

STATE OF DELAWARE  
PUBLIC EMPLOYMENT RELATIONS BOARD

MARGARET M. McKay,	)	
	)	
Charging Party,	)	
	)	<u>ULP No. 97-04-207</u> —
v.	)	
	)	
AMERICAN ASSOCIATION OF UNIVERSITY	)	
PROFESSORS, DELAWARE STATE	)	
UNIVERSITY CHAPTER,	)	
	)	
Respondent.	)	

PROBABLE CAUSE DETERMINATION

The Charging Party, Margaret M. McKay ("McKay"), is an employee within the meaning of Section 1302(m) of the Public Employment Relations Act ("Act"), 19 Del.C. Chapter 13 (1994). The Respondent, Delaware State University Chapter of the American Association of University Professors ("AAUP"), is an employee organization within the meaning of Section 1302(h), of the Act.

On April 22, 1997, McKay filed the above-captioned unfair labor practice charge alleging conduct by the AAUP in violation of its statutory duty of fair representation. At the request of McKay, the charge was held in abeyance until June 18, 1997, when McKay filed an Addenda To Charge and requested that the charge be processed.

On September 15, 1997, the AAUP filed its Answer, denying the allegations contained in the Charge and setting forth three affirmative defenses, namely: 1) Lack of PERB jurisdiction because the charge is barred by the statute of limitations; 2) Lack of PERB jurisdiction because the AAUP is not an "employee organization" under the Act; and 3) Lack of PERB jurisdiction to determine the composition of the

AAUP's Executive Committee or to determine eligibility for AAUP office, as requested in the remedy section of the charge.

On November 20, 1997, as amended on November 24, 1997, McKay filed a Reply denying the affirmative defenses.

### DISCUSSION

The amended charge essentially alleges that as a result of McKay's challenge to the eligibility of a member of the Association's Executive Committee, the AAUP has discriminated and retaliated against her by failing to process grievances filed by her. She further alleges the AAUP has failed to provide her access to information in its possession which is reasonably necessary and relevant to the processing of her grievances and/or to explain or document the reasons for its refusal to process her grievances.

The allegations set forth in the Complaint, many of which are documented by attachments, raise valid issues. The Respondent's denial of the allegations places the accuracy of the allegations in issue.

For the following reasons, the affirmative defenses raised by the Respondent in its Answer do not constitute a valid basis for dismissing the Complaint: (1) Not all of the allegations involve incidents outside the 180 day statute of limitations provided for in PERB Regulation No. 5; (2) The AAUP has previously filed an unfair labor practice charge against University, thereby acknowledging jurisdiction as to that specific charge and did not appeal the Board's determination that AAUP was, in fact, an "employee organization" under section 1302(h), of the Act. The prior PERB ruling that Delaware State University, is a "public employer" within the meaning of Section 1302(n), of the Act is binding until reversed by a higher authority; (3) Issues concerning PERB's jurisdiction to determine the composition of the AAUP's Executive Committee or to determine eligibility to hold AAUP office involve remedy and do not

affect PERB's jurisdiction to process the Charge and to award appropriate affirmative relief, if warranted.

**DECISION**

For the reasons set forth above, it is determined the pleadings constitute probable cause to believe that an unfair labor practice may have occurred. In the absence of a factual stipulation by the parties, a hearing will be scheduled for the purpose of establishing a factual record upon which a decision can be rendered.

January 8, 1998  
(DATE)

/s/ Charles D. Long, Jr.  
CHARLES D. LONG, JR., EXECUTIVE DIRECTOR  
DELAWARE PUBLIC EMPLOYMENT RELATIONS BD.

