

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

TARANUM UPPAL,	:	
	:	
Charging Party,	:	
	:	ULP No. 18-01-1133
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 at some point prior to July 11, 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 January 2, 2018, 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)(3), (b)(5), 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.
 - (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.
 - (5) Distribute organizational literature or otherwise solicit public employees during working hours in areas where the actual work of public employees is being performed in such a way as to hinder or interfere with the operation of the public employer. This paragraph shall not be construed to prohibit the distribution of literature during the employee's meal period or duty-free periods or in such areas not specifically devoted to the performance of the employee's official duties.
 - (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 that ATU President Shavers corresponded with a former ATU 842 member requesting that he immediately cease emailing past and present ATU 842 members. The correspondence (which Uppal attached to the Charge as Exhibit #1) states that Uppal had contacted the individual “in reference to his arbitration vote” and that Uppal had “suggested” in his correspondence with the International that the former member was using members’ email addresses to contact them. The Charge asserts that by sending the correspondence to this former member, Shavers has violated Uppal’s right to reach out to other union members to advise them of voting rights violations and has interfered with his statutory right to seek mutual aid and

protection. Uppal also alleges this action constitutes a violation of §1303 (1), (3) and (4); and §1304 (a) of the PERA.

On January 16, 2018, Shavers filed an Answer to the Charge on behalf of the Respondents in which she denied many of the factual allegations and all the legal conclusions included in 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 22, 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.

DISCUSSION

Consistent with the statutory obligations set forth in 19 Del.C. §1608, 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).

The email from ATU 842 President Shavers upon which Uppal bases this Charge is addressed to an individual identified as Mr. Poli and states:

It has been brought to our attention by Mr. Lawrence Handley, International President of Amalgamated Transit Union, that Mr. Uppal has contacted you in reference to his arbitration vote by local 842 members. Mr. Uppal suggested that you are using Local 842 union member email addresses. It is not proper for a former member to be using such resources and you need to immediately cease emailing past and present members of ATU Local 842 members. *Charge Exhibit 1*.

In ¶ 4 of the Answer to the Charge, it states,

It is admitted that Charging Party was discharged by DTC for violation of its cell phone policy. It is admitted that a grievance was filed regarding the termination. It is admitted that the grievance was not arbitrated. It is further admitted that Charging Party filed an Unfair Labor Practice charge with PERB against ATU Local 842 regarding this grievance and that charge is docketed at Case No. 17-12-1132. It is further admitted that ATU Local 842 filed an Answer and New Matter in Case No. 17-12-1132 seeking dismissal. A decision has not been issued in that case to date.¹

Administrative notice is taken of the pleadings in ULP 17-12-1132.

Uppal alleges ATU 842 has interfered with, restrained or coerced him in or because of his exercise of statutorily protected rights by prohibiting him from reaching out to other union members for mutual aid and protection and that he has been discriminated against because, "... this... has been done to no other member, and is not the policy/practice of ATU 842". It is noted that the Charge contains no information as to the contents of such alleged policy or procedure.

The pleadings do not establish that any action was taken against Uppal which could have prohibited, interfered, or otherwise limited his right to communicate with ATU 842 members. The

¹ The decision on the pleadings dismissing Charge 17-12-1132 was issued on April 2, 2018.

letter which is the basis of this Charge relates to correspondence between ATU 842 and a former member, who is not employed by DTC in a bargaining unit position. Other than referencing Uppal as the individual who related to ATU 842 that this individual was using the email addresses of past and present ATU 842 members for purposes of communication presumably concerning matters of interest to ATU 842 and its members, this correspondence (which is addressed to Mr. Poli) has nothing to do with Uppal. Additionally, the letter was sent to Mr. Poli after the union meeting at which the general membership of ATU 842 voted not to advance Uppal's grievance to arbitration. Uppal does not have standing to challenge any alleged of violations of rights which might accrue to Mr. Poli.

Even when considered in a light most favorable to the Charging Party, there are no factual allegations in this charge which support the conclusion that Shavers and/or ATU 842 engaged in any conduct which violated Mr. Uppal's rights under 19 Del.C. §1307(b)(1).

Similarly, there are no factual allegations which support the charge that Shavers and/or ATU 842 refused or failed to comply with any provision of the PERA or with PERB rules and regulations, in violations of 19 Del.C. §1307(b)(3).

Failing to find any facts in the pleadings which may reasonably support those allegations, the charge that Shavers and/or ATU Local 842 acted in violation of 19 Del.C. §1307 (b)(1) and (b)(2) are dismissed.

In support of his allegation that Shavers and/or ATU Local 842 violated §1307(b)(5), Uppal argues:

I have a legal right to the distribution of literature, to the membership as this is outside of work, and ordering the man who is assisting me to do this to stop doing this communication, for myself and for only myself [*sic*], while directing him to do it for Her self [*sic*] and for others of her choosing is discrimination and qualifies as Hinder [*sic*] or prevent, by threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment by any person.

Uppal misconstrues the conduct which is proscribed by 19 Del.C. §1307(b)(5). Again, there is no factual support for the allegation that Uppal has been restricted in any way which violates this protection. The PERA prohibits the distribution of organizational literature or the solicitation of employees in the workplace during working hours in a manner which hinders or interferes with workplace operations. It is a prohibition on solicitation and distribution of organizational literature in the workplace, not a granting of a right to an individual employee to distribute information which relates to a grievance through a third party. There is no precedent or reasonable legal interpretation of the statutory language which supports this allegation. Consequently, the charge that Shavers and/or ATU 842 violated 19 Del.C. §1307 (b)(5) is also dismissed as there is no basis in the record on which it might be reasonably concluded that a violation occurred.

Uppal alleges that Shavers and/or ATU 842 engaged in conduct which violates §1307(b)(6). He argues in his Response to New Matter:

When I directed Mr. Poli to use the ATU 842 member e mail [*sic*] dispatch to distribute literature to the membership, in an attempt to seek support in my petition to the international union, to investigate these violations and grant my arbitration, and president [*sic*] Lillian Shavers then sent a letter to Mr. Poli, ordering him to stop helping me, knowing full well that she is his pension trustee and has authority over his upcoming need disbursement, due to his disability, she was using her authority as both president and trustee, to stop him from continuing to publish at my direction, and therefore was [*sic*] Hinder or prevent, by threats, intimidation, force or coercion any kind of the My [*sic*] pursuit of any lawful work or employment by any person. *Emphasis in the original.*

It is again noted that the letter from ATU President Shavers to Mr. Poli was sent after the general membership of the local union had voted not to take Uppal's grievance to arbitration. Any fiduciary relationship, if it exists, between Shavers and Poli is irrelevant to this unfair labor practice charge.

There is no support in these pleadings for the conclusion that Uppal or any other DTC employee was hindered or prevented from pursuing lawful work. Any right Uppal may have to

work is limited by his employer's right to terminate his employment for just cause. Uppal's right to grieve his termination arises under the collective bargaining agreement which was negotiated by ATU 842 on his behalf as a member of the bargaining unit. The just cause standard is enforceable through the negotiated grievance procedure.

The employee rights protected by the PERA are clearly set forth in 19 Del.C. §1304, and include:

Public employees shall have the right to:

- (1) Organize, form, join or assist any employee 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 own choosing
- (3) Engage in other concerted activities for the purpose of collective 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.

The pleadings fail to establish any basis upon which to reasonably find a probability that any of these rights were violated. PERB has addressed the question of sufficiency of an unfair labor practice charge to establish a basis upon which a probable cause determination might be issued:

PERB Rule 5.2 (c)(3) requires a "clear and detailed statement of the fact constituting the alleged unfair labor practice ..." Sufficient information must be included in the pleadings to allow a preliminary assessment of the procedural and substantive viability of the charge, i.e., the probability that there is sufficient cause to continue to process the charge. *American Federation of State, County and Municipal Employees, Council 81, Local 3911 v. New Castle County, Delaware*, ULP 09-07-695, VI PERB 4445, 4450 (2009).

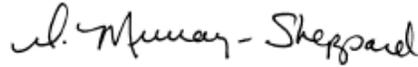
On its face, this Charge fails to allege any facts which would establish that Shavers and/or ATU 842 may have engaged in conduct in violation of any rights guaranteed to Uppal by the PERA, as alleged.

DECISION

Considered in a light most favorable to the Charging Party, the pleadings are not sufficient to establish that President Shavers and/or ATU Local 842 may have violated 19 Del.C. §1307 (b)(1), (3), (5) 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.