

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

Sharon Y. Stribling,)	
Charging Party,)	
)	
v.)	<u>ULP No. 05-01-465</u>
)	Probable Cause Determination
STATE OF DELAWARE, DEPT. OF)	
TRANSPORTATION, DELAWARE)	
TRANSIT CORPORATION,)	
Respondent.)	

BACKGROUND

The State of Delaware, Department of Transportation, Delaware Transit Corporation (“State” or “DTC”) is a public employer within the meaning of §1302(p), of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1986).

Sharon Stribling (“Stribling” or “Charging Party”) was a public employee within the meaning of 19 Del.C. §1302(o) of the PERA who was employed by DTC as a Fixed Route Driver at the time of her termination on or about August 28, 2004.

At all times relevant to this Charge, Charging Party was a member of ATU, Local 842, the exclusive bargaining representative of the Fixed Route Drivers within the meaning of 19 Del.C. §1302(j). DTC and ATU, Local 842 are parties to a collective bargaining agreement for the period December 1, 2002 through November 30, 2007.

This unfair labor practice charge was filed with the Public Employment Relations Board (“PERB”) on January 18, 2005. The Charge alleges conduct by the State in violation of 19 Del.C. §1307(a)(1) through (a)(8), which provide:

1307. Unfair Labor Practices

(a) It is an unfair labor practice for a public employer

or its designated representative to do any of the following:

- (1) Interfere with, restrain or coerce any employee in or 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.
- (3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.
- (4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony under this chapter.
- (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, except with respect to a discretionary subject.
- (6) 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.
- (7) Refuse to reduce an agreement, reached as the result of collective bargaining, to writing and sign the resulting contract.

(8) Refuse to disclose any public record as defined by Chapter 100 of Title 29.

The Complaint alleges that on August 25, 2004, a pre-termination hearing was held with the grievant at which both Union and management representatives were present. Following the hearing Charging Party sent a letter to the Union President requesting to know the status of her situation. The next communication she received was a letter of termination from DTC, on September 29, 2004.

On October 5, 2004, there was a second meeting (which Charging Party referred to as a “two party arbitration”) concerning her job status which was attended by the grievant and both Union and management representatives. The Complaint contends that at this meeting Charging Party’s freedom of speech was violated and that she was not adequately represented by the Union President. For these reasons, Charging Party contends her due process rights under the collective bargaining agreement regarding progressive discipline, specifically Sections 7 and 9 were violated.

Charging Party also contends that the State’s conduct violated 19 Del.C. Chapter 8, Protection of Employees’ Rights¹ and further alleges that because she was terminated pursuant to the terms of a last chance agreement, her union security rights under Section 3, Step 3, of the collective bargaining agreement and 19 Del.C. §1303, Public employee rights were violated.²

¹ The interpretation, application and/or enforcement of the provisions of 19 Del.C. Chapter 8, are not within the jurisdiction of the PERB and are not, therefore, considered in this Probable Cause Determination.

² 19 Del.C. §1303 provides: “Public employees shall have the right to: (1) Organize, form, join or assist any employee organization except to the extent that such right may be affected by a collectively bargained agreement requiring the payment of a service fee as a condition of employment. (2) Negotiate collectively or grieve through representatives of their own choosing. (3) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the State. (4) Be represented by their exclusive representative, if any, without discrimination.

On February 2, the State filed its Answer to the Complaint in which it essentially denies the substantive allegations set forth in the Complaint, including the alleged violations of the statute as set forth in Article 12 of the Complaint.

In New Matter I the State contends the Complaint should be dismissed as to 19 Del.C. §1307(a)(2) because Charging Party has failed to allege any facts that, even if true, would constitute a violation of that statutory provision.

In New Matter II the State contends the Complaint should be dismissed as to 19 Del.C. §1307(a)(3) because Charging Party has failed to allege any facts that, even if true, would constitute a violation of that statutory provision.

In New Matter III the State contends the Complaint should be dismissed as to 19 Del.C. §1307(a)(4) because Charging Party has failed to allege any facts that, even if true, would constitute a violation of that statutory provision.

In New Matter IV the State contends the Complaint should be dismissed as to 19 Del.C. §1307(a)(5) because Charging Party has failed to allege any facts that, even if true, would constitute a violation of that statutory provision.

In New Matter V the State contends the Complaint should be dismissed as to 19 Del.C. §1307(a)(7) because Charging Party has failed to allege any facts that, even if true, would constitute a violation of that statutory provision.

In New Matter VI the State contends the Complaint should be dismissed as to 19 Del.C. §1307(a)(8) because Charging Party has failed to allege any facts that, even if true, would constitute a violation of that statutory provision.

In New Matter VII the State contends that the Charge should be deferred to arbitration pursuant to the grievance and arbitration procedure set forth in the collective bargaining agreement.

On February 8, 2005, the State filed an amended Answer adding under New Matter VII, paragraph 55, which provides: “In addition, the parties are in the process of scheduling an arbitration hearing on the issue of Stribling’s dismissal.”

On February 18, 2005, Charging Party filed her Response to the State’s New Matter. Paragraphs 1 through 12 of the Response address the State’s Answer to the allegations set forth in the Complaint. With regard to New Matters I through VI, Charging Party essentially maintains that the allegations in the Complaint are sufficient to support the specific statutory violations alleged, as required by PERB Rule 5.2(C)

In response to New Matter VII, Charging Party maintains that the allegations in the Complaint raise issues of unfair labor practices under the Public Employment Relations Act rather than a matter for the contractual arbitration procedure.

DISCUSSION

PERB Rule 5.2, Filing of Charges, provides, in relevant part:

- (c) The charge shall include the following information:
 - (3) A clear and detailed statement of the facts constituting the alleged unfair labor practice, including the names of the individuals involved in the alleged unfair labor practice, the time, place of occurrence and nature of each particular act alleged, and reference to the specific provisions of the statute alleged to have been violated. Each fact shall be alleged in a separate paragraph with supporting documentation where applicable.

The Charge does not meet the requirements of PERB Rule 5.2 (C), in that it fails to include allegations which, if proven, would support a conclusion 1) that Charging Party was engaged in activity that is protected under the PERA; 2) that DTC had knowledge of her protected activity; 3) that DTC engaged in conduct that interfered with, retaliated against, coerced or restrained Charging Party in the exercise of her protected rights.

The allegations in the Complaint must be set forth with sufficient specificity to permit not only an informed answer by the Respondent but also an informed determination by the PERB whether or not there is an adequate basis to support a finding of probable cause to believe that an unfair labor practice may have occurred.

In this case, Charging Party has alleged that DTC violated all eight statutory prohibitions on employer conduct. The Charge sets forth only the Charging Party's conclusion that the law has been violated but does not define the incidents or actions on which those conclusions are based. After carefully reviewing the pleadings, I find no specific incidents or conduct which support a finding of probable cause to believe that any violation of 19 Del.C. §1307(a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7) and (a)(8), may have occurred.

There is no basis for a finding of probable cause to believe that Charging Party was not adequately represented by the Union President. Only the Employer was charged with a statutory violation. The mere fact that Charging Party disagrees with the Union's position or conduct cannot support a finding of probable cause that an unfair labor practice by the Employer occurred. Further, in the absence of a finding of probable cause, there is nothing to defer to arbitration, as the State requests.

Even in the absence of a finding of probable cause and without deferral to the contractual arbitration procedure, there is a forum available for Charging Party to litigate all aspects of her underlying complaint that she was unjustly disciplined. The State alleges in paragraph 55 of its Amended Answer, without dispute by the Charging Party, that pursuant to the contractual grievance and arbitration procedure an arbitration hearing concerning Charging Party's termination is currently being scheduled by the State and the Local Union.

It is well established that the unfair labor practice forum is not a substitute or alternative for the resolution of contractual disputes which are subject to grievance arbitration pursuant to the collective bargaining agreement. The PERB has held:

While an unfair labor practice is statutory in origin and raises a question of statutory interpretation to be resolved by the Public Employment Relations Board, an alleged contract violation is proper subject matter only for the negotiated grievance procedure. The unfair labor practice forum is not a substitute for the grievance procedure and the Public Employment Relations Board has no jurisdiction to resolve grievances through the interpretation of contract language. Brandywine Affiliate, NCCEA/DSEA/NEA v. Brandywine Bd. of Ed., Del.PERB, ULP No. 85-06-005, I PERB 131, 142-143 (1986).

The presence or absence of "just cause," the standard by which her termination will be judged in arbitration, raises a question of contract interpretation rather than a statutory question under the Public Employment Relations Act. Thus, the PERB is without jurisdiction to rule on the merits of Charging Party's termination. Charging

Party's sole recourse is the contractual grievance procedure where her grievance is currently awaiting binding arbitration.

PROBABLE CAUSE DETERMINATION

Consistent with the foregoing discussion, the pleadings establish no probable cause to believe that a violation of 19 Del.C. §1307 (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7) or (a)(8) has occurred.

IT IS SO ORDERED.

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

Dated: March 2, 2005