

- (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate bargaining unit, except with respect to a discretionary subject.
- (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 Charge alleges that in December, 2008, DOC unilaterally changed the procedure for scheduling overtime at JTVCC without providing notice to or the opportunity to bargain this change to COAD.

On February 4, 2009, the State filed its Answer to the Charge denying all material allegations.

This Probable Cause Determination is based upon a review of the Charge and Answer.

DISCUSSION

The Rules and Regulations of the Delaware PERB require that upon completion of the pleadings in an unfair labor practice proceeding, a determination shall be issued as to whether those pleadings establish probable cause to believe the conduct or incidents alleged could have violated the Public Employment Relations Act, 19 Del.C. Chapter 13. DE PERB Rule 5.6. For purpose of this review, factual disputes established by the pleadings are considered in a light most favorable to the Charging Party in order to avoid dismissing what may prove to be a valid charge without the benefit of receiving evidence concerning that factual dispute. *Richard Flowers v. State of Delaware, Department of Transportation, Delaware Transit Corporation*, Probable Cause Determination, ULP No. 04-10-453,V PERB 3179 (2004).

COAD asserts DOC unilaterally implemented a change to the procedure at JTVCC for scheduling overtime and that the change has placed a hardship on COAD and has also resulted in missed overtime opportunities and mandatory overtime for bargaining unit employees.

In order to prevail in this matter, COAD must establish that the change alleged to have been unilaterally implemented alters the status quo of a mandatory subject of bargaining in violation of DOC's duty to bargain in good faith.

The pleadings are sufficient to place this matter in issue and to proceed to hearing.

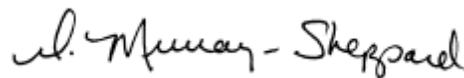
DETERMINATION

Consistent with the foregoing discussion, when reviewed in a light most favorable to the Charging Party, the pleadings provide a sufficient basis for finding probable cause to believe that an unfair labor practice may have occurred.

WHEREFORE, a hearing shall be scheduled forthwith to establish a record on which a determination can be made as to whether DOC committed an unfair labor practice in violation of 19 Del.C. §1307(a)(5) and/or (a)(6) by unilaterally instituting a change in the overtime scheduling procedure at JTVCC.

IT IS SO ORDERED.

DATE: March 2, 2009



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