



management authority conferred by General Order 12.1.A which has been in effect since September 1, 1989. The General Order provides, among other things, that:

The Chief may appoint a member of the command staff to serve as Acting Chief of Police during absences or scheduled vacation, training, etc. The staff member so appointed shall serve, regardless of rank, with all the responsibility and authority of the Chief of Police. Such appointment will be in writing and distributed in a timely fashion.

The City alleges under New Matter that the designation of an officer in the command structure to serve as Acting Chief of Police involves the "selection and direction of personnel" which by statute constitutes a matter of inherent managerial policy reserved to the discretion of management. 19 Del.C. §1605.

The City further maintains that Charging Party lacks standing to file an unfair labor practice charge under 19 Del.C. §1604(b) because the pleadings provide no basis for concluding that Captain Penozza was authorized by Lodge No. 4 to file the complaint.

On January 27, 1994, Captain Penozza filed his response denying the new matter set forth in the City's answer.

#### OPINION

Neither of the two (2) affirmative defenses plead by the City are dispositive of this matter.

1. §1605 concerns the bargaining status of a matter of inherent managerial policy *vis-a-vis* the statutory duty to bargain over "terms and conditions of employment". 19 Del.C. §1602(d) and (n). The issue here is not an alleged violation of §1607(a)(5), failure to bargain in good faith, but whether the City's conduct violates §§1607(a)(1), (a)(2) and (a)(3). Therefore, whether or not the designation of a subordinate officer to serve as Acting Chief of Police qualifies as an inherent managerial policy is not dispositive of the alleged violations set forth in the Complaint.

2. Board Rule 5.2 pertains to the filing of an unfair labor practice charge. It provides, in relevant part:

(a) ... a public employer, a labor organization, or one or more employees may file a complaint alleging a violation of 14 Del.C. §1607. (*emphasis added*).

Section 1604(b), on the other hand, pertains to complaints submitted to the Employer and does not address the standing of an individual or an organization filing an unfair labor practice with the Public Employment Relations Board.

Having disposed of the City's affirmative defenses, it is necessary to consider the merits of the Complaint. The sections of the Act alleged to have been violated provide:

1607. 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.
- (2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization.
- (3) Encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.

In defending its action, the City relies upon General Order 12.1.A, in existence since September, 1989, which confers upon the Chief the authority and discretion to designate an Acting Chief during his absence. There is no allegation that the General Order is, for any reason, in any way defective or represents an abuse of the management's authority. There is, therefore, no entitlement by the Charging Party or any other police officer to the position of Acting Chief of Police.

The practice of designating the highest ranking officer who is working, if proven, would not alter the outcome since it does not take precedence over the clear and unambiguous language of the General Order.

Nor is it compelling that Charging Party was not selected because of his responsibilities as President of F.O.P. Lodge No. 4, the exclusive bargaining representative for all police officers below the rank of Chief. The City's concern that the responsibilities of the Chief of Police and those of the President of the exclusive bargaining representative create the potential for a conflict of interest is not unreasonable.

Finally, the Complaint alleges a per se violation of the Act; therefore, the informal resolution of prior disputes has no bearing upon the resolution of this matter.

#### DECISION

For the reasons discussed, it is determined that pursuant to Rule 5.6, Decision of Probable Cause Determination, of the Rules and Regulations of the Public Employment Relations Board, the pleadings fail to support a finding of probable cause to believe that a violation of §§1607(a)(1), (a)(2) and (a)(3) of the Act, as alleged, may have occurred.

Accordingly, the Complaint is dismissed subject to appeal for review as set forth in Regulation 7.4.

IT IS SO ORDERED.

DATED: 25 February 1994

/s/ Charles D. Long, Jr.  
Charles D. Long, Jr.  
Executive Director  
Del. Public Employment Relations Bd.