

**STATE OF DELAWARE**

**PUBLIC EMPLOYMENT RELATIONS BOARD**

<b>MICHAEL BROWN,</b>	:	
	:	
Charging Party,	:	<b>Review of Hearing</b>
	:	<b>Officer’s Decision</b>
v.	:	
	:	<b><u>U.L.P. No. 05-01-463</u></b>
<b>STATE OF DELAWARE, DEPT. OF TRANSPORTATION,</b>	:	
<b>DELAWARE TRANSIT CORPORATION,</b>	:	
	:	
Respondent.	:	

*Appearances*

*Michael Brown, Pro Se*  
*Jerry M. Cutler, State Labor Relations Office, SPO for DTC*

**Background**

Michael Eugene Brown (“Brown”) was employed by Delaware Transit Corporation as a Fixed Route Operator at the time of the incident at issue here. Brown was, therefore, a public employee within the meaning of section 1302(o) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13.

The Delaware Department of Transportation, Delaware Transit Corporation (“DTC”) is an agency of the State of Delaware (“State”) and a public employer within the meaning of §1302(p) of the PERA.

At all times relevant to the Charge, Brown was a member of Amalgamated Transit Union, Local 842, AFL-CIO, which is 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 of December 1, 2002 through November 30, 2007.

On January 12, 2005, Brown filed an unfair labor practice charge, alleging DTC violated 19 Del.C. §1307(a)(1), (3), (5) and (7)<sup>1</sup> as well as 19 Del.C. Chapter 8.<sup>2</sup> The Charge alleged DTC violated the PERA by and through its actions which resulted in Brown resigning his employment on August 30, 2004. Brown asserts he was accused of on-the-job misconduct and given the option to either resign or be terminated and arrested. ATU Local 842 representatives were present with Brown and advised him to resign. Brown did resign but then changed his mind and attempted to rescind his resignation on or about August 31, 2004. ATU Local 842 Officers advised him later that his request to rescind his resignation would not be granted.

On January 12, 2005, the State filed its Answer to the Charge, denying the material allegations and setting forth New Matter. On January 21, 2005, Brown filed his Response denying the new matter.

On January 28, 2005, the Executive Director of the Public Employment Relations Board (“PERB”) dismissed the Charge, finding there was no probable cause to believe the DTC’s conduct constituted an unfair labor practice under the PERA, as alleged. The decision concluded:

There is no substantive allegation in the Complaint, which if proven, would constitute a violation of 19 Del.C. §1307(a)(1), (a)(3), (a)(5) or (a)(7). This

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<sup>1</sup> (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.
- 3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.
- 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.

<sup>2</sup> The Executive Director correctly concluded that this agency is not responsible for the administration or enforcement of 19 Del.C. Chapter 8, Protection of Employee Rights.

does not, however, deprive Charging Party of a forum in which to process his complaint, the focus of which is that he was unjustly disciplined for conduct in which he asserts he did not engage. The presence or absence of “just cause”, the standard by which his termination will be judged in arbitration, raises a question of contract interpretation rather than a statutory question under the Public Employment Relations Act. Thus, the PERB is without jurisdiction to rule on the merits of Charging Party’s termination. Charging Party’s sole recourse is the contractual grievance procedure where his grievance is currently awaiting binding arbitration. (Probable Cause Determination, p. 5)

On February 4, 2005, Brown requested review of the Executive Director’s dismissal of the charge, and the State responded on February 8, 2005, in accordance with the procedures established by PERB Regulation 7.4. Each member of the Public Employment Relations Board was provided with a complete copy of the record. The Board met in public session on February 16, 2005, to consider Brown’s request. At that time, both Brown and the State presented oral argument.

### **POSITIONS OF THE PARTIES**

#### **Brown:**

Mr. Brown asserts that the Executive Director erred in dismissing the charge as it relates to DTC’s violation of 19 Del.C. §1307(a)(1) and §1303(2).<sup>3</sup> He also argued that by refusing to process his grievance through the grievance procedure, and imposing unjust discipline, the State has violated the law. Mr. Brown argues that to wait for arbitration will cause him great harm because he has been out of work for nine months and needs financial security.

#### **State of Delaware, DTC:**

The State argues the Executive Director was correct in dismissing this charge as there is nothing on the record which, even if proven, would constitute a violation of the Public

Employment Relations Act. The allegations of the charge concern Brown's resignation and his attempts to rescind that resignation, which will be properly heard and decided in the pending binding arbitration proceeding.

### **DISCUSSION**

Upon consideration of the record and the arguments of the parties, the Board unanimously affirms the Executive Director's decision to dismiss this Charge.

The authority of this Board is limited by the Public Employment Relations Act and relates primarily to how a union is certified to represent a group of public employees and to supporting and regulating the collective bargaining process through which the union and the employer reach an agreement concerning working conditions for bargaining unit employees. The statute requires that all collectively bargained agreements contain a "written grievance procedure by means of which bargaining unit employees, through their collective bargaining representatives, may appeal the interpretation or application of any term or terms of an existing collective bargaining agreement." 19 Del.C. §1313(c). Through the negotiated grievance procedure (with which both the union and the employer are required to comply), represented employees have the opportunity to have issues which arise out of the application or interpretation of the contract heard and decided by persons not directly involved in the complained of action.

All disputes that arise in the course of the employment relationship between a public employer and an employee represented by a union do not rise to the level of an unfair labor practice under the PERA simply because they seem "unfair". In order to find probable cause that an unfair labor practice may have occurred, the Charging Party must include facts which relate directly to and are reasonably and logically linked to the specific unfair practices enumerated in 19 Del.C. §1307. This charge does not meet that standard.

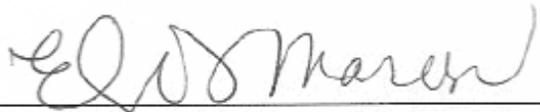
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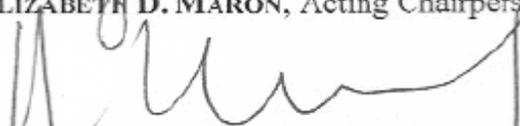
<sup>3</sup> §1303. Public employee rights. Public employees shall have the right to: . . .  
(2) Negotiate collectively or grieve through representatives of their own choosing.

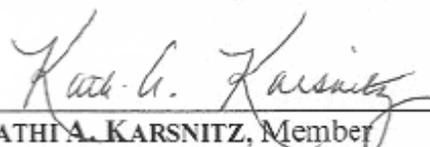
In this case, while the processing of the grievance may not have occurred as quickly as Mr. Brown would have liked, the State has confirmed that Mr. Brown's grievance concerning whether his termination was for just cause will be heard promptly by a neutral arbitrator in a binding proceeding administered by the American Arbitration Association. Although his charge does not rise to the level of an unfair labor practice, the merits of his complaint will be heard and resolved in binding grievance arbitration.

**WHEREFORE**, the Executive Director's decision to dismiss this Charge for failing to establish probable cause to believe that an unfair labor practice has been committed is affirmed in its entirety.

IT IS SO ORDERED

  
ELIZABETH D. MARON, Acting Chairperson

  
R. ROBERT CURRIE, JR., Member

  
KATHI A. KARSNITZ, Member

Dated: March 18, 2005