

includes a grievance and arbitration process and was in effect at all times relevant to the processing of this Charge.

On or about March 18, 2009, Charging Party filed an unfair labor practice charge alleging that AFSCME violated 19 Del.C. §1303, §1304(a) and §1307(b)(1). Charging Party alleges that following her termination from employment by DHSS on or about April 21, 2009, AFSCME failed or refused to respond to her requests for assistance in order to challenge her termination.

On or about September 16, 2009¹, AFSCME filed its Answer denying the material allegations of the Charge.

A probable cause determination was issued and a hearing was conducted. Upon review of the pleadings and consideration of the evidence and argument presented by the parties, the Hearing Officer stayed the processing of the unfair labor practice charge and deferred the unresolved issues to the contractual grievance and arbitration process.

On or about February 11, 2010, AFSCME requested review of the Hearing Officer's decision, asserting the Hearing Officer's Decision was not supported by substantial evidence and was contrary to law. AFSCME requests the Hearing Officer's decision to defer and retain of jurisdiction be reversed, and that the unfair labor practice charge be dismissed in its entirety.

On or about February 26, 2010, Charging Party filed a cross-appeal, requesting the decision be reversed and that the Charge be sustained.

A copy of the complete record in this matter was provided to each member of the Public Employment Relations Board. A public hearing was held on March 17, 2010, at which time the full PERB met in public session to consider the requests for review. The

¹ AFSCME amended its Answer on September 17, 2009. Neither the original nor the amended Answer contained any New Matter to which Charging Party was required to respond.

parties were afforded the opportunity to present oral argument and the decision reached herein is based upon consideration of the record and arguments presented to this Board.

DISCUSSION

AFSCME argues on appeal that the Hearing Officer did not find any evidence to support a finding that the union acted dishonestly, arbitrarily, or in bad faith in its handling of Charging Party's grievance. Consequently, it asserts there is no legal basis to support the retention of jurisdiction or deferral in this case and the Charge should be dismissed in its entirety.

The Hearing Officer clearly and appropriately set forth the standard for finding a violation of a union's duty of fair representation. "In order to meet its statutory obligation to represent its members without discrimination an exclusive employee representative has a duty to act honestly, in good faith and in a non-arbitrary manner." *William v. Norton, et al*, ULP 85-10-006, I PERB 159 (Del.PERB, 1986). Applying this standard, the Hearing Officer found the union's "failure to communicate with Charging Party, while questionable, does not rise to the level of an unfair labor practice charge in that Charging Party has failed to establish ... the Union acted dishonestly, in bad faith or arbitrarily." *Brooks v. AFSCME 640*, ULP 09-08-701, VII PERB 4483, 4490 (Hearing Officer's Decision, 2010).

The only unresolved issue in this case is whether the grievance filed by AFSCME was procedurally sound. The Hearing Officer stated:

Concerning her allegation that the grievance filed by the Union on February 19, 2009, was sloppily written, the ultimate determination as to the sufficiency of the February 19th grievance is an issue within the exclusive province of the contractual grievance and arbitration procedure and possibly arbitration. *Brooks v. AFSCME (Supra, 4490)*.

A determination as to whether the grievance was procedurally defective can only be

made by application of the terms of the collective bargaining agreement. This issue is currently pending resolution through the parties' contractual grievance and arbitration procedure. Should the grievance be dismissed because it is procedurally defective, Charging Party may chose to return to PERB for a determination as to whether the union failed to meet its duty of fair representation under the standards set forth in *Williams* (Supra).

Therefore, the Board finds the Hearing Officer appropriately exercised discretion in deferring this matter to resolution through the contractual procedure, consistent with PERB's long-standing and well-established deferral policy.

Charging Party also requested the Board deny AFSCME's appeal, reverse the Hearing Officer's deferral order and find that the alleged unfair labor practice has been committed. She asserts she has suffered harm as a direct consequence of the Hearing Officer's deferral order, including foreclosure proceedings on her house, loss of income, and lack of expert legal representation to contest her improper termination.

Whether Ms. Brooks' termination was proper and for just cause under the terms of the collective bargaining agreement was not before the Hearing Officer, and is not properly before this Board. The personal and economic hardships she may have suffered may be due to her loss of employment, but do not result from the deferral of this Charge to the grievance and arbitration procedure. The relief she seeks can only be obtained through the grievance and arbitration procedure. Her cross-appeal is, therefore, denied.

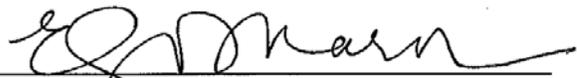
Upon review of the record and consideration of the arguments of the parties, the Board finds the Hearing Officer's decision was not arbitrary, capricious or contrary to law, and that it is based on the record before him.

DECISION

After reviewing the record and hearing and considering the arguments of the parties, the Board unanimously affirms the decision of the Hearing Officer deferring the Charge to resolution through the negotiated grievance and arbitration procedure.

Wherefore, the appeal and cross appeal are denied.

IT IS SO ORDERED.



Elizabeth D. Maron, Chairperson



R. Robert Currie, Jr., Member



Kathi A. Karsnitz, Member

DATED: April 6, 2010