

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY EDUCATION ASSOCIATION,  
NATIONAL EDUCATION ASSOCIATION &  
BERGEN COMMUNITY COLLEGE FACULTY  
ASSOCIATION,

Respondents,

-and-

Docket No. CI-84-19-38

STUART D. SHAW,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants the defendants' motion for summary judgment and dismisses a Complaint based on an unfair practice charge that Stuart Shaw filed against the National Education Association, the New Jersey Education Association, and the Bergen Community College Faculty Association. Shaw had alleged that the NJEA and NEA violated their duty of fair representation by discontinuing funding of a federal lawsuit which Shaw had filed against Bergen Community College after Shaw insisted upon adding an officer of their local affiliate, the BCEA, as an additional defendant. Assuming the truth of all Shaw's factual allegations and granting him the benefit of every favorable inference, the Commission holds, under all the circumstances of this case, that the defendants had no obligation to finance a lawsuit against a BCEA officer.

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Docket No. CI-84-19-38

STUART D. SHAW,

Charging Party.

Appearances:

For the Respondents, Greenberg, Kelly & Prior, Esqs.  
(James F. Schwerin, of Counsel)

For the Charging Party, Stuart D. Shaw, Pro Se

DECISION AND ORDER

On September 12, 1983, Stuart D. Shaw, a member of the Bergen Community College Faculty Association ("Association"), filed an unfair practice charge against the New Jersey Education Association ("NJEA") with the Public Employment Relations Commission. On November 21 and December 28, 1983, Shaw amended the charge to name, respectively, the National Education Association ("NEA") and the Association as additional defendants. The charge, as amended, essentially alleges that the defendants violated subsections 5.4(b)(1) and (5)<sup>1/</sup> of the New Jersey Employer-Employee

<sup>1/</sup> These subsections prohibit public 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."

Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), when NJEA stopped financing a federal lawsuit Shaw and his wife had initiated against Bergen Community College, several members of its Board of Trustees, and the Treasurer of the Association (also an NJEA delegate) and financed instead the defense of the Association official.<sup>2/</sup>

Shaw requested interim relief requiring NJEA to resume funding of his lawsuit pending completion of these unfair practice proceedings. On October 12, 1983, after hearing oral argument and receiving briefs, Commission designee Edmund G. Gerber denied the requested relief because Shaw had not established a likelihood of success on the merits. I.R. No. 84-4, 9 NJPER 645 (¶14278 1983).

On October 25, 1983, the Director of Unfair Practices issued a Complaint and Notice of Hearing. The NJEA and NEA then filed an Answer admitting that NJEA had stopped financing the federal lawsuit, but denying that it owed Shaw any obligation to fund his lawsuit.

On December 8, 1983, the NEA and NJEA filed a Motion for Summary Judgment. They asserted, among other grounds, that Shaw had not alleged a cognizable breach of the duty of fair representation because they had no obligation to fund a federal court lawsuit and because they were not Shaw's majority

<sup>2/</sup> The lawsuit challenged the constitutionality of the College's decision not to grant Shaw tenure or reappoint him.

representative.<sup>3/</sup> On December 12, 1983, the Chairman of the Commission referred this motion to Hearing Examiner Alan R. Howe.

On December 28, 1983, the Hearing Examiner heard oral argument. He also considered the briefs the parties filed in the interim relief and summary judgment motion proceedings as well as all other affidavits and documents filed by the parties.

On January 11, 1984, the Hearing Examiner issued a decision granting the Motion for Summary Judgment. H.E. No. 84-34, 10 NJPER 96 (¶15050 1984) (copy attached). After accepting Shaw's factual allegations as true and giving him the benefit of every favorable inference, the Hearing Examiner found that the defendants' duty of fair representation under the Act did not extend beyond contract negotiations and administration and therefore did not encompass a duty to continue financing Shaw's federal court lawsuit.

On January 25, 1984, after receiving an extension of time, Shaw filed exceptions pursuant to N.J.A.C. 19:14-4.8 and 19:14-7.3. Shaw asserts that the Hearing Examiner erred in: (1) considering whether the defendants had a duty of fair representation towards Shaw in the context of his federal litigation; (2) limiting the Commission's jurisdiction to considering whether the defendants had such a duty; (3) finding that the grievance procedure established in the local union's contract with affiliated parent unions is separate from the grievance procedure established in the local union's contract with the College; and (4) finding that the continuation of a grievance procedure by the parent union is discretionary, once the grievance process has been initiated.

<sup>3/</sup> As already noted, Shaw amended the Complaint on December 28, 1983 to add the Association, his majority representative, as a defendant.

We have reviewed the record. As the Hearing Examiner did, we assume the truth of Shaw's factual allegations for purposes of considering the Motion for Summary Judgment. The facts set forth in the Hearing Examiner's report (pp. 2-4) are generally accurate. We adopt and incorporate them here, with the following modifications and additions. First, Shaw did not inform the NJEA, prior to its initial decision to finance the federal lawsuit, that he would name the Association's Treasurer as a defendant (finding of fact no. 7); instead, he told two NJEA officials that he might name the Treasurer as a defendant and did not mention this possibility at all to the panel of network attorneys which approved his request for financing. Second, the NJEA/NEA Legal Services Program reserves the right to the NJEA "...to grant full assistance, a part thereof, or none at all depending upon funds available and the conditions surrounding each case." Third, there is no indication in the record that NJEA or NEA have ever financed a lawsuit against one of its affiliates or an affiliate's officer.

Pursuant to N.J.A.C. 19:14-4.8(d), summary judgment may be granted "[i]f it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant or cross-movant is entitled to its requested relief as a matter of law...." A motion for summary judgment is to be granted with extreme caution, the moving papers are to be considered in the light most favorable

to the party opposing the motion, all doubts are to be resolved against the movant, and the summary judgment procedure is not to be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 182, 185 (App. Div. 1981); In re Essex County Educational Services Commission, P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982). Even accepting Shaw's factual allegations as true and considering the matter in the light most favorable to Shaw, we agree with the Hearing Examiner, under all the circumstances of this case, that summary judgment in favor of the defendants was clearly warranted.

In In re Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563 (¶13260 1982), we held that the New Jersey Employer-Employee Relations Act's conferral of unfair practice jurisdiction did not empower this Commission to resolve essentially intra-union disputes. Thus, we declined to assert jurisdiction over the claim of certain union members that a union rule restricting their eligibility for union office was unlawful.<sup>4/</sup> We specifically noted that the National Labor Relations Board, our counterpart in the private sector, normally did not adjudicate matters concerning the relationship between a labor organization and its members and that such matters were instead regulated by the Department of Labor under the Labor Management Reporting and Disclosure Act, 29 U.S.C. ¶401.

<sup>4/</sup> We recognized that such a claim might be cognizable in a different forum with a different grant of jurisdiction. For example, a court might consider whether the rule violated a member's contractual rights under a union's constitution and by-laws. See, e.g., Moore v. Local Union No. 483, 66 N.J. 527 (1978) ("Moore"); Calabrese v. PBA, Local 76, 157 N.J. Super. 139, 147 (1978); Barnhardt v. United Auto, Aircraft, Agr. Implement Workers of America, 12 N.J. Super. 147 (App. Div. 1951); In re Newark Building Trades Council, D.U.P. No. 82-34, 8 NJPER 533 (1982).

While we do not have jurisdiction over internal union disputes, we do have jurisdiction over claims that a majority representative has breached the duty of fair representation it owes the members of its negotiations unit in regards to labor relations with their employer. N.J.S.A. 34:13A-5.3 specifically provides:

A majority representative of public employees in an appropriate unit shall be entitled to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all employees without discrimination and without regard to employee organization membership.

We have further elaborated upon the basis of our jurisdiction over unfair representation claims in In re City of Union City and FMBA Local No. 12, P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982).

In the instant case, the heart of Shaw's charge, as amended, concerns a fundamental issue of internal union governance and does not implicate the duty of fair representation.<sup>5/</sup> Shaw, an Association member, essentially insists that NJEA and NEA finance a federal lawsuit against an officer of their local affiliate.<sup>6/</sup> As Shaw himself recognizes, such a lawsuit could discredit the local affiliate, divide its members into opposing camps, and perhaps imperil its majority representative status,

<sup>5/</sup> We agree with the Hearing Examiner that the duty of fair representation provides the only conceivable basis for the invocation of our unfair practice jurisdiction under N.J.S.A. 34:13A-5.4(b)(1)-(5). We are not at liberty, as Shaw suggests, to expand our unfair practice jurisdiction in this case beyond a claim of unfair representation.

<sup>6/</sup> Had the affiliate's officer not been sued, it appears the funding of the law suit would have continued.

thus depriving its state and national affiliates of the benefits flowing from their connection with a majority representative.<sup>7/</sup> No case, private sector or public, has yet held that the duty of fair representation compels a union affiliate to choose sides against a union officer in such an intra-union dispute and to pay the bill for a lawsuit which could produce such deleterious and divisive results. We decline to contract the sphere of internal union affairs that narrowly or to expand the duty of fair representation that broadly.<sup>8/</sup> Accordingly, we grant the defendants' motion for summary judgment.

<sup>7/</sup> In a June 22, 1983 letter to the president of the NJEA, Shaw listed what he considered the conceivable reasons for withholding financial support from him:

These reasons include the feeling that the N.J.E.A. would be suing itself, that such an action would be discrediting unionism at the very time that teachers are threatened by many forces, that the N.J.E.A. would be attacking an ally and a "strong man," that such an action would weaken the N.J.E.A. hold on B.C.C. especially after B.C.C. lost the affiliation recently of every B.C.C. group except the professionals to the Teamsters, and the human consideration that N.J.E.A. would be attacking a long term colleague and well known Association figure.

<sup>8/</sup> The Hearing Examiner, relying on private sector precedent, held that the duty of fair representation is simply inapplicable outside the context of negotiating or administering the terms of a collective negotiations agreement and thus does not extend to financing any federal court lawsuits. Given the added factor in this case of Shaw's insistence upon suing the majority representative's Treasurer, we need not decide whether the duty of fair representation ever extends beyond the negotiation or administration of collective negotiations agreements. The Hearing Examiner also held that NJEA's initial decision to finance Shaw's lawsuit did not remove the subsequent decision to withdraw financing from the realm of internal union affairs and subject it to the duty of fair representation; we agree. Finally, the Hearing Examiner

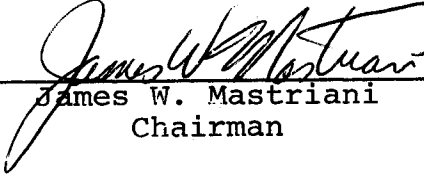
(continued).



ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Wenzler, Newbaker, Suskin and Butch voted for this decision. Commissioner Hipp abstained. None opposed. Commissioner Graves was not present.

DATED: Trenton, New Jersey  
April 12, 1984  
ISSUED: April 13, 1984

g/ (continued)

rejected Shaw's peripheral complaints about the procedures used in deciding to withdraw his financing and his alleged inability to obtain information which would allow him to protest this decision within the internal union processes of the majority representative and its affiliates. We agree with the Hearing Examiner that these complaints are also outside our unfair practice jurisdiction. Moore.

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Respondents,

-and-

Docket No. CI-84-19-38

STUART D. SHAW,

Charging Party.

SYNOPSIS

A Hearing Examiner grants the Respondents' Motion for Summary Judgment as to a charge of unfair practices, which alleged that the Respondents violated Subsection 5.4(b)(1) and (5) of the New Jersey Employer-Employee Relations Act. The Respondent NJEA adopted a legal assistance program in 1981 and, after the discharge of the Charging Party, the NJEA provided an attorney for the Charging Party to prosecute a suit in Federal Court. Thereafter, the NJEA withdrew the funding of legal counsel for the Charging Party and the Charging Party alleged that the NJEA and the other Respondents had breached a duty of fair representation to the Charging Party.

The Hearing Examiner concluded, as a matter of law, that a breach of the duty of fair representation can only arise in a collective negotiations setting and cannot derive from internal procedures of an employee organization. Further, he found that the Commission has never asserted jurisdiction over the internal affairs of an employee organization.

A Hearing Examiner's decision on a Motion for Summary Judgment is not a final administrative determination of the Public Employment Relations Commission. The Charging Party has ten (10) days from the date of the decision to request review by the Commission or else the case is closed.

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Appearances:

For the Respondents  
Greenberg, Kelley & Prior, Esqs.  
(James F. Schwerin, Esq.)

For the Charging Party  
Stuart D. Shaw, Pro Se

DECISION AND ORDER ON RESPONDENTS'  
MOTION FOR SUMMARY JUDGMENT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on September 12, 1983, and amended on November 21, 1983 and December 28, 1983, by Stuart D. Shaw (hereinafter the "Charging Party" or "Shaw") alleging that the New Jersey Education Association (hereinafter the "NJEA"), the National Education Association (hereinafter the "NEA") and the Bergen Community College Faculty Association (hereinafter the "Association"), also, collectively, the "Respondents," have engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"). Inasmuch as the allegations in the Unfair Practice Charge, as amended, are admitted for the purpose of disposing of the Respondents' Motion for Summary Judgment, they will not be set forth at this time, but will be set forth in the "Admitted Findings of Fact," infra. Suffice it to say that a breach of the duty of fair representation is alleged. The Unfair Practice Charge, as amended,

alleges a violation by the Respondent of N.J.S.A. 34:13A-5.4(b)(1) and (5) of the Act.<sup>1/</sup>

Prior to the issuance of a Complaint, infra, Hearing Examiner Edmund G. Gerber denied Shaw's request for interim restraints on October 12, 1983: I.R. No. 84-4, 9 NJPER 645 (1983). Briefs filed by the parties at that time are before the instant Hearing Examiner for consideration in disposing of the Respondents' Motion for Summary Judgment.

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on October 25, 1983. The scheduled hearing dates were cancelled when the Respondents filed a Motion for Summary Judgment on December 8, 1983. The Hearing Examiner heard oral argument by the parties on December 28, 1983.

Pursuant to N.J.A.C. 19:14-4.8(a), the Chairman of the Commission had referred the Respondents' Motion for Summary Judgment to the instant Hearing Examiner under date of December 12, 1983.

Upon the record papers filed by the parties in the instant proceeding to date, the Hearing Examiner makes the following:

ADMITTED FINDINGS OF FACT

1. The New Jersey Education Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
2. The National Education Association is a party of record in this proceeding, an appearance having been made on its behalf, but no finding is made that it is a public employee representative within the meaning of the Act, as amended, over which the Commission has jurisdiction.

1/ These Subsections prohibit public 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.

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

3. The Bergen Community College Faculty Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

4. Stuart D. Shaw is a public employee within the meaning of the Act, as amended, and is subject to its provisions.

5. Shaw was a member of the faculty of the Bergen Community College until his termination on a date not disclosed by the Unfair Practice Charge, as amended. Shaw grieved his termination through the grievance procedure of the collective negotiations agreement between the Association and Bergen Community College. The final step of the grievance procedure is an appeal to the Board of Trustees of Bergen Community College. There is no provision for arbitration, which prompted the court proceedings described hereinafter.

6. At some point after his termination, Shaw sought and obtained a commitment on March 1, 1983 from the NJEA to finance a Federal law suit on behalf of himself and his wife, who also had been terminated by Bergen Community College. The authority for such financing by the NJEA is set forth in certain guidelines for a legal services program, which was adopted by the NJEA on May 15, 1981.

7. Prior to obtaining the commitment to finance his Federal law suit on March 1, 1983, Shaw had disclosed to the NJEA that he intended to name as a defendant, Peter Helff, the Treasurer of the Association and an agent of the NJEA.

8. James Zazzali of the Newark law firm of Zazzali, Zazzali and Kroll was retained by the NJEA to represent Shaw. A Complaint was filed in the District Court in Newark on April 8, 1983, which named Helff as a defendant along with the Bergen Community College and several members of the Board of Trustees. Twelve days after the filing of the aforesaid complaint, Zazzali dropped Helff as a defendant at the behest of the NJEA, all of which was done without notice to or the consent of Shaw.

9. On May 23 and June 8, 1983, Shaw requested in writing that Zazzali reinstate Helff as a defendant forthwith. This was done by Zazzali on June 17, 1983.

10. Thereafter Zazzali became concerned about a possible conflict of interest due to the fact that the litigation was being financed by the NJEA while at the same time an NJEA representative, Helff, was named as a defendant. Zazzali ultimately decided to move in Federal Court for withdrawal as counsel for Shaw which, notwithstanding Shaw's opposition, was granted by the Court on September 8, 1983. Since that date, Shaw and his wife have represented themselves pro se.

11. The original Unfair Practice Charge, which complained about the foregoing, was filed on September 12, 1983 and amended as set forth above.

#### DISCUSSION

Based on the foregoing "Admitted Findings of Fact" it is clear that the instant proceeding is ripe for disposition of the Respondents' Motion for Summary Judgment: see the analysis and discussion by the Commission in Essex County Educational Services Commission, P.E.R.C. No. 83-65, 9 NJPER 19, 20 (1982). Under the authorities set forth therein, a motion for summary judgment may properly be granted when the record papers disclose that "...there is no genuine issue as to any material fact... and that the moving party is entitled to a judgment or order as a matter of law..." The Hearing Examiner is satisfied that the requisites for the grant of the Respondents' Motion for Summary Judgment are met. Based on the foregoing, and the legal arguments made by the representative of the parties, the Hearing Examiner hereby grants the Respondents' Motion for Summary Judgment for the following reasons:

The Admitted Facts In No Way Support  
A Finding That The Respondents Breached  
Any Duty Of Fair Representation To Shaw

As will be apparent hereinafter, a breach of the statutory duty of fair

representation must necessarily arise in the context of either negotiations for a collective agreement between an employee representative and an employer, or the administering of such an agreement during its lifetime: Donnelly v. United Fruit Co., 40 N.J. 61, 76 (1963).

In the Federal sector, beginning with Steele v. Louisville & Nashville Railroad, 323 U.S. 192 (1944), the duty of fair representation has been limited to the collective bargaining or contractual setting, i.e., the obligation of the exclusive representative to represent all employees in the collective negotiations unit fairly and without hostile discrimination or bad faith: See, for example, Ford Motor Co. v. Huffman, 345 U.S. 330 (1953), Conley v. Gibson, 355 U.S. 41 (1957), Humphrey v. Moore, 375 U.S. 335 (1964), Vaca v. Sipes, 386 U.S. 171 (1967), Hines v. Anchor Motor Freight, Inc., 424 U.S. 554 (1976), Bowen v. U.S. Postal Service, \_\_\_ U.S. \_\_\_, 112 LRRM 2281 (1983), and in National Labor Relations Board cases beginning with Miranda Fuel Co., 140 NLRB 181, 51 LRRM 1584 (1962).

The Commission, too, in its fair representation decisions has always had before it facts involving the conduct of the exclusive collective negotiations representative either in negotiating an agreement or administering an existing agreement: See, for example, Hamilton Township Education Association, P.E.R.C. No. 79-20, 4 NJPER 476 (1978), Council No. 1, AFL-CIO, P.E.R.C. No. 79-28, 5 NJPER 21 (1978), N.J. Turnpike Employees Union Local 194, etc., P.E.R.C. No. 80-38, 5 NJPER 412 (1979), Middlesex Council No. 7, NJCSA, P.E.R.C. No. 81-62, 6 NJPER 555 (1980) and FMBA Local No. 12, P.E.R.C. No. 82-65, 8 NJPER 98 (1982). Two of the foregoing decisions concerned collective negotiations and the treatment of employees in the unit (Hamilton and FMBA Local No. 12) while the other three cases dealt with the problem of an employee in resorting to the contractual grievance procedure (Council No. 1, N.J. Turnpike and Middlesex).

Consistent with the Federal sector, the Commission has not expanded the scope of the duty of fair representation beyond the contractual setting, which obligates the exclusive representative to act fairly and without hostile discrimination: See State of N.J., D.U.P. No. 80-6, 5 NJPER 429, aff'd P.E.R.C. No. 80-50, 5 NJPER 485 (1979), which held that there was no obligation on the part of a majority representative to file or pursue an unfair practice charge on behalf of a unit member or members. In the Federal sector, the Courts have been uniform in holding that the duty of fair representation does not extend beyond the National Labor Relations Act and the Railway Labor Act: See, for example, Airline Stewards v. American Airlines, 490 F.2d 636 (7th Cir. 1973), cert. den. 416 U.S. 993 (1974) /the duty does not extend to Title VII claims / and Hawkins v. Babcock & Wilcox Co., 105 LRRM 3438 (N.D. Ohio 1980) /the duty does not extend to advising employees of their administrative or judicial remedies /.

Based on the foregoing authorities, the Hearing Examiner finds and concludes that Shaw has failed to allege any facts which would bring his Unfair Practice Charge, as amended, within the ambit of an arguable breach of the duty of fair representation.

A Claim Arising From An Alleged Violation  
Of Internal Union Procedures Is Not  
Cognizable As An Unfair Practice Under  
The Act

As an examination of the admitted facts, supra, discloses, Shaw's allegations deal solely with the conduct of the NJEA in failing to provide Shaw with counsel to prosecute a suit in Federal Court in Newark. Plainly, this involves the problem which Shaw has encountered under an internal union mechanism wherein legal fees are paid on behalf of members of the NJEA under certain circumstances. The grant or denial of funds for legal counsel appears clearly to be an internal union matter and in no way arises out of the contractual relationship between the Association and Bergen Community College.



The Respondents correctly cite the Commission's decision in City of Jersey City, P.E.R.C. No. 83-32, 8 NJPER 563 (1982) for the proposition that the Commission lacks jurisdiction to consider a claim of the violation of a union constitution. In that case certain employees, who were members of an association, alleged that an unfair labor practice was committed when they were denied the right to hold union office even though they enjoyed every other membership benefit. The Commission noted that it was reluctant to intercede in what was solely an intra-union dispute, a matter over which the Courts of the State would have jurisdiction. Since the case had come before the Commission following an order of the Superior Court in Hudson County, the Commission stated "...Thus, those members...who had joined the Union are free to return to that forum (the Court) to pursue their challenge...." (8 NJPER at 566).

The Respondents also correctly cite the decision of the Director of Unfair Practices in Newark Building Trades Council, D.U.P. No. 82-34, 8 NJPER 333 (1982) where he refused to issue a complaint regarding a claim by an individual union member that the constitution and by-laws of the union were being violated.

In conclusion, the Hearing Examiner notes that in the Hawkins case, cited above, on facts nearly identical to those in the instant case, it was held that an individual employee was not inadequately represented when his union refused to advise the employee of his legal rights under Title VII, which was outside of the context of the collective bargaining agreement. The Court said that the union had no duty to act as an attorney at law and to advise the member of all possible alternatives of legal recourse. <sup>2/</sup>

Thus, the Hearing Examiner finds and concludes that, based on the foregoing authorities, Shaw has failed to state a claim over which the Commission has jurisdiction, i.e., only internal union procedures are involved herein.

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<sup>2/</sup> The Hearing Examiner has considered and rejects Shaw's contention that NJEA violated the Act when it withdrew the offer of legal assistance after having initially granted it since it involves an internal union decision, supra.

\* \* \* \*


Upon the foregoing, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Respondents' Motion for Summary Judgment is granted.
2. The Respondents, by their conduct herein, have not violated N.J.S.A. 34:13A-5.4(b)(1) and (5).

ORDER

It is hereby ORDERED that the Respondents' Motion for Summary Judgment be and same is hereby granted.



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Alan R. Howe  
Hearing Examiner

DATED: January 11, 1984  
Trenton, New Jersey