

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

CHRISTOPHER COOPER,	:	
	:	
Charging Party,	:	
	:	
v.	:	<u>ULP 11-06-811</u>
	:	
TOWN OF GEORGETOWN, DELAWARE	:	PROBABLE CAUSE DETERMINATION
POLICE DEPARTMENT AND THE MAYOR	:	AND ORDER OF DISMISSAL
AND COUNCIL OF THE TOWN,	:	
	:	
Respondents.	:	

Christopher Cooper (“Charging Party”) is or was at all times relevant to this Charge a public employee within the meaning of §1602(k) of the Police Officers and Firefighters Employment Relations Act (“POFERA”), 19 Del.C. Chapter 16 (1986).

The Town of Georgetown, Delaware (“Town”), is a municipality and a public employer within the meaning of 19 Del.C. §1602(l). The Georgetown Police Department is an agency of the Town of Georgetown. The Mayor and Council are the elected executive and legislative representatives of the Town, respectively.

On or about June 23, 2011, Charging Party filed an unfair labor practice charge alleging conduct by the Town in violation 19 Del.C. §1607(a), which provides:

- §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.
 - (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.
- (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.

Charging Party alleges he was unjustly terminated in retaliation for his involvement “in a series of complaints in the Superior Court, the Department of Labor and the Public Employment Relations Board (“PERB”) regarding the operations of the Georgetown Police Department.” Charging Party asserts he was deprived of his right to Union representation during the investigatory process and that his termination was upheld by the Town Council during a secret executive session of which he received no prior notice, thereby depriving him of any opportunity to attend and present evidence in his defense. The Charge alleges the Council’s unannounced executive session was in violation of 29 Del.C. Ch. 100; therefore, the Council’s decision violates the Charter of the Town of Georgetown (Chapter 29, Article XIII) relating to grievance procedures and also violates the POFERA.

On or about July 12, 2011, the Town filed its Answer to the Charge in which it denies participating in any conduct which could be construed as retaliation against Charging Party. The Town asserts it complied with applicable policies, standards and

law at all times. Charging Party was specifically informed of his rights under the Law Enforcement Officers Bill of Rights (“LEOBOR”) as well as his right to an attorney or representative of his choice, and waived both in writing at the initiation of the investigative interview. The negotiated collective bargaining agreement (which includes a grievance procedure) supersedes the provisions of the Town’s Charter concerning the filing of complaints. Charging Party, however, has never filed a grievance contesting his termination.

The Town asserts in New Matter included in its Answer that the Georgetown Police Department and the Town’s Mayor and Council are not proper respondents in their own right as they are subsumed within the municipal corporation and have no “existence or powers except through and with reference to the corporation.” The Town also asserts PERB does not have jurisdiction to rule on alleged violations of LEOBOR; the Georgetown Town Charter or Town Code; and/or the Freedom of Information Act (“FOIA”), 29 Del.C. Chapter 100. The Town also contends the Charge fails to state a claim which would constitute a violation of 19 Del.C. Chapter 16. The Town requests the Charge be dismissed because it does not comply with: PERB Rule 5.2(b) because it was not sworn to by Charging Party; PERB Rule 5.2(b)(3) because it does not identify individuals who allegedly committed unfair labor practices; and does not allege specific provisions of §1607(a) allegedly violated.

On or about July 19, 2011, Charging Party filed his Response to New Matter denying the New Matter raised in the Town’s Answer. Charging Party asserts each named Respondent is a member of the class of respondents set forth in the Act, and that the Act contains no provision permitting individual members of a municipal government to be subsumed within the umbrella of the Town where such individuals act

independently or in concert, in violation of the Act. Charging Party maintains that the alleged violations of other statutes are intended to serve as the basis for the violations of the POFERA alleged in 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 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*, PERB Probable Cause Determination, ULP 04-10-453, V PERB 3179, 3182 (2004).

The Public Employment Relations Board is specifically empowered to administer, *inter alia*, the provisions of the Police Officers and Firefighters Employment Relations

Act. PERB does not have primary jurisdiction over alleged violations of LEOBOR, FOIA or rights established by the Town of Georgetown in its Charter or the Municipal Code. Consequently, allegations concerning violations of rights arising under those sources are dismissed as they are outside of the jurisdiction of PERB to consider in the first instance.

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 [*the statute*] 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. §1607. The instant Charge does not meet the requirements of PERB Rule 5.2 (c)(3) in that it alleges that the Town's conduct violated the Act but 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 PERB to find probable cause to believe an unfair labor practice may have been committed.

Having so determined, there is no need, at this time, to further consider the pleadings to determine whether they constitute probable cause to believe that an unfair labor practice may have occurred.

DETERMINATION

Considered in a light most favorable to Charging Part, 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: August 16, 2011



Charles D. Long, Jr.
Hearing Officer
Del. Public Employment Relation Board