

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

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| DELAWARE CORRECTIONAL OFFICERS | : | |
| ASSOCIATION, | : | |
| | : | |
| Charging Party, | : | |
| | : | |
| v. | : | <u>U.L.P. No. 95-02-120A</u> |
| | : | |
| STATE OF DELAWARE, | : | |
| DEPARTMENT OF CORRECTION, | : | |
| | : | |
| Respondent. | : | |

BACKGROUND

The Public Employment Relations Board (hereinafter "PERB") adopts the "PROBABLE CAUSE DETERMINATION" as outlined in the Principal Assistant/Hearing Officer's Decision of April 28, 1995.

The Delaware Correctional Officers Association ("DCOA" or "Union") is an employee organization within the meaning of §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 §1302(i).

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

On February 21, 1995, the DCOA filed an unfair labor practice charge with PERB alleging violations of 19 Del.C. §1307(a)(1), (a)(2), and (a)(4). The charge alleged the DCOA's President, Ms. Velma M. (Sue) Joyce, was given a 30 day suspension without pay because she identified an alleged informant within the prison system to the media in an interview December 6, 1994. The interview involved questions by the news media of Ms. Joyce concerning her knowledge of circumstances surrounding the escape of eight (8) inmates from Gander Hill Prison on November 28, 1994. Quoting

from the charge itself, Complaint #7 states in part... "At the news conference and otherwise, Sue Joyce, in her capacity as President of DCOA, has alleged and still alleges that the Respondent has covered up its failings contributing to the escape and has attempted to blame the escape entirely on the correctional officers..." The Charging Party also contended that as a representative and President of DCOA, it was Ms. Joyce's duty to defend the members of DCOA against incorrect statements made about them by the Respondent.

The Employer, in its answer to the Unfair Labor Practice Charge, denied any inmate had communicated with prison management about a potential escape and consequently the assertion that after the escape it was common knowledge management had advance knowledge of the escape as provided by an inmate was without basis in fact. Ms. Joyce received a 30 day suspension for revealing the identity of an inmate - and alleged informant - to the news media. In this action she acted without authority and in violation of DOC policy and codes of conduct - an action that her disclosures were derived solely on the basis of rumor, hearsay and speculation. The Employer further states that the disciplinary action imposed on Ms. Joyce was taken against her in her capacity as a Correctional Officer, not as a union official.

DECISION

After a complete review of the record, PERB upholds the Principal Assistant/Hearing Officer's decision of April 28, 1995. Both the "Appeal From Probable Cause Determination" filed by the DCOA and "The Respondent's Answer To Charging Party's Appeal From Probable Cause Determination" have been reviewed by the Board. Complaint #3 of DCOA's appeal states that Regulation 5.6, Decision or Probable Cause Determination "...provides that the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred." The Hearing Officer found in her DECISION, and the Board agrees that the charges presented "...fail to support a finding of probable cause to believe that a violation of 19 Del.C. §§1307(a)(1), (a)(2) and (a)(4) may have occurred..." (emphasis added). The record in this case simply fails to establish the minimum factual

threshold required for the Board to either order a hearing on the allegations or to overrule the Hearing Officer's decision.

The Board has also considered the charge that Ms. Joyce was discriminated against in violation of §1307(a)(4). The record does not support this contention. We agree with the Hearing Officer's conclusion that "...The voluntary identification of a specific alleged informant to the media which results in jeopardy to that individual and threatens public safety does not fall within the protected activities listed in §1307(a)(4). The parties collective bargaining agreement provides the vehicle (grievance and arbitration procedure) for determining the appropriateness of the disciplinary penalty given Ms. Joyce.

The April 28, 1995 decision of the Hearing Officer is, accordingly, wholly affirmed.

IT IS SO ORDERED.

/s/Arthur A. Sloane
ARTHUR A. SLOANE, Chair

/s/Henry E. Kressman
HENRY E. KRESSMAN, Member

/s/William Moser
WILLIAM MOSER, Member

Date: June 12, 1995