

D.U.P. NO. 92-2

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

In the Matter of

NJIT PROFESSIONAL STAFF
ASSOCIATION/AAUP,

Respondent,

-and-

Docket No. CI-91-37

PETER A. NG,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint based on a charge filed by Peter Ng against the NJIT Professional Staff Association/AAUP alleging violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(b)(1), (2), (3), (4) and (5). Ng claimed that the AAUP violated its duty to fairly represent him in the handling of a grievance filed by another employee against him. The Director found that the AAUP did not have a duty to fairly represent Ng when he acted in a supervisory role in an academic setting considered collegial or self-governing.

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Appearances:

For the Respondent,
Reinhardt & Schachter, P.C.
(Paul Schachter, of counsel)

For the Charging Party,
Peter A. Ng, pro se

REFUSAL TO ISSUE COMPLAINT

On January 4, 1991, Peter A. Ng filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the NJIT Professional Staff Association/AAUP ("AAUP") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically 5.4(b)(1), (2), (3), (4) and (5).^{1/}

^{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. (2) Interfering with,

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 charged.^{2/} The Commission has delegated its authority to issue complaints 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/}

1/ Footnote Continued From Previous Page

restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (5) Violating any of the rules and regulations established by the commission."

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 charged and including a notice of hearing containing the date and place of hearing 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.

Ng specifically alleges that, as Chairman of the Department of Computer and Information Science, he is a member of the NJIT faculty and a member of the Professional Staff Association/AAUP.

Ng admits he "advised" Elaine Tabatneck, an employee he supervises, on proper attire. The AAUP filed a grievance critical of Ng on Tabatneck's behalf. Ng claims the AAUP did not follow the proper grievance procedure in handling the grievance against him,^{5/} never consulted Ng on the validity of Tabatneck's allegations and never sent Ng a copy of the grievance. Moreover, he alleges the grievance letter contained libelous statements and untrue accusations about him. Ng argues the AAUP is bound to represent all AAUP members equally and, by its conduct, the AAUP violated its duty to fairly represent him.

In Rutgers AAUP, D.U.P. No. 89-4, 14 NJPER 622 (¶19259 1988), the Rutgers AAUP filed a grievance protesting a denial of tenure and charged that the denial was discriminatory. The chairperson of the department who denied the faculty member's tenure application filed an unfair practice charge against the Rutgers AAUP alleging that he, as a member of the AAUP, was not given an opportunity to comment upon the grievance, and that the grievance damaged his reputation. I held that the department chairperson was not acting as a traditional employee when participating in a tenure

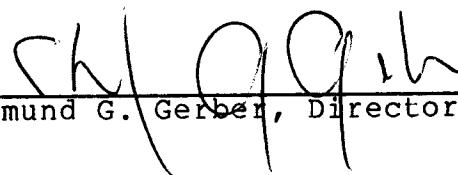
^{5/} The grievance procedure provides that Ng as Department Chairman would review the grievance for the employer at the first step. The AAUP by-passed Ng and brought the grievance to the second step.

review committee. In effect, he was performing a supervisory responsibility which, in an academic setting, is considered collegial or self-governing. Accordingly, the union did not owe a duty of fair representation to the department chairperson when he acted in that capacity.

The same result must be reached here. When Ng "advised" the employee, he acted in a supervisory role which at NJIT is appropriately considered collegial or self-governing. The AAUP does not have a duty to fairly represent NG when he acts in that capacity. The AAUP's obligation is to enforce the contract through the grievance procedure. The AAUP filed a grievance against an employee acting as an agent of the College. By seeking to have the Association represent him as an agent, Ng in effect seeks to have the Association represent the College. The AAUP cannot represent both the grievant and College; a dual function for majority representatives is not within the Act's purposes.^{6/}

The allegation of Ng's charge does not constitute an unfair practice within the meaning of the Act. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: July 17, 1991
Trenton, New Jersey

^{6/} Nevertheless, if the College takes disciplinary action against Ng for his action with Tabatneck, the Association may have an obligation to represent Ng in that proceeding.