

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

DELAWARE CORRECTIONAL OFFICERS ASSOCIATION,	:	
	:	
Petitioner,	:	<u>U.L.P. No. 95-03-123</u>
	:	
v.	:	<u>U.L.P. No. 95-06-134</u>
	:	
STATE OF DELAWARE,	:	<u>U.L.P. No. 95-06-137</u>
DEPARTMENT OF CORRECTION,	:	
	:	<u>U.L.P. No. 95-06-138</u>
Respondent.	:	

BACKGROUND

The Delaware Correctional Officers Association ("DCOA" or "Union") is an employee organization within the meaning of Section 1302(h) of the Public Employment Relations Act ("PERA"), 19 Del.C. Chapter 13 (1994). The DCOA is the exclusive bargaining representative of employees in the State's Adult Correctional Institutions within the meaning of Section 1302(i).

The State of Delaware Department of Correction ("Employer") is a public employer within the meaning of Section 1302(m) of the PERA.

The parties have been involved in collective bargaining since April, 1994. On September 15, 1994, they entered into an interim agreement containing, among others, provisions for determining and distributing overtime, for filling vacancies and for transferring employees. The interim agreement also contained a grievance procedure for processing disputes involving the interpretation or application of the interim agreement. The grievance procedure does not include either advisory or binding arbitration.

Charge No. 123 alleges that on January 6, 7 and 8, 1995, the Employer failed to distribute overtime according to the negotiated procedures and, in so doing, violated Sections 1307(a)(1), (2), (5) and (6), of the Act.

The Employer denies that it failed to comply with the negotiated overtime procedures set forth in the interim agreement.

Charges No. 134 and 137 allege that when assigning officers for a scheduled prisoner execution, the Employer did not follow the negotiated overtime and transfer procedures and, in so doing, violated Section 1307(a)(1), (2), (5) and (6), of the Act.

The Employer denies that the disputed assignments violate either the transfer provision which it maintains is not even involved or the overtime provisions of the collective bargaining agreement, as alleged.

Charge No. 138 alleges that on April 3, 1995, bids were posted for twenty-six (26) positions. The Association maintains that the Employer filled the bid positions according to Section 34.a rather than Section 34.b of the interim agreement and, in so doing, violated Sections 1307(a)(1), (2), (5) and (6), of the Act.

The Employer argues that the bid positions were properly filled in accord with Section 34.b.

In all cases, the Charging Party argues that because the negotiated grievance procedure does not provide for binding arbitration by an impartial third party resort thereto would be futile.

The Employer argues that because each of the underlying issues involve the interpretation and/or the interpretation of the collective bargaining agreement, the exclusive remedy is the negotiated grievance procedure, regardless of whether or not it provides for binding arbitration.

DECISION

Section 1307, Unfair Labor Practices, provides in relevant part:

(a) It is 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.

(2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization;

(5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, except with respect to a discretionary subject of bargaining.

(6) 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.

The PERB concurs with the Executive Director's ruling that the pleadings raise no probable cause to believe that a violation of (a)(1), (2), (5) or (6), of the Act has occurred.

Insofar as the alleged violation of Section 1307(a)(5), it is undisputed that the parties voluntarily entered into an interim agreement which contains provisions for the distribution of overtime, the filling of vacancies and for transfers, as well as a negotiated grievance procedure. It is further undisputed that the Association failed to avail itself of the grievance procedure and filed no grievances concerning the alleged contract violations. Nor does the Association allege that the State has refused to process grievances under the procedure set forth in the interim agreement.

The PERB is not a substitute for the grievance procedure contained in the interim agreement, Indian River Ed. Assn. v. Bd. of Ed. (Del. PERB U.L.P. No. 88-11-127 (1988)). As a consequence, the Board finds that, at the present

time, there is no probable cause to believe that a violation of 19 Del.C. Section 1307(a)(5), has occurred.

WHEREFORE, the August 31, 1995, decision of the Executive Director dismissing the Charge is AFFIRMED, without prejudice.

IT IS SO ORDERED.

DATED: October 27, 1995

/s/Arthur A. Sloane

Chair

/s/Henry E. Kressman

Member

/s/John D. Daniello

Member