

**STATE OF DELAWARE**  
**PUBLIC EMPLOYMENT RELATIONS BOARD**

<b>HOWARD W. STEWART, JR.,</b>	)	
Charging Party,	)	
	)	<b><u>ULP No. 14-01-940</u></b>
v.	)	<b>Probable Cause Determination</b>
	)	<b>and Dismissal</b>
<b>DELAWARE TRANSIT CORPORATION,</b>	)	
Respondent.	)	

APPEARANCES

*Howard W. Stewart, Jr., 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, Howard W. Stewart, Jr. (Stewart), is employed by DTC and is a public employee within the meaning of 19 Del.C. §1302(o). Mr. Stewart is 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 27, 2014, Stewart 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(1) and (4), 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.
- (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 Stewart was suspended without pay on January 15, 2014 and notified by letter dated January 22, 2014 that following a customer complaint and subsequent investigation, DTC was recommending his termination. The January 22, 2014 letter

(which was concurrently provided to the ATU Local 842 President) also advised Stewart that a pretermination hearing would be convened on January 29, and included time and location information. *Exhibit 1 to Charge*. Stewart alleges the January 22 letter fails to provide sufficient information to allow him or the union to adequately prepare for the pretermination hearing.

Mr. Stewart also alleges that “this current 15 day delay is just the beginning of the respondents attempt in my case to delay the outcome indefinitely and is part of a long and well documented practice of delaying cases against its members, as long as possible, even indefinitely, as cited herein. The respondents constant disciplining and delaying of disciplinary proceedings are a clear violation of the charging parties and the unions’s rights to due process under PERA”.

On or about February 4, 2014, DTC filed its Answer denying it had violated the PERA as alleged. DTC specifically denied Mr. Stewart’s assertion that he was not provided with sufficient information concerning the basis for the discipline. DTC included within its Answer the following information:

On January 15, 2014, the Charging Party was called into a meeting with DTC representatives and representatives of the ATU. During this meeting DTC presented video evidence obtained from a bus operated by the Charging Party... All of this video footage was viewed concurrently by the Charging Party, the ATU representatives and DTC’s representatives.

DTC also specifically denied that either Mr. Stewart and/or the ATU have been denied any rights to investigate the nature and basis of the discipline.

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).

On February 10, 2014, Charging Party filed a Response to New Matter denying the

factual and legal positions 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 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).

The Charge includes no factual allegations that any conduct asserted by Stewart could reasonably have had the effect of “encouraging or discouraging membership in an employee organization”<sup>1</sup> in violation of 19 Del.C. §1307(a)(3). Consequently, this portion of the Charge 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 the on-going disciplinary process involving Mr. Stewart and any violation of the statute.

Finally, Mr. Stewart alleges DTC has a continuing practice of delaying disciplinary cases against bargaining unit employees. There are no facts included in the complaint which support this allegation. Indeed, the Charge was filed on January 27, two days prior to the scheduled date

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<sup>1</sup> The selected list of unfair labor practice charges and other matters which are not subject to PERB jurisdiction which Charging Party included in this Charge, beginning at the bottom of page 1 and continuing on to page 2 and page 3, has no relevance or nexus to either 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.

of the pretermination meeting<sup>2</sup> and only nineteen days after he was originally confronted by a DTC representative on January 8, 2014.<sup>3</sup>

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 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). Whether the employer properly complied with any procedural requirements for notifying the employee or his union of the basis for proposed discipline has its origin in the “just cause” standard for discipline which is specifically included 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.

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<sup>2</sup> Exhibit 1 to Charge

<sup>3</sup> Answer, page 2

**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



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