

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

AMERICAN FEDERATION OF STATE,)	
COUNTY AND MUNICIPAL WORKERS,)	
Charging Party.)	
)	<u>ULP No. 01-01-306</u>
v.)	
)	
NEW CASTLE COUNTY,)	
Respondent)	

PROBABLE CAUSE DETERMINATION

The Petitioner, AFSCME, Local No. 1607, (“Petitioner” or “AFSCME”) is an employee organization within the meaning of 19 Del.C. §1302(i) and the exclusive bargaining representative of certain employees of the Respondent within the meaning of 19 Del.C. §1302(j). The Respondent, New Castle County (“Respondent” or “County”), is a public employer within the meaning of 19 Del.C. §1302(n).

The Charge filed with the Public Employment Relations Board (“PERB”) on January 18, 2001, alleges that on or about January 4, 2001, the County issued administrative policy #308, Outside Employment (“Policy”), which establishes procedures requiring prior approval and limiting outside employment by paramedics to a maximum of 20 hours per week. AFSCME contends that by unilaterally imposing restrictions on outside employment the County has violated 19 Del.C. §1307(a)(5).

AFSCME requests that the County be enjoined from implementing the Policy and that this matter be processed on an expedited basis.

In its Answer filed on January 29, 2001, the County denies the allegations and, under a section entitled New Matter, contends the following:

1. The Complaint fails to state a claim upon which relief can be granted;
2. The PERB should defer this issue to arbitration;
3. There is no factual basis for granting the preliminary relief requested by the Petitioner;
4. The Petitioner has failed to exhaust available contractual remedies available to redress any part or all of its grievances as outlined in the unfair labor practice petition.
5. The subject matter of the Policy is reserved to management under the collective bargaining agreement;
6. The subject matter of the Policy is an inherent management right under the Public Employment Relations Act.

In its Response filed on January 30, 2001, the Petitioner denies all of the New Matter set forth in the Respondent's Answer.

DISCUSSION

Concerning County's New Matter, as set forth above:

Paragraph 1 does not address the merits of the underlying issue and is best raised in the form of argument.

Paragraph 2 cites no provision in the collective bargaining agreement supporting the requested deferral to arbitration. By inference, the request for deferral is premised upon the

management rights provision in the collective bargaining agreement, as referenced in Item No. 5. Notwithstanding the lack of specificity, the issue of deferral does not address the merits of the underlying issue and is best raised in the form of argument.

Concerning Paragraph 3, it is established Delaware law that, to be successful, a request for preliminary injunctive relief must satisfy two requirements: 1) the charging party must establish that a reasonable probability that it will ultimately prevail on the merits of the dispute; and 2) that it will suffer irreparable injury if its request for injunctive relief is denied.” Gimbel v. Signal Companies, Inc., Del. Ch., 316 A.2d 599(1974). Failure to establish either element precludes the granting of the requested relief. New Castle County Vocational Technical Ed. Ass’n. v. New Castle County Vocational Technical School District, Del.PERB, ULP85-05-025, I PERB Binder 257 (1988).

There is no showing of irreparable harm resulting from the implementation of administrative policy #308. Corrective action against any affected employee for failing to comply with the Policy prior to a final resolution of the instant charge is subject to reversal should the Petitioner ultimately prevail. If the Employer elects to impose discipline prior to the final resolution of this charge, it does so at its peril.

Paragraph 4 does not address the merits of the underlying issue and is best addressed in the form of argument.

Paragraphs 6 does not address the merits of the underlying issue and is also best raised in the form argument.

In order to facilitate a timely resolution, the Petitioner’s request to expedite the processing of this matter is granted.

DECISION

The pleadings raise a legitimate issue which constitutes probable cause to believe that an unfair labor practice may have occurred. A hearing will be scheduled within the next thirty (30) days for the purpose of establishing a factual record upon which a decision can be issued. Argument concerning issues raised in the Answer under New Matter will be received prior to the close of the record.

March 14, 2001
(Date)

/s/Charles D. Long
Charles D. Long,
Executive Director