STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

AFSCME Council 81, Local Unions 1007, 1267 and 2888,	)	
Charging Parties,	)	
v.	)	**ULP No. 09-12-725**
Delaware State University,	)	
Respondent.	)	

INTERIM DECISION: REQUEST FOR PRELIMINARY INJUNCTIVE RELIEF

The American Federation of State, County and Municipal Employees, AFL-CIO, Council 81, by and through its affiliated Locals 1007, 1267 and 2888 (hereinafter "AFSCME") is an employee organization within the meaning of §1302(i) of the Public Employment Relations Act (19 Del.C. Chapter 13, "PERA"). Local Union 1007 is the exclusive bargaining representative of Clerical/Technical employees (pursuant to DOL Case 137); Local Union 1267 is the exclusive bargaining representative of Plant Maintenance employees (pursuant to DOL Case 52); and Local Union 2888 is the exclusive bargaining representative of public safety employees (pursuant to DOL Case 61), within the meaning of 19 Del.C. §1302(j).

Delaware State University (hereinafter "University") is a public employer within the meaning of 19 Del.C. Section 1302(p).

AFSCME filed this unfair labor practice charge on December 21, 2009, alleging the University violated 19 Del.C. §1307(a)(1), (2), (3), (5) and (7). Specifically, the Charge includes numerous incidents which AFSCME alleges are reflective of a strained collective

bargaining relationship. It alleges DSU has engaged in a "concerted effort to undermine the Union, to render the Union powerless, and [to] make the very concept of a Union superfluous by engaging in open disregard for its responsibility as a public employer to bargain with the Union as well as the use of subterfuge to evade the CBA and the requirements of 19 Del.C. Chapter 13." *Charge* ¶5. The Charge includes, in part, allegations that grievances are not processed, that bargaining unit work is being contracted out, that bargaining unit positions are being retitled (under the guise of creating new positions) in order to remove positions from the bargaining unit, that DSU is engaging in harassing and intimidating Union officers, and that the process for posting and filling vacancies is being disregarded.

On or about February 9, 2010, DSU filed its Answer to the Charge, denying the material allegations of the Charge. Additionally, DSU included five affirmative defenses to the Charge which include: 1) Some or all of the Union's claims are untimely because they are based on incidents or events which occurred more than 180 days prior to the filing of the Charge, in violation of 19 Del.C. 1308; 2) Some or all of the Union's claims regarding timely resolution of grievances are untimely under the terms of the negotiated collective bargaining agreement; 3) The Union has failed to exhaust the remedies available to it under the collective bargaining agreement with regard to some or all of the grievance in issue; 4) The Charge fails to state a claim on which relief can be granted; and 5) The claims contained in the Charge are barred by the doctrines of waiver and estoppel.

AFSCME filed its Response to New Matter on February 18, 2009, denying all of the affirmative defenses.

A Probable Cause Determination, based upon a review of the pleadings was issued by the Public Employment Relations Board ("PERB") on April 26, 2010, which concluded:

> Considered in a light most favorable to Charging Parties, the pleadings provide a sufficient basis for finding probable cause to believe that an unfair labor practice in violations of 19 Del.C. §1307(a)(2), (a)(3), (a)(5) and/or (a)(6) may have occurred.
>
> WHEREFORE, a prehearing conference will be scheduled forthwith to identify and define the factual issues on which a hearing will be convened.

The prehearing conference is scheduled and will be convened on Wednesday, May 12.

On or about April 23, 2010, AFSCME requested PERB issue a restraining order to enjoin the University "to cease and desist from all activities connected with 'privatization' of any sort including allowing any third party to take over the operation of the mail and copy centers, terminating employee rights or reducing any job benefits, and order DSU to maintain the status quo and negotiate in good faith with the Union over privatization as well as the impact of privatization."

The University responded on April 29, 2010, opposing the requested injunction. It asserts that because AFSCME "has failed to establish either of the prerequisites to obtaining preliminary relief – it has made no showing of imminent irreparable harm and it has not established any probability that it will succeed on the merits of its substantive claims. Its request for a restraining order should, therefore, be denied."

DISCUSSION

A preliminary injunction constitutes extraordinary equitable relief and should only be issued in clear cases of irreparable injury and where the granting body is convinced of its urgent necessity. *State v. DSEA*, Del. Ch., 326 A.2d 868 (1974); *Appoquinimink Education Association v. Bd. of Education: Decision on Request for Temporary and Injunctive Relief*, Del. PERB, ULP 98-09-243, III PERB 1781, 1783 (1998); *IAFF Local 1590 v. City of*

Wilmington: Interim Decision on Request for Preliminary Injunctive Relief , Del.PERB, ULP No. 09-06-686, VI PERB 4259, 4261 (2009).

It is well-established Delaware law that a successful request for preliminary injunctive relief must satisfy two requirements. First, the Charging Party must establish that there is a reasonable probability that it will ultimately prevail on the merits of the dispute; and second, that it will suffer irreparable injury if its request for injunctive relief is denied. Gimbel v. Signal Companies, Inc., Del.Ch., 316 A.2d 599 (1974). Failure to establish either element precludes the granting of the requested relief. *New Castle County Vocational Technical Education Association v. New Castle County Vocational Technical School District*, Del.PERB, ULP No. 85-05-025, I PERB 257, 260 (1988); *IAFF v. City of Wilmington*, (Supra, 4262).

It is also well established that monetary damages (such as the loss of wages) do not constitute irreparable harm as monetary damages may be recompensed after resolution of the dispute. *IAFF v. City of Wilmington*, (Supra, 4262). In the absence of alleged irreparable harm other than lost wages and benefits, a request for preliminary injunctive relief is not appropriate.

Further, the University has asserted in its response to AFSCME's request for injunctive relief that,

> [N]ot a single University employee has, or will, suffer any loss of employment as a result of the University's decision to engage an independent contractor to manage its mailroom operations. The six (6) bargaining unit employees formerly employed in the mailroom have each been re-assigned within the University and have not suffered any loss of pay, reduction in benefits, loss of seniority, nor have they otherwise been adversely affected by the University's decision. Importantly, each remains a member of Local Union1007… *¶1 of University's Response.*

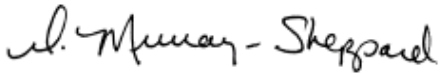
There are sufficient and significant factual issues which directly affect a

determination as to whether there is a probability that AFSCME will prevail on the merits, including whether the University's decision to privatize mail and a copy center operations and/or the impact of that decision on bargaining unit employees, is a mandatory subject of bargaining.

This case is scheduled for a prehearing conference later this week in order to expedite the resolution of the allegations made in this Charge. Considering the well-established criteria for issuance of a preliminary injunction and the current status of this case, AFSCME's request for broad preliminary relief in the form of an order to enjoin the University from privatizing is denied.

IT IS SO ORDERED.

Date: May 10, 2010



DEBORAH L. MURRAY-SHEPPARD
Executive Director, Delaware PERB