

H.E. NO. 88-64

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

In the Matter of

CITY OF CAMDEN & FOP LODGE #1,

Respondents,

-and-

Docket No. CO-H-87-378

PBA LOCAL 35,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission grants Respondent's Motion to Dismiss the Complaint. In a charge by the PBA against the FOP and City, the Hearing Examiner concluded that the PBA did not have standing to pursue the charge.

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Appearances:

For the Respondent City, Murray & Murray, Esqs.  
(Karen Murray, of counsel)

For the Respondent FOP Lodge #1, Markowitz & Richman, Esqs.  
(Joel G. Scharff, of counsel)

For the Charging Party, Tomar, Seliger, Simonoff, Adourian  
& O'Brien, Esqs. (David Seliger, of counsel)

HEARING EXAMINER'S  
DECISION ON MOTION TO DISMISS

An Unfair Practice Charge was filed with the Public  
Employment Relations Commission (Commission) on June 29, 1987, by  
the Policemen's Benevolent Association, Local 35 (PBA) alleging that  
the City of Camden (City) and the Fraternal Order of Police, Lodge 1  
(FOP) violated Subsections 5.5, 5.6, 5.7, and 5.9 of the New Jersey  
Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

(Act).<sup>1/</sup> The PBA alleged that the City violated the above subsections by deducting a representation fee from unit members on behalf of the FOP. It also alleged that the FOP violated Subsection 5.7 by refusing to permit non-FOP members to participate in meetings dealing exclusively with collective negotiations and grievances. In the Charge the PBA also referred to a letter of May 20, 1987 where it set forth more information. That was a letter written by the PBA attorney to officials of the City and FOP. In that letter the PBA

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1/ N.J.S.A. 34:13A-5.5 has three sections. Section (a) provides that a representation fee is negotiable between the majority representative and the employer, and that where an agreement is reached it shall be in writing. Section (b) provides that the representation fee may be up to but not exceed 85% of the regular dues. Section (c) provides that public employees who pay a representation fee have the right to a demand and return system affecting the majority representative.

N.J.S.A. 34:13A-5.6 indicates that where agreement is reached a majority representative is entitled to a representation fee from employees who are not members of the majority representative, provided that membership to the majority representative is available on an equal basis and that the representation fee be available only to a majority representative that has established a demand and return system. This subsection also provided for an Appeals Board to review the amounts of dues returned pursuant to the demand and return system.

N.J.S.A. 34:13A-5.7 provides: "Any action engaged in by a public employer, its representatives or agents, or by an employee organization, its representatives or agents, which discriminates between nonmembers who pay the said representation fee and members with regard to the payment of such fee other than as allowed under this act, shall be treated as an unfair practice within the meaning of subsection 1(a) or subsection 1(b) of this Act."

N.J.S.A. 34:13A-5.9 provides: The commission may promulgate rules or regulations to effectuate the purposes of this act."

questioned the legality of the representation fee being paid to the FOP. The PBA argued that employees must be furnished with an explanation of the fee prior to collection; that employees must be given a copy of the demand and return system, and be given 30 days to review the information. The PBA further argued that the FOP had to adopt a fiscal year accounting system; furnish financial information based upon audited statements; that the FOP may not collect a fee unless there is a negotiated agreement; and that the FOP had represented that if it became the majority representative it would not negotiate for a representation fee. In its letter the PBA sought the return of the representation fees to the affected employees.

By letter of July 17, 1987 the City submitted a statement of position (a copy of which was sent to the PBA and FOP) arguing that it committed no violation. The City further argued in reliance upon Tp. of Union, D.U.P. No. 84-20, 10 NJPER 163 (¶15080 1984) ("Union Tp."), that the PBA lacked standing to pursue the Charge because it alleged no injury to itself. An exploratory conference was held in this matter on or about September 1, 1987, but no settlement was reached.

A Complaint and Notice of Hearing was issued on December 24, 1987, scheduling a hearing for February 2, 1988. The City filed an Answer on January 21, 1988 denying having committed any violation. The City argued that it and the FOP were engaged in interest arbitration and in the interim were observing the agreement

previously negotiated between the City and the PBA. The City asserted several affirmative defenses including that the PBA lacked standing to institute the Charge.

On April 28, 1988 the hearing was rescheduled for June 7, 1988.<sup>2/</sup> On May 31, 1988 the FOP filed a Motion to Dismiss the Complaint and Motion to Stay the Hearing. Copies of the Motion(s) were served upon the PBA and City attorneys. On June 1, 1988 the FOP filed its Answer to the Complaint.

In its Motion to Dismiss the FOP argued that the PBA did not have standing to litigate this Charge. The FOP relied upon Union Tp. and argued that the PBA alleged no injury to itself and thus did not state a cause of action upon which it could litigate the Charge. In its Answer the FOP denied committing any violation of the Act, and raised several affirmative defenses including that the PBA lacked standing to institute the Charge. On June 2, 1988 I granted the FOP's Motion to Stay the hearing.

Motion practice before the Commission is normally controlled by N.J.A.C. 19:14-4.1 et seq. Pursuant to N.J.A.C. 19:14-4.4 the PBA had five (5) days from the service of the FOP Motion papers to file a response to the Motion. If in a particular

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<sup>2/</sup> Pursuant to the PBA's request, the hearing scheduled for February 2 was rescheduled for February 18, 1988. The hearing for that date was also cancelled and rescheduled for March 23, 1988. Pursuant to the FOP's request the March hearing was cancelled to give the parties additional time to resolve the matter. When it was not resolved, the hearing was rescheduled for June 7, 1988.

circumstance our motion rules did not apply, we would follow the OAL rules, N.J.A.C. 1:1-1 et seq. Under those motion rules, particularly N.J.A.C. 1:1-12.2(c), the party opposing the motion must respond within ten (10) days of the service of the motion papers. The FOP actually mailed the motion papers on May 26, 1988. They were received by the Commission on May 31, the operative date with regard to service in the above rules. No response was filed by the PBA within the time allowed by N.J.A.C. 19:14-4.4 or N.J.A.C. 1:1-12.2(c).

#### ANALYSIS

The PBA did not allege in its Charge or in the May 20, 1987 letter any facts describing any injury the PBA has suffered as a result of any actions by the City or the FOP. On that basis I grant the FOP's Motion to Dismiss the Charge with respect to the FOP. Since the City raised the issue of the PBA's standing to pursue this matter in its July 17, 1987 position statement (which was served on the PBA) and in its Answer on January 21, 1988, for the same reasons expressed by the FOP in its motion papers, I dismiss the Charge with respect to the City as well. Thus, the Complaint is dismissed in its entirety.

In Union Tp. a minority union filed an unfair practice charge against the majority representative alleging a violation of

Subsections 5.4(b)(1) and (5) of the Act.<sup>3/</sup> The minority union also alleged that the majority representative was violating the "agency shop amendments" to the Act, Subsections 5.5, 5.6, 5.7, 5.8, and 5.9 of the Act.

The minority union alleged that the majority representative would not allow non-members (agency fee payers) to attend meetings concerning grievances. It further alleged that the majority representative was denying non-members membership on an equal basis. The Administrator of Unfair Practices refused to issue a complaint. He held that the charging party did not allege that any minority union member applied for membership in the majority representative or had been denied such membership because of affiliation with the minority union. He also found that there was no allegation that minority union members (or agency fee payers) were denied attendance at meetings of the majority representative because of their affiliation with the minority union.

Union Tp. is applicable here. The PBA did not allege that non-FOP members were denied any rights because of any affiliation they may have had with the PBA. In fact, the PBA did not allege that non-FOP members were even affiliated with the PBA. The allegations raised by the PBA concern rights of individuals, and

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<sup>3/</sup> 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."

individual employees, not the PBA, had standing to file a charge raising such allegations. Compare Bergen County and Bergen County Sheriff (Howard Neely), P.E.R.C. No. 88-9, 13 NJPER 645 (¶18243 1987), aff'd App. Div. Dkt. No. A-5897-86T8 (3/4/88), certif. den. S.Ct. Dkt. No. 28,654 (5/24/88), where employee Howard Neely filed a charge against his majority representative raising allegations similar to the allegations here. The Commission found a violation in that case.

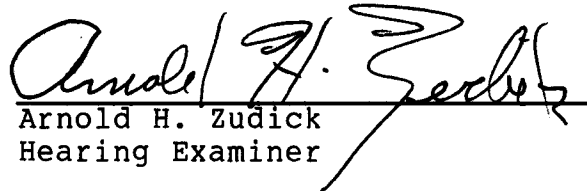
In this case, the allegation in the Charge that the FOP violated Subsection 5.7 of the Act could have been filed by individuals, but there were no specific individuals named in the Charge who were allegedly affected by the FOP's conduct. This Charge was filed by the PBA as a "CO," a charge by a labor organization. It should have been filed as a "CI," a charge by an individual(s), and then named specific individuals affected by the FOP and City's alleged conduct.

The allegations in the May 20 letter mostly raise issues covered by the Representation Fee Rules, N.J.A.C. 19:17-1.1 et seq. N.J.A.C. 19:17-3.1 provides that a majority representative shall establish a fiscal year system of accounting. Subsection 17-3.3 provides that prior to the deduction of the representation fee a majority representative shall provide affected employees with an explanation of the basis of the fee, an audited statement, and a copy of the demand and return system. Subsection 17-4.1 provides for a thirty (30) day period to file a request for review under the



demand and return system. Once again, there was no allegation that the PBA suffered any injury as a result of the FOP's alleged failure to comply with the Representation Fee Rules. If individual employees believed that the FOP failed to comply with those rules they were entitled to file their own charges making such allegations. See Neely. A minority union does not have standing to allege a violation of those rules unless perhaps it alleges how its protected rights were adversely affected by the majority representative's conduct. Union Tp. No such allegation was made here.

Accordingly, based upon the above analysis the Complaint is dismissed. N.J.A.C. 19:14-4.7.

  
Arnold H. Zudick  
Hearing Examiner

Dated: June 27, 1988  
Trenton, New Jersey