

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

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

*Appearances*

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

**Background**

The municipality of Newark, Delaware, is a public employer within the meaning of §1602(l) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 16 (1994).

Fraternal Order of Police Lodge No. 4 (“FOP”) is an employee organization within the meaning of 19 Del.C. §1602(g). The FOP is the exclusive bargaining representative of certain uniformed officers of the Newark Police Department, within the meaning of 19 Del.C. §1602(h).

FOP Lodge 4 filed an unfair labor practice charge alleging the City violated 19 Del.C. §1607(a)(2) and (a)(5)<sup>1</sup> when the City Manager issued a letter to each individual member of the bargaining unit describing the City’s position at the conclusion of mediation. The letter was placed in the mailbox of each officer on the morning of a scheduled union general membership

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<sup>1</sup> 19 Del.C. §1607:

- (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 collective in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit.

meeting at which members were to vote on whether to accept the City's offer (which the FOP bargaining team had rejected at the conclusion of mediation).

After this Board made a Probable Cause Determination, the Executive Director of the Public Employment Relations Board ("PERB") conducted a hearing, received evidence and argument, and issued his decision on April 30, 2002, finding:

By sending the letter dated June 27, 2001, concerning the City's proposal for a successor collective bargaining agreement directly to individual bargaining unit members, the City did not violate 19 Del.C. §1607, Unfair Labor Practices, subsection (a)(2) and (a)(5) of the Act, as alleged. [Notice of Determination, ULP 01-06-321]

On May 8, 2002, the FOP requested this Board review the Executive Director's decision, asserting it was not supported by substantial evidence and was contrary to law.

A public meeting of PERB was convened on June 19, 2002, at which all members were in attendance. Counsel for the parties was afforded the opportunity to make oral argument and the Board received and reviewed the record created below in its entirety. By unanimous vote, the Board affirmed the decision of the Executive Director. This is the decision resulting from that meeting.

### **DISCUSSION**

This matter was remanded by this Board to the Executive Director to receive evidence in order to determine whether the City of Newark committed an unfair labor practice under the criteria established in Paul v. New Castle County Vocational Technical School Board of Education, Del. PERB, ULP 88-12-029, I PERB 395 (1989). The Board directed the Executive Director to consider the factual circumstances surrounding the City's communication to the bargaining unit members, the timing of the letter, the history of the relationship between the City and FOP Lodge 4, and the history of any prior communications of this type.

We limit our review of the Executive Director's decision to the record created by the parties below, as supplemented by the parties' arguments on appeal. We review the decision in order to determine whether it is substantially supported by the record, whether an error of either law or fact was committed, or whether the decision is otherwise arbitrary or capricious.

Given the facts found by the Executive Director and supported by the record, we find there was no negative motive underlying the City's communication to officers of the FOP Lodge 4 bargaining unit. We likewise find that there was no bad faith under the criteria established in the Paul decision.

The City Manager's letter constituted straightforward communication of the type allowed under the POFERA. Neither the letter itself nor the surrounding circumstances supports a conclusion that this communication was coercive, even considering that its delivery to bargaining unit members occurred on the morning of a planned FOP meeting at which the membership was asked to vote on the City's offer.

The FOP had full opportunity to explain to its members whatever inaccuracies it believed the letter contained, as well as to summarize the negotiations and mediation processes between the parties, including what had been requested and offered, agreed upon and left in dispute for the binding interest arbitration process if the membership rejected the City's offer. The City's letter clearly conveys that the parties had "failed to reach an agreement on a new contract" and purports only to set forth the City's offer for the awareness and understanding of the officers.

### **DECISION**

Based upon the record created before the Executive Director and the arguments presented to this Board at its June 19, 2002 meeting, we find the Executive Director's decision to be supported by substantial evidence in that unfair labor practice was committed, consistent with this agency's prior decision in Paul v. New Castle County Vocational Technical School District,

Del. PERB, ULP No. 88-12-029, I PERB 395 (1989), and does not contain errors of either law or fact.

**WHEREFORE**, the Hearing Officer's decision is affirmed in its entirety and the Charge is dismissed.

IT IS SO ORDERED

*/s/Henry E. Kressman*  
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Henry E. Kressman, Chairman

*/s/R. Robert Currie, Jr.*  
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R. Robert Currie, Jr., Member

*/s/Elizabeth D. Maron, Esquire*  
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Elizabeth D. Maron, Esquire, Member

Dated: 11 July 2002