

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

SONJA TAYLOR-BRAY,	:	
	:	
Charging Party,	:	
	:	
v.	:	Unfair Labor Practice Charge
	:	<u>09-11-716</u>
STATE OF DELAWARE, DEPARTMENT	:	
OF SERVICES FOR CHILDREN, YOUTH	:	Probable Cause Determination
AND THEIR FAMILIES,	:	and Order of Dismissal
	:	
Respondent.	:	

BACKGROUND

At all times relevant to this unfair labor practice charge, Sonja-Taylor Bray (“Charging Party”) was a public employee within the meaning of §1302(o) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (“PERA”) and was employed by the State of Delaware, Department of Services for Children, Youth and Their Families. During the period of her employment, she was also a member of a bargaining unit of employees represented by the American Federation of State, County and Municipal Employees, Local 2004 (“AFSCME”).

The State of Delaware (“State”) is a public employer within the meaning of 19 Del.C. §1302(p). The Department of Services for Children, Youth and Families (“DSCYF”) is an agency of the State of Delaware.

On or about November 4, 2009, Charging Party filed an unfair labor practice charge in which she alleges that the State engaged in conduct which violates 19 Del.C.

§1307(a)(1), (a)(3), (a)(4) and (a)(5), which provide:

- §1307 (a) It is an unfair labor practice for a public employer 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.
 - (3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.
 - (4) Discharge or otherwise discriminate against an employee because the employee has signed an affidavit, petition or complaint or has given information or testimony under this chapter.
 - (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, except with respect to a discretionary subject.

Specifically, the Charge alleges Charging Party was terminated for her “inability to perform essential functions of [her] position”, based on a permanent medium duty restriction ordered by her physician. Charging Party contends her Youth Rehabilitative Counselor position has been classified as medium duty work by the United States Department of Labor. She further asserts she was released to return to duty by her physician and a State appointed physician, but that the State refused to allow her to return to work on July 20, 2009. She was terminated effective July 22, 2009. She charges her termination was retaliatory and designed to prevent her from exercising her statutory rights to participate in union activities, including the grievance procedure. Charging Party seeks reinstatement and a make-whole remedy.

On or about November 19, 2009, the State filed its Answer, denying the material allegations of the Charge. Additionally, the State included six affirmative defenses to the

Charge which include that the Charge should be deferred to arbitration and that the Charge fails to allege facts sufficient to state a claim for relief under 19 Del.C. §1307(a)(1), (a)(3), (a)(4), and/or (a)(5)

Charging Party filed a Response to New Matter on December 2, 2009, denying the State's affirmative defenses.

This Probable Cause is based upon a review of the pleadings.

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 provisions set forth in Regulation 7.4. The Board will 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 has, or 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 the 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 statute requires a Charging Party to allege facts in the complaint with sufficient specificity so as to, first, allow the Respondent to provide an appropriate answer and second, to provide facts on which PERB can conclude there is a sufficient basis for the charge. The Charge must also explicitly link the factual allegations to the “specific provision of the statute alleged to have been violated.” DE PERB Rule 5.2. The initial burden rests on the Charging Party to allege facts that support the charge that §1307 of the PERA has been violated.

Even when considered in a light favorable to the Charging Party, the conduct and incidents set forth in the Charge fail to allege facts sufficient to constitute probable cause to believe that an unfair labor practice may have occurred. Charging Party was discharged. A grievance was filed protesting her discharge. That grievance is being processed through the contractual grievance procedure. Whether Charging Party was discharged for just cause is an issue for resolution through the contractual grievance and arbitration procedure.

Charging Party also asserts the State misapplied 29 Del.C. Chapter 52A, Disability Insurance Program. She requests clarification of this chapter of the state law, specifically as it pertains to workers compensation claims involving public employers and merit employees. The requested clarification of Chapter 52A does not fall within PERB’s jurisdiction. Further the allegations made with respect to the whether Charging Party was or should have been on disability insurance or workers compensation are not sufficiently or specifically related to any potential violation of the PERA.

The allegations contained in this Charge constitute Charging Party’s position with

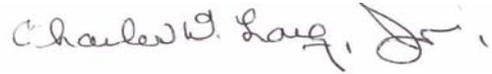
respect to why there was not just cause for her termination. That issue is subject to resolution through the grievance procedure, and does not rise to the level of a potential unfair labor practice by the State under the circumstances asserted in this Charge.

DETERMINATION

The unfair labor practice charge is hereby dismissed in that it fails to allege facts sufficient to support a claim that §1307(a)(1), (a)(3), (a)(4) and/or (a)(5) was violated, as alleged.

IT IS SO ORDERED.

Date: June 1, 2010



Charles D. Long, Jr.,
Hearing Officer
Del. Public Employment Relations Bd.