

**PUBLIC EMPLOYMENT RELATIONS BOARD  
FOR THE STATE OF DELAWARE**

<b>Armond Walden,</b>	:	
	:	
<b>Charging Party,</b>	:	
	:	<b><u>ULP No. 10-05-743</u></b>
<b>v.</b>	:	
	:	<b>Order of Dismissal</b>
<b>State of Delaware, Delaware Transit Corporation,</b>	:	
	:	
<b>Respondent.</b>	:	

**BACKGROUND**

Charging Party’s employment was terminated by the Respondent effective January 15, 2010. The Union filed a grievance pursuant to the appropriate provision of the parties’ collective bargaining agreement. Following a step 4 grievance meeting on February 24, 2010, the grievance was denied and subsequently appealed to arbitration by the Union.

On or about May 21, 2010, Charging Party filed an unfair labor practice charge with the State Public Employment Relations Board (“PERB”) in which he alleges that his termination violated several cited provisions of 19 Del.C. Chapter 13, the Public Employment Relations Act.

On September 3, 2010, the PERB issued a Probable Cause Determination finding that the pleadings were sufficient on their face to establish that an unfair labor practice

may have occurred. The Board also restated its longstanding practice favoring, where applicable, discretionary deferral to the parties' contractual arbitration provision:

Where the alleged statutory violation is directly related to the resolution of a contractual issue, the PERB has adopted a discretionary and limited deferral policy: 'When the parties have contractually committed themselves to mutually agreeable procedures for resolving contractual disputes, it is prudent and reasonable for this Board to afford those procedures the full opportunity to function.' *Fraternal Order of Police Lodge No. 1 v. City of Wilmington*, ULP 89-08-040, (Del.PERB), *1 PERB 4499(1989)*, citing *Collyer Insulated Wire*, 129 NLRB 837 (NLRB, 1971).

Accordingly, the PERB concluded:

Whether Charging Party's termination was improperly based on protected activity in violation of 19 Del.C. §1307(a)(4) requires a determination as to whether he was terminated for just cause. Just cause for termination arises exclusively the collective bargaining agreement.

WHEREFORE, this unfair labor practice charge is deferred to the parties' contractual grievance an arbitration procedure. The parties are to notify the Public Employment Relations Board within sixty (60) days from the date of this decision of the status of this matter.

The Public Employment Relations Board retains jurisdiction over the charge that DTC acted in violation of 19 Del.C. §1307(a)(4) for the express purpose of reconsidering the matter, on application of either party; for any of the following reasons:

- 1) that the arbitration award failed to resolve the statutory claim;
- 2) the arbitration has resulted in an award which is repugnant to the applicable statute;
- 3) the arbitral process has been unfair; and/or
- 4) that the dispute is not being resolved by arbitration with all reasonable promptness.

Pursuant to PERB's order, an arbitrator was selected by the parties to conduct the arbitration hearing and render a decision. An arbitration hearing was held on October 28,

2010. The issue presented to the arbitrator was, "Did the Employer have just cause to terminate the employment of Armond Walden effective January 15, 2010? If not, what shall be the remedy?"

On December 7, 2010, the arbitrator issued his ruling that, "The Employer had just cause to terminate the employment of Armond Walden effective January 15, 2010. The grievance is denied."

On December 27, 2010, the State requested that, "Pursuant to the PERB's Probable Cause Determination and Order of Deferral . . . the PERB enter a final determination in its favor concerning Mr. Walden's unfair labor practice charge."

Having reviewed the arbitration decision, the decision was thorough, logical and clearly presented. There is no reasonable basis for concluding that the arbitration decision fails to satisfy each of the four (4) criteria necessary for reconsideration of the matter by the PERB.

**WHEREFORE**, Unfair Labor Practice Charge No.10-05-743 is hereby dismissed with prejudice.

**IT IS SO ORDERED.**

Date: December 30, 2010



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Charles D. Long, Jr.,  
Hearing Officer  
Del. Public Employment Relations Bd.

