

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

LESTER SHAFFER, BRAD CORDREY,	:
CHRISTOPHER STORY, CHRISTOPHER	:
COOPER and SHAWN BRITTINGHAM,	:
	:
Charging Parties,	:
	:
	:
v.	:
	:
	:
TOWN OF GEORGETOWN, DELAWARE,	:
	:
	:
Respondent.	:

ULP. No. 10-08-758

Probable Cause Determination

BACKGROUND

The Town of Georgetown, Delaware (“Town”) 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. The Town employs police officers in its Police Department.

Charging Parties Lester Shaffer, Brad Cordrey, Christopher Story, Christopher Cooper and Shaw Brittingham (“Charging Parties”) are employed by the Georgetown Police Department and are “public employees” within the meaning of §1602(k), of the POFERA.

On or about August 16, 2010, Charging Parties filed an unfair labor practice charge alleging that the Town has and continues to engage in conduct in violation 19 Del.C. §1607(a) which provides:

§1607(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.
- (2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization.
- (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 or filed 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.
- (6) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.
- (7) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.
- (8) Refuse to disclose any public record as defined by Chapter 100 of Title 29.

Specifically, the Charge alleges representatives of the Town have engaged in the following actions which Charging Parties assert violate the provisions of the POFERA enumerated above:

- a. The Chief of Police and Captain initiated Professional Standards Inquiries on a number of [police] officers, alleging violation of certain directives by the Chief. These investigations were initiated by the Chief and Captain in response to the officers' informal, off-duty meeting with a town official, regarding issues related to the contract between the Town and the officers and the actions of the Chief and the Captain. The investigation by the [Town] is listed as "ongoing" according to the Captain.
- b. The [Town], through the Chief of Police and Captain, are enforcing a Grievance Directive/Policy which is in opposition

to the Grievance policy pursuant to the [collective bargaining agreement].

- c. In the midst of the “professional standards investigation” and on the same date of the interview of the officers, the Captain issued a shift change memorandum, changing the manpower assigned to shifts and the shifts worked by each officer.
- d. The [Town], through the Chief of Police and Captain, have engaged in an ongoing course of verbal harassment, intimidation, and retaliation directed at this and other officers, by engaging in name calling, repeated professional standards investigations, retaliations on scheduling assignments, threats of discipline, and violations of the rights guaranteed by the contract to the Charging Parties and similar officers.
- e. The [Town], through the Chief of Police and Captain, have refused to address issues of officer safety, to wit: permitting bullet proof vests to expire without replacement and, when the officers complained, instituting retaliation against said officers.
- f. The [Town], through the Chief of Police and Captain, have engaged in a course of conduct designed to retaliate against the Charging Party and other officers, for a vote and letter of “no confidence” in the Captain (approved by the Chief, but later denied).
- g. The [Town], through the Chief of Police and Captain, have violated the terms of the contract by notifying officers of a possible loss of employment, when such loss of employment had not been considered nor approved by the Town Government.
- h. The [Town], through the Chief of Police and Captain, have continued to threaten, harass, and intimidate the employees with further prosecution, based upon legitimate grievances. The Town of Georgetown has refused to address the legitimate concerns of employees.

On or about September 1, 2010, the Town filed its Answer to the Charge denying the material allegations contained therein. Under “New Matter, the Town asserted:

- a. This allegation fails to comply with the requirements of PERB Rule 5.2¹

¹ Rule 5, Filing of Charges. 2 (c) The charge shall include the following information: (3) A clear and detailed statement of the facts constituting the alleged unfair labor practice, including the names of the individuals involved in the alleged unfair labor practice, the time, place of occurrence and nature of each particular fact alleged, and reference to the specific provisions of the state alleged to have been violated. Each fact shall be alleged in a separate paragraph with supporting documentation where applicable.

in that it fails to state a claim constituting a violation of 19 Del.C. §1607(a) with sufficient specificity.

- b. The [Town] has two grievance policies² in addition to the negotiated Grievance procedure in the collective bargaining agreement, which apply to disputes which do not concern to alleged violations of that Agreement.
- c. The negotiated collective bargaining agreement includes a Management Rights clause in Article 2.1 which states, “The Town retains and reserves until itself, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and Constitution of the State of Delaware and the United States, and including but not limited to: Hire all employees and, subject to the provisions of the law, to determine their qualifications, and the conditions of their continued employment or cause their dismissal or demotion, and to promote, place, transfer and assign all such employees.”
- d. This allegation fails to comply with the requirements of PERB Rule 5.2 in that it fails to state a claim constituting a violation of 19 Del.C. §1607(a) with sufficient specificity. The allegation is broad and unsupported by the information provided.
- e. Body armor does not expire; only the manufacturer’s warranty expires. All officers have purchased new body armor as needed.
- f. This allegation is untimely because the alleged event occurred more than three years ago, well outside the 180 day window for filing an unfair labor practice charge.
- g. No officers have been dismissed.
- h. All properly filed grievances have been investigated and resolved. There are three different processes for resolving grievances involving the Police Department. The Town is unaware of any legitimate grievance that has not been addressed and resolved.

On or about September 6, 2010, Charging Parties submitted their Response denying the New Matter set forth in the Town’s Answer and exhibits intended to support the claims set forth in the Charge.

DISCUSSION

² The Police Department Grievance Directive and the Town’s Grievance Policy.

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).

DETERMINATION

Considered in a light most favorable to Charging Parties, the facts alleged by Charging Parties, even if proven, do not serve as a basis for finding a violation of §1607(a)(2), (a)(7) or (a)(8), of the POFERA, as alleged.

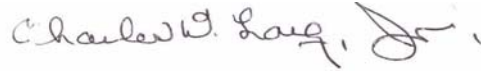
Concerning the remaining alleged violations of §1607(a)(1), (a)(3), (a)(4), (a)(5) and/or (a)(6), the pleadings establish probable cause to believe that an unfair labor

practice may have occurred. The pleadings raise questions of fact which can only be resolved following a hearing for the purpose of creating an evidentiary record upon which a decision can be rendered.

An informal conference will be scheduled for the purpose of defining the issues to be addressed at the hearing.

IT IS SO ORDERED.

Date: September 30, 2010



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