

## A Brief History of Bad Faith Bargaining

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The attempt by the board of trustees and administration of Delaware State University to convince the Chancery Court of the State of Delaware that the University is not a public employer is merely the latest in a decades-old war on the faculty and its exclusive bargaining agent, the Delaware State University Chapter of the American Association of University Professors (DSU-AAUP).

The AAUP was certified by the State Department of Labor in 1977 as the exclusive bargaining agent for [a]ll full-time "voting" faculty as defined by Delaware State University, including Departmental Chairpersons and Academic Directors.... and other professional staff. Eligible faculty and staff voted in favor of representation by DSU-AAUP by a margin of greater than 2-1. But even before the votes could be counted, the administration and board of trustees sought to prevent the formation of the unit as defined by the Department of Labor by challenging the inclusion of the department chairs and having the ballot box impounded. Only the intervention of the court forced the release of the ballot box and the tallying of the votes.

DSU then refused to bargain with the AAUP for two years while the issue of the inclusion of the department chairs was litigated. Only when the court ruled in favor of the AAUP did the administration and board agree to sit down at the bargaining table. The collective bargaining agreement that resulted from those negotiations and its successor agreements define conditions of employment, salaries, promotion and tenure requirements, and ...a prompt, fair, and efficient mechanism for the orderly resolution of grievances ... .

In the past 10 or 12 years, the resolution of grievances has in most instances been glacially slow, egregiously unfair, and stupefyingly inefficient. Administrators charged with the responsibility of hearing grievances have almost never ruled in favor of the grievant and, in the few instances in which they have, senior administrators have almost always refused to implement the remedy. The result of this intransigence is that the AAUP has been forced to demand binding arbitration in far too many cases.

The current litigation, in which Delaware State University ludicrously claims not to be a public employer, results from the administration's refusal, not for the first time, to provide information required by the AAUP to process a grievance filed in 1993. In response, the AAUP filed an unfair labor practice charge against the University in 1995, and in late 1997--over two years later--the Public Employment Relations Board (PERB) ruled that the University was, indeed, guilty of an unfair labor practice and ordered the posting of public notices to that effect.

The University's response was to appeal the PERB's decision to the Court of Chancery, claiming not to be a public employer. Why? The only answer that makes any sense, if one is to credit the board of trustees and administration with any degree of rationality, is that they are attempting to destroy collective bargaining at Delaware State University.

Without the protection of a legally binding collective bargaining agreement, faculty and

professional staff, (and most other employees below the managerial level who are represented by other unions) would be subject to the arbitrary hiring and firing practices, discriminatory salary structures, oppressive workloads, and autocratic administrative structure that existed before the advent of collective bargaining.

What is the flip side from the University's point of view? If the University is not a public employer subject to the PERB, faculty and other employees are no longer prohibited from striking. The Delaware General Assembly, from whom the University receives the largest single portion of its annual budget, might legitimately refuse to honor its budget requests, and the board of trustees and the administration, in destroying collective bargaining, might ultimately destroy the University.