

**STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD**

INTERNATIONAL BROTHERHOOD OF ELECTRICAL)	
WORKERS, LOCAL 2270,)	
)	
Charging Party,)	
)	<u>ULP No. 14-01-941</u>
v.)	
)	Probable Cause Determination
DELAWARE TRANSIT CORPORATION,)	
)	
Respondent.)	

APPEARANCES

Sue D. Gunter, Esq., Sherman, Dunn et.al., for IBEW Local 2270
Rebecca N. Miller, SLREP/HRM/OMB, for DTC

BACKGROUND

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

The International Brotherhood of Electrical Workers, Local 2270, (IBEW) is an employee organization within the meaning of Section 1302(i) of the PERA and the exclusive bargaining representative of certain maintenance employees of DTC within the meaning of Section 1302(j) of the PERA.

On January 28, 2014, the IBEW filed an unfair labor practice charge (Charge) with the Delaware Public Employment Relations Board (PERB) alleging conduct by DTC in violation of

19 Del.C. §1307 (a)(1), (2), (3), (4), (5), (6) and/or (8) which state:

(a) It is an unfair labor practice for a public employer 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.
- (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.
- (4) 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.
- (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, except with respect to a discretionary subject.
- (6) 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.
- (8) Refuse to disclose any public record as defined by Chapter 100 of Title 29

The Charge alleges DTC has intentionally acted in a dilatory manner and has been otherwise uncooperative in providing requested information and in being available to meet for negotiations, thereby thwarting attempts by the IBEW to engage in meaningful negotiations for a first contract. The IBEW characterizes the DTC's actions as retaliation for the Union having successfully organized a group of the DTC's employees. Specifically, the Charge alleges that DTC has: 1) failed or refused to produce requested information which is necessary for the IBEW to prepare for and engage in meaningful collective bargaining; 2) conditioned substantive bargaining upon the IBEW's acceptance of DTC proposed ground rules; 3) been unavailable to bargain for months at a time; 4) required that all discussions be held in person and refusing to communicate with the IBEW by email; and 5) unilaterally altered terms and conditions of

employment without negotiation in order to intimidate the newly certified bargaining unit members.

On February 7, 2014, DTC filed its Answer to the Charge essentially denying the allegations set forth therein. DTC maintains that upon receiving the IBEW's request for information it promptly initiated reasonable steps to gather and forward the requested information. DTC maintains the IBEW has never offered a date on which to commence negotiations. To the contrary, through DTC's efforts two bargaining sessions were scheduled the second of which was postponed at the request of the IBEW. DTC maintains that it never failed to bargain in good faith nor conditioned substantive bargaining upon the IBEW's acceptance of ground rules. DTC acknowledges that it required all substantive discussions take place in person and that it would only communicate by email for the purpose of scheduling hearing dates. DTC denies unilaterally altering terms and conditions of employment. DTC further denies engaging in any activity which could reasonably be construed as intended to intimidate bargaining unit members.

In a section of its Answer entitled New Matter, DTC alleges the Charge fails to allege sufficient facts to state a claim for relief and that the Charge is moot and should, therefore, be dismissed.

On February 8, 2014, the IBEW filed its Response to New Matter in which it denies the allegations contained in the new matter and requests that both be overruled or dismissed.

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 will 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).

The expressed policy of the Public Employment Relations Act is to promote harmonious and cooperative public sector labor management relationships in order to protect the public and to assure the uninterrupted operation and functions of government. The statute explicitly obligates public employers and labor organizations that are certified to represent employees of the public employer to enter into collective bargaining with a willingness to resolve disputes relating to terms and conditions of employment. It also empowers PERB to assist in resolving disputes and to administer the statute.

IBEW Local 2270 was certified on July 31, 2013, as the exclusive bargaining representative of the bargaining unit of DTC employees defined as "paratransit automotive technicians and service technicians employed by DART/DTC, statewide (excluding supervisory employees)." The parties were advised at that time by PERB that the statute requires collective

bargaining, in the case of a newly certified exclusive representative, to begin within a reasonable time after certification.

The PERA places a mutual obligation on the parties, through their representatives, 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. 19 Del.C. §1302(e). It also places an obligation on the parties to conduct their negotiations within customary and statutory time frames. Specifically, §1314(a) requires that in the case of a newly certified representative, “both parties shall immediately notify [PERB] as to the status of negotiations” if an agreement has not been reached 60 days after negotiations have commenced. If an agreement has not been reached after 90 days of negotiations, PERB must appoint a mediator if requested by either party.

Records attached to the IBEW’s Response to New Matter evidence that on or about September 16, 2013, the IBEW requested to meet with DTC to initiate negotiations. *Response Exhibit 1*. It is undisputed that the parties did not meet for a first negotiating session until November 5, 2013. The pleadings also establish that the second meeting was scheduled for February 7, 2014, three months later. The email correspondence between the chief spokespersons also indicates the IBEW clearly declined to accept the employer’s proposed ground rules for negotiations, and that DTC’s representative continued to question this decision after the IBEW explained its declination. Viewed in a light most favorable to the charging party, the information provided in the pleadings raises a substantive question as to whether there has been a good faith effort to negotiate consistent with statutory obligations. Scheduling meetings at three month intervals certainly does not on its face appear to be conduct consistent with resolving the terms of a first agreement.

It is well established that the duty to bargain in good faith under the Public Employment Relations Act obligates a public employer to provide information to an exclusive bargaining

representative that is necessary and relevant to that organization in performing its representational duty. *AFSCME 320 & 1102 v. City of Wilmington*, ULP 10-08-761, VII PERB 4757, 4760 (Probable Cause Determination, 2010). This obligation has been recognized by this Board, the Court of Chancery and the Delaware Supreme Court. *Bd. of Education of Colonial School District v. Colonial Education Association, DSEA/NEA*, Del.Chan., CA 14383, II PERB 1343 (1996), *affirmed Colonial Education Assn. v. Bd. of Education*, Del.Supr., Case 129, 1996, 152 LRRM 2575, III PERB 1519 (1996), (citing *Brandywine Affiliate, NCCEA/DSEA/NEA v. Brandywine School District*, Del.PERB, ULP 85-06-005, I PERB 131, 149 (1986)); *AAUP v. DSU*, Del. PERB., Decision on Remand, ULP 95-10-159, III PERB 2177 (2001); *Delaware Correctional Officers Association v. Delaware Department of Correction*, ULP No. 00-07-286, III PERB 2209, 2214 (2001), *AFSCME Locals v. DSU*, Del.PERB, ULP 10-04-739, VII PERB 4693, 4705 (2010); *ATU Local 842 v. DTC*, ULP 12-02-850, VII PERB 5493, 5497 (Probable Cause Determination, 2012).

A request for information must be made in good faith and the response to that request must also be made in good faith. The union has the initial burden to establish the relevance of the requested information. Although “the burden is not exceptionally heavy”, there must be some proffer as to relevance.¹ Once the presumption of relevance is established, the burden shifts to the employer to respond in good faith in a reasonable and prompt manner.² The parties remain under a good faith obligation to attempt to resolve any issues concerning the scope of the request and/or method of production. *AFSCME, AFL-CIO Council 81, Locals 320 & 1102 v. City of Wilmington, Delaware*, ULP No. 10-08-761 VII PERB 4867, 4882 (2011).

Documents appended to the pleadings establish the scope of the information requested,

¹ *Boise Cascade Corporation and the United Paperworkers International Union, Local 900*, 279 NLRB 422 (NLRB 1986)

² *Tower Books*, 273 NLRB 671 (1984).

and the limitations and time period and method by which DTC responded, as well as where it declined to provide information. Whether this exchange meets the good faith obligation of the parties under the PERA requires further development of a factual record.

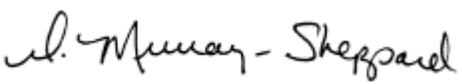
The Charge also alleges DTC posted notices in the workplace which had the effect of causing bargaining unit employees to fear that permanent positions had been converted to “floating” positions and that “job titles, assignments and shift hours” had been abolished. Although DTC denies this occurred, the posting appended to the Charge reflects that all Auto Tech positions are “Floating”. This raises factual (as well as legal) issues upon which a record must be developed in order to determine whether the statute has been violated, as alleged.

DETERMINATION

Considered in their entirety and in a light most favorable to Charging Party, the pleadings are sufficient to constitute probable cause to believe that an unfair labor practice, as alleged, may have occurred.

A prehearing conference will be promptly scheduled to discuss with the parties the further processing of this Charge and the progress of their negotiations. A hearing will also be scheduled for the purpose of developing a factual record on which a determination can be made as to whether DTC has violated 19 Del.C. §1307 (a)(1), (2), (3), (4), (5), (6) and/or (8), as alleged.

Dated: April 1, 2014



DEBORAH L. MURRAY-SHEPPARD
Executive Director, Delaware PERB