

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY,)	
& MUNICIPAL EMPLOYEES, AFL-CIO,)	
COUNCIL 81 AND ITS LOCAL UNION NOS.)	
1007, 1267 and 2888,)	
)	
Charging Party,)	<u>ULP No. 09-12-725</u>
)	
v.)	Probable Cause Determination
)	
DELAWARE STATE UNIVERSITY,)	
)	
Respondents.)	

Appearances

*Perry F. Goldlust, Esq., for AFSCME Locals 1007, 1267 & 2888
Kathleen Furey McDonough, Esq., and Sarah E. DiLuzio, Esq., for DSU*

BACKGROUND

Delaware State University (“DSU” or “University”) is a public employer within the meaning of the Public Employment Relations Act, 19 Del.C. Chapter 13 (“PERA” or “Act”), § 1302(p).

The American Federation of State, County & Municipal Employees, AFL-CIO, Council 81, through its affiliated Locals Nos. 1007, 1267 and 2888 (“AFSCME” or “Union”), is an employee organization within the meaning of §1302(i), of the Act and the exclusive bargaining representative of a bargaining unit of Clerical/Technical employees as defined in DOL Case 167, Plant Maintenance employees as defined in DOL Case 44, and

Security employees as defined in DOL Case 61, respectively, within the meaning of §1302(j), of the Act.

On December 21, 2009, AFSCME filed an unfair labor practice charge in which it alleges DSU has engaged in conduct which violates 19 Del.C. §1307 (a)(1), (2), (3), (5), and (7) which provide:

- §1307 (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
- (1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.
 - (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.
 - (7) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

Specifically, the Charge includes numerous incidents which AFSCME alleges are reflective of a strained collective bargaining relationship. It alleges DSU has engaged in a “concerted effort to undermine the Union, to render the Union powerless, and [to] make the very concept of a Union superfluous by engaging in open disregard for its responsibility as a public employer to bargain with the Union as well as the use of subterfuge to evade the CBA and the requirements of 19 Del.C. Chapter 13.” *Charge ¶5*. The Charge includes, in part, allegations that grievances are not processed, that bargaining unit work is being contracted out, that bargaining unit positions are being retitled (under the guise of creating new positions) in order to remove positions from the bargaining unit, that DSU is engaging in

harassing and intimidating Union officers, and that the process for posting and filling vacancies is being disregarded.

On or about February 9, 2010, DSU filed its Answer to the Charge, denying the material allegations of the Charge. Additionally, DSU included five affirmative defenses to the Charge which include: 1) Some or all of the Union's claims are untimely because they are based on incidents or events which occurred more than 180 days prior to the filing of the Charge, in violation of 19 Del.C. 1308; 2) Some or all of the Union's claims regarding timely resolution of grievances are untimely under the terms of the negotiated collective bargaining agreement; 3) The Union has failed to exhaust the remedies available to it under the collective bargaining agreement with regard to some or all of the grievance in issue; 4) The Charge fails to state a claim on which relief can be granted; and 5) The claims contained in the Charge are barred by the doctrines of waiver and estoppel.

AFSCME filed its Response to New Matter on February 18, 2009, denying all of the affirmative defenses.

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 therein 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).

These pleadings are replete with factual disputes and documentary support which creates, at best, a fragmented snapshot of a troubled labor-management relationship.

Considered in a light most favorable to the Charging Parties, the allegations contained in the Charge, if proven, may support the conclusion that the PERA has been violated. It will be AFSCME's burden to establish both the factual and legal support for such a finding.

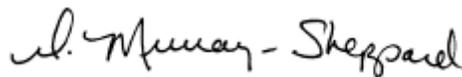
DETERMINATION

Considered in a light most favorable to Charging Parties, the pleadings provide a sufficient basis for finding probable cause to believe that an unfair labor practice in violations of 19 Del.C. §1307(a)(2), (a)(3), (a)(5) and/or (a)(6) may have occurred.

WHEREFORE, a prehearing conference will be scheduled forthwith to identify and define the factual issues on which a hearing will be convened.

IT IS SO ORDERED.

DATE: April 26, 2009



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