TIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES AND VINCENT J. FASANO, ET AL., SUPL-2343, 2344, 2345, 2346, 2347 (3/12/87).

75.3 expulsion and suspension from membership

mmissioners participating:

Paul T. Edgar, Chairman
Maria C. Walsh, Commissioner
Elizabeth K. Boyer, Commissioner

pearances:

Mark Dalton, Esq. - Representing the National Association of Government Employees

Arthur F. Collins, Esq. - Representing Vincent J. Fasano, et al.

DECISION

Statement of the Case

On December 3, 1985, the charging parties Catherine Towner, Kevin Alves, Lester arbowski, Vincent Fasano, and Owen McGarrahan, Jr., filed individual charges with e Labor Relations Commission (Commission) alleging that the National Association of vernment Employees (NAGE) violated M.G.L. c.150E (the Law) by expelling them from ion membership because of their efforts to replace NAGE with another exclusive collective bargaining representative. After an investigation, the Commission issued mplaints on March 21, 1986, alleging that NAGE had violated section 10(b)(1) of e Law by expelling the charging parties from membership in the Union. The cases re consolidated for hearing, and a formal hearing was conducted on April 30, 1986, Judith Neumann, Esq., a duly designated hearing officer of the Commission. All rties were given full and fair opportunity to be heard, to examine and cross-examine tnesses, to introduce evidence and to file briefs. All parties were represented counsel.

After review of the record, and for reasons set forth below, we find that NAGE d not violate Section 10(b)(1) of the Law by expelling the charging parties from ion membership, and we dismiss the complaints accordingly.

Findings of Fact

The facts are not disputed by the parties.

All of the charging parties were either officers or delegates of the Union ior to December, 1983. While in office, they initiated and participated in dissions regarding the formation of MOSES 6, a rival employee organization. In cember of 1983, the charging parties resigned their offices in NAGE, but retained eir membership. Immediately thereafter during the same month, they created a

ion committee" for the purpose of forming MOSES 6. As part of the committee, licited authorization cards aimed at putting MOSES 6 on the ballot in a rep- tion election against NAGE.

NAGE informed the charging parties on December 27, 1983 that their expulsion nbership had been proposed because of their secessionist activities. On Jan- , 1984, MOSES 6 filed a representation petition with the Commission seeking tion to replace NAGE as the exclusive bargaining representative in unit six.

On April 10, 1985, NAGE's Executive Board voted to expel the charging parties of "involvement in a secessionist movement fostering a rival organization the recent Unit Six election." The Executive Board ratified the vote in r, 1985.

Opinion

The issue presented is whether the Union's expulsion of the charging parties king to decertify the Union unlawfully restrained, coerced, or interfered eir protected right to utilize and participate in the Commission's representa- ocesses. For the reasons set forth below, we find that the Union did not vio- e Law by expelling the charging parties, and we dismiss the complaints accord-

Generally, the Commission will not interfere with union rules or actions that ain the legitimate domain of internal union affairs. Although Section 10(b)(1) alified in prohibiting a union from interfering with an employee's protected the Commission has read into the Law the proviso contained in the analogous of the National Labor Relations Act: "...this paragraph shall not impair nt of a labor organization to prescribe its own rules with respect to the tion or retention of membership therein." Luther E. Allen, Jr., 8 MLC 1518 citing 29 U.S.C. Section 158(b)(1). "There is nothing in c.150E to suggest e Commission should, as a regular matter, become involved in overseeing purely l union affairs." Id. at 1521.

A union's freedom to regulate its internal affairs, however, must give way certain overriding public interests implicit in the Law. Hence, in Brockton on Association, 12 MLC 1497, 1503 (1986) the Commission held that an employee s the Commission to enforce the Law" by giving testimony supporting or rebut- charge of prohibited practice, including testimony at the request of an em- in a charge initiated by a union. Accordingly, we concluded that the union lly coerced employees in violation of Section 10(b)(1) of the Law by moving ure employees who voluntarily testified on behalf of the employer at a hearing the Commission. In Allen, supra, the public interest at stake was the pro- n against strikes contained in Section 9A of the Law. Likewise, in Johnston ulty, 8 MLC 1993 (1982), aff'd sub. nom Boston Police Patrolmen's Association, . App. Ct. 953 (1983), the interest was the Commission's statutory mandate he Law to determine appropriate bargaining units.

Thus, as these cases indicate, the legality of union discipline turns on the ative weight to be accorded the various interests at stake. In this case, the on's internal disciplinary actions sent a message to members that use of our rep- entation processes to decertify the Union may lead to adverse consequences. None- less, we do not find an overriding public interest implicit in the Law before which Union's freedom to manage its internal affairs must fall.

Generally, a union has a legitimate interest in preserving strength and soli- ity, and in seeking the support of its members in organizational activities. Meat ters, Local 593 (S & M Grocers), 231 NLRB 1159, 99 LRRM 1123 (1978). In order to fill its collective bargaining obligations, a union must be able to promulgate its rules and have the right to impose reasonable discipline on members who do not y those rules. Indeed, the Board has consistently upheld a union's right to dis- line members who fail or refuse to assist the union in solidifying its bargaining tus. Marble Finishers, Local 89, 265 NLRB 496, 111 LRRM 1609 (1982); Fox Midwest sement Corp., 98 NLRB 699, 29 LRRM 1414 (1952). In Brockton, however, when we anced this general interest against the direct impediment presented there to par- ipation in our remedial processes, we found that the public interest in ensuring mpeded testimony in prohibited practice cases outweighed the union's interests.[1]

In the present case, more than the union's general interest in membership sup- t and loyalty is involved. Indeed, there can hardly be any question that a union a continuing, vital stake in avoiding decertification of its bargaining status. attack on its position as bargaining agent is "in a very real sense an attack on very existence of the union." Price v. NLRB, 373 F.2d 443, 64 LRRM 2495, 2496 h Cir. 1967), cert. denied 392 U.S. 904 (1968). Moreover, if persons opposed to resentation by their own union have the right to insist on continued membership in union, it would render meaningless the union's right to prescribe the qualifica- ns of membership. Marble Finishers, Local 89, supra. As the Supreme Court recog- ed in NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 178, 180-181 (1967), the union's ht to protect itself against the erosion of its status as bargaining agent is an egral component of national labor policy. This is not a case where the conduct the Union members arose in the context of an alleged violation of the Law. Rather, Union members sought to attack the Union's position as the exclusive bargaining resentative. We find no countervailing policy implicit in the Law that, when bal- ed against the Union's interest, requires the Union to retain a member who attacks very existence of the Union.

For these reasons, we conclude that the Union has not violated Section 10(b)(1) the Law, and the complaint is therefore dismissed.

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[1] Cf. United Steelworkers of America, Local 5500, 223 NLRB 854, 855 (1976), in ch the administrative law judge opined that "[t]he repression by a union of testi- y can scarcely be viewed as serving a legitimate union interest." (emphasis in ginal).

Association of Government Employees and Vincent J. Fasano, et al.,
13 MLC 1525

D ORDERED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, CHAIRMAN

ELIZABETH K. BOYER, COMMISSIONER

oner Maria C. Walsh, Concurring

concur in the decision to dismiss the complaint but I write separately to reasons.

y colleagues balance a union's right to "regulate its own affairs" against overriding public interests," as if the union's interests necessarily differ se of the public. In contrast, I would determine the public interest through g the union's lawful interests against the statutorily protected rights of oyees.

abor organizations are private voluntary associations which, like other member-anizations, maintain their identity and integrity by establishing rules to the acqusition of membership. G.L. c.150E does not directly regulate the mem- rules established by a union; and the Commission has recognized that unions right to prescribe their own rules concerning the acquisition and retention rship. Luther E. Allen Jr., 8 MLC 1518, n.6 (1981).[1] Occasionally a union's ip rules may interfere with an employee right guaranteed by the Law, and in ase, the Commission must balance the right of the union to regulate its mem- against the conflicting right of employees to participate in activities pro- y G.L. c.150E.

mployees have the right to "form, join, or assist any employee organization purpose of bargaining collectively...[or] to refrain from any or all of such es." Section 2, G.L. c.150E. In this case the Charging Parties both assisted nation of a new labor organization and assisted in filing a representation peti- decertify NAGE as their exclusive collective bargaining representative. They at the Union has interfered with, coerced or restrained them in the exercise cted rights by expelling them from membership.

In prior cases the Commission has enforced the public policy of the Law by g the union's interest and the employee's interest. Whether the union's con- ward a member is seen as part of the union's legitimate establishment of mem- rules or whether it is found to be unlawful interference, coercion or re- depends upon the Commission's evaluation of the relative legitimacy and im- e of the competing interests at stake in each case. For example, the

[1] (See page 1529)

mmission has held that employees are protected by Law from union discipline when ey engage in certain activities. Specifically, employees who testify in unfair bor practice proceedings at the Commission may not be censured, or otherwise erced, by their union. Brockton Education Association, 12 MLC 1497 (1986). In ockton, the union sought to censure an employee for having voluntarily testified ainst the union. But the union's interest in attempting to control the way in ich employees testify before the Commission was slight when compared to the em- oyee's interest in being free to volunteer testimony at the Commission without fear coercion. The Commission also has held that public employees who comply with G.L. 150E by refusing to engage in an illegal strike may not be disciplined by their ion. Luther E. Allen, Jr., supra. The union's interest in the case was illegal to promote a strike in violation of the Law -- and therefore could not outweigh e employees' interest in obeying the Law.[2] According priority to the employee's ghts in each case advanced two public interests: assurance of complete testimony fore the Commission, and discouragement of public employee strikes.[3]

In this case, a balance must be struck between the employee's right to file e representation petition without coercion and NAGE's right to maintain its own mbership rules. I conclude that the employees by their own actions have demon- rated that their expulsion from membership in NAGE will not significantly infringe on their rights. They have evidenced their willingness to abandon membership in is Union by seeking representation from another union. In contrast, to force NAGE retain them as members would directly and significantly interfere with NAGE's gitimate rights. If employees opposed to a union's representation have the right insist on continued membership in the union, the union's right to establish rules r the acquisition and retention of membership would be rendered meaningless. See chine Stone Workers, Rubbers, Sawyers and Helpers, Local 89, 265 NLRB 496 (1982).

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1 (from page 1528)
In Luther E. Allen, Jr., supra., the Commission concluded that the explicit oviso to Section 8(b)(1)(A) of the National Labor Relations Act, 29 U.S.C. 158, ich acknowledges a union's right to prescribe its own membership rules, could be olied in G.L. c.150E.

[2] I also note that in neither case did the unions seek to expel the employees om membership. Instead, the unions attempted to discipline the employees while re- ining them as members.

[3] The majority also rely on Boston Police Patrolmen's Association, Inc. (Johns- & McNulty), 8 MLC 1993, aff'd sub. nom Boston Police Patrolmen's Association v. or Relations Commission, 16 Mass. App. Ct. 953 (1983). In my view the decision in nston & McNulty stands for the limited principle that a union cannot unilaterally use to represent employees who are unquestionably included in an appropriate bar- ning unit. The case did not involve a purely internal union membership regula- n, but instead concerned the union's duty of fair representation. As the Com- sion noted in its decision: "[h]ad we found these matters to be purely internal the BPPA's defense would have prevailed." 8 MLC at 2004.

Charging Parties remain free to pursue their organizing activities in opposi-
the Union and to file representation petitions with the Commission. They
retain an absolute right to retain membership in the very Union which they

Accordingly, I conclude that NAGE's legitimate and significant interest in
ing the integrity of its membership outweighs the Charging Parites' relatively
interest in retaining their membership in NAGE. On balance the public inter-
this case is served by protecting the Union's right to maintain its own mem-
rules. I therefore concur in the decision to dismiss the Complaint.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

MARIA C. WALSH, COMMISSIONER