STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

MONDEARIO PINCKNEY, DANIEL THOMPSON, AND DAVID EDWARDS,	:	
Appellants,	:	**BOARD DECISION ON REQUEST FOR REVIEW**
v.	:	
DELAWARE PUBLIC EMPLOYEES COUNCIL 81, LOCAL 439, AFL-CIO, AND AFSCME, AFL-CIO,	:	**Unfair Labor Practice Charge No. 24-07-1422**
Appellees.	:	

Appearances

Michael K. DeSantis, Esq. and Anthony N. Delcollo, Esq., Offit Kurman P.A., for the Appellants

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

BACKGROUND

Mondeario Pinckney, Daniel Thompson and David Edwards (collectively "Appellants") are employed by the University of Delaware and are public employees within the meaning of §1302(p) of the Public Employment Relations Act ("PERA"), 19 *Del. C.* Chapter 13. Each of the Appellants is a former member of AFSCME Local 439.

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) within the meaning of 19 Del. C. §1302(i). Its affiliated Local 439 is the certified exclusive

bargaining representative of a unit of University of Delaware blue-collar employees within the meaning of 19 Del. C. §1302(j).[1]

On July 9, 2024, the Appellants 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).[2] The charge was grounded in AFSCME International's determination to expel the Charging Parties from AFSCME membership. On July 29, 2024, AFSCME Council 81 and Local 439 filed their Answer to the Charge which included new matter. The Appellants filed their Response to the New Matter on August 7, 2024.

On October 4, 2024, the Executive Director issued a decision on the pleadings, finding this Board does not have jurisdiction to consider the Charge and that the Charge failed to assert facts sufficient to conclude the PERA may have been violated as alleged.[3] The Charge was dismissed.

On October 9, 2024, the Appellants filed a Request for Review of the Executive Director's Decision, asserting the decision improperly applied the PERA in finding AFSCME's expulsion of the Appellants was solely a matter of internal union business; and that the Executive Director erred in finding the Charge failed to establish that the rights of

[1] Collectively, AFSCME Council 81 and Local 439 are the Appellees. AFSCME International was neither served nor did it enter into the adjudication of this Charge.

[2] (b) 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.

[3] *Mondearío Pinckney, et al. v. AFSCME Local 439,* Probable Cause Determination and Order of Dismissal, X PERB 8949 (October 4, 2024).

the Appellants under the PERA had been negatively impacted by their expulsion from AFSCME membership.

On October 17, 2024, the Appellees filed a response to the Appellants' request for review in which it asserted the arguments made by the Appellants were wholly without merit and that the Request for Review should be dismissed.

A copy of the complete record in this matter was provided to each member of the Public Employment Relations Board. A hearing was convened on December 9, 2024, at which time a quorum of the Board met in public session to hear and consider the Appellants' request for review. The parties were provided the opportunity to present oral argument and to answer questions from the Board.

The decision reached herein is based upon consideration of the record and the arguments presented by the parties.

DISCUSSION

The Board's scope of review is limited to the record created by the parties and consideration of whether the Executive Director's decision is arbitrary, capricious, contrary to law, or unsupported by the record. After consideration of the record and the arguments of the parties on appeal, the Board must vote to affirm, overturn, or remand the decision to the Executive Director for further action.

The Appellants argue that §1303(a) of the PERA protects public employees in organizing, forming, joining and/or *assisting* any employee organization, including a rival organization to the certified exclusive representative of the bargaining unit of which the employees are a part, even when the individuals are members of the existing employee organization. This argument was expressly rejected by the Delaware Superior Court in *Morris v. American Federation of State, City, & Municipal Employees*, C.A. No. 93C-03-

195, 1994 Del. Super. LEXIS 81 (Super. Ct. Jan. 5, 1994). Relying on the guidance established under the federal Labor Management Relations Act, the Court held:

> This Court is in agreement with the courts which have held that a union is permitted to expel a member from a union, where the member was found to have been supporting a rival union. Consequently, the plaintiffs' request for relief based on the assertion that they were expelled from [*AFSCME*] Local 1726 for dual unionism, fails to state a claim upon which relief can be granted…

In reaching this conclusion, the Court considered the issue under the statute which preceded the PERA, i.e., Right of Public Employees to Organize, 19 *Del. C.* 1953, §1301; 55 Del. Laws, c. 126. That statute also protected the rights of public employees to freely organize and to designate representatives of their own choosing for the purpose of collective bargaining with public employers. The predecessor statute also included an analog to §1307(b)(1) of the PERA, "no public employer or other person directly or indirectly shall interfere with, restrain, coerce, or discriminate against any public employee in the free exercise of any right under this chapter."[4]

The PERA (which replaced the Right of Public Employees to Organize in 1994) establishes public employees' rights to be represented for purposes of collective bargaining and obligates public employers to collectively bargain with the certified bargaining representative of its employees with respect to terms and conditions of employment. The PERA does not create or address a right of a public employee to be or remain a member of a particular labor organization. It requires that the labor organization certified as the exclusive bargaining representative of an appropriate bargaining unit represent all bargaining unit members, without discrimination. Section 1302(n) also defines a "non-member" to be an employee who is not a member of the exclusive representative but whom

[4] Right of Public Employees to Organize, 19 *Del. C.* §1302 -§1303.

the exclusive representative is required to represent pursuant to this chapter. There is no obligation for an employee to join or remain a member of a union.

There are also no provisions in the PERA which create or define a labor organization's membership criteria. Courts have consistently held that a union, as a voluntary association of individuals, must have the right to expel a member who has engaged in conduct which threatens the union's existence and/or which is inconsistent with its dually promulgated constitution and by-laws.

The Appellants' argument that the AFSCME International Constitution violates the PERA because it interferes with a public employee's right to organize, join and/or assist *any* employee organization is without basis in fact and law. A member of AFSCME Local 439 placed the charges with the International against the Appellants (who at the time were members of Local 439) for supporting a rival labor organization in an effort to decertify Local 439 as the exclusive bargaining representative of the unit of the University's blue-collar employees. The International's Constitution makes it a chargeable offense for a *member* to engage in "any activity which assists or is intended to assist a competing organization within the jurisdiction of the union." The charges were adjudicated under the International Constitution and the Appellants were determined to have committed the charged offenses.

The Executive Director correctly found the PERA neither establishes nor provides for resolution of disputes between union members. Nor does the fact that one union member filed charges against other union members constitute proof that any of the parties were acting as agents of the union. These types of charges between members are properly the province of the union in policing internal disputes.

DETERMINATION

After reviewing the record, hearing and considering the arguments of the parties, the Board unanimously affirms the Executive Director's determination that the Charge fails to state a claim for which relief can be granted under the Public Employment Relations Act. The decision is not arbitrary or capricious and is consistent with applicable law. The decision is supported by the record created by the parties.

Wherefore, the decision is affirmed, and the appeal is denied.

IT IS SO ORDERED.

Elizabeth D. Maron, Chairperson

Kathi Karsnitz, Member

DATED: December 13, 2024