

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

CARON JENKINS,)	
Charging Party,)	
)	<u>ULP No. 14-01-938</u>
v.)	Probable Cause Determination
)	and Dismissal
DELAWARE TRANSIT CORPORATION,)	
Respondent.)	

APPEARANCES

CaRon Jenkins, Charging Party, Pro Se
Aaron M. Shapiro, SLREP/OMB, for Respondent, DTC

BACKGROUND

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

Charging Party, CaRon Jenkins (Jenkins), was employed by DTC and was a public employee within the meaning of 19 Del.C. §1302(o). Mr. Jenkins was a member of the bargaining unit represented by Amalgamated Transit Union, Local 842 (ATU). ATU Local 842 is certified as the exclusive bargaining representative of that bargaining unit of DTC employees pursuant to 19 Del.C. 1302(j).

On January 21, 2014, Jenkins filed an unfair labor practice charge (Charge) with the Delaware Public Employment Relations Board (PERB) alleging conduct by DTC in violation of 19 Del.C. §1301 (1) and (2), §1303, and/or §1307 (a)(1), (2), (3) and (6), 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:

- (1) Granting to public employees the right of organization and representation;
- (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.
- (2) Negotiate collectively or grieve through representatives of their own choosing.
- (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.
- (4) Be represented by their exclusive representative, if any, without discrimination.

§ 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.
 - (2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization.
 - (3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.
 - (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.

Specifically, the Charge alleges that Jenkins was never officially or formally notified of his termination for unsatisfactory performance following a pre-termination meeting. Jenkins also alleges that DTC has a continuing practice of imposing “heavy handed” discipline which he asserts “can only be an attempt to break the union...”

On or about January 29, 2014, DTC filed its Answer denying it had violated the PERA as alleged. Attached to its Answer was a copy of the written notice of termination (dated December 16, 2013) which indicates it was sent to Jenkins by certified mail, return receipt requested. *Exhibit A to DTC’s Answer.*

DTC also included New Matter in its Answer, asserting the Charge fails to link any material factual allegations to the specific statutory provisions allegedly violated and fails to provide “a clear and detailed statement of the facts constituting the alleged unfair labor practice” as required by PERB Rule 5.2(c) (3).

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 pleadings fail to allege conduct by DTC sufficient to establish probable cause to believe that any violation of 19 Del.C. §1301 and/or §1303 may have occurred.

Concerning the alleged violation of 19 Del.C. §1307(a)(1) and/or (a)(2), there is no factual allegation of DTC conduct which could reasonably be considered to have violated either prohibition. In order for employer conduct to constitute an (a)(1) and/or (a)(2) violation, it must either on its face or through surrounding circumstances reasonably tend to exert undue influence and/or coerce employees or the labor organization in the exercise of protected rights. *WFFA Local 1590 v. City of Wilmington*, ULP 93-06-085, II PERB 937, 976 (1994).

Even if proven, DTC's alleged failure to officially or formally notify Jenkins of his termination does not rise to the level of potential interference with protected rights. ATU Local 842, Jenkins exclusive representative, was provided with timely notice of his termination. In his Charge, Jenkins admits that he was verbally advised by DTC on December 24, 2013 that he had been terminated. DTC provided in its Answer to the Charge a copy of the termination notice which was sent by U.S. and certified mail to Mr. Jenkins, addressed to the same address which he provided in this Charge. The allegation that DTC has violated 19 Del.C. §1307(a)(1) and/or (a)(2) is dismissed because it is unsupported by any facts included in the Charge.

The Charge includes no factual allegations that any conduct asserted by Jenkins could reasonably have had the effect of "encouraging or discouraging membership in an employee organization,"¹ in violation of 19 Del.C. §1307(a)(3). Consequently, this portion of the Charge

¹ The selected list of unfair labor practice charges which Charging Party included in this Charge, beginning at the bottom of page 1 and continuing on to page 2, has no relevance or nexus to either the

is dismissed.

The Charge also alleges DTC has refused or failed to comply with its obligations under the PERA and/or PERB rules in violation of 19 Del.C. §1307(a)(6). Again, there are no factual allegations which reasonably support this conclusion; this portion of the Charge is also dismissed.

The Charge fails to state a claim that the Public Employment Relations Board has been violated. PERB Rule 5.2(c)(3) requires that an unfair labor practice charge must include, “ a clear and detailed statement of the facts constituting the alleged unfair labor practice, including the names of the individuals involved in the alleged unfair labor practice, the time, place of occurrence and nature of each particular act alleged, and reference to the specific provisions of the statute alleged to have been violated”. This Charge makes no reasonable or logical connection between Mr. Jenkins alleged failure to receive formal notification of his termination (of which he admits he was notified through a telephone conversation on December 24, 2013) and any violation of the statute.

Finally, Mr. Jenkins alleged DTC has a continuing practice of imposing “heavy handed” discipline. It is well established in Delaware that “the unfair labor practice forum is not a substitute for the negotiated grievance procedure and PERB has no jurisdiction to resolve grievances through interpretation of contractual language.” *Brandywine Affiliate, NCCEA/DSEA/NEA v. Brandywine Bd. of Education*, ULP 85-06-005, I PERB 131, 142 (1986, Del. PERB).

The Public Employment Relations Board has consistently and repeatedly held that resolution of disputes which arise concerning application or interpretation of the terms of a collective bargaining agreement, i.e., a grievance, are reserved for resolution through the parties’ negotiated grievance and arbitration procedures. PERB is not a substitute for the

factual circumstances or alleged violations of this Charge. The fact that charges may have been filed by members of this bargaining unit and/or ATU 842 in the past has no bearing on the sufficiency of the current Charge.

grievance procedure and its jurisdiction is limited to consideration of charges that the statute has been violated and that an unfair labor practice (as defined at 19 Del.C. §1307) has been committed. *AFSCME Council 81, LU 218 v. Red Clay Consolidated School District*, ULP 09-11-720, VII PERB 4675, 4677 (2010).

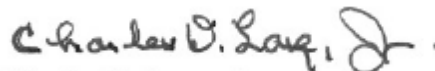
There is no substantive allegation in this Charge which, if proven, would constitute a violation of 19 Del.C. §1307(a)(1), (a)(2), (a)(3) and/or (a)(6). The focus of the underlying complaint is that Charging Party was unjustly or harshly disciplined. The presence or absence of “just cause” raises a question of contract interpretation rather than a statutory question under the PERA. Whether the employer properly complied with any procedural requirements for notifying an employee of the outcome of the pretermination meeting would also have its basis in the collective bargaining agreement negotiated between DTC and ATU Local 842. Disputes concerning compliance with contractual obligations are proper subject matter for resolution through the negotiated grievance procedure.

This Charge fails, on its face, to allege facts which may be reasonably construed, even when considered in a light most favorable to the Charging Party, to have violated the PERA, as alleged.

DETERMINATION

The pleadings fail to establish probable cause to believe that the violations alleged in the Charge may have occurred. Consequently, the Charge is dismissed in its entirety.

Dated: February 14, 2014



CHARLES D. LONG, JR.
Hearing Officer
Del. Public Employment Relations Board.