

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

AMERICAN FEDERATION OF STATE,)	
COUNTY AND MUNICIPAL EMPLOYEES,)	
COUNCIL 81, LOCAL 3615,)	
Charging Party,)	
)	<u>ULP No. 01-01-303</u>
v.)	
)	
CITY OF NEW CASTLE,)	
Respondent.)	

PROBABLE CAUSE DETERMINATION

AFSCME, Council 81, Local 3615, (“AFSCME” or “Union”) is an employee organization within the meaning of Section 1302(h), of the Public Employment Relations Act, 19 Del.C. Ch. 13 (1994) (“PERA” or “Act”). AFSCME is the exclusive bargaining representative of a group of full-time and part-time clerical, fiscal, administrative and public works employees of the City of New Castle (“City”), as defined in DOL Case No. 212. The City is a public employer within the meaning of Section 1302(m) of the Act.

AFSCME and the City are parties to a collective bargaining agreement (“Agreement”) for the period November 15, 2000, through November 15, 2002. By e-mail dated November 10, 2000, AFSCME informed the City that the Agreement was ratified by a vote of bargaining unit

employees on November 9, 2000. The Agreement was subsequently signed on November 15, 2000, by authorized representatives of the parties.

Paragraph 53(a), of the Agreement provides:

All employees in the bargaining unit shall be paid on an hourly basis unless other payment terms are specifically set forth in this agreement. Beginning with the first full pay period after the effective date of this Agreement, Public Works employees shall be paid in accordance with the wage plan set forth in Appendix C hereto and Administrative employees shall be paid in accordance with the wage plan set forth in Appendix D hereto, provided however, that no employee's applicable wage rate shall be reduced from current levels by virtue of this agreement. Initial assignment of employees to job classifications and pay grades pursuant to this contract shall be at the sole discretion of the City.

On or about November 21, 2000, AFSCME advised the City that the effective date of the general wage increase, as set forth in paragraph 53(a), was in error.

Paragraphs 12 through 17, of the Unfair Labor Practice Charge filed on January 10, 2001, allege that Robert Martin, the City Administrator and highest ranking member of the City's bargaining team: 1) acknowledged the parties' agreement to make the general wage increase effective thirty (30) days prior to the date the written Agreement was signed; 2) requested the Union to provide a written document setting forth the actual agreement and how to best correct the error; and 3) communicated his agreement with the content of the document submitted to him and his intent along with City Council President, William Blest, to submit the document to City Council for approval. The Union contends that Council's failure to adopt and implement the agreement constitutes a violation of Section 1307(a)(7), of the Act. [1]

The following letter dated December 14, 2000, from Robert Martin, City Administrator, to Judi Brockett, AFSCME Vice-President, provides, in relevant part:

Dear Ms. Brockett:

I presented the proposed corrective language to Section #53 of the Collective Bargaining Agreement to the Mayor and council in Executive Session on Tuesday, December 12th. The City Solicitor was also in attendance regarding another legal matter when we started discussion on the retro pay issue, he reminded Council that we had not noted on the Executive Session Agenda that personnel issues would be discussed.

Accordingly, the council directed me to respond to you and suggest if the Union wishes to alter this Agreement, that it be done in accordance with the Agreement re-opening provisions. The Council will, also, have to act on the matter in public session.

Please advise us of your thoughts.

In its Answer and New Matter filed with the PERB on January 19, 2001, the City denies the existence of a verbal agreement between the parties which is inconsistent with the clear and unambiguous language of paragraph 53(a).

In its Response to New Matter filed by Charging Party on January 21, 2001, AFSCME denies the material allegations set forth in the New Matter filed by the City.

DISCUSSION

The pleadings are replete with the bargaining history culminating in the November 15, 2000, signing of the current Agreement. Notwithstanding the detailed _ account of the bargaining history, AFSCME admits that on November 1, 2000, it was in possession of the

document prepared by the City, including the language of Article 53(a), as it appears in the signed Agreement. The document prepared by the City was presented to and ratified by the bargaining unit _ membership on November 9, 2000. The Agreement was formally signed by authorized representatives of the parties on November 15, 2000.

[1] Section 1307(a): It is an unfair labor practice for a public employer or its designated representative to do any of the following: (7) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

Paragraph 53(a), of the Agreement is clear and unambiguous on its face. These pleadings do not require the interpretation or application of the Agreement. Rather, they raise a limited issue concerning whether or not the language of Article 53(a), as it appears in the Agreement, accurately reflects the agreement of the parties and, if not, whether the City’s failure to correct the error violates Section 1307(a)(7), of the Act.

The allegations concerning the effective date of the general wage increase are not inconsistent with the December 14, 2000, letter from the City Administrator to the Union’s Vice President which provides, in relevant part: “I presented the proposed corrective language to Section #53 Mayor and council” (emphasis added) The use of the phrase “corrective language” pre-supposes an error exists. Therefore, based solely upon the pleadings, it is reasonable to infer that the City Administrator believed the language of Section 53, as it appears in the current Agreement, is in error and does not reflect his understanding of the agreement reached by the parties. Whether or not such an inference is justified is not known.

13 Del C. §1302. Definitions, provides, in relevant part:

(e) “Collective bargaining” means the performance of the mutual obligation of a public employer through its designated representatives and the exclusive bargaining

representative to confer and negotiate in good faith with respect to terms and conditions of employment, and to execute a written contract incorporating any agreements reached. However, this obligation does not compel either party to agree to a proposal or require the making of a concession.

(q) “Terms and conditions of employment” means matters concerning or related to wages, salaries, hours, grievance procedures and working conditions; provided, however, that such term shall not include those matters determined by this chapter or any other law of the State to be within the exclusive prerogative of the public employer.

Article V. of the PERB’s Rules and Regulations, Unfair Labor Practice Proceedings, Section 5.6, Decision or Probable Cause Determination, provides, in relevant part:

(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. . . .

(b) If the Executive Director determines that an unfair labor practice has, or 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. Each of the parties shall receive a copy of this determination and a notice of hearing containing the date and place of the hearing which shall be conducted by the Executive Director in accordance with Rule 7 herein. A decision based upon the pleadings is subject to review by the Board in accord with the provisions set forth in Regulation 7.4.

PROBABLE CAUSE DETERMINATION

As to the limited issue set forth above, when viewed in a light most favorable to the Charging Party, the pleadings constitute probable cause to believe that an unfair labor practice may have occurred. AFSCME is entitled to the opportunity to present evidence in support of its position that an agreement was reached by authorized representatives of the parties during collective bargaining that the general wage increase would take effect thirty (30) days prior to the date the written agreement was signed.

Wherefore, a hearing will be scheduled forthwith for the purpose of receiving evidence on this issue.

IT IS SO ORDERED.

February 16, 2001

/s/Charles D. Long, Jr.
Executive Director