

STATE OF DELAWARE  
PUBLIC EMPLOYMENT RELATIONS BOARD

DELAWARE STATE TROOPERS' ASSOCIATION,	:	
	:	
Petitioner,	:	
	:	
and	:	Request for Declaratory Statement
	:	<u>D.S. No. 92-01-068</u>
	:	
STATE OF DELAWARE, DEPARTMENT OF PUBLIC	:	
SAFETY and DIVISION OF PUBLIC SAFETY,	:	
	:	
Respondent.	:	

The State of Delaware, Department of Public Safety (hereinafter "State") is a public employer within the meaning of 19 Del.C. §1602(l). Delaware State Troopers Association is the exclusive bargaining representative of the members of the Division of State Police for the ranks of Trooper through Major, within the meaning of 19 Del.C. §1602(g). The State and DSTA were parties to a collective bargaining agreement for the period of July 1, 1989 through June 30, 1991. The dispute in this matter has arisen during the course of negotiations and mediation of a successor agreement.

During the course of the negotiations, the State utilized two employees of the rank of Major on its bargaining team, both of whom are members of the bargaining unit. By letter dated October 21, 1991, DSTA took exception to this practice and requested/demanded that the State cease to include bargaining unit members on its negotiating team. Representatives of the parties subsequently exchanged letters further clarifying the DSTA's position on October 25 and October 27. As of the filing of this petition on January 15, 1992, the dispute had not been resolved through the parties' efforts.

The Association requests in its petition that the Public Employment Relations Board issue "... a clear and concise statement that the Division of State Police, Department of Public Safety, State of Delaware's assignment of a member of the bargaining unit to assist management in connection with negotiations, mediation and/or fact-finding constitutes an unfair labor practice pursuant to 19 Del.C. Section 1607(a)".

On January 22, 1992, the State filed its Answer to DSTA's Petition. In addition to raising a number of Affirmative Defenses, the State moved that the petition be dismissed because "... it fails to cite any provision in the law that has been violated by the Respondent and otherwise fails to state a claim upon which relief may be granted". DSTA responded on January 27, by denying all of the State's affirmative defenses.

This decision is issued pursuant to Regulation 6.4 of the Rules and Regulations of the Delaware Public Employment Relations Board, which states in relevant part:

The Executive Director shall then dispose of the petition by declining to issue a declaratory statement, or by requesting that the parties file briefs, or by scheduling a hearing, if necessary, which shall be conducted in accordance with Regulation 7, or by issuing a declaratory statement.

#### DECISION

Under the provisions of Regulation 6 of the PERB's Rules and Regulations, a declaratory statement may be sought by a party where, as in this case, it is alleged that controversy exists concerning a potential unfair labor practice. The petition must further state that the dispute has arisen either:

- (1) During the course of collective bargaining, and that one party seeks to negotiate with respect to a matter or matters which the other party contends is not a required subject for bargaining;
- (2) Over the contemplation of an act by one of the parties that the other contends is an unfair labor practice under the Acts; or
- (3) Concerning the application of any provision of the Acts or regulation or order of the Board. [Reg. 6.2 (d)].

This petition is not based upon either the negotiability of a given proposal or set of proposals or upon the contemplation of any act which is alleged to be an unfair labor practice. Rather DSTA questions the applicability of the unfair labor practice provisions of the Act to the admitted inclusion of two bargaining unit members on the employer's negotiating team. In making this request, however, the Association has failed to cite the specific provisions of the §1607(a) which it alleges the State has violated. The statutory application which the DSTA places in issue is too general and too vague to permit a meaningful response by the State and/or statement by this Board at this time.

Further, it must be stressed that the PERB was created to provide necessary assistance to the parties, which is not to say that all requests for assistance must be granted. Christina S.D. v. Christina Affiliate, Del.PERB, D.S. 3-2-84-CH (4/30/84). To this end, Regulation 6.1(c)(iv) requires that a controversy placed in question by a petition for declaratory statement be in such a posture that the issuance of the statement will facilitate a resolution of the controversy. The petitioning party is required to affirmatively set forth its reasoning in its request and to assert the impact of the requested statement on the existing controversy.

For these reasons, the petition is deemed defective and is hereby dismissed without prejudice for failing to state a claim upon which relief can be granted.

IT IS SO ORDERED.

D. Murray-Sheppard  
DEBORAH L. MURRAY-SHEPPARD  
Principal Assistant  
Delaware PERB

Charles D. Long, Jr.  
CHARLES D. LONG, JR.  
Executive Director  
Delaware PERB

DATED: February 12, 1992