

P.E.R.C. NO. 89-60

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST NEW YORK POLICE
SUPERVISORY ASSOCIATION,

Respondent,

-and-

Docket No. CI-H-88-32

JOHN SANTA MARIA,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the West New York Police Supervisory Association violated the New Jersey Employer-Employee Relations Act by denying union membership to John Santa Maria because he refused to pay penalty charges required by PSA as a condition of membership. The Commission finds that PSA's penalty rule interfered with Santa Maria's right to refrain from joining PSA by penalizing him the equivalent of union dues for the period of time he exercised that right. The Complaint was based on an unfair practice charge filed by Santa Maria.

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JOHN SANTA MARIA,

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Appearances:

For the Respondent, Alfred G. Osterweil, Esq.

For the Charging Party, Loccke & Correia, Esqs.
(Manuel A. Correia, of counsel)

DECISION AND ORDER

On December 10, 1987, John Santa Maria ("charging party") filed an unfair practice charge against the West New York Police Supervisory Association ("PSA"). He alleges that PSA violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(b)(1) and (5),^{1/} by denying him union membership because he refused to pay penalty charges required by PSA as a condition of membership.

^{1/} 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; (5) Violating any of the rules and regulations established by the commission."

On February 2, 1988, a Complaint and Notice of Hearing issued. On March 7, PSA filed an Answer denying it violated the Act.

On May 5, 1988, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses and introduced exhibits. They argued orally and filed post-hearing briefs on July 28, 1988.

On August 2, 1988, the Hearing Examiner recommended the Complaint's dismissal. H.E. No. 89-3, 14 NJPER 546 (¶19230 1988). He concluded that the parties' "sole" dispute was one of interpretation of the membership requirements of Article II of the PSA Constitution and By-laws and therefore the matter was "purely an intra-union dispute." The Hearing Examiner concluded that the charging party's remedy, if any, lies in the judicial forum.

On August 15, 1988, the charging party filed exceptions. He claims that: (1) he did not acknowledge that Sgt. Heck advised him of the penalty if he postponed joining PSA; (2) it is irrelevant that other officers who joined PSA before September 1987 were not charged a penalty, and (3) it is irrelevant that he did not resubmit his application after the September meeting. He argues that the Hearing Examiner erred in relying on Barnhart v. UAW, 12 N.J. Super. 147 (App. Div. 1951) and other cases which fail to consider the unique issue of this case.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-8) are accurate. We incorporate them with these additions. The PSA Constitution and Bylaws provide a \$1000 death benefit for all PSA members. It also provides for graduated

retirement benefits. Members who joined before March 14, 1985 receive \$1500 upon retirement. Those who joined between March 14, 1985 and January 1, 1988 and who are members over 3 years get \$1500, 2-3 years get \$400, 1-2 years get \$200 and less than 1 year no benefit. For those who join after January 1, 1988, members over 5 years get \$1500, 4-5 years get \$800, 3-4 years get \$600, 2-3 years get \$400, 1-2 years get \$200 and less than 1 year no benefit.

The issue is whether PSA violated the Act by requiring that the charging party pay, as a condition of membership, penalty charges assessed for the period he was eligible for membership but chose not to join. The "Membership" provision of the PSA Constitution and By-Laws provides:

New members shall submit to the Association an initiation fee of fifty (\$50.00) dollars, and shall pay dues in the amount of Twelve (\$12.00) Dollars per month.

a) any police officer with the present rank of Sergeant or above, may within ninety (90) days join this Association by submitting the initiation fee. Thereafter, a penalty of Twelve (\$12.00) Dollars per month shall be paid in addition to the initiation fee.

b) any police officers promoted, in the future, shall be subject to the same ninety (90) day grace period, beginning with the date of promotion, thereafter, he shall be subject to the same penalty as in (a) above.

The essential facts are not in dispute. The charging party was promoted to sergeant on December 23, 1985 and applied for membership on June 3, 1987. Because his application was tendered

almost one year beyond the specified grace period, PSA required that he submit, in addition to his initiation fee, the penalty fee.

N.J.S.A. 34:13A-5.3 guarantees the charging party's right "freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from such activity." Subsection 5.4(b)(1) prohibits employee organizations from interfering with, restraining or coercing employees in these rights. See also Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122 (1978).

PSA's rule, in form, substance and application, is a "penalty" provision. By its terms it conditions membership on the payment of penalty charges for the time period the applicant chose not to join PSA. This rule violates subsection 5.4(b)(1).

Private sector caselaw accords. Lullo v. Int'l Ass'n of Firefighters, Local 1066, 55 N.J. 409 (1970) (experience and adjudication under the federal act may guide the Act's interpretation). Union membership rules that restrict an employee's right to refrain from joining a union are illegal. Namm's Inc., 102 NLRB No. 215, 31 LRRM 1328 (1953) (violation by requiring back dues accruing before union shop agreement requiring membership as condition of employment; back dues are plainly more than lawful periodic dues or initiation fees); Automobile Workers (CIO) (Stackers), 99 NLRB No. 166, 30 LRRM 1169 (1952) (violation by charging larger initiation fee to penalize employees who had

exercised statutory right to refrain from joining union); Ferro Stamping & Mfg. Co., 93 NLRB No. 252, 27 LRRM 1593 (1951) (violation by requiring "old" employees to pay a larger initiation fee than "new" employees because "old" employees refused to join union when not legally bound to do so); see also NLRB v. Automobile Workers, CIO, ___ F.2d ___, 29 LRRM 2433 (7th Cir. 1952).^{2/}

We reject the argument that PSA's penalty rule is merely an internal union matter. If a rule invades or frustrates an overriding policy of the labor laws, it may not be enforced. See Scofield v. NLRB, 394 U.S. 423 (1969); see also NLRB v. Textile Workers, Local 1029, 409 U.S. 213 (1972); NLRB v. Allis-Chalmers, 388 U.S. 1758 (1967). This rule interfered with the charging party's right to refrain from joining PSA by penalizing him the equivalent of union dues for the period of time he exercised that right. PSA asserts that the rule is aimed at achieving a legitimate union objective, preventing employees from receiving a large retirement or death benefit without having contributed to the Association. In fact, PSA's retirement benefit structure prorates payment according to length of membership. It could adopt a similar payment schedule for death benefits. PSA has not proved that its penalty provision was required to pay for those benefits. General

^{2/} Private sector union security agreements can require financial core union membership. Many private sector cases arise under circumstances where the union required back dues for a period of time before membership was required.

Longshore Workers Int'l Longshoremen's Ass'n, Local No. 419, 186
NLRB No. 94, 75 LRRM 1411 (1970).

Accordingly, under all the circumstances of this case, we find that PSA violated subsection 5.4(b)(1) by penalizing John Santa Maria for not joining PSA before June 1987. In the absence of proof of violations of any Commission rules or regulations, we dismiss the subsection 5.4(b)(5) allegation.

ORDER

The West New York Police Supervisory Association is ordered to:

A. Cease and desist from interfering with, restraining or coercing employees in the exercise of their rights to refrain from joining an employee organization, particularly by denying John Santa Maria membership because he refused to pay penalty charges required by PSA as a condition of membership.

B. Take the following affirmation action:


1. Rescind its penalty provision requiring applicants to pay the equivalent of back dues for that period that they chose not to join PSA.

2. Post in all places where the West New York Police Supervisory Association customarily posts notices to unit members, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by

it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
November 22, 1988
ISSUED: November 23, 1988

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

The West New York Police Supervisory Association hereby notifies employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of their rights to refrain from joining an employee organization, particularly by denying John Santa Maria membership because he refused to pay penalty charges required by PSA as a condition of membership.

WE WILL rescind our penalty provision requiring applicants to pay the equivalent of back dues for that period that they chose not to join PSA.

Docket No. CI-H-88-32 WEST NEW YORK POLICE SUPERVISORY ASSOCIATION

Employee Organization

Dated _____

By _____

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.

H.E. NO. 89-3

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

In the Matter of

WEST NEW YORK POLICE SUPERVISORS
ASSOCIATION,1/

Respondent,

-and-

Docket No. CI-H-88-32

JOHN SANTA MARIA,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent did not violate subsections 5.4(b)(1) and (5) of the New Jersey Employer-Employee Relations Act when it refused to accept the tender of the Charging Party for membership in June 1987. This refusal was based upon the Charging Party's failure to tender a penalty of \$12 per month retroactive to the date when he was first eligible to apply for membership. Since this was a purely internal union matter, involving the interpretation of the constitution and by-laws of the Respondent, there was no breach of the duty of fair representation as alleged. The Charging Party's remedy, if at all, lies in the judicial forum: City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563, 565 (¶13260 1982).

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.

H.E. NO. 89-3

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WEST NEW YORK POLICE SUPERVISORS
ASSOCIATION,^{1/}

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Appearances:

For the Respondent, Alfred G. Osterweil, Esq.

For the Charging Party, Loccke & Correia, Esqs.
(Manuel A. Correia, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on December 10, 1987, and amended on February 19 and May 5, 1988, by John Santa Maria ("Charging Party" or "Santa Maria") alleging that the West New York Police Supervisors Association ("Respondent" or "PSA") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. ("Act"), in that in December 1985, Santa Maria became a sergeant and six months thereafter in June 1986, he became eligible

^{1/} As amended at the hearing.

to join the PSA but since the PSA did not become the certified collective negotiations representative until June 1987, Santa Maria did not apply for membership in the PSA until that time; that Santa Maria was denied membership in the PSA until he paid an "initiation fee," which included monthly dues from the time that he became eligible to join the PSA in June 1986; that an additional application for membership was made by Santa Maria at a regular membership meeting of the PSA on September 9, 1987, where he was again denied membership unless he paid dues back to July 1986; and that Santa Maria has been prohibited in participating in any meetings or discussions of the PSA concerning contract-related matters, including ratification, having specifically been excluded from a meeting of the PSA in December 1987, which was devoted to the proposed 1987-88 contract settlement; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(b)(1) and (5) of the Act.^{2/}

It appearing that the allegations of the unfair practice charge, as amended, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on February 25, 1988. Pursuant to the Complaint and Notice of Hearing, following agreed upon adjournments, a hearing was held

^{2/} 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; (5) Violating any of the rules and regulations established by the commission."

on May 25, 1988, in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and the parties filed post-hearing briefs by July 28, 1988.

An unfair practice charge, as amended, having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The West New York Police Supervisors Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

2. John Santa Maria is a public employee within the meaning of the Act, as amended, and is subject to its provisions.

3. The PSA was formed when it adopted a constitution and by-laws on April 10, 1985 (J-1). This constitution and by-laws has been amended twice (see J-1, J-2 and footnote 8, infra). Article II, "Membership," after providing in a Section 2 that all applications for membership are to be referred to "Advisory Board for investigation," provides in Section 3 as follows:

New members shall submit to the Association an initiation fee of Fifty (\$50.00) dollars, and

shall pay dues in the amount of Twelve (\$12.00) Dollars per month.

a) any police officer with the present rank of Sergeant or above, may within ninety (90) days join this Association by submitting the initiation fee. Thereafter, a penalty of Twelve (\$12.00) Dollars per month shall be paid in addition to the initiation fee.

b) any police officers promoted, in the future, shall be subject to the same ninety (90) day grace period, beginning with the date of promotion. Thereafter, he shall be subject to the same penalty as in (a) above.^{3/}

4. At the time that the PSA was formed in April 1985,^{4/} the police supervisors (sergeant and above), employed by the Town of West New York ("Town"), were represented in collective negotiations by Policemen's Benevolent Association, Local No. 88 ("PBA") in a unit, which included patrolmen. On August 15, 1985, the PSA filed a petition seeking to sever the police supervisors from the overall unit, supra. The Commission on March 24, 1987, overruled its Hearing Officer and ordered that severance of the Town's police supervisors was required due to a conflict of interest: P.E.R.C. No. 87-114, 13 NJPER 277 (¶18115 1987).

^{3/} Daniel Murphy, the Recording Secretary of the PSA and a witness for the Charging Party, testified that the membership has interpreted the above provisions of Article II, Section 3, as requiring a grace period of 180 days from the date of promotion of a police officer to Sergeant. Thus, the penalty of twelve dollars per month does not become effective until 180 days, or approximately six months, after the police officer is promoted to Sergeant.

^{4/} Between February and April 1985, the charter members of the PSA each loaned the sum of \$50 in lieu of initiation fee to generate the funds necessary to incorporate it. The loans of these individuals were re-paid by the PSA within the year following its incorporation.

5. Thereafter, an election was conducted among the police supervisors and on May 29, 1987, the Commission issued a Certification of Representative to the PSA for a unit of "All police supervisors, including sergeants, lieutenants, captains and deputy chiefs..." excluding, inter alia, "police officers" (CP-1).

6. Santa Maria has been employed in the Town's Police Department for 11 years and on December 23, 1985, he was promoted from Patrolman to Sergeant. Santa Maria had been a past officer of the PBA and at or about the time of his promotion he had served on several PBA committees.

7. Shortly after Santa Maria was promoted to Sergeant, he was solicited by Donald Heck, a Captain in the Police Department, who was then the President of the PSA, to apply for membership. Heck gave Santa Maria an application, spoke to him several times and invited him at one point to a meeting and dinner. On the date that Santa Maria was promoted, two other patrolmen, Michael Caliguero and Frank Caraccio, were likewise promoted to Sergeant. Heck also solicited Caliguero and Caraccio to join the PSA at that time. However, while Santa Maria elected to "wait," Caliguero and Caraccio tendered the \$50 initiation fee and were voted into membership in March 1986.^{5/}

^{5/} Heck testified without contradiction that he explained to Santa Maria, Caliguero and Caraccio the requirement that each pay a timely \$50 initiation fee and that their failure to do so would result in a penalty of \$12 per month from the last day of the 180-day grace period under J-1. Santa Maria acknowledged on cross-examination that Heck had done so.

8. In February 1987, the Town promoted ten additional patrolmen to the position of sergeant and by September 9, 1987, all of those promoted had made timely application for membership in the PSA, tendering only the \$50 initiation fee with no penalty imposed under Article II of J-1.

9. Under the PSA membership's interpretation of J-1, Article II, supra, Santa Maria had 180 days from his promotion on December 23, 1985, to fulfill the PSA's membership requirements. However, he did not make application for membership until June 3, 1987, almost one year after the grace period. At that time he tendered an application and the \$50 initiation fee to the PSA Recording Secretary Murphy. Several days later, Murphy returned the tender because Santa Maria had not included the penalty of \$12 a month since July 1986, or \$132 additional. Santa Maria complained by letter dated June 9, 1987 to Mario Karcich, the then President of the PSA (CP-2). Santa Maria testified that the reason for the delay in applying for membership was that the PBA had continued as bargaining agent for the police supervisors until the PSA was certified on May 29, 1987. If he had applied for membership prior thereto, he would have been engaged in "dual unionism," particularly since he had been a past officer and committee member in the PBA. Santa Maria added that the PSA had performed no services for him prior to its certification.

10. Murphy testified that Santa Maria never renewed his application for membership after June 3, 1987. Essentially, Santa

Maria did not contradict Murphy since his testimony was that he had not re-submitted his application after addressing the membership of the PSA at a September 9, 1987 regular meeting.^{6/}

11. The minutes of the September 9th meeting (CP-3) reflect that Santa Maria spoke regarding the penalty clause and after discussion, a motion to amend the by-laws was defeated.

12. Collective negotiations for the PSA's first agreement commenced in the summer of 1987. As of the date of the hearing, no final collective negotiations agreement had been negotiated and ratified by the PSA membership. However, on January 20, 1988, the PSA membership had at a special meeting ratified a monetary settlement with the Town, following which retroactive wages were paid to PSA unit members.

13. On December 9, 1987, a regular meeting of the PSA was held where the only reference to the status of negotiations was that "Nothing new has taken place. PBA is going to arbitration." (CP-4). While the testimony of Murphy was that nothing regarding the contract was discussed "in any detail," Santa Maria testified that at the meeting of December 9, 1987 or January 20, 1988, he attempted to attend because contract matters were being discussed but was told by Karcich that he had no right to attend. Santa Maria also testified that Karcich asked the membership whether he should be permitted to attend, but the question was voted down.

^{6/} His appearance before the membership resulted from his request to Karcich on June 9, 1987 (CP-2) for permission to appear.

14. The Hearing Examiner finds as a fact that Santa Maria was familiar with the membership requirements in the PSA, including the \$50 initiation fee and the \$12 per month penalty for untimely application, notwithstanding Santa Maria's testimony that he never received a copy of J-1 and was not shown a copy until December 1987. As previously found, Heck testified without contradiction that he had fully explained the application procedure to Santa Maria, including the \$50 initiation fee and the \$12 per month penalty.

15. Finally, Santa Maria insisted that he was under no obligation to pay the \$12 per month penalty until the PSA was certified in May 1987, and that even if he were to reapply as of the date of the hearing, he should only be required to pay the "representation fee" from the date of certification, May 29, 1987,^{7/} and be entitled to death and retirement benefits under J-1, as amended.^{8/}

^{7/} Santa Maria's use of the term "representation fee" is ambiguous since it is not clear whether he was referring to the "agency shop" fee permitted under our Act with appropriate safeguards or whether he was referring to the \$12 per month penalty under the PSA's constitution and by-laws.

^{8/} Murphy testified that J-1 has been amended twice to provide for death and retirement benefits, which are paid from the general treasury of the PSA. He testified further that it was for this reason that the PSA requires the back payment of dues, i.e., the \$12 monthly penalty, when an individual makes an untimely application for membership.

DISCUSSION ANALYSIS

The PSA Did Not Violate §§5.4(b)(1) Or (5) Of The Act By Requiring John Santa Maria To Comply With The Provisions Of Article II, Section 3 Of Its Constitution And By-laws Since This Involves An Internal Union Matter And Not A Breach Of The Duty Of Fair Representation.

The Hearing Examiner is convinced that the PSA has not breached its duty of fair representation to Santa Maria. First, there is no collective negotiations agreement in effect between the PSA and the Town from which a breach of the duty of fair representation by the PSA might arise, notwithstanding that the PSA membership ratified a monetary settlement on January 20, 1988. Santa Maria benefited monetarily from this settlement. Secondly, Santa Maria's sole dispute with the PSA is over its interpretation of the membership requirements of Article II of the constitution and by-laws. This is purely an intra-union dispute, which can only be remedied, if at all, by resort to the judicial forum. The Commission's decisions in this regard are consistent.

A starting point is City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563 (¶13260 1982) where temporary CETA employees sought relief from the Commission regarding their right to hold elected office. The union had denied these employees the right to hold office under its constitution and by-laws. The constitution mandated that only a permanent employee of Jersey City was eligible for elected office. The Commission, in dismissing this aspect of the unfair practice charge, stated that it was "...reluctant to intercede in what is only an intra-union dispute..." (8 NJPER at 565). The Commission cited Calabrese v. PBA, Local 76, 157 N.J.

Super 139, 147 (App. Div. 1978) where the Court stated that a private organization "...must have considerable latitude and rule making in order to accomplish their objectives, and their private rules are generally binding on those who wish to remain members." The Commission also cited Barnhart v. U.A.W., 12 N.J. Super 147 (App. Div. 1951) where the Court stated that: "...Courts are loath to interfere with the internal management of an unincorporated, voluntary association. The right of a voluntary association to interpret and administer its own rules and regulations is as sacred as the right to make them..." (12 N.J. Super. at 152).^{9/}

In a subsequent decision, FMBA Local 35, P.E.R.C. No. 83-144, 9 NJPER 336 (¶14149 1983), the Commission held that the union had rebutted the presumption that it violated the Act when it denied membership to an employee who sought re-admittance. The Commission stated that to rebut the presumption, the union must prove that the rejection of the applicant was for good cause and if it succeeds then it has not violated §5.4(b)(1) of the Act. In that case, the applicant had engaged in a series of actions detrimental to the union, namely, seeking to have positions eliminated, forming a rival organization and instituting an unsuccessful suit against the union to obtain monies held in a special death and retirement fund (see 9 NJPER at 203, 204).

^{9/} The Hearing Examiner perceives no legal distinction between Barnhart and this case, regarding an unincorporated versus an incorporated association. Labor organizations are involved in each case with the same functions and objectives.

In ATU Local 824, D.U.P. No. 85-9, 10 NJPER 600 (¶15279 1984) the Director of Unfair Practices refused to issue a complaint based on allegations that Local 824 charged persons newly hired from a bankrupt company an initiation fee of \$300, notwithstanding that Local 824's by-laws provided that the amount of the initiation fee was \$75. The Director found that there was no breach of the duty of fair representation involved under our Act since nothing in the Act directly or indirectly regulates union membership fees, excepting, however, agency shop fees (see N.J.S.A. 34:13A-5.6). Thus, "...The instant dispute is strictly an internal matter which does not fall under the guise of the Act..." (10 NJPER at 601).^{10/}

Finally, note is taken of two recent Commission decisions where the issue was the conduct of a union regarding its procedures for contract ratification votes. First, the Director of Unfair Practices refused to issue a complaint in Camden County College Faculty Association, D.U.P. No. 87-13, 13 NJPER 253 (¶18103 1987) where it was charged that the union conducted an improper and inaccurate contract ratification vote. The Director stated that

^{10/} See also, Jersey City POBA, D.U.P. No. 85-2, 10 NJPER 475 (¶15212 1984), where a complaint was not issued based on allegations that the union interfered with a member's freedom of speech by denying him access to membership lists and that the union's by-laws established an "attendance quota" for candidates for union office; and Bergen Community College Faculty Association, P.E.R.C. No. 84-117, 10 NJPER 262 (¶15127 1984) where an issue involving the funding of a federal law suit by the union for a member was deemed "...a fundamental issue of internal union governance and does not implicate the duty of fair representation..." (10 NJPER at 263).

"...The ratification process affects all members of the negotiations unit and is essentially an internal union matter. Absent allegations of arbitrary, discriminatory or bad faith conduct we will not issue a complaint on a matter involving internal union activities..." 13 NJPER at 254.

In State Troopers NCO, D.U.P. No. 88-7, 14 NJPER 14 (¶19004 1987) complaint issuance was refused where the issue was the union's refusal to permit non-members, or members who failed to attend union meetings, to vote on contract ratification. Citing a Chancery Division decision in Middlesex County, the Director noted that the Court there said that the by-law procedure for a membership vote on contract ratification is "...an internal process...in the formulation of a collective agreement..." Further, the Director noted that the Court also stated that "...exclusion from the membership prerogative to vote on ratification deprive them of no right, statutory or otherwise..."

It is obvious to the Hearing Examiner, based on his consideration of all of the foregoing authorities, that the sole issue involved herein is an internal union dispute between Santa Maria and the PSA regarding the attaining of membership, which can only be remedied, if at all, in the courts of law on this State. It in no way implicates any violation of our Act by the PSA, specifically, a breach of the duty of fair representation. Accordingly, the Hearing Examiner must recommend dismissal of the Complaint.

* * * * *

Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSION OF LAW

The Respondent did not violate N.J.S.A. 34:13A-5.4(b)(1) or (5) since the issue of attaining membership in the Respondent Association pursuant to its constitution and by-laws is an internal union matter, which does not arise to a breach of the duty of fair representation.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entirety.



Alan R. Howe
Hearing Examiner

DATED: August 2, 1988
Trenton, New Jersey