

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

WILMINGTON FIREFIGHTERS ASSOCIATION,	:	
LOCAL 1590,	:	
	:	
Charging Party,	:	
	:	
v.	:	<u>U.L.P. No. 93-06-083⁵</u>
	:	
CITY OF WILMINGTON,	:	
	:	
Respondent.	:	

PROBABLE CAUSE DETERMINATION

The Wilmington Firefighters Association, IAFF, (hereinafter "WFFA" or "Charging Party") is an employee organization within the meaning of §1602(f) of the Police Officers' and Firefighters Employment Relations Act, 19 Del.C. Chapter 16 (hereinafter "Act").

The City of Wilmington (hereinafter "City" or "Respondent") is a public employer within the meaning of §1602(l) of the Act.

On June 4, 1993, Charging Party filed an unfair labor practice complaint with the Public Employment Relations Board (hereinafter "Board"). The charge alleges a continuing course of conduct by Chief Wilmore and Deputy Chief Armstead which constitutes a campaign of harassment and intimidation of Wayne Warrington, President of WFFA, and WFFA in violation of §§1607 (a)(1), (a)(2), and (a)(3) of the Act.

On June 16, 1993, the Respondent filed its Answer denying the charge thereby placing in issue each incident upon which the WFFA relies.

The City's Answer also raised affirmative defenses which may be summarized as follows:

1. At the time of the filing of the Charge, the parties were signatories to a collective bargaining agreement effective July 1, 1990 through June 30, 1993.
2. Included in the agreement was a grievance procedure culminating in binding grievance arbitration (Article III) and a provision which the City maintains reserves to it exclusive authority concerning the transfer of employees. (Article X)
3. Because specific incidents alleged in the complaint concerning work site conditions, communications, reimbursement for training courses, grievances, investigations, and fundraising activities are proper subject matter for the grievance procedure and/or involve transfers and/or the "direction of personnel", a right reserved exclusively to management by §1605 of the Act, the City contends they should be dismissed as a basis for the unfair labor practice.
4. Alternatively, the City requests that the Charge be deferred to binding grievance arbitration.

On June 24, 1993, WFFA filed its response to the new matter set forth in the City's Answer.

OPINION

In support of its position that the Board dismiss or defer the current charge the City cites Brandywine Affiliate, NCCEA/DSEA/NEA v. Brandywine School District Board of Education (Del. PERB, ULP No. 85-06-005 (February 5, 1986)), and Indian River Education Association v. Board of Education of the Indian River School District (Del. PERB, ULP No. 90-09-053 (July 19, 1991)).

The City's reliance on the cases cited is misplaced. Both Brandywine and Indian River involved a single act by the respective employer which the Association

believed constituted a *per se* violation of the Act. In each case the Board assumed jurisdiction and issued a decision resolving the dispute.

The relevant issue in Brandywine involved an alleged mid-term unilateral change by the District of the status quo of a mandatory subject of bargaining set forth in the collective bargaining agreement. Accepting jurisdiction, the Board concluded that:

It is important to understand that the issue here is not whether the disputed action taken by the District was in violation of the labor agreement. What is at issue is whether or not the District's action constituted a unilateral change in the status quo sufficient to violate section 4007(a) of the Act, as alleged. In an unfair labor practice proceeding it is of no consequence that the disputed conduct may also constitute a violation of the collective bargaining agreement.

In Indian River, the Board stated:

This Board has consistently held that its jurisdiction encompasses interpretation of a collective bargaining agreement where an unfair labor practice charge involves an allegation that requires a determination of whether one party has unilaterally altered the status quo as it relates to a mandatory subject of bargaining. Local 1590, IAFF, et al., v. City of Wilmington, Del.PERB, ULP No. 89-09-041 (1/23/90) p. 469.

The Board has adopted a limited discretionary deferral policy for unfair labor practices requiring contractual interpretations, where there exists a long-standing and well established collective bargaining relationship, the employer is willing to arbitrate a grievance properly filed pursuant to a negotiated grievance procedure, and the resolution of the contractual dispute would also resolve the underlying issue presented in the unfair labor practice complaint. Red Clay Educational Association v. Bd. of Education of the Red Clay Consolidated School District, Del.PERB, AULP No. 90-08-052A (1991).

Unlike the Brandywine and Indian River cases, however, the genesis of the current unfair labor practice charge is not a single incident related to a question of contract interpretation which, if decided in favor of the charging party, would constitute a *per se* violation of the Act. Rather, it alleges union animus resulting in a

continuing course of harassment and intimidating conduct. This issue, based upon the totality of the conduct alleged, is not susceptible to resolution by arbitration decisions concerning those individual incidents which may also involve questions of contract interpretation.

DECISION

The City's request that the charge be either dismissed or deferred is denied. Pursuant to Rule 5.6, Decision or Probable Cause Determination, of the Board's Rules and Regulations, it is determined that the pleadings are sufficient to establish that an unfair labor practice may have occurred.

A hearing to establish a factual basis upon which a decision can be rendered is scheduled for September 15, 1993.

IT IS SO ORDERED.

Dated: July 28, 1993

/s/ Charles D. Long, Jr.
CHARLES D. LONG, Jr.
Executive Director, PERB