

PUBLIC EMPLOYMENT RELATIONS BOARD
FOR THE STATE OF DELAWARE

AMERICAN FEDERATION OF STATE, COUNTY,	:	
AND MUNICIPAL EMPLOYEES, COUNCIL 81,	:	
LOCAL UNIONS 320 AND 1102,	:	
	:	ULP 10-12-781
Petitioners,	:	
	:	
v.	:	MOTION TO COMPEL
	:	ENFORCEMENT
CITY OF WILMINGTON, DELAWARE,	:	
	:	
Respondent.	:	

APPEARANCES

Perry F. Goldlust, Esq., for AFSCME

Martin C. Meltzer, Esq., Deputy City Solicitor, for Wilmington

The City of Wilmington, Delaware, (“City”) is a public employer within the meaning of 19 Del.C. §1302(p) of the Employment Relations Act, 19 Del.C. Chapter 13 (“PERA” or “Act”).

The American Federation of State, County & Municipal Employees, AFL-CIO, Council 81, through its affiliated Locals 320 and 1102 (“AFSCME”), is an employee organization within the meaning of §1302(i), of the Act and the exclusive bargaining representative of two bargaining units of City employees, within the meaning of §1302(j), of the Act.

The City and AFSCME Local 320 are parties to a collective bargaining agreement with a term of January 1, 2007 through December 30, 2009. By letter dated September 9, 2009, AFSCME Local 320 advised the City of its desire and intent to open negotiations

for a successor agreement.

The City and AFSCME Local 1102 are parties to a collective bargaining agreement with a term of July 1, 2007 through June 30, 2010. By letter dated April 16, 2010, Local 1102 advised the City of its desire and intent to open negotiations for a successor agreement.

On or about December 16, 2010, AFSCME filed an unfair labor practice charge, alleging the City had violated 19 Del.C. §1307 (a)(5), (a)(6), and (a)(8) which provide:

§1307 (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

- (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.
- (8) Refuse to disclose any public record as defined by Chapter 100 of Title 29.

The City filed its Answer to the Charge specifically objecting to AFSCME's request for a temporary restraining order or preliminary injunction, and denying the legal assertions set forth in the Charge.

The PERB Executive Director denied AFSCME's Motion for Temporary Restraining Order on December 30, 2010, finding no threat to the public interest or to the interests of the employees or parties sufficient to justify interim relief.

On January 14, 2010, the Executive Director issued a decision finding that the City violated its duty to bargain in good faith and 19 Del.C.1307(a)(5) by failing or refusing to provide information in response to a reasonable and relevant, good faith request made by the union pursuant to its representational responsibilities to police the

collective bargaining agreement. The City was directed to cease and desist from failing or refusing to provide the information requested by the union on November 11, 2010, and to provide all of the requested information within twenty (20) days of the date of the decision. The decision was not appealed.

On or about January 18, 2012, AFSCME filed a Request for Issuance of a Rule to Show Cause Why the City Should Not be held in Contempt of the PERB's Order of January 14, 2011 and/or that the PERB Seek an Order from the Chancery Court to Enforce its Order. The Motion asserted that the City has not produced the information pursuant to PERB's Order and has not and can no longer appeal that Order. AFSCME requested PERB issue an Order:

1. Requiring the City to show cause why it should not be held in contempt of the Executive Director's Order in her decision in the above-referenced matter;
2. Find the City acted in bad faith as defined in *Dept. of Corrections, State of Delaware, v. Delaware Correctional Officers Association*, Chancery Court, Glasscock, Master, ULP 00-07-286 (C.A. 19115 IV PERB 2909, 2916)(8/28/03) in that the law of the State is clear as to the public employer's responsibility to provide the Union information.
3. Find that the request for information was on its face, reasonably related to the Union's need for information to enforce the CBA and to protect the members of its bargaining unit;
4. Find that the City offered no defense as to why the information should not be produced instead of just refusing to follow the Executive Director's Order.

The City filed its Response to the Petitioner's Request on or about February 10, 2012. While admitting most of the factual background included in AFSCME's Motion, the City denied it had failed or refused to comply with the Order. The City responded that it had provided a list of temporary and part time limited personnel to representatives of AFSCME Local 1102 on February 9, 2011.

AFSCME responded in a letter to the Executive Director dated February 27, 2012,

in which it admits that the City did provide information, but stated that information “does not answer AFSCME Council 81 Local Unions 320 and 1102’s request for information.”

AFSCME asserts in its letter,

To date, the City has not provided the requested information. The urgency in securing the information has increased as there will be an arbitration hearing on a Union grievance, the subject of which is the layoff. The primary source of evidence as to who should have been laid off is the list of November 11, 2010 of “temporary, part-time or seasonal employees being utilized by the City of Wilmington as well as their function, scope of work, location and rate of pay.”

If the City is compelled to provide the list, there will undoubtedly be additional questions of a more targeted fashion regarding the specific jobs and how they were filled. As can be deduced, the Union does not think this matter is moot and again urges the PERB to take action to compel the City to respond and compensate the Union for the legal fees related to the pursuit of information that should have been provided at the end of 2010.

The decision reached herein is based upon the pleadings submitted by the parties and the record created in considering the underlying merits of this unfair labor practice charge.

DISCUSSION

Preliminarily, there is no basis for inclusion of AFSCME Local 320 in this matter. It was previously determined that nothing in the underlying charge related to Local 320 and PERB dismissed any charge that the City had violated its obligations with respect to that Local. *AFSCME Council 81, Locals 320 & 1102 v. City of Wilmington, Delaware*, ULP No. 10-12-781, VII PERB 4849, 4852 (2011, Decision on Pleadings).

AFSCME requests in its prayer that the Executive Director find its request for information was on its face, reasonably related to the Union’s need for information to enforce the CBA and to protect the members of its bargaining unit. That determination

was explicitly addressed in the January 14, 2011 Order which stated, “The information AFSCME requested was specific and clearly relevant to the union’s policing of Article V, 6.11(f) of the collective bargaining agreement.” *AFSCME v. Wilmington* (Supra, p. 4857).

AFSCME Local 1102’s request for information on which the unfair labor practice decision was based was initially set forth in the November 11, 2010 letter from its President, “Union Local 1102 is requesting a list of all Temporary, Part-time, or Seasonal Employees being utilized by the City of Wilmington, as well as their function, scope of work, location and rate of pay.” A second request was sent to the City’s Solicitor by an AFSCME Staff Representative on December 3, 2010, who requested:

... Access to and copies of the following documents and information are being requested in connection to the upcoming layoffs, the Union needs this information to make sure that the procedure in the upcoming layoffs is in compliance with the Collective Bargaining Agreement:

List of all temporary, part-time and casual seasonal individuals working for the city by job title and department.

PERB’s Decision and Order of January 14, 2011, directed the City to “cease and desist from failing or refusing to provide the information requested by the union on November 11, 2010, and to provide all of the requested information within twenty (20) days of the date of this decision.” The decision was not appealed by the City, nor was any complaint received from AFSCME at the close of the twenty-day period that the City had not complied with the Order. It was not until January 18, 2012 (more than a year after issuance of the PERB’s Order) that the Union filed a request to hold the City in Contempt and requested PERB seek enforcement of the January 14, 2011 Order in Chancery Court.

Attached to the City’s Response to Petitioners’ Request to Hold City in Contempt of PERB’s Order of January 14, 2011, was a six page document which included three lists: “Agency Temp List 01.05.11”, “Agency Temp List 12.22.10”, and “City of

Wilmington Temporary and Part Time Limited Service Personnel, 1.05.11”. *Exhibit 2 to the City’s Response*. Also attached to the City’s Response is an Affidavit of the City’s former Director of Human Resources who averred that she delivered a copy of the documents included in Exhibit 2 to leadership and representative of AFSCME Local 1102 on February 9, 2011, pursuant to PERB’s Order of January 14, 2011. *Exhibit 1 to City’s Response*.

In a letter filed on February 27, 2012, in response to the City’s Response to the Motion, AFSCME’s Counsel states, “Mr. Meltzer is correct that the City of Wilmington (“City”) did provide the information attached to his January 26, 2012 letter to the Public Employment Relations Board.” AFSCME goes on to argue that the information provided does not answer the Local’s request for information. It is curious that more than a year has passed since the Order was issued and the information provided before any mention is made of the City’s alleged failure or refusal to provide the information.

The information attached to the City’s Response includes the names, department and division, pay rate and function of the temporary, part time and seasonal employees the City employed in December and January, 2011. AFSCME concedes that it did, in fact, receive this information on or about February 9, 2011. The information provided by the City is directly and substantially responsive to Local 1102’s November 11, 2010 request.

The pleadings fail to provide support for AFSCME’s allegation that the City has failed to provide the requested information. Section 1309(b) of the PERA provides the Board with the right to petition Chancery Court for enforcement of any order issued under the Unfair Labor Practice provisions of the PERA. Exercise of the right is within the Board’s discretion and requires a showing by an aggrieved party that there has been

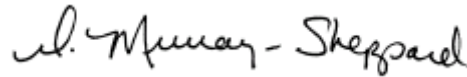
substantial and direct failure or refusal by another party to comply with the Board's Order. Based on the information presented, this case does not meet those requirements.

DECISION

For the reasons set forth above, AFSCME Local 1102's Motion Seeking PERB Enforcement of its January 14, 2011 Order in Chancery Court is denied.

IT IS SO ORDERED.

DATE: March 13, 2012



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