

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

ARMOND WALDEN,	:	
	:	
Charging Party,	:	
	:	<u>ULP No. 11-06-808</u>
v.	:	
	:	Probable Cause Determination
AMALGAMATED TRANSIT UNION,	:	and Order of Dismissal
LOCAL 842,	:	
	:	
Respondent.	:	

Appearances

Armond Walden, Charging Party, pro se
Roland Longacre, President, ATU Local 842

BACKGROUND

The Amalgamated Transit Union, Local 842, (“ATU”) is an employee organization within the meaning of §1302(i), of the Public Employment Relations Act, 19 Del.C. Chapter 13 (“PERA”). The ATU is the exclusive bargaining representative of certain employees of Delaware Transit Corporation (“DTC”), an agency of the State and a public employer within the meaning of §1302(j), of the PERA.

Armond Walden (“Charging Party) was a public employee within the meaning of §1302(o) who, prior to his discharge, was employed by DTC as a bus driver. During the period of his employment Charging Party was also a member of a bargaining unit

represented by the ATU for purposes of collective bargaining. Charging Party was discharged from his employment by DTC on or about January 15, 2010. The discharge was grieved through the ATU and was ultimately heard at arbitration before Arbitrator Joseph Loewenberg on or about October 28, 2010. On or about December 13, 2010, Arbitrator Loewenberg issued his decision sustaining the discharge.

On June 13, 2011, Charging Party filed an unfair labor practice charge alleging that Arbitrator Loewenberg committed an unfair labor practice by interrupting the collective bargaining procedure in violation of §1302(e) of the Act, which provides:

“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.

Charging Party further alleges that following the Arbitrator’s decision the ATU “has taken no actions to further fulfill its legal duty of fair representation to the Charging Party” by appealing the Arbitrator’s decision despite Charging Party’s request that it do so. By this action, Charging Party alleges that ATU violated 19 Del.C. §1304(a) which provides:

The employee organization designated or selected or the purpose of collective bargaining by the majority of the employees in a collective bargaining unit shall be the exclusive representative of all of the employees in the unit for such purpose and shall have the duty to represent all unit employees without discrimination. Where an exclusive representative has been certified, a public employer shall not bargain in regard to matters covered by this chapter with any employee, group of employees or other employee organization.

On June 21, 2011, the ATU filed its Answer essentially admitting to the

chronology of events set forth in the Charge but denying any violation of its responsibilities under the PERA.

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*, PERB Probable Cause Determination, ULP 04-10-453, V PERB 3179, 3182 (2004).

In this matter there are no issues of material fact. Arbitrator Loewenberg cannot have committed an unfair labor practice by interrupting the collective bargaining process,

as Charging Party claims. Arbitrator Loewenberg is not a named party to the Charge, nor is he a representative or agent of either the ATU or DTC. Further, as provided for in §1307(a) and §1307(b) respectively, the commission of a statutory unfair labor practice is limited to a “public employer or its designated representative” or “a public employee” or “an employee organization or its designated representative.” Arbitrator Loewenberg falls into none of these categories. Consequently, any and all allegations that Arbitrator Loewenberg violated the PERA are dismissed.

Charging Party’s contention that the ATU violated its duty of fair representation by failing to appeal the arbitrator’s decision as he requested is likewise without merit. In drafting the Public Employment Relations Act, the Delaware Legislature expressly incorporated the duty of fair representation. 19 Del.C. §1304(a) provides, in relevant part:

The employee organization designated or selected for the purpose of collective bargaining by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of all the employees in the unit for such purpose and shall have the duty to represent all unit employees without discrimination.

The PERB has previously considered the duty of the exclusive bargaining representative to represent all members of the bargaining unit without discrimination. In the case of *Williams v. Norton and Callison*, (ULP No. 85-10-006, I Del.PERB 159 (1986)), Norton was a UniServ Director for the Delaware State Education Association and Callison was a local union President. In its decision, PERB set forth the standard to be applied when considering issues involving the duty of fair representation, observing:

As early as 1953, the United States Supreme Court held that “a wide range of reasonableness must be allowed a statutory representative in serving the unit it represents” (Ford Motor Co. v. Huffman, 345 U.S. 330 (1953)). It further refined this premise when it defined the duty to represent unit employees without

discrimination as ” . . . the obligation to serve the interests of all members without hostility. . . toward any, to exercise discretion with complete good faith and honesty, and to avoid arbitrary conduct” (Vaca v. Sipes, Supra.). The underlying logic of Ford Motor Co. and Vaca provides a realistic and persuasive approach in defining the scope of the duty of fair representation and is consistent with the standard contained in section 4004(a) ¹ of the Public School Employment Relations Act. Consequently, in order to meet its statutory obligation to represent its members without discrimination an exclusive employee representative has a duty to act honestly, in good faith and in a nonarbitrary manner. These factors form the basis of every fair representation case and must, therefore, be evaluated on a case by case basis.

The ATU filed a grievance challenging Charging Party’s discharge, which it processed through each step of the contractual grievance procedure and ultimately to arbitration. During the arbitration hearing before a neutral arbitrator mutually selected by ATU and DTC, the parties were afforded the opportunity to present, testimony, documentary evidence and closing oral argument in support of their respective positions.

Decisions concerning the processing of Charging Party’s grievance were subject to the judgment and discretion of the exclusive bargaining representative. Unless it can be shown that in exercising its judgment and discretion the ATU “acted dishonestly, in bad faith and in an arbitrary manner,” there is no violation of 19 Del.C. §1304(a). In this case, Charging Party fails to make or support an allegation that the ATU acted dishonestly, in bad faith or in an arbitrary manner in declining to appeal the arbitrator’s decision.

DECISION

Considered in a light most favorable to the Charging Party, the pleadings fail to support a finding of probable cause to believe that ATU Local 842 committed a violation of 19 Del.C. §1307(a)(1), (a)(2) and/or (a)(5), as alleged.

¹ 19 Del.C. §1304(a) is identical to 14 Del.C. §4004(a)

Consequently the Charge is dismissed.

Date: July 13, 2011

Handwritten signature of Charles D. Long, Jr. in cursive script.

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