

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

RICHARD N. FLOWERS,)	
)	PERB Review of
Petitioner,)	Hearing Officer's
)	Decision
v.)	
)	
STATE OF DELAWARE, DEPARTMENT OF)	
)	
TRANSPORTATION, DELAWARE TRANSIT CORP.,)	<u>ULP NO. 04-10-453</u>
)	
Respondent.)	

BACKGROUND

The State of Delaware, Department of Transportation, Delaware Transit Corporation (“DTC”) is a public employer within the meaning of section 1302 (p) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (“PERA”) and is the Respondent to this unfair labor practice charge.

The Charging Party, Richard N. Flowers (“ Mr. Flowers”) was a Fixed Route Operator employed by DTC in New Castle County. At all times relevant to this charge, Mr. Flowers was a member of the Amalgamated Transit Union, AFL-CIO, Local Union 842 (“ATU Local 842”), which is the exclusive representative of a bargaining unit of DTC Fixed Route Operators pursuant to 19 Del.C. §1302(j).

At all times relevant to this dispute, DTC and ATU Local 842 were parties to a collective bargaining agreement for the period of December 1, 2002 through November 30, 2007.

On or about October 4, 2004, Mr. Flowers filed an unfair labor practice charge alleging DTC had refused to process his grievances and had threatened and then terminated him in retaliation for his engaging in protected conducted under the PERA.

On or about October 8, 2004, DTC filed its Answer to the charge denying all material allegations contained therein. The Answer also contained new matter and a motion for dismissal asserting Mr. Flowers had 1) refused to participate in the grievance procedure and 2) the underlying issue of his termination should be deferred to the negotiated grievance and arbitration procedure.

Charging Party Flowers filed his Response on October 18, 2004.

Following an informal conference and three days of hearing, the Hearing Officer rendered her decision on December 8, 2005, dismissing the charge and finding:

Mr. Flowers was offered the opportunity to discuss the processing of his complaints at the beginning of the October 6, 2004, Step 4 hearing concerning his termination, at which Union representatives were present. During that hearing he admitted that he had received Mr. Hickox's telephone messages requesting Mr. Flowers call to discuss the processing of his complaints. Having been provided with telephone messages, correspondence and in person invitations to discuss the further processing of his complaints, and declining or refusing to respond to any of them, there is no support for the charge that DTC failed or refused to process Mr. Flowers' grievances in violation of its duty to bargain in good faith with the ATU . . . [Decision, V PERB 3447, 3464]

Even when considered in a light most favorable to the Charging Party, the record in this case does not support a finding that the activities in which Mr. Flowers was engaged rise to the level of concerted action which is protected by the statute. Further, there is little if any evidence that management was aware that Mr. Flowers was playing any role in advancing issues related to collective bargaining. The timing of the events on which Mr. Flowers relies does not support the conclusion that his termination was influenced by an illegal motive to remove him because he was an activist engaged in concerted and protected activity under the PERA. . . [Decision, V PERB, 3447, 3470]

On December 16, 2005, Mr. Flowers requested review of the Hearing Officer's decision, and DTC responded on January 3, 2006.

A copy of the complete record in this matter was provided to each member of the Public Employment Relations Board. The Board met in public session to consider this matter on January 18, 2006.

DISCUSSION

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

Prior to any consideration of the merits of the request for review, the Board was advised by staff that Charging Party Flowers had called the PERB office at approximately 8:00 on the morning of the Board's meeting to request a continuance. Mr. Flowers stated he had a scheduling conflict and was also required to be in Cherry Hill, New Jersey that morning for a court hearing. At the recommendation of staff, he called again around 9:00 a.m. at which time he reiterated his request to the Executive Director. The Director advised Mr. Flowers that he would relay his request to the Board where it would be addressed.

The record indicates Mr. Flowers and the DTC were first advised of the January 18, 2006, scheduled date for the Board's review in this case by letter dated December 19, 2005. There was no indication in either of Mr. Flowers' telephone calls that his request for continuance was based on emergency or other circumstances beyond his control. Rather, he stated it resulted from a "scheduling conflict." Counsel for DTC stated at the hearing that she had not been advised of the request or need for continuance by Charging Party.

Charging Party's motion to continue the Board's consideration of his request for review until a later date was unanimously denied. The Board is in receipt of his written statement in support of his request for review (filed December 16, 2005) as well as DTC's responsive

submission of January 3, 2006. The opportunity to present oral argument is a courtesy extended to parties by the Board, which is limited and designed simply to highlight what has been submitted in writing, primarily for the benefit of the attending public. The record below, the Hearing Officer's decision and the arguments of the parties on appeal was provided and reviewed by each member of the Board prior to the January 18, 2006 hearing. The Board proceeded with its deliberations without receipt of oral argument from either party.

After careful review of the decision and the supporting record, we find no basis in fact or law for overturning the Hearing Officer's decision. Charging Party was provided with a more than adequate opportunity to create a record to support his claim of an unfair labor practice.

Mr. Flowers' request for review raised a concern about a subpoena which was issued at his request, but which was not honored by the subpoenaed person during the first two days of hearing. The record is clear that Mr. Flowers withdrew his request at the opening of the third day of hearing.

Mr. Flowers also states in his request for review, "All I ever wanted is for the perb to tell dart aka the state of Delaware to play fair and stay within the rules." The Hearing Officer's decision specifically and severally addresses the many concerns that Mr. Flowers raised concerning "fairness" and does so based upon the record and a sound understanding of the law under the Public Employment Relations Act.

Finally, Mr. Flowers requests in his appeal, ". . . I at this time would like to request a review of both cases." The second case to which he refers was his appeal of the Executive Director's dismissal of his charge that ATU Local 842 failed or refused to adequately represent him during the processing of the grievance which resulted from his termination. Flowers v. Herbert & ATU Local 842, ULP 05-02-468, V PERB 3411 (9/7/05). This Board was scheduled to hear that appeal on November 9, 2005. At that time, Mr. Flowers appeared before the Board and personally withdrew his request for review prior to any receipt of oral argument or

deliberation by the Board. At that time, the case was closed and there is no active appeal pending in that matter. His request to hear “both cases” is therefore denied.

DECISION

Consistent with the foregoing discussion, the decision of the Hearing Officer is affirmed.

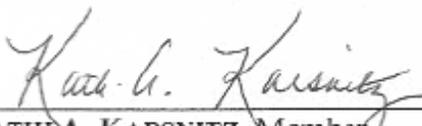
IT IS SO ORDERED.



ELIZABETH D. MARON, Acting Chairperson



R. ROBERT CURRIE, JR., Member



KATHIA A. KARSNITZ, Member

DATE: 26 January 2006