

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

SONJA TAYLOR-BRAY,	:	
	:	
Charging Party,	:	Unfair Labor Practice Charge
	:	<u>10-01-727</u>
v.	:	
	:	
AMERICAN FEDERATION OF STATE, COUNTY,	:	PROBABLE CAUSE DETERMINATION
AND MUNICIPAL EMPLOYEES, LOCAL 2004,	:	AND ORDER OF DISMISSAL
	:	
Respondent.	:	

BACKGROUND

At all times relevant to this unfair labor practice charge, Sonja Taylor-Bray (“Charging Party”) was a public employee within the meaning of §1302(o) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (“PERA”) and was employed by the State of Delaware, Department of Services for Children, Youth and Their Families (“DSCYF”).

The American Federation of State, County and Municipal Employees, AFL-CIO, Council 81, through its affiliated Local 2004, is an employee organization within the meaning of §1302(i), of the Act and the exclusive bargaining representative of certain DSCYF.

During the period of her employment, Charging Party was a member of a bargaining unit of employees represented by the American Federation of State, County and Municipal Employees, Local 2004 (“AFSCME”). The pleadings also establish that Charging Party was a Shop Steward for Local 2004 during the

leadership administration of the previous Local President.

On January 26, 2010, Charging Party filed an unfair labor practice charge in which she alleged that AFSCME engaged in conduct which violated 19 Del.C. §1304(a), §1307(b)(1) and (b)(2).¹

§1304(a) The employee organization designated or selected for the purpose of collective bargaining by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of all the employees in the unit for such purpose and shall have the duty to represent all unit employees without discrimination. Where an exclusive representative has been certified, a public employer shall not bargain in regard to matters covered by this chapter with any employee, group of employees or other employee organization.

§1307(b) It is an unfair labor practice for a public employee or for an employee organization or its designated representative to do any of the following:

- 1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.
- 2) Refuse to bargain collectively in good faith with the public employer or its designated representative if the employee organization is an exclusive representative.

On February 6, AFSCME filed a Motion for Clarification of the Unfair Labor Practice Charge. AFSCME's Motion for Clarification was granted. On February 23, 2010, Taylor-Bray filed an amended Charge and also a Motion For Summary Judgment.

In the "Conclusion" of the clarified Charge, Charging Party summarizes the essence of her Charge, as follows:

¹ Charging Party cites only §1304, as having been violated. §1304(b) and (c) have no relevance to the pending charge; consequently, only §1304(a) is being considered as possibly having been violated.

- Charging Party asserts that Council 81 (Pat Bailey²/Cameron Henry³) on behalf of AFSCME Chairperson, John Seferian allowed her to be terminated for no other reason but retaliation.
- Charging Party contends that AFSCME Chairperson John Seferian was formally notified of Local 2004 issues and failed to enforce the AFSCME Constitution pertaining to its subsidiary's violations.
- Charging Party contends that management and AFSCME by and through the parties mentioned in ULP 09-11-716⁴ and ULP 10-01-727 did systematically seize an opportunity to rid themselves of a member with the courage and insight to identify collusion with management.
- Charging Party's grievances remain unanswered or unresolved in violation of 19 Del.C. §1304(a) as of the date of the filing of this charge.
- Charging Party maintains that the documentation supports probable cause that AFSCME/Council 81, Pat Bailey and Cameron Henry were negligent IF not malicious in their failure to represent Charging Party equally, without discrimination and in good faith. AND that AFSCME Council 81, Pat Bailey and Cameron Henry neglected altogether to collectively bargain on Charging Party's behalf in accordance to Local 2004 CBA, Article 2.
- Finally, Charging Party reiterates that there are/were employees with restricted duty status who were not terminated. AND that this irrefutable confirmation that "it is more likely than not" as required for probable cause determination that she was systematically retaliated against by the employee organization (AFSCME/Local 2004) and the public employer, by and through their representatives, violated her due process rights in violation of the exercising of rights under 19 Del.C. §1307.

Charging Party seeks the following remedies for the alleged violations:

- Find AFSCME has violated the statute
- Provide such other appropriate and reasonable relief as the PERB deems just.
- Grant and enter an order to cease and desist the "lock out"

² Patricia Bailey is a Staff Representative of AFSCME Council 81 who services affiliated Local Unions.

³ Cameron Henry is the current President of AFSCME Local Union 2004).

⁴ A separate and distinct unfair labor practice charge Charging Party filed against her former employer, DSCYF.

(Local 2004 CBA, Article 23).

- Charging Party requests her “State Merit Employee” status is restored. Charging Party wishes to be assigned to the SHDC transportation unit in order to minimize interactions with Supervisor Donald McIlvain. Charging Party requests all sick leave and vacation time be restored which were removed under wrongful termination. Charging Party further requests the accrued leave from 7/22/09 until re-employed by added or paid to her. Lastly, Charging Party requests reimbursement of all dues paid or accrued from period of 2007-2010, which denotes the period of Cameron Henry’s service.

On March 17, 2010, AFSCME filed its Answer to the Charge, denying the material allegations set forth therein. Additionally, AFSCME included five affirmative defenses to the Charge which include: 1) Charging Party failed to state a cause of action upon which relief can be granted; 2) Charges made beyond the 6-month period from the date the ULP was filed are barred by the statute of limitations; 3) Charging Party failed to join a necessary party, i.e, the State who terminated Charging Party; 4) PERB lacks jurisdiction to grant the relief requested in the Charge; and 5) Charging Party failed to identify the changes made in the Amended Charge. Consequently, AFSCME asserts, the clarification does not meet the requirements for filing an unfair labor practice charge.

Taylor-Bray filed her Response to the Union’s Answer on March 17, 2010, essentially denying all of the Affirmative Defenses set forth, therein.

DISCUSSION

The Rules and Regulations of the Delaware PERB require that upon completion of the pleadings in an unfair labor practice proceeding, a determination shall be issued as to whether those pleadings establish probable cause to believe that the conduct or incidents allege therein may have violated the Public Employment

Relations Act, 19 Del.C. Chapter 13. DE PERB Rule 5.6.

For the purpose of this review, factual disputes established by the pleadings are considered in a light most favorable to the Charging Party in order to avoid dismissing what may prove to be a valid charge without the benefit of receiving evidence concerning that factual dispute. *Richard Flowers v. State of Delaware, Department of Transportation, Delaware Transit Corporation*, Probable Cause Determination, ULP No. 04-10-453, V PERB 3179 (2000).

Concerning the administration of Union business, Paragraph 6, of the Amended Charge provides, in relevant part:

Henry was apparently upset that Charging Party (on behalf of the Elections Committee) protested the 2009 election. The Committee protested that due to inclement weather conditions and advisories, all members interested in nominating did not attend (SEE: B7 & B.8). Henry refused to allow Derek Booker (Elections Chairperson) to answer the Election Committee's request for a list of members who nominated an their respective nominees (SEE: B-14). The Election Committee protested to protect the interest of the membership.

AFSCME's Answer to paragraph 6, provides:

It is admitted that Charging Party did file charges against the Local regarding the election process. Those charges were heard and dismissed by John Sefarian, Judicial Panel Chairperson, AFSCME AFL-CIO on April 1, 2009. On April 23, 2009, the Charging Party appealed Mr. Sefarian's decision requesting a full judicial panel to hear her appeal. That appeal was heard on or about August 5, 2009. The Charging Party chose not to attend the appeal hearing. The Charging Party was offered the opportunity to present a written statement by September 16, 2009. On October 5, 2009, the decision of the full judicial panel, by a vote of 5-0, sustained Mr. Sefarian's decision. The Charging Party had the opportunity for a further appeal to the international convention. However, she chose not to exhaust her available remedies. The balance of the allegations is denied.

Charging Party has alleged actions and decisions by AFSCME's leadership

concerning the administration of the Local which she asserts have interfered with, restrained or coerced the exercise of her rights under the PERA. Whether the Local has conformed its conduct to the requirements of its Constitution and By-laws is subject to protest or appeal through the internal procedures established by the union. Charging Party utilized the appeal procedure as evidenced by the documentation provided in the pleadings. The Public Employment Relations Board has no jurisdiction for oversight of the internal functioning of a public sector labor organization in Delaware. This State has not adopted a statute which mirrors the Labor Management Reporting and Disclosure Act⁵ or the federal Civil Service Reform Act⁶, each of which explicitly grants certain rights to union members and protects their interests by promoting democratic procedures within labor organizations.

The pleadings do not support Charging Party's conclusions that alleged irregularities in the internal administration of the union may have violated the PERA or have negatively affected either terms and conditions of employment or her employment status.

Simply stated, Charging Party was discharged. Whether Charging Party was discharged for just cause is a question within the exclusive jurisdiction of the contractual grievance and arbitration procedure mutually agreed to by the State and AFSCME, as the exclusive bargaining representative of an appropriate unit.

Even when considered in a light most favorable to the Charging Party, the pleadings fail to provide a nexus between the processing of Charging Party's

⁵ The LMRDA applies to private sector employees and their unions.

⁶ The Civil Service Reform Act applies to employees of the federal government and their unions.

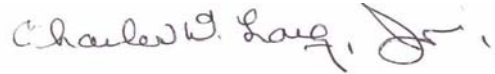
grievances, her injury and subsequent termination sufficient to support her claim that AFSCME failed or refused to provide fair representation or otherwise impeded or negatively affected her rights as a public employee under the PERA.

DETERMINATION

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.

IT IS SO ORDERED.

Date: June 11, 2010



Charles D. Long, Jr.,
Hearing Officer
Del. Public Employment Relations Bd.