

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

<b>FRATERNAL ORDER OF POLICE, LODGE 1,</b>	)	
	)	
<b>Charging Party,</b>	)	<b><u>ULP No. 10-12-782</u></b>
	)	
<b>v.</b>	)	<b>PROBABLE CAUSE</b>
	)	<b>DETERMINATION</b>
<b>CITY OF WILMINGTON, DELAWARE,</b>	)	
	)	
<b>Respondent.</b>	)	

APPEARANCES

*Jeffrey M. Weiner, Esq., for FOP Lodge 1*  
*Krista Butler, Asst. City Solicitor., for City of Wilmington*

**BACKGROUND**

The City of Wilmington, Delaware (“City”) is a public employer within the meaning of 19 Del.C. §1602(l) of the Police Officers and Firefighters’ Employment Relations Act, 19 Del.C. Chapter 16 (“POFERA”)

The Fraternal Order of Police, Lodge No. 1 (“FOP”) is an employee organization within the meaning of 19 Del.C. §1602(g) and the exclusive bargaining representative of police officers employed by the Wilmington Police Department.

FOP Lodge 1 and the City are parties to a collective bargaining agreement which has a term of July 1, 2007 through June 30, 2010.

On or about December 20, 2010, the FOP filed an unfair labor practice Charge

alleging the City violated 19 Del.C. §1607(a)(1), (a)(5) and (a)(6), which provide:

§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.
- (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.

The FOP alleges the City instituted a change in the Dental/Orthodontal insurance coverage effective July 1, 2010, reducing the lifetime maximum benefit of up to \$4,500.00 for orthodontic services for each family member to a lifetime maximum benefit of \$7,500 for the entire family. The FOP asserts this constitutes a unilateral change in a mandatory subject of bargaining, in violation of Article 4.1 of the parties' agreement and in violation of the City's duty to bargain in good faith under the POFERA.

On or about January 25, 2011, the City filed its Answer to the Charge in which it denied the material allegations of the charge. The City asserts it did not unilaterally change the Dental/Orthodontal coverage or benefit. The City specifically responded:

By way of further explanation, the City of Wilmington was notified on December 2, 2010 that a collective bargaining employee received improper information from the insurance carrier with respect to his Dental/Orthodontal coverage. Immediately thereafter the City performed independent research on the issue and contacted it's [*sic*] insurance carrier and learned that a data entry error on part of the insurance carrier caused the error. On December 14, 2010, the City received notification from it's [*sic*] insurance carrier that the data entry error was corrected.

This determination 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 purposes of determining 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. *Flowers v. DART/DTC*, Del.PERB, Probable Cause Determination, ULP 04-10-453, V PERB 3179, 3182 (2004).

On its face, the Charge fails to allege any facts which would establish that the City has refused or failed to comply with a provision of the POFERA or with PERB rules and regulations. Consequently, the Charge that the City has violated 19 Del.C. §1607(a)(6) is dismissed.

The subject of this unfair labor practice charge specifically involves an alleged unilateral change in benefits, a mandatory subject of bargaining. 19 Del.C. §1602(n). Paragraphs #5 and #6 of the Charge and Answer raise factual issues relating to whether a

change was implemented. Viewed in a light most favorable to the charging party, the pleadings establish a sufficient basis to believe an unfair labor practice may have occurred.

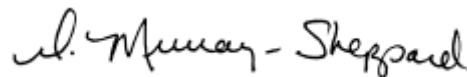
### **DECISION**

The pleadings fail to establish probable cause to believe that a violation of 19 Del.C. §1607(a)(6) has occurred; consequently that charge is dismissed.

Considered in a light most favorable the FOP, the pleadings supports the finding that there is probable cause to believe that a change in dental benefits may constitute a violation of 19 Del.C. §1607 (a)(1), and/or (a)(5), as alleged.

The pleadings raise questions of fact which can only be resolved following a hearing convened for the purpose of creating an evidentiary record upon which a decision can be rendered. A hearing will be scheduled forthwith.

DATE: March 18, 2011



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