

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

WILMINGTON FRATERNAL ORDER OF POLICE,)
LODGE NO. 1,)
) <u>ULP No. 06-11-544</u>
Petitioner,)
) Probable Cause Determination
CITY OF WILMINGTON,)
)
Respondent,)

BACKGROUND

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

Fraternal Order of Police Lodge No. 1 (“FOP Lodge 1”) is an employee organization which admits to membership police officers employed by the City of Wilmington and which has as a purpose the representation of such employees in collective bargaining, pursuant to 19 Del.C. §1602(g).

The City of Wilmington and FOP Lodge 1 are parties to collective bargaining agreements for both a bargaining unit of rank and file police officers and a unit of Captains and Inspectors. The agreements are coterminous from July 1, 2001 through June 30, 2007.

On or about November 13, 2006, FOP Lodge 1 filed an unfair labor practice charge alleging the City violated 19 Del.C. §1607(a)(1), (a)(5) and/or (a)(6), 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 bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit.
 - (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.

The Charge alleges that through the issuance of an Informational Bulletin and modified Directive 6.42 on October 19, 2006, the City unilaterally instituted changes to the Sickness/Injured/Death Policy Leave which is included in the collective bargaining agreements. Specifically, the FOP asserts the new policy included the following modifications:

- Prohibiting an officer, who is on sick leave, from engaging in any outside employment (6.42 A.10);
- Providing an entire new section governing “Sickness related to Mental Health” (6.42 B.1 – 11);
- Establishing an entirely new section governing “Return to Duty with Limitations” (6.42 E.1 – 3);
- Establishing an entirely new section governing “Duration of Modified Duty” (6.42 F);
- Establishing an entirely new section governing “Family Medical Leave of Absence” (6.42 H).

The FOP asserts leave policies, including leaves for illness, injury and death, are mandatory subjects of bargaining. By instituting these changes without notice or opportunity to negotiate to the FOP, the City violated its duty to bargain in good faith and §1607(a)(1), (a)(5) and (a)(6) of the Police Officers’ and Firefighters’ Employment Relations Act.

The City filed its Answer to the Charge on or about December 8, 2006, in which it denied that the modifications to Policy Directive to 6.42 were new, and asserting that all alleged

changes complied with the City's past practices. It also asserts the City discussed the potential changes with the FOP President and also attempted to meet with the FOP to discuss the changes, but the FOP did not respond to its offer. The City admits that sick/injury/death leave policies are mandatory subjects of bargaining, but denies it violated the statute by issuing the Informational Bulletin and modified Directive 6.42.

Under New Matter, the City asserts the modifications to Directive 6.42, Sickness/Injury/Death Leave Police, are administrative in nature and within the scope of Employer Rights under 19 Del.C. §1605. The changes are subject to management discretion and did not affect conditions of employment.

FOP Lodge 1 filed an Answer to the City's New Matter on or about December 15, 2006, in which it denied the City's new matter.

This Probable Cause Determination is based upon a review of FOP Lodge 1's Charge, the City's Answer to the Charge and New Matter, and FOP Lodge 1's Answer to the City's New Matter.

DETERMINATION

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

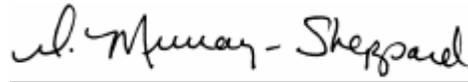
- (a) Upon review of the Complaint, the Answer and the Response, the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with 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.

Construed in a light most favorable to the Charging Party, the pleadings constitute reason to believe that an unfair labor practice may have occurred. Specifically, the issue is whether the Informational Bulletin and modified Directive 6.42 issued by the Chief of Police on October 19, 2006, constitute a unilateral change to a mandatory subject of bargaining in violation of 19 Del.C. §1607(a)(1), (a)(5) and/or (a)(6). The pleadings also raise a question as to whether the FOP had notice of and the opportunity to negotiate concerning any potential changes.

The pleadings raise both factual and legal questions. PERB shall conduct a hearing as soon as is reasonably possible in order to provide the opportunity for the parties to create an evidentiary record on which argument can be made and a decision rendered.

DATE: 9 January 2007



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