

PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF DELAWARE

AMALGAMATED TRANSIT UNION,)	
LOCAL 842,)	
)	
Petitioner,)	ULP No. 03-06-394
)	
STATE OF DELAWARE DEPARTMENT)	
OF TRANSPORTATION, DELAWARE)	
TRANSIT CORPORATION,)	
)	
Respondent.)	

BACKGROUND

The Amalgamated Transit Union, Local 842, ("ATU") is an employee organization within the meaning of the Public Employment Relations Act 19 Del.C. Chapter 13 ("ACT") specifically §1302(i). ATU is the exclusive representative of the bargaining unit consisting of operating and maintenance employees employed by the Delaware Administration for Regional Transit ("DART") within the meaning of 19 Del.C. §1302(j).

State of Delaware, Department of Transportation/Delaware Transit Corporation ("DTC" or "State") is a public employer within the meaning of §1302(p) of the Act. [1]

[1] The Delaware Authority for Regional Transit ("DART") was created by the Delaware General Assembly in 1969 as a provider of public transit. In 1994 the General Assembly created the Delaware Transit Corporation (DTC) to oversee DART and the operation and management of the public transit system within Delaware. Currently, DTC is responsible for overseeing bus service along fixed routes throughout the State (Now "DART First ATU alleges that by unilaterally withdrawing the no-fault attendance policy/perfect attendance policy the State has violated Sections 1307(a)(1) and (a)(5) of the Act, which provide:

§1307. Unfair Labor Practices.

(a) It is an unfair labor practice for a public employer

or its designated representative to do any of the following:

(1) Interfere with, restrain or coerce any employee

in or because of the exercise of any right guaranteed

under this chapter.

(5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, except with respect to a discretionary subject.

DISCUSSION

The basis for this unfair labor practice charge filed by ATU with the PERB on June 24, 2003, is set forth in paragraphs 5 and 6, of the Complaint, which provide:

5. On or about November 3, 1994, DART/DTC notified ALL DART/DTC employees that a no-fault attendance policy/perfect attendance recognition policy was being implemented. The no-fault attendance policy perfect attendance recognition policy pertains to all employees at DART and involves the rewards and discipline of the employees' attendance at DART/DTC. A true and correct copy of said policy is attached hereto as Exhibit "A" and incorporated herein.

State"); specialized paratransit for disabled, infirmed and elderly patrons ("DAST"); and rail commuter service.

6. On or about March 1, 2003, DART unilaterally rescinded the no-fault attendance policy/perfect attendance policy thereby unilaterally and without bargaining changing the terms and conditions of employment. Specifically, DART/DTC unilaterally rescinded the attendance policy by posting a memorandum indicating that effective March 1, 2003, the no-fault attendance policy and perfect attendance recognition policy is rescinded. A true and correct copy of said memorandum is attached hereto as Exhibit "B" and incorporated herein.

On June 14, 2003, the State filed its Answer admitting all of the factual allegations set forth in the Complaint and raising the following affirmative defenses: 1) The principles of Equitable Estoppel preclude the Union from arguing this claim; 2) The doctrine of laches should

bar the Union from advancing its claim at this time; 3) The Union failed to file its charge in a timely fashion; and 4) The unfair labor practice charge should be deferred to arbitration.

On July 30, 2003, ATU filed its response to the new matter contained in the State's Answer in which it essentially contested each of the affirmative defenses raised by the State.

DETERMINATION

In Council 81 v. State of Delaware, Dept. of Transportation, Div. of Highways, Del. PERB, ULP 95-01-111, II PERB 1279, 1291 (1975), the PERB held that:

. . . [M]atters concerning or related to discipline are a condition of employment and may not be unilaterally altered by either party without negotiation at least to the point of impasse.

The State's Answer to the Complaint places none of the facts alleged therein in dispute. The New Matter alleged by the State raises legal rather than factual issues. Consequently, a hearing to establish a factual record upon which a decision can be rendered is unnecessary.

Therefore, construed in a light most favorable to the Charging Party, the pleadings constitute reason to believe that an unfair labor practice may have occurred.

August 8, 2003
(Date)

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