

**STATE OF DELAWARE**  
**PUBLIC EMPLOYMENT RELATIONS BOARD**

<b>FRATERNAL ORDER OF POLICE, LODGE 22,</b>	:	
<b>AND CHRISTOPHER WHITEHOUSE,</b>	:	
	:	<b>Unfair Labor Practice Charge</b>
Charging Parties,	:	<b><u>No. 24-11-1438</u></b>
	:	
V.	:	
	:	<b>PROBABLE CAUSE DETERMINATION</b>
<b>TOWN OF MILTON, DELAWARE,</b>	:	
	:	
Respondent.	:	

The Town of Milton, Delaware is a public employer within the meaning of §1602(13) of the Delaware Police Officers’ and Firefighters’ Employment Relations Act (“POFERA”), 19 *Del. C.* Chapter 16.

The Fraternal Order of Police (“FOP”) is an employee organization within the meaning of 19 Del. C. §1602(7). The FOP, by and through its affiliated Lodge No. 22 (“FOP Lodge 22”) is the exclusive representative of a bargaining unit of Milton Police Officers within the meaning of 19 Del. C. §1602(8). FOP Lodge 22 represents a bargaining unit which includes all full-time and part-time sworn Milton police officers at and below the rank of Sergeant.

FOP Lodge 22 and the Town are parties to a fully executed collective bargaining agreement which has a term of October 1, 2024, through September 30, 2025. *Charge, Exhibit A.*

Christopher Whitehouse was employed by the Town and was a public employee within the meaning of 19 *Del. C.* §1602(13). Mr. Whitehouse resigned from the Milton Police Department on August 4, 2024, at which time he held the rank of Sergeant.

FOP Lodge 22 and Mr. Whitehouse will be collectively referred to herein as “Charging Parties”.

On November 25, 2024, Charging Parties filed an unfair labor practice charge with the Delaware Public Employment Relations Board (“PERB”) alleging conduct by the Town in violation of 19 Del. C. §1607(a)(1), (3), and (4), which state:

- (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 in or 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.
  - (4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint, or has given information or testimony under this chapter.

The Charge alleges that the Town violated the POFERA by retaliating against then Sgt. Whitehouse for engaging in statutorily protected activities. The Charging Parties assert the Town’s prohibited actions resulted in Mr. Whitehouse being constructively and improperly discharged from his employment with the Town.

On December 9, 2024, the Town filed its Answer to the Charge denying many of the facts set forth in the Charge. In new matter included in its Answer, the Town asserts the Charge was not filed within 180 days of the incident giving rise to the complaint. 19 *Del. C.* 1608(a).<sup>1</sup> The Towns requests the Charge be dismissed as untimely.

Charging Parties filed their response to the New Matter on January 3, 2025, denying that the Charge is untimely, asserting Mr. Whitehouse’s constructive discharge on August 4, 2024, at the least, occurred within the 180-day timeframe.

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<sup>1</sup> Evidence shall be taken and filed with the Board; provided, that 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.

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 a 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. DOT/DTC*, ULP 04-10-453, V PERB 3179, 3182 (Probable Cause Determination, 2004).

Prior to any consideration of the merits of an unfair labor practice charge, it must first be established that the Delaware Public Employment Relations Board has authority to issue a complaint based on the asserted facts in the Charge. Section 1608 of the Police Officers' and Firefighters' Employment Relations Act, Disposition of Complaints, states:

- (a) The Public Employment Relations Board is empowered and directed to prevent any unfair labor practice described in §1607(a) and (b) of this title and to issue appropriate remedial orders. Whenever it is charged that anyone has engaged or is engaging in any unfair practice described in §1607(a) and (b) of this title, the Board or any designated agent thereof shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charge and including a notice of hearing containing the date and place of hearing before the Board or any designated agent thereof. Evidence shall be taken and filed with the Board; ***provided, that 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.*** (emphasis added)

The six-month limitations period begins to run when clear and unequivocal notice is given that the unfair labor practice has been committed, rather than on the date when its consequences become effective.<sup>2</sup> This Charge was filed on November 25, 2024; consequently, the statutory timeframe of 180-days, extends back to May 29, 2024.

The Charge alleges that during the period between May 29, 2024, and June 24, 2024, Sgt. Whitehouse was actively engaged as a member of the FOP Lodge 22 bargaining team in the negotiations with the Town for the first collective bargaining agreement between these parties.<sup>3</sup> The Town denies Sgt. Whitehouse “actively bargained on behalf of Fraternal Order of Police, Lodge 22.”<sup>4</sup>

The Charge also alleges that on or about June 6, 2024, Sgt. Whitehouse’s performance was evaluated as needing improvement<sup>5</sup> for the first time in his ten-year career with Milton Police Department and that as a result, he was “denied a step increase and corresponding increase in pay for 2024, per pertinent Town of Milton Policy.”<sup>6</sup> The

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<sup>2</sup> See *Leach Corp.*, [312 NLRB 990](#), 991, [145 LRRM 1080](#) (1993) (“The 10(b) period commences only when a party has clear and unequivocal notice of a violation of the Act.”).

<sup>3</sup> The final agreement was signed by the parties on September 30, 2024, and went into effect on October 1, 2024.

<sup>4</sup> Answer @ ¶8.

<sup>5</sup> Exhibit B to the Charge.

<sup>6</sup> Charge @ ¶11.

Charging Parties allege Sgt. Whitehouse was harshly evaluated based on his leadership role in FOP Lodge 22. It also asserts the performance review expressly indicates that adverse employment actions were taken against Sgt. Whitehouse “because he discussed working conditions with his fellow officers and Milton management” in a manner the Town characterized as “speaking negatively.”<sup>7</sup> The Town denies these allegations as well as the legal assertions made by the Charging Parties.

A continuing violation generally occurs when there is a continuing course of conduct. In such cases, the party charged cannot escape responsibility for wrongdoing by claiming that the charge was not filed within the required filing period when measured from the onset of the contested course of conduct.<sup>8</sup> In order to reach back to events and actions which occurred more than 180 days prior to the filing of the Charge, there must be related and similar actions which occurred within the 180-day statutory window prior to the filing of the Charge. The prior incidents may be considered in so far as they provide context to conduct occurring during the window.

With all inferences drawn in the favor of the Charging Parties, the pleadings are sufficient to support the possibility that an unfair labor practice may have occurred. It will be the FOP’s burden to establish that the Town engaged in conduct which violates 19 *Del. C.* §1607(a)(1) , (3) and/or (4), as alleged.

### **DETERMINATION**

Considered in a light most favorable to the Charging Parties, the pleadings are sufficient to establish that the Town may have violated 19 Del. C. §1607 (a)(1), (3) and/or

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<sup>7</sup> Charge ¶13.

<sup>8</sup> *Davis & Smith v. Diamond State Port Corp. & ILA Local 1694-1*, ULP 00-12-301, III PERB 2229, 2234 (May 29, 2001).

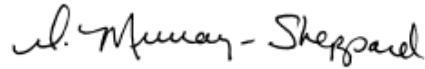
(4), as alleged. The pleadings raise both questions of fact and law which can only be resolved following the creation of a complete evidentiary record and the consideration of argument.

**WHEREFORE**, a hearing will be promptly scheduled for the purpose of developing a full and complete factual record upon which argument can be made and a decision rendered concerning:

WHETHER THE TOWN OF MILTON, DELAWARE, INTERFERED WITH, COERCED OR RESTRAINED MR. WHITEHOUSE IN EXERCISING HIS STATUTORILY PROTECTED RIGHTS; ENCOURAGED OR DISCOURAGED MEMBERSHIP IN FOP LODGE 22 BY DISCRIMINATION IN REGARD TO HIRING, TENURE OR OTHER TERMS AND CONDITIONS OF EMPLOYMENT; AND/OR DISCHARGED OR OTHERWISE DISCRIMINATED AND/OR GAVE INFORMATION OR TESTIMONY UNDER THE POFERA, IN VIOLATION 19 *DEL. C.* §1607(A)(1), (3) AND/OR (4), AS ALLEGED.

The issue of the timeliness of the Charge will be considered preliminarily following completion of the evidentiary record and receipt of argument from the parties.

DATE: February 21, 2025



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