

P.E.R.C. NO. 2014-31

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PROBATION ASSOCIATION OF NEW JERSEY,

Respondent,

-and-

Docket No. CI-2011-045

PETER TORTORETO AND ROBYN GHEE,

Charging Parties.

SYNOPSIS

The Public Employment Relations Commission adopts a Hearing Examiner's recommended decision granting the Probation Association of New Jersey's (PANJ) motion for summary judgment dismissing an unfair practice case filed against it by Peter Tortoreto and Robyn Ghee. The charging parties alleged that PANJ violated the New Jersey Employer-Employee Relations Act, specifically N.J.S.A. 34:13A-5.4b(1), when it brought disciplinary charges against them resulting in suspensions from PANJ, fines, and other penalties. The Commission agrees with the Hearing Examiner that the charging parties' allegations, even if true, concern internal union matters over which the Commission does not have jurisdiction.

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, Fox and Fox, attorneys (Craig Gumpel, of counsel)

For the Charging Parties, Law Offices of C. Gregory Stewart, attorneys (Clifford G. Stewart, of counsel)

DECISION

On February 18, 2013, Peter Tortoreto and Robyn Ghee (collectively "Charging Parties") filed exceptions to a Hearing Examiner Report and Recommended Decision which granted the Probation Association of New Jersey's ("PANJ") motion for summary judgment. The motion for summary judgment arose out of the Charging Parties' unfair practice charge filed on April 4, 2011 against PANJ. The charge alleges that PANJ violated subsection of 5.4b(1)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act) when PANJ brought disciplinary

^{1/} This provision 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."

charges against the Charging Parties resulting in suspensions from PANJ, fines, and other penalties. The Charging Parties assert that PANJ violated its duty of fair representation when it did not follow its Constitution and By-laws during the disciplinary process and the punishments meted out against the Charging Parties amounted to an expulsion from PANJ in violation of the Act.

A Complaint^{2/} issued on March 14, 2012. PANJ filed its Answer on March 28. On May 31, PANJ filed a motion for summary judgment together with a brief and Certification of George Christie, its President. On July 30, the Charging Parties filed a brief and Certifications from both of the Charging Parties in opposition to the motion. On August 14, PANJ filed a brief in response to the Charging Parties' submission. The motion was referred to Hearing Examiner Patricia Taylor Todd. N.J.A.C. 19:14-4.8(a).

On January 16, 2013, the Hearing Examiner issued her Report and Recommended Decision granting PANJ's motion for summary judgment. H.E. 2013-12, 39 NJPER 403 (¶128 2013). She found that the allegations of the Charging Parties in the Complaint concerned internal union matters over which the Commission lacks jurisdiction and that the Charging Parties did not allege any facts which would amount to unfair practices within the Act.

^{2/} An Amended Complaint issued on March 26, 2012.

We incorporate the comprehensive factual and procedural history set out in the Hearing Examiner's decision.

On February 19, 2013, the Charging Parties filed exceptions to the Hearing Examiner's Report and Recommended Decision.^{3/} On February 28, PANJ filed a response to the Charging Parties' exceptions.

The Charging Parties filed six exceptions to the Hearing Examiner's Findings of Fact^{4/} ("FoF") and three exceptions to the analysis in the decision.

Vaca v. Sipes, 386 U.S. 171, 190 (1967), is the seminal case setting out the standard for a union's duty of fair representation. The Court in Vaca found that a violation of a union's duty of fair representation occurs when its conduct towards one of its members is "arbitrary, discriminatory or in bad faith."

We reviewed the limits on our jurisdiction over disputes involving the relationship between a union and its members in NJ State PBA and PBA Local 199 (Rinaldo), P.E.R.C. No. 2011-83, 38 NJPER 56 (¶8 2011):

We do not have power to enforce union constitutions and by-laws. These documents may establish judicially enforceable contractual rights, but a violation of their

^{3/} We deny the Charging Parties' request for oral argument. The issues have been fully briefed.

^{4/} The Charging Parties filed exceptions to Findings of Fact 1, 5, 6, 12, 13 and 17.

provisions does not generally constitute an unfair practice under our Act. Teamsters Local 331 (McLaughlin), P.E.R.C. No. 2001-30, 27 NJPER 25, 27 (¶32014 2000); Calabrese v. PBA Local 76, 157 N.J. Super. 139 (Law Div. 1978). Nor do we have authority to referee or resolve internal 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, 565-566 (¶13260 1982); cf. Danese v. Ginesi, 280 N.J. Super. 17, 25 (App. Div. 1995) (unions are entitled to considerable latitude in making membership rules). Nor do we have jurisdiction to enforce the New Jersey Constitution as opposed to the statutory rights specifically granted by the New Jersey Employer-Employee Relations Act. In contradistinction to all these broader disputes, our unfair practice jurisdiction over membership matters is statutorily confined under the Act we administer to two instances. The first instance is where a majority representative violates its duty to represent its members fairly in contract negotiations and grievance processing, N.J.S.A. 34:13A-5.3; OPEIU Local 153 (Johnstone), P.E.R.C. No. 84-60, 10 NJPER 12 (¶15007 1983). The second instance is where a majority representative arbitrarily, discriminatorily, or invidiously excludes or expels a negotiations unit employee seeking to participate in majority representative affairs affecting his or her employment conditions. FOP Lodge 12 (Colasanti), P.E.R.C. No. 90-65, 16 NJPER 126 (¶21049 1991); PBA Local 199 (Abdul-Haqq), P.E.R.C. No. 81-14, 6 NJPER 384 (¶11198 1980).

As set forth below, we find that the Charging Parties' exceptions relate to allegations, that even if true, concern internal union matters over which the Commission does not have jurisdiction. Additionally, we find that there is no evidence that the conduct of PANJ was arbitrary, discriminatory or in bad

faith or that the Charging Parties were expelled from PANJ as a result of the discipline imposed on them.

The Charging Parties except to FoF 1 which identifies PANJ as the "majority representative of certain professional and supervisory employees..." The Charging Parties assert that the Hearing Examiner should have identified as the majority representative PANJ "Case Related Professional Unit," of which the Charging Parties are members, and PANJ "Professional Supervisor's Unit." We find that FoF 1 is correct as written especially in light of the fact that the Charging Parties identified PANJ as the Respondent in their unfair practice charge.

The Charging Parties' exceptions to FoFs 5 and 6 refer to the PANJ disciplinary process and procedures and the PANJ Constitution and By-laws. The Charging Parties do not claim that the FoFs are erroneous, but rather that the proper procedures were not followed by PANJ in the specific disciplinary process involving the Charging Parties. They assert that PANJ Professional Supervisor's Unit members were assigned to the disciplinary committee when the members should have been comprised of Case Related Professional Unit members. We find that even if these facts are true, this constitutes an internal union matter.

Similarly, the exceptions to FoFs 12, 13 and 17 also relate to internal union matters and fall outside our unfair practice jurisdiction.

The Charging Parties' exceptions to the analysis of the decision are that the Hearing Examiner disregarded that the suspension of the Charging Parties "amounted to nothing less than an expulsion from the union;" that she did not view the facts of this matter in a light most favorable to the non-moving party (Charging Parties); and that she failed to appropriately apply the standards of 5.4b(1) to this case.

With respect to the alleged expulsion of the Charging Parties, the Hearing Examiner found the following:

Charging Parties were suspended as members in good standing and Tortoreto was fined. Both were temporarily barred from participating in union-related activities, events and functions, including elections. Ultimately, Charging Parties were temporarily excluded - not expelled - from PANJ. As of the filing date of the instant Motion, Ghee's six-month suspension has been completed, and she has been reinstated and can participate in all activities and functions, including elections.

We agree with the Hearing Examiner that the Charging Parties were not expelled from PANJ and any alleged violations with respect to their suspensions fall outside our unfair practice jurisdiction.

Rinaldo.

Regarding the Charging Parties' other two arguments, we find that the Hearing Examiner used the appropriate standard in

granting PANJ's motion for summary judgment and we agree with her that the alleged violations of 5.4b(1) have not been properly supported.^{5/}

ORDER

The Hearing Examiner's dismissal of the Complaint is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau, Eskilson, Voos and Wall voted in favor of this decision. None opposed. Commissioners Bonanni and Jones were not present.

ISSUED: November 21, 2013

Trenton, New Jersey

^{5/} The Hearing Examiner stated:

"I find that even if all the allegations were proven true they would amount to internal union disputes. None of the alleged facts support even a potential violation of 5.4b(1) of the Act."