

D.U.P. NO. 87-10

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

In the Matter of

CAMDEN COUNTY COLLEGE AND
CAMDEN COUNTY COLLEGE FACULTY ASSOCIATION,

Respondent,

-and-

PROFESSOR RICHARD ZALESKI,

Charging Party.

Docket Nos. CI-87-3, CI-87-4,
CI-87-7, CI-87-11,
CI-87-13, CI-87-37
and CI-87-38

SYNOPSIS

Acting pursuant to authority delegated to him by the Commission, the Director of Unfair Practices declines to issue Complaints on certain unfair practice charges filed by a professor against the Camden County College and the Faculty Association.

Specifically, the Director dismissed charges involving the College's alleged failure to assign him Cooperative Education courses, and found that the assignment or non-assignment of particular courses is a matter of educational policy and is not negotiable. Therefore, the Faculty Association's refusal to arbitrate his non-assignment of Cooperative Education courses is not a violation of the Act, nor is the College's refusal to supply the professor with information concerning to whom such assignments were made.

Additionally, an allegation that charging party was not paid for a holiday was found to be a mere allegation of contract violation and therefore no complaint was issued. Also, an allegation that an answer to a grievance was not in strict compliance with the contractual grievance procedure was dismissed where the facts showed that the grievance was answered, and the grievance procedure is self-executing and terminates in binding arbitration.

Lastly, a complaint issued on charging party's allegation that he was harrassed and retaliated against because he filed grievances and charges against the employer.

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

In the Matter of

CAMDEN COUNTY COLLEGE AND
CAMDEN COUNTY COLLEGE FACULTY ASSOCIATION,

Respondent,

-and-

PROFESSOR RICHARD ZALESKI,

Charging Party.

Docket Nos. CI-87-3, CI-87-4,
CI-87-7, CI-87-11,
CI-87-13, CI-87-37
and CI-87-38

Appearances:

For the Respondent-Employer,
William Wilhelm, Dean of Labor Relations

For the Respondent-Employee Representative,
Leo Galcher, NJEA UniServ Representative

For the Charging Party,
Professor Richard Zaleski

DECISION

Professor Richard Zaleski ("Charging Party") filed unfair practice charges^{1/} against Camden County College ("Respondent or College") asserting that College has engaged in certain actions which constitute unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

^{1/} Commission docket numbers CI-87-3, CI-87-7, CI-87-11, CI-87-38.

("Act"), specifically subsections 5.4(a) (1), (2), (3), (4), (5) and (7).^{2/} The Charging Party also filed unfair practice charges against the Camden County College Faculty Association^{3/} ("Respondent Association") alleging that the Respondent Association, by its actions, violated the Act, and specifically subsections 5.4(b)(1), (2) and (5).^{4/}

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

^{2/} These subsections prohibit public employers, their representatives or agents from: (1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this Act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.; (7) Violating any of the rules and regulations established by the Commission.

^{3/} Commission docket numbers CI-87-4 and CI-87-13.

^{4/} 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; (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances.(5) Violating any of the rules and regulations established by the Commission.

complaint stating the unfair practice charge.^{5/} The Commission has delegated its authority to issue complaints to me and has established a standard upon which unfair practice complaints shall be issued. The standard provides that the complaint shall issue if it appears that the allegations of the charging party, if true, may constitute unfair practices within the meaning of the Act.^{6/} The Commission's Rules provide that we may decline to issue a complaint where appropriate.^{7/}

In CI-87-37, filed November 24, 1986, Charging Party asserts that the Employer violated the Act, specifically, 34:13A-5.4(a)(1), (2), (3), (4) and (7). That charge, in relevant part, asserts that the College discriminated against him, reprimanded him and denied him a personal day in reprisal for the submission of grievances and other protected activities.

It appearing that certain facts as set forth in CI-87-37 may constitute unfair practices within the meaning of the Act except

^{5/} 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 hearing before the commission or any designated agent thereof..."

^{6/} N.J.A.C. 19:14-2.1

^{7/} N.J.A.C. 19:14-2.3

as specifically noted below, we are today issuing a Complaint and Notice of Hearing on that charge.

No facts are set forth in the charge constitute domination or interference with the formation, existence or administration of an employee organization. Therefore, that portion of the charge alleging violations of 34:13A-5.4(a)(2) is dismissed. There are no facts alleging the Commission's Rules were violated or that Zaleski was discriminated against because he filed any complaint, affidavit or petition with this agency. Therefore, the allegations of violations of 34:13A-5.4(a)(4) and (7) is dismissed.

CI-87-37 also alleges that the College violated the Act by its refusal to pay Zaleski for time he took off on President's Day, which he alleges is a violation of Title 18A. This allegation is also made in CI-87-11. At best, Charging Party may be alleging a violation of the collective negotiations agreement in effect between the parties. There are no factual allegations to support the claim that the employer's action was discriminatory. The Commission has previously held that it will not entertain unfair practice charges which merely allege that the contract has been violated. See, State of New Jersey, Department of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). Additionally, there is no factual allegation that would implicate a violation of this Commission's Rules. Therefore, we decline to issue a Complaint on this allegation, and we dismiss this charge, CI-87-11 and the same allegation which is set forth in CI-87-37.

In CI-87-7, filed July 25, 1986, Charging Party alleges that the Respondent Employer violated N.J.S.A. 34:13A-5.4(a)(1), (3), (4), (5) and (7), by its alleged failure to convene the Dean's Committee to hear his June 10, 1986 grievance at Step 1 as required by terms of the grievance procedure of the collective negotiations agreement then currently in effect.

Article 10 "Grievance Procedure" provides at Section 10.3 that:

Grievances shall be presented and adjusted in accordance with the following procedures:

Step One: A grievance shall be presented in writing through or by the authorized Association representative to the Dean's Committee on Faculty grievances. The Dean's Committee on Faculty grievances shall, within seven (7) calendar days after receipt of the grievance meet with the grievant and the authorized Association representative in an effort to adjust the matter to the satisfaction of all concerned.

The Dean's Committee shall make a decision and communicate it in writing to the grievant and the authorized Association representative within five (5) working days after said meeting.

Step Two: The decision of the Dean's Committee on Faculty Grievances may be appealed in writing to the President of the College or designee within five (5) working days after its receipt by the grievant and the authorized Association representative. The President of the College or designee shall within seven (7) calendar days after the receipt of the appeal meet with the grievant and the authorized Association representative in an effort to adjust the matter to the satisfaction of all concerned. The President of the College or designee shall within seven (7) days of said meeting make a decision and communicate it in writing to the grievant and the authorized Association representative.

Zaleski filed his grievance (No. 86-07) with the Dean for Personnel and Labor Relations on June 4, 1986 alleging that the

College failed to provide adequate secretarial help in violation of Article 18.6 and other articles of the contract. By memo dated June 9, 1986 the Dean advised Zaleski that the grievance could not be processed unless it was authorized by the Association's Faculty Grievance Committee. By memo dated June 18, 1986, the President of the Association authorized the processing of the grievance to Step One. By memo dated June 23, 1986 the College's Dean of Personnel and Labor Relations advised the Faculty Association that the College would not convene the Dean's Committee but would instead respond to the grievance in writing. On June 24, 1986, the Dean responded to the grievance in writing by stating that the subject of the grievance is a "non-negotiable, illegal topic of the collective bargaining agreement...is not arbitrable...and is without merit and is hereby denied."

In CI-87-38, Charging Party reiterated its allegations as set forth in CI-87-7, and added the following factual allegations. On October 17, 1986, the Faculty Association resubmitted the same grievance (re-numbered as 86-10) to Step One. The Charge alleges that the College again failed to process the grievance, all in violation of N.J.S.A. 34:13A-5.4 (a)(1), (3), (4), (5) and (7). A memo from Dean Wilhelm to the Faculty Association Grievance Committee dated October 23, 1986, holds that the grievance is without merit and denies it. Further, the Dean advised the Faculty Grievance Committee that the College would skip Step Two of the grievance procedure and, if the Association so chose, proceed

directly to arbitration. On October 31, 1986, the Association submitted its request to be heard at Step Two of the grievance procedure. By memo dated November 3, 1986, Dean Wilhelm advised the Association that the College affirmed its decision at step 1 that the grievance is without merit.

Charging Party alleges in CI-87-7 and CI-87-38 that by its alleged failure to strictly follow the procedures for processing grievances as set forth in the collective negotiations agreement, the Association violated N.J.S.A. 34:13A-5.4(a)(1), (3), (4), (5) and (7). There is no allegation of fact which would suggest that the Charging Party was discriminated against for exercising any protected activity or filing of any complaint, petition, affidavit with this Commission. Therefore, no complaint will issue with regard to alleged violations of subsections (3) and (4). No section of the Commission's Rules is cited as having been violated and therefore, no complaint will issue with regard to 34:13A-5.4(a)(7).

With regard to the alleged violation of 5.4(a)(5), the Charging Party alleges that the Respondent Employer denied him his right to have his grievance heard by failing to strictly follow the contractual grievance procedure. While it may be that the College, by declining to convene the Dean's committee to permit the grievance to be presented in person, violated its own procedure for hearing grievances, Zaleski was not denied his right to present the grievance and have his grievance answered. Simply put, Zaleski is alleging that the College violated the contract by not strictly

following the steps outlined in the contract, Article 10. However, the Association had the right to bring this matter to arbitration. Where there is a self executing grievance procedure which ends in arbitration, it is not an unfair practice if the employer fails to act at an intermediate step of the grievance procedure, for the Association has the right to have a neutral third party, the arbitrator, hear the grievance. [Op. of Rockaway, D.U.P. 83-5, 8 NJPER 644 (¶13309 1982)] Therefore, I decline to issue a complaint with regard to the allegation of violation of 34:13A-5.4(a)(5) and (a)(1). The unfair practice charges in CI-87-7 and CI-87-38 are hereby dismissed.

The allegations in CI-87-3, and the two unfair practice charges against the Faculty Association (CI-87-4 and CI-87-13) all involve Charging Party's attempts to seek review of the College's assignment of Cooperative Education courses to the faculty. Charging Party filed CI-87-3 on July 18, 1986, alleging that the Camden County College violated 34:13A-5.4(a)(1), (3), (5) and (7).

For the reasons stated below, I am not inclined to issue a Complaint on these latter three Charges.

In CI-87-3, Zaleski alleges that a grievance he filed in June, 1986, involving the College's alleged failure to assign him a Co-Op course, was processed through the grievance procedure and denied at Steps One and Two. The thrust of the charge concerns the College's refusal to provide Zaleski with a list of the employees who had been assigned to teach Co-Op courses that year. The College

alleges that its decisions concerning the assignment of courses is a managerial prerogative and therefore, it is not obligated to provide information concerning the employee to whom those courses are assigned. On July 21, 1986, Charging Party filed CI-87-4 against the Camden County Faculty Association alleging that it violated N.J.S.A. 34:13A-5.4(b)(1) and (5) when it failed, in June, 1986, to convene a grievance committee to consider one of Zaleski's grievances as described above, and then failed to seek arbitration over Zaleski's non-assignment of such a course. On August 21, 1986, Charging Party filed CI-87-13 alleging that the Faculty Association violated 34:13A-5.4(b)(1), (2) and (5) when it allegedly failed in the summer of 1985 to assign Zaleski the right to arbitrate his dispute with the College concerning the assignment of Co-Op courses.

An employer has a managerial right to transfer employees to other positions within its workforce. See also, South Brunswick Bd. of Ed., P.E.R.C. No. 85-60, 11 NJPER 22 (¶16011 1984); Byram Twp. Bd. of Ed., 152 N.J. Super 12 (App. Div. 1977). An employer's decision to assign its work force to perform non-teaching duties is not mandatorily negotiable or arbitrable. As we recently stated in Roselle Park Board of Education, D.U.P. No. 86-6, 12 NJPER 219 (¶17088 1986):

The Board has a managerial right to decide how to assign its work force and any unfair practice charge attempting to restrict such right must be dismissed."

The assignment (or non-assignment) of teaching staff members to particular courses is a matter of educational policy and not negotiable or subject to review in arbitration. It follows that, since Zaleski has no right to seek arbitration concerning the College's failure to assign him, the Board did not have an obligation to provide this information.

The Charges against the Faculty Association (CI-87-4 and CI-87-13) both allege that the Respondent Association failed to seek arbitration on Zaleski's grievances concerning the College's assignment of the Co-Op courses. The Association's alleged refusal to either seek arbitration for Zaleski or assign him the right to seek arbitration does not constitute a violation of the Act, since the subject matter of the grievances was not arbitrable to begin with. Further, an employee organization is permitted wide latitude in determining which disputes it deems appropriate to pursue to arbitration--there is no requirement that it take every claim of contract violation through the grievance process to arbitration.

A breach of the Union's statutory duty of fair representation occurs only when a union's conduct towards a member of the unit is arbitrary, discriminatory or in bad faith. AFSCME Council No. 1, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978).

In N.J. Turnpike Employees' Union, P.E.R.C. No. 80-38, 5 NJPER 412 (¶10215 1979), the Commission set forth the standards for finding a breach of the duty of fair representation as follows:

In considering a union's duty of fair representation, certain principles can be

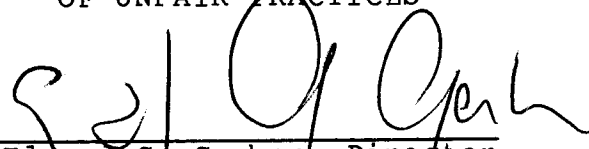
identified. The union must exercise reasonable care and diligence in investigating, processing and presenting grievances; it must make a good faith judgment in determining the merits of the grievance; and it must treat individuals equally by granting equal access to the grievance procedure and arbitration for similar grievances of equal merit. 5 NJPER at 413

See also, Council #1, AFSCME, P.E.R.C. No. 79-28, 5 NJPER 21 (¶10013 1978); Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967). Zaleski's dissatisfaction with the final disposition of his grievance is not a sufficient basis for a finding that the union breached its duty of fair representation.

There are no facts presented in the Charge which support a conclusion that the Association's decision not to seek arbitration, over a matter which is essentially not arbitrable, was arbitrary, discriminatory, or in bad faith.

Accordingly, for all of the reasons set forth above, I have determined that the Commission's complaint issuance standard has not been met^{8/} and I decline to issue a Complaint on the allegations in CI-87-4 and CI-87-13. These charges are dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: February 6, 1987
Trenton, New Jersey

^{8/} I also note that CI-87-13 alleges no dates of alleged occurrence of unfair practices which are within the six-month period of the filing of the charge.