

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

SHARON Y. STRIBLING,	:	
	:	
Charging Party,	:	Review of Hearing
	:	Officer’s Decision
v.	:	
	:	<u>U.L.P. No. 05-01-465</u>
STATE OF DELAWARE, DEPT. OF TRANSPORTATION,	:	
DELAWARE TRANSIT CORPORATION,	:	
	:	
Respondent.	:	

Appearances

Sharon Y. Stribling, Pro Se
Catherine T. Hickey, Esq., State Labor Relations Office, SPO for DTC

Background

Sharon Y. Stribling (“Stribling”) was employed by Delaware Transit Corporation as a Fixed Route Operator at the time of her termination on or about August 28, 2004. Stribling 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, Stribling 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 8, 2005, Stribling filed an unfair labor practice charge, alleging DTC violated 19 Del.C. §1307(a)(1), (2), (3), (4), (5), (6), (7) and (8)¹ as well as 19 Del.C. Chapter 8.² The Charge alleged DTC violated the PERA by and through its actions which resulted in Stribling being terminated on September 28, 2005 for violation of a Last Chance Agreement. Stribling asserts DTC violated the statute and her rights during the pre-termination and pre-arbitration proceedings.

On February 2, 2005, the State filed its Answer to the Charge, denying the material allegations and setting forth New Matter. The State amended its Answer on February 8, 2005, to advise that the parties were also in the process of scheduling arbitration of the underlying issue.

On February 18, 2005, Stribling filed her Response denying the new matter.

On March 2, 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 stated:

¹ (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.
- 3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.
- 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.
- 6) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.
- 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.

² 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.

Even in the absence of a finding of probable cause and without deferral to the contractual arbitration procedure, there is a forum available for Charging Party to litigate all aspects of her underlying complaint that she was unjustly disciplined. . . [P]ursuant to the contractual grievance and arbitration procedure an arbitration is currently being scheduled by the State and the local union. . . .

The presence or absence of “just cause,” the standard by which her termination will be judged in arbitration, raises a question of contract interpretation rather than a statutory question under the Public Employment Relations Act. Thus, 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 her grievance is currently awaiting binding arbitration.

On March 11, 2005, Stribling requested review of the Executive Director’s dismissal of the charge, and the State responded on March 18, 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 April 20, 2005, to consider Stribling’s request. At that time, both Stribling and the State presented oral argument.

POSITIONS OF THE PARTIES

Stribling:

Ms. Stribling asserts that the Executive Director erred in dismissing the unfair labor practice charge.

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. Charging Party’s concerns raise a question of contractual

interpretation 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 primarily 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, 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.

In this case, the State has confirmed that Ms. Stribling's grievance concerning whether her termination was for just cause will be heard promptly by a neutral arbitrator in a binding proceeding administered by the American Arbitration Association. Although her charge does

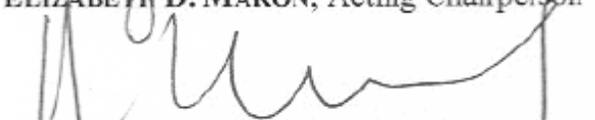
not rise to the level of an unfair labor practice, the merits of her complaint will be heard and resolved in binding grievance arbitration.

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.

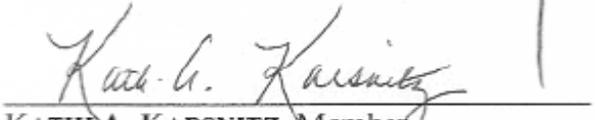
IT IS SO ORDERED



ELIZABETH D. MARON, Acting Chairperson



R. ROBERT CURRIE, JR., Member



KATHI A. KARSNITZ, Member

Dated: April 28, 2005