

**PUBLIC EMPLOYMENT RELATIONS BOARD**  
**FOR THE STATE OF DELAWARE**

<b>AMERICAN FEDERATION OF STATE, COUNTY</b>	:	
<b>AND MUNICIPAL EMPLOYEES, COUNCIL 81,</b>	:	
<b>LOCAL 218,</b>	:	
	:	
Charging Party,	:	
	:	<b><u>ULP No. 09-10-708</u></b>
v.	:	
	:	Probable Cause Determination
<b>APPOQUINIMINK SCHOOL DISTRICT,</b>	:	
	:	
Respondent.	:	

**BACKGROUND**

The Appoquinimink School District ("District") is a public employer within the meaning of §1302(p) of the Public Employment Relations Act ("PERA"), 19 Del.C. Chapter 13 (1994).

The American Federation of State, County and Municipal Employees, Council 81, Local 218 ("AFSCME") is the exclusive representative of certain non-supervisory custodial and maintenance employees of the District for purposes of collective bargaining (as defined in DOL Case 193), pursuant to section 1302(j) of the Public Employment Relation Act, 19 Del.C. Chapter 30, ("PERA").

AFSCME and the District were parties to a collective bargaining agreement with term of June 30, 2007 – June 30, 2010, which was in effect at all time relevant to this dispute.

On or about October 12, 2009, AFSCME filed an unfair labor practice charge with the Public Employment Relations Board ("PERB") alleging conduct by the District in violation of Section 1307(a)(2), (a)(3), (a)(5) and (a)(6) of the PERA, which provides:

- (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
- (2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization.
  - (3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.
  - (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, except with respect to a discretionary subject.
  - (6) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.

The Charge alleges that on or about July 1, 2009, the District “unilaterally reduced the Board’s supplement to the total compensation paid to bargaining unit employees by 2.5%. *Charge ¶9.* AFSCME asserts that this unilateral change in compensation was “not based on any law or right given to the Board” and was “done intentionally and with reckless disregard for the confusion and anger this unilateral action would have on members of the bargaining unit.” *Charge ¶ 12.*

On October 27, 2009, the District filed its Answer to the Charge, essentially denying the material allegations contained therein and specifically denying it had reduced the local supplement paid to bargaining unit members as charged. Under Affirmative Defenses contained in its Answer, the District asserted:

- \* The District fully complied with §1307 of the PERA and, in fact, negotiated with Local 218 in good faith and reached an agreement which was ratified by the bargaining unit members.
- \* The District complied with Article 14.1<sup>1</sup> of the parties' collective bargaining agreement.

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<sup>1</sup> 14:1 This Agreement incorporates the entire understanding of the parties on all matters which were or could have been the subject of negotiation. During the term of the Agreement, neither party shall be required to negotiate with respect to any such matter whether or not covered at the time this Agreement

- \* The Charge is “erroneous, false and not based on any investigation or facts,” and alleges AFSCME failed to discuss this matter with its Local Union Vice-President before filing the Charge.

The District asked that the Charge be dismissed as baseless, unfounded, and falsely filed .

On or about November 3, 2009, AFSCME filed its response denying the District’s Affirmative Defenses, stating the District’s response “does not provide evidence of an offer to negotiate over the change in pay or a written agreement speaking to pay or that the Union’s membership was ever given the opportunity to vote on the questions of reduction in pay.” *Charging Party’s Response to New Matter ¶1.*

This Probable Cause Determination is based upon a review of the pleadings.

### **DISCUSSION**

The Rules and Regulations of the Delaware PERB require that upon completion of the pleadings in an unfair labor practice proceeding, a determination shall be issued as to whether those pleadings establish probable cause to believe the conduct or incidents alleged may have violated the Public Employment Relations Act, 19 Del.C. Chapter 13. DE PERB Rule 5.6. For the purpose of this review, factual disputes established by the pleadings are considered in a light most favorable to the Charging Party in order to avoid dismissing what may prove to be a valid charge without the benefit of receiving evidence concerning that factual dispute. *Richard Flowers v. State of Delaware, Department of Transportation, Delaware Transit Corporation, Probable Cause Determination, ULP No. 04-10-453,V PERB 3179 (2004).*

There is no dispute that wages are a mandatory subject of bargaining and that the District and AFSCME have negotiated a local wage rate (included in Appendix A of the

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was executed, however, should the parties agree to discuss and conclude agreement on any issue(s), such agreement(s) shall be effected only by an instrument in writing duly executed by both parties with appropriate ratification and approval of the parties.

collective bargaining agreement) which supplements the State-funded portion of bargaining unit employees' salaries.

AFSCME's allegation that the District unilaterally implemented a "2.5% reduction in total compensation" is denied by the District. Attached to the District's Answer was a letter from the District's Director of Finance addressed to the Associate Secretary of Education for Finance and Services, to which was attached "a copy of the signed furlough plans for all Appoquinimink SD employees covered by collective bargaining agreements." The first full paragraph on the fourth page of Exhibit 5 states, "The President of the Custodial Bargaining Unit, Dawn Reynolds has agreed to the agreement reached for Custodians." The document includes the following:

- ***Pertaining to Custodians:***

Custodians, groundskeepers and painters will have furlough days off for the 2009-2010 school year. In order to receive the local share of their salaries, they will have four (4.0) furlough days for custodians. It has been agreed with the union to have December 28, 29, and 30 off during the Winter Break and April 6<sup>th</sup> off during the Spring Break. This agreement has been reached with Dawn Reynolds, President of the local custodial union.

This document is signed by Ms. Reynolds on behalf of the Custodial Union and the District's Human Resource Director. *Exhibit 5 to District's Answer.*

The District asserts that this agreement was voted on and ratified by the bargaining unit membership on October 17, 2009. Also attached to the District's Answer is a copy of an October 19 e-mail from the Ms. Reynolds<sup>2</sup> which states in part, "... the custodians wants [*sic*] off on Dec 23 instead of April 6<sup>th</sup>. So the 23 of Dec is it. I have the vote page to[*sic*], I will get you a copy of it. I will try and call you later today if not

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<sup>2</sup> Although the e-mail address indicates the correspondence is from "Dawn" at the e-mail address of "[ClaytonDawn@aol.com](mailto:ClaytonDawn@aol.com)", Exhibit 3 to the District's Answer is an e-mail from this same address which is signed "Dawn Reynolds".

tomorrow. – Dawn”. *Exhibit 6 to District’s Answer.*

The pleadings disclose a fundamental factual dispute. AFSCME asserts at ¶9: “On or about July 1, 2009, Board unilaterally reduced the Board’s supplement to total compensation paid to bargaining unit employees by 2.5%”. The District denies this allegation and responds, “The Appoquinimink School Board of Education did *not* reduce the local supplement to total compensation as charged.” (emphasis in original)

As previously stated, pleadings are construed in the light most favorable to the Charging Party for purposes of determining whether probable cause exists to believe that an unfair labor practice might have occurred. In order to resolve this dispute, a hearing will be scheduled in order to establish a record on which it may be determined whether the local supplement was reduced by 2.5% for bargaining unit employees, as alleged.

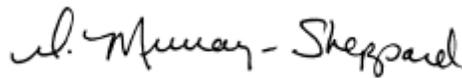
**DETERMINATION**

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.

Based on the pleadings, a hearing will be scheduled in order to establish a record on which it may be determined whether the local supplement was reduced by 2.5% as alleged.

**IT IS SO ORDERED.**

DATE: February 18, 2010



DEBORAH L. MURRAY-SHEPPARD  
Executive Director  
Del. Public Employment Relations Bd.