

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

MICHELLE I. THOMAS,)
)
 Charging Party)
) **ULP NO. 04-06-436**
)
 DELAWARE STATE UNIVERSITY,) Probable Cause Determination
)
 Respondent.)

BACKGROUND

Charging Party, Michelle I. Thomas (“Thomas”) is employed by Delaware State University (“DSU”), and is a public employee within the meaning of Section 1302 (o) of the Public Employment Relations Act, 19 Del. C. Chapter 13 (1986)(hereinafter “Act”).¹

Respondent, Delaware State University (“DSU”) is a public employer within the meaning of Section 1302(p) of the Public Employment Relations Act.²

¹ “Public employee” or “employee” means any employee of a public employer except: (1) any person elected by popular vote or appointed to office by the Governor; (2) any person who is a prisoner or inmate or who is held in lawful custody by an agency of the State; (3) any person appointed to serve on a board or commission; (4) any employee, as defined in Chapter 40 of Title 14 of a public school employer, as defined in Chapter 40 of Title 14; (5) any police officers and firefighters employed by the State or political subdivisions of the State or any agency thereof; or any municipal corporation, municipality, city or town located within the State or any agency thereof which, upon the affirmative legislative act of its common council or other governing body, has elected to come within Chapter 16 of this title, or which hereafter elects to come within Chapter 16 of this title; (6) Confidential employees of the public employer; and (7) Supervisory employees of the public employer, provided however, that any supervisory position in a bargaining unit deemed to be appropriate prior to September 23, 1994 shall so continue , unless said unit is decertified in accordance with § 1311(b) of this title, or is modified in accordance with procedures authorized by §1310(e) of this title.

² “Public employer” or “employer” means the State, any county of the State or any agency thereof, and/or any municipal corporation, municipality, city or town located within the State or any agency thereof, which upon the affirmative legislative act of its common council or other governing body has elected to come within the former Chapter 13 of this title or which hereafter elects to come within this chapter, or which employs 100 or more full-time employees.

The American Federation of State, Count and Municipal Employees, Local 1007 (“AFSCME”) is an employee organization³ and an exclusive bargaining representative⁴ within the meaning of Sections 1302(i) and (j) of the Public Employment Relations Act.

The unfair labor practice charge filed on June 28, 2004, alleges DSU engaged in conduct which violates 19 Del. C. Section 1303 of the Act, which provides:

Public employees shall have the right to:

- (1) Organize, form, join or assist any employee organization except to the extent that such right may be affected by a collectively bargained agreement requiring the payment of a service fee as a condition of employment.
- (2) Negotiate collectively or grieve through representatives of their own choosing.
- (3) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the State.
- (4) Be represented by their exclusive representative, if any, without discrimination.

The charge alleges, inter alia, that Charging Party was subjected to retaliatory conduct by DSU, as a consequence of having filed a formal grievance against DSU under provisions set forth in a collective bargaining agreement between AFSCME Local 1007 and DSU.

Delaware State University’s Answer to the unfair labor practice charge, filed on or about July 14, 2004, denied all material allegations and raised an affirmative defense that “at all times relevant to the underlying facts of [the] case, respondent was unaware that the petitioner was engaged in any Union activities.”

³ “Employee organization” means any organization which admits to membership employees of a public employer and which has as a purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative or agent of said organization.

On or about July 26, 2004, Charging Party filed its Response denying DSU's Answer and New Matter.

DETERMINATION

The Rules and Regulations of the Delaware Public Employment Relations Board (hereinafter "PERB") at Article V, Unfair Labor Practice Proceedings, Section 5.6, Decision or Probable Cause Determination, provide, in relevant part:

- (a) Upon review of the Complaint, the Answer and the Response, the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with the provisions set forth in Regulation 7.4. The Board shall decide such appeals following a review of the record, and, if the Board deems necessary, a hearing and/or the submission of briefs.

- (b) If the Executive Director determines that an unfair labor practice has, or may have occurred, he shall, where possible, issue a decision based upon the pleadings; otherwise he shall issue a probable cause determination setting forth the specific unfair labor practice which may have occurred.

Considered in a light most favorable to the Charging Party, the pleadings constitute probable cause to believe that an unfair labor practice may have occurred. Specifically, the issue is whether the performance evaluation of September 30, 2003 was retaliation for the grievance filed by Charging Party on September 12, 2003, alleging that

⁴ "Exclusive bargaining representative" or "exclusive representative" means the employee organization which as a result of certification by the Board has the right and responsibility to be the collective bargaining agent of all employees in that bargaining unit.

Charging Party was being required to perform work outside of the applicable job description.

Wherefore, in the absence of a stipulation, a hearing will be scheduled for the purpose of establishing a factual record upon which a decision can be rendered.

IT IS SO ORDERED.

DATE: August 27, 2004

/s/Charles D. Long, Jr.
Charles D. Long, Jr.
Executive Director