

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

MONDEARIO PINCKNEY, DANIEL THOMPSON,	:	
AND DAVID EDWARDS,	:	
	:	Unfair Labor Practice Charge
Charging Parties,	:	<u>No. 24-07-1422</u>
	:	
V.	:	
	:	PROBABLE CAUSE DETERMINATION
DELAWARE PUBLIC EMPLOYEES COUNCIL 81,	:	AND ORDER OF DISMISSAL
LOCAL 439, AFL-CIO, AND AFSCME, AFL-CIO,	:	
	:	
Respondents.	:	

Appearances

Anthony Delcollo, Esq., Offit Kurman P.A., for the Charging Parties

Lance Geren, Esq., O'Donoghue & O'Donoghue, for the Respondents

Mondeario Pinckney, Daniel Thompson and David Edwards (collectively “Charging Parties”) are employed by the University of Delaware¹ and are public employees within the meaning of §1302(p) of the Public Employment Relations Act (“PERA”), 19 *Del. C.* Chapter 13.

The American Federation of State, County and Municipal Employees International, AFL-CIO (“AFSCME International”) is a labor organization. It is the chartering organization for affiliated councils and local unions which represent public sector employees.

Delaware Public Employees Council 81, AFSCME, AFL-CIO (“AFSCME Council 81”) is an employee organization (chartered by AFSCME International, AFL-CIO) within

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

the meaning of 19 Del. C. §1302(i). Its affiliated Local 439 is the certified exclusive bargaining representative of a bargaining unit of University of Delaware blue-collar employees within the meaning of 19 Del. C. §1302(j).

Each of the Charging Parties was a member of AFSCME Local 439.²

On July 9, 2024, the Charging Parties filed an unfair labor practice charge with the Delaware Public Employment Relations Board (“PERB”) alleging conduct by AFSCME in violation of 19 Del. C. §1307(b)(1) and (b)(3), which state:

- (a) It is an 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 because of the exercise of any right guaranteed under this chapter.
 - (3) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.

The Charge alleges that AFSCME International, Council 81 and Local 439 violated the PERA by and through provisions of the International Constitution which Charging Parties allege interfere with their protected rights to engage in concerted activities, including the right to assist any employee organization, as guaranteed by §1303, Employee rights. (*Emphasis included in Charge ¶25*). The Charging Parties further allege that their expulsion from AFSCME membership was a direct result of their support for an alternative labor organization during a decertification election process, which they assert is protected activity under the PERA. Charging Parties request PERB provide the following remedies: 1) Determine that AFSCME Council 81, Local 439 and AFSCME International committed unfair labor practices in violation of 19 *Del. C.* §1307(b)(1) and (b)(3); 2) Determine and

² Charge Exhibit A, at p. 1.

declare that Article X, §2 of AFSCME’s International Constitution and related provisions of the Local 439 Constitution violate the PERA; 3) Order that the International Constitution and the Local 439 Constitution be modified to comply with the PERA; 4) Order the Respondents to expunge all adverse actions (including the expulsion of Charging Parties from Local 439), all records thereof, and make the Charging Parties whole; and 5) Provide such other relief as is just, appropriate and reasonable.

On July 29, 2024, AFSCME Council 81 and Local 439 (collectively “Respondent”) filed their Answer to the Charge denying most of the factual allegations and all of the legal conclusions asserted by the Charging Parties. In new matter included in their Answer, the Respondents assert 1) Charging Parties failed to internally and administratively exhaust their claims; 2) the Delaware PERB lacks jurisdiction over the claims made in the Charge; 3) the Charge fails to state a claim against the Respondents, Council 81 and Local 439; and 4) Counsel is conflicted in representing the Charging Parties as he also represents Council 81 in a separate matter pending before PERB and has failed to secure a waiver of the conflict from Council 81. The Respondents request the Charge be dismissed in its entirety.

Charging Parties filed their Response to the New Matter on August 7, 2024, in which they denied the legal defenses and conclusions asserted by the Respondents 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. DOT/DTC*, ULP 04-10-453, V PERB 3179, 3182 (Probable Cause Determination, 2004).

This charge arises out of interactions which occurred during the processing of a petition to decertify AFSCME Local 439 as the exclusive representative of the bargaining unit of blue-collar University of Delaware employees.³ The Independent United Workers Association ("IUWA") filed as a 10% intervenor and was a balloting choice available to the voters. David Edwards was identified as the President of the IUWA. The representation election was conducted by the Public Employment Relations Board on April 5, 2023.

The uncontested facts in the pleadings include that the Constitution of AFSCME International⁴ provides a process for AFSCME members to bring charges against other

³ The sequence and processing of the decertification petition are set forth in *IUWA Local 1 and AFSCME 439 and University of Delaware*, REP 23-01-1340, IX PERB 8745 (2023).

⁴ A copy of the current AFSCME International Constitution was not provided by either party in its submission(s).

AFSCME members. On or about August 11, 2023, an AFSCME Local 439 member filed charges against each of the Charging Parties with AFSCME International, alleging they had violated Article X, Sections 2A, 2E, 2F and 2J of the International Constitution as well as Article V of the Local 439 Constitution.

A member of the International's Judicial Panel heard the charges and issued his decision on January 12, 2024, in which he found the Charging Parties:

... guilty of violating Article X, Section E of the International Constitution. Mondeario Pinckney is additionally found guilty of violating Article X, Section 2J of the International Constitution. The penalty assessed against them pursuant to Article X, Section 15 of the International Constitution is that they are expelled from membership.

The Respondents assert that the Charging Parties failed to exhaust their claims internally and administratively after being expelled from AFSCME membership by the International Judicial Panel Member. No further information was included to support this defense or to provide a basis on which it can be evaluated. Consequently, it is denied.

The complaints made in this Charge are parallel to the allegations made in *Taylor-Bray v. AFSCME Local 2004*, ULP 10-01-727, VIII PERB 4659 (2010). In dismissing the charge for failing to allege facts sufficient to support a claim that statutory violations may have occurred, the PERB hearing officer opined:

Whether the Local has conformed its conduct to the requirements of its Constitution and By-laws is subject to protest or appeal through internal procedures established by the union. Charging Party utilized the appeal procedure as evidenced by the documentation provided in the pleadings. The Public Employment Relations Board has no jurisdiction for oversight of the internal functioning of a public sector labor organization in Delaware. This State has not adopted a statute which mirrors the Labor Management Reporting and Disclosure Act⁵ or the

⁵ The LMRDA applies to private sector employees and their unions. Labor-Management Reporting and Disclosure Act of 1959, Public Law 86-257; 73 Stat. 519 et seq., 29 U.S.C.A. §§ 401-531.

federal Civil Service Reform Act,⁶ each of which explicitly grants certain rights to union members and protects their interests by promoting democratic procedures within labor organizations.⁷

This Board has also held that its jurisdiction is “limited to the interpretation and application of the PERA and does not extend to matters of internal union business”.⁸ The conditions for AFSCME membership, on their face, are not subject to review or regulation by PERB. Consequently, this Charge provides no basis on which to conclude that either AFSCME’s International Constitution or the constitution and by-laws of its affiliated Local 439 violate the PERA as alleged.

The Charge fails to establish how the rights of the Charging Parties under the PERA have been negatively impacted by their expulsion from AFSCME membership. The Charge does not assert that AFSCME membership is required as a condition of continued employment for the Charging Parties, nor could it under the statute.

Finally, the Delaware PERB is not responsible for enforcing the ethical obligations of counsel which appear before it. Counsel for both parties are members of the Delaware Bar and should be familiar with both their ethical obligations and how to file a complaint with the Delaware Supreme Court’s Office of Disciplinary Counsel. Consequently, this affirmative defense is denied.

DETERMINATION

Considered in a light most favorable to the Charging Parties, the Public Employment Relations Board does not have jurisdiction to consider the Charge. Further,

⁶ The Civil Service Reform Act applies to employees of the federal government and their unions. Civil Service Reform Act of 1978, Pub. L. 95-454, 92 Stat. 1111

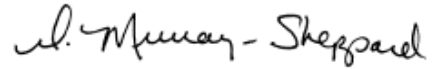
⁷ *Taylor-Bray* at p. 4664

⁸ *Dolena Grayson v. ATU Local 842, et al.*, ULP 13-05-903, VIII PERB 5719, 5723 (2013).

the Charge fails to assert facts sufficient to conclude the PERA may have been violated as alleged.

WHEREFORE, the Charge is hereby dismissed.

DATE: October 4, 2024



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