

**STATE OF DELAWARE**  
**PUBLIC EMPLOYMENT RELATIONS BOARD**

DELAWARE STATE UNIVERSITY CHAPTER OF THE,	:	
AMERICAN ASSOCIATION OF UNIVERSITY	:	<b>PERB Review of the</b>
PROFESSORS,	:	<b>Hearing Officer's</b>
Charging Party,	:	<b>Decision</b>
	:	
v.	:	<b><u>U.L.P. No. 97-12-224</u></b>
	:	
DELAWARE STATE UNIVERSITY,	:	
Respondent.	:	

*Appearances*

*Jonathan Axelrod, Esq, Beins, Axelrod & Kraft, P.C., for AAUP*  
*Noel Primos, Esq., Schmittinger & Rodriguez, PA., for DSU*

**BACKGROUND**

Delaware State University (“DSU” or “University”) is a public employer within the meaning of §1302(p)<sup>1</sup> of the Public Employment Relations Act, 19 Del.C. Chapter 13 (“PERA”).

Delaware State University Chapter of the American Association of University (“AAUP”) is an employee organization within the meaning of 19 Del.C. §1302(i). The AAUP is the exclusive bargaining representative of Delaware State University’s full-time “voting” faculty as defined by Delaware State University, including Departmental Chairpersons and Academic Directors, professional librarians, counselors, research faculty, extension agents, department and library assistants, and half-time faculty, within the meaning of 19 Del.C. §1302(j).

On December 19, 1997, the AAUP filed Unfair Labor Practice Charge 97-12-224, alleging DSU violated §1307(a)(5) of the PERA when it failed and refused to negotiate in good faith with the AAUP concerning the procedures to be utilized in changing a student’s final grade which was assigned by a faculty member.

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<sup>1</sup> The subsections of 19 Del.C. §1302 were renumbered when the statute was amended in 2000. There was, however, no change in the definition of a “public employer”; it was simply renumbered from §1302(n) to §1302(p).

On January 9, 1998, DSU filed its Answer to the Charge, including New Matter, denying it had violated the statute. Specifically, DSU asserted it was directed by a consent award of a grievance arbitrator to develop and implement a policy to be used in changing a student's grade when it has been determined a faculty member has assigned the grade in violation of University policy. The University argued this is an area of discretion or policy which is reserved to the employer under 19 Del.C. §1305, and it, therefore, had no duty to negotiate with the AAUP concerning this issue. DSU also asserted it was not subject to PERB jurisdiction as it was not a "public employer" within the meaning of 19 Del.C. §1302(p).

The AAUP filed its Response to New Matter on January 20, 1998.

The Hearing Officer dismissed the charge in a decision issued on August 2, 2002, following a lengthy period during which the question of whether Delaware State University was a public employer covered by the PERA, and therefore subject to PERB jurisdiction, was litigated in Delaware courts. The Hearing Officer found that the procedures by which DSU administrators change a student's final grade, in circumstances where the individual grading policy of the assigning faculty member violates the University's policy, is a matter of inherent managerial policy. 19 Del.C. §1305. Consequently, the University was not required to negotiate this procedure, and there was no violation of 19 Del.C. §1307(a)(5) as alleged.

On August 9, 2002, the AAUP requested the full Board review the Hearing Officer's decision.

On August 21, 2002, DSU filed a Response to AAUP's Request for Review of the Hearing Officer's Decision, asserting in summary that the AAUP request was groundless because it was not based on valid arguments and reasoning.

The full Public Employment Relations Board conducted a public hearing on September 18, 2002. Counsel for the parties were afforded the opportunity to present oral argument and each Board member received and reviewed the record created before the Hearing Officer. By unanimous vote, the Board affirmed the Hearing Officer's findings and dismissal of the charge. This is the decision resulting from that meeting.

## DECISION

The question presented for resolution on appeal is whether the Hearing Officer correctly concluded that the procedures by which DSU administrators change a student's final grade (in circumstances where the assigning faculty violates the University's policy) was not a mandatory subject of bargaining and finding DSU had not committed an unfair labor practice. The AAUP also requested this Board address “. . .the contradiction between the conclusion that the issue is ‘a matter of inherent managerial policy’ and the Hearing Officer's finding that the parties have acknowledged that the appropriate avenue for faculty input on policy issues is through the Faculty Senate.” (AAUP Appeal of Hearing Officer's Decision, at p. 2, citations omitted.)

Pages 2694 through 2697 of the Hearing Officer's decision set forth the background of this case and are incorporated herein by reference. AAUP, DSU Chapter v. Delaware State University, Del.PERB, ULP 97-12-224, IV PERB Binder 2693 (2002).

The uniformity of DSU's grading system lies within the core of the University's standards of operations and directly impacts the quality of its educational product and its reputation in the higher education and employment communities. We therefore conclude that this is a matter of inherent managerial policy.

Delaware State University was not required to negotiate the issue relating to the administration's changing of a final student grade, which was assigned by a faculty member in violation of the University-wide grading policy.

The Board finds no apparent contradiction between the conclusion that the issue presented is a permissive subject of bargaining and the Hearing Officer's observation that the appropriate avenue for input on this policy issue is through DSU's Faculty Senate. The question posed was whether this issue was a mandatory subject of bargaining, which DSU was statutorily required to collectively bargain with the exclusive representative of its employees. The Hearing Officer found, and we concur, that this is not a mandatory subject of bargaining, but rather a permissive subject which falls within the employer's inherent managerial policies. Noting that the parties acknowledge and agree that the Faculty Senate exists for the purpose of providing faculty input on policy issues and that DSU has proposed to allow the Faculty Senate to

“formulate a policy” on this issue for the Vice President’s approval is not inconsistent with that conclusion. Rather, it simply notes that although DSU cannot be required to bargain this issue, it has acceded to permit faculty input and development through an established mechanism for input on policy issues.

THEREFORE, the decision of the Hearing Officer in this matter is affirmed and the unfair labor practice charge is hereby dismissed.

/s/Henry E.Kressman  
HENRY E. KRESSMAN, CHAIRMAN  
Delaware Public Employment Relations Board

/s/R. Robert Currie, Jr.  
R. ROBERT CURRIE, JR., MEMBER  
Delaware Public Employment Relations Board

/s/Elizabeth Daniello Maron  
ELIZABETH D. MARON, ESQ., MEMBER  
Delaware Public Employment Relations Board

Dated: 9 January 2003