

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

FRATERNAL ORDER OF POLICE, LODGE 4,	:	
	:	
Charging Party,	:	Review of Hearing
	:	Officer's Decision
v.	:	
	:	<u>U.L.P. No. 01-06-321</u>
CITY OF NEWARK, DELAWARE,	:	
	:	
Respondent.	:	

Appearances

Perry F. Goldlust, Esq., Heiman, Aber, Goldlust & Baker, for FOP Lodge 4
Sheldon N. Sandler, Esq., Young, Conaway, Stargatt & Taylor, for the City

Background

Fraternal Order of Police Lodge 4 (“FOP”) is an employee organization within the meaning of §1602(g) of the Police Officers’ and Firefighters Employment Relations Act, 19 Del.C. Chapter 16 (1986), (“POFERA”). FOP Lodge 4 is the exclusive representative of uniformed Newark police officers at and below the rank of Captain, within the meaning of §1602(h) of the POFERA.

The City of Newark, Delaware, is a public employer within the meaning of §1602(l) of the POFERA.

This matter stems from an unfair labor practice charge filed on June 28, 2001 by the FOP against the City. The FOP alleged that the City violated 19 Del.C. § 1607(a)(2) and (a)(5).¹ Specifically, the FOP alleged that the City caused a letter to be delivered to every member of the bargaining unit regarding a rejected offer from the City in violation of Delaware law.

On July 5, 2001, the City moved to dismiss the charge. After the parties presented briefs, on August 22, 2001, the Executive Director found that the pleadings did not provide a basis to find probable

¹ (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization;
5) Refuse to bargain collectively in good faith with the public employer or its designated representative if the employee organization is an exclusive representative.

cause to believe that the City violated its duty to bargain in good faith or interfered with the existence or administration of the FOP. Thereafter, the FOP appealed to this Board.

Discussion

The facts are essentially undisputed. On or around June, 2001, the parties were engaged in negotiating a collective bargaining agreement with a Board appointed mediator. During a June 21, 2001, mediated bargaining session, the City made an oral proposal which was unacceptable to the FOP. Thereafter, the FOP scheduled a general membership meeting for June 27, 2001.

On the morning of June 27, 2001, the City caused a letter signed by Carl F. Luft, City Manager, to be delivered to every member of the bargaining unit. The letter's stated purpose was to "ensure that each of you is aware of and understands the City's offer."

Article V of the Rules and Regulations of the Delaware Public Employment Relations Board provides:

5.6 Decision or Probable Cause Determination

- (a) Upon review of the Complaint, the Answer and the Response, the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred.

In Paul v. Board of Education of the New Castle Co. Vocational Tech School District, Del.PERB, U.L.P. No. 88-12-029 (February 7, 1989), this Board found that for unilateral communications to constitute an unfair labor practice, there must be a determination as to whether it violates 19 Del.C. §1607(a)(2) and(5). While such communications may not be per se violations of the law, they may be considered as evidence indicating a lack of good faith bargaining. As a result, "not only the content of the specific communication in question but also the circumstances surrounding its publication and distribution are relevant." Paul, at 7.

Given our prior ruling in Paul, this Board finds that the factual circumstances surrounding the communication, timing of the letter, and the history of the parties' relationship and prior communications need to be examined. A full exploration of the allegations should be explored by a hearing. The

Charging Party is required to show only that an unfair labor practice “may” have occurred. PERB Rule 5.7. The timing of the letter and the prior history of communications coupled with the letter itself meets this requirement.

DECISION

Consistent with the foregoing discussion, the Board finds probable cause to believe that the City violated its duty to bargain in good faith or dominated, interfered with, or assisted in the existence or administration of the FOP in violation of 19 Del.C. §1607(a)(2) and/or (a)(5) when the City’s letter was delivered directly to the bargaining unit employees.

WHEREFORE, this matter is remanded to the Executive Director for hearing in accordance with this Board’s rules.

IT IS SO ORDERED

/s/Henry E. Kressman
HENRY E. KRESSMAN, Chairman
Delaware Public Employment Relations Bd.

/s/R. Robert Currie
R. ROBERT CURRIE, Member
Delaware Public Employment Relations Bd.

/s/Elizabeth D. Maron
ELIZABETH D. MARON, ESQ., Member
Delaware Public Employment Relations Bd.

Dated: November 27, 2001