

PUBLIC EMPLOYMENT RELATIONS BOARD
STATE OF DELAWARE

DR. JAH I ISSA,	:	
	:	
Charging Party,	:	
	:	
v.	:	<u>ULP No. 13-02-887</u>
	:	
AMERICAN ASSOCIATION OF UNIVERSITY	:	DECISION ON THE MERITS
PROFESSORS, DELAWARE STATE UNIVERSITY	:	
CHAPTER,	:	
	:	
Respondent.	:	

APPEARANCES

Dr. Jahi Issa, Charging Party, pro se
Perry F. Goldlust, Esq., and Justin Keating, Esq., for AAUP, DSU Chapter

BACKGROUND

Dr. Jahi Issa (“Dr. Issa” or “Charging Party”) is a former employee of the Delaware State University¹ (“DSU”) within the meaning of Section 1302(o), of the Public Employment Relations Act (“PERA”). 19 Del.C. Chapter 13 (1994). He was also a member of the bargaining unit and represented for purposes of collective bargaining by the American Association of University Professors of Delaware State University..

The American Association of University Professors of Delaware State University (“DSU-AAUP” or “Respondent”) is an employee organization within the meaning of §1302(i), of the PERA and the exclusive bargaining representative of a bargaining unit of faculty and related

¹ Delaware State University is a public employer within the meaning of 19 Del.C. §1302(p).

employees of DSU, within the meaning of §1302(j) of the PERA.

Dr. Issa was discharged from his employment as an Associate Professor at DSU effective August 17, 2012. On or about February 21, 2013, he filed an unfair labor practice charge with the State Public Employment Relations Board (“PERB”). At the request of the PERB, the Charge was amended because it failed to comply with PERB Rule 5, Unfair Labor Practice Proceedings 5.1(b) and 5.2(c)(3).² The amended Charge was filed on February 26, 2013, alleging DUS-AAUP has engaged in conduct which violates 19 Del.C §1303, §1304(a) and /or §1307(b)(1), which provide:

§1303: Public employee rights.

Public employees shall have the right to:

- (1) Organize, form, join or assist any employee organization except to the extent that such right may be affected by a collectively bargained agreement requiring the payment of a service fee as a condition of employment.
- (2) Negotiate collectively or grieve through representatives of their own choosing.
- (3) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the State.
- (4) Be represented by their exclusive representative, if any, without discrimination.

§1304. Employee organization as exclusive representative.

- (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

² PERB Rule 5. Unfair Labor Practice Proceedings.

5.1. Pleadings

- (b) All paragraphs of pleadings shall be individually numbered.

5.2. Filing of Charges.

- (c) The Charge shall include the following information:

- (3) A clear and detailed statement of the facts, constituting the alleged unfair labor practice, including the names of the individuals involved in the alleged unfair labor practice, the time, place of occurrence and the nature of each individual act alleged, and reference to the specific provisions of the statute alleged to have been violated. Each fact shall be alleged in a separate paragraph with supporting documentation where applicable.

public employer shall not bargain in regard to matters covered by this chapter with any employee, group of employees or other employee organization...

§1307. Unfair labor practices.

(b) It is 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.

Specifically, the Charge alleges that following his discharge, Dr. Issa “repeatedly attempted to secure representation from AAUP-DSU to challenge his termination.” Charge, ¶4. Charging Party claims that the DSU-AAUP “never got back to me regarding my request for assistance or provided requested representation.” *Charge*, ¶5.

On March 13, 2013, the DSU-AAUP filed its Answer to the Charge denying the material allegations set forth therein. DSU-AAUP’s Answer included New Matter, in which it asserted, 1) The Charge fails to state a claim on which relief may be granted because the applicable collective bargaining agreement does not give a non-tenured professor the right to arbitrate any substantive aspect of discharge from employment; and 2) The Charge is not timely and does not conform to the applicable statute of limitations.

On March 21, 2013 Charging Party filed its Response to Affirmative Defenses denying Respondent’s allegations, as set forth therein.

A Probable Cause Determination was issued on April 2, 2013, in which it was determined the pleadings established probable cause to believe that a violation of 19 Del.C. §1303, §1304(a) and/or §1307(b)(1), as alleged, may have occurred.

A hearing for the purpose of creating a full and complete evidentiary record was conducted over two days, May 14 and May 28, 2013. The record closed upon receipt of written argument from each party.

ISSUE

WHETHER THE AAUP, DSU CHAPTER, FAILED OR REFUSED TO PROVIDE “REQUESTED GRIEVANCE AND ARBITRATION OF ALL UNFAIR TREATMENT BY MANAGEMENT DUE TO WRONGFUL DISCHARGE OF EMPLOYMENT FROM DELAWARE STATE UNIVERSITY ON AUGUST 17, 2012”, IN VIOLATION OF 19 DEL.C. §1303, §1304 AND/OR §1307(B)(1), AS ALLEGED?

FACTS

The following facts are derived from the testimony and documentary evidence contained in the record created by the parties and are considered to be relevant and material to the disposition of this Charge.

The Delaware State University Chapter of the American Association of University Professors (DSU-AAUP) is the exclusive bargaining representative of a unit of Delaware State University employees which includes:

All full-time “voting”³ faculty as defined by Delaware State University, including Departmental Chairpersons and Academic Directors. The Association also represents the following employees: Professional Librarians, Counselors, Research Faculty, Extension Agents, Department and Library Assistants, and Half-time Faculty and Clinical Practitioner in Nursing. *Jt. Exhibit I, §4.1.*

Delaware State University and the AAUP are parties to a current collective bargaining agreement which has a term of July 1, 2010 through August 31, 2015.

The Charging Party, Dr. Jahi Issa, was employed by Delaware State University as an assistant professor of History and Africana Studies and was a member of the bargaining unit represented by the AAUP. Dr. Issa was not tenured but was “on the tenure track”. Except for

³ §3.30 of parties’ current collective bargaining agreement defines a “voting member” of academic departments to refer to “... tenured and tenure track faculty members and those holding the rank of Instructor, Research Faculty as defined in 7.3.3 and Clinical Practitioners in Nursing.

tenured faculty, all other faculty must be recommended for and reappointed annually. All tenure track faculty are considered to be probationary employees until they are awarded tenure, and are employed under annual contracts with the University. *Jt. Exhibit 1, §7.5.1*

DSU-AAUP President Steve Newton testified without contradiction that after a non-tenured faculty member has served for two years, if the University decides not to reappoint him for any reason, it must issue a terminal contract to that faculty member for the following academic year. *TR p. 382.*

Dr. Issa was issued a terminal contract for the 2012-2013 academic year in April, 2012. Consequently, his employment at DSU would have been terminated at the end of the 2012-2013 academic term.

Through letters sent to Dr. Issa which he alleged were dated June 1, 2012 and June 19, 2012⁴, the University Provost requested to meet with the him “at 10:30 A.M. July 11 2012 to issue formal notification of his intent to impose discipline action against me as outlined in 10.4.4 of the C.B.A.” In an email of July 9, 2012 to DSU-AAUP President Newton (with a copy provided to Michael Mauer of the AAUP International) sent at 8:18 p.m., Dr. Issa requested:

Since I am an AAUP member in good standing, I hereby request that the Delaware State University Chapter of the AAUP provide legal representation for me regarding the unfair treatment by the DSU management. Please contact me regarding the time that we shall meet or talk before the meeting and the time that I am supposed to meet AAUP representation on July 11, 2012. *Union Exhibit 5.*

DSU-AAUP President Newton responded to Dr. Issa by email at 12:12 p.m. on July 10 (the following day):

By contract the AAUP does not provide legal representation for meetings

⁴ Neither of the Provost’s letters were entered into the record in this proceeding.

under CBA 10.4.4.⁵ We have not provided legal representation for any unit member in such a meeting to the best of my knowledge, which stretches back eight years.

I did arrange, however, for your ACLU attorney (whom you preferred to use instead of AAUP representation for the past several months) to be allowed to accompany you for any such meetings. I do not believe that the Provost will object to that arrangement, as he had previously approved it.

Please advise me regarding whether you would like to have a union representative. Please do so immediately, as you have already waited about three weeks from the receipt of the Provost's letter to request such representation. ... I will then attempt to see if either Professors Barczewski or Crawford are available to represent you, even though this is summer and less than 48 hours notice. If neither is available to represent you, and you wish AAUP representation, I will contact the Provost to request that this meeting can [*sic*] be delayed until one of them is available.

Again, it is critical that you respond immediately to this email if you do wish union representation, and that you prepare all documentary evidence for review by that individual. *Union Exhibit 5*.

Dr. Issa and DSU-AAUP President Newton met at 2:00 p.m. on July 10, 2012. Dr. Issa memorialized their meeting in a follow-up email at 4:06 that afternoon in which he noted Dr. Newton had agreed to request to reschedule the July 11 meeting with Provost in order to "locate proper AAUP representation." Dr. Issa also agreed to provide copies of all the communications

⁵ §10.4.4: If the University is considering discipline of a tenured faculty member, the appropriate administrative officer shall invite the faculty member to discuss the matter before issuing a formal notification of intent to impose discipline. If the meeting is held and a mutually acceptable resolution is reached, (which may include dismissal, or written reprimand or remedial plan or period of supervised probation) the issue shall be deemed resolved, and a statement of the terms of the settlement shall become part of the unit member's personnel file. The settlement shall not be inconsistent with the terms of this Agreement. A copy of the terms of the settlement shall be given to the unit member, the appropriate Academic Dean, the appropriate Vice President, and the President of the AAUP. If the meeting does not resolve the matter, the President of the University or his designee shall notify the affected unit member in writing, with a copy to the AAUP, of his/her intention to dismiss or suspend the employee and provide the reasons(s) therefor. Within ten (10) calendars days after receipt of the foregoing notification, the affected unit member may either resign, accept discharge or suspension, or agree to a hearing before an arbitrator agreed upon by the parties or selected from a panel appointed by the American Arbitration Association. The "parties" to a Discipline Arbitration are the University and the affected unit employee. Notwithstanding any agreement to arbitrate, the parties may at any time meet informally to resolve this matter. *Jt. Exhibit 1*.

he had received from DSU “over the past four months” by the afternoon of July 11, 2012. *Union Exhibit 5.*

By email dated July 16, 2012, DSU-AAUP President Newton advised Dr. Issa that the AAUP would provide representation by its attorney to accompany Dr. Issa to the meeting with the Provost, and that DSU had agreed to “grant an exception to policy” in order to allow this to occur. *Union Exhibit 5.* Dr. Newton advised Dr. Issa that DSU-AAUP would cover the attorney’s expenses and pay all fees involved with representation for this meeting. He also advised Dr. Issa:

You should be aware that this is an exception to policy on the part of both the AAUP and the University. The University has agreed to it on the condition that it does not set a precedent.

The DSU AAUP has pursued this course because it has become difficult to locate suitable grievance officers to handle your case. You have objected to several of the individuals normally assigned to handle such cases, and others have conflict of interest issues that would not allow them to represent you.

The AAUP does not want to request an untrained even if senior faculty member to represent you in such a critical meeting.

Again, I will advise you when a meeting date can be worked out. *Union Exhibit 5.*

The predisciplinary meeting was ultimately rescheduled for Friday, August 17, 2012. Dr. Issa was accompanied to the meeting by Justin Keating, Esq. (AAUP’s counsel). At that meeting, Dr. Issa was provided with a notice of Discharge signed by the Provost and dated August 17, 2012, which stated, in relevant part:

This letter is to inform you that you are permanently discharged from employment at the University (C.B.A. 10.4.1⁶) for “just cause”. Under

⁶ §10.4.1: “Discharge is an action taken by the University to permanently discharge from employment at the University a tenured member of the faculty or any other unit employee prior to the end of a specified term. Discipline may only be for ‘just cause’.”

C.B.A. 10.4.2⁷, “Just Cause” for discipline is predicated upon your fitness to perform your professional responsibilities. More specifically, the charges are:

10.4.3 A. Failure to perform professional responsibilities either through incompetence, persistent negligence, refusal to carry out reasonable assignments, or disregard for or failure to meet scholarly and professional standards and ethics.

10.4.3. E. Serious misconduct of such a nature as to warrant and evoke the condemnation of the academic community.

On or about Friday, August 24, 2012, Dr. Issa prepared an “Affidavit of Grievance of Wrongful Termination and Breach of Contract by Delaware State University Management”, which he directed to DSU AAUP President Newton:

Please be advised and take particular notice of service regarding the wrongful Discharge of Jahi Issa.

- 1) I, Jahi Issa, am requesting immediate grievance and arbitration of all unfair treatment by management due to the wrongful discharge of employment from Delaware State University on August 17, 2012. I was not giving *[sic]* due process nor was I giving *[sic]* a hearing as called forth *[sic]* by contract. DSU violated Articles IX, X and XIV of the CBA of 2010-2015. If I am denied grievance and arbitration I will be forced to go to the NLRB. I am also requesting that the DSU AAUP include all previous request for grievance and arbitration.
- 2) Dr. Jahi Issa has NEVER REQUESTED to Dr. Steven Newton for the ACLU of Delaware to handle AAUP Grievances nor any other responsibility that the DSU AAUP is required to handle by contract. *Joint Exhibit 2.*

Dr. Issa contacted President Newton by email just before midnight on Sunday, August 26, 2012:

On August 17, 2012 myself *[sic]* and DSU AAUP Attorney Justin Keating entered a meeting that I was told by AAUP DSU President Dr. Steve Newton and AAUP counsel was supposed to be an official hearing. That was not the case! No hearing ever occurred! Myself and AAUP Attorney

⁷ §10.4.2: “‘Just Cause’ for discipline shall be predicated upon substantiated charges directly and substantially related to the fitness of the affected unit member to perform professional responsibilities. The normal burdens of proof and of going forward acknowledged in labor arbitration shall apply.”

Keating were given a letter of discharge by DSU administration.

DSU has routinely violated the CBA as it regards my grievance. I hear [*sic*] by ask that if the DSU AAUP can not enforce my CBA by allowing me to grieve and providing me an arbitrator, that the National Office of the AAUP provide me with effective counsel immediately... *Charging Party Exhibit 9.*

DSU-AAUP President Newton responded by email at 7:53 a.m. the following morning,

Monday, August 27, 2012:

The meeting on 17 August 2012 was a meeting in accordance with CBA 10.4.4, which occurs after the university administration has already determined to impose discipline on a unit member.

The hearing to which you refer, was the hearing to which you were invited several months earlier by Ms. Irene Chapman-Hawkins during the administrative investigation of the incident on 1 March 2012.

At that time, by your own choice, you were being represented by ACLU attorney Richard Morse and not the AAUP.

The AAUP has no direct knowledge of what occurred during that representation, but we are aware that you did not participate in the investigation by attending the interview requested by Human Resources.

You did not request AAUP representation until after the administrative investigation was concluded, and Ms. Chapman-Hawkins had already rendered a decision against you. Several weeks after that point you then requested AAUP representation and an AAUP attorney was provided to you at no expense to you.

The status of your grievances [*sic*] has been dealt with, in detail, in prior correspondence.

At your request, however, I will put the question of approving arbitration to the AAUP Executive Committee at its next meeting in early September. *Charging Party Exhibit 9*

Dr. Issa responded by email about an hour later at 9:12 a.m. on Monday, August 27, 2012:

Truth be Told! The status of my grievances have never been dealt with. Never! If they have please inform me how and when this took place. You

are very good at telling half-truths! A few days after I was entrapped and arrested I emailed you on my DSU email and grieved this issue. You know this to be true! You have never responded to this demand!

I have filled [*sic*] several grievances over the past 10 months. They have NEVER BEEN DEALT WITH!

I am being politically persecuted because of my political views. Because I am a whistle blower! Because I am an African American male! Because DSU has systematically pushed out most of its African American professors and they have been replaced with non-African Americans. You have been apart [*sic*] of this persecution and I have asked you on several occasions to step off until the federal investigation against you and other DSU employees is finished as it regards myself.

Dr. Newton, Why are you working with management to deny a fellow union member his rights under contract? Why are you playing word games and telling half-truths as it regards me. What are you hiding or protecting? Is it nepotism!

The AAUP needs to stop hoarding White Privilege! If you can't do that then TREAT ME AS IF I AM WHITE AND immediately give me the arbitrators that I have demanded on several occasions! The AAUP has a legal obligation to me.

Since my great, great, great grandfather was white, As of today I am invoking my honorary and hereditary WHITENESS and I expected [*sic*] to be treated accordingly!

I am again demanding an Arbitrator immediately! I will no longer allow you to dictate what I am grieving.

I am demanding that you meet with the Executive Council and grant me an arbitrator immediately! *Charging Party Exhibit 9*

DSU-AAUP President Newton again responded to Dr. Issa by email shortly thereafter, at

11:57 a.m. on Monday, August 27, 2012:

I will forward this email to the remaining members of the DSU AAUP Executive Committee.

For the record (lest silence be somehow considered as agreement): your accusations against me, and against the DSU AAUP are not merely unfounded, they are untrue.

I will inform you when the DSU AAUP Execute Committee makes a

decision on your “demand.” *Charging Party Exhibit 9*

The record does not contain any documentary evidence that DSU AAUP President Newton contacted Dr. Issa either by email or letter thereafter. It does contain the AAUP Meeting Minutes of August 30, 2012, which state, in relevant part:

Members Present: Professors Newton (Chair), Dujari, Crawford, Williamson, Ernst, Rasamny, Hagos and Barczewski

Meeting came to order at 11 a.m.

...II. Personnel Issues: Dr. Jahi Issa was officially discharged from the University two weeks ago, was involved in various issues. Our police reports to Attorney General. There was an administrative investigation, Dr. Issa did not come to attend the meeting. He was found guilty. CBA 10.4.4 Discipline. Newton authorized phone calls and meeting with AAUP’s lawyers (Justin Keating in Axelrod’s office). Issa demanded that AAUP provide him with attorney at our expense for his lawsuit. Motion by Crawford: Do not provide attorney at our expense, seconded by Dujari, all in favor. *Charging Party Exhibit 7.*

PRINCIPAL POSITIONS OF THE PARTIES

Charging Party:

Dr. Issa asserts that following his discharge he made numerous requests for representation from the AAUP without success. He attributes DSU-AAUP’s failure to respond to his requests to racial bias and opposing political views. He requests PERB find DSU-AAUP violated the PERA as alleged and issue the following remedy:

... back pays [*sic*], time and resources spent on this case and other amendments to make him whole again. Among other Amendments, Dr. Issa seeks ‘Reinstatement of this Faculty position at DSU or a comparable institution of higher learning on the East Coast.’ *Charging Party’s Brief, p. 8.*

Respondent:

DSU-AAUP denies the allegations set forth in the Charge and denies that it breached its

duty of fair representation to Dr. Issa concerning his discharge. It requests the Charge be dismissed in its entirety.

DISCUSSION

DSU-AAUP initially argued that because Dr. Issa was a non-tenured faculty member at the time of his discharge, he was not entitled to access the contractual grievance procedure. Consequently, because there was not right to grieve, the unfair labor practice charge for failure to represent must be dismissed. DSU-AAUP apparently relies on Section 10.4.4 of the CBA for its position. Section 10.4.4 however, applies exclusively to tenured faculty, which (it is undisputed) Dr. Issa was not.

The discharge letter provided to Dr. Issa during the August 17, 2012 meeting with the Provost, clearly and unequivocally provides, in relevant part: “. . . you are permanently discharged from employment at the University (C.B.A. 10.4.1) for “just cause.”

Section 10.4.1 provides:

10.4 Discharge and Other Sanctions

10.4.1 Discharge is an action taken by the University to permanently discharge from employment at the University a tenured faculty member of the faculty *or any other unit member* prior to the end of a specified term. Discipline may only be for ‘just cause’. (*Emphasis added*)

10.4.2 Section 10.4.2, states:

10.4.2 “Just Cause” for discipline shall be predicated upon substantiated Charges directly and substantially related to the fitness of the affected unit member to perform professional responsibilities. the normal burdens of proof and of going forward acknowledged in labor arbitrations apply.

The record is void of any contractual provision or other evidence precluding a non-tenured faculty member in Dr. Issa’s situation from access to the grievance procedure and ultimately to arbitration (the latter being at the union’s discretion).

In drafting the Public Employment Relations Act, the Delaware legislature expressly addressed both exclusivity and the duty of fair representation. 19 Del.C. Section 1303(a) provides, in relevant part:

The employee organization designated or selected for the purpose of collective bargaining by the majority of the employees in an appropriate bargaining unit shall be the exclusive representative of all employees in the unit for such purpose and shall have the duty to represent all unit employees without discrimination.

This mandate requires the exclusive representative not discriminate against or among those whom it is obligated to represent. However, Section 1303(4) alone, does not convert racial discrimination by an employer, even if proven, into an unfair labor practice under Section 1307(a) of the PERA. *Harris v. ILA 1694-1*, ULP 11-10-827, Probable Cause Determination and Order of Dismissal, VII PERB 5263, 5269 (Del.PERB, 2011).

The mere fact that Charging Party is African-American is not enough to establish his rights under §1303(4) of the PERA may have been violated. The rights created by Section 1303(4) is not without limitation. A charge of discrimination requires, at a minimum, an allegation of disparate treatment in the exercise of rights established by the PERA based upon race supported by reasonable and related factual allegations. *Harris* (Supra, p. 5629). Neither the pleadings nor the record in this contain support for disparate treatment. Therefore, the allegation that DSU-AAUP violated 19 Del.C. §1304(a) by discriminating against Dr. Issa is dismissed because it is not supported by the record.

Critical to consideration of the facts supporting the alleged breach of the duty of fair representation is establishing the point at which the duty attaches. The Charge alleges DSU-AAUP failed to provide Dr. Issa requested representation to “challenge his termination”. *Charge ¶4*. The record establishes Dr. Issa first requested representation by the AAUP in connection with his expected termination via an email dated July 10, 2012. This is the date on which the

duty of fair representation effectively attached. Evidence and argument concerning incidents occurring prior to July 10, 2012, which were referred to during the processing of this charge were accorded no weight and were not considered in reaching this decision.

A breach of the duty of fair representation occurs “only when a union’s conduct toward a member of the collective bargaining unit is arbitrary, discriminatory or in bad faith . . .” *Vaca v. Sipes* (386 US 171 (1967); *Williams v. Norton, et. al.* ULP 85-10-006, I PERB 159, 167 (PERB, 1986); *Morris v. DCOA & DOC*, ULP 99-12-272, III PERB 2161 (PERB, 2001); *Flowers v. Herbert*, ULP 05-02-468, V PERB 3411, 3413 (PERB, 2005).

The United States Supreme Court held in *Vaca v. Sipes* that a union may not arbitrarily ignore a meritorious grievance or process it in a perfunctory manner. This does not, however, mean that an individual employee has an absolute right to have his/her grievance taken to arbitration. *Vaca, Supra., p. 195*. The Supreme Court has also held that discretion must be afforded to a union in order to assure the effective functioning of collective bargaining. *Electrical Workers (IBEW) v. Foust*, 442 U.S. (1979). A union has the right under the statutory framework to decline to take a grievance to arbitration for many reasons; but it may not refuse to do so for no reason.

The Delaware PERB has held:

...[I]n order to meet its statutory obligation to represent its members without discrimination an exclusive representative has a duty to act honestly, in good faith and in a non-arbitrary manner. These factors form the basis for every fair representation case . . . “ Although a union is afforded significant latitude in fulfilling its statutory duties, these factors constitute the standard by which complaints alleging a breach of the duty of fair representation are resolved. *Alicia A. Brooks v. AFSCME Local 640*, ULP 09-08-701, VII PERB 4483, 4489 (PERB, 2010).

The test is essentially one of good-faith.

There is conflicting evidence concerning what, if any, course of action DSU-AAUP

undertook in response to Dr. Issa's request for representation. At one point it appears the Union intended to seek approval from its Executive Committee concerning whether or not to proceed to arbitration. However, Union President Newton testified that a pre-condition to arbitration is that the dispute in question must have been heard at Steps One and Two of the contractual grievance procedure. Because no grievance was ever filed on behalf of Charging Party there was nothing to arbitrate.

The minutes of the meeting of the Executive Committee on August 30, 2012, resolve this predicament. They provide, in relevant part: "Issa demanded that we provide him with attorney at our expense for his lawsuit. *Motion by Crawford: Do not provide attorney at our expense, seconded by Dujari, all in favor.*" The record is void of any evidence establishing that a second vote by the Executive Committee occurred or that the question of whether or not to proceed to arbitration was ever addressed.

The record evidence establishes the following material facts: 1) The various emails exchanged by the parties concerning numerous subjects served no useful purpose other than to exacerbate an obviously strained relationship; 2) There were numerous requests by Dr. Issa for representation by DSU-AAUP; 3) No grievance was filed by DSU-AAUP or Dr. Issa contesting his discharge; and 4) DSU-AAUP did not provide a timely or meaningful response to Dr. Issa's clear requests for representation.

Consistent with the foregoing discussion, the record supports the conclusion that DSU-AAUP failed to meet its duty of fair representation to Dr. Issa in contesting his August 17, 2012 discharge from employment by Delaware State University. Dr. Issa made a timely request to DSU-AAUP to file a grievance contesting his discharge on August 24, 2012, five working days after he was discharged at a meeting with the Provost where he was accompanied by the DSU-AAUP's attorney.

It is important to note that the issue presented for resolution under the PERA does not concern the merits of Charging Party's discharge, but whether Dr. Issa was afforded his statutory right to be represented by the exclusive bargaining representative. Consequently, this decision addresses only the harm caused to Dr. Issa by the DSU-AAUP's refusal or failure to process his grievance. DSU-AAUP was not Dr. Issa's employer and cannot, therefore, reinstate him to his prior employment or award him a position at any other University, as he has requested. The union is, however, responsible for the loss of income to Dr. Issa through the remainder of the period for which he was contracted to teach at DSU. It is undisputed that he was issued a terminal contract prior to his discharge for the 2012-2013 academic year. Consequently, DSU-AAUP is hereby directed to make him whole for the losses he sustained between the date of his termination (August 17, 2012) and the end of the 2012-2013 academic year.

Finally, it should be noted that it is well past the time that a timely grievance could be filed contesting Dr. Issa's discharge by DSU. DSU was not named as a party to this proceeding and it also well past the statute of limitations for filing an unfair labor practice against the University. Consequently, there is no basis for PERB to consider whether Dr. Issa's discharge was supported by just cause nor any basis to order a non-party (DSU) to reinstate the Charging Party.

CONCLUSIONS OF LAW

1. Prior to his discharge effective August 17, 2012, Charging Party was a public employee within the meaning of §1302(o) of the Public Employment Relations Act, 19 Del.C. Chapter 13.
2. The American Association of University Professors, Delaware State Chapter, is the exclusive bargaining representative of certain employees of Delaware State University

(including “Professors”) within the meaning of 19 Del. C. §1302(j).

3. The allegation that DSU-AAUP violated 19 Del.C. §1304(a) by discriminating against Dr. Issa is dismissed because it is not supported by the record.

4. By failing to respond to the Charging Party’s request for representation and to file a timely grievance contesting his termination, DSU-AAUP failed to meet its obligation to provide fair representation to a bargaining unit member, in violation of 19 Del. C. §1303 and §1307(b)(1).

WHEREFORE, the American Association of University Professors, Delaware State Chapter, is hereby ordered to take the following affirmative action:

- A) Cease and desist from engaging in conduct in violation of its duty to fairly represent bargaining unit members;
- B) Make Charging Party whole for actual losses suffered for the period of August 17, 2012 through the end of his terminal contract at the end of the 2012-2013 academic year.
- C) Immediately post the Notice of Determination in all areas where notices affecting bargaining unit employees are normally posted by DSU-AAUP at Delaware State University.
- D) Notify the Public Employment Relations Board in writing within sixty (60) calendar days of the steps taken to comply with this Order.

Dated: August 26, 2013



CHARLES D. LONG, JR.
Hearing Officer
Del. Public Employment Relations Board