

On or about January 26, 2010¹, the Appellant filed an unfair labor practice charge alleging AFSCME violated 19 Del.C. §13074 (a), §1307 (b)(1), and/or (b)(2). She alleges the termination of her employment on or about July 22, 2009, was retaliatory, that AFSCME was negligent and malicious in its failure to represent her, and that her due process rights were violated by AFSCME's failure or refusal to provide her with adequate representation in contesting her termination.

On or about March 17, 2010, AFSCME filed its Answer to the Charge, including Affirmative Defenses. The Appellant filed her Response to New Matter on March 17, 2010.

A Probable Cause Determination and Order of Dismissal was issued on June 11, 2010, in which the PERB Hearing Officer concluded:

Even when considered in a light most favorable to the Charging Party, the pleadings fail to provide a nexus between the processing of the Charging Party's grievances, her injury and subsequent termination sufficient to support her claim that AFSCME failed or refused to provide fair representation, or otherwise impeded or negatively affected her rights as a public employee under the PERA.

The unfair labor practice charge is hereby dismissed in that it fails to allege facts sufficient to support a claim that 19 Del.C. §1304, §1307 (b)(1) and/or (b)(2) was violated as alleged.

On or about June 16, 2010, the Appellant requested review of the Hearing Officer's decision, requested the Hearing Officer's decision be reversed, that AFSCME be found to have violated the statute as alleged, and that she be returned to State employment and made whole.

On or about June 23, 2010, AFSCME responded to the Request for Review, asserting the Hearing Officer's decision was proper and should be affirmed.

A copy of the complete record in this matter was provided to each member of the

¹ On February 23, 2010, the Appellant clarified the Charge and submitted a Motion for Judgment.

Public Employment Relations Board. A public hearing was held on July 21, 2010, at which time the full PERB met in public session to consider the request for review. The parties were afforded the opportunity to present oral argument and the decision reached herein is based upon consideration of the record and arguments presented to this Board.

DISCUSSION

The scope of the Board's review of a decision rendered by the Executive Director, or her designated Hearing Officer in this case, is limited to the record created before the Hearing Officer and must address whether the decision is arbitrary, capricious, contrary to law, or otherwise unsupported by the record. Upon consideration of the record and the basis for the appeal, the Board must formally vote to either uphold or overturn the decision, or it may remand it for further action to the Executive Director.

The Appellant asserts AFSCME did not represent her in good faith, retaliated against her and, in collusion with the State, had her terminated from her employment. She asserts AFSCME failed or refused to provide her with representation before the Industrial Accident Board and PERB. She argues the grievances she filed were not answered and she believes that the current President of AFSCME Local 2004 negligently and perhaps maliciously failed or neglected to provide proper representation to her and that she was terminated in retaliation for questioning certain practices of the Local.

The Appellant has alleged AFSCME violated its "duty to represent all bargaining unit employees without discrimination" and that AFSCME has interfered with, restrained or coerced her in the exercise of her rights under the PERA and/or has refused to negotiate in good faith with the State. 19 Del.C. 1304, 1307(b)(1), (b)(2). While she has voiced her concern and dissatisfaction with the manner in which her grievances and termination were handled, she has not established the necessary discriminatory nexus nor

identified the manner in which her rights *under the statute* have been affected.

Whether Ms. Taylor-Bray's termination was proper and for just cause under the terms of the collective bargaining agreement was not before the Hearing Officer, and is not properly before this Board. The Appellant was not terminated by the Union and the recourse she seeks (i.e., reinstatement to State employment) is not within the AFSCME's power to grant.

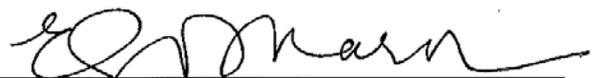
Upon review of the record and consideration of the arguments of the parties, the Board finds the Hearing Officer's decision was not arbitrary, capricious or contrary to law, and that it is based on the record before him.

DECISION

After reviewing the record and hearing and considering the arguments of the parties, the Board unanimously affirms the decision of the Hearing Officer finding no probable cause to believe an unfair labor practice may have occurred and dismissing the Charge.

Wherefore, the appeal is denied.

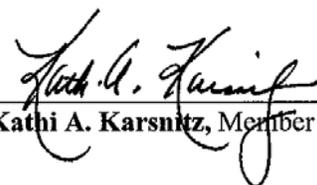
IT IS SO ORDERED.



Elizabeth D. Maron, Chairperson



R. Robert Currie, Jr., Member



Kathi A. Karsnitz, Member

DATED: August 13, 2010