

**STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD**

FRATERNAL ORDER OF POLICE, LODGE NO. 15,)	
Charging Party.)	
)	
and)	<u>DS No. 00-04-281</u> [1]
)	
CITY OF DOVER,)	
Respondent.)	

APPEARANCES

Perry F. Goldlust, Esquire, for F.O.P., Lodge No. 15
Sheldon N. Sandler, Esquire. for the City of Dover

BACKGROUND

Fraternal Order of Police, Lodge No. 15 (“FOP”) is an employee organization within the meaning of § 1620(f) of the Police Officers’ and Firefighters’ Employment Relations Act, 19 Del.C. Chapter 16 (“POFERA” or “Act”). FOP, Lodge 15 is the exclusive bargaining representative, within the meaning of 19 Del.C. § 1602(g), of all sworn police officers employed by the City of Dover Police Department in the ranks of Patrolman, Patrolman First Class, Corporal and Sergeant, and Lieutenants. The City of Dover, Delaware, (“City”) is a public employer within the meaning of 19 Del.C. § 1602(l).

[1] The unfair labor practice charge initially filed by the FOP on April 17, 2000, was subsequently amended to a Petition for a Declaratory Statement.

In March, 2000, the Dover Police Department was accredited by the Commission on Accreditation for Law Enforcement Agencies. On April 17, 2000, the FOP filed a Petition for a Declaratory Statement seeking a determination of whether certain conduct by the City would constitute violations of Sections 1607 (a)(5) and (a)(8) of the Act. [2] The specific conduct involved the City's refusal to produce all documents pertaining to the actual cost to the City/Department to attain and maintain accreditation and any resulting revenue enhancements. [3]

The FOP's position is twofold: First, the requested information is necessary in order for it to bargain effectively over the impact of accreditation upon terms and conditions of employment which are mandatory subjects of bargaining; Second, regardless of the reason for the request, the information constitutes a public record, as defined by 29 Del.C. Chapter 100, to which the bargaining representative is entitled under Section 1607(a)(8), of the POFERA.

On April 24, 2000, the City filed its Answer maintaining that the City's decision to seek accreditation constitutes an inherent managerial policy about which it is not required to collectively bargain with the FOP. The City contends that the production of information required by the POFERA applies only to mandatory subject of bargaining.

Under a section entitled "New Matter", the City contends that Section 10003, of 29 Del.C. Chapter 100, the Freedom of Information Act, ("FOIA") applies only to existing public documents. The information requested by the FOP is not contained in any

[2] Section 1607 provides, in relevant part: (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

(5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit.

(8) Refuse to disclose any public record as defined by Chapter 100 of Title 29.

[3] Included within the term "revenue enhancing" is cost savings realized from accreditation.

existing public document and the City is not obligated by FOIA to make independent and unduly burdensome calculations in order to create a public record. The City did agree that information concerning the cost of insurance would be provided to the FOP when available.

In its April 28, 2000, Response to New Matter, the FOP acknowledges that the accreditation process is a permissive subject of bargaining but contends that the cost of accreditation is relevant to bargaining over the impact of accreditation in areas such as the increased productivity resulting from accreditation.

Aside from the duty to bargain, the FOP contends that Section 1607(a)(8), of the POFERA requires the City to disclose any public record as defined by Chapter 100, of Title 29, without qualification. Any document reflecting the expenditure of public funds is clearly a public record within the meaning of 29 Del.C. Chapter 100.

On May 8, 2000, the City filed a Motion To Dismiss the FOP's Petition, with supporting argument consisting essentially of the FOP's acknowledgment that the accreditation program constitutes a permissive subject of bargaining which need not be negotiated. The City contends that it is not obligated to provide any information concerning a permissive subject of bargaining.

On May 16, the FOP filed an objection to the City's Motion for the reason that a Motion to Dismiss is not provided for in the Rules and Regulations of the Public Employment Relations Board (PERB). The Executive Director denied the City's Motion and a hearing was held on August 9, 2000, at which time the parties were afforded full opportunity to present evidence and argument in support of their respective positions. The FOP provided testimony, documentary evidence and oral argument. The City presented only oral argument. The following discussion and opinion result from the record thus compiled.

ISSUE

Whether failing to provide the requested information
would constitute a violation of 19 Del.C. §§ 1607 (a)(5)
and (a)(8), as alleged.

DISCUSSION

The duty to bargain in good faith includes a duty on the part of the public employer to supply an exclusive bargaining representative, upon request, with sufficient information to enable that representative to understand and intelligently discuss the issues raised at the bargaining table. NLRB v. Truitt Mfg. Co., 351 US 1249, 38 LRRM 2042 (1956); NLRB v. Acme Industrial, 385 US 431, 64 LRRM 2069 (1967). Employers must provide relevant, non-privileged information necessary for a collective bargaining representative to fulfill its statutory representation duty. Bd. Of Education v. Colonial Education Assn., Del. Chan., 152 LEEM 2369 (1996). An employer is required to provide this information in order to permit an exclusive bargaining representative to perform its function as bargaining agent.

On the other hand, an exclusive representative's request for information must be made in good faith. The information requested must relate directly to the organization's representational function and must be reasonably necessary to the performance of that function. NLRB v. Item Co., 5th Cir.; 222 F.2d 956, LRRM 2709 (1955).

The FOP's contention that the cost of attaining and maintaining accreditation and the resulting revenue enhancement if any, is necessary for bargaining over the impact of accreditation upon mandatory subjects of bargaining is unpersuasive. The FOP acknowledges that the City's decision to pursue accreditation is a permissive subject of bargaining. Thus, the cost of attaining and maintaining accreditation is unrelated to any duty on the City to bargain over that decision.

Rather than a single source of revenue, an Employer's position at the bargaining table reflects a myriad of economic factors. Consequently, revenue enhancements alone have no meaningful significance insofar as they concern collective bargaining over the impact of accreditation upon terms and conditions which are mandatory subjects of bargaining.

The record contains no evidence that the City has claimed inability to pay. To the contrary, the FOP argues that the requested information is necessary so that the FOP can be prepared in case the City asserts an inability to pay.

Thus, within the posture of the collective bargaining process at the time the Request for a Declaratory Statement was filed, refusal to provide the requested financial information would not constitute a refusal to bargain in good faith in violation of Section 1607 (a)(5), of the Act.

The more difficult issue concerns 19 Del.C. §1607 (a)(8). Section 19 Del.C. § 1601, provides:

§ 1601. Statement of Policy

It is the declared policy of the State and the purpose of this chapter to promote harmonious and cooperative relationships between public employers and their employees, employed as police officers and firefighters, and to protect the public by assuring the orderly and uninterrupted operations and functions of public safety.

These policies are best effectuated by:

- (1) Granting to police officers and firefighters the right of organization and representation;
- (2) Obligating public employers and organizations of police officers and firefighters which have been certified as representing their employees to enter into collective bargaining negotiations with the willingness to resolve disputes relating to terms and conditions of employment and to reduce to writing any agreements reached through such negotiations, and
- (3) Empowering the Public Employment Relations Board to assist in resolving disputes between police officers and firefighters and their public employers and to administer this chapter.

Regardless of the reason, a dispute resulting from a request by an exclusive employee representative for public documents subject to 29 Del.C. Chapter 100, undermines the primary purpose underlying the Act and is, therefore, within the jurisdiction of the Public Employment Relations Board to resolve.

The language of 19 Del.C. § 1607 (a)(8) is clear, unambiguous and without qualification. An Employer is obligated to provide a certified bargaining representative with public documents as defined in 29 Del.C. Chapter 100, the Freedom of Information Act, regardless of the reason for which the information is sought.

CONCLUSIONS OF LAW

1. Failure to provide the FOP with existing documents concerning the cost of attaining accreditation, maintaining accreditation, and revenue enhancements, if any, relating thereto, would not constitute a violation of 19 Del.C., 1607 (a)(5).

2. Failure to provide the FOP with existing documents which reflect the cost of attaining accreditation, maintaining accreditation and associated revenue enhancements, if any, would constitute a violation of 19 Del.C., 1607 (a)(8).

October 20, 2000

(Date)

/s/Charles D. Long_____

Charles D. Long,
Executive Director