

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

<b>SONYA BYERS-HOLLEY,</b>	)	
	)	
<b>Charging Party,</b>	)	<b><u>ULP No. 11-02-788</u></b>
	)	
<b>v.</b>	)	
	)	<b>Probable Cause</b>
<b>AMERICAN FEDERATION OF STATE,</b>	)	<b>Determination and</b>
<b>COUNTY and MUNICIPAL EMPLOYEES,</b>	)	<b>Order of Dismissal</b>
<b>DISTRICT COUNCIL 81, AFL-CIO, LOCAL</b>	)	
<b>1102,</b>	)	
	)	
<b>Respondent.</b>	)	

*Appearances*

*Samuel L. Guy, Esq., for Charging Party*

*Perry F. Goldlust, Esq., for AFSCME*

**BACKGROUND**

Sonya Byers-Holley (“Charging Party”) is or was at all times relevant to this Charge an employee of the City of Wilmington, Delaware (“City”). She is a public employee within the meaning of section 1302(o) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13.

The American Federation of State, County and Municipal Employees, Council 81, (“AFSCME”) is an employee organization within the meaning of 19 Del.C. §1302(i). AFSCME, by and through its affiliated Local 1102, is the exclusive bargaining representative of a bargaining unit of City of Wilmington employees, including Charging Party. 19 Del.C. §11302(j),

On February 28, 2011, Charging Party filed an unfair labor practice charge

alleging conduct by AFSCME in violation of 19 Del.C. Chapter 13. Specifically, the Charge alleges Charging Party received a letter (on or about November 10, 2010) from the City advising her position was being eliminated. She received a second letter in January, 2011, advising her that she was being laid-off effective February 1, 2011. Charging Party asserts she requested assistance from both AFSCME Council 81 and Local 1102 on February 3 and 4, 2011, but neither “was willing to provide timely assistance or provide timely representation.” Charging Party asserts AFSCME Local 1102 and Council 81 have failed and refused to provide representation to her in violation of their responsibilities under 19 Del.C. Chapter 13. She also asserts the City exerts undue influence over the union.

On February 28, 2011, AFSCME filed its Answer to the Charge, in which it denied the material allegations of the Charge. AFSCME asserted the Charge lacked sufficient information to form a belief as to the dates on which Charging Party received the letters on which the Charge is based. AFSCME also asserts the Charge provides insufficient information concerning the help Charging Party sought from the City and what relief, if any, was granted to the Charging Party by the City.

AFSCME’s Answer also included New Matter in which it asserts the Charge fails to allege sufficient facts to support a determination that there is probable cause to believe that an unfair labor practice may have been committed. It argues the Charge fails to allege facts sufficient to determine it did not meet its duty of fair representation either by acting dishonestly, without good faith and/or in an arbitrary manner. *Gloria B. Williams v. Rudy Norton, DSEA and Jo A. Callison, Christina Affiliate*, Del. PERB , ULP No. 85-10006, I PERB 159 (3/7/86). AFSCME also alleges Charging Party has failed to join the

City as a necessary party to Charge, because allegations of collusion with the City and meeting the performance standards for the position that Charging Party wanted requires that the City be added as a necessary party. AFSCME argues it is not required to take the complaint of every member through the grievance procedure. It concludes the union can and did exercise its right to not take a case that it determined lacks a good faith claim of breach of contract.

On March 10, 2011, Charging Party filed her Response To New Matter essentially denying the allegations set forth therein.

### **DISCUSSION**

Rule 5.6 of the Rules and Regulations 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 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 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*, ULP 04-10-453, V PERB 3179, 3182 (Probable Cause Determination, 2004).

PERB Rule 5, Unfair Labor Practice Proceedings, provides, in relevant part:

5.2 Filing of Charges

(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 statute alleged to have been violated. Each fact shall be alleged in a separate paragraph with supporting documentation where applicable.

Rule 5 (c)(3) requires a Charging Party to include specific information in its Charge to allow a preliminary assessment of the procedural and substantive viability of that charge. PERB has previously held:

The Charging Party must 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. *Sonja Taylor-Bray v. AFSCME Local 2004*, ULP No. 10-01-727, VII PERB 4633 (2010); *Flowers v. Amalgamated Transit Union, Local 84*, ULP No. 10-07-752, VII PERB 4749, 4754 (2010).

When a Charging Party chooses not to include specific information in compliance with Rule 5.2(c)(3), it acts at its peril. *AFSCME Council 81, Local 3911 v. New Castle County*, ULP 09-07-695, VII PERB 4445, 4450 (PERB, 2009).

The instant Charge does not meet the requirements of PERB Rule 5.2 (c)(3). It

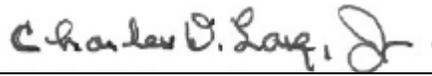
does not allege with sufficient specificity any potential violations(s) of §1307. Nor does it allege any facts to support the assertion that AFSCME is subject to undue influence by the City of Wilmington.

**DETERMINATION**

Considered in a light most favorable to Charging Party, the pleadings fail to provide a basis upon which to conclude that a violation of 19 Del.C. §1307(b), may have occurred.

WHEREFORE, the Charge is dismissed without prejudice.

Date: April 20, 2011



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