

**STATE OF DELAWARE**  
**PUBLIC EMPLOYMENT RELATIONS BOARD**

<b>DELAWARE STATE UNIVERSITY CHAPTER OF THE</b>	:	
<b>AMERICAN ASSOCIATION OF UNIVERSITY</b>	:	
<b>PROFESSORS,</b>	:	
	:	<b>Unfair Labor Practice Charge</b>
Charging Party,	:	<b><u>No. 21-05-1267</u></b>
	:	
v.	:	<b>PROBABLE CAUSE DETERMINATION</b>
	:	
<b>DELAWARE STATE UNIVERSITY,</b>	:	
	:	
Respondent.	:	

Delaware State University (“DSU”) is a public employer within the meaning of 19 Del. C. §1302(p) of the Public Employment Relations Act, 19 Del. C. Chapter 13 (PERA).

The Delaware State University Chapter of the American Association of University Professors (“AAUP”) is an employee organization within the meaning of 19 Del. C. §1302(i). It is the certified exclusive representative of the bargaining unit of Delaware State University employees as defined in DOL Case 113, within the meaning of 19 Del. C. §1302(j). The recognition clause found in Article 4 of the parties’ July 1, 2016 through June 30, 2021 collective bargaining agreement states:

- 4.1 Delaware State University recognizes the Delaware State University Chapter of the American Association of University Professors as the sole and exclusive bargaining representative as certified by the Department of Labor, State of Delaware, with respect to matters concerning wages, salaries, workloads, sick leave, vacations, grievance procedures, sabbatical leaves, and such other terms and conditions of employment as are specifically set forth in this Agreement, for all employees of the University in the collective bargaining unit (unit members) designated by that certification dated May 10, 1977, as follows:

All full-time voting faculty members as defined by Delaware State University, including Departmental Chairpersons and Academic Directors.

The Association shall also represent the following employees: Professional Librarians, Counselors, Research Faculty, Extension Agents, Department and Library Assistants, Half-time Faculty and Clinical Practitioners in Nursing, and Child Lab Assistants. *Charge Exhibit A, p. 6.*

DSU and the AAUP are parties to a collective bargaining agreement which has a term of July 1, 2016 through June 30, 2021. The agreement was in effect at the time the pleadings were filed in this case. Article 23 of this Agreement provides:

23.2.2 The Parties agree to begin negotiations no later than October 15, 2020, on the Agreement to succeed this Agreement. If pursuant to such negotiations an agreement on the renewal or modification of this Agreement is not reached prior to the expiration date, this Agreement shall continue in effect during the period of negotiations until a new Agreement is reached. *Charge Exhibit A., p. 100.*

On May 26, 2021, the AAUP filed an unfair labor practice charge with the Delaware Public Employment Relations Board (“PERB”) alleging conduct by DSU in violation of 19 Del. C. §1307(a)(1) and (a)(5), which provide:

- (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
  - (1) Interfere with, restrain or coerce any employee because of the exercise of any right guaranteed under this chapter.
  - (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, except with respect to a discretionary subject.

The Charge alleges DSU violated the rights of bargaining unit employees to organize, join, form and/or assist the AAUP and failed or refused to bargain in good faith with the AAUP by:

- 1) Diverting bargaining unit work by offering courses virtually through the “DSU Online” platform;
- 2) Unilaterally establishing wage rates and salaries for the 2021 Summer Session; and/or
- 3) Failing or refusing to provide information requested by the AAUP which is related and necessary to its work to enforce the collective bargaining agreement.

On June 7, 2021, DSU filed its Answer to the Charge in which it admitted DSU began offering courses through DSU Online and that those course offerings have been expanded over time. It also admitted it is compensating DSU Online instructors at a rate of \$2,500 per course.

In new matter included in its Answer, DSU asserts the Charge fails to articulate a violation of the PERA or otherwise state a claim under the PERA for which relief may be granted. DSU denies it has refused to bargain concerning any mandatory subject of bargaining and asserts it has bargained and continues to bargain with the AAUP regarding DSU Online. It requests the Charge be dismissed in its entirety.

The AAUP filed its response to DSU’s New Matter on June 16, 2021, in which it denied all of the legal conclusions included therein.

This probable cause determination is based on 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 a 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).

The pleadings in this matter are sufficient to establish probable cause to believe an unfair labor practice may have occurred. It will ultimately be the AAUP's burden to establish by a preponderance of the evidence that DSU violated the Public Employment Relations Act, as alleged.

### **DETERMINATION**

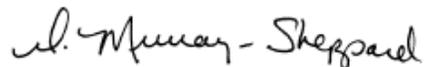
Considered in a light most favorable to the Charging Party, the pleadings are sufficient to establish that DSU may have violated 19 Del. C. §1307 (a)(1) and/or (a)(5), as alleged. The pleadings raise both questions of fact and law which can only be resolved

following the creation of a complete evidentiary record and the consideration of argument.

**WHEREFORE**, a hearing will be promptly scheduled for the purpose of developing a full and complete factual record upon which a decision can be rendered concerning:

WHETHER DELAWARE STATE UNIVERSITY INTERFERED WITH THE PROTECTED RIGHTS OF EMPLOYEES AND/OR FAILED AND REFUSED TO BARGAIN IN GOOD FAITH WITH THE AAUP, IN VIOLATION OF 19 DEL. C. §1307 (A)(1) AND/OR (A)(5), BY DIVERTING BARGAINING UNIT WORK TO DSU ONLINE, UNILATERALLY ESTABLISHING THE WAGE AND SALARY RATE FOR DSU ONLINE INSTRUCTORS, AND/OR FAILING OR REFUSING TO PROVIDE INFORMATION REQUESTED BY THE AAUP CONCERNING DSU ONLINE WHICH WAS NECESSARY FOR EFFECTIVE ENFORCEMENT OF THE PARTIES' COLLECTIVE BARGAINING AGREEMENT.

Having found probable cause based on the pleadings, DSU's asserted defense that the Charge fails to state a claim on which relief may be granted under the PERA is denied.



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