

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

AFSCME, COUNCIL 81, LOCAL 1007,)	
Charging Party,)	
)	
v.)	ULP No. 00-11-298
)	
DELAWARE STATE UNIVERSITY,)	
Respondent.)	

PROBABLE CAUSE DETERMINATION

The Delaware State University (“University” or “DSU”) is a public employer within the meaning of Section 1302(n) of the Public Employment Relations Act, 19 Del.C. Ch. 13 (1994) (“PERA” or “Act”). The American Federation of State, County and Municipal Workers, Council 81, Local 1007 (“AFSCME”) is an employee organization within the meaning of Section 1302(h) of the Act and the exclusive bargaining representative of certain employees of DSU, as defined in Department of Labor Case No. 116, within the meaning of Section 13023(j), of the Act.

The unfair labor practice charge filed on November 14, 2000, alleges the following: 1) AFSCME and DSU concluded negotiations over the terms of a successor collective bargaining agreement on June 18, 1998, at which time DSU assumed responsibility for preparing the final document to be signed by the parties. As of the date of the filing of the charge DSU has failed to produce the document; 2) Contrary to a longstanding practice, Residence Managers are being required to live on campus in dormitories. This change was not mentioned during the most recent contract negotiations and was implemented without prior notice to AFSCME; 3) On or about March 30, 2000, DSU notified AFSCME that Residence Hall Managers and Assistant Managers were being assigned new responsibilities, additional educational

requirements were to be required as was living on campus and of title changes without a corresponding salary adjustment; 4) AFSCME unsuccessfully requested to bargain with DSU on a number of occasions concerning the impact of the requirement that all Resident Managers either live in dormitories or be demoted and the rate of pay; 5) On March 30, 2000 and again on August 10, 2000, AFSCME requested that DSU provide certain information upon which the decision to require residency was based. As of the date of the filing of the charge no information was provided; 6) As set forth in Counts I through IV, DSU has engaged in conduct in violation of 19 Del.C. §1307(a)(5) and (a)(7), of the Act.

On November 27, 2000, DSU filed its Answer essentially denying the material allegations set forth in the charge. Under New Matter and Affirmative Defenses, DSU contends that PERB lacks jurisdiction over the matter and requests that the matter be deferred to arbitration under the parties collective bargaining agreement because a resolution of the allegations requires the interpretation of the collective bargaining agreement. DSU also argues that the charge should be dismissed as untimely filed.

On November 27, 2000, AFSCME filed a Response to New Matter denying the allegations set forth, therein.

Following an informal conference with the Executive Director of the PERB on March 5, 12001, the charge was held in abeyance while the parties attempted to informally resolve their differences with the participation of a PERB mediator. [1] When the settlement discussions were unsuccessful the matter was scheduled for hearing and the following Probable Cause Determination issued.

APPLICABLE STATUTORY PROVISIONS

19 Del.C. Section 1307, Unfair labor practices, provides, in relevant part:

- a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
 - (5) Refuse to bargain collectively in good faith with an employee representative which is the

[1] The issue concerning the preparation of a final document to be signed by the parties (Count I) was settled and withdrawn during the informal conference.
exclusive representative of employees in an appropriate unit, except with respect to a

discretionary subject.

ISSUE

Whether the pleadings constitute probable cause to believe that an unfair labor practice may have occurred?

DETERMINATION

Considered in a light most favorable to AFSCME, the factual issues constitute probable cause to believe that an unfair labor practice may have occurred.

A hearing will be held on August 30, 2001, for the purpose of establishing a factual record concerning the issues raised in Count II, paragraphs 19 and 20; Count III, paragraphs 23 and 24; and Count IV, paragraphs 25, of the charge.

Legal argument addressing DSU's Affirmative Defenses consisting of deferral to arbitration and timeliness are to be submitted at the time of closing argument and will be considered within the context of the factual record prior to a consideration of the merits, if necessary.

August 20, 2001
(Date)

/s/Charles D. Long, Jr.
Charles D. Long, Jr.,
Executive Director