

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

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| LAUREL EDUCATION ASSOCIATION, DSEA/NEA, | : |
| | : |
| Charging Party, | : |
| | : |
| v. | : <u>ULP No. 17-09-1120</u> |
| | : |
| LAUREL SCHOOL DISTRICT, | : Probable Cause Determination |
| | : |
| Respondent. | : |

Appearances

Patricia P. McGonigle, Esq., Delaware State Education Assn./NEA
David H. Williams, Esq., Morris James LLP, for Laurel School District

BACKGROUND

The Laurel School District (“District”) is a public school employer within the meaning of 14 Del.C. §4002(p) of the Public School Employment Relations Act, 14 Del.C. Chapter 40, (“PSERA”).

The Laurel Education Association DSEA/NEA (“LEA”) is an employee organization within the meaning of §4002(i) of the PSERA and the exclusive bargaining representative of two bargaining units of Laurel School District employees (within the meaning of §4002(j)), including:

- a) All certified employees and School Nurses, including all Elementary and Secondary Classroom Employees, Speech and Hearing Specialists, Visiting Employees, Psychologists, Guidance Counselors and Librarians employed by the Laurel School District (collectively “teachers”); and

- b) Support employees, including all full time and part time custodians, custodian firefighters, maintenance mechanics, manager/supervisor or buildings and grounds, secretaries (all classifications), and paraprofessionals (all classifications) (collectively, “ESPs”).

On or about September 18, 2017, LEA filed an Unfair Labor Practice Charge alleging that the District has refused to bargain collectively in good faith with the LEA in violation of 14 Del.C. §4007(a)(5) which states:

§4007. Unfair Labor Practices – Enumerated

- (a) It is an unfair labor practice for a public school employer or its designated representative to do any of the following:
 - (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit.

Specifically, LEA alleges the District unilaterally adopted a dress code without notice to or negotiation with the union. By this action, LEA asserts the District has violated its duty to bargain in good faith under the PSERA.

On September 22, 2017, the District filed its Answer to the Charge in which it admitted all of the facts included in the Charge, but denied the legal conclusions asserted by LEA. The District did not include any new matter and/or affirmative defenses in its Answer to the Charge.

This probable cause determination results from a review of the pleadings submitted by the parties.

DISCUSSION

Rule 5.6 of the Rules and Regulations of the Delaware Public Employment

Relations Board provides:

- (a) Upon review of the Complaint, the Answer and the Response the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with the provisions set forth in Regulation 7.4. The Board will decide such appeals following a review of the record, and, if the Board deems necessary, a hearing and/or submission of briefs.
- (b) If the Executive Director determines that an unfair labor practice may have occurred, he shall where possible, issue a decision based upon the pleadings; otherwise, he shall issue a probable cause determination setting forth the specific unfair labor practice which may have occurred.

For purposes of reviewing the pleadings to determine whether probable cause exists to support the charge, factual disputes revealed by the pleadings are considered in a light most favorable to the Charging Party in order to avoid dismissing a valid charge without the benefit of receiving evidence in order to resolve factual differences. *Flowers v. DART/DTC*, ULP 04-10-453, V PERB 3179, 3182 (Probable Cause Determination, 2004).

It is not disputed that neither the Teacher Agreement, nor the ESP Agreement specifically addresses or creates a dress code for the workplace. The District admits that its Superintendent set forth expectations for employee dress in the workplace at a district-wide meeting in August, 2017 and "... thereafter, building principals detailed the parameters for employee dress ... during their building staff in-service days." The

District also admits that staff handbooks for each of the District's four schools address expectations and provide limitations on employee dress in the workplace.

In *Red Clay Consolidated School District v. Red Clay Education Association, DSEA/NEA*¹, the Delaware PERB unanimously affirmed the decision of its Executive Director finding the dress code implemented by the Red Clay Consolidated School District was a mandatory subject of bargaining. LEA relies on this decision as the basis for this unfair labor practice charge.

The District argues the dress code at issue in this case differs significantly and in a material manner from the facts considered by Board in the *Red Clay* case.

On their face, the pleadings provide a sufficient basis to conclude that an unfair labor practice may have occurred. The pleadings identify issues of fact, whether non-compliance with the dress code has a consequence for employees, whether compliance involves a loss of convenience or comfort or cost for employees, and whether there are relevant and material differences between the dress code which was implemented in Laurel from the dress code considered by PERB in *Red Clay*. The pleadings also raise legal issues, including whether the *Red Clay* decision is distinguishable, such that the dress code in this case is not a mandatory subject of bargaining.

A hearing will be promptly scheduled for the purpose of establishing a factual record on which argument can be considered in order to render a determination on this Charge.

DETERMINATION

Considered in a light most favorable to the Charging Party, the pleadings support

¹ DS/ULP 06-06-524, V PERB 3751, 3755 (DE PERB, 2007).

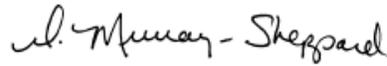
that an unfair labor practice may have occurred. The pleadings raise questions of fact and law which can only be resolved following submission of a complete evidentiary record and argument.

WHEREFORE, a hearing will be promptly scheduled for the purpose of establishing a factual record upon which a decision can be rendered concerning:

DID THE LAUREL SCHOOL DISTRICT VIOLATE ITS DUTY TO BARGAIN IN GOOD FAITH AND 14 DEL.C. §4007(A)(5) BY FAILING OR REFUSING TO NEGOTIATE A DRESS CODE, AS ALLEGED?

IT IS SO ORDERED.

DATE: November 30, 2017



DEBORAH L. MURRAY-SHEPPARD
Executive Director
Del. Public Employment Relations Board