

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

Charles Harris,)	
)	
Charging Party,)	
)	
v.)	ULP No. 11-04-800
)	Probable Cause Determination
State of Delaware, Diamond State)	and Order of Dismissal
Port Corporation,)	
)	
Respondent.)	

BACKGROUND

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

Charles Harris (“Charging Party”) is an employee of DSPC and a public employee within the meaning of 19 Del.C. §1302(o), of the PERA.

On or about April 25, 2011, Charging Party filed the instant unfair labor practice charge alleging conduct by DSPC in violation §1307 of the PERA, which provides, in relevant part:

§1307. Unfair labor practices

(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, except with respect to a discretionary subject.
- (6) Refuse or fail to comply with any provision of his 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 a 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.

On or about May 4, 2011, the State filed its Answer and New Matter. The State denies it has engaged in conduct in violation of the PERA. It asserts the allegations of race discrimination and alleged violations of the Wage Payment and Collection Act do not constitute unfair labor practices under the PERA. It also asserts that to the extent that this Charge asserts there has been a violation of the PERA, such charge is precluded by the Charge which was previously filed by Charging Party's exclusive bargaining representative, ILA Local 1694-1 (ULP 11-02-787). The State asserts, "In the absence of an allegation that the ILA has violated its duty of fair representation, or that [Charging Party] has an interest in this matter which is not adequately represented by the ILA,

[Charging Party] is precluded from bringing a second charge under the same set of facts raising identical issues.”

On or about May 16, 2011, Charging Party filed a Response to New Matter, asserting, “The concepts compromising unfair labor practices are broad enough to encompass the actions of the employer inconsistent with these public policy standards.” The Response denies Charging Party is precluded from filing this Charge because the ILA has previously filed a charge based on the same set of facts.

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).

Unfair labor practices are not general in nature and arise exclusively from the specific provisions of 19 Del.C. §1307. The instant Charge does not meet the requirements of PERB Rule 5.2 (c)(3) in that it does not “explicitly link the factual

allegations to the specific provision of the statute alleged to have been violated.” Consequently, there is insufficient information contained in the Charge to allow the Respondent to submit an informed Answer to the Charge and for PERB to find probable cause to believe an unfair labor practice may have been committed.

DETERMINATION

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

WHEREFORE, the Charge is dismissed without prejudice.

DATE: June 1, 2011



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