

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

TEAMSTERS LOCAL 326,	:	
	:	
Charging Party,	:	
	:	<u>ULP No. 15-04-995</u>
v.	:	
	:	Probable Cause Determination
CITY OF MILFORD,	:	
	:	
Respondent.	:	

BACKGROUND

The City of Milford (City) is a public employer within the meaning of §1602(l) of the Police Officers’ and Firefighters Employment Relations Act (POFERA), 19 Del.C. Chapter 16.

General Teamsters Local 326 (Teamsters Local 326) is an employee organization within the meaning of 19 Del.C. §1602(g) and the exclusive representative of the bargaining unit of all City of Milford police officers at or below the rank of Sergeant, within the meaning of 19 Del.C. §1602(h).

The City and Teamsters Local 326 have been engaged in negotiations for a collective bargaining agreement since early May, 2014.

On April 2, 2015, Teamsters Local 326 filed an unfair labor practice charge alleging that the City violated 19 Del.C. §§1607(a)(5) and (a)(7)¹ by negotiating in bad faith. Specifically, the

¹ 19 Del.C. §1607 Unfair Labor Practices.

(a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
(5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit;

Charge alleges the City violated its obligations under the POFERA by negotiating to an agreement in principle in bad faith. The Union asserts that at no time during the negotiations did the City's bargaining team indicate the City had an inability to pay for the negotiated terms. After the agreement had been reached and the bargaining unit membership had ratified it, the City Council rejected the agreement its agents had negotiated at the bargaining table. Teamsters Local 326 requests the City be found to have committed an unfair labor practice, as alleged; that the City be restrained from rejecting the agreement negotiated by the parties; and that the City be required to pay the legal fees and expenses incurred by Teamsters Local 326 in connection with the prosecution of this unfair labor practice complaint.

The City filed its Answer on April 14, 2015, admitting many of the underlying facts but denying that the City had violated its obligations under the POFERA. The City included New Matter in its Answer, in which it alleges that at the commencement of negotiations, the City's chief negotiator communicated to Teamsters Local 326 bargaining committee, without objection, that all economic terms negotiated by the parties were subject to approval by the City Council. The City asserts approval by its City Council is required in order to achieve a final and binding collective bargaining agreement. Consequently, the Council's rejection of the tentative agreement means there is no final and binding agreement. The City argues, the unfair labor practice complaint should be dismissed and the parties should be directed to resolve their impasse through the mediation and, if necessary, the binding interest arbitration procedures set forth in 19 Del.C. §1614 and §1615, respectively.

Teamsters Local 326 filed its Response to the City's New Matter on April 23, 2015.

This probable cause determination is based upon a review of the pleadings submitted in

(7) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

this matter.

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 following facts are not disputed in the pleadings. On February 19, 2014, the Milford police bargaining unit voted to decertify the Fraternal Order of Police (FOP) and certify Teamsters Local 326 as its exclusive bargaining representative. The existing collective bargaining agreement between the City and the FOP was effective, by its terms, from July 1, 2011 through June 30, 2014. Following the certification of Teamsters Local 326 as the exclusive representative of the bargaining unit, negotiations commenced on May 8, 2014. During the period of negotiations, the City maintained the *status quo ante* established by the predecessor

agreement with the FOP.

Teamsters Local 326 and the City of Milford reached a tentative agreement or agreement in principle² on September 17, 2014. The agreement was subsequently ratified by the union membership. By email dated October 8, 2014, Teamsters' representative Paul Thornberg advised the City Manager (Richard Carmean) and the City's counsel (Gary L. Simpler, Esq.) that:

(c) The 2 day vote is complete and counted. The Officers were very happy with the direction and have agreed to it pending approval from the City Council. I will call tomorrow to check on a minor detail or two. ³

By email to the City's counsel dated January 12, 2015, counsel for Teamsters Local 326 (Jeffrey M. Weiner, Esq.) notified the City:

... As you know better than I, the City of Milford's Executive Branch and Local 326 negotiated and reached agreement upon a new Collective Bargaining Agreement which the City's Legislative Branch has not yet passed. Despite the passage of time, Local 326 has not received any information as to any terms and conditions which the City Council would appreciate an explanation or alternatively find objectionable. Therefore, in one word, the parties are at impasse.

Accordingly, Local 326 has retained my services to represent the Milford Police Officers in Binding Interest Arbitration, which based upon the agreement achieved with the Executive Branch, will involve City Council and other counsel I assume.

Nevertheless, since before the disagreement between the Executive and Legislative Branches, you apparently represented the City generally, as a professional courtesy I am forwarding to you with this email the Petition which Local 326 has authorized me to file unless tomorrow after tonight's Council Meeting, Local 326 receives a positive response that this impasse is (and how will be) resolved in the very near future to the mutual satisfaction of all parties. ⁴

² The Teamsters refer to the agreement reached by the parties on September 17, 2014, as an "agreement in principle", while the City refers to it as a "tentative agreement." For purposes of this probable cause determination, these terms are used interchangeably.

³ Exhibit A to the City's Answer.

⁴ Exhibit B to the City's Answer.

On January 26, 2015, representatives of the City and Teamsters met. At that meeting, the City “modified its economic proposal consistent with the instructions provided by the City Council.” *City New Matter ¶8*. Teamsters Local 326 asserts the City’s representatives advised them at this meeting that “(a) City Council had rejected the agreement in principle; (b) the explanation was that the City could not afford the agreement in principle and would not raise taxes to pay for it; (c) that the entire agreement in principle was not acceptable; (d) that the only acceptable change to the prior Collective Bargaining Agreement was a 2% midpoint at each rank; and (e) the only matter for discussion was a bonus or incentive for officers to move back within the City limits.” *Teamsters Response to New Matter ¶8*.

Mediation was directed by the Public Employment Relations Board pursuant to 19 Del.C. §1614. A mediator was appointed and the first mediation session scheduled for May 6, 2015.

The PERA defines “collective bargaining” to mean,

. . . the performance of the mutual obligation of the Public employer through its designated representatives and the exclusive bargaining representative to confer and negotiate in good faith with respect to terms and conditions of employment, and to execute a written agreement incorporating any agreements reached. *19 Del.C. §4002(e)*.

The Delaware Court of Chancery has previously held that a binding agreement comes into existence once a tentative agreement is ratified by the membership of the union. *Colonial Food Service Workers Assn. v. Bd. of Ed., Del.Ch., 1987 WL 18431 (1987)*. See also *Laurel Ed. Assn., DSEA, NEA, v. Bd. of Ed., ULP No. 11-11-835, VII PERB 5453 (2012)*, *City of Lewis v. FOP, Lodge No. 2, ULP No. 07-06-575 VI PERB 3925 (2008)*.

It is well settled that the determination as to whether a party has adhered to the principles of good faith bargaining can only be made by examining the totality of the conduct of the negotiations. The doctrine of good-faith bargaining requires that the representatives of the

parties who participate in collective bargaining have the authority necessary to make decisions which bind their principals. Otherwise, the collective bargaining process could not move forward. *Appoquinimink Ed. Assn. v. Bd. of Ed.*, ULP 98-09-243, III PERB 1785, 1799 (1998).

The determination as to whether the employer's representative was vested with the requisite authority to execute the employer's good faith obligations can only be determined within the context of the overall course of negotiations conduct. *Polytech Education Assn. v. Polytech School District*, ULP 01-02-307, IV PERB 2313, 2323 (2001). While an employer is not required to be represented by an individual with the final authority to enter into an agreement, this privilege is subject to the proviso that the limitation(s) placed upon its representative does not act as to inhibit the progress of negotiations. *United Brotherhood of Carpenters & Joiners Local 1780*, 244 NLRB 277, 281 (1979).

Case law established under the National Labor Relations Act, while not binding upon the decision making authority of this Board, may provide guidance in developing case law in Delaware. While noting there is a significant difference between the rights of private sector employers and employees subject to the jurisdiction of the National Labor Relations Board (specifically as it relates to the right to strike and lock-out), decisions concerning the withdrawal from tentatively agreed upon terms by an employer are useful. The NLRB held in *Merrill M. Williams*⁵ that an employer's refusal to execute an agreed upon contract constitutes a *per se* violation the employer's duty to bargain in good faith and interference with the protected rights of employees as it "demonstrates a refusal to acknowledge and abide by the fruits of bargaining." The Board differentiated this *per se* violation after the ratification of the agreement by the union from an effort by the employer to modify the agreement before ratification and as a result of a change in

⁵ 279 NLRB 82 (1986)

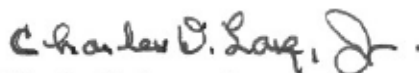
circumstances.⁶

The pleadings in this matter raise both factual and legal issues as to whether the employer's overall approach to these negotiations undermined its statutory obligation to bargain in good faith, and whether the employer violated its obligations under the statute by repudiating a collectively bargained agreement. A hearing will be convened for the purpose of creating a record on which a legal argument may be presented on these issues.

DETERMINATION

Consistent with the foregoing discussion, the pleadings are sufficient to establish probable cause to believe that an unfair labor practice may have occurred. A hearing will be promptly scheduled for the purpose of establishing a factual record upon which a determination can be made as to whether the City of Milford violated its statutory obligation to negotiate in good faith and/or to execute a collectively bargained agreement in violation of 19 Del.C. §1307(a)(5) and/or (a)(7), as alleged.

Dated: May 22, 2015



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

⁶ See also *Long Island Day Care Services*, 303 NLRB 112 (1991).