IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

DELAWARE STATE UNIVERSITY,	)	
	)	
Respondent Below-	)	
Appellant,	)	
	)	
V.	)	Civil Action No. 1329-K
	)	
DELAWARE STATE UNIVERSITY CHAPTER, AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS,	)	
	)	
Charging Party Below-	)	
Appellee.	)	

ORDER

Submitted: February 13, 1997
Decided: February 24, 1997

(1) This is an appeal from the Public Employment Relations Board. The American Association of University Professors ("AAUP") charged Delaware State University with an unfair labor practice. 19 Del. C. § 1307. The University contested the Board's jurisdiction on the ground that the University is not a "public employer." 19 Del. C. § 1302(n). The Executive Director ruled that the University is a public employer, denied its motion to dismiss, and asked the parties

to agree on a date for an unfair labor practice hearing. The University filed this appeal.

(2) The AAUP argues that the University has lost the right to appeal by failing to appeal the Executive Director's decision to the Board, as provided in the Board's rules. The University responds that the Board's rules do not provide for an immediate appeal of the Executive Director's decision. The University argues that it should not be required to go through the administrative process before it can contest the Executive Director's decision upholding the Board's jurisdiction. The University further argues that if it must go through the administrative process, it should nonetheless be permitted to obtain judicial review of the decision sustaining the Board's jurisdiction even if the University prevails on the unfair labor practice charge.

(3) There is a strong presumption favoring the exhaustion of administrative remedies, except in certain circumstances where immediate judicial relief is justified. Levinson v. Delaware Comp. Rating Bureau, Del.Supr., 616 A.2d 1182, 1190 (1992). There are no such circumstances in this case. Cf. Myers v. Bethlehem Shipbuilding Corporation, 303 U.S. 41 (1938)(having to participate in an administrative hearing does not constitute irreparable harm sufficient to justify exception to exhaustion requirement).

(4) The statute provides for an appeal to the Court of Chancery by any party adversely affected by a decision of the Board--not of the Executive Director--disposing of a complaint charging an unfair labor practice. 19 Del. C. § 1309 (a). Board Rule 7.4 provides for the Board's review of the Executive Director's decision following a hearing. The Board may then determine whether its rules required the University to immediately appeal the Executive Director's jurisdictional decision. It would be premature for this court to decide that issue at this time. It would also be premature for this court to decide whether the University may appeal the decision that the Board has jurisdiction over the University if the University prevails on the unfair labor practice charge.

* * *

It is ordered that the AAUP's motion to dismiss is granted.

Feb. 24, 1997
Date

Vice Chancellor