

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

<b>CITY OF LEWES,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
v.	)	<b><u>ULP No. 07-06-575</u></b>
	)	<b>Probable Cause Determination</b>
<b>FRATERNAL ORDER OF</b>	)	
<b>POLICE, LODGE NO. 2,</b>	)	
	)	
<b>Respondent</b>	)	

**BACKGROUND**

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

The Fraternal Order of Police, Lodge No. 2 (“Lodge No. 2”) is an employee organization which admits to membership public employees and which has a purpose the representation of such police officers in collective bargaining pursuant to 19 Del. C. §1602(g). The Fraternal Order of Police, by and through its Lodge No. 2, represents a bargaining unit of all police officers below the rank of Chief who are employed by the Lewes Police Department as defined in DOL Case No. 250 for the purpose of collective bargaining and is certified as the exclusive representative of that unit. 19 Del. C. §1602(h).

On June 8, 2007, the City filed an unfair labor practice charge alleging that Lodge No. 2 violated 19 Del. C. §1607(b)(4), which provides:

§1607. Unfair labor practices - Enumerated

(b) It is an unfair labor practice for a public employer or for an employee organization or its designated representative to do any of the following:

(4) Refuse to reduce an agreement reached as a result of collective bargaining to writing and sign the resulting contract.

The Complaint alleges that the City of Lewes and Lodge No. 2 were parties to a collective bargaining agreement with a term of April 1, 2004 through March 31, 2007. Negotiations for a successor Agreement commenced on or about November 14, 2006. At the negotiating session on March 13, 2007, health insurance was discussed in depth for the first time. At that negotiating session the City expressed its desire to change the health care carrier and also the existing coverage to a Blue Cross plan, Simply Blue EPO 100. The City distributed to the Lodge No. 2 representatives a two-page summary of the Blue Cross plan including the individual and family calendar year deductibles. In response, Lodge No. 2 expressed its desire for the State of Delaware plan.

Subsequent discussions occurred and on March 30, 2007, the parties agreed to insure with Blue Cross during the first year of the successor contract and to form a Health Insurance Committee to consider and recommend a health care carrier, thereafter.

FOP Lodge No. 2 ratified the tentative collective bargaining agreement on April 4, 2007. The Lewes City Council did likewise on April 9, 2007.

Concerns subsequently arose within the bargaining unit concerning the health care insurance and further discussions between the City and Lodge No. 2 occurred. At the

meeting of May 30, 2007, Lodge No. 2 explained that at the ratification meeting on April 4, 2007, its representatives did not inform the general membership of the new deductible amounts and were unaware of the new annual deductibles until it met with representatives of Blue Cross after the ratification vote occurred. For these reasons, Lodge No. 2 has refused to execute the successor Agreement.

The City contends that its final offer to Lodge No. 2 on March 30, 2007, was contingent upon Lodge No. 2 accepting the Blue Cross health care coverage.

Lodge No. 2 filed its Answer on or about June 20, 2007, in which it denies that it violated §1307(b)(4), of the Act, as alleged. In essence, it asserts that at the March 13, 2007, negotiating session the City handed out a one page summary of the Blue Cross health insurance plan. The discussion then focused upon an increase in the co-pay from \$10 to \$30 and the amount of the monthly premium.

Lodge No. 2's agreement to accept the Blue Cross plan during the first year of the successor Agreement and to form a Health Insurance Committee resulted from the State's moratorium on adding any new municipal units into the State plan.

Lodge No. 2 claims that the membership was not told of the new deductibles at the ratification vote on April 4, 2007. Had the membership been told, the tentative agreement probably would not have passed. After the ratification vote, when Lodge No. 2 first became aware of the new deductibles, further discussion with the City occurred concerning the health insurance issue.

Lodge No. 2 claims that it has not signed the successor Agreement because no "meeting of the minds" concerning the health care insurance existed at the time of the ratification vote which is, therefore, not binding.

No New Matter was contained in Lodge No. 2's Answer. Consequently, this Probable Cause Determination is based upon the Complaint and the Answer.

### **DETERMINATION**

Regulation 5.6 of the Rules and Regulations of the Delaware Public Employment Relations Board provides:

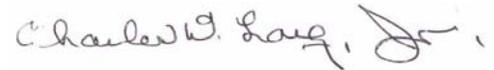
- (a) Upon review of the Complaint, the Answer and the Response, the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice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

The allegations set forth in the Charge raise valid questions under the statute relating to the status of the negotiated Agreement. This being the case, probable cause exists to believe that an unfair labor practice may have occurred. Specifically, the issue involves the status of the tentative agreement reached by the parties insofar as it relates to the alleged agreement over health insurance and the impact, if any, of the ratification vote by the general membership.

The legal and factual issues raised by the parties can only be resolved following development of a factual record and receipt of argument. Consequently, a hearing will be promptly scheduled for this purpose.

**IT IS SO ORDERED.**

Date: 6 July 2007

A handwritten signature in cursive script, reading "Charles D. Long, Jr.", written in black ink on a white background.

Charles D. Long, Jr.,  
Executive Director,  
Del. Public Employment Relations Bd.