

D.U.P. NO. 89-4

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

In the Matter of

RUTGERS AAUP,

Respondent,

-and-

Docket No. CI-88-74

DR. HANS FISHER, DR. PAUL GRIMINGER  
& DR. EDWARD J. ZAMBRASKI,

Charging Parties.

SYNOPSIS

The Director of Unfair Practices refuses to issue a Complaint on a charge alleging that the AAUP violated its duty to fairly represent three faculty members. The charging parties challenge the AAUP's conduct during the tenure grievance process of a colleague. The Director concludes that the underlying issue relates to a collegial function, rather than the charging parties' terms and conditions of employment.

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

In the Matter of

RUTGERS AAUP,

Respondent,

-and-

Docket No. CI-88-74

DR. HANS FISHER, DR. PAUL GRIMINGER  
& DR. EDWARD J. ZAMBRASKI,

Charging Parties.

Appearances:

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

For the Charging Parties  
Dr. Hans Fisher, pro se  
Dr. Paul Griminger, pro se  
Dr. Edward J. Zambraski, pro se

REFUSAL TO ISSUE COMPLAINT

On April 18, 1988, Hans Fisher, Paul Griminger and Edward Zambraski filed an amended unfair practice charge alleging that Rutgers AAUP ("AAUP") violated subsections 5.4(b)(1) and (3)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et

---

<sup>1/</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; (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."

seq. ("Act"). On June 13, 1988, a Commission staff agent conducted an exploratory conference.

Charging parties allege that the AAUP violated its duty to represent them fairly by its actions during the processing of a grievance for Dr. Rashida A. Karmali, who had been denied tenure. They allege that the AAUP participated in the selection of a grievance review committee, two members of which were "intimately involved" with Karmali. Charging parties claim that this created a "conflict of interest to any fair and unbiased hearings on matters that affect[ed their] character and reputation." The charging parties also allege that they attempted to change the composition of Karmali's grievance review committee by asking both an Associate Provost and the AAUP President to replace the two committee members whose interests allegedly "conflicted" with Karmali's. They claim that, although the College was willing to change the committee composition, the AAUP did not respond to their request.

The charging parties also allege that the AAUP only reluctantly agreed to file a grievance on their behalf challenging the alleged inequities created by the processing of the Karmali grievance. They claim that even when the AAUP filed the grievance, the union did not address their concerns. Charging parties complain that they had no opportunity to present their side to the Karmali tenure denial and that their reputations were consequently damaged.

The following facts were obtained at the exploratory conference. Karmali and Fisher work in the Department of Nutrition

at Rutgers. Fisher is the department chairman and Karmali a professor in the department. Article X of the collective negotiations agreement between Rutgers and the AAUP contains a procedure for grieving tenure and other faculty personnel matters. The process involves the selection of a three-member committee which hears the grievance and determines whether an error has been made. If the committee finds an error has been made, the personnel decision is re-evaluated. The Rutgers/AAUP agreement also contains a conventional grievance procedure in Article IX.

Karmali filed an Article X grievance when she was denied tenure. She claims that the denial was due to her race, sex and ethnicity and she specifically named Fisher. The committee found that an error had been made and that Fisher had been capricious and prejudicial to Karmali.

Fisher claims he was not given an opportunity to testify at Karmali's hearing, that the committee's report was untrue and his reputation damaged. He asked the AAUP to file an Article IX grievance challenging the propriety of the processing of Karmali's Article X grievance. AAUP presented the grievance, the College denied it and AAUP refused to process it any further.

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.<sup>2/</sup> 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.<sup>3/</sup> The Commission's rules provide that I may decline to issue a complaint.<sup>4/</sup>

In Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967), the Supreme Court articulated the standard for determining whether a labor organization violated its duty of fair representation. The Court held:

...a breach of the statutory duty of fair representation occurs only when a union's conduct towards a member of the collective bargaining unit is arbitrary, capricious or in bad faith.  
[Id. at 190, 64 LRRM 2376]

---

<sup>2/</sup> 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...."

<sup>3/</sup> N.J.A.C. 19:14-2.1.

<sup>4/</sup> N.J.A.C. 19:14-2.3.

New Jersey has adopted the Vaca standard in deciding duty of fair representation cases. See Saginario v. Attorney General, 87 N.J. 480 (1981).

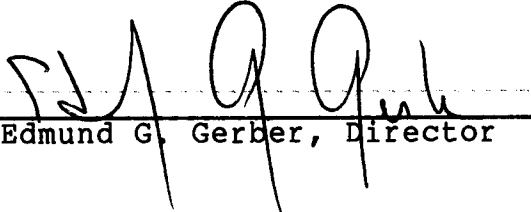
On August 26, 1988, we advised the Charging Parties that we were not inclined to issue a Complaint because they failed to allege that the AAUP acted arbitrarily, discriminatory or in bad faith concerning matters that affected their terms and conditions of employment. Rather, they challenged the AAUP's strategy in processing Fisher's grievance. We invited the parties to submit additional factual allegations and statements of position. We advised the parties that, in the absence of a submission which would warrant an evidentiary hearing, we would dismiss the Complaint.

On September 1, 1988, the Charging Parties filed a position statement and a letter indicating that the University was willing to change the composition of Karmali's grievance committee but that the AAUP would not agree to a change. The Charging Parties alleged that, despite their "numerous phone calls and...several letters to [the] AAUP President...[h]e did not return phone calls, or answer letters until the grievance hearing had started and...[he] refused to entertain the concept of having hearings before a neutral grievance committee." The Charging Parties argued that, "Perhaps, strictly legalistically speaking, the AAUP may not be required to listen our complaints about the membership of the grievance committee but morally and ethically, no one can question that the AAUP acted arbitrarily, capriciously and unfairly in representing [the charging parties]." (Charging parties' September 1 response).

The Charging Parties' submission does not change the character of their unfair practice charge. Rather, they sought to have the AAUP represent them in a matter which was an outgrowth of a collegial or self-governance function within the University. Such collegial functions are not terms and conditions of employment. Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976). They have not alleged facts showing that the AAUP acted arbitrarily, discriminatorily or in bad faith in matters that affect their terms and conditions of employment.

Accordingly, we decline to issue a Complaint.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: September 15, 1988  
Trenton, New Jersey