

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

WILMINGTON FOP LODGE NO. 1,)	
Charging Party,)	
)	
v.)	<u>ULP No. 02-08-362</u>
)	
CITY OF WILMINGTON,)	
Respondent.)	

PROBABLE CAUSE DETERMINATION

The City of Wilmington (“City”) is a public employer within the meaning of 19 Del.C. § 1602 (l) of the Police Officers’ and Firefighters’ Public Employment Relations Act “Act”), 19 Del.C. Chapter 13 (1986). [1]

The Fraternal Order of Police, Lodge No. 1 (“FOP”) is an employee organization within the meaning of 19 Del.C. § 1602(g). [2] The FOP is the exclusive bargaining representative of a bargaining unit of certain uniformed police officers employed by the City within the meaning of 19 Del.C. § 1602 (h). [3]

The City and the FOP are parties to a collective bargaining agreement which term expired on June 30, 2001, but by the parties agreement, for the most part, continues in effect.

[1] “Public employer” or “employer” means the State or any political subdivisions of the State or any agency thereof, any county, or any agency thereof, or any municipal corporation or municipality, city or town located within the State or any agency thereof, which (1) upon the affirmative legislative act of its common council or other governing body has elected to come within Chapter 13 of this title, (2) hereafter elects to come within this chapter, or (3) employs 25 or more full-time employees. For the purposes of paragraph (3) of this subsection, “employees” shall include each and every person employed by the public employer except: (A) any person elected by popular vote; and (B) any person appointed to serve on a board or commission.

BACKGROUND

On August 5, 2002, the FOP filed this unfair labor practice charge alleging that the City of Wilmington violated Section 1607, Unfair labor practices subsection (a) (1) and/or (5), of the Act, 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 in or because of the exercise of any right guaranteed under this chapter.
 - (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit.

On August 23, 2002, the City filed its Answer to the Charge. Included under New Matter the City alleged the following:

- 1) The Early Warning System is a management right under 19 Del.C.

§ 1605;

- 2) This matter should be resolved through the contractual grievance

and arbitration procedure because the Early Warning System falls within the purview of Article 1, WORK RULES AND REGULATIONS, section 11.1 of the collective bargaining agreement which provides,

in relevant part:

General. The employees' representative agrees that the Employer has complete authority over the policies and administration of the Police Department which it exercises under the provisions of law and in fulfilling its responsibilities under this Agreement, including the establishment of work rules and regulations not inconsistent with the provision of this Agreement. Any matter involving the management of department operations not covered by this Agreement is the province of the Employer. Should the Lodge object to any work rule or regulation as being violative

[2] "Employee organization" means any organization which admits to membership police officers or firefighters employed by a public employer and which has as a purpose the representation of such persons in collective bargaining, and includes any person acting as an officer, representative or agent of said organization.

[3] "exclusive bargaining representative" or "exclusive representative" means the employee organization which as a result of certification by the Board has the right and responsibility to be the collective bargaining agent of all employees in that bargaining unit.

of this Agreement, the provisions of 3 through 15 of this Article and the disciplinary procedures set out in the Police

Rules and Regulations shall constitute the contractual disciplinary grievance procedure . . .

3) By filing this unfair labor practice charge the FOP has engaged in conduct in violation of 19 Del.C. Sections 1607 Unfair labor practices, subsections (b)(2) and (b)(3), which provide:

1607(b) It is an unfair labor practice for a public employee or an employee organization or its designated representative to do any of the following;

(2) Refuse to bargain collectively in good faith with the public employer or its designated representative if the employee organization is an exclusive representative.

(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 to the conduct of collective bargaining under this chapter.

The City also petitioned the PERB to issue a Declaratory Statement declaring the Early Warning System Policy an Employer's Right about which the City is not required to bargain under 19 Del.C. §1605, Employer rights, which provides:

A public employer is not required to engage in collective bargaining on matters of inherent managerial policy which include, but are not limited to, such areas of discretion or policy as the functions and programs of the public employer, its standards of services, overall budget, utilization of technology, the organizational structure and staffing levels, selection and direction of personnel.

On September 3, 2002, the FOP filed its Response denying the New Matter and opposing the City's Request for a Declaratory Statement.

DISCUSSION

Article V of the Rules and Regulations of the Delaware Public Employment Relations Board, Unfair Labor Practice Proceedings, provides:

5.6 Decision or Probable Cause Determination

(a) Upon review of the Complaint, the Answer and Response, the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred.

Having properly filed this unfair labor practice charge the FOP is entitled to have the charge processed. The allegations set forth in the charge and the City's Request for a Declaratory Statement arise from the same underlying facts. Consequently, independently processing a Request for a Declaratory Statement would result in duplicative and unnecessary effort since the issues raised by the Request for a Declaratory Statement will be adequately addressed and resolved within the context of this unfair labor practice proceeding.

The pleadings allege no specific contractual violation. The pleadings allege only statutory violations. The resolution procedures set forth in Article 11 of the collective bargaining agreement cited by the City do not provide an adequate venue for determining whether a statutory violation has occurred. Consequently, the resolution procedures set forth therein do not apply.

PROBABLE CAUSE DETERMINATION

The pleadings constitute probable cause to believe that an unfair labor practice may have occurred. Wherefore, in the absence of a factual stipulation, a hearing will be scheduled for the purpose of establishing a factual record upon which a decision can be rendered.

IT IS SO ORDERED

October 1, 2002
(DATE)

/s/Charles D. Long, Jr.
Charles D. Long, Jr.
Executive Director. PERB