

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

DELAWARE STATE AND FEDERAL EMPLOYEES	:	
LOCAL 1029, LABORERS INTERNATIONAL	:	
UNION OF NORTH AMERICA, AFL-CIO,	:	
	:	
Charging Party,	:	
	:	
v.	:	<u>ULP No. 18-02-1137</u>
	:	
STATE OF DELAWARE, JUSTICE OF THE PEACE	:	Probable Cause Determination
COURT,	:	
	:	
Respondents.	:	

The State of Delaware (“State”) is a public employer within the meaning of 19 Del.C. §1302(p) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (PERA). The Justice of the Peace Court (“Court”) is an agency of the State. JP Court #3 is located in Georgetown, Delaware, and handles criminal proceedings.

The Delaware State and Federal Employees Local 1029, Laborers International Union of North America, AFL-CIO, (“LIUNA 1029”) is an employee organization within the meaning of 19 Del.C. §1302(i). On February 9, 2018, LIUNA 1029 was certified as the exclusive bargaining representation of all regular full-time and part-time Judicial Case Processors I, II, and III employed at JP Court #3. 19 Del.C. §1302(j).

On February 16, 2018, LIUNA Local 1029 filed an unfair labor practice charge with the Delaware Public Employment Relations Board (“PERB”) alleging conduct by the Court 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 the Court terminated a bargaining unit employee (identified for purposes of this Probable Cause Determination as “KW”) because she engaged in protected activity in December, 2017. Specifically, the Charge alleges KW engaged in protected activity of which her employer was aware, including joining the union and wearing a jacket to work with LIUNA insignia. LIUNA 1029 is seeking KW’s reinstatement to her prior position and that she be made whole for all lost wages and benefits.

On March 2, 2018, the Court filed its Answer to the Charge admitting the facts as they relate to KW’s employment and that it was aware that she wore a jacket with LIUNA insignia to work on December 20, 2017. The Court denies members of management were aware of any concerted or protected activity by KW or any other employee prior to December 4, 2017. It asserts KW was terminated prior to the completion of her probationary period because she was unable to satisfactorily perform the duties of the Judicial Case Processor I position into which she was hired in March, 2017.

In New Matter contained in the Answer, the Court asserts the Charge fails to state a claim for which relief may be granted under the PERA. It argues the Charge fails to establish the Court acted with animus directed toward KW because of her affiliation with LIUNA, but rather that she was terminated for legitimate, non-discriminatory reasons.

On March 19, 2018, LIUNA 1029 filed a Response to New Matter in which it

denied the legal conclusions and affirmative defenses asserted by the City. It argues the Court's alleged reasons for terminating KW are pretextual.

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 Court engaged in conduct which interfered with, restrained or coerced KW because she exercised her right to engage in protected concerted activity

and/or encouraged or discouraged membership in LIUNA 1029 by discrimination in regard to hiring, tenure or other terms and conditions of employment when she was terminated.

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 Delaware PERB has adopted a shifting burden analysis for evaluating allegations of animus in *Wilmington Firefighters Association, Local 1590 v. City of Wilmington*.¹ 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 charging party 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 whether the employee had engaged in protected activity.²

¹ ULP 93-06-085, II PERB 937, 957 (1994).

² *International Union of Electronic, Salaried and Machine Workers, AFL-CIO v. Kent County*, ULP 95-01-113, II PERB 1091, 1093 (1995).

The pleadings in this matter are sufficient to establish probable cause to believe an unfair labor practice may have occurred.

DETERMINATION

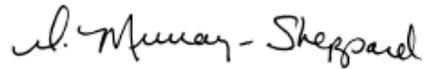
Considered in a light most favorable to the Charging Party, the pleadings are sufficient to establish that the Court may have violated 19 Del.C. §1307 (a)(1) and/or (a)(3), as alleged. The pleadings raise both questions of fact and law which can only be resolved following the creation of a complete evidentiary 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 THE JUSTICE OF THE PEACE COURT INTERFERED WITH THE PROTECTED RIGHTS OF EMPLOYEES AND/OR ENCOURAGED OR DISCOURAGED MEMBERSHIP IN LIUNA LOCAL 1029 BY DISCRIMINATION WHEN IT TERMINATED THE EMPLOYMENT OF AN EMPLOYEE DURING A CERTIFICATION ELECTION CAMPAIGN IN VIOLATION OF 19 DEL.C. §1307 (A)(1) AND/OR (A)(3).

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

DATE: April 20, 2018



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