

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

CARON JENKINS,)	
)	
Charging Party,)	
)	
v.)	
)	
LILLIAN SHAVERS AND AMALGAMATED)	ULP No. 14-02-948
TRANSIT UNION, LOCAL 842)	Probable Cause Determination
)	
Respondents.)	

APPEARANCES

CaRon Jenkins, pro se, Charging Party
Lauren M. Hoye, Esq., Willing, Williams, & Davidson, for the ATU Local 842

BACKGROUND

At the time of his discharge, Charging Party, CaRon Jenkins (Jenkins), was an employee of the Delaware Transit Corporation, an agency of the Delaware Department of Transportation and a public employer within the meaning of §1302 (p) of the Public Employment Relations Act (PERA).

The Amalgamated Transit Union, Local 842, (ATU) is an employee organization within the meaning of 19 Del.C. §1302(i) and the exclusive bargaining representative of certain hourly operators and maintenance employees of the Delaware Transit Corporation. 19 Del.C. §1302(j). Jenkins held a bargaining unit position prior to his discharge. Lillian Shavers (Shavers) is the current President of ATU Local 842.

On February 28, 2014, Jenkins filed an unfair labor practice charge with the Delaware Public Employment Relations Board (PERB) alleging conduct by ATU Local 842 and its President in violation of 19 Del.C. §1301 (1), (2) and (3); §1303 (1), (2), (3) and (4); §1304 (a) and (b); and §1307(b)(1), (2) (3), and (6), which provide:

§ 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;
- (3) Empowering the Public Employment Relations Board to assist in resolving disputes between public employees and public employers and to administer this chapter.

§ 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.

§ 1304. Employee organization as exclusive representative.

- (a) The employee organization designated or selected for the purpose of collective bargaining by the majority of the employees in an

appropriate collective bargaining unit shall be the exclusive representative of all the employees in the unit for such purpose and shall have the duty to represent all unit employees without discrimination. Where an exclusive representative has been certified, a public employer shall not bargain in regard to matters covered by this chapter with any employee, group of employees or other employee organization.

- (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 views known, and as long as the adjustment is not inconsistent with the 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 complainant specifically requests, in writing, that the exclusive representative not be present.

§ 1307. Unfair labor practices, enumerated.

- (b) It is unfair labor practice for a public employee or for an employee organization 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) Refuse to bargain collectively in good faith with the public employer or its designated representative if the employee organization is an exclusive representative.
 - (3) 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.
 - (6) Hinder or prevent, by threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment by any person, or interfere with the entrance to or egress from any place of employment.

Specifically, Jenkins alleges that during a union meeting, ATU's President Shavers stated that the ATU would not represent him in a grievance challenging his discharge because he had

filed a complaint with the PERB. Jenkins alleges this statement was allegedly repeated by Shavers during a subsequent telephone conversation with Jenkins.

On March 18, 2014, the ATU filed its Answer denying the allegations set forth in the Charge. The ATU asserts that at the time of his discharge, Jenkins had been employed by DTC as a bargaining unit employee only for approximately two months and had not yet completed his six-month probationary period. Although probationary employees work under the provisions of the negotiated collective bargaining agreement between DTC and ATU Local 842, they remain on probationary status for a full six months, during which they are not entitled to the job protections of the “just cause” provision of the CBA.

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 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*, PERB Probable Cause Determination, ULP 04-10-453, V PERB 3179, 3182 (2004).

In support of its position the ATU cites the following contract provision:

Section 3 – UNION SECURITY

- C. New employees shall work under the provisions of the Agreement but shall be employed only on a 6 month trial calendar basis, provided however, that the Administration may not discharge or discipline for the purpose of evading this Agreement or discriminating against Union members.

The union contends this contractual provision authorizes the discharge of a probationary employee for any reason during the probationary period, subject only to the two limitations set forth therein.

It is well-established that PERB's jurisdiction is limited to resolving statutory issues arising under the PERA. The purpose of the negotiated grievance procedure is to resolve issues concerning contractual interpretation and application.

Except for the alleged violation of §1307(b)(1) as it relates to §1304(b), the pleadings fail to establish any factual basis on which to conclude there may be probable cause to believe that the statutory violations alleged by the Charging Party may have occurred. Therefore, the charges concerning 19 Del.C. §1301 (2) and (3); §1303, (1), (2), (3) and (4); § 1304 (b); and §1307(b) (2), (3), and (6), are dismissed.

Reviewed in a light most favorable to the Charging Party (i.e., assuming the allegations he has made are true), the pleadings are sufficient to support a probable cause determination that the ATU may have interfered with, restrained or coerced Jenkins because he exercised his statutory right to file an unfair labor practice charge. Specifically, he alleges he was denied grievance representation by the union because he had filed a charge with this office. The ATU denies Jenkins has been treated any differently than other similarly situated employees and

further denies it has violated §1307(b)(1). In order to determine whether the ATU has, in fact, violated the statute as alleged, a factual record must be created and argument received on which the allegations may be fully considered.

It will be the Charging Party's initial burden to establish that the facts he alleges are true, specifically that the ATU's President announced at a general membership meeting and reiterated in a telephone conversation that Jenkins would not be receiving union representation, "...because and only because [he] had filed a PERB complaint...". Upon providing sufficient evidence to establish these facts, the burden then shifts to the ATU to establish a legitimate legally sufficient basis for its action. The burden then shifts back to Jenkins to establish that the union's asserted reason(s) is pretextual.

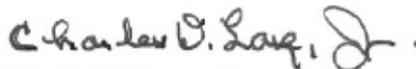
DETERMINATION

The pleadings fail to establish probable cause to believe that a violation of 19 Del.C. §1301 (1), (2) and (3); §1303, (1), (2), (3) and (4); §1304 (a), and §1307(b)(2), (3), and (6) may have occurred. As to these allegations the Charge is dismissed.

The pleadings are sufficient to establish probable cause to believe that a violation of 19 Del.C. §1307(b)(1) may have occurred.

A hearing will be promptly scheduled for the purpose of establishing a factual record upon which argument may be considered and a decision made concerning the alleged violation.

Dated: May 27, 2014



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