

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

ARMOND D. WALDEN,	:	
Charging Party,	:	
	:	
v.	:	<u>ULP No. 04-12-460</u>
	:	
STATE OF DELAWARE, DEPARTMENT	:	
OF TRANSPORTATION, DELAWARE	:	
TRANSIT CORPORATION,	:	
Respondent.	:	

**DECISION ON MOTION TO INTERVENE OF
AMALGAMATED UNION LOCAL 842 THROUGH
ITS TRUSTEE LARRY HANLEY AMALGAMATED
TRANSIT INTERNATIONAL UNION**

BACKGROUND

The State of Delaware, Department of Transportation, Delaware Transit Corporation (“DART/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.

An unfair labor practice charge was filed against the Respondent by Charging Party with the Delaware Public Employment Relations Board on December 15, 2004. The charge alleges conduct by DART/DTC in retaliation for Charging Party's engaging in protected activity and otherwise exercising his protected rights under 19 Del.C. Chapter 13.

On or about January 12, 2005, a Probable Cause Determination was issued finding the pleadings supported the further processing to determine whether DART/DTC had violated 19 Del.C. §1307(a)(1), (a)(2), (a)(3), and/or (a)(4) as alleged. A prehearing conference was held on February 10, and the hearing is scheduled for April 6, 2005.

On April 5, 2005, the Amalgamated Transit International Union, AFL-CIO ("ATIUI") moved to be included as an Intervenor in this matter and to be included in any proceedings on the morning of April 5, 2005. It also moved to continue the scheduled hearing in order to allow for adequate preparation. As set forth in its Motion, on or about March 25, 2005, the ATIUI placed ATU Local 842 into trusteeship. ATIUI argues that its interest in this unfair labor practice proceeding is related to the reasons that its Local 842 was placed into trusteeship, namely, "internal conflicts among incumbent officers and the local Union's ability to properly represent its members and process and resolve grievances." It further argues at ¶ 9 of its Motion:

The unfair labor practice charge filed by Armond Walden assert [*sic*] that Walden was engaged in protected activity including attempts to run for local Union office against incumbent officers, that the Delaware Transit Corporation knew that Walden was engaged in protected activity and that Walden's protected activity influenced or motivated the Delaware Transit Corporation's decision to terminate him. The charges concern issues arising under Delaware law and the collective bargaining agreement in place between ATU Local 842 and the Delaware Transit Corporation. As such the International Union, as Trustee for Local 842, has a vital interest in the matters raised.

DART/DTC verbally opposed the Motion to Intervene arguing that any interest the International Union has in this matter did not arise as a result of the International placing the local into trusteeship. DART/DTC asserts there was no interest when the Charge was filed in December and there is no interest in the matter now.

Further, DART/DTC disputes the ATIU position that the “allegations raised in this charge are lengthy and involve conduct which occurred over a period of time.” The DART/DTC asserts that the issue was limited in the Probable Cause Determination which was issued on January 12, 2005, and further focused and refined as a result of the prehearing conference PERB convened on February 10, 2005.

Charging Party Walden was also contacted by telephone and he stated that he does not oppose either the ATIU’s Motion to Intervene or its Motion for Continuance.

DISCUSSION

Delaware PERB Rule 1.7, Intervention, provides:

Any party desiring to intervene shall make a motion for such intervention, stating the grounds upon which such party claims to have an interest in the petition. . .

In order for a party to be granted leave to intervene in a proceeding which was initiated and involves other parties, it must affirmatively establish that it has an interest in the subject matter of the charge which is not adequately represented by the current parties to the matter. Alternatively, a party may be permitted to conditionally intervene where it makes a showing that its claim has a question of law or fact in common with the proceeding.

In this case, the basis for the charge is focused solely upon actions taken by DART/DTC. There is no allegation, indeed no inference, of an unfair labor practice having been committed by ATU Local 842. In fact, a separate and independent unfair labor practice charge subsequently filed by Charging Party against the ATU, Local 842, Vice President, is currently pending before the Delaware PERB, awaiting a probable cause determination.

The decision to grant intervener status is discretionary with the adjudicating agency. The ATIU has demonstrated no distinguishable interest in this matter and is, therefore, an unnecessary party to the proceeding. The inclusion of the ATIU as a party is not necessary to enable PERB to determine whether DART/DTC violated the statute, as alleged, or to enter an appropriate Order against DART/DTC should a violation be found.

DECISION

ATIU's Motion to Intervene is denied.

Since the Motion to Intervene is denied, ATIU has no standing to move for a continuance.

Dated: 5 April 2005

/s/Charles D. Long, Jr.

**Charles D. Long, Jr.,
Executive Director**