STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

COMMUNICATION WORKERS OF AMERICA, LOCAL 13101,	:	
Charging Party,	:	**ULP No. 13-10-926**
v.	:	
	:	**Decision on the Pleadings**
KENT COUNTY LEVY COURT,	:	
Respondent.	:	

BACKGROUND

Kent County Levy Court (County) is a public employer within the meaning of section 1302(p) of the Public Employment Relations Act, 19 Del.C. Chapter 13. The Kent County Department of Public Works (DPW) is an agency of the County.

The Communication Workers of America, Local 13101, ("CWA") is an employee organization within the meaning of 19 Del.C. §1302(i). It is the exclusive bargaining representative of the unit of non-supervisory hourly production and maintenance employees of the Kent County Wastewater Treatment Facility, within the meaning of 19 Del.C. §1302(j). DOL Case 261.

Kent County Levy Court and CWA Local 13101[1] are parties to a collective bargaining agreement which has a term of January 1, 2009 through December 31, 2014.

On or about October 15, 2013, CWA filed with the Public Employment Relations

[1] Local 13101 was formerly known as CWA Local 1036/Branch 312.

Board ("PERB") an unfair labor practice charge alleging conduct by the County in violation of 19 Del.C. §1307(a)(1) and (a)(5), which provide:

> (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.
>
> (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 regard to a discretionary subject.

The Charge alleges by failing and refusing to process the grievance of a bargaining unit employee protesting his termination through Steps 1, 2 and 3 of the grievance procedure as set forth in Article VII of the parties' negotiated grievance procedure, the County has violated the employee's rights and its duty to bargain in good faith.

The Charge further alleges the County has failed or refused to supply to the CWA certain information which is relevant and necessary to the processing of the grievance, in violation of 19 Del.C. §1307(a)(1) and (a)(5) and its obligations under the PERA. The County is also charged with failing to establish a neutral and impartial Personnel Administration Board and with installing surveillance cameras in the workplace "solely for the purpose of surveying [sic] and observing the conduct of [CWA represented] employees", without notice to CWA or providing the opportunity for negotiations.

On or about October 24, 2013, the County filed its Answer to the Charge admitting many of the facts asserted in the Charge, but denying the CWA's allegation that it has violated its duties or obligations under the Public Employment Relations Act. The County provided extensive documentation with its Answer. No new matter or affirmative defense to the Charge was raised in the Answer.

On November 8, 2013, CWA filed a request to the Public Employment Relations Board to enjoin a scheduled November 13, 2013 hearing before the County's Personnel Administration Board on the termination of the bargaining unit employee. The union requested the hearing be enjoined until the County complied with the negotiated terms of the collective bargaining agreement, processed the grievance through the negotiated steps of the grievance procedure, and provided the information the union requested.

The PERB Executive Director convened a teleconference on the afternoon of November 12, 2013, for the purpose of discussing the scope and purpose of the November 13 hearing. CWA's request for preliminary injunction was denied by letter dated November 13, 2013, which stated:

> The standards PERB employs in considering a request for injunctive relief are set forth in our case law:
>
> > It is well-established Delaware law that a successful request for preliminary injunctive relief must satisfy two requirements. First, the Charging Party must establish that there is a reasonable probability that it will ultimately prevail on the merits of the dispute; and second, that it will suffer irreparable injury if its request for injunctive relief is denied. *Gimbel v. Signal Companies, Inc.*, Del.Ch., 316 A.2d 599 (1974). Failure to establish either element precludes the granting of the requested relief. *New Castle County Vocational Technical Education Association v. New Castle County Vocational Technical School District*, Del.PERB, ULP 85-05-025, I PERB 257, 260 (1988); *IAFF v. City of Wilmington*, Del.PERB, ULP 09-06-686, VI PERB 4259, 4262 (2009).
>
> There is a pending unfair labor practice charge alleging the County has failed and refused to process the grievance according to the negotiated grievance procedure and/or has failed and refused to provide information necessary for the union to serve its representative function in violation of the Public Employment Relations Act. The documentation which has been submitted which relates to the request for preliminary injunction supports the conclusion that the PAB is convening this evening pursuant to its authority and responsibilities as set forth in §68-16(a) of the

> Kent County Code. When the PAB's decision is issued, should it include disciplinary action, the grievant may then pursue his options under the contractual grievance procedure. Consequently, at this point in the procedure, there is no showing of irreparable harm.
>
> While review of a disciplinary decision under the County Code progresses through the same decision makers at the identified steps, the negotiated grievance procedure requires "discussions/meetings to resolve the grievance shall be scheduled by the responsible County authority at each step." *Article 6.1, 2009-2014 CBA.*

FACTS

The following facts are undisputed and are established by the documents submitted in support of the Charge, the Answer and CWA's request for injunctive relief:

By letter dated August 30, 2013, Anthony Richardson, a bargaining unit employee, was advised by the Director of Public Works of the County's intention to terminate him for violations of Chapter 68-15 F (1) and (6) of the County Code.[2] The letter also advised that a pre-termination hearing had been scheduled for September 6 at 2:30 p.m., at which

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[2] §68-15. Tenure of Service

E. Any permanent employee may be terminated by his/her department head following a pre-termination hearing. When the department head decides to take such final action following a pre-termination hearing, he/she shall within two working days of the hearing file with the employee a written notification containing a statement of the reason(s) for the action. The notice shall inform the employee that he/she shall be allowed five working days to file a written request for modification to the Personnel Director. If the Personnel Director determines that the termination was not justified, he/she may modify or rescind the action following consultation with the appropriate department head. If the Personnel Director determines that the action is justified, a copy of the written request will be forwarded to the Personnel Administration Board within one week as notification of a potential appeal.

F. Progressive or immediate disciplinary measures may be imposed for:

(1) Unauthorized use of working hours. This shall include the following: an unreasonable amount of lost time or abuse of sick leave; absence without leave; excessive tardiness; and pursuing any non-job related activities during work hours without the permission of the department head.

(6) Violation of state statutes, County ordinances, administrative regulations or department rules.

hearing, the employee would have the opportunity,

> …to respond to the charge(s) listed in this letter and to present any evidence, extenuating circumstances, or other reason(s), which would convince me as your department head that you were not a party to the above listed violations or that termination is not the appropriate action to be taken at this time. *County Exhibit 5*

The letter also advised that the employee could be represented by legal counsel and/or Union representative at this meeting; however, should he fail to attend, his absence would be deemed a resignation from employment.

By letter dated September 3, 2013, the County Personnel Director advised the employee he was placed on administrative leave with pay for his normally scheduled work hours until his pre-termination hearing on September 6. The letter cited to Kent County Code, which states that an employee placed on administrative leave, "… is prohibited from engaging in any job responsibilities or visiting the worksite unless specifically directed in writing." County Code also states,

> Administrative leave shall not be construed as an adverse disciplinary action and the employee shall continue to receive all employee benefits. Placement on administrative leave during a continuing investigation shall extend as necessary to the amount of time permitted for the Personnel Director or Department Head to take disciplinary action. *County Exhibit 6*

The pre-termination hearing was held as scheduled on September 6 and on September 9 the Director of Public Works notified the employee that his employment at the Kent County Wastewater Treatment Facility was terminated effective September 10, 2013 at 5:00 p.m. The employee was advised in this letter that he was "allowed five (5) working days from the date of this letter to file a written request for modification to the Personnel Director." The letter further advised,

> If the Personnel Director determines that the termination is not justified, he may modify or rescind the action following

> consultation with the Department Head. If the Personnel Director determines the action is justified, a copy of your written request will be forwarded to the Personnel Administration Board within one (1) week as notification of a potential appeal.
>
> If your request for modification by the Personnel Director is denied, you may appeal the termination decision to the Personnel Administration Board within two (2) weeks of notification by addressing the written appeal and 10 copies to the Personnel Director. A hearing will be scheduled as soon as reasonably possible. *County Exhibit 7*

A third letter was sent to the employee on September 10, 2013, by the County Personnel Director advising him that his paid administrative leave concluded at 5:00 p.m. that day and contained information concerning the status of the employee's benefits through the end of the month, arrangements for compensation of accrued leave, and requiring the employee to return all uniforms and equipment as set forth in the collective bargaining agreement. *County Exhibit 8.*

The terminated employee sent an email to the County Personnel Director on September 13, the subject of which was "Written request for modification", which states:

> Now that I finally have an answer from Hans Medlarz[3], I would like to proceed with the next step of the process. I am requesting that you rescind the action from Hans Medlarz, based upon failure to follow the Company [*sic*] Policy, Union Contract, and the fact that the allegations were not appropriately defined or proven during the request for information used as a termination hearing. In addition, as my right as a union member, I agree with the Union filing on my behalf with regards to following the contract. Thanks for your time in this matter. *County Exhibit 9*

By letter dated September 19, 2013, the County Personnel Director denied the employee's request for modification of the termination, stating, in part:

> …On September 16, 2013, you hand delivered a letter requesting review and modification of the termination decision, but it lacked

[3] Director of Public Works and the employee's department head.

> any additional information which may have assisted in my consideration of the request.
>
> After reviewing and considering information/documents presented by your Department Head, the testimony at your pre-termination hearing, and the letter requesting modification, I have determined that the decision of the Department Head to terminate your employment with Kent County is justified… Therefore, I must deny your request for modification. *County Exhibit 10.*

The letter also states that a copy of the written request for modification will be forwarded to the County Personnel Administration Board "as notification of a potential appeal." The employee is advised that he must file an appeal of the termination decision within five (5) working days of this notification "… per union contract by addressing or delivering the written appeal to the Personnel Director..."

By memorandum addressed to the Personnel Administration Board members, the Personnel Director advised that he had denied the employee's request to modify the Department Head's decision to terminate his employment. He included in the memorandum an excerpt from the County Code, §68-16. Procedure of appeals:

> A. A classified or unclassified employee may appeal a disciplinary demotion, a suspension of greater than three days or a termination any time within two calendar weeks after being notified that he/she is the subject of the adverse personnel action and a request by the employee for modification by the Personnel Director has been denied. The appeal is to be filed in writing with the Personnel Director, who will transmit it to the Personnel Administration Board. It should consist of an original and 10 copies (one copy to the department head, one copy to the County Attorney, one copy to the legal counsel for the Board, and seven copies for the Personnel Administration Board), and it should set forth the facts and reasons why the demotion, suspension or termination was unwarranted.
>
> (1) If the employee files an appeal and the Board has jurisdiction, the Personnel Director in consultation with the Chairman of the Personnel Administration Board shall schedule a hearing within 15 working days after receiving the appeal. At the discretion of the employee, the hearing

> may be private or open to the public. A transcript of all proceedings during the hearing may be made should the employee be willing to bear the full cost of the preparation of such transcript. Otherwise a general record of proceedings shall be prepared by Personnel Department staff for the Board.
>
> (2) The burden of proof in any hearing before the Board shall rest upon the department head or Personnel Director, whichever may be applicable. All testimony shall be given under oath, and each side shall have a right of cross-examination. Witnesses may be sequestered upon the request of any party to the proceedings. Witnesses shall be assured freedom from restraint, interference, coercion, discrimination and reprisal.
>
> B. If the Board finds the adverse personnel action is erroneous as a matter of law, arbitrary and capricious or otherwise unsupported by substantial evidence, the employee shall be reinstated to his/her former position without loss of pay.
>
> C. The Board's findings of fact and decision shall be made in writing within 10 working days after the conclusion of the hearing, and shall be forwarded to both sides promptly thereafter.
>
> D. Unclassified employees desiring to appeal termination shall do so in the manner as provided in Delaware law. *County Exhibit 11*.

Prior to issuance of the Personnel Director's denial of the employee's request for modification, CWA prepared a grievance form on the employee's behalf, asserting the County had failed to follow Article VI, Grievance Procedure, of the parties' negotiated collective bargaining agreement. The grievance was filed with the Director of Public Works on September 16, 2013. Section 6.1 of the agreement defines a grievance as:

> … a dispute between a non-probationary full time bargaining unit employee, group of employees or the union and the County or its agent, limited to the application or interpretation of this agreement.

Article VI sets forth a four[4] step grievance procedure. Step 1 is an informal

[4] Although Article VI only explicitly enumerates Steps 1 through Step 4, it does provide for a right to appeal either a disciplinary or contractual grievance to Superior Court pursuant to the Court's Rule 72. §6.9 also provides that the parties may mutually agree to submit a grievance to arbitration

discussion with the employee's immediate supervisor, who, if no resolution is reached must provide a written response within five working days; Step 2 is an appeal of the immediate supervisor's decision to the Department Head; and Step 3 is an appeal to the County Personnel Director of the Department Head's decision. For disciplinary matters, the grievance procedure concludes in the following manner:

> 6.6 Step 4. Disciplinary Matters. If after the decision of the Personnel Director, the employee is of the opinion that the grievance has not been satisfactorily resolved, and if the grievance results from a disciplinary matter for which a suspension in excess of three days, or if there has been any prior suspension with the previous twelve month period, or if a termination was imposed, then in such event the aggrieved employee, who may be assisted by the Union, shall, within five (5) working days after the Personnel Director's response is due, appeal in writing to the Personnel Administration Board of Kent County, Delaware. The Personnel Administration Board shall schedule a hearing on the matter as soon as reasonably possible and shall render a written decision within ten (10) working days after the hearing date. The decision of the Personnel Administration Board may be appealed on the record to Superior Court pursuant to Superior Court Rules, Rule 72. *County Exhibit 1*.

Receipt of the grievance was acknowledged by signature of the Director of Public Works on September 17, 2013. *County Exhibit 12.*

By letter to the CWA Shop Steward dated September 19, 2013, the Director of Public Works declined to process the grievance, stating:

> I acknowledge receipt of a written grievance dated September 16, 2013, but have determined it to be invalid because it was not properly filed by a "full time bargaining unit member" as provided in the collective bargaining agreement. Mr. Richardson is no longer employed by Kent County Levy Court. *County Exhibit 14.* [5]

"prior to and in lieu of Court."

5 This letter was issued the same day on which the County Personnel Director denied the employee's request for modification.

A second grievance was filed by the CWA Shop Steward and received by the County Personnel Director on October 3, 2013, challenging the County's application of §6.1 and §6.2 of the collective bargaining agreement. It asserted "… when an employee is disciplined, the Union has the right to sit down with the 1st level supervisor or department head to discuss it." It requested a "date and time we can talk to somebody about this grievance." *County Exhibit 16.* The grievance specifically stated in response to the first question on page 2 that it concerned an issue of contract interpretation.

By memorandum addressed to CWA's Chief Steward, dated October 8, 2013, the County Personnel Director acknowledged receipt and denied the grievance, finding it to be untimely:

> I am in receipt of a written grievance dated October 2, 2013, and received in the office on October 3, 2013. The written grievance provides little specific information about the incident being grieved.
>
> However, since it was received by me, it appears likely that it is an appeal of the grievance response authored by Public Works Director Hans Medlarz dated September 19, 2013. His response was the result of a grievance dated September 16, 2013 submitted by Anthony Richardson and signed by Jesse Wallace. The grievance was described as "termination".
>
> If the conclusions reached above are accurate, your grievance was not appealed "*… within five (5) working days after the Department Head's response is due…*" Given that the original grievance was dated September 16, 2013, the Department Head's response would have been due on September 23, 2013. Therefore, you should have appealed the Department Head's decision no later than September 30, 2013.
>
> As explained above, the grievance is nullified for being untimely. Therefore, regarding your appeal, I render the following decision: Denied.
>
> Notwithstanding the timeliness issue, it is incumbent for future grievances to be specific enough to clearly discern the matter or issue being grieved and the contract provision affected. *County*

Exhibit 17.

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 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 violations alleged, 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).

It is well-established in Delaware PERB case precedent that a unilateral change in the status quo of mandatory subjects of bargaining constitutes a *per se* violation of a party's duty to bargain in good faith and 19 Del.C. §1307(a)(5). *ILA Local 1694-1 v. Diamond State Port Corporation*, ULP 11-02-787, VII PERB 4977, 4983 (2011); *affirmed* VII PERB 5069 (6/21/11). PERB has held that the "grievance procedure is a mandatory subject of bargaining and may not be unilaterally changed by either party, either overtly or by

inaction." *Donahue v. City of Wilmington,* ULP 08-11-637, VI PERB 4123, 4128 (2008). Once agreed upon, the negotiated grievance procedure may not be modified or ignored unless the parties have mutually agreed to do so. *Caesar Rodney Education Assn. v. Bd. of Education,* ULP 02-06-360, IV PERB 2729, 2733 (PERB Decision on Review, 2002); affirmed C.A. No. 1549-K, IV PERB 2933 (Chan.Ct., 2003).

The grievance procedure lies at the heart of the continuous collective bargaining obligation and constitutes the primary vehicle by which the parties' agreement is defined and refined during its term. For the agreement as a whole to have real meaning, it is incumbent upon the parties to administer the grievance process in accordance with the negotiated contractual terms. *Indian River Education Association v .Board of Education of Indian River School District*, ULP 90-09-053, I PERB 667, 675 (1991).

The parties' negotiated agreement requires the employer not to discharge an employee without just cause. *CBA §9.1.* It also includes specific provisions which address grievances concerning both disciplinary and contractual matters. *CBA §6.6 and §6.7.* Further, Article 6.8 of the parties' collective bargaining agreement states:

> … Discussions/meetings to resolve the grievance shall be scheduled by the responsible County authority at each above step.

The County does not dispute that no meetings were held prior to the issuance of the Director of Public Works decision on September 19, 2013 or before the issuance of the County Personnel Director's October 8, 2013, decision on the second grievance. As stated in the *Indian River* decision (supra.):

> By issuing decision without affording the grievants and their representatives the hearing which were required by the negotiated grievance procedure, the [employer] unilaterally altered the status of quo of the grievance procedure. This decision does not depend upon the intent or motivations of the [employer], but rather results from the employer's

> misunderstanding as to its basic obligations under the Act. The [employer] could have reached the same conclusions without facing the time and expense of an unfair labor practice proceeding had its representatives … followed the grievance procedure to which it contractually committed before issuing the decisions.

The County argues that it followed the termination and appeal process set forth in the County Code, which it asserts is substantially similar to the grievance process. The PERA does not permit a public employer to unilaterally substitute a similar process for the negotiated grievance procedure. The law requires the parties to enter into a collectively bargained agreement which includes a "…written grievance procedures by means of which bargaining unit employees, through their collective bargaining representatives, may appeal the interpretation or application of any term or terms of an existing collective bargaining agreement; such grievance procedures shall be included in any agreement entered into between the public employer and the exclusive bargaining representative." 19 Del.C. §1313(c). Whether the County has followed the alternative process in the past is also of no consequence to its obligations under the PERA. When the County chose to unilaterally ignore its obligation to process grievances through the negotiated procedure, it violated its duties and obligations under the PERA.

For these reasons, the pleadings are sufficient to establish that the County committed a *per se* violation of 19 Del.C. §1307(a)(1) and (5), as alleged, by failing or refusing to abide by the terms of the negotiated grievance procedure.

The second issue raised by this unfair labor practice charge concerns the employer's duty to provide information, upon union request, which relates to the enforcement of rights arising under the collective bargaining agreement and the statute. This issue has been considered by the PERB in numerous prior decisions.

The key inquiry when a question concerning the duty to provide information

arises is whether the information requested "is relevant information necessary for the bargaining representative to intelligently determine facts, assess its position and decide what course of action, if any, to pursue." *NCCEA/DSEA/NEA v Brandywine School District*, ULP No. 85-06-005, I PERB 131, 149 (1986). Where requested information relates to a potential grievance, the test for relevance is liberal. *AFSCME Locals 1007, 1267, & 2888 v. DSU*, ULP 10-04-739, VII PERB 4693, 4704 (2010).

In this case, the documentation appended to the pleadings establishes the union's initial request for information was made by email from the CWA's Shop Steward to the County Personnel Director:

> In order to process the Anthony Richardson grievance, the Union requests the following information:
>
> 1. Mr. Richardson's personnel file.
> 2. All information considered in making the decision to terminate Mr. Richardson, including but not limited to performance reviews, disciplinary records, video evidence, any photographic evidence and any eyewitness reports filed by any employees, both bargaining unit and non-bargaining unit employees.
> 3. All investigative notes in reference to this case.
> 4. Copies of any notes from any and all interviews conducted in the investigation of this case.
> 5. The names of all bargaining unit employees who have been terminated in the past 5 years and a description of the infraction for which they were terminated.
> 6. The personnel files and disciplinary records of all employees named in response to number 5 above.
>
> Please provide the information within the next 5 business days to [Shop Steward] Jesse Wallace. If any part of this request is denied or any material is unavailable, please state so in writing and provide the remaining items which the union will accept without prejudice to its position that it is entitled to all documents and information sought in this request. This request is submitted without prejudice to the Union's right to file subsequent requests. *County Exhibit 21*.

The employee also delivered a letter to the County Personnel Director concerning "Written request for Personnel Administration Board", which is dated September 13, 2013:

> I am requesting to meet and have a hearing with the board. At which time, I am requesting the opportunity to bring valuable information for an appropriate consideration to be made. I am requesting all information prior to the meeting in regards *[sic]* involving the allegations in order to fully understand what I am being accused of. The union has been requesting this information several times. I would like the opportunity to fully discuss the issues revolving *[sic]* this decision also. These questions include:
>
> 1: Who observed sleeping on the job
>
> 2: The performance improvement plan
>
> 3: Copy of the falsified time sheet.
>
> In addition, I am requesting to review these items with the ability to verify the validity. I am asking the union president to be copied on all information and the scheduling of the hearing to all in attendance. Once again, thank you for your time in this matter. *County Exhibit 22* [6]

By memorandum dated September 30, 2013, the County Personnel Director supplied the CWA Shop Steward with a list[7] naming four individuals (including the employee at issue in the present matter) who were terminated between December 18, 2008 and September 9, 2013. The memorandum states:

> The Personnel Office has received a request from the union for specific records, which among other things included a copy of Anthony Richardson's personnel file. Mr. Richardson e-mailed a message supporting the Union's request for documents.
>
> The requested report regarding former union members terminated over the past five years is also attached.
>
> I am unable to provide the other requested information at this time. If you have any questions, please contact me… *County*

[6] It appears this letter was also delivered to the County Personnel Director by email on September 24, 2013.

[7] The list is entitled "Termination Report (members only) 5 years", and includes a column titled "Reason". All of the individuals listed were employed by the Department of Public Works, Wastewater Treatment Facility.

Exhibit 26.

In its Answer to the Charge, the County states,

> Respondent acknowledges that Charging Party requested certain information. Respondent denies that the requested "*information is relevant and necessary for charging party to determine whether it will proceed*," since [the employee] already filed an appeal to the Personnel Administration Board by letter dated September 13, 2013, and received on September 25, 2013. *Answer ¶15.*
>
> …Respondent replied to the information request to the extent required by the collective bargaining agreement and law as it relates to a disciplinary hearing process… *Answer ¶16.*

The County also asserts the Charging Party failed to submit "any follow up requests to substantiate its right to the personnel file of former employees, investigative notes, eyewitness statements, videos, etc.". *Answer ¶16.* It alleges the CWA had no right under the collective bargaining agreement to the additional information and documents without providing substantiation.

The County fails to understand its well-established good faith obligations under the PERA. The Personnel Director's memorandum of September 30, 2013, concludes he is "unable to provide the other requested information at this time." He does not request further clarification or justification of the CWA's request. He does not indicate why the requested information is unavailable at that time.

A public employer's duty to provide information requires a reasonable, good faith effort to respond in a timely manner to the Union's request. Absent evidence justifying an employer's delay in furnishing a union with relevant information, such a delay will constitute a violation of §1307(a)(1) and (a)(5) because the union is entitled to the information at the time of its initial request and it is the employer's duty to furnish it as promptly as possible. *AFSCME, Council 81, Local Unions 320 and 1102 v. City of*

Wilmington, ULP No. 10-12-781, VII PERB 4849, 4856 (2010). Without disclosure of information which allows the union to assess the viability of the employer's actions within the context of the collective bargaining agreement, the grievance and arbitration process cannot serve its purpose of timely and effective resolution of disputes arising under the agreement. "The purpose of the statute is to facilitate effective collective bargaining relationships. The open, honest and good-faith exchange of information is a cornerstone of an effective relationship and is protected by the PERA." *AFSCME v. Delaware State University*, ULP 10-04-739, VII PERB 4693, 4705 (Decision on Motion for Summary Judgment, 2010).

CWA's request was limited to the documentation the County was relying upon to support its decision to terminate the employee and to information concerning other bargaining unit employees who had been terminated in the previous five years. Only the employer knows what information it relied upon to reach its decision to discharge the employee. On its face, the request was reasonably related to CWA's representative responsibilities. The County has failed to raise a valid defense as to why this information was not provided to the Union in a timely manner.

By failing or refusing to respond in a timely manner to the Union's request for information specifically related to a disciplinary matter, the County violated its obligations under the PERA.

CWA Local 13101 also alleges the County has violated 19 Del.C. §1307(a)(1) by failing to "establish a neutral and impartial Personnel Administration Board because a member of the Board is related to the County's attorney." The pleadings, even when viewed in a light most favorable to the union, fail to allege sufficient facts to conclude that the alleged violation may have occurred. Consequently, this portion of the Charge is dismissed.

Finally, the union alleges the County has also violated its statutory obligations by "unilaterally, and without notice to the charging party, installed surveillance cameras at various locations throughout its operations… solely for the purpose of surveying and observing the conduct" of bargaining unit employees. *Charge ¶19, 20.* In its Answer to the Charge, the County provided documents which establish that the installation of security cameras was discussed at a Labor-Management Committee meetings on August 9, 2011, and March 12, 2013; and April 16, 2013. The instant Charge was filed on October 15, 2013, which is 182 days after the April 16, 2013 meeting. 19 Del.C. §1308 provides that a charge cannot be sustained based on any unfair labor practice occurring more than 180 days prior to the filing of the charge. Consequently, this portion of the Charge is dismissed as untimely.

CONCLUSIONS OF LAW

1. Kent County Levy Court (County) is a public employer within the meaning of 19 Del.C. §1302(p).

2. The Communication Workers of America, Local 13101, (CWA) is an employee organization within the meaning of 19 Del.C. §1302(i). It is the exclusive bargaining representative of the unit of non-supervisory hourly production and maintenance employees of the Kent County Wastewater Treatment Facility, within meaning of 19 Del.C. §1302(j). DOL Case 261.

3. The County and CWA Local 13101 are parties to a collective bargaining agreement which has a term of January 1, 2009 through December 31, 2014.

4. The grievance procedure is a mandatory subject of bargaining. Unilateral changes to the status quo of a mandatory subject of bargaining constitutes a per se violation

of the PERA.

5. The County unilaterally modified the status quo of the negotiated grievance procedure, a mandatory subject of bargaining, by failing or refusing to conduct grievance hearings. By this action, the County has violated its ongoing obligation to bargain in good faith and has also interfered with the rights guaranteed to employees by the PERA, in violation of 19 Del.C. §1307 (a)(1) and (5).

6. The County further violated its statutory obligations when it failed to provide information requested by CWA Local 13101 which was relevant and necessary for union to intelligently determine facts, assess its position and decide what course of action, if any, to pursue, concerning the termination of a bargaining unit employee. By this action, the County has violated 19 Del.C. §1307 (a)(1) and (5).

7. The charges alleging the County violated its statutory obligations by failing to establish a neutral and impartial Personnel Administration Board is dismissed as there are insufficient facts asserted to support this charge.

8. The charge alleging the County violated its statutory obligations by "unilaterally, and without notice to the charging party, installed surveillance cameras at various locations throughout its operations… solely for the purpose of surveying and observing the conduct" of bargaining unit employees is dismissed because it was not timely filed.

WHEREFORE, Kent County Levy Court is hereby directed to take the following affirmative actions

1. The County is ordered to cease and desist from engaging in conduct in dereliction of its duty to collectively bargain in good faith with the exclusive bargaining

representative of its Wastewater Treatment Facility employees.

2. The County is ordered to afford the grievant and his representative the grievance hearings to which he was statutorily entitled under the contractual grievance procedure.

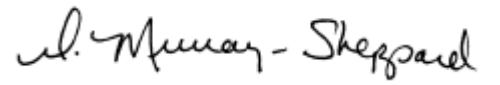
3. The County is ordered to cease and desist from failing or refusing to provide information requested by CWA Local 13101 which is necessary and relevant to the union in performing its representational function and to immediately provide the information requested by CWA.

4. Immediately post a copy of the Notice of Determination in all places where notices of general interest to the bargaining unit members are usually posted. The notice shall remain posted for a period of thirty (30) days.

5. The County is directed to notify the Public Employment Relations Board within forty-five (45) days of the date of this decision of the steps taken to fully comply with this Order.

IT IS SO ORDERED.

Dated: June 4, 2014



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