

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY,	:	
AND MUNICIPAL EMPLOYEES, COUNCIL 81,	:	
Local 1607, AFL-CIO,	:	
	:	ULP No. 17-10-1124
Charging Party,	:	
	:	PROBABLE CAUSE DETERMINATION
v.	:	
	:	
NEW CASTLE COUNTY, DELAWARE,	:	
	:	
Respondent.	:	

BACKGROUND

New Castle County, Delaware (County) is a public employer within the meaning of §1302(p) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (PERA).

The American Federation of State, County and Municipal Employees, Council 81 (AFSCME), is an employee organization within the meaning of 19 Del.C. §1302(i). By and through its affiliated Local 1607, AFSCME is an exclusive bargaining representative, within the meaning of 19 Del.C. §1302(j). AFSCME Local 1607 represents the bargaining unit of County employees.

The County and AFSCME are parties to a collective bargaining agreement for this bargaining unit which has a term of April 1, 2015 through March 31, 2019.

On October 9, 2017, AFSCME Local 1607 (“AFSCME”) filed an unfair labor practice charge with the Public Employment Relations Board (PERB) alleging conduct by the County in violation of 19 Del.C. §1307 (a)(1), (a)(5), and (a)(6), which state:

- (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.

- (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.

AFSCME alleges the County violated its obligations under the PERA by failing and refusing to provide information requested by the union which is relevant and necessary to its performance of statutory representational duties and that the County thereby violated its duty bargain in good faith concerning a mandatory subject of bargaining. Specifically, the Charge alleges that on or about July 28, 2017, AFSCME requested the following information in order to enforce an arbitration award and/or to determine if further violations of the collective bargaining agreement had occurred:

A list of all employees who have been promoted from December 7, 2016, through the present, including the employee's name, job title, position to which they were promoted, date of the promotion, and any notice provided to the Union or any other posting for the promotion.

The Charge asserts that as of October 9, 2017 (the date of filing), the County had failed to respond to this request for information.

On October 18, 2017, the County filed its Answer to the Charge, denying the conclusions and assertions that it had violated the PERA. The County included in its Answer an affirmative defense, asserting the Charge fails to state a claim upon which relief may be granted.

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

DISCUSSION

Regulation 5.6 of the Rules of the 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 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 determining whether probable cause exists to support an unfair labor practice 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. *Flowers v. DART/DTC*, ULP 04-10-453, V PERB 3179, 3182 (2004).

Delaware PERB case law concerning the employer's duty to provide information is well settled. Where requested information relates to a potential grievance, the test for relevance is liberal. *AFSCME Locals 1007, 1267 and 2888 v. DSU*, ULP 10-04-739, VII PERB 4693, 4704 (2010). The PERA requires the public employer to act in good faith to provide "access to relevant information necessary for the bargaining representative to intelligently determine facts, assess its position and decide what course of action, if any, to pursue." *NCCEA/DSEA/NEA v. Brandywine School District*, ULP 85-06-005, I PERB 131, 149 (1986). This obligation has been recognized by Delaware's Public Employment Relations Board, Court of Chancery, and Supreme Court. *Bd. of Education of Colonial School District v. Colonial Education Assn., DSEA/NEA*, CA No. 14383, II PERB 1343 (Del.Chan.,1996), *aff'd Colonial Education Assn. v. Bd. of Education*, 685 A.2d 361, III PERB 1519 (Del., 1996); *AAUP v. DSU*, Del. PERB., ULP 95-10-159, III PERB 2177 (Decision on Remand, 2001); *Delaware Correctional Officers Association v. Delaware Dept. of Correction*, ULP No. 00-07-286, III PERB 2209, 2214 (2001), *AFSCME Locals 1007, 1267 and 2888 v. DSU*, ULP 10-

04-739, VII PERB 4693, 4705 (2010).

A public employer's duty to provide information requires a reasonable, good faith effort to respond in a timely manner to the union's request. Absent evidence justifying an employer's delay in furnishing a union with relevant information, such a delay will constitute a violation of §1307(a)(1) and (a)(5) because the union is entitled to information at the time of its initial request and it is the employer's duty to furnish it as promptly as possible.

AFSCME Council 81, Local Unions 320 & 1102 v. City of Wilmington, ULP 10-12-781, VII PERB 4849, 4856 (2010).

The County denies AFSCME's allegation that the County failed to respond to a July 28, 2017 request from AFSCME for information which was related to a potential on-going contractual violation of Section 29 of the parties' current collective bargaining agreement. The County asserted, "...[O]n August 16, 2017, CHRO Phillips provided requested information to the Local 1607 President and Vice President." There was, however, no documentary evidence appended to the Answer to support this assertion. Consequently, the pleadings raise a factual dispute which is fundamental to a determination as to whether there has been a statutory violation.

The allegations relating to the County's failure or refusal to provide information, if proven, may support the conclusion that the PERA has been violated. It will be the Charging Party's burden to establish both the factual and legal support for such a finding, and it will be the County's burden to establish that it fully met its statutory obligations in responding to AFSCME's request for information.

For the reasons set forth above, the County's assertion that the Charge fails to state a claim upon which relief may be granted under 19 Del.C. §1307(a)(1), (a)(5) and/or (a)(6) is without merit.

DECISION

Considered in a light most favorable to the Charging Party, the pleadings are sufficient to establish that the County may have violated 19 Del.C. §1307 (a)(1), (a)(5) and/or (a)(6), as alleged.

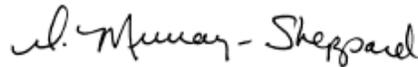
The pleadings raise both questions of fact and law which can only be resolved following the creation of a complete evidentiary record and the consideration of argument.

WHEREFORE, a hearing will be promptly scheduled for the purpose of developing a full and complete factual record upon which a decision can be rendered concerning:

WHETHER NEW CASTLE COUNTY INTERFERED WITH THE PROTECTED RIGHTS OF BARGAINING UNIT EMPLOYEES OR AFSCME LOCAL 1607 AND/OR VIOLATED ITS DUTY TO BARGAIN IN GOOD FAITH BY FAILING OR REFUSING TO PROVIDE INFORMATION WHICH WAS REASONABLY RELEVANT AND NECESSARY TO THE UNION IN PERFORMING ITS REPRESENTATIONAL OBLIGATIONS IN VIOLATION OF 19 DEL.C. §1307(A)(1), (A)(5) AND/OR (A)(6).

Having found probable cause based on the pleadings, the County's assertion that the charge fails to state a claim upon which relief can be granted is denied.

DATE: October 31, 2017



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