

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

TARANUM UPPAL,	:	
	:	
Charging Party,	:	
	:	ULP No. 17-12-1132
v.	:	
	:	
LILLIAN SHAVERS AND AMALGAMATED	:	PROBABLE CAUSE DETERMINATION
TRANSIT UNION LOCAL 842,	:	and ORDER OF DISMISSAL
	:	
Respondents.	:	

Appearances

Taranum Uppal, Charging Party, pro se
Lillian Shavers, President, ATU Local 842, for Respondents

BACKGROUND

Taranum Uppal (“Uppal”) was employed by the Delaware Transit Corporation in a bargaining unit position until his termination prior to July, 2017.

Delaware Transit Corporation is an agency of the Delaware Department of Transportation, and is a public employer within the meaning of §1302(p) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13. Consequently, Uppal was public employee within the meaning of 19 Del.C. §1302(o).

The Amalgamated Transit Union (“ATU”) is an employee organization within the meaning of 19 Del.C. §1302(i). By and through its affiliated Local 842, the ATU is the exclusive bargaining representative of a unit of “all hourly-rated operating and maintenance employees” in New Castle County, within the meaning of §1302(j) of the PERA.

Lillian Shavers (“Shavers”) is and was the President of ATU Local 842 at all times relevant

to this unfair labor practice charge.

On or about December 12, 2017, Uppal filed an Unfair Labor Practice Charge with the Public Employment Relations Board (“PERB”) alleging that Shavers and ATU Local 842 had acted in violation of his rights and 19 Del.C. §1307(b)(1), (b)(2), (b)(3), and/or (b)(6), which state:

§1307 Unfair labor practices

- (b) It is 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.
 - (6) Hinder or prevent, by threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment by any person, or interfere with the entrance to or egress from any place of employment.

Specifically, Uppal alleges Shavers and the ATU 842 Executive Board directed union members not to attend a general membership meeting during which a vote would be taken to decide whether Uppal’s termination grievance would be processed to arbitration, and that President Shavers peremptorily ended the meeting knowing that there were union members who were in route to support Uppal’s appeal. He further alleges that Shavers and ATU 842 have failed to represent him and refused to take his grievance to arbitration.

On January 2, 2018, Shavers filed an Answer to the Charge on behalf of the Respondents in which she responded to the facts and denied the legal conclusions of the Charge. The Answer included new matter, in which it was asserted that the Charge fails to state a claim upon which relief can be granted.

On January 9, 2018, Uppal filed a response denying the new matter asserted in the Answer

to the Charge.

This determination results from a review of the pleadings submitted by the parties, pursuant to PERB Rule 5.6(b).

DISCUSSION

Consistent with the statutory obligations set forth in 19 Del.C. §1308, Rule 5.6 of the Rules and Regulations of the Delaware Public Employment Relations Board states:

- (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.

- (a) 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).

Preliminarily, the merits of Uppal's grievance (i.e., whether he was terminated for just cause) are not before this agency for resolution. Just cause is a contractual concept which was negotiated into the collective bargaining agreement between ATU Local 842 and Delaware Transit

Corporation for the benefit of employees like Uppal. It is enforceable through the negotiated grievance procedure.

In order to establish probable cause to believe that the ATU President and/or other unidentified Executive Board members violated Uppal's statutory rights and 19 Del.C. §1307(b)(1), he must set forth facts in the Charge which, if true, could result in a finding that the alleged violations had been committed. PERB Rule 5.2 (c)(3) requires a Charging Party to include sufficient information in its Charge to allow a preliminary assessment of the procedural and substantive viability of that charge. PERB has previously held:

The Charging Party must allege 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. The Charge must also explicitly link the factual allegations to the "specific provisions of the statute alleged to have been violated." PERB Rule 5.2. The initial burden rests on the Charging Party to allege facts that support the charge that §1307 of the PERA has been violated. *Sonja Taylor-Bray v. AFSCME Local 2004*, ULP 09-11-716, VII PERB 4633, 4636 (2010); *Flowers v. Amalgamated Transit Union, Local 84*, 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).

When a Charging Party asserts facts for which it fails to include credible and specific supporting information in compliance with 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 (2009). Allegations of statutory violations based on supposition and suspicion, without credible supporting documentation, are not sufficient to meet the standard for establishing probable cause to support the charge.

Uppal's Charge alleges that ATU President Shavers and other unidentified Executive Board members interfered with the process by which he could secure the necessary authorization for arbitration of the grievance of his termination. The Local By-laws of ATU 842 require:

- 33.2 All decision [*sic*] to go to arbitration shall be brought to the Entire Union Membership for a vote within thirty (30) days, unless it is an arbitration of a defined area (Wilmington Fixed Route, Wilmington Maintenance, Dover Fixed Route, or Statewide Paratransit), but will still have to meet

the thirty (30) day vote. Any reasonable question will be answered as fully as possible. (Note: after step 3 in the contract the members has Forty [sic] (45) days to request to go to arbitration. This means it can be brought to the entire membership at the regular union meeting that is held each month).

- 33.3 The vote is to be strictly on the merits of the subject to be arbitrated. (Note Personality, Attitude, Perceived work habits, cost or Group association shall have no bearing on the merits of said arbitration).¹
Exhibit A to ATU 842's Answer to the Charge.

There is no dispute that the merits of his grievance were presented to the union membership through a series of three meetings including morning and evening meetings in New Castle County and an evening meeting at a later date in Dover, as was the customary practice of this local union. It is also not disputed that Uppal was present at each of the meetings in which his grievance was considered by the members of the union who were in attendance.

Any violation of ATU 842's by-laws are subject to review by the procedures set forth in those by-laws. Appended to the Charge is an undated letter to the Amalgamated Transit Union's International President requesting "... an investigation, review, for overturning the decision to denying [sic] my case an arbitration." *Charge Exhibit 1.* This letter evidences that Uppal was aware of and appropriately exercised his membership right to challenge the internal ATU 842 process for authorizing arbitration of his grievance. The pleadings do not establish a basis upon which it may be concluded that there has been any collateral infringement on Uppal's statutory rights under the PERA.

Uppal also asserts that Shavers ended one of three general membership meetings early to prevent union members from voting in support of arbitration of his case. Clarity of this assertion is found in Uppal's complaint to the International which he appended to the Charge. It states:

... [I]n addition at the July, Tuesday night meeting, president Lillian Shavers ended the meeting early when she was informed by my [sic] myself that members were in route from work to attend and vote in my favor, those members arrived, after she left and that would have alone been enough to

¹ The excerpts of By-laws 33.2 and 33.3 are included in exhibits attached to both the Charge and the Answer.

carry this vote to arbitration...

ATU 842's Answer includes at Exhibit B minutes from its July general membership meetings. General membership meetings were conducted on Tuesday, July 11, 2017 in New Castle County both in the morning and in the evening, and a third meeting was conducted on Sunday afternoon, July 23, 2017, in Dover. The July 11 evening meeting minutes indicate the meeting was called to order at 7:05 p.m. and adjourned at 8:45 p.m. The veracity of Uppal's assertion that the meeting was ended after only 40 minutes is questionable, at best. The meeting lasted one hour and 40 minutes, which is more than the scheduled 90 minutes Uppal asserts was required. Further appended to the Charge as Exhibit 2 are screen shots from a cell phone (identified as belonging to Uppal) which he asserts establish that had the meeting been continued, enough members would have presented themselves to provide "enough votes to carry the vote." The document appended as Exhibit 2 includes dated messages from unidentified source(s) dated July 13, 15, 16, 19, and 20. None of these dates are relevant to the incidents Uppal cites as supporting his Charge. Nor do the texts in any manner reference an ATU 842 general membership meeting.

Uppal asserts he was discriminated against "based on my appearance, and possibly other reasons, due to the current political climate..." The Charge fails to assert any facts on which it might be concluded that Uppal was treated in a discriminatory manner, as it fails to establish the basis for discrimination, if any, with sufficient specificity. Appearance, in and of itself, is not an actionable basis on which to sustain a claim of discrimination.

The Delaware PERB has considered the duty of the exclusive bargaining representative to represent all members of the bargaining unit without discrimination in a number of prior cases.² In *Williams v. Norton and Callison*³, PERB set forth the standard to be applied when considering issues

² *Walden v. ATU Local 842*, ULP 11-06-808, VII PERB 5101, 5104 (2011).

³ ULP No. 85-10-006, I PERB 159 (1986)

involving the duty of fair representation, observing:

As early as 1953, the United States Supreme Court held that “a wide range of reasonableness must be allowed a statutory representative in serving the unit it represents” (*Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953)). It further refined this premise when it defined the duty to represent unit employees without discrimination as “. . . the obligation to serve the interests of all members without hostility. . . toward any, to exercise discretion with complete good faith and honesty, and to avoid arbitrary conduct” (*Vaca v. Sipes*, *Supra.*). The underlying logic of *Ford Motor Co.* and *Vaca* provides a realistic and persuasive approach in defining the scope of the duty of fair representation and is consistent with the standard contained in section 4004(a)¹ of the Public School Employment Relations Act.⁴ Consequently, in order to meet its statutory obligation to represent its members without discrimination an exclusive employee representative has a duty to act honestly, in good faith and in a nonarbitrary manner. These factors form the basis of every fair representation case and must, therefore, be evaluated on a case by case basis.

Decisions concerning the processing of a grievance are subject to the judgment and discretion of the exclusive bargaining representative. A breach of the duty of fair representation occurs “only when a union’s conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith . . .” *Vaca*, *Supra.*; *Williams*, *Supra.*, p 167; *Morris v. DCOA & DOC*, ULP 99-12-272, III PERB 2161 (PERB, 2001); *Flowers v. Herbert*, ULP 05-02-468, V PERB 3411, 3413 (PERB, 2005).

The facts asserted by Uppal are insufficient, even when considered with all inferences drawn in his favor, to establish that ATU Local 842 and/or members of its Executive Board interfered with, restrained or coerced any employee in or because of the exercise of a protected right, in the manner that he alleges.

⁴ The statutory language of 14 Del.C. §4004(a) is identical to that of 19 Del.C. §1304(a) which is in issue in this case:

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.

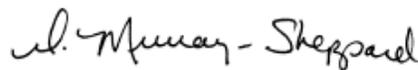
There are no facts alleged in this Charge which can reasonably be found to support the conclusion that ATU 842, its President and/or members of its Executive Board have refused to bargain collectively with the Delaware Transit Corporation; that it has refused or failed to comply with any provision of the PERA or rules established by the PERB; or has hindered or prevented, by threats, intimidation, force or coercion of any kind, the lawful work or employment of any person or with the entrance to or egress from any workplace.

DECISION

Considered in a light most favorable to the Charging Party, the pleadings are not sufficient to establish that ATU Local 842, its President, or any members of its Executive Board may have violated 19 Del.C. §1307 (b)(1), (2), (3), and/or (6) as alleged.

WHEREFORE, the Charge is dismissed in its entirety, with prejudice, for failing to state a legitimate claim under the Public Employment Relations Act.

DATE: March 30, 2018



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