STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

AMALGAMATED TRANSIT UNION LOCAL 842 and ARMOND WALDEN, Petitioner,	)	
v.	)	**ULP No. 05-06-483**
	)	**Probable Cause Determination**
STATE OF DELAWARE, DELAWARE ADMINISTRATION FOR REGIONAL TRANSIT/DELAWARE TRANSIT CORPORATION, Respondent.	)	

BACKGROUND

Armond Walden ("Walden" or "Charging Party") was a public employee within the meaning of Section 1302(o) of 19 Del.C. Chapter 13, the Public Employment Relations Act ("Act" or "PERA") who was employed by the Delaware Transit Corporation ("DTC" or "State"), a public employer within the meaning of 19 Del.C. 1302(p), as a Fixed Route Driver at the time his employment was terminated in approximately September, 2004.

At all times relevant to this Charge, Walden was a member of the Amalgamated Transit Union, Local 842, ("ATU" or "Charging Party") the exclusive bargaining representative of the Fixed Route Drivers employed by DTC within the meaning of 19 Del.C. §1302(j). At all times relevant to this matter, Walden was an employee of ATU

and its designated representative for the purpose of administering the collective bargaining agreement between ATU and DART.

On June 13, 2005, Charging Parties filed this unfair labor practice Charge alleging violations of 19 Del.C. §1307(a)(1) and (a)(3).[1]

In support of the Charge Charging Parties allege that the Vice President of ATU International, Larry Hanley in late April, 2005 and early May, 2005, requested of DTC representative William Hickox access to Company property for Walden, a designated representative of ATU, for the purpose of administering the collective bargaining agreement between DTC and ATU and to otherwise service the bargaining unit employees. Mr. Hanley's request was denied because Walden had been terminated for allegedly threatening members of the supervisory staff.

On June 24, 2005, the State filed its Answer to the Charge denying that it committed the statutory violations alleged in the Charge. Under the heading of New Matter I, the State alleges there can be no violation of §1307(a)(1) of the Act against either ATU or Walden because §1307(a)(1) involves alleged action against "any employee" of a public employer which applies to neither ATU nor Walden. Nor can there be a violation of §1307(a)(3) of the Act against Walden because "there are no activities involving the hiring, tenure or other terms and conditions of employment" alleged in the Charge.

Alternatively, under the heading of New Matter II, the State argues that because Walden was discharged for, among other things, threatening his supervisors, the State

[1] 19 Del.C. §1307 (a) It is an unfair labor practice for a public employer or its designated reprersentative 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.

had reasonable cause for denying him access to Company property. Further, in accordance with Section 3, paragraph E, of the collective bargaining agreement, the Union may select DART employees as Union representatives who must be granted leaves of absence without pay but without loss of seniority.

Under the heading of New Matter III, the State countercharges that through its purported employee Walden, the ATU has engaged in conduct including threats, intimidation, force and/or coercion, trespass and interference with employees' rights to engage in lawful employment including the entrance to and egress from DART's places of employment, in violation of §1307(b)(6), of the Act.

On June 28, 2005, Charging Parties filed their Response to New Matter and Answer to the Unfair Labor Practice Charge set forth in New Matter III. Concerning New Matter I, Petitioner denies the State's allegations that neither ATU nor Walden is a public employee within the definition of public employee in §1302(o), of the Act.

Concerning New Matter II, Petitioners essentially deny the State's allegations.

Concerning New Matter III, Petitioners deny the allegations set forth, therein claiming a lack of specificity as required by PERB Rule 5.[2]

On June 30, 2005, ATU and Walden amended the original Charge to include an alleged violation by the State of Section 1307(a)(5), of the Act. In support of the Amended Charge Petitioners attached a copy of a decision rendered by the National Labor Relations Board in June, 2005, in Claremont Resort, Inc. d/b/a/ Claremont Resort

[2] PERB Rule 5, Filing of Charges, provides, in relevant part: The charge shall include the following information: (2) 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.

and Spa and Hotel Employees and Restaurant Employees Union, Local 2850, 344 NLRB No. 105.

On July 12, 2005, the State filed an Amended Answer denying a violation of §1307(a)(5), and provided support for the alleged violation by Charging Parties of 1307(b)(6), as set forth in New Matter III of the State's Answer. The State also moved to dismiss the Amended Charge as a result of Respondent's failure to comply with PERB Rule 5(c). The State further contends that the above-referenced decision in Claremont is distinguishable from the instant case.

PROBABLE CAUSE DETERMINATION

1. Section 1302(o) of the Act provides:

> (o) "Public employee" or "employee" means any employee of a public employer except: (1) any person elected by popular vote or appointed to office by the Governor; (2) any person who is a prisoner or inmate or who is otherwise held in legal custody by an agency of the State; (3) any person appointed to serve on a board or commission; (4) any employee, as defined in Chapter 40 of Title 14 of a public school employer, as defined in Chapter 40 Title 14; (5) any police officers and firefighters employed by the State or political subdivisions of the State or any agency thereof, or any municipal corporation, municipality, city or town located within the State or any agency thereof which, upon the affirmative legislative act of its common council or other governing body, has elected to come within Chapter 16 of this title, or which hereafter elects to come within Chapter 16 of this title. Any police officers and firefighters included in this subsection shall be subject to Chapter 16 of this title;

> (6) confidential employees of the public employer; and (7) Supervisory employees of the public employer, provided however, that any supervisory position in a bargaining unit deemed to be appropriate prior to September 23, 1944 shall so continue, unless said unit is decertified in accordance with §1311(b) of this title, or is modified in accordance with procedures authorized by §1310(e) of this title.

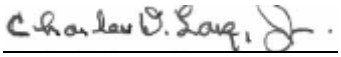
Neither ATU nor Walden qualify as an "employee" under the Act. Consequently, there is no probable cause to believe that a violation of either §1307(a)(1) or §1307(a)(3), as alleged by Charging Parties, may have occurred.

2. Concerning the violation of 1307(a)(5) alleged in the amended Charge filed on June 30, 2005, the pleadings establish probable cause to believe that said violation may have occurred. The disposition of this alleged violation requires proof as to whether Charging Party Walden qualifies as a designated representative of the ATU and whether the State improperly refused him reasonable access to DTC property necessary for him to perform his Union responsibilities.

3. Concerning the State's New Matter, as amended in its Amended Answer filed on July 12, 2005, the pleadings establish probable cause to believe that a violation by Charging Parties of §1302(b)(6), may have occurred. The disposition of this alleged violation requires proof of the conduct attributed to Charging Party Walden and whether, at the time of his conduct, he was acting in the capacity of a designated representative of ATU.

4. An evidentiary hearing will be scheduled for the purpose of establishing a factual record upon which a determination can be made as to whether a violation of 19 Del.C. §1307(a)(5) or 19 Del.C. §1307(b)(6), has occurred.

IT IS SO ORDERED



(Date) **August 5, 2005** **Charles D. Long, Jr.,**
Executive Director