

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

DELAWARE STATE EDUCATION ASSOCIATION,	:	
and GLORIA HO,	:	
	:	Unfair Labor Practice Charge
Charging Parties,	:	<u>No. 24-07-1419</u>
	:	
v.	:	PROBABLE CAUSE DETERMINATION
	:	
CAPE HENLOPEN SCHOOL DISTRICT	:	
BOARD OF EDUCATION,	:	
	:	
Respondent.	:	

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

The Delaware State Education Association (“DSEA”) is an employee organization within the meaning of 14 *Del. C.* §4002(i). Gloria Ho (“Ms. Ho”) is a employed by the District as a National Certified School Social Worker and is a public employee within the meaning of 14 *Del. C.* §4002(p). DSEA and Ms. Ho will be referred to, collectively, herein as the “Charging Parties”.

On July 1, 2024, the Charging Parties filed an unfair labor practice charge with the Delaware Public Employment Relations Board (“PERB”) alleging conduct by the District in violation of 14 *Del. C.* §4007(a)(1) and (a)(2), which provide:

- (a) It is an unfair labor practice for a public school 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.
- (2) Dominate, interfere with or assist in the formation, existence, or administration of any labor organization.

The Charge alleges the District violated the Charging Parties' protected rights by providing Ms. Ho a lower performance rating because she was serving as an elected member of DSEA's Executive Board during the 2023-24 school year. Specifically, the Charge alleges the Principal and Assistant Principal at Milton Elementary School (where Ms. Ho is assigned) expressed concerns about her "union-related" absences from the building, which they stated was the basis for her lower evaluation.

On July 11, 2024, the District filed its Answer to the Charge admitting some and deny other facts asserted by the Charging Parties. The District's Answer also included new matter in which it asserts any alleged violation would be under the Public Employment Relations Act (19 *Del. C.* Chapter 13), rather than under the PSERA. The District also asserts the Charge is insufficient to support an allegation that either DSEA's or Ms. Ho's rights were violated. It requests the Charge be dismissed in its entirety.

The Charging Parties filed their Response to New Matter on July 16, 2024, in which they denied the District's legal defenses.

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 Charging Parties' burden to establish by a preponderance of the evidence that the District violated the Public School Employment Relations Act, as alleged.

Whether the Charge is properly filed under the PSERA or PERA will be addressed as a preliminary matter in the decision. It is noted that the enumerated violations which can be committed by a public employer of §4007(a)(1) and (a)(2) of the PSERA are identical to the provisions of §1307(a)(1) and (a)(2) of the PERA.

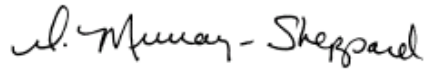
DETERMINATION

Considered in a light most favorable to the Charging Parties, the pleadings are sufficient to establish that the District may have violated 14 Del. C. §4007 (a)(1) and/or (a)(2), 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 CAPE HENLOPEN SCHOOL DISTRICT INTERFERED WITH THE
PROTECTED RIGHTS OF A PUBLIC SCHOOL EMPLOYEE AND/OR A LABOR
ORGANIZATION IN VIOLATION OF 14 *DEL. C.* §4007 (a)(1) AND/OR (a)(2)
AS ALLEGED.

DATE: September 9, 2024



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