

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

POLYTECH EDUCATION ASSOCIATION,)	
DSEA/NEA,)	
Charging Party,)	
)	<u>ULP No. 01-02-307</u>
v.)	
)	
POLYTECH SCHOOL DISTRICT,)	
Respondent.)	

PROBABLE CAUSE DETERMINATION

The Polytech School District (“District”) is a public employer within the meaning of Section 4002(n) of the Public School Employment Relations Act (“Act”) 14 Del.C. Chapter 40 (1983). Polytech Education Association (“Association”) is an employee organization within the meaning of Section 4002(h) and an exclusive representative of certain employees of the District within the meaning of Section 4002(i), of the Act.

The Charging Party filed the above-captioned unfair labor practice charge with the Public Employment Relations Board (“PERB”) on February 12, 2001. The charge alleges conduct by the Respondent in violation of Section 4007(a)(5), of the Act, which provides:

- (a) It is an unfair labor practice for a public school 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

exclusive bargaining representative of employees
in an appropriate unit.

At all times relevant to the charge the parties were engaged in collective bargaining over the terms of a successor collective bargaining agreement. The charge alleges the following conduct evidences that the District's bargaining representatives did not possess the necessary authority to make timely decisions and commitments inherent in the collective bargaining process and that such conduct violates Section 4007(a)(5), of the Act:

The decision by the District to withdraw
or rescind the tentative agreement on
Local Bonus Pay or a Retention/Gap/
Commitment Bonus;

The decision by the District to withdraw
or rescind the tentative agreement on
the deletion of the last sentence to Appendix
B of the 1996-1999 Agreement;

The decision by the District to withdraw or
rescind the tentative agreement on staff
and technical assistance appropriate to the
concept of inclusion;

The charge further alleges that the District unilaterally changed a condition of employment under negotiation by the parties and that such conduct violates Section 4007(a)(5), of the Act:

The decision by the District to alter the morning
schedule; and,

The decision by the District to impose a policy
regarding the ability of teachers to leave the
school building during the work day.

In its Answer filed with the PERB on February 28, 2001, the Respondent denies engaging in conduct in violation of the Act, as alleged. Under a Section entitled New Matter the District pleads

numerous affirmative defenses which Charging Party denies in its Response To New Matter filed on March 12, 2001.

DISCUSSION

The duty to bargain, 14 Del.C. §4007 (a)(5) attaches only to terms and conditions of employment, as defined in Section 4002(r), which have been determined to constitute mandatory subjects of bargaining. Appoquinimink Ed. Ass'n. v. Bd. of Ed., Del.PERB, ULP 1-2-84A, I PERB Binder 23 (1984). [1] The pleadings raise issues including, inter alia, whether the conduct alleged by the Charging Party involved mandatory subjects of bargaining; the status of the parties' tentative agreements; the requisite authority of the District's bargaining representatives; and the Board of Education's failure to approve agreements reached at the bargaining table by the authorized bargaining representatives of the District and the Association.

DETERMINATION

Consistent with the foregoing discussion, and considered in a light most favorable to the Charging Party, the factual issues raised by the pleadings constitute probable cause to believe that unfair labor practice charges, as alleged, may have occurred.

[1] 4002(r): "Terms and conditions of employment" means matters concerning or related to wages, salaries, donated leave program(s) in compliance with Chapter 13 of this title, hours, grievance procedures and working conditions; provided, however, that such term shall not include those matters determined by this chapter or any other law of the State to be within the exclusive prerogative of the public school employer.

Wherefore, a hearing will be scheduled within the next forty-five (45) days for the purpose of establishing a factual record upon which a determination can be rendered concerning the merits of this charge.

March 29, 2001
(Date)

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