

STATE OF DELAWARE  
PUBLIC EMPLOYMENT RELATIONS BOARD

)

FRATERNAL ORDER OF POLICE, LODGE NO. 1, )  
Complainant )  
 ) ULP No. 98-02-226  
v. )  
 )  
CITY OF WILMINGTON. )  
Respondent )

DECISION ON RESPONDENT'S MOTION TO DISMISS OR STAY

The City of Wilmington (hereinafter "City") is a municipal corporation of the State of Delaware and a public employer within the meaning of 19 Del.C. section 1602 (l). The Fraternal Order of Police, Lodge No. 1, (hereinafter "FOP") is the exclusive bargaining representative of the employees of the City's police department in the positions of Patrol Person, Sergeant, Lieutenant, and Matron, within the meaning of 19 Del.C. section 1602 (g). At all times relevant to this matter the City and FOP were parties to a collective bargaining agreement which is effective for the period of July 1, 1995 through June 30, 1998.

On February 24, 1998, the FOP filed the above-referenced unfair labor practice charge with the Public Employment Relations Board ("Board"). The charge alleges that by unilaterally changing the entitlement to have court appearances logged as compensatory time off, the City has violated sections 1607 (a) (1) and/or (a) (5), of the Police Officers' and Firefighters' Employment Relations Act (hereinafter "Act"). The

City's Answer denying the Charge was filed on March 12, 1998, and the FOP's Response to New Matter contained, therein, was filed on March 16, 1998. On March 24, 1998, the City filed a request to have the Charge either dismissed or, in the alternative, stayed pending exhaustion of the contractual remedies currently being pursued by the FOP.

The City contends the facts underlying the grievance which was appealed to arbitration by the FOP on February 6, 1998, are identical to those underlying the instant unfair labor practice charge. The City asserts it is prepared to abide by the arbitrator's decision and award and, therefore, the interests of the FOP will not be prejudiced by the requested order.

On April 7, 1998, the FOP filed its response opposing the granting of the City's requested Order. The FOP contends the contractual issue raised by the grievance is distinct and separate from the statutory issue raised by the unfair labor practice charge. The FOP contends the two issues exist independently of each other and the processing of one has no bearing upon the processing of the other.

#### ISSUE

Does the unfair labor practice charge qualify for dismissal or deferral under the Board's established deferral policy?

#### DISCUSSION

Contrary to the City's position, the mere presence of a common factual basis resulting in the filing of an unfair labor practice charge, alleging a statutory violation, and a grievance, alleging a violation of a collective bargaining agreement, does not warrant the dismissal of the unfair labor practice charge.

The Board has, however, adopted a limited deferral policy providing for the suspending the processing of an unfair labor practice charge pending exhaustion of

the parties' negotiated grievance and arbitration procedures. The deferral policy is grounded in the Board's belief that when parties have mutually committed themselves to mutually agreeable procedures for resolving contractual disputes, it is prudent and reasonable for PERB to afford those procedures the full opportunity to function. FOP #1 v. City of Wilmington, Del. PERB, ULP 89-08-040 (1989) Binder I @ p. 449.

The policy requires that the following conditions must be met before a charge is considered for deferral:

- 1) A decision on the unfair labor practice charge turns on the interpretation of a provision of the parties' collective bargaining agreement;
- 2) The parties have a long standing and well established collective bargaining relationship; and
- 3) The employer has clearly indicated its willingness to submit the contractual issue to arbitration.

Whenever an unfair labor practice charge is deferred, the PERB retains jurisdiction to reconsider the charge for any of the following reasons, upon the application of either party:

- 1) The arbitration award which was rendered failed to resolve the statutory claim;
- 2) Either party refused to abide by the arbitrator's decision;
- 3) The arbitral process was unfair;
- 4) The dispute was not being resolved by arbitration with reasonable promptness; and/or
- 5) The issue was satisfactorily resolved by the parties through collective

Where, as here, the determination of whether an unfair labor practice has occurred depends upon the interpretation of specific provisions of the parties' collective bargaining agreement, staying the processing of the unfair labor practice

charge and deferring the contractual interpretation issue to the parties' contractual grievance and arbitration procedure "... requires the parties to honor their contractual obligation rather than, by casting their dispute in statutory terms, to ignore their agreed upon procedures." City of Wilmington v. Local 1590, IAFF, Del. Supr., 385 A.2d 720 (1986).

**WHEREFORE**, the City's request for a Stay is granted, in accord with the provisions set forth above. The parties are ordered to notify the Board of their compliance with this Order,

**IT IS SO ORDERED.**

May 20, 1998  
(Date)

Charles D. Long  
Charles D. Long,  
Executive Director