

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

<b>GENERAL TEAMSTERS LOCAL UNION 326,</b>	:	
	:	
Charging Party,	:	<b><u>ULP No. 09-07-691</u></b>
	:	
v.	:	<b>PROBABLE CAUSE DETERMINATION</b>
	:	
<b>CITY OF REHOBOTH BEACH, DELAWARE,</b>	:	
	:	
Respondent.	:	

**BACKGROUND**

The City of Rehoboth Beach, 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).

General Teamsters Local 326 (“Union”) 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). The Union is the exclusive bargaining representative of uniformed Rehoboth Beach Police Department employees below the rank of Lieutenant, as certified in Representation Petition 96-10-198 (DOL 218).

The City and the Union are parties to a current collective bargaining agreement which has a term of April 1, 2007 through March 31, 2010.

On or about July 15, 2009, the Union 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.

Specifically, the Charge alleges the City unilaterally changed the terms and conditions of a mandatory subject of bargaining (i.e., the grievance procedure) when it refused to process Corporal Whitman's grievance through the last step of the grievance procedure as set forth in the collective bargaining agreement.<sup>1</sup>

On July 27, 2009, the City filed its Answer to the Charge denying the material allegations. The Answer also included New Matter alleging that the Union had filed a "complaint" rather than a "grievance" as defined in §9.2 of the collective bargaining agreement. The City asserts processing of a complaint terminates with a final and binding decision of the City Manager. §9.5. Consequently the City did not violate either the negotiated grievance procedure or its duty to bargain in good faith.

On or about July 31, 2009, the Union filed its Response to New Matter denying that the dispute was a "complaint" rather than a "grievance" and asserting that the suspension of Cpl. Whitman without pay from his duties as a police officer was clearly a disciplinary action subject to just cause. The Union requests PERB find the City committed an unfair labor practice in violation of 19 Del.C. §1607(a)(5) and order the City to process Cpl. Whitman's grievance in accordance with the negotiated grievance procedure.

### **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

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<sup>1</sup> The Union's Charge also included a second count alleging a violation of 19 Del.C. §1607(a)(8) which was withdrawn by letter dated August 5, 2009.

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).

The Union alleges the City committed a per se violation of the duty to bargain in good faith when the Mayor and Commissioners refused to address the merits of Cpl. Whitman's grievance at Step 3, by characterizing the dispute as a "complaint" in order to prevent consideration of the merits of the grievance beyond the City Manager. The City admits the Union's ¶12 allegation "...On February 10, 2009, the Union filed a formal written Report of Grievance on behalf of Cpl. Whitman requesting that the City pay Cpl. Whitman for all lost time and benefits arising out of the suspension without pay that was effective February 4, 2009."

It is well established by statute, as well as by prior case law, that the grievance procedure is a mandatory subject of bargaining. 19 Del.C. §1602(e), (n). Consequently, if the City's actions are proven to effect a unilateral change in the negotiated grievance procedure, an unfair labor practice will have occurred. *Diamond State Port Corporation v. ILA, Local 1694-1*, Probable Cause Determination, ULP 09-05-682, VI PERB 4275, 4277 (2009).

A determination as to whether the City violated its duty to bargain in good faith and to refrain from instituting a unilateral change in the grievance procedure turns on the question of whether Union's protest of Cpl. Whitman's suspension without pay constituted a "grievance" or a "complaint" as defined in Article 9 of the Agreement. PERB has frequently exercised its

discretion to defer rendering a decision on a charge (which requires a determination as to the meaning and application of specific contractual language) to resolution through the parties' mutually agreed upon binding arbitration proceeding. This case, however, does not lend itself to deferral of the Charge because there is neither a pending grievance nor a binding arbitration provision in the parties' Agreement.

Consequently, a hearing will be scheduled for the purpose of receiving evidence and argument necessary to resolve the limited issue of whether the underlying dispute constitutes a grievance which is subject to the mandatorily negotiated grievance procedure.

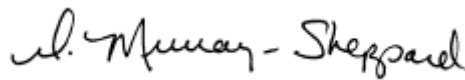
### **DETERMINATION**

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 the City failed to bargain good faith in violation of 19 Del.C. §1607(a)(5).

**IT IS SO ORDERED.**

DATE: September 2, 2009



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