

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Respondent,

-and-

Docket No. CO-80-78-78

CAMDEN POLICE SUPERIOR
OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

In an unfair practice case presenting an issue of first impression in New Jersey, the Commission finds that the Camden Police Superior Officers Association may not be represented for the purposes of collective negotiations and adjustment of grievances by Teamsters Local 676. The Commission finds that the Association's "hiring" of Local 676 to act on its behalf violates an implicit legislative policy against the representation of police by an employee organization which admits non-police to membership. The prohibition against the arrangement presented in this case is subsumed in the language of N.J.S.A. 34:13A-5.3 which prevents police from becoming members of an employee organization which admits non-police to membership. Although the members of the Superior Officers Association did not actually join Teamsters Local 676, the Commission determines, in accordance with comments of the Appellate Division in County of Gloucester v. PERC, 107 N.J. Super. 150 (App. Div. 1969), aff'd 55 N.J. 333 (1970), that policemen may not be represented by an employee organization which admits employees other than policemen to membership. The Commission finds that the police officers constitutional rights of free association under the First Amendment to the United States Constitution are not violated by barring the Teamsters from representing the Superior Officers Association, since the Superior Officers did not become members of the Teamsters, and hence did not actually exercise their right of association. Moreover, the Commission determines that while it is empowered to examine constitutional arguments in carrying out its jurisdiction, an administrative agency does not have the authority to declare a statute to be unconstitutional particularly with respect to a portion of the Act which creates the agency. Accordingly, the Commission finds that the City of Camden had no obligation to negotiate with Teamsters Local 676 as a representative of the Camden Police Superior Officers Association, and hence did not violate N.J.S.A. 34:13A-5.4(a)(5) by refusing to do so.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Respondent,

-and-

Docket No. CO-80-78-78

CAMDEN POLICE SUPERIOR
OFFICERS ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Murray, Granello & Kenney, Esqs.
(Malachi J. Kenney, of Counsel)

For the Charging Party, Tomar, Parks, Seliger, Simonoff
& Adourian, P.C. (Robert F. O'Brien, of Counsel)

DECISION AND ORDER

On September 27, 1979, an Unfair Practice Charge was filed with the Public Employment Relations Commission by the Camden Police Superior Officers Association (the "Association") alleging that the City of Camden (the "City") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), by refusing to negotiate with the Association because it had hired Teamsters Local 676 (the "Teamsters") to be its representative in negotiations with the City. The charge alleged that the City had violated N.J.S.A. 34:13A-5.4 (a) (5).^{1/}

^{1/} This subsection prohibits 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."

It appearing that the allegations of the Unfair Practice Charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on March 25, 1980. Pursuant to the Complaint and Notice of Hearing, a pre-hearing conference was held on July 25, 1980. Pursuant to N.J.A.C. 19:14-6.7, the parties stipulated the facts in this matter, waived an evidentiary hearing and a Hearing Examiner's Recommended Report and Decision, and agreed to submit this matter directly to the Commission based upon the formal pleadings, the stipulation of facts, the contract between the parties, and the briefs.

Based upon the entire record, including the stipulation of facts^{2/} and the briefs submitted in this matter, the Commission finds the following factual setting. The City has recognized the Association as the exclusive majority representative for collective negotiations in a unit consisting of sergeants, lieutenants, and captains in the Camden Police Department. The City and the Association as the majority representative have entered into several collective agreements.

In a letter dated August 15, 1979, John P. Greeley, President of the Teamsters Local 676 sent a letter to the Mayor of Camden advising him that Local 676 had been hired by the Camden Police Superior Officers Association to represent it. In this letter, Greeley stated that by the term represents, "I basically mean that Teamsters Local 676 has been hired by the Superior Police Officers to represent them in contract negotiations,

2/ A copy of those stipulations is attached hereto.

internal affairs, grievance procedures and arbitration." The City refused to negotiate with the Teamsters as the representative of the Association and filed an unfair practice charge (Docket No. CE-80-5), alleging illegal interference against the Teamsters with the negotiations between the City and the Association. The City also filed an application for interim relief based on its charge. The Association responded by filing the instant charge. The Commission's designated agent did issue an interim relief order on the City's charge in which he temporarily enjoined the Teamsters from representing the Association for purposes of collective negotiations.^{3/}

This case is a matter of first impression for the Commission. The City bases its defense to the Complaint on the language of N.J.S.A. 34:13A-5.3 itself. This statute provides in relevant part:

Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely

^{3/} This order was issued on September 27, 1979, the same day as the Association filed the instant charge. Pursuant to the interim relief order the Association itself then negotiated with the City, and a new collective negotiations agreement was achieved through interest arbitration. It therefore appeared that the dispute was resolved and the City's charge was withdrawn.

Subsequently, the attorney for the Charging Party herein notified the Commission that the Association still desired to hire the Teamsters to represent it and therefore it wanted to pursue its charge, which had never been withdrawn, against the City. Thus the complaint issued in this case. On April 7, 1980 the City filed a new charge (CE-80-24) which was really a re-institution of its original charge.

As indicated in the stipulation of facts, collective negotiations, including interest arbitration, have continued during the processing of this case between the City and the PSOA.

and without fear of penalty or reprisal, to form, join, and assist any employee organization or to refrain from any such activity; provided...nor, except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collective negotiations; and provided further, that, except where established practice, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership... (emphasis added)

The question before the Commission is whether the Teamsters can serve as the representative of the Association for the purposes of collective negotiations, internal affairs, grievance procedures and arbitration and not violate the statute.

The stipulated facts establish that the Teamsters is an employee organization that represents and admits employees other than policemen to membership, including private sector employees in the City of Camden. The members of the Association are policemen within the meaning of the Act, and the Association is the representative of those members as police employees of the City of Camden for the purposes of collective negotiations pursuant to the Act. The Association argues that as long as its members do not become members of the Teamsters, neither its action in hiring the Teamsters nor the Teamsters' action in representing it are contrary to the statute's language or intent and are therefore permissible. We do not agree and find that the City has no duty to negotiate with the Teamsters as the Association's hired representative.

In County of Gloucester v. PERC, 107 N.J. Super 150 (App. Div. 1969), aff'd, 55 N.J. 33 (1970), PERC had declared that certain county correction officers were not policemen and therefore were not precluded from joining Teamsters Local 676 (the same organization involved in the present matter), which admitted to membership employees other than policemen. On appeal, PERC's holding that the correction officers were not policemen because they were neither armed nor called upon to exercise reserved police powers even though authorized to, was found to be an overly restrictive interpretation of subsection 5.3. The Court held that the "legislative objection cannot be frustrated by such a narrow reasoning." 107 N.J. Super at 158. In analyzing the statute and the meaning of "policeman," the Court stated: "We are unaided by any specific explication or definition of 'policeman' in the legislative history of the statute in question, and therefore turn to the most universal and effectual way of discovering the true meaning of a law, when the words are dubious, which is by considering the reason and spirit of it, or the cause which moved the Legislature to enact it." Gloucester at 156.

The Commission finds the Court's wording in Gloucester, supra, to be instructive when it warned against frustrating the legislative objective by applying reasoning too narrowly in determining whether certain factual circumstances are to be governed by the statute. In interpreting the statute, the Court reasoned that "...the Legislature was seriously concerned with preventing law enforcement officers, authorized to make detections, apprehensions and arrests, from joining an employee's union

which might place them in a conflicting position and create circumstances for possible divided loyalty or split allegiance." Gloucester at 157. We, too, must be careful not to give too restrictive an interpretation of the words of the statute and thereby hinder its intent.

Although the policemen in the Association have not claimed that they are presently, or in the future, "joining" the Teamsters union, the Commission finds that the arrangement between the Association and the Teamsters frustrates the Legislature's intent in enacting Section 5.3. The Teamsters have been hired to represent the Association in collective negotiations, grievances, arbitrations, and internal affairs and to simply state that because Association members would not be "members" of the Teamsters is an attempt to circumvent the law. To approve this relationship would sanction the potential conflict which the Legislature intended to prohibit.

In Hasbrouck Heights Hospital Assn. v. Borough of Hasbrouck Heights, 15 N.J. 447 (1954) and Grogan v. DeSapio, 11 N.J. 308 (1953), it was found that a statute should not be construed to permit its purposes to be defeated by evasion. "A construction which would have the effect of placing it in the power of the transgressor to defeat the object and purpose of the law by evasion will not be favored." State v. Gratole Brothers, Inc., 26 N.J. Super. 581, 585 (1953). We find that such an evasion exists in this case based on the functions the Teamsters would assume and on which they demand recognition from the City. These functions include the heart of the legal responsibilities and

duties of an exclusive majority representative. N.J.S.A. 34:13A-

5.3 also states:

...Representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election conducted by the commission as authorized by this act shall be the exclusive representatives for collective negotiations concerning the terms and conditions of employment of the employees in such unit...

and further

...A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership. Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment. (emphasis supplied)

The letter which was sent to the Mayor by the Teamsters' President, states that the Teamsters will act and represent the Police Superior Officers Association in these very functions which the exclusive representative is obligated to perform.

We find that although the prohibition against police becoming members of an employee organization which admits non-police to membership may not be literally violated on the stipulated facts of this record, allowing police officers of the City to be represented in collective negotiations by the Teamsters as set forth in the August 15, 1979 letter constitutes an impermissible

attempt to circumvent the intent of the Legislature.

Moreover, we find support for our belief that the instant arrangement is improper in the language governing the organizational and representational rights of supervisory employees. While supervisors may join an organization that admits non-supervisory employees to membership, they may not be represented in collective negotiations by that organization. N.J.S.A. 34:13A-5.3. We believe that by specifically prohibiting even membership by police in an organization that admits non-police in the immediately succeeding proviso, the Legislature was indicating that the prohibition against representation of police by non-police organizations was subsumed within the limitation on membership as the latter was considered more all encompassing than the former. This view of legislative intent is supported by the excerpts from the County of Gloucester case, supra, which speak in terms of potential conflicts posed for police vis a vis non-police in much the same terms that the Supreme Court has used in discussing the potential conflicts of interest which can occur when supervisors are represented by an organization which also represents employees whose performance and conduct they must evaluate or regulate. Compare e.g. Gloucester, supra, 107 N.J. Super at 157 with Board of Education of West Orange v. Wilton, 57 N.J. 404, 416-417 (1971).

The fact that the Court in Gloucester was thinking in terms of potential problems of representation is also illustrated by this language from the opinion:

The critical problem posed on this appeal is whether the decision of the Commission that County correction officers are not policemen and therefore may be represented

by the Teamsters Union, is consistent with the intendment of N.J.S.A. 34:13A-5.3 which provides that "no policemen shall have the right to join an employee organization which admits employees other than policemen to membership."

107 N.J. Super at 155 (emphasis added)

The Court went on to hold that the decision of the Commission, which had allowed correction officers who were found to be policemen to join and thus be represented by the Teamsters, "... is incompatible with the reason and spirit of N.J.S.A. 34:13A-5.3 in that it violated an implicit legislative policy." Id at 159, (emphasis added).

The Association has also argued that the prohibition against police joining an employee organization that admits employees other than policemen improperly interferes with the individual officer's rights of freedom of association under the First Amendment to the United States Constitution. However, we do not believe that this case presents that issue. The stipulated facts do not present a situation where a police employee has sought membership, or been denied membership, or been penalized for joining an employee organization.^{4/} The only question before us is the appropriateness of permitting the Association to hire the Teamsters to represent them in negotiations under our Act and that

^{4/} While it is readily conceded that police officers or public employees generally do not relinquish their First Amendment rights when they accept public employment, and that some lower federal courts have found overly broad prohibitions on police officers' membership in other organizations to be an infringement on their freedom of association, that factual situation is not presented herein. The specific question before PERC is whether the City violated its duty to negotiate in good faith by refusing to negotiate with the Teamsters as the representative of the Association; the more general question is whether N.J.S.A. 34:13A-5.3 prohibits the hiring arrangement attempted by the Association herein. Neither of these constitutes a limitation on an individual police officer's right to join an organization.

limitation does not violate the Constitution.

Even where a federal court has found police officers' freedom of association to be improperly restricted, it has also held that a state may restrict or even completely deprive police of collective negotiations rights enjoyed by other public employees without violating the constitutional rights of the individuals. See Vorbeck v. McNeal, 407 F. Supp. 733 (E.D. Mo.), aff'd 426 U.S. 943, reh. denied 429 U.S. 874 (1976) (holding there is no federal constitutional right to collective bargaining and that exclusion of police officers from bargaining rights enjoyed by other public employees was a classification bearing a rational relation to a legitimate government interest). Additionally, the restriction of 29 U.S.C.A. §159(b)(3) (section 9(b)(3) of the National Labor Relations Act), which is analogous to N.J.S.A. 34:13A-5.3 in that it prohibits an organization which admits non-guards from being certified to represent private sector guards, has passed constitutional muster against a First Amendment freedom of association claim. See Teamsters Local 344 v. NLRB, 568 F. 2d 12 (7th Cir. 1977). The Court held that the restriction imposed was too limited to justify holding it unconstitutional.^{5/} Thus, even if a prohibition on police becoming members

^{5/} In Lullo v. International Association of Firefighters, 55 N.J. 409 (1970) the Supreme Court upheld the constitutionality of the exclusive majority representative concept against an attack by minority organization members in a unit that it violated the New Jersey constitutional guarantee that public employees can be represented by the representatives of their own choosing. The Court recognized that this most basic concept of labor relations, that the organization selected by the majority of employees shall be the representative of all employees in the unit for the purposes of collective negotiations, constitutes a limitation upon the rights of the non-supporters to have the organization of their choice, but held that the limitation did not offend Article I, Paragraph 19 of the N.J. Constitution.

(continued)

of Teamsters Local 676 (which is not the case herein) could be considered suspect, prohibiting the Association from having the Teamsters represent it in negotiations and the presentation of grievances does not violate either the U.S. or New Jersey Constitutions.

Moreover, even if the constitutional arguments were triggered by these facts, the Commission, as a creation of the Legislature, must presume the constitutional validity of the legislation under which it operates until passed upon by a judicial body. Baldwin Construction Co. v. Essex Co. Bd. of Taxation, 24 N.J. Super. 252, 272 (Law Div. 1952), aff'd 27 N.J. Super. 240 (App. Div. 1953), aff'd 16 N.J. 329 (1954). While an administrative agency should apply all relevant law, including constitutional law, in passing upon the action of parties within its jurisdiction, it is a generally accepted principle that such agencies do not have the authority to declare a statute unconstitutional, particularly a portion of the act which creates it. Hunterdon Central High School Board of Education v. Hunterdon Central High School Teachers Assn, 174 N.J. Super. 468, 474-475 (App. Div. 1980), aff. on the opinion below, ___ N.J. ___ (1981).

6/ (continued)

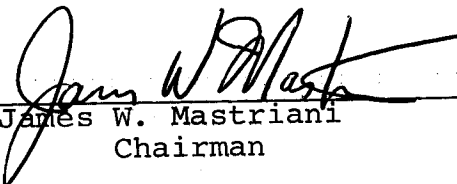
It should also be recognized that Article I, Paragraph 19 only grants public employees the right to organize and present grievances and proposals. This does not confer on them a right to be represented in collective negotiations. See Delaware River and Bay Authority v. International Org. of Masters Mates & Pilots, 45 N.J. 138, 144-145 (1965). This broader right is found in N.J.S.A. 34:13A-5.3.

In conclusion, we find implicit in N.J.S.A. 34:13A-5.3 a prohibition which prevents an organization which admits non-police to membership from representing police for the purposes of collective negotiations and the adjustment of grievances. The instant arrangement violates that prohibition, and hence the City was under no duty to negotiate with Teamsters Local 676 as the representative of police employed by the City.

ORDER

The Complaint in this matter is hereby dismissed in its entirety.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Parcels, Suskin, Hipp and Newbaker voted for this decision. Commissioner Graves was not present.

DATED: Trenton, New Jersey
June 9, 1981
ISSUED: June 10, 1981