STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

MICHAEL BROWN,	)	
Charging Party,	)	
	)	
v.	)	**ULP No. 05-01-463**
	)	**Probable Cause Determination**
STATE OF DELAWARE, DEPT. OF TRANSPORTATION, DELAWARE TRANSIT CORPORATION,	)	
Respondent.	)	

BACKGROUND

The State of Delaware, Department of Transportation, Delaware Transit Corporation ("State" or "DTC") is a public employer within the meaning of §1302(p), of the Public Employment Relations Act ("PERA"), 19 Del.C. Chapter 13 (1986).

Michael Eugene Brown ("Brown" 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 in approximately June, 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. This unfair labor practice charge was filed with the Public Employment Relations Board

("PERB") on January 12, 2005. The Charge alleges conduct by the State in violation of 19 Del.C. §1307(a)(1),(3), (5) and (7), which provides:

> 1307. Unfair Labor Practices
> (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 of employees in an appropriate unit, except with respect to a discretionary subject.
> >
> > (7) Refuse to reduce an agreement, reached as the result of collective bargaining, to writing and sign the resulting contract.

Charging Party also alleges violations of 19 Del.C. Chapter 8, Protection of Employees' Rights.[1]

The Complaint alleges that on August 30, 2004, Charging Party was accused of on-the-job misconduct and given the option of termination and arrest or resignation. Brown's Union representative was present and advised him to resign. Charging Party

[1] The interpretation, application and/or enforcement of the provisions of 19 Del.C. Chapter 8, Protection of Employees' Rights, are not within the jurisdiction of the PERB and are not, therefore, considered in this Probable Cause Determination.

opted to resign but changed his mind the following day. He was subsequently informed by the Union President that his request to rescind his resignation would not be granted.

On January 12, 2005, the State filed its Answer to the Complaint denying the material allegations set forth therein. Under New Matter-I through IV, the State alleges that Charging Party has failed to allege any facts which, even if proven, would constitute a violation of 19 Del.C. §1307(a)(1), (a)(3), (a)(5) or (a)(7).

Under New Matter V, the State alleges that this dispute should be deferred to the contractual arbitration procedure and that the State and the union are currently in the process of scheduling the matter to be heard by a labor arbitrator.

On January 21, 2005, Charging Party filed his Response to New Matter in which he essentially denies the allegations set forth in the State's New Matter I through IV and rejects the State's request that the charge be deferred to the contractual grievance procedure.

DISCUSSION

The allegations set forth in the Complaint relate exclusively to Charging Party's resignation which he subsequently attempt to rescind. The issue of his resignation is moot since it is undisputed that, although as of the date of this decision Charging Party remains out of work, his job status is the subject of a grievance currently pending binding arbitration pursuant to the contractual grievance procedure.

Under New Matter V in the State's Answer the State alleges, inter alia:

> 29. The parties' collective bargaining agreement provides for arbitration of a broad range of disputes.
>
> 30. The arbitration clause clearly encompasses the disputes

which appear to be at issue in this case, and the matter in
dispute requires the interpretation of the contractual language
in the agreement.

31. The State is willing to resolve this dispute through
arbitration and, in fact, the parties are in the process of
scheduling the matter to be heard by a labor arbitrator.

In his Response to New Matter, Charging Party replies to the State's contentions, as follows:

"29. They have not bargained.

30. No the State is not being fair they break the PERB laws.

31. The State knows this takes months-This is not fair."

The State's contentions in paragraphs 29, 30 and 31 are uncontested and, therefore, considered admitted.

It is well established that the unfair labor practice forum is not a substitute or alternative for the resolution of contractual disputes which are subject to grievance arbitration pursuant to the collective bargaining agreement. The PERB has held:

> While an unfair labor practice is statutory in origin and raises a question of statutory interpretation to be resolved by the Public Employment Relations Board, an alleged contract violation is proper subject matter only for the negotiated grievance procedure. The unfair labor practice forum is not a substitute for the grievance procedure and the Public Employment Relations Board has no jurisdiction to resolve grievances through the interpretation of contract language. Brandywine Affiliate, NCCEA/DSEA/NEA v. Brandywine Bd. of Ed., Del.PERB, ULP No. 85-06-005, I PERB 131, 142-143 (1986).

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 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

Consistent with the foregoing discussion, the pleadings establish no probable cause to believe that a violation of 19 Del.C. §1307 (a)(1), (a)(3), (a)(5) or (a)(7) has occurred.

WHEREFORE, the Charge is dismissed.

IT IS SO ORDERED

/s/Charles D. Long, Jr.
Charles D. Long, Jr.,
Executive Director

Dated: January 28, 2005