

PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF DELAWARE

NEAL EASTBURN,	:	
Charging Party,	:	
	:	
v.	:	<u>ULP No. 09-05-673</u>
	:	Probable Cause Determination
STATE OF DELAWARE, JUSTICE OF THE	:	
PEACE ,	:	
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 Justice of the Peace (“Court”) is an agency of the State.

Neal Eastburn (“Charging Party”) was a public employee employed by the Court at all times relevant to this Charge, within the meaning of 19 Del.C. §1302(o). Charging Party was also a member of a bargaining unit of Court employees for purposes of collective bargaining.

On or about May 6, 2009, Charging Party filed an unfair labor practice charge alleging the Court violated 19 Del.C. §1307(a)(4), which provides:

§1307. Unfair labor practices.

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

(4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony under this chapter.

Charging Party alleges that he was the leader of a group of Constables who objected to being placed by the PERB into Compensation Bargaining Unit 1 (“Unit 1”) because of what they perceived to be a lack of functional similarity to Security Officers. The Constables challenged the inclusion of their classification in Unit 1.

Following a hearing on or about October 23, 2008, a decision was rendered declaring Constables were not sufficiently similar to other Unit 1 classifications. As a result, the Constables were not placed in Compensation Bargaining Unit 1. In his capacity as the leader of the group of Constables, Charging Party periodically dealt with the Operations Manager of the Court.

Charging Party alleges that an investigation of Charging Party was initiated by Court against him. Following a pre-termination hearing on January 16, 2009, by letter dated January 23, 2009, Charging Party was informed of his termination related to the performance of his job duties.

Charging Party alleges that prior to his involvement with the other Constables in the PERB representation proceedings, the conduct resulting in his termination was known and condoned by the Court. Charging Party alleges that his termination was in retaliation for his outspoken criticism of how Constables were treated and his organizational efforts.

On May 28, 2009, the State filed its Answer denying the material allegations set forth in the Charge. In a section entitled New Matter, the State alleges that when an employee brings an unfair labor practice charge he must show that the employer harbored an anti-union animus and that the animus was a substantial or motivating factor for the discipline at issue. If successful, the burden of going forward shifts to the employer to show that the same action would have been taken without the presence of anti-union

animus. Citing *Wilmington Firefighters Assn., Local 1590 v. City of Wilmington*, PERB ULP 93-06-085 (1994)

The State maintains that Charging Party has failed to allege any facts or circumstances to establish the Court harbored any anti-union animus against him. Nor has Charging Party established that the Court did not have a legitimate non-discriminatory reason for his termination.

On June 10, 2009, Charging Party filed his Response to New Matter.

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 the provisions set forth in Regulation 7.4. The Board shall 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 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 pleadings 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 limited purpose of a probable cause determination is to establish that the facts alleged by Charging Party are sufficient to establish probable cause to believe that an unfair labor practice may have occurred. If the answer is in the affirmative, the decision of whether an unfair labor practice has, in fact, been committed is a function of the evidence presented at hearing.

The State's position that the allegations are insufficient to warrant proceeding to a hearing is unpersuasive.

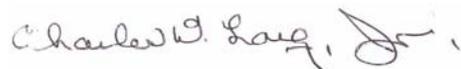
DETERMINATION

Considered in a light most favorable to Charging Party, the pleadings constitute probable cause to believe that an unfair labor practice may have occurred. Specifically, the issue is whether Court has violated 19 Del.C. §1307(a)(4) by terminating Charging Party.

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: September 4, 2009



CHARLES D. LONG, JR., Hearing Officer
Del. Public Employment Relations Bd.