA (Labriola), P.E.R.C. No. 82-75, 8 NJPER 123 (¶13053 1982); City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563 (¶13260 1982); PBA Local No. 199 (Rasheed Abdul-Haqq), P.E.R.C. No. 81-14, 6 NJPER 384 (¶11198 1980).

Here, the charging parties have failed to prove that the FOP's actions were arbitrary, capricious or invidious. The charging parties were actively trying to replace the FOP with the PBA. They informed the FOP that they would do so again. The FOP acted reasonably and therefore lawfully when it expelled the "discordant elements". See Calabrese.<sup>7/</sup>

The charging parties also contend that collecting agency fees from expelled unit members violates subsection 5.4(b)(1) and sections 5.5 and 5.6. They claim that collecting fees penalizes them for engaging in protected activities and violates the Act's requirement that fee collectors afford membership on an equal basis. The FOP claims that it is entitled to collect agency fees since it still has the duty to represent the charging parties fairly, and that otherwise they would enjoy a free ride.

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<sup>7/</sup> The parties have stipulated that the charging parties may reapply for FOP membership. Any reapplication rejections would be subject to the same standard of review.

N.J.S.A. 34:13A-5.6 erects conditions to the collection of representation fees. Kramer v. Boonton Bd. of Ed., 99 N.J. 523 (1985). One is that membership in the majority representative is available to all employees on an equal basis. In Rasheed Abdul-Hagg we stated:

It would be anomalous to hold that an organization could on the one hand close its doors to an eligible and willing prospective member and to allow the organization with the other hand to collect a 'service fee' from the same individual. The purpose of N.J.S.A. 34:13A-5.6 is not to establish a unit member's right to belong to the organization, which is embodied in N.J.S.A. 34:13A-5.3, but rather to insure that organizations which do not afford employees the right to join and participate in organizational democracy, cannot extract fees from those they would exclude. [Id. at 386]

See also Jersey City.

In Bergen Cty. Sheriff (Neely), P.E.R.C. No. 88-9, 13 NJPER 645 (¶18243 1987), aff'd 227 N.J. Super. 1 (App Div. 1988), recon. den. 3/15/88, certif. denied, 111 N.J. 591 (1988), we found that "a majority representative cannot collect representation fees from employees denied membership solely because they belong to other employee organizations." Id. at 646. That case did not, however, reach the issue of legally expelled members. We noted that:

We limit this decision to the simple question of membership. We do not address the separate question of whether representation fees could be collected from employees whose memberships were terminated for actually disrupting union affairs or whose memberships were conditioned upon nonparticipation in confidential union affairs more specifically implicating the conflict between rival organizations. [Id. at 646 n.3]



This case falls within the Bergen Cty. exception: an employee organization collecting fees from employees legally expelled for disrupting union affairs.

In assessing whether the collection of agency fees from these expelled members violated subsection 5.4(b)(1), we must balance the rights of the charging parties against the rights of the employee organization. Employees have the right to join an employee organization and the right to be represented without regard to their membership status in the employee organization. On the other hand, an employee organization has the right to establish internal rules to protect its interests and those of its members.

On balance, we find that any interference with protected rights is outweighed by the legitimate organizational interest in collecting fees to help pay for the representation that the FOP is obligated to provide. We have already found that the expulsions were not arbitrary. The charging parties were disrupting FOP affairs by attempting to have the FOP removed as the majority representative. They can continue to vigorously support the PBA if they so choose. Membership in the FOP is not necessary for either employment or advancement in police work.<sup>8/</sup>

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8/ Local 1104, CWA v. NLRB, 520 F.2d 411 (2d Cir. 1985) cert. den. 473 U.S. 1041 (1976) is distinguishable. In the private sector, it is permissible to condition an employee's continued employment upon union membership so long as membership is not terminated for any reason other than the failure to pay dues and initiation fees. Here, nonmembership has no employment consequences. Accord Civil Service Employees Ass'n, Inc., 17 PERB 3072 (NY 1984).

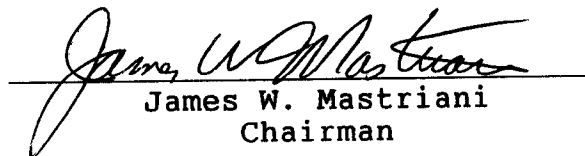
Nor are we persuaded that the FOP is failing to provide membership on an equal basis. There are a significant number of PBA members who have been afforded FOP membership and have not been expelled. These particular members were expelled in accordance with internal union procedures for violating specific rules. The legislative scheme would be undermined by allowing active support for a rival organization in a representation election to nullify a unit member's financial obligation to the majority organization that must fairly represent that member. We need not decide here under what circumstances the FOP must either readmit the charging parties or forfeit the collection of representation fees.

Accordingly, the charging parties have failed to prove that the FOP violated subsection 5.4(b)(1) or sections 5.5 and 5.6.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Smith and Johnson voted in favor of this decision. Commissioners Reid, Wenzler and Ruggiero voted against this decision.

DATED: Trenton, New Jersey  
January 31, 1990  
ISSUED: February 1, 1990