P.E.R.C. NO. 2001-30

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TEAMSTERS LOCAL 331,

Respondent,

-and- Docket No. CI-2000-44

HOWARD CHARLES MCLAUGHLIN,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission remands an amended unfair practice charge to the Director of Unfair Practices. The amended charge was filed by Howard Charles McLaughlin against Teamsters Local 331 and alleges that the union violated the New Jersey Employer-Employee Relations Act in connection with the negotiation and ratification of a collective negotiations agreement between Local 331 and the City of Atlantic City. Mclaughlin appealed the Director's refusal to issue a Complaint. The Director found that the Commission did not have jurisdiction over the assertions that Local 331 violated by-laws concerning ratification procedures and dues increases. He also found that not having shop stewards attend meetings with the employer's attorney was an internal union decision. In addition, he found that the allegation that Local 331 favored some unspecified white collar employees did not support finding a breach of the duty of fair representation absent an allegation of discrimination or bad faith. The Commission concludes that the allegation that Local 331 violated its by-laws by increasing dues without calling a special meeting involves solely an alleged breach of a union by-law and does not implicate the duty of fair representation or any other possible unfair practice and was properly dismissed by the Director as outside the Commission's jurisdiction. Viewing the remaining allegations collectively, the Commission believes that they do not suffice to assert a breach of the duty of fair representation. The Commission finds that the amended charge does not set forth enough facts to support the allegations and affords McLaughlin a final opportunity to amend the charge to specify the facts underlying any perceived breach of the duty of fair representation.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Weissman & Mintz, attorneys (Mark A. Rosenbaum, of counsel)

For the Charging Party, Howard Charles McLaughlin, pro se

DECISION

On May 25 and June 13, 2000, Howard Charles McLaughlin filed an unfair practice charge and amended charge against Teamsters Local 331. The charge, as amended, alleges that Teamsters Local 331 violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4b(1), (2) and (5),[1/] in connection with the negotiation and ratification of a collective negotiations agreement between

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1/ These provisions 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. (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances. (5) Violating any of the rules and regulations established by the Commission."

Teamsters Local 331 and the City of Atlantic City. The amended charge specifically alleges that between September 5 and December 27, 1999, Local 331 did not bring its shop stewards to meetings with the City's labor relations attorney and that Local 331 did not give reasonable notice of a ratification meeting held on December 27, 1999. The charge also alleges that at that meeting, Local 331 did not take steps to prevent agency shop employees from voting; "exercised undue influence and coercion over the 'white collar' employees to achieve a favorable vote"; and "had the interests of only a certain few segments of the 'white collar' employees...." Finally, the charge alleges that Local 331 increased dues without holding the special meeting required by its by-laws.

Attached to the charge were several exhibits pertaining to an earlier action McLaughlin filed against Local 331 in the Superior Court in Atlantic County. McLaughlin sought to have the new contract, effective January 1, 2000, enjoined on several grounds, including an allegation that Local 331 violated its by-laws by not giving reasonable notice of the ratification vote. His Complaint also sought to have dues increases rescinded because the special meeting required by the by-laws had not been held. The Honorable L. Anthony Gibson, J.S.C., dismissed the Complaint for lack of jurisdiction, but stated that McLaughlin could bring his complaint to the Commission. In filing his charge, McLaughlin submitted a cover letter stating that Judge Gibson had indicated that the Court would reopen the matter if the Commission did not have jurisdiction.

On July 24, 2000, the Director of Unfair Practices refused to issue a Complaint. D.U.P. No. 2001-4, 26 NJPER 394 (¶31154 2000). He found that the Commission lacked jurisdiction over McLaughlin's assertions that Local 331 violated by-laws concerning ratification procedures and dues increases. He also found that not having shop stewards attend meetings with the employer's attorney was an internal union decision. In addition, he found that the allegation that Local 331 favored some unspecified white collar employees did not support finding a breach of the duty of fair representation absent an allegation of discrimination or bad faith.2/

On August 7, 2000, McLaughlin appealed the refusal to issue a Complaint. He asserts that the Commission has jurisdiction to consider his contentions that Local 331 unduly influenced and coerced white collar employees at the ratification meeting and that agency shop employees should not have been allowed to vote. Local 331 asks in response that we affirm the Director's ruling "absent an allegation of willful discriminatory conduct by the union during the ratification process."

On October 25, 2000, McLaughlin requested oral argument. We deny that request.

2/ The Director also ruled that paragraphs 6 and 7 of the amended charge did not meet the requirement that a charge clearly and concisely state the facts constituting the alleged unfair practice. N.J.A.C. 19:14-1.3(a)3. McLaughlin does not dispute that ruling.

This case involves two settled principles. The first is that a majority representative owes a duty of fair representation to all employees within its negotiations unit. The second is that a union has considerable latitude in governing itself and the Commission will not intervene in internal union affairs. We will explain these principles and then examine how they apply.

N.J.S.A. 34:13A-5.3 states that "[a] majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in that unit." However, that section also imposes a duty of fair representation: the majority representative "shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership." A union will not be found to have violated that duty unless its conduct was arbitrary, discriminatory, or in bad faith. Compare Saginario v. Attorney General, 87 N.J. 480 (1981) and Vaca v. Sipes, 386 U.S. 171 (1967). See also D'Arrigo v. New Jersey State Bd. of Mediation, 119 N.J. 74, 78-79 (1990).

In the context of negotiating contracts, a majority representative is accorded wide latitude in trying to secure the deal it believes both possible and best. See Belen v. Woodbridge Tp. Bd. of Ed., 142 N.J. Super. 486 (App. Div. 1976), certif. den. 72 N.J. 458 (1976). The Belen court quoted these passages from Ford Motor Co. v. Huffman, 45 U.S. 330 337-338 (1953):

> Any authority to negotiate derives its principal strength from a delegation to the

> negotiators of a discretion to make such concessions and accept such advantages as, in the light of all relevant considerations, they believe will best serve the interests of the parties represented. A major responsibility of negotiators is to weigh the relative advantages and disadvantages of differing proposals.
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> Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.
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> Compromises on a temporary basis, with a view to long range advantages, are natural incidents of negotiation. Differences in wages, hours and conditions of employment reflect countless variables. [at 337-338, 73 S. Ct. at 686.]
>
> [142 N.J. Super. at 491]

In Airline Pilots v. O'Neill, 499 U.S. 65 (1991), the Supreme Court cautioned that a labor relations agency regulates the process of collective bargaining, but not the outcome. The Court added:

> Any substantive examination of a union's performance, therefore, must be highly deferential, recognizing the wide latitude that negotiators need for the effective performance of the bargaining responsibilities.... For that reason, the final product of the bargaining process may constitute evidence of a breach of duty only if it can be fairly characterized as so far outside a "wide range of reasonableness"... that it is wholly "irrational" or "arbitrary."

Despite this latitude, however, a union cannot use its power as exclusive representative to punish an employee or group of employees. See, e.g., City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982)(union illegally excluded one employee's job classification from its interest arbitration offer because employees resented his previous raises). See generally Hardin, The Developing Labor Law, 1464-1471 (3d ed. 1992). Such discriminatory representation may be evidenced by irregularities in the ratification process -- a union bent on using its negotiations power to penalize a group of employees might seek to exclude those employees from participating in the ratification process. See, e.g., SEIU Local 455/74, P.E.R.C. No. 94-117, 20 NJPER 275 (¶25139 1994)(union may breach its duty of fair representation by its actions surrounding ratification); cf. Branch 6000, National Association of Letter Carriers v. NLRB, 595 F.2d 806 (D.C. Cir. 1979)(union violated duty of fair representation by limiting referendum on days off to union members who were not acting as a "committee of the whole" considering the entire unit's interest, but rather as individual employees expressing personal preferences).

The second principle is that unions and other private organizations are given wide latitude in adopting rules for internal governance. Calabrese v. PBA Local 76, 157 N.J. Super. 139, 146 (Law Div. 1978). Courts have jurisdiction to enforce a union's constitution or by-laws; we do not. And we will not

intercede in intra-union disputes unconnected to allegations and proof that an unfair practice has been committed. City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563 (¶13260 1982)(unions committed unfair practices by collecting representation fees from CETA employees without affording membership on an equal basis, but could lawfully deny union members who were temporary employees the opportunity to run for union office). We cannot police how a union conducts a ratification vote absent factual allegations tying specific ratification misconduct to a specific breach of the duty of fair representation in negotiations.

We now apply these principles to the allegations in McLaughlin's amended charge. We ask whether those allegations raise issues within our unfair practice jurisdiction and clearly specify facts which, if true, may constitute an unfair practice. N.J.A.C. 19:14-1.3 (charge must clearly and concisely state facts constituting the alleged unfair practice and must specify the time and place the alleged acts occurred and the actors' names); N.J.A.C. 19:14-2.1 (Complaint should not issue unless the allegations, if true, may constitute unfair practices).

The allegation that Local 331 violated its by-laws by increasing dues without calling a special meeting involves solely an alleged breach of a union by-law and does not implicate the duty of fair representation or any other possible unfair practice. That allegation was properly dismissed because it is outside our jurisdiction.

The remaining allegations are tied to the negotiations process so they warrant closer examination to see if a breach of the duty of fair representation has been alleged. We will consider each allegation separately and then consider them all collectively.

The allegation that shop stewards were excluded from meetings with the City's attorney does not assert a possible unfair practice; a majority representative need not bring all members of its negotiations team to every negotiations session, and it is not unusual that a smaller group would meet with an employer's labor relations attorney. The allegation that a by-law was violated by not giving "reasonable notice" of a ratification meeting is outside our jurisdiction since it is not tied to other factual allegations evidencing unfair representation. Not taking safeguards to prevent non-members from voting is not an unfair practice absent a specific connection to an unfair representation claim. An allegation that a union "exercised undue influence and coercion" over some employees at a ratification meeting must be supported by specific factual allegations describing the misconduct and connecting it with alleged unfair representation; the amended charge does not state such facts or meet the specificity requirements of N.J.A.C. 19:14-1.3. Finally, a conclusory allegation that a majority representative had the interests of only some employees in mind does not meet our specificity requirements or suffice to allege unfair representation in negotiating a contract.

Viewing those allegations collectively, we also believe that they do not suffice to assert a breach of the duty of fair representation. It appears that McLaughlin believes that Local 331 negotiated an agreement that discriminated against a group of employees and that it then conducted the ratification process so as to discount the voice of that group. But the amended charge does not give enough factual flesh to that belief. It does not specify, for example, the group of employees discriminated against; how this group was discriminated against (the benefits denied or detriments incurred); who intimidated and coerced employees at the ratification meeting; and what statements and acts evidence such intimidation and coercion. Specificity is imperative when a charge alleges improprieties in negotiating and ratifying contracts; the settlement of negotiations disputes and the validity of new agreements should not remain open to question without a specific basis for such a question.

Having said all this, we will nevertheless afford McLaughlin a final opportunity to amend his charge to specify the facts underlying any perceived breach of the duty of fair representation. We do so given the unique posture of this case where the Superior Court instructed him to present his claims to us yet may have indicated that he could return to that forum if we did not consider his claims. McLaughlin has conscientiously tried to have his claims heard and he should not be required to return to Superior Court unless it is clear that he is not asserting

specific facts which, if true, might constitute unfair representation. Cf. Kaczmarek v. New Jersey Turnpike Auth., 77 N.J. 329 (1978)(employee who tried to raise fair representation claim in court should not be barred from filing charge).

We remand this case to the Director to afford McLaughlin 20 days from the date of this decision to amend his charge.3/ The Director should not issue a Complaint unless an amended charge asserts specific facts which, if true, might constitute a breach of the duty of fair representation.

ORDER

The allegation concerning increases in dues without complying with a by-law is dismissed. The case is otherwise

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3/ We caution charging parties that attaching exhibits to a charge or generally incorporating exhibits does not satisfy our specificity requirement. The charge itself must specify each factual allegation so that the respondent may know the factual allegations and answer them one-by-one. The respondent must then specifically admit, deny, or explain each allegation or have an unanswered allegation deemed to be admitted. N.J.A.C. 19:14-3.1

remanded to the Director of Unfair Practices for proceedings consistent with this opinion.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: November 30, 2000
Trenton, New Jersey
ISSUED: December 1, 2000