STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

INTERNATIONAL UNION OF ELECTRONIC, ELECTRICAL, SALARIED AND MACHINE WORKERS (IUE), AFL-CIO,	:	
Charging Party,	:	ULP No. 95-05-129
v.	:	ULP No. 96-02-167
KENT COUNTY,	:	
Respondent.	:	

DISMISSAL OF MOTION TO QUASH

A hearing has been scheduled for Thursday, September 12, 1996, to address the issues raised in the above-captioned matters. At the request of the Petitioner, subpoenas were issued to and served upon certain individuals, specifically: Robert McLeod; Donald Blakey; Michael P. Cebrick; Richard Ennis; William Paskey; Terry L. Pepper; Harold J. Peterman; and, Ronald D. Smith.

On September 5, 1996, Respondent filed a Motion to Quash the subpoenas served upon the above-named individuals for the reasons that:

a. Any testimony that possibly could be elicited from any of the aforesaid individuals would be irrelevant to the charges at issue in the above-captioned matter, as none of the aforesaid individuals participated in the collective bargaining sessions between the parties in the above-captioned matter; and

b. Any testimony which could possibly be elicited from any of the aforesaid individuals would be protected by the attorney-client privilege.

The argument set forth by the Respondent in paragraph (a) is without merit. The standard by which the quality of negotiations is tested is the "totality of conduct." B.F. Diamond Construction Co., 163 NLRB 161, 64 LRRM 1333, (1967), enf'd.

per curiam, 410 F.2d, 71 LRRM 2112 (CA 5), cert. denied, 396 U.S. 835, 72 LRRM 2432 (1969); Seaford Ed. Assn. v. Bd. of Ed., Del. PERB, ULP 2-2-84S (1984, PERB Binder I, p. 1); Red Clay Ed. Assn v. Bd. Of Ed., Del PERB, ULP 90-06-051 (1990, PERB Binder I, p. 575). In reviewing the totality of the employer's conduct, anti-union behavior away from the bargaining table is a valid consideration. NLRB v. Billion Motors, 700 F.2d 454, 112 LRRM 2873 (CA8, 1983)

Furthermore, each complaint alleges violations in addition to the failure to bargain in good faith which is the subject of 19 Del.C. §1307 (a)(5).

Consequently, the fact that the above-named individuals did not participate in collective bargaining sessions has no bearing on the relevancy or admissibility of their testimony.

So, too, the argument set forth by the Respondent in paragraph b is not convincing. Depending upon the surrounding circumstances, specific testimony may or may not be protected by the attorney-client privilege. If, in the opinion of the County's representative, prospective testimony is so protected the privilege may be asserted at the hearing in the form of an objection to specific questions.

Accordingly, the Respondent's Motion to Quash the subpoenas served upon Messrs, McLeod, Blakey, Cebrick, Ennis, Paskey, Pepper, Peterman, and Smith is denied.

IT IS SO ORDERED.

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

DATED: 6 September 1996