

**PUBLIC EMPLOYMENT RELATIONS BOARD
STATE OF DELAWARE**

RICHARD FLOWERS,	:	
	:	
Charging Party,	:	
	:	<u>ULP 13-10-928</u>
v.	:	
	:	Probable Cause Determination
STATE OF DELAWARE, DELAWARE	:	and Order of Dismissal
TRANSIT CORPORATION,	:	
	:	
Respondent.	:	

Appearances

*Richard Flowers, Charging Party, pro se
Aaron M. Shapiro, SLREP/HRM/OMB, for DTC*

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.

Richard Flowers (Charging Party) is employed by DTC 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 which represents a 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).

On or about October 24, 2013, Charging Party filed an unfair labor practice charge (“Charge”) alleging that DTC violated 19 Del.C. §1301(2), §1303(1) and (3), §1304(b) and §1307(a)(1), (4), (6), (7), and (8), which state:

§ 1301. Statement of policy.

It is the declared policy of the State and the purpose of this chapter to promote harmonious and cooperative relationships between public employers and their employees and to protect the public by assuring the orderly and uninterrupted operations and functions of the public employer. These policies are best effectuated by:

- (2) Obligating public employers and public employee organizations which have been certified as representing their public employees to enter into collective bargaining negotiations with the willingness to resolve disputes relating to terms and conditions of employment and to reduce to writing any agreements reached through such negotiations...

§ 1303. Public employee rights.

Public employees shall have the right to:

- (1) Organize, form, join or assist any employee organization except to the extent that such right may be affected by a collectively bargained agreement requiring the payment of a service fee as a condition of employment.
- (3) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the State.

1304. Employee organization as exclusive representative.

- (b) Nothing contained in this section shall prevent employees individually, or as a group, from presenting Complaints to a public employer and from having such complaints adjusted without the intervention of the exclusive representative for the bargaining unit of which they are a part, as long as the representative is given an opportunity to be present at such adjustment and to make its view known, and as long as the adjustment is not inconsistent with terms of an agreement between the public employer and the exclusive representative which is then in effect. The right of the exclusive representative shall not apply where the complaint involves matters of personal, embarrassing and confidential nature, and the complaint specifically requests, in writing, that the exclusive representative not be present.

§ 1307. Unfair labor practices, enumerated.

(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.
- (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.

- (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.

The Charge alleges Charging Party requested from DTC “all information and all calculations as to our eligibility for the increased ridership/revenue incentive program as outlined in the contract, section 10(d) ... for all years of this contract...” He asserts his request was ignored because he has filed charges with PERB in the past.

On November 1, 2013, the State filed its Answer in which it denied both the factual and legal allegations asserted in the Charge. In response to the Charging Party’s requests for information, DTC’s Comptroller has offered to meet with Charging Party to discuss his concerns, as documented in emails attached to the Answer. The State asserts Charging Party has failed or refused to respond these offers. The State also notes that the documents attached to the Charge are not Charging Party’s payroll records but are those of another DTC employee who holds a different position; consequently, those records are irrelevant to the Charge.

Under a section of the Answer entitled New Matter , the State alleges that the Charge is untimely because it was not filed within the statutory 180 day filing period. 19 Del.C. §1308.

On or about November 12, 2013, Charging Party filed its Answer to New Matter denying the new matter asserted by the State.

This determination is based upon a review of the pleadings submitted in this matter.

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 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 has, or 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).

The PERA states in §1308, Disposition of complaints:

- (a) The Board is empowered and directed to prevent any unfair labor practice described in §1307 (a) and (b) of this title and to issue appropriate remedial orders. Whenever it is charged that anyone has engaged or is engaging in any unfair practice as described in §1307(a) and (b) of this title, the Board or any designated agent thereof shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charge and including a notice of hearing containing the date and place of hearing before the Board or any designated agent thereof. Evidence shall be taken and filed with the Board; provided, that no complaint shall issue based on any unfair labor practice occurring more than 180 days prior to the filing of the charge with the Board. (*emphasis added*).

The statutory requirement is incorporated into the Board's rules at 5.2 which requires that an unfair labor practice complaint "... must be filed within one hundred and eighty (180) days of the alleged violation." Rule 5.2 further states that the limitation "shall not be construed to

prohibit introduction of evidence of conduct or activity occurring outside the statutory period, provided the Board or its agent finds it relevant to the question of commission of an unfair labor practice within the limitations period.”

The pleadings, including the appended exhibits, establish Charging Party received his personal Incentive Payment on January 25, 2013. On March 20, 2013, Charging Party sent an email to the DTC Controller concerning his Incentive Payment. The Charge was filed on October 24, 2013, 93 and 39 days beyond the 180 day statute of limitations. Consequently, the Charge is untimely and cannot be processed.

The purpose of the unfair labor practice procedure is to resolve legitimate concerns of a public employee, public employer or an exclusive bargaining representative under the statutory provisions of the Public Employment Relations Act, 19 Del.C. Chapter 13. An unfair labor practice charge is not intended as a forum in which to air every concern an employee has about his/her employment status. A question concerning the propriety of the payment of a negotiated benefit is properly resolved through the contractual grievance procedure. The pleadings do not establish or assert that a grievance was filed in this matter by either Charging Party or the exclusive bargaining representative on his behalf.

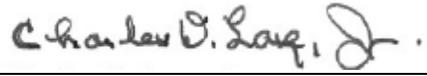
For these reasons, the Charge is dismissed both because it is untimely and fails to state a legitimate claim under the Public Employment Relations Act.

DETERMINATION

Considered in a light most favorable to Charging Party, the Charge, on its face, fails to establish probable cause to believe that an unfair labor practice, as alleged, may have occurred.

WHEREFORE, the Charge is dismissed in its entirety, with prejudice.

DATE: December 30, 2013

Handwritten signature of Charles D. Long, Jr. in cursive script.

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