

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

DOLENA GRAYSON,)	
Charging Party,)	<u>ULP No. 13-05-903</u>
)	
v.)	Probable Cause Determination &
)	
AMALGAMATED TRANSIT UNION,)	Order of Dismissal
LOCAL 842 AND ROLAND LONGACRE,)	
Respondents.)	

APPEARANCES

Dolena Grayson, Charging Party (pro se)

Roland Longacre, President/Business Agent, for ATU Local 842

BACKGROUND

The Amalgamated Transit Union, Local 842 (“ATU”) is an employee organization within the meaning of §1302(i) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (“PERA”). It is the exclusive bargaining representative of certain employees of the Delaware Transit Corporation (“DTC”) within the meaning of 19 Del.C. §1302(j). Roland Longacre is the current president of ATU Local 842.

The Charging Party, Dolena Grayson (“Grayson”) was at all times relevant to this charge a public employee within the meaning of §1302(o) of the PERA. Prior to being discharged, Ms. Grayson was employed by DTC, a public employer within the meaning of 19 Del.C. §1302(p). Ms. Grayson was a member of the bargaining unit represented by ATU Local 842.

On May 14, 2013¹, Charging Party filed an unfair labor practice charge with the

¹ The charge was initially received by PERB on May 8, 2013. However, because it did not comply with PERB’s filing requirements it was returned to Charging Party, who refiled it on May 14, 2013.

Delaware Public Employment Relations Board (“PERB”) alleging conduct by the Respondent in violation of 19 Del.C. §§ 1304(a), 1307(b)(1) and 1307(b)(3).²

Specifically, the Charge alleges Ms. Grayson was treated differently than other members of the bargaining unit in the manner in which the ATU conducted the membership vote on whether to take the grievance protesting her discharge to arbitration. The Charge alleges the ATU President failed to properly inform the general membership of the scheduled arbitration vote to be conducted at its April meetings; inaccurately informed the members at the evening vote on April 9, 2013 that the Local’s Executive Board had unanimously voted against proceeding to arbitration on Ms. Grayson’s grievance; and violated the ATU by-laws by improperly voting on the grievance. Charging Party asserts that by these actions, the President and ATU Local 842 violated the ATU’s Constitution and General Laws. The Charge requests PERB find the ATU violated the PERA as alleged and order that it cease and desist from further violations, and that PERB order the ATU to proceed to arbitration of Ms. Grayson’s grievance pursuant to the collective bargaining agreement.

On May 23, 2013, the ATU filed its Answer denying the allegations set forth in the

² §1304. Employee organization as exclusive representative.

(a) 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 regards to matters covered by this chapter with any employee, group of employees or other employee organization.

§1307. Unfair labor practices.

(b) It is an 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.

Charge. The ATU asserts neither the International constitution nor the Local 842 by-laws were violated in the manner in which the voting was conducted on whether to take the grievance to arbitration.

The ATU included New Matter in its Answer in which it asserts Section 23³ of the Constitution and General Laws of the International Amalgamated Transit Union provides an appeal procedure to members who feel they have been treated unfairly by their local union. The ATU asserts members are obligated as set forth on page 1 of the ATU Constitution to exhaust the ATU internal appeal procedure before bringing the matter before an outside legal authority. It asserts this Charge should be dismissed because Ms. Grayson has failed to exhaust the ATU appeal procedures; consequently, the Charge should be dismissed and the requested remedy denied.

On May 31, 2013, Charging Party filed her response to New Matter denying the allegations set forth therein. She further asserted the terms of the ATU's Constitution and General Laws cannot supersede State law and that whether she has other avenues of redress available to her is irrelevant.

This determination results from a review of the pleadings as described above.

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

³ **Sec. 23 Appeals:** Any member or members feeling that they have been unfairly dealt with by the L.U. (Local Union) have the right of appeal (after the L.U. has given its final decision in the case or cases) to the I.P. (International President), from the I.P. to the G.E.B. (General Executive Board), and from the G.E.B. to the regular Convention of the I.U. (International Union).

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).

On its face, the Charge does not allege any facts sufficient to support a charge that the ATU has violated 19 Del.C. §1307(b)(3), nor does it set forth with sufficient specificity what statutory right the ATU has interfered with or in what manner Ms. Grayson was restrained or coerced in or because of any guaranteed statutory right. Even if, as the Charge alleges, Ms. Grayson was treated “differently than other members who have been discharged from the public employer”, there must be some support offered in the Charge as to how this “different” treatment was discriminatory in a manner prohibited by the PERA.

The Public Employment Relations Board is a creature of statute, and its jurisdiction and authority are circumscribed by the PERA, the applicable Delaware public sector collective bargaining law. It is clear the Charging Party perceives there were irregularities and

inconsistencies in the process by which ATU Local 842 decided not to take her grievance through the arbitration process.

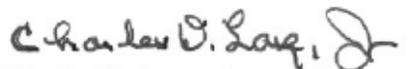
PERB has previously held a charging party's initial course of action to contest the handling of a grievance by her union is to pursue available administrative remedies by filing an appeal with the Union through appeal procedures set forth in the union's internal by-laws and/or constitution. *Alicia A. Brooks v. AFSCME Council 81, LU 640*, ULP 09-08-701, VII PERB 4483, 4490 (2010). Consequently, the Charging Party's assertion that whether other avenues of redress were available to her is irrelevant is inaccurate.

While Charging Party is correct in her assertion that the Union's Constitution does not supersede the terms of the PERA, the PERB's jurisdiction is limited to the interpretation and application of the PERA and does not extend to the matters of internal union business in the first instance.

DETERMINATION

The pleadings fail to establish probable cause to believe that the violations alleged in the Charge may have occurred. Consequently, the Charge is dismissed in its entirety.

Date: June 24, 2013



CHARLES D. LONG, JR.
Hearing Officer
Del. Public Employment Relations Board