

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

<b>KENT COUNTY LEVY COURT,</b>	:	
	:	
Appellant,	:	<b>PERB Review of Executive</b>
	:	<b>Director's Decision</b>
v.	:	
	:	<b><u>ULP No. 13-10-926</u></b>
<b>COMMUNICATION WORKERS OF AMERICA,</b>	:	
<b>LOCAL 13101,</b>	:	
	:	
<b>Appellee.</b>	:	

Appearances

*William W. Pepper, Sr., Esq., Schmittinger & Rodriguez, for Kent County*

*Robert Westbrook, Executive Vice President, CWA Local 13101*

Appellant Kent County Levy Court (County) is a public employer within the meaning of §1302(p) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (PERA). 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 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

Board (PERB) an unfair labor practice charge alleging conduct by the County in violation of 19 Del.C. §1307(a)(1) and (a)(5).<sup>1</sup> Specifically, the Charge alleged the County failed or refused to process a grievance contesting the termination of a bargaining unit employee through the negotiated grievance procedure and also refused to provide information to CWA which was relevant and necessary for it to meet its representational responsibilities.<sup>2</sup>

On or about October 24, 2013, the County filed its Answer denying the material allegations set forth in the Charge. No new matter or affirmative defenses were asserted in the Answer.

A Decision on the Pleadings was issued on June 4, 2014, which found:

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).

The County further violated its statutory obligations when it failed to provide information requested by CWA Local 13101 which is relevant and necessary for the union to intelligently determine facts, assess its position and decide what course of action, if any, to pursue

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<sup>1</sup> § 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.
  - (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.

<sup>2</sup> CWA also alleged the County violated its statutory obligations by failing to establish a neutral and impartial Personnel Administration Board and by installing surveillance cameras (without notice to the Union) at various operational locations for the purpose of monitoring and observing employee conduct. Both of these allegations were dismissed and those portions of the Executive Director's decision were not appealed.

concerning the termination of a bargaining unit employee. By this action, the County has violated 19 Del.C. §1307(a)(1) and (5). *CWA Local 13101 v. Kent County Levy Court*, ULP 13-10-926, VII PERB 6089, 6107 (2014).

The decision directed the County to cease and desist from violating the statute, to afford the grievance hearings to which the grievant was entitled, and to provide any information requested by the CWA which was reasonably necessary and relevant to the union to perform its representational functions.

On June 10, 2014, the County requested review of the Executive Director's decision by the full Public Employment Relations Board. CWA filed a written response to the County's request for review on June 20, 2014, and the County filed written argument in support of its appeal on July 3, 2014. CWA declined to respond to the County's July 3 submission.

A copy of the complete record in this matter was provided to each member of the Public Employment Relations Board. A public hearing was convened on July 16, 2014, at which time the full Board met in public session to hear and consider this request for review. The parties were provided the opportunity to present oral argument and the decision reached herein is based upon consideration of the record and the arguments presented to the Board.

### **DISCUSSION**

The Board's scope of review is limited to the record created by the parties and consideration of whether the decision is arbitrary, capricious, contrary to law, or unsupported by the record. After consideration of the record and the arguments of the parties on appeal, the Board must vote to affirm, overturn, or remand the decision to the

Executive Director for further action.

The County argues on appeal that the Executive Director erroneously interpreted the parties' collective bargaining agreement concerning the processing of termination cases and improperly required the County to produce documents that are "universally shielded" from production because their release violates the privacy rights of former employees.

The County asserts the collective bargaining agreement reflects the understanding of the parties that disciplinary matters are handled in accordance with Chapter 68 of the Kent County Code. The County states on appeal that "the only way to give effect to all applicable parts of the collective bargaining agreement and Chapter 68 is to require that the procedures under Article IX/Chapter 68 be completed and, if the union or employee remains dissatisfied, the Article VI grievance procedure can be invoked." It asserts the disciplinary and the grievance procedures should run consecutively, not concurrently.

The County's argument is circular. It argues that discipline is not final until the decision has been initiated by the department head; considered for modification by the Personnel Director; approved by the Personnel Administration Board; and reviewed by Superior Court on a writ of certiorari. Only at that point, the County argues, can a grievance be filed. The first step of the negotiated grievance procedure begins with the employee's immediate supervisor, the second step is with the department head, the third step is with the Personnel Director and the fourth step is with the PAB. Again, the decision can be appealed to Superior Court on a writ of certiorari.

The County is correct in its assertion that the collective bargaining agreement should be read so as to give reasonable effect to all of its provisions. To follow the process the County advocates, however, would be redundant, time consuming and would

render the grievance procedure a nullity. The same individuals who consider the discipline before it is “finalized” would be responsible for reviewing that discipline during the grievance process. The County’s construction of the contractual grievance language is illogical.

The PERA dictates that all collective bargaining agreements must include a contractual grievance procedure:

The public employer and the exclusive bargaining representative shall negotiate 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).

The collective bargaining agreement negotiated by these parties dictates the County cannot discharge an employee without just cause. The grievance procedure requires the County to schedule “discussions/meetings to resolve the grievance... at each step.” It is undisputed that no grievance discussions or meetings were held.

In fact, on or about September 16, 2013, CWA, through its Chief Shop Steward filed a grievance alleging the County had not followed the contractual grievance procedure with respect to this termination. The Department Head responded:

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. [The Grievant] is no longer employed by Kent County Levy Court. *County Exhibit 14.*

Following this logic, there is no method by which a bargaining unit employee or the union could enforce the just cause protections of the collective bargaining agreement in cases of termination, because those individuals are no longer County employees.

The record and the law support the Executive Director's determination that the County violated its obligations under the PERA when it instituted a unilateral change in the negotiated grievance procedure by failing and refusing to process the termination of a bargaining unit employee through that process.

The County contends it was directed to provide information which it alleged were confidential as personnel records. The standard for information to which the Union is entitled under the PERA is, however, very well established:

The statutory duty of representation necessarily encompasses the right to conduct a reasonable investigation which, if not otherwise privileged, includes access to relevant information necessary for the bargaining representative to intelligently determine facts, assess its position and decide what course of action, if any, to pursue. The duty to furnish such information extends beyond the negotiations to the day to day administration of the collective bargaining agreement. To conclude otherwise would render the entire representation process meaningless. *Brandywine Affiliate, NCCEA/DSEA/NEA v. Brandywine School District Board of Education*, U.L.P. No. 85-06-005, I PERB 131, 149 (1986).

At no point prior to the processing of this unfair labor practice charge did the County raise an issue of privilege. A public employer has a duty to make a reasonable, good faith effort to provide a timely response to the union's request for information. If the County believed some of the information was privileged, it had an obligation to explicitly make that belief and the basis therefore known. Nothing in the County's response of September 30, 2013, indicates it had a concern about either the nature or the scope of the request. The County Personnel Director provided the information concerning terminated bargaining unit employees and then simply stated, "I am unable to provide the other requested information at this time." *County Exhibit 26*.

For these reasons, the record and the law support the Executive Director's determination that the County violated its obligations under the PERA when it did not

respond in good faith to the Union's request for information which was reasonably related to its representational obligations.

**DECISION**

After reviewing the record, hearing and considering the arguments of the parties, the Board unanimously affirms the decision of the Executive Director and denies the County's appeal of that decision.

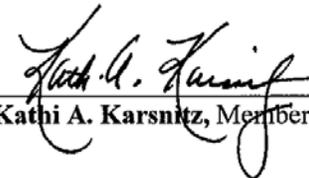
**IT IS SO ORDERED.**



**Elizabeth D. Maron, Chairperson**



**R. Robert Currie, Jr., Member**



**Kathi A. Karsnitz, Member**

DATE: August 6, 2014