

THE STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

SHARON STRIBLING,	:	
	:	
Charging Party,	:	
	:	<u>ULP No. 10-09-764</u>
v.	:	Probable Cause Determination
	:	and Order of Dismissal
DELAWARE TRANSIT CORPORATION AND	:	
AMALGAMATED TRANSIT UNION, LOCAL 842,	:	
	:	
Respondents.	:	

Appearances

Sharon Stribling, Pro Se
Valerie M. Eifert, SLREP, for DTC
Alaine Williams, Esq., Williams Willig & Davidson, for ATU Local 842

BACKGROUND

The State of Delaware (“State”) is a public employer within the meaning of §1302(p) of the Public Employment Relations Act (“PERA” or “Act”), 19 Del.C. Chapter 13 (1994). The Delaware Transit Corporation (“DTC”) is an agency of the State.

The Amalgamated Transit Union, Local 842, (“ATU”) is an employee organization within the meaning of (“PERA”), §1302(i) of the Public Employment Relations Act, (19 Del.C. Chapter 13) (“PERA”). Through its affiliated Local 842, ATU, is the exclusive bargaining representative of certain employees of DTC within the meaning of §1302(j), of the PERA.

Charging Party Sharon Stribling (“Charging Party”) is employed as a bus driver by DTC and is a public employee within the meaning of 19 Del.C. §1302(o). Charging Party is a member of the bargaining unit represented by ATU Local 842.

DTC and ATU are parties to a collective bargaining agreement which has an expiration date of August 31, 2010, but which remains in full force and effect at all times relevant to this Charge.

On or about September 3, 2009, Charging Party filed an unfair labor practice charge alleging that DTC and ATU violated 19 Del.C. §1301(1), and (2); §1304(a); ATU violated §1304(a) and §1307(b) (1), (2) and/or (3); and, DTC violated §1307(a)(1), (2), (3), (5) and/or (6), which provide:

§1301 It is the declared policy of the State and the purpose of this chapter to promote harmonious and cooperative relationships between public employers and their employees and to protect the public by assuring the orderly and uninterrupted operations and functions of the public employer. These policies are best effectuated by:

- (1) Granting to public employees the right of organization and representation;
- (2) Obligating public employers and public employee organizations which have been certified as representing their public employees to enter into collective bargaining negotiations with the willingness to resolve disputes relating to terms and conditions of employment and to reduce to writing any agreements reached through such negotiations

§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.
- (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.

- (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.

§1307(b) It is unfair labor practice for a public employee or for an employee organization 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) Refuse to bargain collectively in good faith with the public employer or its designated representative if the employee organization is the exclusive representative.
- (3) 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

Charging Party alleges that on June 15, 2010, she was suspended pending termination. A pre-termination meeting was held on June 24, 2010 and Paul J. Kulesza (Chief Transportation Supervisor, Mid-County) issued a pre-termination decision on July 9, 2010, which states in relevant part,

On Thursday, June 24, 2010, a pre-termination hearing was held on your behalf at the Beech St. Facility. Present at this hearing were: Charles D. Moulds, Fixed Route Transportation Manager; Richard Seibel, Employee Relations Specialist; Wali Rushdan, President, Local 842, ATU; Lillian Shavers, Shop Steward, Local 842, ATU; Larry Vaughan, Chief Transportation Supervisor; you and I.

At this time we discussed the customer service complaints we received concerning your continued rude and disrespectful treatment of your passengers. In addition, we also received a complaint concerning your bus traveling at a high rate of speed on I-95 toward the Christiana Mall Park-n-Ride. A review of your bus' video showed you driving erratically and at an excessive speed in the rain. During our discussion we talked about the numerous incidents for which you have been counseled, trained, retrained, and subjected to various degrees of

progressive discipline, including warnings (both verbal and in writing) up to multiple day suspensions. All of these measures have not had their intended impact as your pattern of behavior continues.

After reviewing your history and the facts presented at the hearing, it is my decision that in lieu of termination your employment be reinstated as of Monday, July 12, 2010 with no back pay or benefits.

Further it is understood and agreed to by all parties present that this is your final warning as any future verifiable incidents of this nature will result in immediate termination of your employment with the Delaware Transit Corporation.

If you have any questions, please feel free to call me. *Charge Exhibit 2.*

By certified mail postmarked July 29, 2010, Charging Party notified DTC and the ATU that she did not agree with the settlement and intended to file a grievance protesting her reinstatement. In the letter to the ATU, she advises the union of her intent to “grieve my recent suspension pending termination” and enclosed a signed grievance form. She asserts she has a right to grieve the discipline and requests a Step 4 hearing and the right to petition union members for arbitration of her grievance. In her letter to DTC, Charging Party states her intent to grieve her reinstatement without back pay, to continue her EEOC complaint and to file a PERB complaint. She states she “made no deal, agreed to no terms and made no concession of any kind to return to work.” She asserts in her Charge that both DTC and ATU have ignored her grievance and denied her a Step 4 grievance hearing as required by the collective bargaining agreement.

Charging Party also contends DTC has a practice of scheduling pre-termination hearings after an employee has been suspended pending termination and then reinstating the employee without pay and benefits, in violation of the Public Employment Relations Act.

On or about September 3, 2010, Respondent ATU filed its Answer essentially denying the material allegations set forth in the Charge. Respondent maintains that the reasons supporting Charging Party's initial suspension pending termination, including passenger complaints and her prior record, were fully reviewed with Charging Party and the ATU at the pre-termination hearing on June 24, 2010. Paragraph 4 of ATU's Answer states in relevant part:

...At that pretermination hearing, DTC explained the allegations against Ms. Stribling including customer service complaints that have been received concerning Ms. Stribling's treatment of passengers. Complaints were reviewed. Also discussed at the hearing was prior discipline of Ms. Stribling in 2008 which resulted in a notice that if further incidents of disrespectful treatment of passengers occurred, Ms. Stribling would be terminated. Also discussed at the pretermination hearing were the allegations of Ms. Stribling driving her bus in a reckless manner. All DTC buses are equipped with video cameras. The video tape of Ms. Stribling's bus was shown. There was also a discussion regarding incidents in which Ms. Stribling had been counseled, trained, retrained and subject to various degrees of progressive discipline.

At the pretermination hearing, Ms. Stribling asked that she not be terminated. She repeatedly asked that she be given another chance and returned to work. President Rushdan and Shop Steward Lillian Shavers argued vociferously on behalf of Ms. Stribling that she be given an opportunity to return to work. Following the pretermination hearing on June 24, 2010, Shop Steward Shavers along with Ms. Stribling, met with Paul Kulesza, the Chief Transportation Supervisor in Mid-County and pleaded for Ms. Stribling to be reinstated without back pay. During that discussion, Shop Steward Shavers once again argued vociferously that Stribling be given the opportunity to return to work. It was stated that if she returned to work, she would return to work without any back pay.

Following those meetings, and in consideration of the Union and Ms. Stribling's request, DTC resolved to return Ms. Stribling to employment with no back pay or benefits. The resolution, which had been agreed to by the Union as well as Ms. Stribling, indicated that Ms. Stribling's return to work with no back pay or benefits would be her final warning. Further, there was discussion that any future "verifiable" incidents of this nature would result in immediate

termination of her employment with Delaware Transit Corporation. Ms. Stribling was not required to sign a “Last Chance Agreement” as a result of arguments the Union made on her behalf to DTC that a “Last Chance Agreement” should not be required. DTC acquiesced in the Union’s request that there be no “Last Chance Agreement”

Ms. Stribling was to return to work on July 12, 2010. However, prior to July 12, 2010, Ms. Stribling took herself out of service by “marking off.” At a later point in time, Ms. Stribling returned to employment.

The ATU declined to file a grievance on Charging Party’s behalf because Ms. Stribling’s reinstatement was a negotiated settlement agreed to by the parties. The Union’s position was clearly communicated to Charging Party by the Local Union President.

Respondent ATU further alleges that unfair labor practices are specifically set forth in §1307 of the Act and there is no independent cause of action for violation of §1301(1), §1301(2), or §1304(a), as alleged.

Respondent DTC filed its Answer to the unfair labor practice charge on September 15, 2010, essentially denying all of the material allegations set forth in the Charge. DTC alleges that Charging Party was suspended following two passenger complaints concerning her job performance and review of her unsatisfactory disciplinary history. Following the pre-termination hearing on June 24, 2010, and with agreement by all parties, Charging Party was reinstated effective July 12, 2010, without back pay or benefits on a last chance basis.

The ATU did not contest Charging Party’s reinstatement nor did Charging Party notify DTC of her disagreement with her reinstatement until July 29, 2010, well beyond the contractual ten (10) day period within which a Step 4 grievance must be filed.¹

¹ Section 9 – Discipline of the parties’ collective bargaining agreement states, in relevant part:

- C. Should it become necessary, in the opinion of the Administration, to suspend or discharge an employee for infractions of Administration rules, other than those covered in Paragraph (B), a

DTC asserts in New Matter included in its Answer that the allegations contained in the unfair labor practice charge cite no facts which could reasonably be construed as violating the cited sections of the PERA.

On September 24, 2010, Charging Party filed her Response denying the New Matter set forth in DTC's Answer to the Charge.

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 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

thorough investigation of the case shall be made by the proper Administration officials within 15 days of the offense or as may be required to assure accuracy of all related facts.

Upon completion of this investigation, the employee and the Union will be notified of the decision of the Administration officials. Such decision shall not become effective until the employee has had an opportunity for an Appeal Hearing before the Administrator except in cases which warrant dismissal or at the option of an employee.

- D. In those instances where an Appeal Hearing bore the Administrator is requested, all parties are obligated to schedule such hearing within 5 days from the date of notification to the employee of the outcome of the investigation. Based upon the outcome of this hearing, such discipline, as applicable, shall become effective. This hearing shall be considered Step 3 in the Grievance Procedure detailed in Section 7 of this Agreement.

Section 7 – Disagreements, Disputes, Grievance Procedure

- Step 4 A sincere endeavor will be made by the Administration and the Union to dispose of any difference arising out of the application of this Agreement through conferences between the Administration and the Union. If the grievance is still not resolved at this stage, a meeting shall be held between the Union, and the State Deputy Director for Employee Relations (“Deputy Director”)/Administration within 10 days of the written response at Step 3.

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).

PERB has addressed the question of sufficiency of an unfair labor practice charge for purposes of rendering a probable cause determination in prior decisions, specifically holding:

PERB Rule 5.2(c)(3) requires a “clear and detailed statement of the facts constituting the alleged unfair labor practice...” Sufficient information must be included in the pleadings to allow a preliminary assessment of the procedural and substantive viability of the charge, i.e., the probability that there is sufficient cause to continue to process the charge. *American Federation of State, County and Municipal Employees, Council 81, Local 3911 v. New Castle County, Delaware* (Del. PERB, ULP 09-07-695 , VI PERB 4445, 4450 (2009)).

On its face, this Charge fails to allege any facts which would establish that either DTC or the ATU may have engaged in conduct which tended to interfere with, restrain or coerce the Charging Party in the exercise of any rights guaranteed by the statute, in violation of 19 Del.C. §1301, §1304, §1307(a)(1) and/or §1307(b)(1).

The statutory prohibitions defined in 19 Del.C. §1307 (a)(2) and (a)(3) restrict the actions of the public employer in its relationship with and conduct toward the exclusive bargaining representative of the employer’s employees. These provisions do not relate to

rights of individual employees. The Charge does not allege any facts which relate to interference with organizational rights.

19 Del.C.§1307(a)(6) and (b)(3) are derivative charges that an employer or union has failed or refused to comply with “any provision of this Chapter or with rules and regulations established by the Board...” Again, the pleadings fail to establish a basis for Charging Party’s allegations of violation.

Charging Party’s charge that DTC’s alleged practice of suspending employees pending termination and subsequent reinstatement those employees often with a lesser penalty has no merit. Section 9, of the collective bargaining agreement, Discipline, confers upon DTC the authority to, “**suspend** or discharge employees.” (emphasis added) Modification of an intended termination to a suspension following a pretermination meeting is, in fact, evidence that the process is effective and that the employer is open and receptive to considering the employee’s side of the story.

Concerning the allegations against ATU, the Union is the exclusive bargaining representative of the employees in an appropriate unit. The grievance procedure is negotiated between DTC and ATU to create a process for resolution of disputes arising under the collective bargaining agreement. If the Union agrees with the action taken by the Employer at Step 3 (the pre-termination meeting), regardless of whether the affected employee agrees (in the absence gross negligence on the part of the Union) the matter is over. There is no allegation of conduct by Charging Party which could reasonably be construed as gross negligence by the Union. On the other hand, if the Union disagrees with the Employer’s decision at Step 3, it alone has the option of appealing the Step 3

decision to Step 4 of the contractual grievance procedure. The contract is very clear on this point.

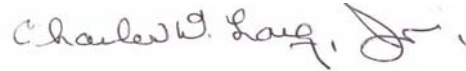
DETERMINATION

Considered in a light most favorable to Charging Party, the pleadings fail to establish probable cause to believe that an unfair labor practice, as alleged, may have been committed by either the Delaware Transit Corporation and/or Amalgamated Transit Union Local 842.

Accordingly, the Charge is hereby dismissed in its entirety.

It is so ordered.

Date: October 28, 2010



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