

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY AND	:	
MUNICIPAL EMPLOYEES, AFL-CIO, COUNCIL	:	
81, LOCALS 320 AND 1102,	:	
	:	
Charging Parties,	:	ULP No. 10-08-761
	:	
v.	:	Probable Cause Determination
	:	
CITY OF WILMINGTON, DELAWARE,	:	
	:	
Respondent.	:	

BACKGROUND

The City of Wilmington, Delaware, (“City”) is a public employer within the meaning of 19 Del.C. §1302(p) of the Employment Relations Act, 19 Del. C. Chapter 13 (“PERA” or “Act”).

The American Federation of State, County & Municipal Employees, AFL-CIO, Council 81, through its affiliated Locals 320 and 1102 (“AFSCME”), is an employee organization within the meaning of §1302(i), of the Act and the exclusive bargaining representative of two bargaining units of City employees, within the meaning of §1302(j), of the Act.

The parties are currently engaged in collective bargaining over the terms of successor collective bargaining agreements for those units.

On or about August 19, 2010, AFSCME filed an unfair labor practice charge alleging conduct by the City in violation of 19 Del.C. §§1307(a)(5), (a)(6), (a)(7) and

(a)(8), which provide:

- §1307 (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 unit, except with respect to a discretionary subject.
 - (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 AFSCME requested the City provide the results of a comparable wage survey (“JAQ Report”) conducted by the City and information identifying the scope and cost of the City’s outside labor counsel during the most recent ten (10) year period. AFSCME asserted it needed this information to assist in contract administration and to more effectively represent the bargaining unit members.

When the City declined to provide the requested information, AFSCME requested the State Department of Justice clarify the City’s obligation to provide the requested information under both the state’s Freedom of Information Act (“FOIA”, 29. Del.C. Chapter 25, specifically §10005), and the applicable collective bargaining statute, the Public Employment Relations Act, 19 Del.C. Chapter 13.

On or about August 9, 2010, the State Solicitor issued a decision which concluded:

We conclude that records of expenditures for outside counsel must promptly be produced, subject to the exemptions for attorney-client and other privileged information. However, because of the desirability of there being a consistent body of Delaware labor law, we defer to PERB to determine whether

the JAQ report must be disclosed, pursuant to PERA.

On or about September 3, 2010, the City filed its Answer, admitting to the relevant facts and denying the material allegations contained in the Charge. Under New Matter, the City asserts AFSCME desires the requested information for purposes of collective bargaining which disqualifies that information from the definition of a public record under 29 Del.C. §10002(g). The City denies that its refusal to produce the information violates its statutory duty to bargain in good faith. The City accuses AFSCME of bargaining in bad faith by attempting to obtain records exempted from the disclosure requirements of the Freedom of Information Act for the purpose of gaining leverage in collective bargaining.

On or about September 8, 2010, Charging Party filed its Response to New Matter denying the allegations set forth therein.

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 therein may have violated the Public Employment Relations Act, 19 Del.C. Chapter 13. DE PERB Rule 5.6.

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 Public Employment Relations Act provides that it is an unfair labor practice for a public employer or its designated representative to refuse to disclose any public record as defined by Chapter 100 of Title 29. 19 Del.C. §1307(a)(8). It is well established through PERB case law that the duty to bargain in good faith under the Public Employment Relations Act (“PERA”) obligates public employers to provide information to exclusive bargaining representatives that is necessary and relevant to those organizations in performing their representation duties. This obligation has been recognized by Delaware’s Public Employment Relations Board, Court of Chancery, and Supreme Court. *Bd. of Education of Colonial School District v. Colonial Education Association, DSEA/NEA*, Del.Chan., CA 14383, II PERB 1343 (1996), *affirmed Colonial Education Assn. v. Bd. of Education*, Del.Supr., Case 129, 1996, 152 LRRM 2575, III PERB 1519 (1996), (citing *Brandywine Affiliate, NCCEA/DSEA/NEA, v. Brandywine School District*, Del.PERB, ULP 85-06-005, I PERB 131, 149 (1986)); *AAUP v. DSU*, Del. PERB., Decision on Remand, ULP 95-10-159, III PERB 2177 (2001); *Delaware Correctional Officers Association v. Delaware Department of Correction*, ULP No. 00-07-286, III PERB 2209, 2214 (2001), *AFSCME Locals v. DSU*, Del.PERB, ULP 10-04-739, VII PERB 4693, 4705 (2010).

The allegations contained in the Charge, if proven, may support the conclusion that the PERA has been violated. It will be AFSCME’s burden to establish both the factual and legal support for such a finding.

The only issue here involves whether the Public Employment Relations Act

requires the City to provide AFSCME with a copy of the JAQ report. The pleadings do not reveal material disputed facts concerning AFSCME's request and the City's refusal to provide the JAQ report.

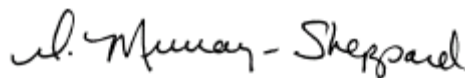
DETERMINATION

Considered in a light most favorable to Charging Party, the pleadings are sufficient to establish probable cause to believe that an unfair labor practice, as alleged, may have occurred.

In the absence of dispute as to material fact, there is no need to hold an evidentiary hearing. The City will be provided the opportunity to respond to AFSCME's Motion for Judgment on the Pleadings (filed September 9, 2010) and to file legal argument in response to AFSCME's brief in support of its Motion. A timely decision will be rendered thereafter on AFSCME's Motion.

IT IS SO ORDERED.

DATE: September 15, 2010



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