

D.U.P. NO. 87-13

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

CAMDEN COUNTY COLLEGE
FACULTY ASSOCIATION,

Respondent,

-and-

DOCKET NO. CI-87-44

PROFESSOR RICHARD ZALESKI,

Charging Party.

SYNOPSIS

The Director refuses to issue a complaint on a charge filed by Richard Zaleski against the Camden County Faculty Association. Zaleski alleged that the Association conducted an inaccurate and improper ratification vote for a proposed collective agreement with Camden County College. The Director concludes that the ratification process is essentially an internal union matter and that Zaleski has failed to allege that the Association's conduct harmed an identifiable class of employees or was arbitrary, discriminatory or in bad faith.

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Appearances:

For the Respondent

G. Kenneth Merryman, President

For the Charging Party

Professor Richard Zaleski, pro se

REFUSAL TO ISSUE COMPLAINT

On January 7, 1987, Richard Zaleski filed an unfair practice charge against the Camden County College Faculty Association ("Association") alleging violations of sections 5.4(b)(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). Zaleski alleges that the Association conducted an improper and inaccurate ratification vote for a proposed collective negotiations agreement between the Association and Camden County College.

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

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge.^{2/} The Commission has delegated its authority to issue complains to me and has established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act.^{3/} The Commission's rules provide that I may decline to issue a complaint.^{4/}

On February 24, 1987, we advised Zaleski that we were inclined to refuse to issue a complaint on this charge.

^{2/} N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice and including a notice of hearing containing the date and place of hearings before the commission or any designated agent thereof..."

^{3/} N.J.A.C. 19:14-2.1

^{4/} N.J.A.C. 19:14-2.3

In order to maintain a section 5.4(b)(1) claim that a majority representative has breached its duty of fair representation, a charging party must allege facts which, if true, would support the claim that his (or her) representative acted in a manner which was arbitrary, discriminatory or in bad faith.

Hamilton Tp. Bd. of Ed., D.U.P. No. 82-24, 8 NJPER 199 (¶13083 1982); Vaca v. Sipes, 386 U.S. 171 (1967).

In Council of N.J. State College Locals, D.U.P. No. 81-8, 6 NJPER 531 (¶11271 1980), a case in which a minority union charged a majority representative with a violation of section 5.4(b)(1) for its alleged failure to execute a contract ratified by its own membership, we dismissed the unfair practice charge because:

The established standard for fair representation protects individual employees and classes of employees from indiscriminate treatment by the majority representative. Where a majority representative's activities affect all unit employees equally, the "quality" of representation, not its "fairness" is placed in issue and this conduct may not constitute an unfair practice.
Id. at 532.

Zaleski has not alleged either that he or an identifiable class of employees has been discriminated against as a result of the ratification process used by the Association. He has not alleged what harm was suffered as a result of the Association's conduct. 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. (See also, AFSCME, Local 2293, P.E.R.C. No. 82-87, 8 NJPER 223 (¶13092 1982).)

Zaleski has alleged no facts in support of the 5.4(b)(5) claim.

On February 24, 1987, we invited Zaleski to file any additional evidence (or a position statement) that he wished us to consider. We advised Zaleski, that absent persuasive evidence and argument to the contrary, we would decline to issue a complaint.

Zaleski has not filed any additional evidentiary materials or a position statement. Accordingly, we refuse to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: March 11, 1987
Trenton, New Jersey