

PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF DELAWARE

SONYA BYERS-HOLLEY, :
 :
 Appellant, : **PERB Review of the**
 : **Executive Director’s**
 : **Decision**
 v. :
 :
 AMERICAN FEDERATION OF STATE, COUNTY, : **ULP 11-02-788**
 AND MUNICIPAL EMPLOYEES, COUNCIL 81, :
 AFL-CIO, LOCAL 1102, :
 :
 Appellee. :

Appearances

Samuel L. Guy, Esq., for Charging Party
Perry F. Goldlust, Esq., for AFSCME Council 81

BACKGROUND

Sonya Byers-Holley (“Appellant”) is or was a public employee within the meaning of §1302(o) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (“PERA”). She was employed (prior to being laid off effective February 1, 2011) by the City of Wilmington and was a member of the bargaining unit represented by AFSCME Local Union 1102.

The American Federation of State, County and Municipal Employees, Council 81 (“AFSCME”) is an employee organization within the meaning of 19 Del.C. §1302(i). AFSCME, by and through its affiliated Local 1102, is the exclusive bargaining representative of the bargaining unit of City of Wilmington employees within the meaning of 19 Del.C. §1302(j).

On or about February 29, 2011, the Appellant filed an unfair labor practice charge alleging AFSCME violated 19 Del.C. §1307. The Appellant charged AFSCME refused to provide her with timely assistance in filing a grievance and failed to provide her with timely representation in violation of its statutory duties. The Charge also alleges the City of Wilmington “exerts undue influence over Local 1102.”

On or about February 28, 2011, AFSCME filed its Answer denying the material allegations and asserting the Charge failed to allege facts necessary to support the cause of action: 1) the Charge failed to allege AFSCME did not meet its duty of fair representation by acting dishonestly, without good faith and in an arbitrary manner; 2) Charging Party failed to join the City of Wilmington as a necessary party to the Charge; and/or 3) AFSCME is not required to take the complaint of every member through the grievance procedure and that it exercised its right to decline to take a case it determined lacked a good faith claim of breach of contract.

Charging Party filed its response on or about March 10, 2011, denying AFSCME’s affirmative defenses.

Upon review of the pleadings, the Hearing Officer dismissed the charge without prejudice on April 20, 2011, holding:

Considered in a light most favorable to Charging Party, the pleadings fail to provide a basis upon which to conclude that a violation of 19 Del.C. §1307(b) may have occurred.

On or about April 26, 2011, the Appellant requested the full Public Employment Relations Board review the Hearing Officer’s decision, asserting the decision was not supported by substantial evidence, was contrary to law, arbitrary and capricious. Charging Party requested a probable cause determination be issued and that a hearing be conducted on the underlying issue. In addition, she requested the Board grant her leave to amend her Charge.

AFSCME filed its response to the Request for Review on May 5, 2011, requesting the appeal be denied and that the Hearing Officer'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 May 18, 2011, at which time a quorum of the 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 scope of review is limited to the record created by the parties and consideration of whether the decision from which the appeal is taken is arbitrary, capricious, contrary to law or unsupported by the record. After consideration of the record and the arguments of the parties on appeal, the Board must vote to affirm, overturn or remand the decision to the Hearing Officer 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).

The Hearing Officer concluded the Charge did not meet the requirements of PERB Rule 5.2 (c)(3) because it failed to allege with sufficient specificity facts to support

its allegations that AFSCME acted in violation of 19 Del.C. §1307(b). The Charge was dismissed without prejudice, providing the option for the Charging Party to refile the Charge if there are additional facts which might be alleged to support her allegations.

Charging Party has failed to set forth a sufficient basis for concluding that even if AFSCME failed or refused to meet with the Charging Party its conduct was dishonest, without good faith or arbitrary. The conclusory statement in the Charge that “the employer exerts undue influence over Local 1102, Council, AFSCME, AFL-CIO (sic)” with no supporting factual allegations is insufficient to allow an initial assessment of whether Respondent engaged in dishonest or bad faith conduct. Similarly, the bald assertion that Charging Party was a victim of grievable action and that Respondent violated its legal duty to represent her in pursuit of a grievance is insufficient to support even a preliminary assessment of the likelihood that she could substantiate a case after a full hearing on the matter. Indeed, Charging Party’s Response to New Matter suggests that the real bone of contention is not that Respondent refused to meet with Charging Party but that it chose not to grieve Charging Party’s treatment by the employer. Standing alone, an Exclusive Bargaining Representative’s decision not to pursue a grievance on behalf of a member is not a violation of its duty of fair representation.

With respect to Charging Party’s request that the Board grant her leave to amend her Charge, such a request should be made to the Executive Director who can determine whether such a request is timely or otherwise appropriate.

For these reason, Charging Party has failed to establish the Hearing Officer’s decision was arbitrary, capricious, contrary to law or unsupported by the record.

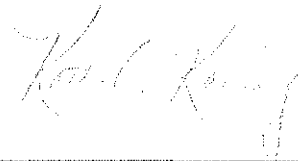
DECISION

After reviewing the record, hearing and considering the arguments of the parties, a

quorum of the Board unanimously affirms the decision of the Hearing Officer finding the pleadings fail to establish just cause to believe AFSCMB committed an unfair labor practice as alleged.

Wherefore, the dismissal of the Charge, without prejudice, is affirmed.

DATE: May 25, 2011



Kathi A. Karsnitz, Esq., Acting Chairwoman



R. Robert Currie, Jr., Member