

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES, COUNCIL 81, LOCAL 837,)	
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)	
Charging Party,)	
)	<u>ULP No. 10-12-780</u>
v.)	Probable Cause Determination
)	
STATE OF DELAWARE, DEPARTMENT OF TRANSPORTATION,)	
)	
)	
Respondent.)	

BACKGROUND

The State of Delaware (“State”) is a public employer within the meaning of section 1302(p) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13. The Department of Transportation (“DOT”) is an agency of the State.

The American Federation of State, County and Municipal Employees, Council 81, (“AFSCME”) is an employee organization within the meaning of 19 Del.C. §1302(i). By and through its affiliated Local Union 837, it is the exclusive bargaining representative of certain employees of the Department of Transportation, Division of Maintenance and Operations, within the meaning of 19 Del.C. §1302(j).

On December 15, 2010, Charging Party filed an unfair labor practice charge alleging the State violated 19 Del.C. §1307(a)(2) and (a)(3), 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:

(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.

The Charge alleges that on or about August 10, 2010, a DOT Labor Relations Officer was informed by the Local 837 President that the four bargaining unit supervisors (employed at the Chapman Road Facility (“CRF”)) had declined to sign either a membership card or a fair share fee payroll deduction authorization. Thereafter, the Charge avers DOT commenced deducting the fair share fee from the CRF supervisors’ wages, “in accord with 19 Del.C. §1319.”

The Charge alleges that on or about November 5, 2010, the DOT Director of Human Resources met with one of these supervisors during working hours while the supervisor was being paid by the State. The Charge alleges that, upon information and belief, during their discussion the supervisor provided the Director with the details of the Union’s internal dues and service fee structure.

AFSCME asserts the DOT Director of Human Resources, intending to assist the supervisors, e-mailed AFSCME’s Executive Director with several questions concerning the Union’s dues and fee structure. AFSCME declined to respond to the Director’s questions, and advised the information she had requested was a matter of internal Union business.

The Charge alleges that on or about November 16, 2010, the four supervisors sent

a letter to other Local 837 bargaining unit employees. The letter was addressed “Dear Fellow Union Member.” AFSCME asserts the letter encouraged recipients to stop paying membership dues and to decertify the union. AFSCME alleges, upon information and belief, the letter was prepared and distributed by the supervisors while they were working on State paid time and with the permission and assistance of DOT management.

On or about December 7, 2010, a DOT Labor Relations Officer questioned the Union on behalf of another employee concerning whether Union dues would increase in 2011. She was informed by an AFSCME representative dues would not increase.

The State filed its Answer to the Charge on or about December 28, 2010. With regard to the material allegations set forth therein, the State denies that the PERB has ever issued a decision establishing that DOT supervisory employees at issue in this charge are in the bargaining unit represented by AFSME Local 837.

The State asserts that on or about August 10, 2010, the Local 837 President informed the DOT Labor Relations Officer that he had informed the four supervisors named in the Charge that a fair share fee would be deducted from their pay checks after they declined to sign a Union membership card.

The State acknowledges that the DOT Director of Human Resources spoke with a supervisor concerning his question about the difference between the amount being deducted from his paycheck for fair share fees and the information he had received from AFSCME advising him of the amount of the fee. When the Director sought clarification from AFSCME, she was informed the amount the State was deducting was correct and should continue. She so informed the employee involved.

In December, 2010, the DOT employee responsible for inputting deductions into

the payroll system informed DOT's Labor Relations Officer that she was leaving service and was trying to plan ahead for the following year. At her request, the DOT Labor Relations Officer inquired of an AFSCME representative as to whether union dues would increase in 2011. She was informed by the AFSCME representative they would not.

The State denies that any violation of the PERA, as alleged, occurred.

In a section of its Answer entitled New Matters, the State claims that the Charge fails to allege facts sufficient to state a claim for relief under either §1307(a)(2) or §(a)(3).

On January 5, 2011, Charging Party filed its Response to New Matter denying the State's position set forth therein.

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).

First, by way of establishing the background facts, the prior petitions and charges referenced by AFSCME in its Charge (and attached as Exhibits 2, 3 and 4 thereto) dealt exclusively with AFSCME Local Union 879. There is no reference in any of the cited decisions to the Charging Party in this case, AFSCME Local 837, nor to supervisory employees.

The Charge alleges a series of incidents occurred concerning conduct by bargaining unit supervisors employed at the Chapman Road Facility in which AFSCME asserts DOT was involved in a manner which violates 19 Del.C. §1307 (a)(2) and/or (a)(3). The State admits a conversation occurred between DOT's Director of Human Resources and one of the supervisors concerning the amount being deducted from his paycheck and the information he had received directly from AFSCME concerning the amount of the fair share fee. It also admits the Director of Human Resources requested clarification directly from AFSCME, and upon receiving confirmation that the correct amount was being deducted, DOT made no further inquiries and did not change the amount being deducted.

The State also admits it inquired through the DOT Labor Relations Officer of a Council 81 representative as to whether there would be an increase in the amount of the dues deduction in 2011, in anticipation of the retirement of its employee who handled

payroll deductions. The Council 81 representative responded there would not be a dues increase. There is nothing in the Charge to suggest or support a conclusion that any further action was taken by either party as a result of this exchange of information.

When viewed in a light most favorable to the charging party, there is insufficient evidence in the pleadings to support a determination that either of these incidents constitutes probable cause to believe that a violation of 19 Del.C. §1307 (a)(2) and/or (a)(3) may have occurred, as alleged.

The remaining incident alleged in the Charge concerns allegations that DOT was involved, supported, and/or had knowledge of the distribution of the November 10, 2010, letter from the four (4) supervisors named in the Charge to all Local 837 members. The pleadings establish factual discrepancies concerning the distribution of the letter, specifically as to whether DOT “permitted the supervisors to use State mail to distribute anti-union material while being paid by the State”, whether DOT condoned the supervisors’ use of their supervisory titles in communicating with other bargaining unit members to advocate for decertification of the union, and/or whether DOT condoned or supported the supervisors who communicated as “fellow Union members” when DOT knew that they were not, in fact, members of Local Union 837.

DETERMINATION

Consistent with the foregoing, when considered in a light most favorable to Charging Party, the pleadings are sufficient to establish probable cause to believe that an unfair labor practice, as alleged, may have occurred. This probable cause relates exclusively to the allegations concerning DOT’s involvement, if any, in the creation,

distribution and/or content of the November 10, 2010 letter from the four bargaining unit supervisors to other Local 837 bargaining unit members, urging decertification of the union.

A hearing will be convened forthwith to address the factual issues raised by the pleadings concerning this incident.

IT IS SO ORDERED

Date: May 24, 2011



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