

By letter dated October 25, 1996, AFSCME, Council 81, appealed the October 18th decision to the Public Employment Relations Board ("PERB") but only as it applied to Issue 2, involving the question of probable cause.

ISSUE

Is there probable cause to believe the County has engaged or is engaging in conduct in violation of 19 DeL.C. §1307(a)(1) and (a)(2) as alleged?

DECISION

The Board carefully reviewed the entire record in this case and voted 2-1 to uphold the Executive Director's decision that "...There is no probable cause to believe that an unfair labor practice has occurred and this charge is therefore, dismissed."

The collective bargaining agreement between the parties contains two (2) relevant sections, namely 44(a) and 44(b), both of which are cited in the Union's grievance that led to the unfair labor practice charge. The Union argued that Section 44(a) controlled and therefore the decision of the Hearing Officer was final and binding upon the parties. By failing to abide by the Hearing Officer's decision, the County has committed a per se violation of the duty to bargain in good faith as well as an attempt to interfere with rights guaranteed under the PERA. (Sections 1307(b)(2) and (b)(1) respectively.

The County argued it did not violate the Act, as alleged, by appealing the decision of the Hearing Officer to either the Court of Chancery or to arbitration. Further, that consistent with prior PERB decisions the unfair labor practice petition should, at the very least, be deferred to the arbitration process as set forth in the negotiated grievance procedure.

The Board majority agrees with the Executive Director's statement that "...The initial grievance does not allege a singular violation of §44(a). Not only does the

grievance allege violations of both §44(a) and (b), the Hearing Officer refers to each section in both his statement of the issue and decision." The Board majority agrees that the Sections 44(a) and 44(b) are separate, independent and mutually exclusive provisions. Section 44(b) provides for a classification review where an employee believes he or she is improperly classified based upon his or her job duties and responsibilities. Contrary to the final and binding decision inherent in Section 44(a), Section 44(b) provides that if the issue is not resolved, the employee through the Union can process the dispute through the grievance procedure which includes arbitration as the final step of the process.

The Executive Director in his decision stated, "The PERB has previously declined to involve itself in matters of contractual interpretation, holding that the exclusive forum for resolving issues involving the interpretation and/or application of the collective bargaining agreement is the negotiated grievance procedure. The facts of this matter do not warrant a deviation from this position..." The Board majority agree.

The October 18, 1996 decision of the Executive Director is, accordingly, affirmed by the Board majority.

IT IS SO ORDERED.

/s/Henry E. Kressman
HENRY E. KRESSMAN, Chair
(For the Majority)

/s/John D. Daniello
JOHN D. DANIELLO, Member
(Dissenting)

/s/James F. Maher
JAMES F. MAHER, Member
(For the Majority)

Dated: November 29, 1996