

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

DELAWARE CORRECTIONAL OFFICERS ASSOCIATION, :
 :
 Petitioner, :
 :
 v. : U.L.P. No. 95-06-138
 :
 STATE OF DELAWARE, :
 DEPARTMENT OF CORRECTION, :
 :
 Respondent. :

PROBABLE CAUSE DETERMINATION

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" or "Act"), 19 Del.C. Chapter 13 (1994). 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.

DCOA filed the above-captioned unfair labor practice charge with the Public Employment Relations Board ("PERB") on June 14, 1995. The charge alleges violations of Article 1307, Unfair Labor Practices, (a)(1), (2) and (6), of the Public Employment Relations Act, 19 Del.C. 13 (1984), 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.

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

(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 unit this Chapter.

BACKGROUND

The parties are currently engaged in negotiations for the purpose of entering into a collective bargaining agreement and have been so engaged since April, 1994. On or about September 15, 1994, the parties entered into an Interim Agreement which includes the following provisions:

34.a Vacancies at each institution shall be posted by shift and days off. Applications by Correctional Officers for such posted shift and days off for the position of Correctional Officers shall be selected by seniority of those eligible to bid.

34.b Vacancies at each institution within all other classifications, including Correctional Officers' Specialized positions, Corporals and Sergeants, shall also be posted shift and days off selection but shall be based on skill, ability, and reliability, seniority, and overall needs of the institution.

The addition of the underlined passage is the only change to Article 34.b from the prior Agreement. Despite requests from the Association and assurances from the State, the term "specialized position" remains undefined.

On April 13, 1995, bids were posted for 26 positions one of which was designated as a specialized position. The Petitioner maintains the position is not a specialized position and the awarding of the position should have been made pursuant to Article 34.a, rather than Article 34.b.

The Petitioner alleges that by failing to follow the contractual procedure and define the term specialized position in a timely manner, as it agreed to do, the Respondent has violated the Act, as alleged.

OPINION

The authority to dismiss an unfair labor practice charge for lack of probable cause to believe that an unfair labor practice has occurred is found in Article 5.6, of the Board's Rules and Regulations, which provides:

5.6 Decision or Probable Cause Determination

- (a) Upon review of the Complaint, Answer and Response, the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with the provisions set forth in Regulation 7.4. The Board shall decide such appeals following a review of the record, and, if the Board deems necessary, a hearing and/or the submission of briefs.

The issue raised by this grievance concerns the interpretation and application of Article 34 of the interim collective bargaining agreement agreed to by the parties in September, 1994.

The PERB has consistently applied its policy concerning questions requiring contract interpretation as first set forth in Brandywine Affiliate NCCEA/DSEA/NEA v. Brandywine School District Board of Education, (Del. PERB, U.L.P. No. 85-06-005 (1985)), which provides:

The unfair labor practice forum is not a substitute for the grievance procedure and the Public Employment Relations Board has no jurisdiction to resolve grievances through the interpretation of contract language. It may, however, be necessary for the Board to periodically determine the statue of specific contractual provisions in order to resolve unfair labor practice issues properly before it.

In the case of Indian River Ed. Assn. v. Bd. of Ed. Indian River School District (Del. PERB, U.L.P. No. 88-11-027 (1988)), the PERB dismissed the charge for lack of probable cause to believe that a violation had occurred, concluding: The determination of whether the District's action in this matter was proper necessarily requires the interpretation of Article XVII, Section D. This determination is, by statute, the function of the negotiated grievance procedure. In exercising its authority the Board cannot, as it is requested to do here, serve as an alternative to the grievance procedure. Lastly, the complaint contains no allegation, nor does the record establish, that the [school] Board's refusal to honor the appeal to Level III was for any reason other than its good-faith perception of its rights under the relevant contract language.¹

Analysis of contractual language by the PERB has been limited to matters requiring the determination of the status quo. Christina Education Assn. v. Bd. of Ed., Christina School District, Del. PERB, U.L.P. No. 88-09-026 (1986).²

The procedure for resolving disputes involving the interpretation and/or application of the collective bargaining agreement was not unilaterally imposed upon the Association by the State. To the contrary, it was mutually agreed to during the give and take of the collective bargaining process. The fact that the negotiated Agreement contains provision which includes an undefined term is not uncommon; however, such a provision raises a question of contract interpretation which is properly resolved through the negotiated grievance procedure.

The complaint does not allege that a grievance as filed which the State refused to process according to the negotiated grievance procedure. The

¹ See also Lake Forest Ed. Assn. v. Lake Forrest Bd. of Ed., Del. PERB, U.L.P. No. 92-07-076 (1992); I.A.F.F., Local 1590 v. City of Wilmington, Del. PERB, U.L.P. No. 91-10-093 (1992).

² See also Indian River Ed. Assn. v. Bd. of Ed., Indian River School District, Del. PERB, U.L.P. No. 90-09-053 (1990); F.O.P. Lodge No. 1 v. City of Wilmington, Del. PERB, U.L.P. No. 93-08-088 (1993); I.A.F.F., Local 1590 v. City of Wilmington, Del. PERB, U.L.P. No. 93-06-085 (1993).

fact that the grievance procedure does not contain a provision requiring review by a neutral third party is of no consequence. The procedure for resolving disputes involving the interpretation and/or application of the collective bargaining agreement was not unilaterally imposed upon the Association by the State. To the contrary, the contractual grievance procedure was mutually agreed to within the give and take of the collective bargaining process, the result of which is that the Petitioner is bound by the provision for which it bargained and to which it agreed.

DECISION

Based upon the foregoing, it is determined that pursuant to Rule 5.6, Decision or Probable Cause Determination of the Rules and Regulations of the Public Employment Relations Board, the pleadings fail to support a finding of probable cause to believe that a violation of 19 DeL.C. §1307, as alleged, has occurred.

Accordingly, the Charge is dismissed.

IT IS SO ORDERED.

DATED: August 31, 1995

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