

STATE of DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

HOWARD HUTT,	:	
	:	
Charging Party,	:	
	:	
v.	:	<u>ULP No. 14-06-961</u>
	:	Probable Cause Determination
	:	and Order of Dismissal
	:	
LILLIAN SHAVERS AND AMALGAMATED	:	
TRANSIT UNION, LOCAL 842,	:	
	:	
Respondents.	:	

Appearances

Howard Hutt, Charging Party, pro se
Lillian Shavers, President, ATU Local 842

At the time of his discharge, Charging Party, Howard Hutt (Hutt), was a probationary employee of the Delaware Transit Corporation (DTC). The State of Delaware is a public employer within the meaning of §1302 (p) of the Public Employment Relations Act (PERA). DTC is an agency of the State.

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 two bargaining units of fixed route operators, paratransit operators and maintenance employees of DTC. 19 Del.C. §1302(j). Lillian Shavers (Shavers) is the current President of ATU Local 842. Hutt was employed in a bargaining unit position prior to his discharge.

On or about June 30, 2014, Hutt filed an unfair labor practice charge alleging that ATU Local 842 and its President had violated 19 Del.C. §1301(1) and (2); §1303(2) and (4); §1304(a);

and §1307(b)(1), (2) and (3), 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:...

- (2) Negotiate collectively or grieve through representatives of their own choosing...
- (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 bargaining 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 regards to matters covered by this chapter with any employee, group of employees or other employee organization.

§ 1307 Unfair labor practices

- (b) It is an 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.

Hutt asserts he was discharged during his probationary training and that ATU Local 842 has refused to file a grievance protesting his termination, as he requested. He asserts in the Charge that his employer engaged in “discriminatory/illegal conduct” by discharging him for failure to complete work for which he was not compensated. He alleges ATU’s failure or refusal to file a grievance on his behalf violates its statutory obligations.

On or about July 8, 2014, the ATU Local 842 filed its Answer denying the allegations set forth in the Charge. The ATU requests the Charge be dismissed as it fails to set forth any facts which may constitute a violation of the PERA, as alleged.

DISCUSSION

Rule 5.6 of the Rules and Regulations of the Delaware Public Employment Relations Board provides:

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.

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). There are no clear factual disputes on the face of the pleadings.

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”. The Charge, however, makes no reasonable or logical connection between Mr. Hutt’s termination and any violation of the statute by his exclusive representative.

Mr. Hutt alleges he was illegally discharged by DTC because he did not complete work at home over a holiday period for which he believes he should be compensated. He asserts, “it is not lawful to assign unpaid take home work to a contractual, hourly employee.” He included in his charge what appears to be a basic summary of the Fair Labor Standards Act (FLSA) from an uncited web site.

Allegations of wage and/or hour violations under the FLSA fall within the jurisdiction of the Delaware Department of Labor, not the PERB. Further, that would involve a complaint against his former employer, not his union.

Mr. Hutt misunderstands the scope and purpose of the contractual grievance procedure. He states in the Charge:

I have formally and continually requested union representation from president Shavers and she has claimed that I am not yet the proper class of employees to be entitled to representation. To be clear, I as an probationary employee and [*sic*] asking only for a grievance to be filed, on this illegal discharge and a step 4 hearing to be held so that I can present

my case and report the criminal activities to the highest authorities at DART. The PERA would seem [*sic*] to clearly indicate that I am entitled at least this minimal and little cost level of representation, since there is no cost to filing a grievance and step 4 hearing are held monthly at DART.

The grievance procedure is negotiated by and between the employer and the union for the purpose of resolving disputes concerning “interpretation, application or operation of any provision of the [collective bargaining] agreement.” The Charge asserts no contractual violation by the employer for which a proper grievance could be filed.

In its Answer, the ATU cites to Section 4 and Section 10 of the negotiated collective bargaining agreement to establish that employees do not have a right to grieve discharge or discipline during the first six months of their employment. The ATU is obligated to meet no more and no less than the reasonable expectations of the parties to the collective bargaining agreement and to provide representation in matters involving rights which accrue to bargaining unit members under the terms of that agreement. *AAUP-DSU Chapter v. Issa*, ULP 13-02-887, VIII PERB 5885, 5891 (Bd. Remand Decision, 2013). Mr. Hutt admits in his Charge that he was a probationary employee.

Turning to the specific violations asserted in the Charge, the PERA confers on the employer and the exclusive bargaining representative the mutual obligation to collectively bargain in good faith concerning terms and conditions of employment. The Charge asserts no facts which support the conclusion that the ATU may have violated its the duty to bargain with DTC. Therefore, the charges that the ATU violated §1301(2), §1304(a), and §1307(b)(2) are dismissed in their entirety.

Mr. Hutt cannot be deprived of the right which does not exist. The negotiated agreement does not provide a right to grieve discipline or discharge to employees until they have completed a six month probationary period. Consequently, there is no substantiated violation of §1303(2).

Nor is there substantiation that §1303(4), of the PERA has been violated because the Charge includes no facts from which it might be concluded that the ATU acted in a discriminatory manner.

19 Del.C. §1307(b)(1) requires that the conduct in question resulted from the Charging Party's "exercise of any right guaranteed under this chapter". The pleadings contain no information that supports the conclusion that Mr. Hutt engaged in protected activity under the PERA and/or that the ATU interfered with his statutory rights.

Having found no statutory violation supported by the pleadings, in order for there to have been a violation of §1307(b)(3), there must have been an allegation that the ATU has failed or refused to comply with PERB's rules and regulations. Again, the pleadings allege no specific allegation and fail to provide factual support for this portion of the Charge.

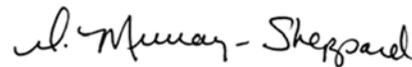
For these reasons, the Charge fails to state a claim for which relief can be granted under the Public Employment Relations Act, and is, therefore, dismissed in its entirety.

DETERMINATION

The pleadings fail to establish probable cause to believe that an unfair labor practice may have occurred.

WHEREFORE, the Charge is dismissed with prejudice.

Date: September 23, 2014



DEBORAH L. MURRAY-SHEPPARD
Executive Director, Delaware PERB