

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

RICHARD FLOWERS,)	
)	
Charging Party,)	
)	ULP 14-06-958
v.)	
)	Probable Cause Determination
STATE OF DELAWARE,)	and Order of Dismissal
DELAWARE TRANSIT CORPORATION,)	
)	
Respondent.)	

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). The Delaware Transit Corporation (DTC) is an agency of the State.

Charging Party 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 represented by the Amalgamated Transit Union, Local 842, which represents a unit of DTC employees for purposes of collective bargaining and is certified as the exclusive bargaining representative of that unit pursuant to 19 Del.C. 1302(j).

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,) which state:

§ 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.

Specifically, the Charge alleges that DTC failed to pay the Charging Party sick time like other bargaining unit employees for an absence in retaliation for his filing charges with the PERB and his union service. Flowers contends the collective bargaining agreement requires the sick leave payment he seeks without medical documentation because it was neither required nor requested by DTC.

On or about June 12, 2014, DTC filed its Answer denying the material allegations set forth in the Charge. DTC alleges that Flowers “failed to assert any enumerated or detailed factual or legal allegations to which the Respondent can meaningfully respond”. Further, Flowers has failed to assert any facts which support his contention that he was denied sick leave compensation because of his alleged union activity and/or involvement in activities protected by the Act.

In New Matter included in its Answer, DTC alleges Flowers failed to state a claim for which relief can be granted because the charge fails to link any factual allegations to the specific statutory provisions allegedly violated, as required by PERB Rule 5.2(c)(3).

On or about June 19, 2014, Flowers filed a Response denying the New Matter contained

in DTC's Answer.

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 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 has, or 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 purpose of the unfair labor practice procedure is to resolve legitimate concerns of a public employee, public employer or an exclusive bargaining representative under the statutory provisions of the Public Employment Relations Act, 19 Del.C. Chapter 13. An unfair labor practice charge is not intended as a forum in which to air every concern an employee has about his/her employment status.

A question concerning DTC's failure to pay a negotiated benefit is properly resolved

through the contractual grievance procedure. The pleadings do not establish or assert that a grievance was filed in this matter by either Charging Party or the exclusive bargaining representative on his behalf.

Concerning the alleged statutory violations, the mere involvement of an employee in alleged protected activity under the Act alone is insufficient to support an unfair labor practice charge. Flowers lists in his Charge seven actions filed with the Public Employment Relations Board over the past ten years. The disposition of those charges was:

- **ULP No. 04-10-453:** Alleged violations of 19 Del.C. §1307(a)(1) through (8). Charge was dismissed for failure to prove the alleged violations.
- **ULP No. 05-02-468** alleging violations of 19 Del.C. §1307(a)(1) through (8) and 1307(b)(1) thru (6). Charge was dismissed for failure to prove the alleged violations.
- **ULP No. 09-02-664:** Alleged violations of 19 Del.C. §1303(2) and §1307(a)(1), (5), and (6). Charge was dismissed for failure to prove the alleged violations.
- **ULP No. 10-07-752:** This charge was filed by Charging Party Flowers against ATU Local 842. DTC had no involvement in the processing or allegations of this charge. Consequently, it has no relevance to the instant Charge.
- **ULP No. 11-12-837:** Alleged violations of 19 Del.C. §1307(a)(1), (2), (4), (5), and (7). Charge was dismissed for failure to establish probable cause to believe that an unfair labor practice may have occurred.
- **ULP No. 13-10-927:** Alleged violations of 19 Del.C. §1301(1), §1303(1) and (3), and §1307(a)(1), (2), (3), (4), and (6). Charge was dismissed for failure to establish probable cause to believe that an unfair labor practice may have occurred.
- **ULP No. 13-10-928:** Alleged violations of 19 Del.C. §1301 (2), §1303(1) and (3), §1304(b) and §1307(a)(1), (4), (6), (7), and (8). Charge was dismissed for failure to establish probable cause to believe that an unfair labor practice may have occurred.

The disposition of these Charges indicates a pattern of filing unsubstantiated charges. Each charge which is filed with PERB is fully considered independently on its merits. It is noted, however, that six of the seven charges Flowers references allege he was treated in a

discriminatory manner because of his involvement in asserted protected activity. None of those charges has been sustained. This charging party has been repeatedly advised in PERB decisions that the unfair labor practice process is not a substitute for the grievance procedure and that issues which raise a question as to whether a contractual right or provision has been appropriately and fairly applied must be processed through the negotiated grievance procedure. The instant charge is similar to those previously filed in that it also raises an issue concerning the fair application of a provision of the negotiated collective bargaining agreement, i.e., sick leave benefits. And like the earlier charges, this charge also fails to assert any facts which would support a finding that there is a probability that it could constitute an unfair labor practice, even when viewed liberally in a light most favorable to the charging party.

DETERMINATION

Considered in a light most favorable to the Charging Party, the Charge, on its face, fails to establish probable cause to believe that an unfair labor practice, as alleged, may have occurred.

WHEREFORE, the Charge is dismissed in its entirety, with prejudice, for failing to state a legitimate claim under the Public Employment Relations Act.

Dated: June 30, 2014



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