

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

<b>JULIUS CEPHAS,</b>	)	
	)	<b><u>ULP No. 06-11-545</u></b>
Petitioner,	)	
v.	)	
	)	Probable Cause Determination
<b>ILA LOCAL 1694-1, DAVID CLEMENTS AND</b>	)	
<b>ANTHONY KNIGHT,</b>	)	
	)	
Respondents.	)	

**BACKGROUND**

Julius Cephas (“Petitioner”) is an employee of the Diamond State Port Corporation and is the immediate past-president of Local Union 1694-1 of the International Longshoremen’s Association, AFL-CIO. Petitioner is a public employee within the meaning of §1302(o) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1994).

The International Longshoremen’s Association, Local 1694-1 (“ILA”) is an employee organization which admits to membership employees of the Diamond State Port Corporation. The ILA has as a purpose the representation of such employees in collective bargaining, pursuant to 19 Del.C. §1302(j).

Anthony Knight is the current President of ILA Local 1694-1 and David Clements is the Business Agent. Both Knight and Clements have held these locally elected positions since January, 2006.

Diamond State Port Corporation and the ILA are parties to a collective bargaining agreement the term of which extends from October 1, 2004 through September 30, 2007.

On or about November 15, 2006, Petitioner Cephas filed an unfair labor practice charge alleging the ILA, by and through Respondents Clements and Knight, violated 19 Del.C. §1307(b)(1), (b)(6) and/or §1303(3) and §1304, which provide:

- (b) It is an unfair labor practice for a public employee or for an employee organization 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.
  - (6) Hinder or prevent, by threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment by any person, or interfere with the entrance to or egress from any place of employment.

§1303. Public employee rights.

Public employees shall have the right to:

- (3) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the State.

§1304. Employee organization as exclusive representative.

- (a) The employee organization designated or selected for the purpose of collective bargaining by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of all the employees in the unit for such purpose and shall have the duty to represent all unit employees without discrimination. Where an exclusive representative has been certified, a public employer shall not bargain in regard to matters covered by this chapter with any employee, group of employees or other employee organization.

The Charge specifically alleges the following:

On November 13, 2005, the night of ILA Board Nominations, David Clements slandered the Petitioner's name and the Petitioner filed [internal Union] charges against him.

On January 1, 2006, new Union leadership took over. On January 7 the Petitioner notified the ILA Local about David Clements' harassing action towards him. Specifically, Petitioner's correspondence to the Local 1694-1 Recording Secretary states, "On Saturday, January 7, 2006, Dave Clemens [*sic*] retaliated against me by approaching my supervisor, pointing at me, and demanding my supervisor take

my radio and that I be reassigned to a different job. Dave Clemens [sic] is harassing me and creating a hostile work environment. I feel as though my safety is in jeopardy and with the power and influence that the ILA 1694-1 Business Agent holds, combined with the fact that he is harassing my supervisor, I feel that my job is in jeopardy too.” *Attachment B*.

The Petitioner also notified the Port Director about the incident on the same date.

On January 20 2006, the Petitioner again sought to bring Local 1694-1 Charges against Clements, stating in his letter to the Local Recording Secretary that:

This note is to officially notify you of my request that charges be brought against David Clements for behavior detrimental to ILA 1694-1 and Non Performance of Duties as Business Agent.

Specifically, David Clements has been stalking me with a camera filming my actions in various locations, hiding behind vehicles and other places while I am at work. Also, he has videotaped my license plate number.

His behavior has become more and more bizarre. I am more afraid than ever before. I am seeking other remedies of the situation; however, I am filing these charges internally in accordance to our constitution.

I do not know his purpose for these tapes - Who is he showing these tapes to? – I believe he means to do me harm. He may be filming me and passing the tapes to other parties so that they can identify me to do me harm.

I have discussed this issue with the [Union] President. The President said that he told him to stop bothering me but aside from that there is little he could do.

Dave Clements behavior is making me very scared. I constantly look over my shoulders and I am starting to fear for my life. *Attachment D*.

The Port and the ILA were slow in responding to the Petitioner’s charges against Dave Clements and protecting him from being harassed and filmed by him. The Petitioner then filed a criminal report with the Wilmington Police Department on February 7, 2006.

On February 8, 2006, the Petitioner sent a second letter to the Port Director which stated:

On January 7, 2006 I wrote to you regarding being harassed by the ILA 1694-1 Business Agent, David Clements.

David Clements continues to harass me. He has been stalking me with a camera, filming my actions in various locations, following me around and hiding behind vehicles and other places while I am at work. Also, he has videotaped my license plate number.

His behavior has become more and more bizarre. I have filed internal charges with the union, I've filed charges with the Wilmington Police, and I need to know what you are going to do to protect me as a twenty-year employee of the Port. I should not be forced to endure a hostile work environment.

I am more afraid than ever before and need to know the Port's position on this kind of behavior. What is the Port's policy on employees being filmed without permission? Is there a policy regarding videotaping on the Port? Is this behavior acceptable to the Port of Wilmington?

I have been taking off from work and using up my vacation time because my nerves are getting bad and I am experiencing a lot of anxiety. I appeal to you to protect me from this type of treatment.

Dave Clements' behavior is making me very scared. I constantly look over my shoulders and I fear for my life everyday. *Attachment F.*

The Petitioner alleges the Port's management was not protecting him, but, instead, was trying to put the responsibility on the ILA Local to address the problem of harassment. He expressed to Port management that he was a Port employee first and that he felt the Port was not effectively dealing with this issue. The Petitioner then sent a third letter to the Port Director on March 28, 2006:

I am writing you to reiterate my sincere concern and fear for my safety with regards to my being singled out, targeted and harassed at my place of employment at the Diamond State Port Corporation by the ILA 1694-1 Business Agent, David Clemens *[sic]*.

I have written to you on two separate occasions (both letters enclosed with this correspondence) with regards to this situation, which began in January 2006, and have not received any substantive correspondence from you with regards to how you plan to resolve this situation. Your letter, dated January 11<sup>th</sup> (actually misdated as the year 20065), was a boilerplate response to a very serious situation. In this letter you stated that the DSPC policy states "all employees have the right to work in an environment free of harassment." Yet, to-date, you have done nothing to curtail the activity of David Clemens *[sic]* with regards to his actions and behaviors where I am concerned. Where is my RIGHT TO WORK IN AN ENVIRONMENT FREE FROM HARASSMENT? By you not taking a stand and exercising due diligence in this matter, you are contributing to my feelings of fear and anxiety with regards to reporting for work and being able to perform to my best ability while I am on the

job site. I have felt it necessary to have to look over my shoulder constantly looking out for what is to come next from David Clemens [sic] or take vacation days on the days that I do not wish to subject myself to his harassment activities. WHEN ARE YOU GOING TO RESPOND IN A MANNER THAT WILL STOP THIS ACTIVITY?

Dave Clemens is not a co-worker of the Diamond State Port Corporation and has been on workman's compensation since 1997. David Clemens' [sic] actions are borderline psychotic and there is no rationale that I can think of for his actions and harassment towards me. As the leader in this organization who is charged with handling such situations, I expect you to manage and use due diligence with regards to this situation. With regards to his filming my actions at the workplace, I have no idea what he is using this film for or to whom he is giving it. I am very afraid of him and the manner with which he has been behaving – in a work environment where he has no reason being or no business.

Since January 2006, the Diamond State Port Corporation has allowed Dave Clemens [sic] to continuously harass me by filming me on the job site. In addition, in court on March 17, 2006 David Clemens [sic] stated to the judge that, not only does he have permission from DSPC to film me, but that he is a worker at the Diamond State Port Corporation. Is it true that he has permission by DSPC management to film me? Is this legal? If so, I would like to have this permission, as granted, in writing from port authorities. Or, do I have to resort to going to federal court or meet with the Diamond State Port Corporation's Human Relations Committee with regards to this matter?

In addition to what has been stated above, David Clemens [sic], on January 7, 2006, harassed both me and the supervisor on duty at which time the supervisor also filed a report to which he has received no response. IS THIS PROTOCOL FOR YOUR MANAGEMENT STAFF AS WELL?

I expect, as a 20-year employee with the DSPC, due diligence regarding this matter. I am also looking at other agencies for assistance with this matter if it is not resolved within the port administration expeditiously – keeping in mind that it has gone unresolved for 2.5 months to date. *Attachment G.*

On April 4, 2006, the Petitioner sent a fourth letter to the Port Director concerning another incident involving Business Agent Clements:

This brief note is to make you aware of an incident that occurred on Saturday, April 1, 2006 at the Port of Wilmington job site with David Clemons [sic].

At approximately 3:00 p.m. I was in the process of entering Building F and Dave Clemons [sic] said to me “you can’t come in this building without a safety vest.” My comment to him was that I was going into the building. He proceeded to walk towards me but Tom White and Dary Dilliard intervened and stopped him. I proceeded into the building without incident.

Please note that this is the third occasion where David Clemons [sic] has approached me in such an aggressive manner. He began this aggressiveness towards me in January 2006 with the harassing behavior of filming and verbal abuse. Now, he has graduated to a more aggressive state of behavior where he feels comfortable approaching me in a more physical manner and I can only wonder what would’ve happened without the intervention of Tom White and Dary Dillard. David Clemons [sic] is definitely getting bolder in his aggressiveness towards me.

I have come to you on every occasion via reporting to the supervisor as well as putting each situation in writing directly to you. You have received information from witnesses with regards to each incident. When is the Port going to take action about this matter? Do I have to be seriously injured or killed before anything is done?

I can’t continue to work in an environment that is promoting such negative behaviors. I have already taken my vacation days as well as days off without pay to try to avoid more harassment from him. How do you expect me to do my job responsibly with such a continuous and growing mode of negative behaviors from David Clemons [sic]? I am pleading that you take serious action on this very unusual and dangerous behavior taking place at my place of work. *Attachment H*

In a letter dated July 10, 2006, from ILA District Council, Respondent Clements was placed on a sixty-day suspension for the slander charges. *Attachment I*

After the suspension from District Council, Respondent Clements filed charges with the Local Union against the Petitioner.

The Local held a hearing on those charges on October 3, 2006. Two weeks after that hearing, the Petitioner alleges the Local retaliated by suspending and fining him. *Attachment I*

On October 13, 2006, Respondent Clements filed a grievance against the Petitioner’s classification. The Petitioner is the only bargaining unit employee of the Port who is certified and classified for the Weigh Master position. The ILA told the Petitioner they are trying to help him through the situation; however, no one notified him that the grievance had been filed by Respondent Clements. The Grievance states:

DSPC has eliminated the function of Weighmaster by refusal to construct a scale-house in order to allow the current Weighmaster to perform the contractual assignment.

This action by DSPC has effectively eliminated the actual position by creating a Permanent Vacancy at Weighmaster. DSPC has since early 1990's has [*sic*] made accommodations to transfer the Weighmaster to many unclassified assignments for a decade without detailing to the union the functions of several assignments in order for the union to monitor the protections of senior hire versus work detail. Due to DSPC's actions, it is obvious the Weighmaster is being forced to work in a demoted capacity subjecting the Weighmaster unfairly to CBA Article 13.2.

Remedy/Solution Sought: Construct immediately scale house.  
*Attachment M.*

On October 24, the Petitioner wrote to the Port Director in reference to the unauthorized grievance filed by Respondent Clements:

It has been brought to my attention that a grievance was filed related to my classification as weigh-master at the Port of Wilmington.

This grievance has been presented as if the union is helping me out and doing something in my best interest and I always welcome any help I can get. This is not help. This is a repackaging of the same harassing behavior since this new union leadership took over in January. I believe that this is a very thinly veiled attempt at retaliation for a letter they received from the International and the B.A. sixty suspension [*sic*].

ILA 1694-1 leadership propose to represent me because I am working out of class. There are a large percentage of union employees working out of class with no problem. In fact, we have union leaders themselves working out of class, at a premium rate, and this is no problem for anyone except me. In my opinion management does not even need them in these classifications on a daily basis and they are also getting a higher rate of pay. I haven't disrupted with anyone's seniority or bumping rights.

The Business Agent and the union leadership have harassed, threatened, and constantly created a hostile work environment for me since being elected to office Jan. 1, 2006 and since January 3<sup>rd</sup> I have been being harassed on my job. I have reported it to the union, the port, the Police department and to the International and now here it is October and yet it continues. I am tired of being continually harassed.

I applaud the port in taking swift action to protect the union members at the meetings from 5:15 p.m. to 8:00 p.m. I wish they would make the same consideration by protecting me on the job from 8:00 a.m. to 5:00 p.m.

I received a letter from the DSPC management advising me that they will not tolerate anyone creating a hostile work environment. I am asking the Port management to see what can be done to protect my rights as an employee of the port. *Attachment N.*

A hearing on the grievance was scheduled for October 25, 2006. The Petitioner, along with his Shop Steward appeared at the hearing. When Respondent Clements noticed the Petitioner was in attendance, Clements left the hearing and called the Port Director, requesting the Petitioner be removed from the hearing. When the Petitioner did not leave, the hearing was continued and rescheduled for November 17, 2006.

The Charge requests PERB find the Respondents violated the statute as alleged and that they be ordered to cease and desist from all actions which violate the statute, including discriminating against and hindering the Petitioner from pursuing lawful work. The Charge also requests that the grievance hearing and further processing of the grievance concerning the Weigh Master position be enjoined.

On November 17, 2006, the PERB Executive Director issued a decision denying the Petitioner's Request for Injunctive Relief, wherein he held:

In order to prevail the party seeking the relief must establish both irreparable harm which will result if the request is not granted and the probability that it will prevail of the merits of the underlying substantive issue.

In this matter, neither to these conditions have been satisfied at this stage of the proceedings. (*citations omitted*)

The ILA filed its Answer to the Charge on or about November 27, 2006, in which it denied the relevancy of any and all of the documents attached to the Charge. It asserted only ILA 1694-1 could properly be named as a Respondent under the Public Employment Relations Act; consequently, Mr. Knight and Mr. Clements were inappropriately included by the Petitioner



as “defendants” and should be dismissed from the proceedings. It further denied that the ILA had violated any of the cited provisions of the PERA and moved the charge be dismissed.

Under New Matter, the ILA asserts that all of the allegations made in the Charge are covered either by the collective bargaining agreement or the constitution and by-laws of the local union. It asserts ‘. . . the sole and exclusive forum for determining the factual accuracy or the legal significance of petitioner’s allegations are the grievance procedure of the Collective Bargaining Agreement or the various remedies provided by the constitution and bylaws of the Local Union and its International Union, International Longshoremens Association, AFL-CIO.”

The Petitioner filed an Answer to the ILA’s New Matter on or about December 1, 2006, in which he denied the new matter. Specifically, the Petitioner responded:

. . . I am the immediate Past-President of ILA Local 1694-1. The harassment and actions taken by Respondent Clements violate the Union’s statutory duty to represent all bargaining unit employees without discrimination. I have been singled out for disparate treatment because I did not support the current union administration and opposed them in the last union election.

. . . The collective bargaining agreement does not provide recourse for a bargaining unit employee who asserts he has been denied fair, nondiscriminatory representation by his exclusive bargaining representative, as is the employee’s statutory right under 19 Del.C. §1303. The rights I seek to enforce arise exclusively from the Public Employment Relations [Act], 19 Del.C. Chapter [13] for which the Public Employment Relations Board is exclusively responsible.

. . . Respondent Clements is the Business Agent and Respondent Knight is the President of ILA Local 1694-1. 19 Del.C. §1307(b) provides an unfair labor practice may be committed by either a public employee, an employee organization, or its designated representative. (*emphasis in original*)

By letter dated December 6, 2006, the Executive Director advised the Petitioner and Counsel for ILA 1694-1 that Respondent Clements had requested the opportunity to file an Answer to the Charge on his own behalf. A seven day window was provided in which an individual Answer would be accepted from either Respondent Clements and/or Respondent Knight, noting “Respondents Clements and Knight can only be held responsible for specific

conduct prohibited by §1307(b) in their capacity as designated representatives of the exclusive representative or as public employees.”

Answers were not filed by either Respondent Clements or Respondent Knight. Counsel for ILA 1694-1, by letter dated December 7, 2006, argued that neither Clements nor Knight should be treated as Respondents, as the Petitioner had identified them as Defendants on the face of the Charge. It asserted,

The relief sought on page 4 of the charge is solely against the Respondent [Union] and Clements’ name only arises in the attempt to enjoin him from pursuing a grievance which he filed in his capacity as a Business Agent. Hence, it is wholly inappropriate to consider him (or Anthony Knight) as a “Respondent” since the only respondent named in the charge is the Local Union and the only request for a finding of a violation is that made against the Respondent.

This Probable Cause Determination is based upon a review of the Petitioner’s Charge, the ILA 1694-1’s Answer to the Charge and New Matter, and Petitioner’s Response to the ILA 1694-1’s New Matter.

### **DETERMINATION**

Regulation 5.6 of the Rules of the Delaware Public Employment Relations Board requires that after reviewing 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.

In making that determination, PERB rules governing the filing of unfair labor practice charges must also be considered. Rule 5.2, Filing of Unfair Labor Practice Charges, provides in relevant part:

[Unfair labor practice] complaints must be filed within one hundred and eighty (180) days of the alleged violation. This limitation shall not be construed to prohibit introduction of evidence of conduct or activity occurring outside the

statutory period, provided the Board or its agent finds it relevant to the question of commission of an unfair labor practice within the limitations period.

The instant charge was filed on or about November 15, 2006; therefore, the limitations period began 180 days prior thereto, on May 19, 2006. In order to consider the incidents which occurred prior to May 19, there must be evidence of actions in violation of the statute within the limitation period.

In this case, the only incidents occurring within the limitations period are the suspension from membership and fining of Petitioner Cephas by the Local in October and the filing of the grievance. The recourse for contesting the fairness or appropriateness of Local's imposed sanctions is through the internal union process and is not subject to PERB jurisdiction.

There is nothing on the face of the grievance filed by the Union concerning the Weigh Master position which suggests that the grievance does not arise under the terms of the collective bargaining agreement or that it is discriminatory or harassing on its face. The grievance does not request that the Employer demote the Petitioner or request a remedy that is detrimental to the Petitioner. The requested remedy in the grievance at issue is that the Port construct a scale house.

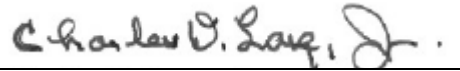
Although the incidents which are alleged to have occurred prior to May 19, 2006, raise serious concern about the Petitioner's work environment and the role of the ILA Business Agent, and for that matter, the Port in creating and supporting a hostile environment, those incidents occurred outside of the allowable review period of 180 days prior to the filing of the charge. There is no conduct alleged to have occurred within the window that constitutes a probable or possible violation of the statute; therefore, there is no bridge to consider the incidents occurring prior thereto.

For the reasons set forth herein, the acts alleged to have occurred during the limitations period do not constitute a sufficient basis for finding probable cause to support the charge.

Consequently, it is unnecessary at this time to address the ILA's argument concerning whether the Union President and Business Agent can be named as co-respondents to a charge.

Wherefore, this charge is hereby dismissed without prejudice.

DATE: 1 February 2007

Handwritten signature of Charles D. Long, Jr. in cursive script, positioned above a horizontal line.

CHARLES D. LONG, JR.  
Executive Director  
Del. Public Employment Relations Bd.