

**PUBLIC EMPLOYMENT RELATIONS BOARD
FOR THE STATE OF DELAWARE**

TEAMSTERS LOCAL UNION NO. 326,)
) <u>ULP No. 05-02-470</u>
Petitioner,)
) Probable Cause Determination
CITY OF REHOBOTH BEACH, DELAWARE)
)
Respondent.)

BACKGROUND

The City of Rehoboth, Delaware (“City”) is a public employer within the meaning of §1602(l) of the Police Officers’ and Firefighters’ Employment Relations Act (“PERA”), 19 Del.C. Chapter 16 (1986).

Teamsters Local Union No. 326 (“Teamsters”) is an employee organization which admits to membership Rehoboth Police Officers and has as a purpose the representation of those officers in collective bargaining, pursuant to 19 Del.C. §1602(g). Teamsters Local Union 326 represents a bargaining unit of all Rehoboth Police Officers below the rank of Lieutenant for purposes of collective bargaining and is certified as the exclusive bargaining representative of that unit. 19 Del.C. §1602(h).

The City of Rehoboth and Teamsters Local Union 326 were parties to a collective bargaining agreement which had a term of April 1, 2001, through March 31, 2004. The parties negotiated a successor agreement which has an effective date of April 1, 2004 and extends through March 31, 2007.

During the course of the negotiations for a successor agreement, the City and Local 326 entered into a Memorandum of Understanding (“MOU”) which provided:

MEMORANDUM OF UNDERSTANDING

The City of Rehoboth Beach and Teamsters Local Union No. 326 agree that the scores of the 3 employees who unsuccessfully tested for Corporal in October, 2003 shall be recalculated in the manner set forth in revised Article 10 upon ratification of a successor Agreement. If the recalculation results in a passing score of 70, such employees shall be promoted to Corporal, without back pay, effective upon ratification of the Agreement. [Charge, Attachment C]

The MOU was signed by Greg Ferrese, Rehoboth City Manager, and Michael S. Ciabattoni, Vice President, Teamsters Local Union No. 326. Each dated his signature “3/30/04”.

The tentative Agreement reached at the conclusion of the negotiations was unanimously ratified by the bargaining unit of Rehoboth Police Officers on or about December 28, 2004.

At some point around the time of the ratification vote, Teamsters Vice President Ciabattoni telephoned City Manager Ferrese and suggested that the parties agree to make the salaries of the three employees who were to be promoted to Corporal as a result of the ratification of the Agreement retroactive to April 1, 2004 (the effective date of the new Agreement), rather than upon ratification. Although Ferrese indicated that he was inclined to agree, he needed to confer with the City’s counsel.

On or about December 29, 2004, City Manager Ferrese telephoned Vice President Ciabattoni and told him he had spoken with the City’s attorney and that the City would agree to back pay for the new Corporals.

City Manager Ferrese later called Vice President Ciabattoni in January advising him that Ferrese had been reminded that the parties had agreed how the new Corporals were to be compensated in the March 30, 2004 MOU and that the City was bound by that written agreement.

On or about February 24, 2005, Teamsters filed an unfair labor practice charge alleging the City violated 19 Del.C. §1607(a)(1) and (a)(5)¹, which provide:

- (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 collectively bargain 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.

The Charge alleges that the City unilaterally breached its oral agreement with Local No. 326 to promote the new Corporals, provide them their stripes and back pay retroactive to April 1, 2004. Local No. 326 requests PERB bind the City to its oral agreement, find that the City has violated the statute as alleged, and pay the Union all reasonable counsel fees and costs incurred to prosecute this charge.

The City of Rehoboth filed its Answer to the Charge on or about March 9, 2005, in which it denied the allegations of the Charge, requested that it be dismissed and that the Union be required to pay reasonable counsel fees and costs.

The City's Answer did not include new matter. This Probable Cause Determination is based upon a review of Teamsters' Charge and the City's Answer.

DISCUSSION

The Delaware General Assembly conferred upon the Public Employment Relations Board authority and responsibility to “. . . assist in resolving disputes between police officers and firefighters and their public employers . . .” 19 Del.C. §1601(3). The statute also requires employers and unions to “enter into collective bargaining negotiations with the willingness to

¹ The Charge inaccurately alleges a violation of 19 Del.C. §1307, the Public Employment Relations Act, rather

resolve disputes relating to terms and conditions of employment and to reduce to writing any agreements reached through such negotiations.” 19 Del.C. §1601(2)

Regulation 5.6 of the Rules of the Delaware Public Employment Relations Board requires:

- (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 that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board 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.
- (b) If the Executive Director determines that an unfair labor practice has, or may have occurred, he shall, where possible, issue a decision based upon the pleadings; otherwise he shall issue a probable cause determination setting forth the specific unfair labor practice which may have occurred.

The factual circumstances under which this dispute arises are largely undisputed. The issue presented for resolution is whether the conversation between Mr. Ciabattoni and Mr. Ferrese in late December 2004, constituted an oral agreement sufficient to supersede the executed Memorandum of Understanding dated March 30, 2004.

The pleadings raise both legal and limited factual issues, which if resolved in favor of Local Union 326, could support a conclusion that the statute has been violated as alleged.

DECISION

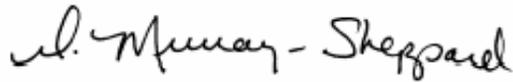
Consistent with the foregoing discussion, the pleadings identify and support factual and legal issues sufficient to establish probable cause to believe that the City of Rehoboth may have violated 19 Del.C.§1607(a)(1), and/or (a)(5).

than 19 Del.C. §1607, the Police Officers’ and Firefighters’ Act which applies to this dispute. Because the statutes

WHEREFORE, a hearing will be convened for purposes of receiving evidence and argument on this charge, in order that a record might be established on which a decision can be rendered. In lieu of a hearing, the parties may mutually agree to enter a stipulation of facts and a method for submission of argument in support of their respective positions.

IT IS SO ORDERED.

DATE: 14 April 2005



DEBORAH L. MURRAY-SHEPPARD
Hearing Officer
Del. Public Employment Relations Bd.

are identical in defining the unfair labor practices alleged herein, this error has has been corrected administratively.