

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

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|--|---|-------------------------------------|
| <b>ROBERT PALLADINO,</b>               | : |                                     |
|  | : |                                     |
| <b>Charging Party,</b>                 | : |                                     |
|  | : |                                     |
| <b>v.</b>                              | : | <b><u>ULP No. 16-10-1084</u></b>    |
|  | : |                                     |
| <b>CITY OF MILFORD, DELAWARE, CITY</b> | : | <b>Probable Cause Determination</b> |
| <b>ELECTRIC DEPARTMENT, AND KEITH</b>  | : | <b>Order of Dismissal</b>           |
| <b>KNOTTS,</b>                         | : |                                     |
|  | : |                                     |
| <b>Respondents.</b>                    | : |                                     |

APPEARANCES

*Robert Palladino, pro se*  
*William W. Bowser, Esq., Young Conaway Stargatt & Taylor, for the City*

Robert Palladino (“Palladino” or “Charging Party”) is employed by the Electric Department of the City of Milford, Delaware. He is a public employee within the meaning of §1302(o) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (“PERA”). Palladino, by virtue of his position, is a member of the bargaining unit of City employees represented by International Brotherhood of Electrical Workers, Local Union 126 (IBEW 126). IBEW 126 was certified as the exclusive bargaining representative of all non-supervisory employees of the City of Milford Electric Department, including Electric Linemen, Electric Utility Groundmen, and Meter Technicians, as a result of an election conducted by the Public Employment Relations Board on August 31, 2016.<sup>1</sup>

The City of Milford (“City”) is a municipality located within the State of

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<sup>1</sup> PERB Representation Petition 16-06-1069 (CERT).

Delaware and public employer within the meaning of 19 Del. C. §1302(p). The Milford Electric Department is an agency of the City. Keith Knotts (“Knotts”) is an Electric Lead Lineman and serves in a supervisory role in the Electric Department. Knotts’ position is not represented by IBEW 126.

On October 31, 2016, IBEW 126 filed an unfair labor practice charge with the Delaware Public Employment Relations Board (“PERB”) alleging conduct by the City in violation of 19 Del.C. §1307(a)(1) and (a)(3), which provide:

- (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 because of the exercise of any right guaranteed under this chapter...
  - (3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.

The Charge alleges that on September 13, 2016 the City issued a three-day suspension to Palladino for “allegedly breaking the axle on a work truck, while driving the assigned City of Milford vehicle.”<sup>2</sup> The Charge asserts this was the first suspension issued to Palladino in his career and followed his active support of IBEW 126 during the organizing drive which had culminated in the certification of the union thirteen (13) days earlier. The Charge asserts Palladino had recently been identified as a member of the IBEW 126 bargaining team and that Knotts was an “anti-union supervisor.” By issuing the discipline to Palladino under these circumstances, he charges the City with violating the PERA by interfering with employee rights and discouraging union membership.

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<sup>2</sup> Charge ¶3.

In his prayer for relief, Palladino requests the Public Employment Relations Board:

- 1) Find the City violated the statute as alleged.
- 2) Order the City to cease and desist from all actions which violate the statute, including the imposition of performance notices upon employees Tommy Henderson, Dale Breeding, and Rob Palladino.
- 3) Order the City to take the following affirmative action:
  - a. Rescind the performance notices upon employees Tommy Henderson, Dale Breeding, and Rob Palladino;
  - b. Make employee Rob Palladino whole in back pay and benefits.
- 4) Provide such other appropriate and reasonable remedy as the PERB deems just.

On November 9, 2016, the City filed its Answer to the Charge admitting the facts as they relate to the incident involving the broken axle on the City bucket truck, but denying the legal conclusions and allegations set forth in the Charge. The Answer also contains new facts and included copies of the invoice for repairing the vehicle, the incident report completed by Knotts (who was an eye witness to the incident in which the truck was damaged); the disciplinary notice provided to Palladino on September 20, 2016 (including the City's grievance procedure which was attached to and referenced in the notice); §810 of the City's Personnel Ordinance, which sets forth standards for Employee Conduct and Work Rules; and documentation of a verbal reprimand issued to Palladino in July, 2016.

In New Matter contained in the Answer, the City contends Palladino lacks standing to bring the Charge on behalf of himself or other bargaining unit members because IBEW 126 is the certified exclusive bargaining representative. The City also asserts the Charge fails to state a claim against Knotts because it contains no allegations that he acted outside of his role as a supervisor or agent of the City; consequently, it does

not support the conclusion that he acted in his individual capacity and he should be dismissed as an individual respondent. The Answer alleges the Charge fails to state a claim against the City because it includes no information, other than a simple assertion, that Knotts was “anti-union”. It asserts the Charge “fails to allege any facts supporting a claim that Knotts harbored an anti-union animus or that Knotts, because of such animus, fabricated facts leading to the Charging Party’s suspension.” The Charge, the City asserts, also fails to allege any facts to support the finding that either of the individuals who actually issued the suspension (the Public Works Director and the Electric Superintendent), harbored any anti-union animus. Finally, the City asserts Palladino has failed to exhaust his administrative remedies. At the time the suspension was issued, Palladino was provided with a copy of the City’s Grievance Procedure and was advised that he had a right to appeal the disciplinary suspension under §890 of the City’s Personnel Ordinance. IBEW 126 representatives were present at this meeting and were also notified of the grievance procedure at that time. The City requests the Public Employment Relations Board dismiss the Charge in its entirety.

On November 17, 2016, Palladino filed a Response to New Matter in which he admitted most of the facts setting forth the timeline for issuance of the discipline and identifying participants in the pre-disciplinary meeting. Charging Party denied the legal conclusions and affirmative defenses asserted by the City.

This probable cause determination is based on review of the pleadings 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 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*, ULP 04-10-453, V PERB 3179, 3182 (Probable Cause Determination, 2004).

The Charge alleges the City engaged in conduct which interfered with, restrained or coerced Palladino because he exercised his right to engage in protected concerted activity and/or encouraged or discouraged membership in IBEW 126 by discrimination in regard to hiring, tenure or other terms and conditions of employment.

Employee rights under the PERA are defined in §1303 and include the right to:

- (1) Organize, form, join or assist any labor 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 choosing.
- (3) Engage in other concerted activities for the purpose of collectively 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. *19 Del.C. §1303.*

The PERA establishes these are rights which accrue to public employees as that term is defined at §1302(o) of the statute. As such, individual employees have the right to file unfair labor practice charges, on their own behalf, where they believe these rights have been infringed upon in violation of 19 Del.C. §1307. PERB Rule 5.2(a) makes this clear:

- (a) A public employer, labor organization, and/or one or more employees may file a complaint alleging a violation of 14 Del.C. §4007, 19 Del.C. §1607, or 19 Del.C. §1307. Such complaints must be filed within one hundred and eighty (180) days of the alleged violation.

PERB Rule 5.2 (c)(3) requires a charging party to include specific information in its Charge to allow a preliminary assessment of the procedural and substantive viability of that charge. The burden is on the charging party to provide facts in the complaint with sufficient specificity so as to, first, allow the respondent to provide an appropriate answer, and second, to provide facts on which the PERB can conclude there is a sufficient basis for the charge.<sup>3</sup>

The Delaware PERB adopted a shifting burden analysis for evaluating allegations of union animus in *Wilmington Firefighters Association, Local 1590 v. City of*

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<sup>3</sup> *Sonja Taylor-Bray v. AFSCME Local 2004*, ULP 10-07-727, VII PERB 4633, 4636 (2010); *Flowers v. Amalgamated Transit Union, Local 842*, ULP 10-07-752, VII PERB 4749, 4754 (2010); *Jamell Harkins v. State of Delaware, Delaware Transit Corporation*, ULP No. 11-12-842, VII PERB 5393, 5396 (2012)

*Wilmington*.<sup>4</sup> Under this shifting burden analysis, the charging party must establish that an employee engaged in activity which is protected under the PERA, that the employer is/was aware that the employee engaged in that protected activity, and that the protected conduct was a substantial or motivating factor in the adverse employment action taken by the employer against the employee. Once the employee meets this prima facie standard, the burden shifts to the employer to either establish that prohibited motives played no part in its decision to take action against the employee or demonstrate that the same action would have been taken for a legitimate business reason, regardless of the whether the employee had engaged in protected activity.<sup>5</sup>

When the charging party chooses not to include specific information to support its charge, as required by Rule 5.2(c)(3), it acts at its peril. *AFSCME Council 81, Local 3911 v. New Castle County*, ULP 09-07-695, VII PERB 4445, 4450 (PERB, 2009). On its face, this Charge fails to assert any facts on which it might be concluded that Palladino engaged in concerted conduct which was statutorily protected or that his employer had knowledge of such conduct. It also fails to allege any facts on which it might be concluded that his supervisor engaged in union animus. Conclusory statements, without some asserted basis in specific facts, are insufficient to sustain a finding of probable cause to support the further processing of an unfair labor practice charge.

Further, the Palladino requests the City be directed to “rescind the performance notices upon employees Tommy Henderson, Dale Breeding, and Rob Palladino.” This Charge was filed by a single public employee. The pleadings fail to establish that Palladino is an agent of IBEW 126, nor does it establish who Mr. Henderson or Mr.

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<sup>4</sup> ULP 93-06-085, II PERB 937, 957 (1994).

<sup>5</sup> *International Union of Electronic, Salaried and Machine Workers, AFL-CIO v. Kent County*, ULP 95-01-113, II PERB 1091, 1093 (1995).

Breeding are and what relationship, if any, they have to this proceeding. The duty to represent bargaining unit employees is held exclusively by the certified representative and cannot be exercised by an individual bargaining unit employee, unless he or she is a designated representative of the labor representative.

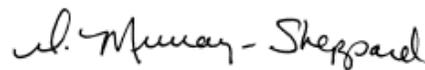
It is unnecessary to address whether Palladino's alleged failure to make use of the City created, non-negotiated, grievance procedure to contest his suspension would require this Charge to be deferred because the pleadings fail to present sufficient evidence on which it might be concluded that there is probable cause to believe the statute may have been violated.

### **DECISION**

For the reasons set forth above, the Charge fails to establish a sufficient factual basis on which it might be concluded that there is probable cause to believe that an unfair labor practice may have occurred.

**WHEREFORE**, the Charge is hereby dismissed, without prejudice.

DATE: December 15, 2016



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DEBORAH L. MURRAY-SHEPPARD  
Executive Director  
Delaware Public Employment Relations Bd.