

**PUBLIC EMPLOYMENT RELATIONS BOARD**

**FOR THE STATE OF DELAWARE**

<b>Edwin Rodriguez</b>	:	
<b>Charging Party,</b>	:	
	:	<b><u>ULP No. 09-05-677</u></b>
<b>v.</b>	:	
	:	<b>PROBABLE CAUSE DETERMINATION</b>
<b>State of Delaware, Justice of the</b>	:	
<b>Peace Court,</b>	:	<b>and ORDER OF DISMISSAL</b>
<b>Respondent.</b>	:	

**BACKGROUND**

The State of Delaware (“State”) is a public employer within the meaning of §1302(p) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1994). The Justice of the Peace Court (“Court”) is an agency of the State.

Edwin Rodriguez (“Charging Party”) was employed by the Court at all times relevant to this Charge and was a public employee within the meaning of 19 Del.C. §1302(o). Charging Party was also a member of a bargaining unit of Court employees represented by the FOP for purposes of collective bargaining until the FOP disclaimed its interest in continuing to represent the unit.

On or about May 20, 2009, Charging Party filed an unfair labor practice charge alleging that the Court violated 19 Del.C. §1307(a)(4), which provides:

§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:

- 3) 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.

Charging Party alleges that he suffers from acute diabetes and, based upon medical documentation submitted to the Court, he was advised by Debbie Manelski, (the Court's Human Resource Representative) to apply for an FMLA leave of absence. Charging Party alleges that he was subsequently informed by the Operations Manager for New Castle County in a letter dated February 5, 2009, that she was recommending his employment be terminated because he drove a State vehicle assigned to him out of his territory, spent work hours at locations where he had no business reason to be, submitted incomplete and inaccurate logs and court documents and falsified court documents. *Charge, Exhibit 3.*

He was also informed in the February 5<sup>th</sup> letter that he was suspended without pay because of the seriousness of the charges against him. By letter from Ms. Manelski dated February 2, he was advised he would be responsible to pay the costs of his health and dental insurance.

Charging Party maintains that his termination was retaliation for his involvement in protected activity. Specifically he alleges:

- 1) He criticized the Employer's treatment of constables and desired to be represented in collective bargaining by a union (*Charge, ¶28 A*);
- 2) He exercised his rights under the PERA (*Charge ¶ 28 B*);
- 3) His termination coincided with the termination of another employee who was active in union-related matters and his termination was arbitrary, capricious and motivated by anti-union animus (*Charge ¶ 28 C*);
- 4) His termination was particularly harsh in that the Court knew or had reason to know of Charging Party's health problems, failed to consider the stress of termination, denied his request for a continuance of a meeting scheduled for

February 3, 2009, ignored a note from his personal physician, and terminated him while he was on unpaid FMLA leave and just months short of the date he would have qualified for a pension (*Charge ¶ 28 D*);

- 5) His discharge was not supported by any rules or regulations or erratically enforced rules and regulations only maintained in New Castle County and in violation of the laws of the State of Delaware (*Charge ¶ 28 E*).

On or about June 3, 2009, the State filed its Answer to the Charge in which it alleges that Charging Party , “has not plead or otherwise alleged any official or otherwise concerted activity and protected activity under the PERA contemporaneous with the circumstances alleged in the Charge.” (Answer, para. 4)

The State denies that Charging Party requested to postpone the February 3<sup>rd</sup> hearing so that he could obtain representation. The doctor’s note referenced by Charging Party was not ignored since Charging Party was not requested to work but only to attend a meeting. Further, Charging Party was not requested to file for FMLA leave, but only to return his FMLA paperwork by February 20, 2009. Other allegations by Charging Party are either denied by the State or considered to be legal conclusions to which no response is necessary.

Concerning Paragraph 28 (a), (b), (c) and (d), of the Charge, the State asserts:

- A. The Court denies knowledge that Charging Party was a critic of the Court’s treatment of Constables, or of his subjective desire for representation in collective bargaining. The State contends that Charging Party has not alleged with any specificity, that he engaged in any protected activity (other than his involvement in the 2000 contract negotiations involving the FOP) which formed the basis for the Court’s alleged anti-union animus against him.
- B. The State maintains that Charging Party has failed to allege any protected activity under the PERA.
- C. The State maintains the allegations set forth in sub-paragraph C constitute legal conclusions to which no response is necessary. The State also denies the allegation that its action are not supported by or are otherwise contrary to controlling law, rules and regulations.

D. The State asserts the Charging Party never requested a “continuance”, nor did he ask to postpone, discontinue or otherwise delay discussions during the February 2, 2009 meeting. Charging Party never attempted to reschedule the February 3, 2009 pre-termination hearing. It did not ignore “Rodriquez doctor’s opinion that he not report for work” and did not expect him to perform his job duties during the meeting. The State asserts Charging Party’s dismissal did not divest him of rights under the State retirement benefits plan.

Under a section entitled New Matter, Count I, the State maintains Charging Party has failed to allege with any specificity or particularity that he engaged in any protected activity in any way relevant to the time frame set forth in the Charge, thereby resulting in the failure of Charge to state a claim upon which the PERB may grant relief

In Count II, under New Matter, the State requests that this matter be deferred to the Merit Grievance process.

On or about June 10, 2009, Charging Party filed his Response to New Matter in which he denies all material allegations of the New Matter.

### **DISCUSSION**

Regulation 5.6 of the Rules of the Delaware Public Employment Relations Board requires:

- (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 shall 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 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. DART/DTC*, Del. PERB Probable Cause Determination, ULP 04-10-453 V PERB 3179, 3182 (2004).

The limited purpose of a probable cause determination is to determine whether the facts alleged by Charging Party are sufficient to establish probable cause to believe that an unfair labor practice may have occurred. Here, Charging Party has failed to allege facts which, even if proven, would satisfy this purpose. He has alleged no specific involvement in protected activity other than his participation as a member of the FOP bargaining committee during the 2000 contract negotiations. Without any support he simply alleges he was critical of the manner in which the Court treated the constables and favored Union representation.

There is no allegation that Charging Party played any role in the processing of the Constables' concern over the possibility of their being placed in State Merit Unit 1.

The termination of Constable Eastburn is separate and distinct from that of Charging Party, is based upon the allegations set forth in the Eastburn Charge and has no bearing on this matter. The fact that Charging Party suffers from diabetes is likewise irrelevant to consideration of whether an unfair labor practice may have occurred in violation of 19 Del.C. 1307(a)(4).

The scheduling and/or rescheduling of the meetings referenced by Charging Party in his Charge do not constitute a foundation for finding probable cause that Charging Party may have been the target of retaliation for involvement in protected activity.

The Charge references no specific incidents supporting the allegation that rules and regulations were “erratically enforced” and maintained only in New Castle County. In fact, he cites no specific rule and/or regulation. Nor does Charging Party cite any laws of the State of Delaware which he alleges were violated by his termination.

General and non-specific allegations as a basis for an unfair labor practice charge unjustly deprive the Respondent of its ability to prepare an informed Answer. In this case, the Charge is insufficient to support a finding that a violation of the statute may have occurred.

Having so concluded, it is unnecessary to consider the New Matter plead by the State in its Answer to the Charge.

### **DETERMINATION**

Considered in a light most favorable to Charging Party, the pleadings fail to establish probable cause that an unfair labor practice may have occurred.

Consequently, the Charge is hereby dismissed.

**IT IS SO ORDERED.**

Date: October 12, 2009



CHARLES D. LONG, JR., Hearing Officer  
Del. Public Employment Relations Bd.