

salary and step increases in 2010 in order to help address a projected budget deficit. The 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 return for no layoffs of Local 1590 members. The City knew that by withholding that information, the membership of Local 1590 would be ratifying an agreement with a FY2010 percentage salary 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 the 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.*

The IAFF requests the Public Employment Relations Board "issue an Order finding the City's actions to be in violation of 19 Del.C. §1607(a)(5) and to grant all reasonable remedies, including temporary or preliminary relief to Local 1590."

The Charge was forwarded to the City for response. In response to a request for the City's counsel, PERB granted a ten (10) day extension to the City to respond to the Charge. The City's Answer is due on or before July 3, 2009.

Counsel for the IAFF responded to the extension by letter dated June 23, 2009:

My reason for objecting [to the extension] is that the City intends to lay off a number of Firefighters effective July 1, 2009 and this relates directly to the basis for our petition. Following the City's Answer ... I intended to ask PERB to enter a Temporary Order to maintain the current manpower staffing of the Fire Department (status quo) until a Hearing could be held.

Please consider this letter as my request that you enter a Temporary Order requiring the City to stay any layoffs until a full hearing can be held.

By letter also dated June 23, 2009, the City objected to the issuance of any

Temporary Order to maintain current manpower staffing, asserting the order would be “premature and without basis” as no determination had yet been made that an unfair labor practice has been committed.

The IAFF responded to the City’s letter on June 24, arguing,

[I]t is not an extraordinary request for PERB to maintain the status quo while it hears an unfair labor practice charge. [The City’s] concern that an unfair labor practice charge could be misused ignores the fact that the Executive Director is required to make a Probable Cause Determination based on the pleadings and that the Executive Director has the authority to issue Injunctions and Temporary Orders. The present and realistic harm to the employees who are being laid off far outweighs the City’s concerns about possible future abuses of the PERB process.

The City again responded to the IAFF correspondence, arguing in relevant part,

...[T]here are several significant factors [the IAFF] overlooks. Presently, a TRO would be premature and could result in harming the City and the affected firefighters. For instance, if the City was restrained from going forward with the layoffs, and it was later determined that the layoffs were permissible, who pays the City and the taxpayers back for the additional cost. Would the affected firefighters or the Union be required to pay back the City, or will the City and the taxpayers suffer irreparable harm by the loss of the spent funds?

Also, there would not be irreparable harm to the affected firefighters. If the City is found to have committed an unfair labor practice and is required to reverse itself on the layoffs;*[sic]* those affected firefighters would be made whole.

The City would reiterate that issuing a Temporary Restraining Order at this time would be setting a bad precedent. It will encourage the filing of unfair labor practice charges with TROs whenever layoffs are contemplated by public management.

DISCUSSION

A preliminary injunction constitutes extraordinary equitable relief and should only be issued in clear cases of irreparable injury and where the granting body is

convinced of its urgent necessity. *State v. DSEA*, Del. Ch., 326 A.2d 868 (1974); *Appoquinimink Education Association v. Bd. of Education: Decision on Request for Temporary and Injunctive Relief*, Del. PERB, ULP 98-09-243, III PERB 1781, 1783 (1998)

The IAFF is correct in its assertion that the Police and Firefighters Employment Relations Act requires the Executive Director to make a probable cause determination based upon a review of the pleadings. In this case, however, the pleadings are not complete. The only pleading presently filed is the Charge, which did not include a request for expedited processing nor include a motion for preliminary injunction. Upon completion of the pleadings (including the receipt of the Answer and Response to any new matter which may be included in the Answer), a probable cause determination will be issued.

It is well-established Delaware law that a successful request for preliminary injunctive relief must satisfy two requirements. Firstly, the charging party must establish that there is a reasonable probability that it will ultimately prevail on the merits of the dispute; and second, that it will suffer irreparable injury if its request for injunctive relief is denied. *Gimbel v. Signal Companies, Inc.*, Del.Ch., 316 A.2d 599 (1974). Failure to establish either element precludes the granting of the requested relief. *New Castle County Vocational Technical Education Association v. New Castle County Vocational Technical School District*, Del.PERB, ULP No. 85-05-025 (1988); *Appoquinimink*

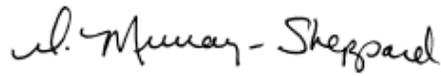
At this point in the processing of this charge, the IAFF has neither addressed nor provided support on which a conclusion could be drawn that there is a “reasonable probability that it will ultimately prevail on the merits of the dispute.”

Further, it is also well established that monetary damages (such as the loss of

wages) do not constitute irreparable harm as monetary damages may be recompensed after resolution of the dispute. In the absence of alleged irreparable harm other than the lost wages and benefits for the firefighters who may be laid-off, the IAFF's request for broad preliminary relief in the form of an order "requiring the City to stay any layoffs until a full Hearing can be held" is denied.

IT IS SO ORDERED.

Date: June 29, 2009



DEBORAH L. MURRAY-SHEPPARD
Executive Director, Delaware PERB