

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

INDEPENDENT UNITED WORKERS ASSOCIATION,	:	
LOCAL 1,	:	
	:	
Petitioner,	:	
	:	
AND	:	Objections to Decertification Election
	:	
AMERICAN FEDERATION OF STATE, COUNTY,	:	
AND MUNICIPAL EMPLOYEES, COUNCIL 81,	:	<u>REP. 23-01-1340</u>
LOCAL 439,	:	
	:	
AND	:	DECISION ON THE MERITS
	:	
UNIVERSITY OF DELAWARE,	:	
	:	
RESPONDENTS.	:	

APPEARANCES

David Edwards, President, for IUWA Local 1, Petitioner
Lance Geren, Esq., O’Donoghue & O’Donoghue LLP, for AFSCME Council 81
Robert Nagle, Esq., Fox Rothschild LLP, for University of Delaware

BACKGROUND

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

American Federation of State, County, and Municipal Employees, (“AFSCME”) AFL-CIO, Council 81 is an employee organization within the meaning of 19 Del. C. §1302(i). By and through its affiliated Local 439, AFSCME is and has been since 1966 the exclusive bargaining representative of a bargaining unit of blue collar employees of the University of Delaware as certified, modified and defined in DOL Case 16, within the meaning of 19 Del. C. §1302(j). The unit includes all full-time and part-time University employees who hold Bus Driver, Caretaker,

Custodial Technician, Custodial/Set-up Technician, Driver-Mover, Groundskeeper, Refuse Collector, Refuse Equipment Operator, and Shipping/Receiving Clerk positions.

The Independent United Workers Association, Local 1 (“IUWA”) is an employee organization within the meaning of 19 Del. C. §1302(i). Consistent with the statutory requirements of §1312, the IUWA filed an annual employee organization report, signed by its president, which included copies of its by-laws.

The University and AFSCME Local 439 are parties to a collective bargaining agreement for this bargaining unit which has a term of January 1, 2020 through June 30, 2023.

On or about January 26, 2023, a group of bargaining unit employees signed cards in support of a petition to decertify AFSCME Local 439, indicating they wished to replace AFSCME with the IUWA as the exclusive bargaining representative of the unit. The petition was signed by one of the bargaining unit employees. Section 1311(b) of the PERA provides:

- (b) Where an employee organization has been certified as the exclusive representative, a group of employees within the bargaining unit may file a petition with the Board for decertification of the exclusive bargaining representative. The petition must contain the uncoerced signatures of the employees within the bargaining unit and allege that the employee organization presently certified is no longer the choice of a majority of the employees in the bargaining unit. If a lawful collective bargaining agreement of no more than 3 years’ in duration is in effect, no petition shall be entertained unless filed not more than 180 days nor less than 120 days prior to the expiration of such agreement. A decertification petition also may be filed if more than 1 year has elapsed from the date of certification of an exclusive bargaining representative and no collective bargaining agreement has been executed, and the procedures for mediation and fact-finding have been invoked and completed as provided in this chapter.

Based on a list of bargaining unit employees provided by the University, the petition was verified as timely filed and properly supported by at least 30% of the bargaining unit employees. Notices of the decertification petition were provided to AFSCME and the IUWA. Copies were also provided to the University, which was requested to post copies in the workplace and to provide a copy directly to each bargaining unit employee via email. The University certified to the Public

Employment Relations Board (“PERB”) that the notices had been posted and emailed as requested on February 14, 2023.

On or about February 23, 2023, the University provided an Excelsior List of all eligible voters, which included the names, position titles, home addresses, email addresses, phone numbers and shift information for 269 bargaining unit employees. The list was simultaneously provided to both AFSCME and IUWA for review. There were no objections filed to the eligible voter list.

Arrangements were made for the election and notices were provided to the parties on March 8, 2023, with a PERB request that the University again post the notices in the workplace and provide to all eligible voters by email. The Notice of Decertification Election included a Sample Ballot:

Sample - OFFICIAL SECRET BALLOT - Sample
Representation Petition No. 23-01-1340 (DECERT)

The purpose of this election is to determine whether University of Delaware employees in the bargaining unit defined by DOL Case 16 desire to continue to be represented by AFSCME Local 439 or desire to replace it with IUWA Local 1 or to be unrepresented for purposes of collective bargaining. *The unit includes full-time and part-time University of Delaware employees classified as Bus Driver, Caretaker, Custodial Technician, Custodial/Set-up Technician, Driver-Mover, Groundskeeper, Refuse Collector, Refuse Equipment Operator, Shipping/Receiving Clerk.*

DO YOU WISH TO BE REPRESENTED FOR PURPOSES OF COLLECTIVE BARGAINING BY:

AFSCME Local 439 (current representative)

Independent United Workers Assn. Local 1
(alternative representative)

No Representative

Mark only one X on your ballot, inside one square.

Do not sign your name on this ballot.

Fold your ballot and place it in the ballot box.

The Notice also included instructions for absentee ballots:

Absentee ballots should be requested AS SOON AS POSSIBLE by eligible voters who are unable to cast a ballot in person, due to circumstances beyond their control. Such ballots must be requested directly from PERB by the eligible voter (please call (302) 577-5070) and will be mailed directly to the voter at his/her home. Absentee ballots cast by US mail must be received in the PERB office on or before 4:30 p.m. on Tuesday, April 4, 2023, in order to be cast and counted.

The Notice stated that the results would be determined by the majority of the votes cast and included information concerning authorized polling and count observers:

AFSCME Local 439, IUWA Local 1 and the University of Delaware may each designate one observer and one alternate to observe the casting of ballots. The observers shall be persons familiar with the employees normally assigned to the voting location. Observers shall (a) act as checkers at the voting place; (b) assist in the identification of voters; (c) challenge voters and ballots; and (d) otherwise assist the PERB agent.

Each party shall also be permitted to appoint one representative to observe the official counting of the ballots.

The Notice provided specific instructions to voters:

The election will be by SECRET ballot. Voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling places. Violations of these rules should be reported immediately to the Public Employment Relations Board, or its agent in charge of the election. 19 Del. C. §1311.

An agent of the PERB will hand a ballot to each eligible voter at the polling site. The voter will then mark his/her ballot in secret and fold it. The voter will then personally deposit the folded ballot in a ballot box which is under the supervision of a PERB agent.

The Election was scheduled and conducted as noticed on:

POLLING TIME & LOCATION

Date: Wednesday, April 5, 2023

Time:	7:30 AM – 5:00 PM	<i>There will be two brief breaks:</i>
Polling Location:	Perkins Student Center Room 211, Blue & Gold Room 325 Academy Street, Newark	10:30 – 10:50 AM 2:00 – 2:20 PM

The University, AFSCME and the IUWA each designated representatives to observe the

polling and the counting of the ballots. The designated observers were provided with the following observer instructions:

DUTIES (GENERAL):

Act as checkers and watchers.

Challenge voters and ballots. Voters may be challenged only for good cause.

Otherwise assist as requested by the agent(s) of the Public Employment Relations Board.

THINGS TO DO (GENERAL):

Check off voters on the copy of the master eligibility list provided by PERB.

Observe that only one voter is voting at any one time.

Observe that each voter deposits a ballot in the ballot box.

Observe that each voter leaves the polling area immediately after depositing his/her ballot.

Observe that the ballot box is sealed before it leaves the polling place.

Report any irregularities to the PERB's agent as soon as noticed.

BE ON TIME. Observers are required to report to the polling area fifteen (15) minutes prior to the scheduled election period.

THINGS NOT TO DO (SPECIFIC):

Do not give any help to any voter.

Do not leave the polling place without the PERB's agent's consent.

Do not wear any indication of the public employer or employee organization which you represent. This includes badges, buttons, placards, electioneering devices, etc., including advertising on any article of clothing. The PERB's agent is the sole arbiter as to the type of identification to be worn during the election.

Do not bring a list of voters. The PERB's agent shall have the only list of voters allowed in the polling area, and will provide a copy for use by the representative of each organization.

You should enter upon this task with a fair and open mind. Conduct yourself so that no one can find fault with your actions during the election. You are designated to observe that the election is conducted in a fair and impartial manner, so that each eligible voter has a fair and equal chance to express himself/herself freely and in secret. *[Emphasis added]*

All designated observers and alternate observers were also provided with a copy of the

“Instructions for Appointed PERB Officials”:

The election official appointed by the Public Employment Relations Board is responsible for the conduct of this election. The public employer and each employee organization which appears on the ballot shall be permitted to appoint one election observer and one alternate. Observers shall be persons who are familiar with the employees normally assigned to the working sites voting in the election.

1. Voting will be conducted in-person as follows:

Wednesday, April 5, 2023		
Time:	7:30 AM – 5:00 PM	Ballot Count: 5:00 PM
Location:	Perkins Student Center Blue & Gold Room (Room 211) 325 Academy Street Newark, DE	Perkins Student Center Blue & Gold Room (Room 211) 325 Academy Street Newark, DE
<i>There will be two brief breaks: 10:30 – 10:50 AM and 2:00 – 2:20 PM</i>		

2. AFSCME Local 439, IUWA Local 1, and the University of Delaware may designate a representative who may be present in the polling area and remain so during the course of the election. All other persons must remain outside the designated polling area while the polls are open.

3. There is to be no electioneering of any kind within the designated polling areas during the election period.

4. At the start of the election in the Blue & Gold Room (Room 211) at the Perkins Student Center, the PERB election official and the observers will check the ballot box to be sure it is empty. The PERB election official will then seal the box. The election official, along with each observer, will sign the seal. Any absentee ballots received by the PERB will be removed from their envelopes and deposited unread into the sealed ballot box at the start of the polling period.

5. Voters will report to the election official and identify themselves. Each voter will sign beside his/her printed name on the certified voter list. The election official will initial the signature. Except for challenged ballots, marked ballots are to be placed in the ballot box by the voting employee.

6. All employees appearing on the certified list are eligible to vote and challenges as to eligibility will not be honored. Challenges for cause are permitted.

7. Any prospective voter may be challenged for cause. Any employee whose name does not appear on the eligible voter list certified

by the PERB as being the complete list of employees within the defined appropriate unit, shall be challenged by the agent of the PERB.

A voter challenged for cause shall vote but his/her ballot shall not be cast. It shall instead be sealed in a separate unmarked envelope under the supervision of the designated agent of the PERB and then inserted in an identifiable and marked envelope provided by the PERB and retained by its agent.

The challenged ballots shall only be referred to if they could affect the outcome of the election. If challenged ballots must be referred to, then each challenge shall first be resolved. Upon resolution of the challenge, if the ballots are legitimate, they shall be counted.

8. At the conclusion of the polling period, the Designated Observers and the PERB official will each sign a Certificate of Conduct of Election. Immediately following the closing of the polls **on Wednesday, April 5, 2023**, a PERB official will supervise the counting of the ballots. The counting of the ballots will occur in the Blue & Gold Room (Room 211) at the Perkins Student Center, 325 Academy Street, Newark, DE.

9. The public employer (University of Delaware) and employee organizations (AFSCME Local 439 and IUWA Local 1) shall be permitted to appoint one representative to observe the casting and counting of the ballots.

10. The election will be determined by the majority of the votes cast. As there are more than 2 choices on the ballot, should none of the choices receive a majority of the votes cast, a run-off election must be conducted. The ballot in the run-off election shall contain the 2 choices on the original ballot that received the largest number of votes. 19 *Del. C.* §1311(d)

11. Upon completion of the counting of the ballots, the Public Employment Relations Board shall advise the authorized representatives of the parties of the voting results, in writing. Notices shall be prepared and provided to the employer for posting in the workplace to advise affected employees of the outcome of the election.

12. Any questions or problems arising during the election are to be resolved by the PERB election official, who may request assistance, where necessary, from Deborah L. Murray-Sheppard, Executive Director of the Delaware PERB.

Party observers were present throughout the polling period which was conducted and overseen by the Executive Director of the Public Employment Relations Board. At the conclusion of the polling, each observer signed the certificate of conduct of election:

The undersigned acted as the authorized observers of AFSCME Local 439, IUWA Local 1, and University of Delaware, respectively, in the conduct of the balloting at the above time and place.

WE HEREBY CERTIFY that this ELECTION was fairly conducted, that all eligible voters were given an opportunity to cast their ballots in secret in the interest of a fair and secret election, that the absentee ballots were deposited into the ballot box with their secrecy preserved, that the ballot box was sealed at the conclusion of the polling period and retained in the custody of the PERB official signing this document.

Following the closing of the poll at 5:00 p.m., the ballots were counted by the PERB Executive Director. Again, each of the parties designated an observer for the counting process. The count was conducted in the same room in which the polling had been held. There were a number of additional witnesses in the room, all of which were cautioned prior to the initiation of the counting process that only the designated observers could lodge objections during the course of the count.

Of the 269 eligible voters, 237 unchallenged ballots¹ were cast, a voting rate of 88% of the bargaining unit. There were no void ballots. The ballots were tabulated as follows:

AFSCME Local 439	139	(59% of ballots cast)
IUWA Local 1	95	(40% of ballots cast)
No Representative	3	(1% of ballots cast)

Each of the designated observers for the University, AFSCME Local 439 and IUWA Local 1 signed the tally of ballots under the following statement of certification:

The undersigned representatives of the parties hereby certify the counting and tabulating of the ballots were fairly and accurately performed, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge receipt of a copy of this tally.

Having received a majority of the valid votes cast, AFSCME Local 439 was confirmed as the exclusive representative of the bargaining unit. The decertification effort of IUWA Local 1 failed. Notices of the outcome of the election were provide to the University, which certified that

¹ There was a single challenged ballot cast by an alleged new employee who began work after the submission of the Excelsior List. As resolution of the challenge could not affect the results of the election, the ballot was not opened or counted.

copies were posted in the workplace and provided to all bargaining unit employees by email on April 6, 2023. The notices stated that any objections to the election or to conduct affecting the results of the election must be filed with PERB within five days of the posting of the Notices. It also reminded bargaining unit employees that §1311(e) of the PERA prohibits the conduct of another election within 12 months of a preceding valid election.²

OBJECTIONS TO THE ELECTION

By email dated April 10, 2023, IUWA Local 1 President David Edwards made allegations of election interference by email:

I am reaching out to you to provide you with a transcription of the election observations of which was obtained from the observer, and can be retrieved from Video surveillance of the specific pooling areas during the election period between 7:30am- 5pm. on April 5, 2023. The election was held At the Perkins Student Center on the campus of the University of Delaware on the second floor in the Blue and Gold Room.

The Following is a list of things that were observed during the election on that day. Also, as per instructed by the PERB, we are to Report any irregularities to you as the Agent as soon as noticed.

You should note that Members of ASCFME [*sic*] Council 81 were observed violating several rules that you specifically indicated on the instruction Memo for the election-on-Election Day. If necessary, observers and witnesses are willing to corroborate what they observed during election day. Also, **video surveillance** can be provided by the university in regard to the activities in the Perkins Hall that day.

The individuals observed wearing AFSCME shirts include Diane Muckle, Linda Mobley, Angela Lamanna (Legal Rep), Octavus Williams and Andrew Smith.

THINGS NOT TO DO (SPECIFIC):

Those specific things are included below as listed. Also, as a reference, images accompanying the observations are Exhibit 1 and Exhibit 2

1. Do not wear any indication of the public employer or employee organization which you represent. This includes badges, buttons, placards, electioneering devices, etc., including Advertising on any article of clothing

A. ASFCME [*sic*] Council 81 along with members was observed Wearing

² Although provided the opportunity, the University did not file a response to IUWA's objections.

Green and Blue ASFCME Shirts.

B. ASFCME was observed promoting and passing out green stickers to potential voters before and after they actually voted.

C. ASFCME members also wore those same stickers and displayed them on their clothing. Along with the ASFCME [*sic*] Logo and Brand name

Also, it should be noted that several members who voted have complained that they were aggressively approached by members who have been Identified and that wore AFSME [*sic*] shirts and stickers. Voting members explained that AFSCME Reps and Members were standing at all entrances to Perkins Hall throughout the day. Some members stated that they felt intimidated and coerced to vote in favor for Local 439 and falsely reminded that they would lose their benefits and pension.

In addition to the election rules being violated and broken, the following document is a timeline of events that emphasize the taking down of IUWA fliers, the threat by an apparent agent of AFSCME to cause bodily harm to an IUWA Representative (Jerry Adams) with the actual disruption of an IUWA key station presentation, and the perpetuation of lies that were only resolved by the university very late in the process (lose job, lose benefits, etc.).

Timeline of Events Impacting the Election

March 7th email to La-Toya from Mr. Edwards informing La-Toya that IUWA will exercise its rights.

March 22nd email to La-Toya from Mr. Edwards informing her about Manager Christina Moore taking down IUWA flyer.

March 24th Andre Smith pulled down IUWA flyers at the transportation department. Key witnesses Anthony Delcollo, Jerry Adams, Dave Ware, Dan Thompson, Barbara Gross-Todd Mondeario Pinckney.

March 27th Email to La-Toya from Mr. Edwards informing La-Toya about University Management pulling down flyers.

March 30th Kelly Tucker attacked and threatened Jerry Adams at independence [*sic*] Hall. Key witness were Dave Ware, Paul Jackson and Kenny Revell. A police report filed.

April 3rd- La-Toya finally responds with a memo one day before the election at 7:51pm And instructs management to put the memo on all information boards were [*sic*] members frequently visit, and appear on the election notice

April 5th- Election interference by AFSCME wearing shirts telling people to vote AFSCME asking people who did they vote for giving out stickers everything is under surveillance Angela LaManna Octavus Williams Andre Smith Linda Mobley ... key witness Banks Adams, Dave Ware Dan Thompson, Lee-Ann O'Brien, Annette Selby, Victoria Aguilar, Morris Foster and Mondeario Pinckney.

For the reasons stated in this letter, we are submitting this document to

object to the results of the decertification election and are filing a motion to declare the election void and to be redone. We strongly recommend and are asking the PERB to sustain our objections due to the conduct of the election that includes gross violations of election rules along with the blatant interference by members and supporters of ASFCME, And to hold a new election. *[Emphasis in the original]*

By letter dated April 17, 2023, AFSCME filed a response to the IUWA's objections, in which it opposed each objection and requested PERB administratively dismiss the petition and certify the election results.

STANDARD FOR REVIEW OF OBJECTIONS

The Delaware PERB looks to federal law under the National Labor Relations Board for guidance, recognizing that there are some differences between the private and public sectors. *Seaford Education Association v. Bd. of Education*, ULP 2-2-84S, 1 PERB 1, 5 (1984).

In a recent decision dismissing objections to a certification election conducted by the NLRB, the Regional Director of Region 32 summarized the standards for considering objections and a request to set aside the results of a representation election:

"Representation elections are not lightly set aside" *NLRB v. Hood Furniture Mfg. Co.*, 941 F.2d 325, 328 (5th Cir. 1991) (citations omitted) and "[t]here is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees." *Id.* at 328. The objecting party bears the "entire burden" of showing evidence that misconduct warrants overturning the election. *Id.* at 328. The burden of proof is on the party seeking to set aside a Board-supervised election, and that burden is a "heavy one." *Lalique N.A., Inc.*, 339 NLRB 1119, 1122 (2003); *Chicago Metallic Corp.*, 273 NLRB 1677, 1704 fn. 163 (1985). The objecting party's burden encompasses every aspect of a *prima facie* case. *Sanitas Service Corp.*, 272 NLRB 119, 120 (1984).

The standard used to determine whether objectionable conduct occurred varies depending upon who is alleged to have committed the misconduct. Where, as here, the objecting party alleges that the other party to the election, or its agent, committed the objectionable conduct, the objecting party must show not only that the acts occurred by the other party's agent, but also that they "interfered with the employees exercise of free choice to such an extent that they materially affected the results of an election." *NLRB v. Gulf States Cannery*, 634 F.2d 215, 216 (5th Cir. 1981). See *Cedars-Sinai Medical Center*, 342 NLRB 596, 597 (2004) (citing

Cambridge Tool & Mfg. Co., 316 NLRB 716 (1995) -conduct is objectionable "if it has the tendency to interfere with the employees' freedom of choice."³

The PERA grants the fundamental right of organization and representation to employees. 19 Del. C. §1301. It is the right of public employees to negotiate and grieve through representatives of their choosing and to be represented by their certified exclusive bargaining representative without discrimination. 19 Del. C. §1303. Based on these rights, the NLRB guidance that absent a *prima facie* showing of impropriety, a determinative election outcome will be presumed to reflect the free and untrammelled choice of the employees in the unit⁴ is adopted.

DISPOSITION OF IUWA LOCAL 1's OBJECTIONS

In considering challenges and exceptions to an election, the Executive Director is required to either dismiss the objections, or hold a hearing, if necessary. PERB Rule 4.8. A hearing is not necessary in this case for the reasons discussed herein.

Before addressing the IUWA's specific objections to conduct affecting the election, it is incumbent upon the objecting party to provide enough information (including documentation) to support its allegations. The objecting party must establish not only that the acts occurred by the other party's agent, but also that they interfered with the employees' exercise of free choice to such an extent that they materially affected the results of an election. In reviewing the objections, conclusory statements and/or perceptions are insufficient to establish facts on which an election may be overturned. This is particularly true when, as here, 88% of the eligible voters cast ballots and the prevailing union secured 59% of the votes cast.

- 1) Presence of individuals wearing AFSCME insignia in the polling area

³ *Lodi Memorial Hospital Association, Inc. d/b/a Adventist Health Lodi Memorial*, 32-RC-309991, Regional Director's Decision on Election Objections and Certification of Representative (NLRB, Regional Director Decision, 2023).

⁴ *United Sanitation Services, Division of Sanitas Service Corp.*, 272 N.L.R.B. 119, 117 LRRM 1372 (1984).

The IUWA appended to its April 10 email a picture of the Blue and Gold Room, located on the second floor of the Perkins Student Center. This is the room in which both the polling and the counting and tabulating of the ballots occurred. The picture was taken during the ballot count procedure and includes pictures of individuals in the room other than the designated count observers. While the picture does not identify the individuals in the picture, it does show at least two individuals who are wearing AFSCME shirts. It also does not include in the picture the actual counting of the ballots or the designated observers who were at a table immediately to the left of the picture.

This picture was not taken during the polling period in which ballots were being cast. The only people in the room during the casting of ballots were the PERB Executive Director, designated observers for AFSCME, IUWA and the University, and two voters, maximum – one marking a ballot in the back of the room and the next voter signing in to vote.

This objection is dismissed because it does not identify any conduct which could have impacted the outcome of the election.

2) Individuals were wearing AFSCME shirts in violation of PERB Instructions

IUWA specifically named four eligible voters (Muckle, Mobley, Smith and Williams) and one Council 81 representative (LaManna) who were wearing AFSCME shirts during the period of the April 5, 2023 election. It alleges that the wearing of shirts or other insignia violates the instructions provided prior to the election.

The instructions to which the IUWA refers were provided to the designated observers (and alternate observers) prior to the election to insure there were no indications of whom the observers represented in the polling area when voters were casting their ballots. There were no observers who were in violation of this rule during the polling.

The restrictions on polling observers were not a general prohibition on eligible voters. It

was not published or otherwise noticed that there were any restrictions on the apparel of employees appearing to vote. Had that been the case, any voter showing up in uniform with University insignia would have similarly been in violation. No voters were prohibited from voting based on their apparel.

Each eligible voter was permitted to cast his/her ballot individually and in secret, after signing in at the registration table with the PERB official. Only one voter was permitted to be at the table to mark his/her ballot at a time. At no time did anyone, other than the PERB official, speak with voters while they were marking their ballots. Each voter, after marking his/her ballot, then personally deposited that ballot in the ballot box.

For these reasons, the IUWA's objection to voters and others wearing AFSCME shirts and/or stickers is dismissed as it is based on a misunderstanding of PERB instructions. Further, the objection does not assert conduct which may have adversely affected the conduct of the election.

- 3) AFSCME Representatives conduct in passing out stickers and speaking with voters entering the Perkins Student Center before and after voting

The protected polling area for this election included the second floor hallway outside the Blue and Gold Room in the Perkins Student Center. Signage was posted advising the area was an "OFFICIAL PERB POLLING AREA" and stated in bold letters, "NO ELECTIONEERING PERMITTED IN THIS AREA." At no time during the polling were there any reports of electioneering in this area. Further, the PERB official neither heard nor saw any electioneering conduct outside the polling room.

The conduct of which IUWA complains was occurring on the first floor of the Perkins Student Center. The PERB official, during the breaks, observed that AFSCME proponents had gathered at a table in the dining area.

Eligible voters did appear to cast their ballots wearing AFSCME stickers and some were

also wearing AFSCME shirts. Each voter, however, cast his/her ballot in secret and without interference.

IUWA alleges that some unidentified voters complained that they felt they were “aggressively approached” by AFSCME proponents and that they “felt intimidated and coerced to vote in favor of [AFSCME] Local 439 and falsely reminded that they would lose their benefits and pension.” In *Kent County Levy Court & IUE*, PERB addressed allegations of misrepresentation in campaign statements:

The PERB recognizes the wisdom in refraining from probing the truth or falsity of campaign statements of the parties, and intervening only where a party has engaged in fraud or forgery which renders voters unable to recognize propaganda for what it is... Exaggerations, inaccuracies, and half truths are best left for correction by the opposing party... The evaluation of the veracity of campaign statements is best left to the employees, who, as mature individuals, have the capacity to recognize campaign propaganda for what it is and to accord it appropriate weight in their decision making process.⁵

Further, PERB Rule 4.1 (d) states campaigning shall be controlled by the unfair labor practice provisions of the statute, 19 Del. C. §4007. There have been no unfair labor practice charges filed in connection with this election.

The allegation does not establish a basis on which it might reasonably be concluded that the outcome of the election was reasonably affected by this conduct.

4) Allegations of interference prior to the April 5 election described as “Timeline of Events Impacting the Election”

None of the emails or memos referenced in the “Timeline of Events Impacting the Election” were included with the objections. Concerning the alleged altercation between two bargaining unit employees on March 30, 2023, the objection states that a police report was filed. The IUWA does not assert in its timeline how any of the incidents materially affected the outcome

⁵ REP 94-12-110, II PERB 1101, 1105 (1995).

of the election.

Specifically, the IUWA alleges that its flyers were removed from the workplace by both University and bargaining unit employees. It asserts that it made the University aware of this on March 27, 2023 and that the University's Human Resources Director sent a memo on April 3, 2023 instructing management "to put the memo on all information boards were [*sic*] members frequently visit, and appear on election notice." Neither the emails nor the memo were provided with the objections.

Both the IUWA and AFSCME were provided with the Excelsior List provided by the University on February 23, 2023, which included the mailing address, email address and phone number for each eligible voter. The unions had ample time and access to every eligible voter to directly provide information and campaign materials in advance of the election.

As stated above, campaigning is controlled by the unfair labor practice provisions of the PERA. No charges have been filed concerning this election.

In sum, the IUWA has failed to raise any material and substantial issue of fact that would warrant a hearing over its objections or require invalidating the election results. The objections are overruled in their entirety as they fail to establish that any of its allegations, individually or collectively, had a reasonable tendency to influence the outcome of the election or to interfere with the employees' exercise of their free choice.

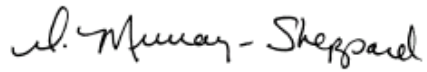
DECISION

The IUWA's objections to the conduct of the decertification election and to conduct affecting the results of that election are insufficient to conclude that the alleged actions by AFSCME and/or the University had a reasonable tendency to influence the outcome of the election or to interfere with the employees' exercise of their free choice.

The objections are therefore dismissed and the election result, as certified by the PERB on April 5, 2023, is affirmed. AFSCME Local 439 is and remains the certified exclusive bargaining representative of the unit of University of Delaware blue collar employees as defined in DOL Case 16.

IT IS SO ORDERED.

DATE: June 13, 2023



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