

THE STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

JOSEPH F. POLI, JR.,)	
)	
Charging Party,)	
)	<u>ULP No. 12-03-857</u>
v.)	
)	Probable Cause Determination
)	
)	Order of Dismissal
AMALGAMATED TRANSIT UNION, LOCAL 842,)	
)	
Respondent.)	

APPEARANCES

Joseph F. Poli, Jr., Charging Party, (pro se)
Roland Longacre, President/Business Agent, for ATU Local 842

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”). It is the exclusive bargaining representative of certain employees of the Delaware Transit Corporation (“DTC”)¹ within the meaning of §1302(j) of the PERA.

Joseph F. Poli, Jr. (“Charging Party”) is an employee of DTC. He is a public employee within the meaning of §1302(o) of the Act and is a member of the bargaining unit by the ATU.

¹ The Delaware Transit Corporation (“DTC”) is an agency of the State of Delaware (organizationally located within the Department of Transportation) and is a public employer within the meaning of §1302(p).

On March 20, 2012, Charging Party filed an unfair labor practice charge with the Public Employment Relations Board (“PERB”) alleging conduct by the ATU in violation of 19 Del.C. §1301(1), §1301(2), §1303(1), §1303(3), §1303(4), §1304(a) and §1307(b)(1), (b)(3) and (b)(4).² The essence of the Charge is that Respondent has refused and continues to refuse to provide Charging Party with a copy of a recent arbitration decision to publish on a “members’ website”. He argues arbitration awards constitute binding decisions as the final step of the grievance procedure and are therefore part of the collective bargaining agreement. Charging Party asserts, “It is our understanding that this award like the others contains vital and binding contract and DTC policy interpretation, which we as employees of DTC, members of the ATU, and parties to the contract are required to know and must comply with by law.” He concludes:

² §1301 It is the declared policy of the State and the purpose of this chapter to promote harmonious and cooperative relationships between public employers and their employees and to protect the public by assuring the orderly and uninterrupted operations and functions of the public employer. These policies are best effectuated by: (1) Granting to public employees the right of organization and representation; (2) Obligating public employers and public employee organizations which have been certified as representing their public employees to enter into collective bargaining negotiations with the willingness to resolve disputes relating to terms and conditions of employment and to reduce to writing any agreements reached through such negotiations.

§1303 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. (3) Engage in other concerted activities for the purpose of collective bargaining in or other mutual aid and 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 without discrimination.

§1304(a) 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 employees in the unit for such purpose and shall have the duty to represent all unit employees without discrimination.

§1307(b) It is unfair labor practice for a public employee or for an employee organization 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. (3) 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. (4) Refuse to reduce an agreement, reached as a result of collective bargaining to writing and sign the resulting contract.

By these actions ATU842 has violated 1301 (1) in that by denying myself and the membership this award they are denying my and our right to organize specifically our right to collect, organize and maintain a complete database of all contract and contract interpretations, like AAA Awards, need *[sic]* to comply with the contract.

By these actions ATU842 has violated *[sic]* 1301 (2) in that we cannot even confirm that they reduce this agreement to writing without seeing it.

By these actions ATU842 has violated 1303 (1) in that interfering *[sic]* with my right to continue to organize and assist our employee organization by providing legally binding contract interpretations.

By these actions ATU842 has violated 1303 (3) in that they are interfering with my right to engage in mutual aid and protection of our membership, for reasons cited above.

By these actions ATU842 has violated 1304(4) and 1304)(a) in that they are discriminating against me by allowing some members to see this award and its contractual application but not me.

By these actions ATU842 has violated 1307(b)(1) and (3) for reasons and sections cited above.

By these actions ATU842 has violated 1307(b)(4) in that we cannot even confirm that this agreement was made and reduced to writing without seeing it.

Charging Party requests ATU be found to have violated the PERA as alleged, and that PERB order the ATU to cease and desist from acting in violation of the PERA and release the arbitration award to Charging Party.

On March 29, 2012, the ATU filed its Answer denying the allegations set forth in the Charge. Under New Matter, the ATU asserts PERB is not the proper venue for resolution of Charging Party's concerns. It argues, "This is an internal Union Matter and *[Charging Party's]* venue if he is dissatisfied with a decision of the Union is to the International as outlined in Chapter 23 of the Constitution and General Laws of the ATU."

The ATU also asserts Charging Party is attempting to assert himself as an alternative bargaining agent for bargaining unit employees in violation of §1304(a), of the Act. It notes Charging Party is not an appointed, elected or designated officer of the ATU. The website referred to in the Charge is neither authorized nor sanctioned by either the International ATU or Local 842.

On April 9, 2012, Charging Party filed its Response to New Matter denying the allegations set forth therein.

This determination results from a review of the pleadings as described above.

DISCUSSION

Rule 5.6 of the Rules and Regulations of the Delaware Public Employment Relations Board provides:

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

The PERA requires “the public employer and the exclusive bargaining representative” to negotiate written grievance procedure “by means of which bargaining unit employees, through their exclusive bargaining representatives, may appeal the interpretation or application of any term or terms of an existing collective bargaining agreement”. 19 Del.C. §1313(c). Where an employee organization is certified as the exclusive representative of a bargaining unit of public employees, the employer is specifically prohibited from having any direct dealings concerning collective bargaining issues with any employee, group of employees or other employee organization, except under the very limited set of circumstances set forth in 19 Del.C. §1304(b).

Collective bargaining agreements are negotiated between the public employer and the exclusive bargaining representative (ATU Local 842 in this case). They are the only parties to such agreement, although bargaining unit employees are the beneficiaries of the agreement. *Charles Harris v. DSPC and ILA 1694-1*, PERB Review of the Executive Director's Decision, ULP No. 11-10-827, VII PERB 5407, 5411 (2012). The grievance procedure may be invoked to resolve disputes concerning interpretation and/or application of the terms of that agreement to a particular set of circumstances. Grievance resolutions do not, however, constitute negotiated terms and do not modify the terms of the Agreement itself. In fact, grievance resolutions and arbitration awards are generally understood to have application only to the specific grievance.

There is no statutory requirement that grievance resolutions be reduced to writing or published. Any such requirement would find its genesis in the collective bargaining

agreement, not in the statute. In Section 7 of the collective bargaining agreement between ATU Local 842 and DTC, only the union has the right to advance a grievance beyond Step 2³, and the ATU and DTC have committed to engage in a “sincere endeavor ... to dispose of any difference arising out of the application of this AGREEMENT through conferences between the ADMINISTRATION and the UNION” at Step 4. There is no contractual requirement for grievance resolutions to be published.

Charging Party’s allegations that the ATU has violated his rights under the statute are without basis in fact or in law. The Charge provides no basis on which it might reasonably be concluded that the ATU has acted in violation of the PERA. Charging Party appears to have a fundamental confusion about the role of the union in negotiating and enforcing a collectively bargained agreement with the employer, and the role of individual bargaining unit members who are the beneficiaries of that agreement.

The ATU properly asserts in its Answer that the complained of action is a matter of internal union business. It points Charging Party to Section 23 of the General Laws of the Amalgamated Transit Union as the appropriate mechanism to challenge an internal union decision. It also notes in its response to ¶9 that Charging Party is “more than welcome to view the award at the Union Office by appointment”.

Finally, the ATU made a counter-charge in its Answer, alleging Charging Party has “... gone around the Union and dealt directly with individual members without the Union’s direct knowledge either filing on behalf of individual members or coercing them into filing various complaints and actions including but not limited to Unfair Labor

³ **STEP 3** If not resolved in Step 2, within 5 days from receipt of the Step 2 response, the UNION shall have the right to appeal the decision in writing to the Administrator or their designee. When such appeal is written the UNION shall describe the details of their dissatisfaction with the Step 2 decision. The Administrator, or their designee, will formally hear the grievance appeal. Such hearing shall be scheduled as soon as practical but not later than 10 days from receipt of written appeal request. The Administrator or their designee shall render a written response within 10 days of the appeal hearing.

Practice Charges after the decision to arbitrate an individual's case has been made." It further alleges Charging Party portrays himself as a Union Official by email and by maintaining a "members' website" which is not sanctioned or authorized by the ATU. While the charges made are not pled with sufficient specificity to permit a finding of probable cause at this time, the allegations are quite serious and, if plead and proven at some later date, could result in very serious consequences for Charging Party.

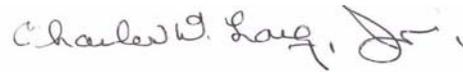
DECISION

The pleadings establish no probable cause to believe that the violations alleged in the Charge may have occurred. Consequently, the Charge is dismissed, in its entirety, with prejudice.

The Counter-Charge included in the ATU's Answer does establish a sufficient basis to find probable cause to believe that an unfair labor practice may have been committed; consequently it is also dismissed, but without prejudice.

IT IS SO ORDERED.

Date: April 18, 2012



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