

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

CARON JENKINS,)	
)	
Charging Party,)	
)	
v.)	<u>ULP No. 14-02-949</u>
)	Probable Cause Determination
DELAWARE TRANSIT CORPORATION,)	and Order of Dismissal
)	
Respondent.)	

APPEARANCES

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

BACKGROUND

The State of Delaware (“State” or “Respondent”) 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.

CaRon Jenkins (“Jenkins” or “Charging Party”) 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 February 28, 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, §1304(a), and/or §1307 (a)(1), (2), (3), (4), (5) 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.

§ 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.

§ 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.
 - (4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony 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 respect to a discretionary subject.
 - (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 again raises a complaint that Jenkins was never officially or formally notified of his termination for unsatisfactory performance following a pre-termination meeting.¹ The Charge also alleges that DTC conspired with its independent workers' compensation carrier in an effort to close a prior unfair labor practice charge by offering the Charging Party "an illegal financial incentive and medical treatment" in exchange for his voluntary resignation.

On or about March 11, 2014, DTC filed its Answer denying it had violated the PERA as

¹ The Charging Party had previously filed a Charge which was dismissed for failure to state a claim on February 14, 2014. *Jenkins v. DTC*, ULP 14-01-938, VIII PERB 5965 (2014). He did not file a timely appeal to that Order of Dismissal.

alleged. 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).

The Charging Party did not file a response to the New Matter, although he was provided the opportunity to do so.

This decision results from a review of the pleadings as submitted by the parties.

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 Charge fails, on its face, to allege any facts which may reasonably be construed, even

when considered in a light most favorable to the Charging Party, to have violated the PERA as alleged. The Charging Party may not simply re-package a prior charge which has previously been determined to have no merit under the statute without asserting new information which would support a finding that there was a violation of the PERA and expect a different result. If the Charging Party believed the dismissal of ULP 13-01-938 (issued on February 14, 2014) was incorrect, he was advised of his right to appeal that decision within 5 days of his receipt of the decision, per PERB Rule 7.4. He chose not to exercise that right.

There are no facts alleged concerning the settlement offer made to the Charging Party by DTC to resolve his worker's compensation claim that can reasonably be inferred to constitute probable cause to believe that DTC interfered with any of Mr. Jenkins statutorily protected rights under the PERA.

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 with prejudice.

Dated: April 17, 2014



CHARLES D. LONG, JR.
Hearing Officer