

PUBLIC EMPLOYMENT RELATIONS BOARD
FOR THE STATE OF DELAWARE

JOSEPH F. POLI, JR.,	:	
	:	
Charging Party,	:	
	:	<u>ULP No. 07-04-567</u>
v.	:	
	:	Probable Cause Determination
STATE OF DELAWARE, DELAWARE TRANSIT	:	
CORPORATION,	:	
	:	
Respondent.	:	

BACKGROUND

The State of Delaware (“State”) is a public employer within the meaning of §1302(p) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1994). The Delaware Transit Corporation (“DTC”) is an agency of the State.

Amalgamated Transit Union, Local 842, AFL-CIO (“ATU”) is an employee organization which admits to membership DTC employees and has as a purpose the representation of those employees for purposes of collective bargaining, pursuant to 19 Del.C. §1302(i). ATU, by and through its Local 842, represents a bargaining unit of DTC employees for purposes of collective bargaining and is certified as the exclusive bargaining representation of that unit. 19 Del.C. 1302(j).

ATU Local 842 and DTC are parties to a collective bargaining agreement which has an expiration date of November 30, 2007.

The Charging Party, Joseph F. Poli, Jr. , is employed by DTC and is a public employee within the meaning of 19 Del.C. §1302(o). The Charging Party is also a

member of ATU Local 842 and at the time of the alleged incident, served as an ATU Shop Steward.

On or about April 16, 2007, the Charging Party filed an unfair labor practice charge alleging that DTC violated 19 Del.C. §1307(a)(1), (a)(2), (a)(3), and 19 Del.C. §1304(b), which provide:

§1307 (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.
- 2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization.
- 3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.

§1304 (b) Nothing contained in this chapter shall prevent employees individually, or as a group, from presenting complaints to a public employer and from having such complaints adjusted without the intervention of the exclusive representative for the bargaining unit of which they are a part, as long as the representative is given the opportunity to be present at such adjustment and to make its view known, and as long as the adjustment is not inconsistent with the terms of an agreement between the public employer and the exclusive representative which is then in effect. The right of the exclusive representative shall not apply where the complaint involves matters of personal, embarrassing and confidential nature, and the complainant specifically requests, in writing, that the exclusive representative not be present.

The Charge alleges that on or about March 9, 2007, the Charging Party, in his capacity as an ATU Shop Steward, placed in the lockers of bargaining unit members a “Union Flyer” which summarized recent grievance outcomes. Specifically at issue in this charge is the paragraph in which Charging Party described the outcome of a Step 4 hearing in which he was the grievant:

There was also a step 4 involving my self [sic] and the failure to clean out the drivers [sic] box, that is the storage box above the drivers [sic] seat. Many members showed concern that we could be disciplined for failure to do something no one could remember being told to do. First rest assured this did not happen as the discipline was withdrawn, and steps are being taken to assure that cleaning of the driver box is made an official part of the duties of GS so please if you are a cleaner or mechanic who does GS only once in a while, be advised that, the cleaning of the box is now being made part of our responsibility. *Charge, Exhibit 2.*

Charging Party received a memo from his supervisor on or about March 9, 2007, which stated in relevant part:

On March 9, 2007, at 1750 hours, I called Joe Poli into the Foreman's office to discuss two issues that were brought to my attention earlier in the day.

First issue being a complaint about him leaving literature in employee's lockers. Mr. Poli was told by me to cease the placing of any type flyers, posters, notices, etc, in employee's personal lockers. He was made aware that there are several bulletin boards throughout the shop area for the purpose of announcements and notices.

Second issue discussed was in reference to the erroneous information contained in his flyer... *[included paragraph from the Charging Party's correspondence quoted above]*

I reminded Mr. Poli that upon his return to work from Workman's Comp., I gave him a copy of the GS procedures that were drawn up June 16, 2006. Under responsibilities that a runner is to perform on a nightly basis, its states; >Remove all trash and debris from coach and drivers areas. I also reminded Mr. Poli that I went over the entire form of responsibilities with the entire GS crew. Also, since this time, I have reiterated numerous times that the driver's area (including the overhead box) is to be cleaned out on a nightly basis as well as wiping down the dashboards.

I then went on to tell Mr. Poli that his discipline was not withdrawn because of a "new policy" as he stated. It was withdrawn because he lied to my boss (Joe Patson) by saying he was never informed of this responsibility.

Since Mr. Poli cannot accept responsibility for his own actions, I informed him that I would be making memorandums for record of any official interaction I have with him. This is being done to protect my fellow coworkers, and myself as well as to remove any doubt as to interpretation or understanding.

Mr. Poli will be offered the opportunity to review each memorandum. Upon completion of his review, I will ask him to sign and date each one. If signature is refused, a third party witness will be brought in for their verification and signature. *Charge Exhibit 1.*

On or about March 13, 2007, Charging Party communicated the following by e-mail to the ATU Trustee, DTC Director of Operations, and the designated State Labor Relations Specialist:

Sirs, in the sprit [*sic*] of speaking to you before taking other action I wish to bring to your attention the following. Over time I have been active with the union there has been no access to the union bulletin board. There is only one locking board and it is locked, no one has the key. In response to this the union has posted information where ever it can but these notices are quickly being removed. In response to this notices are being placed into lockers, after providing members with the right to decline this type of notification and be placed on the no locker list. In response to this I just received a directive from my supervisor, Mr. Mead Revis, that censors the content of these notices and prohibits the practice of placing them in maintenance lockers. I concenter [*sic*] these practices of interfering with the release of union information and the censoring of there [*sic*] content in violation of Perb [*sic*] and find no choice but to file a complaint. After speaking with other union official, I have discovered that the request for access to union locking board as pursuant to the contract, is not new and has been left unanswered.

This is what I propose, provide union locking boards and keys to all break rooms that ATU has access. There will then be no need to post items else where. Also provide direction to supervisors that the content of union documentation is not subject to their approval. This will cost DTC next to nothing and would be in compliance with the contract. The alternative is a PERB complaint that will cost you more just to address. I know that you have more to deal with than just me, however I have current orders that prohibit the

release of union documentation so I can not wait long before filing.
Charge Exhibit 3.

The Charge alleges DTC violated §1307(a)(1), (a)(2), and (a)(3) of the PERA by interfering with internal union communications, failing to provide the Shop Steward with access to the Union bulletin board, and censoring the content of union communication. It also asserts DTC violated 19 Del.C. §1304(b) when the Director of Operations failed to respond to Charging Party's complaint of March 13.

The State filed its Answer on or about May 3, 2007, in which it admitted DTC Supervisor Revis drafted the memo of March 9 in part to direct the Charging Party to "refrain from improperly and without permission using State property (personnel lockers) for Union business" and also to instruct Charging Party to stop disseminating factually incorrect information and misstatements concerning the State's operational policies and directives. The State denied the "union flyer" prepared by Charging Party and placed in the employee lockers was a "bona fide Union action" and asserts its content was neither reviewed nor approved by Union leadership.

The State denied that Charging Party's supervisor lacks authority or responsibility to direct him to refrain from disseminating factually incorrect information concerning operational policies and directives. It asserts DTC management representatives are responsible to address and correct violations of policies and directives, and to prevent the unauthorized use of State property and interference with State operations. The State also argues that neither the ATU nor the Charging Party has filed a grievance and consequently there has been no "refusal" to address the issue of union communication in the workplace. DTC has no knowledge that the ATU leadership does not have access to the locked bulletin boards DTC has made available for union use.

Finally, the State asserts there is no basis in fact or law to find a potential violation of §1304(b) because the Charging Party does not have standing to make a claim thereunder.

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

DISCUSSION

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.

For purposes of reviewing the pleading to determine whether probable cause exists to support the charge, factual disputes revealed by the pleadings are considered in a light most favorable to the Charging Party in order to avoid dismissing a valid charge without the benefit of receiving evidence in order to resolve factual differences. *Flowers v. DART/DTC*, Del.PERB Probable Cause Determination, ULP 04-10-453, V PERB 3179, 3182 (2004).

The essence of this Charge is that DTC management, through its supervisor, has interfered with the ability of ATU Local 842, through its Shop Steward, to communicate with bargaining unit members in the workplace by limiting the Shop Steward's access to bulletin boards and other methods for disseminating written materials. It further alleges DTC has interfered with the administration of the union by attempting to "correct" internal union communication.

These allegations, if proven, could be the basis for finding a violation of 19 Del.C. §1307(a)(1), (a)(2), and/or (a)(3).

The Charge does not, however, provide a basis for finding DTC may have violated 19 Del.C. §1304(b), which provides the right of the union (as the exclusive bargaining representative of bargaining unit employees) to be involved in any extra-contractual complaints process between the employer and employees to insure that any resolution of those complaints is not inconsistent with the collective bargaining agreement. It also provides employees to have personal, embarrassing and confidential complaints heard privately when such privacy is requested in writing.

Charging Party's e-mail of March 13 to DTC management requests that management intercede with its supervision to permit the ATU to have access to the union bulletin boards. The March 13, 2007 e-mail does not constitute an extra-contractual complaint made by an individual employee or group of employees, nor is it a complaint of a personal, embarrassing or confidential nature. It concerns the method by which the ATU communicates with bargaining unit employees, and is not, therefore, subject to 19 Del.C. §1304(b).

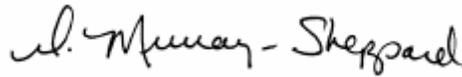
DETERMINATION

Considered in a light most favorable to the Charging Party, the pleadings constitute probable cause to believe that an unfair labor practice may have occurred. Specifically, the issue is whether DTC has violated 19 Del.C. §1307(a)(1), (a)(2) and/or (a)(3) by interfering with the right of the certified exclusive bargaining representative of a unit of its employees, through its representatives, to communicate with bargaining unit members or otherwise interfered with the administration of the union.

The pleadings raise multiple factual and legal issues which can only be resolved following development of a factual record and receipt of argument. Consequently, a hearing will be convened forthwith for this purpose.

IT IS SO ORDERED.

DATE: 12 June 2007



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