

PUBLIC EMPLOYMENT RELATIONS BOARD
FOR THE STATE OF DELAWARE

WILMINGTON FIREFIGHTERS ASSOCIATION,	:	
LOCAL 1590,	:	
	:	
Charging Party,	:	<u>ULP No. 09-06-686</u>
	:	
v.	:	Charge and Counter Charge
	:	
CITY OF WILMINGTON, DELAWARE,	:	PROBABLE CAUSE DETERMINATION
	:	
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).

The Wilmington Firefighters Association, Local 1590 (“Local 1590”) is an employee organization which admits public employees to membership and has as a purpose the representation of those employees in collective bargaining pursuant to 19 Del.C. §1602(g). Local 1590 is the exclusive bargaining representative of uniformed City Fire Department employees in the ranks of Firefighter through Battalion Chief, as certified in DOL Case 23.

On or about June 15, 2009, Local 1590 filed an unfair labor practice charge alleging the City had violated 19 Del.C. §1607(a)(5):

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

(5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate bargaining unit.

Local 1590's Charge alleges:

During a critical time in contract negotiations, the City proposed and negotiated a percentage salary increase for Fiscal Year 2010, at the same time as it was intending to require Local 1590 to give back the very same negotiated percentage salary increase in exchange for no layoffs of Local 1590 members. The City knew by withholding that information, the membership of Local 1590 would be ratifying an agreement with a FY 2010 percentage increase that the City intended not to actually give them. The City's actions in concealing a material fact, that they proposed and intended to agree to the FY 2010 percentage salary increase but then demand that it be eliminated in return for no layoffs, prevented Local 1590 from properly representing its members during the negotiations and subsequent ratification. The City's actions constitute a failure to bargain in good faith and an unfair labor practice in violation of 19 Del.C. 1607(a)(5). *Charge, ¶14.*

On July 2, 2009, the City filed its Answer to the Charge¹ denying all material allegations. The Answer also included New Matter and a Counter Charge in which the City alleged the Local 1590 had violated 19 Del.C. §1607b)(2):

- (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:
 - (2) Refuse to bargain collectively in good faith with the public employer or its designated representative if the employee organization is an exclusive representative.

The Counter Charge alleges Local 1590 ratified the collective bargaining agreement with the knowledge that full implementation would result in layoff of its members and did so in bad faith and in violation of its statutory obligations "with the intent to compel the City by any means, including litigation, to provide more than what they bargained for."

On or about July 15, 2009, the Local 1590 filed its Response to New Matter and Answer to the Counter Charge.

This Probable Cause Determination is based upon a review of the pleadings as they relate to both the Charge and the Counter-Charge.

¹ The City amended its Answer and New Matter on July 13, 2009. Local 1590 was provided additional time to respond to the New Matter (as amended) and the Counter Charge.

DISCUSSION

The Rules and Regulations of the Delaware PERB require that upon completion of the pleadings in an unfair labor practice proceeding, a determination shall be issued as to whether those pleadings establish probable cause to believe the conduct or incidents alleged could have violated the Police Officers and Firefighters Employment Relations Act, 19 Del.C. Chapter 16. DE PERB Rule 5.6. For purpose of this review, factual disputes established by the pleadings are considered in a light most favorable to the Charging Party in order to avoid dismissing what may prove to be a valid charge without the benefit of receiving evidence concerning that factual dispute. *Richard Flowers v. State of Delaware, Department of Transportation, Delaware Transit Corporation*, Probable Cause Determination, ULP No. 04-10-453,V PERB 3179 (2004).

Local 1590 (in its Charge) and the City (in its Counter Charge) each allege the other has failed or refused to bargain in good faith during the course of the negotiations for the successor agreement. The burden falls on the party making the allegation of bad faith to present facts and argument which support the allegation.

As both parties have asserted a failure to bargain in good faith during the course of the negotiations, the pleadings are sufficient to place this matter in issue and to proceed to hearing.

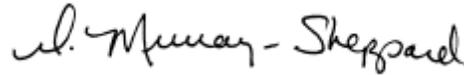
DETERMINATION

Consistent with the foregoing discussion, the pleadings provide a sufficient basis for finding probable cause to believe that an unfair labor practice may have occurred.

WHEREFORE, a hearing shall be scheduled forthwith to establish a record on which a determination can be made as to whether either the City and/or Local 1590 failed to bargain good faith in violation of 19 Del.C. §1607(a)(5).

IT IS SO ORDERED.

DATE: August 27, 2009



DEBORAH L. MURRAY-SHEPPARD
Executive Director
Del. Public Employment Relations Bd.