

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

|                                      |   |                               |
|--------------------------------------|---|-------------------------------|
| <b>RICHARD FLOWERS,</b>              | : |                               |
|                                      | : |                               |
| <b>Appellant,</b>                    | : | <b>PERB Review of Hearing</b> |
|                                      | : | <b>Officer’s Decision</b>     |
|                                      | : |                               |
| <b>v.</b>                            | : | <b><u>ULP 14-06-958</u></b>   |
|                                      | : |                               |
| <b>STATE OF DELAWARE,</b>            | : |                               |
| <b>DELAWARE TRANSIT CORPORATION,</b> | : |                               |
|                                      | : |                               |
| <b>Appellee.</b>                     | : |                               |

Appearances

*Richard Flowers, Charging Party, pro se*  
*Aaron M. Shapiro, SLREP/HRM/OMB, for DTC*

The State of Delaware (State) is a public employer within the meaning of §1302(p) of the Public Employment Relations Act (PERA), 19 Del.C. Chapter 13 (1994, “PERA”). The Delaware Transit Corporation (DTC) is an agency of the State.

Appellant Richard Flowers (Flowers) is employed by DTC and is a public employee within the meaning of 19 Del.C. §1302(o). Flowers is a member of the bargaining unit of fixed route transit operators represented by the Amalgamated Transit Union, Local 842 (ATU).

DTC and ATU Local 842 were (at all times relevant to the processing of this Charge) parties to a collective bargaining agreement, which includes both a negotiated grievance and arbitration procedure for the resolution of contractual disputes and a paid sick leave benefit for bargaining unit employees.

On or about June 4, 2014, Flowers filed an unfair labor practice charge alleging

DTC had engaged in conduct in violation of 19 Del.C. §1307(a)(1), (4) and (6).<sup>1</sup> Specifically, the Charge alleged that DTC failed to provide Flowers sick leave pay for absences in April and May, 2014. Flowers alleged he was treated differently than other bargaining unit employees and retaliated against because he had engaged in protected activity by filing and assisting in the filing of unfair labor practice charges against DTC.

On or about June 12, 2014, DTC filed its Answer denying the material allegations set forth in the Charge. It also included in its Answer New Matter, asserting the Charge failed to state a claim for which relief can be granted.

On or about June 19, 2014, Flowers filed his Reply, denying the assertions of New Matter included in DTC's Answer.

A Probable Cause Determination and Order of Dismissal was issued on June 30, 2014, which found the Charge failed to establish probable cause to believe that an unfair labor practice, as alleged, may have occurred. The Charge was dismissed in its entirety, with prejudice.

On July 7, 2014, Flowers requested review of the Hearing Officer's decision by the full Public Employment Relations Board. DTC filed a written response to the Appellant's request for review on July 9, 2014.

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<sup>1</sup> § 1307. Unfair labor practices, enumerated.

(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.
- (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.
- (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.

A copy of the complete record in this matter was provided to each member of the Public Employment Relations Board. A public hearing was convened on July 16, 2014, at which time the full Board met in public session to hear and consider this request for review. The parties were provided the opportunity to present oral argument and the decision reached herein is based upon consideration of the record and the arguments presented to the Board.

### **DISCUSSION**

The Board's scope of review is limited to the record created by the parties and consideration of whether the decision is arbitrary, capricious, contrary to law, or unsupported by the record. After consideration of the record and the arguments of the parties on appeal, the Board must vote to either affirm, overturn, or remand the decision to the Executive Director for further action.

The Appellant conceded during the hearing on his request for review that the Hearing Officer did not err in issuing the decision on the pleadings which dismissed his Charge. He argues, however, that PERB is the only available alternative to resolve issues with his employer because he does not believe he receives fair treatment from DTC. He suspects he is treated differently because he has filed unfair labor practice charges against DTC in the past and has assisted other employees in doing so as well. He concludes he has, therefore, been retaliated and discriminated against because he has engaged in protected activity under the PERA.

A suspicion, to be actionable, must have some basis in fact and that factual basis must be set forth by the Charging Party in an unfair labor practice charge. The Appellant's Charge asserted he was treated differently than other employees, but does not specify how. He argued that because he has accumulated sick leave available, he is

entitled to use it upon demand. He alleged he was told that he could not use sick leave for a work related injury, but he was then prohibited from using his accumulated sick leave after his workers compensation claim was denied. When Mr. Flowers originally raised those allegations with DTC, it responded that it had paid him for all of the sick leave which had been properly requested and supported with the required paperwork. DTC's responses were reflected in a series of emails which the Appellant attached to his Charge.

Sick leave is a contractually provided benefit, as acknowledged by the Appellant who cites to the relevant contractual provisions in his Charge. Whether or not the Appellant properly complied with the contractual terms for requesting to use his accumulated leave and/or whether he was unfairly denied the use of that leave are questions which arise under the collective bargaining agreement, not under the statute. The appropriate forum for resolution of contractual disputes is the negotiated grievance procedure. The Appellant confirmed that he understands how grievances are properly filed and conceded he did not file a written grievance concerning the alleged improper denial of the use of sick leave.

The Public Employment Relations Board has limited authority and jurisdiction which is clearly set forth in the PERA. It is not an alternative forum for every perceived "unfair" action which occurs in the workplace. Where an employee seeks to enforce a contractual right, he is well served to promptly contact his exclusive bargaining representative to clarify both any rights to the benefit and access to the contractual grievance procedure.

The Appellant asserts he cannot establish retaliation or discrimination by DTC because his employer refuses to provide information he needs to do so. He confuses his role as an employee with that of his exclusive bargaining representative, ATU Local 842.

The employer has an obligation under the law to provide information to the certified exclusive bargaining representative which is reasonably necessary for the union to determine whether there has been a contractual violation. This is not, however, a right to information concerning other employees which accrues to individual bargaining unit members.

The Appellant has failed to provide any rational or reasonable basis to conclude that the PERA has been violated, as he alleges. For these reasons, the Board finds no basis to overturn or remand the Hearing Officer's decision below.

**DECISION**

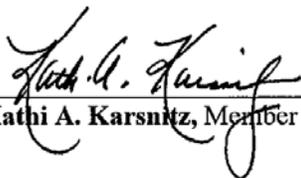
After reviewing the record, hearing and considering the arguments of the parties, the Board unanimously affirms the decision of the Hearing Officer dismissing the Charge for failure to establish probable cause to believe that an unfair labor practice may have occurred, as alleged.

Wherefore, the appeal of the dismissal of the Charge is denied.

**IT IS SO ORDERED.**

  
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**Elizabeth D. Maron, Chairperson**

  
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**R. Robert Currie, Jr., Member**

  
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**Kathi A. Karsnitz, Member**

DATE: July 31, 2014