

STATE OF DELAWARE  
PUBLIC EMPLOYMENT RELATIONS BOARD

CAPITAL EDUCATORS ASSOCIATION,	:	
	:	
Appellant,	:	Review of Decision
	:	
v.	:	<u>U.L.P. No. 94-07-102</u>
	:	
BOARD OF EDUCATION OF THE	:	
CAPITAL SCHOOL DISTRICT,	:	
	:	
Respondent.	:	

**DECISION ON REVIEW OF  
PROBABLE CAUSE DETERMINATION**

The Public Employment Relations Board (hereinafter "PERB") adopts the Probable Cause Determination as outlined in the Executive Director's Decision of August 29, 1994.

The Capital Educators Association (hereinafter referred to as "Association") is the exclusive bargaining representative of the public employer's certificated professional employees, within the meaning of §4002(i) of the Public School Employment Relations Act, 14 Del.C. Chapter 40 (hereinafter referred to as "PSERA").

The Board of Education of the Capital School District (hereinafter referred to as "District") is a public employer within the meaning of §4002(m) of the PSERA.

On March 19, 1993, the District suspended a Dover High School teacher without pay for three (3) days for alleged misconduct. A grievance was filed and processed through the contractual procedure to arbitration. On March 23, 1994, the arbitrator issued a decision supporting the District's action and denying the grievance.

On May 3, 1994, District Superintendent Joseph L. Crossen, sent a letter to all faculty members advising them of the outcome of the arbitration award and quoting portions regarding the alleged misconduct. It was that action that prompted the

Association's filing of an unfair labor practice charge on July 25, 1994. The Executive Director's August 29, 1994, decision dismissed the Association's charge. A Request for Review of that decision was filed with the PERB by the Association on September 12, 1994. The reasons for the requested review are stated as:

1. Capital School District Superintendent Joseph L. Crossen's letter of May 3, 1994 to the faculty "... publicized the fact that the grievance had been decided adversely to the teacher, and even quoted part of the arbitrator's decision, in a way that was embarrassing and humiliating to the teacher involved, and which could reasonably be expected to have a chilling effect on the future exercise of grievance rights by other teachers..."
2. "... The PERB held recently that '(t)he filling and processing of employee grievances is a fundamental day to day part of collective bargaining and constitutes protected activity...'. Further, that ...'Section 1407(a)(1) prohibits interference, restraint and coercion by a public school employer with respect to such protected rights...'".
3. The Executive Director's decision is not supported by the law as previously explained by the PERB or by the record.
4. The parties have agreed to keep grievance matters confidential. Also that a teacher's right to keep embarrassing matters confidential is also recognized by the PSERA at §4004(b).

#### DECISION

After a complete review of the record, the Public Employment Relations Board upholds the Executive Director's decision of August 29, 1994. At no time has PERB

ruled that an employer is prohibited from communicating with its unionized employees. §4005, School Employer Rights, states:

A public school employer is not required to engage in collective bargaining on matters of inherent managerial policy, which include but are not limited to, such areas of discretion or policy as ... the selection and direction of personnel. [*emphasis added*]

The record does not reflect any claim that Superintendent Crossen's letter to the faculty was factually inaccurate in its quotes of the arbitrator's decision. Nor in our opinion can its contents be considered as interference, restraint or coercion by a public school employer. Given the fact thirty (30) teachers protested the three (3) day suspension of the teacher involved in this charge and the student newspaper wrote an editorial concerning the incident, the School District had a clear right to explain its position. In our opinion, this was done in a factual and non-threatening manner.

The charge that Superintendent Crossen's letter "... could reasonably be expected to have a chilling effect on the future exercise of grievance rights by other teachers ..." is rejected. The Association refers to Sussex Vo-Tech Teachers Association v. Bd. of Education (Del.PERB, U.L.P. No. 88-01-021). It should be noted that the Executive Director in that decision stated in part:

... The burden is on the Association to factually support these allegations. Direct evidence that any employee was actually intimidated, coerced or restrained, however, is unnecessary. Rather the test is whether the conduct reasonably tended to interfere with either the free exercise of employee rights or administration of the labor organization. An objective standard is required in evaluating the 'reasonable tendency' of the actions to interfere, restrain or coerce.

In this case, it is statements made by an Administrator which form the basis of the charge. Such statements must, either on their face or through the surrounding circumstances, reasonably tend to interfere with employee rights or to exercise undue influence and/or coercion of employees of the Association in order for such statements to rise to the level of a violation of §4007(a)(1) and/or (2). It is this attendant threat of reprisal or promise of benefit which violates the Act and separates violative statements from those protected by free speech under the Constitution... [cites omitted]

The Board has evaluated Superintendent Crossen's letter and finds no evidence of threat of reprisal or promise of benefit. Accordingly, no violation is found.

The August 29, 1994 decision of the Executive Director is, accordingly, wholly affirmed.

**IT IS SO ORDERED.**

/s/ Arthur A. Sloane.  
ARTHUR A. SLOANE, Chair

/s/ R. Robert Currie, Jr.  
R. ROBERT CURRIE, JR., Member

/s/ Henry E. Kressman  
HENRY E. KRESSMAN, Member

Dated: 27 September 1994