

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

GEORGETOWN POLICE DEPARTMENT FRATERNAL	:	
ORDER OF POLICE,	:	
	:	
Charging Party,	:	
	:	<u>ULP No. 20-06-1236</u>
v.	:	
	:	
TOWN OF GEORGETOWN, DELAWARE,	:	PROBABLE CAUSE DETERMINATION
	:	AND ORDER OF DISMISSAL
Respondent.	:	

Appearances

Craig J. McGowan, for Georgetown Police Department FOP

Stephani J. Ballard, Esq., for Town of Georgetown

The Town of Georgetown, Delaware (“Town”) is a public employer within the meaning of 19 Del. C. §1602(l) of the Police Officers’ and Firefighters’ Employment Relations Act, 19 Del. C. Chapter 16 (POFERA).

The Georgetown Police Department Fraternal Order of Police (“FOP”) is an employee organization within the meaning of 19 Del. C. §1602(g). It is the exclusive representative of a bargaining unit of Georgetown Police Officers at and below the rank of Captain, as defined in DOL Case 240.

The Town and the FOP are parties to a collective bargaining agreement which had a term of May 1, 2016 through April 30, 2019. The terms of that agreement remained in force and effect until the parties enter into a new contract, per Article 1.2.

On June 30, 2020, the FOP filed an unfair labor practice charge with the Delaware Public Employment Relations Board (“PERB”) alleging conduct by the Town in violation

of its obligations under the POFERA. The Charge was amended¹ on July 20, 2020, to properly allege a violation of 19 Del. C. §1607(a)(5), which states:

(a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

(5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit.

The FOP alleges the Town unilaterally assessed an increase in health care costs and made changes to health care benefits during the period of time that the parties were engaged in bargaining for a successor collective bargaining agreement.

On July 9, 2020, the Town filed its Answer to the Charge admitting most of the facts while disputing the FOP's legal conclusions. It also included new matter and affirmative defenses in its Answer. The Town asserts the Charge is untimely² as it was filed more than 180 days after the FOP was made aware of the changes to the employee health care contribution rates.³

The Town also asserts the Charge fails to state a claim for which relief can be granted because the parties negotiated the process by which changes would be made to the health care benefits through the Benefits Committee, of which the FOP President and/or his designee are members. The Benefits Committee recommendations were subject to review and implementation by the Town's Mayor and Council. The FOP filed a grievance pursuant to the parties' negotiated agreement, which was heard and denied at each of the

¹ The original Charge filed by the FOP incorrectly cited violations of the Public Employment Relations Act, 19 Del. C. Chapter 13. When the Charge was amended to properly cite the Police Officers' and Firefighters' Employment Relations Act, the FOP also withdrew the portions of the Charge which related to the implementation of a GPS program, specifically ¶¶ 4, 5, 6, and 16 of its original Charge.

² 19 Del. C. §1608(a) provides, "...no complaint shall issue based on any unfair labor practice occurring more than 180 days prior to the filing of the charge with the Board".

³ The Charge was not filed until June 30, 2020, which the Town alleges was 193 days after the FOP was notified of the change on December 19, 2019.

three steps of that process.

The FOP filed its Response to the Town's New Matter on July 20, 2020, in which it denies the Town's request that the Charge be dismissed. It requests PERB find the Town violated the POFERA as alleged and direct it to "... comply with the CBA, reinstating the members previous benefits, [and] otherwise make the members whole."

This probable cause determination is based on review of the pleadings submitted by the parties.

FACTS

Because there are no material disputes of fact in this case, consideration turns to whether the undisputed facts, as set forth below, are sufficient to establish that an unfair labor practice has been committed by the Town.

Article 13, Benefits, of the parties 2016-2019 collective bargaining agreement (which remained in force and effect in 2019 and 2020) states, in relevant part:

ARTICLE 13 BENEFITS

13.1 Introduction

The benefits addressed by this article are more fully explained in applicable plan documents, insurance contracts, and summary plan descriptions.

13.2 Medical Benefits

The Town will provide medical coverage to eligible employees and their qualifying dependents, in accordance with Health Care Plan provided to all Town Employees.

Full-time employees are eligible to participate the first day of employment.

13.3 Benefits Committee

The Town Manager shall appoint and Chair a Benefits Committee which will include the President of the Georgetown Police Department Fraternal Order of Police Bargaining Unit and/or his designee(s). The Benefits Committee shall explore the possibility of changes in health insurance. One purpose of this review process is to foster competition among prospective vendors. The Benefits Committee shall make its recommendations to the Mayor and Council. The Mayor and

Council may implement the recommendation. In order for such a recommendation to be implemented, the recommendation must satisfy the following criteria: The coverage provided to employees and their eligible dependents shall remain the same, and the cost to the employee shall remain the same, except to the extent change in cost allocation is necessary in order to offset dramatic increases in the cost of coverage (i.e. in excess of 15% from one year to the next), or the FOP Bargaining Unit votes by a majority of their membership to approve any change...
Charge, Exhibit A.

ARTICLE 14 MAINTENANCE OF STANDARDS

The Town agrees that, except to the extent the parties agree otherwise and reduce such agreement to writing, terms and conditions of employment relating to any mandatory subject of bargaining shall be maintained at the standards in effect at the time of signing this Agreement. Such terms and conditions of employment shall be improved to the extent specific provisions for improvement are set forth in this Agreement. This Section is not intended to diminish the Town's authority under Article 2, Management Rights.

On December 19, 2019, a representative of the Town sent an email to all of the Town's employees (including bargaining unit members represented by the FOP), which stated:

Thank you to all of the employees that attended the annual benefits meeting this afternoon.

For your records, attached is a copy of today's presentation, policies that were reviewed, copy of original memo that was sent to everyone on December 10th (2020 Employee Benefits Meeting) regarding today's meeting. I also included a copy of the 2020 Employee Health Care Plan for the Town of Georgetown (2020 EE Booklet).

Some important items to remember:

- New Insurance Cards Issued and provided today
- **New employee weekly contribution rate takes effect January 1st (\$10.64 per covered individual on the plan)**
 - Employee Only - \$10.64 per week
 - Employee/Spouse - \$21.28 (\$10.64 per person) per week
 - Employee/Children
 - Employee +1 - \$21.28 per week
 - Employee +2 - \$31.92 per week
 - Employee +3 - \$42.56 per week
 - Family

- Employee/Spouse +1 - \$31.92 per week
- Employee/Spouse +2 - \$42.56 per week
- Employee/Spouse +3 - \$53.20 per week
- HRA Contribution – **CHANGE**
 - Single Coverage – The Town of Georgetown will give you \$400 to help you pay your \$1,500 medical deductible and medical co-pays.
 - Family – The Town of Georgetown will give you \$1,000 to help you pay your \$3,000 medical deductible and medical co-pays.
- The Flex Card is to be used for co-pays and deductibles only!
- After December 31st, if you receive a bill for a copay or something that went towards the deductible for the 2019 health care year, you are unable to use your current Flex Card. You must request a reimbursement check from Integra. Do not use your Flex credit card.
- **Please remember, any changes you want to make to your health care plan and any supplemental insurance coverage must be made prior to December 31, 2019.**
- Make sure the Town has your current address, emergency contact information, if changes had [*sic*] taken place throughout the year.
- Update any beneficiary forms, W-4 form if necessary.

Please feel free to contact Olga or myself [*sic*] should you have any questions regarding what was provided or discussed today. *Answer, TOG Exhibit 4.*

The changes to the employee contribution rate were made during the December 30, 2019 – January 5, 2020 payroll period, appearing in the pay checks issued on January 9, 2020. *Charge Exhibit E.*

On or about January 13, 2020, the FOP Vice President filed a grievance alleging violations of Article 13, Benefits, 13.3 Benefits Committee, and Article 14, Maintenance of Standards:

On January 9, 2020 our membership was assessed an increase cost in their health care in excess of 300% and a change in health care.

Under Article 13.3 Benefits Committee of the Collective Bargaining Agreement the benefits committee will include the President of the FOP or his designee and recommendation from the committee must satisfy the following criteria: The coverage provided to the employees and their

dependents shall remain the same and the cost to employees and their dependents shall remain the same, except where dramatic increases in the cost of coverage (i.e., in excess of 15% from one year to the next), or the FOP Bargaining Unit votes by a majority of their membership to approve any change.

At no time was the FOP President or designee included in any Benefits Committee, the coverage is not the same, the cost is not the same and the increase in the cost of coverage is not only dramatic but astronomical. The FOP Bargaining Unit has also not voted to approve any change.

Under Article 14, Maintenance of Standards, the terms and conditions of employment relating to any mandatory subjects of bargaining shall be maintained at the standards in effect at the time of the signing.

It is also unlawful to unilaterally change mandatory subjects of bargaining even during negotiations and after the expiration of the Collective Bargaining Agreement. *Charge, Exhibit F.*

The Grievance was denied at Step 1 by the Chief of Police by email dated January 21, 2020:

I find that the changes to the Health Care plan for 2020, which applies to all employees of the Town (not just GPD), were made in accordance with Article 13.3 of the Bargaining Agreement. Members of the unit, including yourself, were noticed of the Benefits Committee meetings, and you personally attended the last meeting. Other meetings, open to all employees, were held to explain the changes. No concerns were voiced by you or the FOP. I further find that the substantive requirements for a change in coverage set forth in Article 13.3 have been met.

Accordingly, I find the grievance to be without merit. *Charge, Exhibit G.*

The FOP appealed the grievance to Step 2, where it was denied by the Town Manager on February 3, 2020. *Charge Exhibit I.* The grievance was appealed to Step 3, the final step of the negotiated grievance procedure, and heard by the Mayor and Town Council on February 26, 2020. By decision dated March 25, 2020, the grievance was again denied. *Charge Exhibit K.*

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.

The parties are entitled to the benefit of their negotiated agreement. In this case, the Town and the FOP negotiated a process by which recommendations for changes to the health care plan could be made, including changes to employee costs, through the Benefits Committee. Section 13.3 clearly sets forth the parties' agreement on this process.

The negotiated agreement also includes a grievance procedure at Article 5 for the purpose of resolving questions or disputes concerning the interpretation or application of any of the terms of the collective bargaining agreement.

The grievance process is a mandatory subject of bargaining. It is the primary mechanism by which the parties interpret and apply the negotiated terms of their agreement to workplace incidents and issues.

When parties have contractually committed themselves to agreeable procedures for resolving contractual disputes, it is prudent and reasonable for this Board to afford those procedures the full opportunity to function. *FOP Lodge No. 1 v. City of Wilmington*, ULP 89-08-040, I PERB 449 (PERB, 1989), citing *Collyer Insulated Wire*, NLRB, 192 NLRB 837 (1971).

It is well established in Delaware PERB case law that the unfair labor practice forum is not a substitute for the negotiated grievance procedure.⁴ The statutory purpose of

⁴ *Brandywine Affiliate, NCCEA/DSEA/NEA v. Brandywine Board of Education*, ULP 85-06-005, I PERB 131, 142-143 (PERB, 1986); *Delaware State Troopers Association v. Delaware DSHS, Division of State Police*, ULP 20-09-1248, IX PERB 8321, 8329 (PERB, January 8, 2021), *affirmed* IX PERB 8351 (March 4, 2021).

the POFERA to support and promote collective bargaining is not advanced by permitting parties to sidestep the negotiated grievance procedure by casting a dispute in statutory terms.⁵

There is no dispute that the FOP grieved its concern that the Town had violated its obligations under Article 13 and Article 14. The grievance was processed through all three steps of the negotiated grievance procedure, culminating with the decision issued by the Mayor and Council on March 25, 2020. The fact that it was denied throughout the grievance process does not mean the dispute rises to the level of an unfair labor practice under the POFERA.

The grievance filed by the FOP Vice President asserted changes to the healthcare costs and coverage constituted violations of Articles 13 and 14 of the collective bargaining agreement. The unfair labor practice charge also asserts the Town breached the collective bargaining agreement by failing to adhere to Article 13.3, Benefits Committee, and Article 14, Maintenance of Standards. *Charge ¶15*. Those claims were properly resolved through the negotiated grievance procedure. Consequently, this charge is dismissed as the pleadings fail to set forth a basis on which it might be concluded that probable cause exists to find a statutory violation of the POFERA.⁶

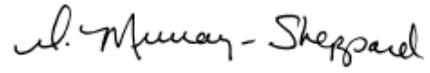
DETERMINATION

Considered in a light most favorable to the Charging Party, the pleadings are not sufficient to establish that the Town has violated 19 Del. C. §1607 (a)(5) as alleged. Having found no probable cause exists to find that an unfair labor practice may have been

⁵ *FOP Lodge 1 v. City of Wilmington*, ULP 18-04-1143, IX PERB 7087, 7092 (PERB, 2018).

⁶ Because the charge does not assert a claim which rises to the level of a potential unfair labor practice, it is unnecessary to address the timeliness issue raised by the Town.

committed, the Charge is dismissed.



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

DATE: September 30, 2021