

PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF DELAWARE

HELENE ROSS,	:	
	:	PERB Review of the
Appellant,	:	Executive Director’s
	:	Decision
v.	:	
	:	
CHRISTINA EDUCATION ASSOCIATION,	:	<u>ULP 10-12-779</u>
	:	
Appellee.	:	

Appearances

Helene C. Ross, pro se
Jeffrey M. Taschner, Esq., General Counsel, Delaware State Education Association

BACKGROUND

Helene C. Ross (“Appellant”) is a public school employee within the meaning of 14 Del.C. §4002(m). She is employed by the Christina School District and her position falls within the bargaining unit currently represented by the Christina Education Association, DSEA.

The Christina Education Association (“Association”) is the exclusive bargaining representative of the bargaining unit of certificated non-administrative employees of the Christina School District within the meaning of 14 Del.C. §4002(i).

On or about December 8, 2010, the Appellant filed an unfair labor practice charge alleging the Association violated 14 Del.C. §4007 (b)(1), (2), (3) and 14 Del.C. §4003 (2), (3), and (4). The Appellant charged the Association “failed or refused to provide proper representation” to her in violation of its statutory duties.

On or about January 7, 2011, the Association filed its Answer denying the material allegations set forth in the Charge. The Association's Answer did not include new matter and requested the Charge be dismissed because it was without merit.

Upon review of the pleadings, the Executive Director dismissed the charge on March 4, 2011, holding:

Considered in a light most favorable to Charging Party, the pleadings fail to establish probable cause to believe that an unfair labor practice, as alleged, may have been committed by the Christina Education Association.

On or about March 9, 2011, the Appellant requested the full Public Employment Relations Board review the Executive Director's decision. She objected to "the understanding of the facts in this case as reflected in the Order" and requested the Board reverse the Executive Director, find probable cause and direct a hearing be scheduled on the merits of the Charge.

The Association filed its response to the Request for Review on March 14, 2011, requesting the appeal be denied and that the Executive Director's decision dismissing the Charge for lack of probable cause be affirmed.

A copy of the complete record in this matter was provided to each member of the Public Employment Relations Board. A public hearing was convened on March 16, 2011, at which time the full Board met in public session to hear and consider this request for review. The parties were provided the opportunity to present oral argument and the decision reached herein is based upon consideration of the record and the arguments presented to the Board.

DISCUSSION

The Board's standard of review of a decision of the Executive Director is well-established. The scope of review is limited to the record created by the parties and

consideration of whether the decision is arbitrary, capricious, contrary to law or unsupported by the record. After consideration, the Board must vote to affirm, overturn or remand the decision to the Executive Director for further action.

PERB Rule 5.6 requires the Executive Director to review the pleadings and determine whether they are sufficient to establish probable cause to believe that an unfair labor practice in violation of the statute may have occurred. In reviewing the sufficiency of a Charge for purposes of determining probable cause, this Board has held:

Sufficient information must be included in the pleadings to allow a preliminary assessment of the procedural and substantive viability of the charge, i.e., the probability that there is sufficient cause to continue to process the charge. *AFSCME Council 81, Local 3911 v. New Castle County, Delaware*, ULP 09-07-695, VI PERB 4445 (2009).

In her request for review, the Appellant argues the Executive Director erred in finding there was insufficient evidence to support her claim that the Association failed to act in good faith. She argued her complaint did not concern the decision of the Association's Executive Board declining to process her grievances to arbitration, but rather that the Association had failed to bargain on her behalf with the District in March, 2010, at the time the 48 hour letter was issued and meeting was held. She alleges the Association failed to address her concerns about the lack of specificity in the letter and what she perceived to be the Principal's interference with her right to representation in the 48 hour meeting. She argued that when the District arbitrarily violates its own rules and policies, it is the Association's obligation "to hold the District's feet to the fire," as part of the Association's duty of fair representation to bargaining unit members.

The Executive Director clearly and appropriately set forth the standard for finding a violation of a union's duty of fair representation. "In order to meet its statutory obligation to represent its members without discrimination an exclusive employee representative has a

duty to act honestly, in good faith and in a non-arbitrary manner.” *William v. Norton, et al*, ULP 85-10-006, I PERB 159 (Del.PERB, 1986). Applying this standard, the Board concurs the pleadings do not establish a factual basis on which it can be concluded that the Association acted in a discriminatory or arbitrary manner.

The Appellant expressed her pique that the 48 hour letter did not set forth with sufficient particularity (in her opinion) the reason(s) she was being summoned to the meeting. The right to “prior written notice and specific reasons for such [disciplinary] meeting at least 48 hours in advance” arises from Article 4.3.1 of the collective bargaining agreement, not from the statute. Contractual provisions are enforced and interpreted through the negotiated grievance procedure. In this case, the Association, after considering the merits of the Appellant’s grievances determined it would not take this case to arbitration. As well as its duty to provide fair representation to bargaining unit members, the Association also has a duty to bargain in good faith, which includes not pursuing non-meritorious grievances.

Finally the Appellant argues she was deprived of adequate representation when the Principal refused to allow her a union representative of her choosing for the 48 hour meeting, but instead rescheduled the meeting to allow for a Delaware State Education Association UniServ Director to attend. The Appellant failed to establish either a legal or contractual right to a representative “of her choosing” for a disciplinary meeting. Further, the record establishes that the UniServe Director did attend the disciplinary meeting and continued to be involved in the processing of the Appellant’s grievances.

Upon review of the record and consideration of the arguments of the parties, the Board finds the Executive Director’s decision was not arbitrary, capricious or contrary to law, and that it is soundly supported by review of the pleadings. The pleadings do not support the conclusion that the Association may have acted in an arbitrary or discriminatory manner, or in bad faith in providing representation to the Appellant.

DECISION

After reviewing the record, hearing and considering the arguments of the parties, the Board unanimously affirms the decision of the Executive Director finding the pleadings fail to establish just cause to believe the Christina Education Association committed an unfair labor practice as alleged.

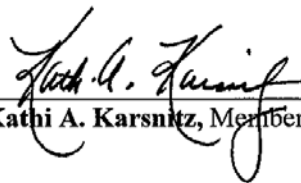
Wherefore, the Charge is dismissed in its entirety is affirmed.



Elizabeth D. Maron, Chairperson



R. Robert Currie, Jr., Member



Kathi A. Karsnitz, Member

DATE: March 21, 2011