

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

FRATERNAL ORDER OF POLICE,)	
LODGE NO. 4,)	
Petitioner,)	
)	ULP No. 01-06-321
and)	
)	
CITY OF NEWARK,)	
Respondent)	

BACKGROUND

The City of Newark (“City”) is a public employer within the meaning of Section 1602(l) of the Police Officers’ and Firefighters’ Employment Relations Act, 19 Del. C. Chapter 16 (1986) (“Act”).

The Fraternal Order of Police, Lodge No. 4, (“FOP”) is an employee organization within the meaning of Section 1602(g) of the Act and the exclusive bargaining representative of certain employees of the City’s Police Department within the meaning of Section 1602(h) of the Act.

On June 28, 2001, the FOP filed this unfair labor practice charge alleging the City violated §1607, Unfair Labor Practices, subsection (a)(2) and (a)(5) of the Act, which provides:

- (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 an employee representative which is the exclusive representative of employees in an

appropriate unit.

The charge resulted from a letter dated June 27, 2001, from the City Manager to each bargaining unit employee purportedly setting forth the City's final offer. It provides, in its entirety:

As you know by now, the City and the negotiating committee for your union have failed to reach an agreement on a new contract. I am writing this letter to ensure that each of you is aware of and understands the City's offer.

1. Retiree and spouse health insurance - Each retiring employee will be offered a choice of two options at normal retirement:

A. The City will pay 100% of the health insurance premium for up to 15 years after the employee's retirement. The City will pay \$8 per month multiplied by the Employee's years of service as a police officer toward the spouse's premium for up to 15 years.

B. The City will pay the premium rate in effect for the employee as of the employee's retirement date for the life of the retiree. The City will pay \$8 per month multiplied by the employee's years of service as a police officer toward the spouse's premium for life. Coverage commences after the employee/retiree reaches age 55 and retires from employment as a police officer.

2. Effective January 1, 2002, the method for calculating flex points will be revised. If this change were implemented at today's premium rates, it would reduce the number of flex points from 126 to 91. This would result in a maximum monthly payroll deduction, at today's rates, of \$34.32. If your selections cost less than 91 points, you would not be required to make

a payroll deduction.

3. Effective January 1, 2002, the copay amounts for most health insurance benefits will increase from \$5 to \$10, The copay amount for a 30 day supply of a generic drug will increase from \$5 to \$7.50 and for most brand names from \$5 to \$10.

4. Annual salary rates at each step will increase as follows:

April 1, 2001	3.25%
April 1, 2002	3.25%
April 1, 2003	3.50%
April 1, 2004	3.50%
April 1, 2005	4.0%

This proposal is consistent with the agreement the City recently reached with the Employees Council. The only exception is the first retirement health insurance option which was offered to reflect the earlier age at which you may retire.

I believe that this is a reasonable and fair offer. It is my sincerest hope that you will give it your serious consideration.

Sincerely,
Carl F. Luft
City Manager

The letter was delivered to the individual employees on the day of a scheduled vote by the FOP's membership on the City's last offer which had been rejected by the FOP's bargaining committee.

On July 5, 2001, the City filed its Answer to the Charge, including new matter. The City simultaneously filed a Motion to Dismiss the complaint and a supporting brief. The FOP filed a Brief in Opposition to the City's Motion to Dismiss on July 17, 2001, and the City responded by filing a Reply Brief on July 20, 2001.

On August 22, 2001, the Executive Director determined that:

Considered in the light most favorable to Charging Party, the pleadings do not provide a basis to find 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 Manager's July 27, 2001, letter was delivered directly to bargaining unit employees.

The FOP appealed the dismissal to the full Public Employment Relations Board (PERB) which heard the matter on October 17, 2001, following which the PERB, based upon Paul v. New Castle County Vocational Technical School Board of Education, Del. PERB, ULP 88-122-029, I PERB 395 (1989), reversed the Executive Director's finding of no probable cause and remanded the matter to the Executive Director for an evidentiary hearing in accordance with the PERB's rules.

A hearing was held before the Executive Director on January 17, 2002, at which the parties presented testimony and documentary evidence in support of their respective positions. Closing argument was provided in the form of written post-hearing briefs, the last of which was received on March 12, 2002. The following discussion and decision result from the record thus compiled.

ISSUE

Whether 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 violated §1607, Unfair Labor Practices, subsection (a)(2) and (a)(5) of the Act, as alleged?

PRINCIPAL POSITIONS OF THE PARTIES

Union: The Union argues the following:

1. The City's letter of June 27, 2001 was intended to circumvent the Union's bargaining committee.
2. The timing of the letter was designed for maximum impact to override the negative bargaining committee report to the membership.
3. The content of the letter was inaccurate and misleading.

City: The City points out that an employer generally has the right to inform its employees in non-coercive terms about the status of labor negotiations and the employer's view of proposals being negotiated.

The City contends that no circumstances are present establishing that the Letter of June 27, 2001, was coercive in any respect. The City's proposals had all been submitted to the Union and the letter was neither misleading nor intimidating.

The City contends that to find for the Union would require a conclusion that by merely writing and sending a benign explanation of its proposal an Employer per se violates the Act, the very conclusion rejected in Paul v. New Castle County Vocational Technical School Board of Education (Supra.).

The City contends that the Union has provided no evidence that the City did not bargain in good faith.

DISCUSSION

In Paul v. New Castle County Vocational Technical School Board of Education, (Supra.), cited by both parties, a tentative agreement between the bargaining committees was rejected by the Union rank and file. The alleged violation of 14 Del.C. sections 4007(a), (1), (2) and (5) of the Act centered around two (2) documents: 1) a published document entitled "NCCVTSD Board Review," and 2) The President of the Board of Education sent to the individual bargaining unit employees a letter dated November 23, 1988, which opens with the following paragraph:

The Board of Education was notified this past October
that the tentative contractual agreement between

the Administration and the Association teams was rejected by the Association members. Both teams worked long and hard to achieve a competitive and fair contract. I wish to provide information to help the faculty better understand the Board's position on several major issues.

With regard to this letter the hearing officer concluded:

Not every communication from an employer to its employees is prohibited. Direct communications do not, therefore, constitute per se violations of the Act; rather, they may be considered as evidence indicating a lack of good-faith bargaining. For this purpose not only the content of the specific communication in question but also the circumstances surrounding its publication and distribution are relevant.

Contrary to the allegations contained in Charging Party's complaint, the record contains no basis for concluding that the content of Mr. Slabach's letter implies that the bargaining unit officers did not supply the employees with accurate information concerning the tentative agreement. Nor is it biased and misleading. The letter contained no new offers nor did it attempt to demean the position of the bargaining representative. It is to be expected that the employer would present data supporting its position. If the Association considered that a response was necessary, it was free to do so as it deemed appropriate within the confines of the law.

Paul v. New Castle County Vocational Technical School Board of Education (Supra. at 397, 400-401).

The Union's argument that the June 27, 2001, letter was an attempt by the City to circumvent the Union's bargaining committee is unpersuasive. The letter contains no new offers. To the contrary, Union Vice-President and bargaining committee member John Agnor testified that everything in the letter had

been presented to the Union's bargaining committee by the mediator and that the letter only repeated that which had already been discussed by the parties.

Vice-President Agnor acknowledged the letter is neither coercive nor does it accuse the Union of dishonesty. Although some members of the bargaining unit questioned why the letter was sent, none of the witnesses stated they felt intimidated. Although no words in the letter attacked the effectiveness of the FOP's bargaining committee, Vice-President Agnor personally believed this was the City's intent, along with attempting to influence the membership vote.

Union President, John DiGhetto, also believed the letter was intended to undermine confidence in the Union's bargaining committee. The sole basis for his belief is one sentence in the letter which provides: "I am writing to ensure that each of you is aware of and understands the City's proposal."

Although this may have been the subjective reaction of Officers Agnor and DiGhetto, this one sentence does not establish that the City intended to undermine confidence in the Union's bargaining committee. The stated purpose of the letter mirrors the purpose of the communication at issue in Paul (Supra.) Although there is evidence that some bargaining unit members questioned why the letter was sent, there is no evidence that any bargaining unit employee believed the letter was intended to undermine the competency of the Union's bargaining committee.

The Union witnesses also acknowledge the letter was neither coercive nor accuses the Union of dishonesty.

The Union's reliance upon the fact that after the initial two (2) proposals from the City in January 2001, subsequent proposals were made orally rather than in writing, is a non-factor. At issue here is not an unfair labor practice alleging an improper course of conduct during the negotiations. This change focuses solely on the letter of June 27, 2001.

Considered within the context of the foregoing discussion, the letter of June 27, 2001, does not rise to the level of an attempt by the City to undermine confidence in or otherwise circumvent the FOP's bargaining committee.

The FOP's argument that the timing of the letter was designed for maximum impact to override the negative bargaining committee report to the membership is likewise unpersuasive. It is to be logically expected that the employer would present data supporting its position. This expectation does not transform the letter into a violation of Section 1607 (a) (2) and (5), as alleged.

Although the members of the FOP's bargaining committee members did not receive a copy of the letter addressed to them as team members, each received a copy like every other bargaining unit employee. If the FOP considered a response was necessary, it was free to respond as it deemed appropriate within the confines of the law. Paul (Supra.) The FOP, in fact, had the opportunity to address the letter with the membership, however it determined appropriate, at the Union meeting which occurred after the letter was distributed and prior to the scheduled vote.

The Union further argues that the content of the letter was inaccurate and misleading. It cites the following three (3) omissions as the basis for its position:

- * The Letter fails to mention the City's position on Worker's compensation.
- * The letter did not contain the fact that the computation of the flex plan would be based on the amount that most favors the City.
- * The City failed to mention the 25th anniversary limitation in its retiree health care proposal.

With regard to worker's compensation, the City's proposal contained no change to the substance of the existing plan. The only new element was a guarantee that the existing plan would not be changed during the term of the Agreement. Although possibly not meeting the bargaining unit's overall expectation, this commitment would reasonably be perceived by the bargaining unit as a positive rather than a negative proposal.

The other two (2) omissions cited by the FOP are, at best, de minimus when considered within the totality of what were expansive and complex negotiations. The City was entitled to present a summary of what it considered to be the essence of its overall proposal. The FOP's witnesses acknowledge that the substance of the City's entire proposal was presented to the Union during the negotiation process,

including mediation. The letter was in the FOP's possession prior to the scheduled meeting and the FOP had every opportunity before the scheduled vote to rebut the content of the letter or use the alleged omissions to its advantage. This was a risk of which the City was clearly aware when deciding to send the letter. Considered within the totality of the circumstances presented, this letter does not rise to the level of bad-faith bargaining.

CONCLUSIONS OF LAW

1. The City of Newark ("City") is a public employer within the meaning of Section 1602(l) of the Police Officers' and Firefighters' Employment Relations Act, 19 Del. C. Chapter 16 (1986) ("Act").

2. The Fraternal Order of Police, Lodge No. 4, ("FOP") is an employee organization within the meaning of Section 1602(g) of the Act and the exclusive bargaining representative of certain employees of the City's Police Department within the meaning of Section 1602(h) of the Act.

3. 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 §1607, Unfair Labor Practices, subsection (a)(2) and (a)(5) of the Act, as alleged.

**PURSUANT TO 19 DEL.C. SECTION 1606, NEW CASTLE COUNTY IS HEREBY ORDERED
TO:**

1. Within ten (10) calendar days from receipt of this decision, post the attached NOTICE OF DETERMINATION at each location throughout the City where notices of general interest to police officers are normally posted. The Notice shall remain posted for a period of thirty (30) days.

IT IS SO ORDERED.

Dated: April 30, 2002

/s/Charles D. Long, Jr.

Charles D. Long, Jr.,
Executive Director