

STATE OF DELAWARE
DELAWARE PUBLIC EMPLOYMENT RELATIONS BOARD

ARMOND D. WALDEN,)	
)	
Charging Party,)	
)	
v.)	ULP No. 04-11-456
)	
STATE OF DELAWARE, DART FIRST)	
STATE, DELAWARE TRANSIT)	
CORPORATION,)	
)	
Respondent.)	

PROBABLE CAUSE DETERMINATION

The State of Delaware, Department of Transportation, Delaware Transit Corporation (“DTC”) is a public employer within the meaning of § 1302(p), of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1986).

Armond D. Walden (“Walden” or “Charging Party”) was a public employee within the meaning of 19 Del.C. §1302(o) of the PERA who was employed by DTC as a Fixed Route Driver at the time of his termination earlier in 2004.

At all times relevant to this Charge, Charging Party was a member of ATU, Local 842, the exclusive bargaining representative of the Fixed Route Drivers within the meaning of 19 Del.C. §1302(j). DTC and ATU, Local 842 are parties to a collective bargaining agreement for the period December 1, 2002, through November 30, 2007.

This unfair labor practice charge was filed by Charging Party with the PERB on November 9, 2004. The charge alleges conduct by the State including “harassment,” “threats,” and “intimidation” because Charging Party engaged in Union activity and exercised his protected rights under 19 Del.C. Chapter 13. Charging Party alleges violations of 19 Del.C. §1307(a)(1), (2), (4), (5),(7) and (8), 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.
- (2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization.
- (4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony 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.
- (7) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.
- (8) Refuse to disclose any public record as defined by Chapter 100 of Title 29.

Charging Party also alleges violations of 19 Del.C. Chapter 8, Protection of Employees’ Rights, specifically §802, Requirements before any public authority may

take over and operate privately owned mass transit systems, sub-sections (3) and (4) and §803, Required contract provisions.¹

The State's Answer to the Charge filed on November 19, 2004, denies the material allegations set forth in the Complaint and points out that allegations set forth in paragraphs 3 through 6 of the Complaint "are identical in all relevant aspects to the allegations made by Timothy Joynes in Joynes v. State of Delaware, et.al., PERB U.L.P. Case No. 04-01-415."²

The State's Answer also includes the following New Matter: 1) "The Unfair Labor Practice Charge Should Be Dismissed On Timeliness Grounds." The State's rationale is that the acts complained of are identical in all relevant respects to the Charge filed on January 5, 2004. As the conduct complained of by Joines occurred prior to January 5, 2004, the filing of the instant Charge exceeds the 180 day filing period set forth in PERB Rule 5.2, Filing of Charges, subsection (a).

2) "The PERB Should defer the Charging Party's Unfair Labor Practice Charge To Arbitration." The State maintains that the arbitration clause in the parties' collective bargaining agreement encompasses disputes of the type which appear to be raised by the Complaint. Since the resolution of the issues raised by Charging Party require the interpretation of language in the collective bargaining agreement, the U.L.P. should be deferred to the contractual arbitration procedure.

Charging Party's Response, filed on November 30, 2004, denies the New Matter contained in the State's Answer.

¹ The interpretation, application and/or enforcement of the provisions of 19 Del.C. Chapter 8, Protection Of Employee's Rights, are not within the jurisdiction of the PERB and are not, therefore, considered in this Probable Cause Determination.

² U.L.P. No. 04-01-415 was filed by Timothy Joynes on January 5, 2004.

DISCUSSION

The authority conferred upon the PERB by the State legislature is to, “. . . assist in resolving disputes between public employees and public employers and to administer this chapter. 19 Del. C. §1301 (3). Section 1306 of the PERA, Public Employment Relations Board, provides: “The Board, established by §4006 of Title 14, known as the ‘Public Employment Relations Board,’ shall be empowered to administer this chapter under the rules and regulations which it shall adopt and publish.”

The authority to issue either a decision or a finding of probable cause to believe that an unfair labor practice may have occurred based upon the pleadings is found in Article 5.6 of the Rules and Regulations of the Public Employment Relations Board, which 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. If the Executive Director determines there is no probable cause to believe that an unfair labor practice may have occurred, the party filing the charge may request that the Board to review the Executive Director’s decision in accord with the provisions set forth in Regulation 7.4. The Board will decide such appeals following a review of the record, and, if the Board deems necessary, a hearing and/or submission of briefs.

5, Unfair Labor Practice Proceedings, Section 5.2, Filing of Charges, states, in relevant part:

(a) A public employer, labor organization and/or one or more

employees may file a complaint alleging a violation of 14 Del.C. §4007, 19 Del.C. §1607, or 19 Del.C. §1307.

. . .

(c) The charge shall include the following information:

(3) A clear and detailed statement of the facts constituting the alleged unfair labor practice, including the names of the individuals involved in the alleged unfair labor practice, the time, place of occurrence and nature of each particular act alleged, and reference to the specific provisions of the statute alleged to have been violated. Each fact shall be alleged in a separate paragraph with supporting documentation where applicable.

PERB Rule 5.2 requires that an unfair labor practice complaint be filed not more than 180 days after the date of the incident giving rise to the charge and assures not only that the Respondent has sufficient information enabling the preparation of an informed Answer but also enables the PERB to fulfill the requirements of Rule 5.6, insofar as issuing either a decision or a probable cause determination.

Here the Complaint is deficient in several respects. Paragraphs 1, 2, the majority of paragraph 3, and 4, 5, 6, and 8 of Charging Party's Complaint are identical to paragraphs 1,2, 3, the majority of paragraph 4, and 5,6,7, and 8, of a complaint filed by DART employee Timothy Joynes on January 5, 2004. Whether the specific conduct by management complained of by Charging Party is the same or similar to the conduct complained of by Joynes is unclear. If the former, this Complaint filed on November 9, 2004, does not comply with the 180 day filing period required by PERB Rule 5.2.

The Charge is deficient because it does not meet the requirements of PERB Rule 5 (c). It fails to include facts which, if proven, would support a conclusion 1) that Charging Party was engaged in activity that is protected under the PERA; 2) that DTC had knowledge of his protected activity; 3) that DTC engaged in conduct that interfered with, retaliated against, coerced or restrained Charging Party in the exercise of his protected rights.

Facts to support allegations, including the names of individuals involved, date and place of occurrence and the nature of the conduct involved which are alleged to have violated the PERA, must be set forth with enough specificity to allow PERB to evaluate whether there is probable cause to believe that an unfair labor practice may have occurred. This Charge sets forth only the Charging Party's conclusion that the law has been violated but does not define the incidents or actions on which those conclusions are based.

As a result, the Complaint fails to provide a sufficient basis for making an informed determination concerning whether the charge is timely filed and/or whether there are specific acts or conduct sufficient to establish probable cause to believe that an unfair labor practice may have occurred.

DECISION

Consistent with the foregoing discussion, the Complaint fails to establish probable cause to believe that the alleged violations of the 19 Del.C. §1307, may have occurred. The Charge is, therefore, dismissed without prejudice. Charging party may amend his Complaint to include specific acts or conduct upon which a determination as to timeliness

and an informed probable cause determination concerning the underlying substantive allegations can be made.

IT IS SO ORDERED

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

Dated: December 16, 2004