

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

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| JAMELL HARKINS, | : | |
| | : | |
| Charging Party, | : | |
| | : | |
| v. | : | <u>ULP 11-12-842</u> |
| | : | Probable Cause Determination |
| STATE OF DELAWARE, DELAWARE | : | Order of Dismissal |
| TRANSIT CORPORATION, | : | |
| | : | |
| Respondent. | : | |

Appearances

Jamell Harkins, Charging Party, Pro Se
Susan E. Ufberg, SLREP/HRM/OMB, for DTC

BACKGROUND

The State of Delaware (“State”) is a public employer within the meaning of §1302(p) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1994). The Delaware Transit Corporation (“DTC”) is an agency of the State.

Jamell Harkins (“Charging Party”), was employed by DTC at all times relevant to this Charge and is a public employee within the meaning of 19 Del.C. §1302(o). Charging Party is a member of the bargaining unit represented by the Amalgamated Transit Union, Local 842, (“ATU”) which represents a bargaining unit of DTC employees for purposes of collective bargaining and is certified as the exclusive bargaining representative of that unit pursuant to 19 Del.C. 1302(j).

ATU and DTC are parties to a collective bargaining agreement which has an

expiration date of November 30, 2008, but which remained in full force and effect at all times relevant to this Charge.

On or about December 14, 2011, Charging Party filed an unfair labor practice charge (“Charge”) alleging that DTC violated 19 Del.C. §1307(a)(1), (a)(2), (a)(3), and (a)(6), which provide:

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. Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit or complaint or has given information or testimony under this chapter.
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 Charge alleges that on November 20, 2011, while collecting trash in the DTC service truck at the Monroe Street garage, Charging Party received a telephone call from his wife informing him that his daughter was having a life threatening seizure. He left work and drove home in the DTC service truck. Upon arriving at home he injected his daughter with medication thereby preventing her death. He returned to work in about one (1) hour. At that time, Charging Party alleges he was unable to locate the shift foreman so he was unable to report his absence. Charging Party was subsequently suspended pending termination. He

claims he is a victim of disparate treatment and that this is just an incident in a long list of attempts by DTC to break the Union.

On December 22, 2011, the State filed its Answer essentially denying all of the allegations contained in the Charge. The State further alleges that the allegations contained in the Charge, even when viewed in a light most favorable to Charging Party, fail to allege facts that constitute the statutory violations alleged. In a section of the Answer entitled New Matter, the State alleges that Charging Party lacks standing to maintain the Charge; the Charge should be deferred to arbitration under the parties' collective bargaining agreement; and the Charge fails to allege facts sufficient to support a finding of a statutory violation.

On December 29, 2011, Charging Party filed a Response to New Matter denying the State's defenses set forth therein.

DISCUSSION

Rule 5.6 of the Rules and Regulations of the Delaware Public Employment Relations Board provides:

- (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).

Rule (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 the PERB can conclude there is a sufficient basis for the charge. The Charge must also explicitly link the factual allegations to the “specific provisions of the statute alleged to have been violated.” 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 10-07-727, VII PERB 4633, 4636 (2010); *Flowers v. Amalgamated Transit Union, Local 84*, ULP 10-07-752, VII PERB 4749, 4754 (2010).

This unfair labor practice charge does not allege any activity by the Charging Party sufficient to support a finding that DTC may have interfered with, restrained or coerced him in or because of any protected right guaranteed by the PERA. This is fatal to the alleged violation of §1307(a)(1), of the PERA.

Even when viewed in a light most favorable to Charging Party, the allegations contained in the Charge do not support a finding that DTC may have violated 19 Del.C. §1307(a)(2), (a)(3) and (a)(6), as alleged.

The conduct and incidents set forth in the Charge fail to allege any facts sufficient to constitute probable cause to believe an unfair labor practice may have occurred. Charging

Party was discharged. A grievance was filed protesting his discharge. That grievance is being processed through the contractual grievance procedure. Whether Charging Party was discharged for just cause (or was the victim of disparate treatment) is an issue for resolution through the contractual grievance and arbitration procedure. The PERB has held on numerous occasions that the unfair labor practice provisions of the PERA are not an alternative to the contractual grievance procedure.

DECISION

The Charge fails to establish probable cause to believe that an unfair labor practice, as alleged, may have occurred.

WHEREFORE, the Charge is hereby dismissed, with prejudice.

Dated: January 30, 2012



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