

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

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| RAMON TAYLOR, et. al. |) | |
| |) | |
| Charging Parties, |) | |
| |) | |
| v. |) | <u>U.L.P. No. 96-10-197</u> |
| |) | [Ramon Taylor, et.al.] |
| DELAWARE CORRECTIONAL |) | |
| OFFICERS ASSOCIATION, |) | |
| |) | |
| Respondent. |) | |

BACKGROUND

Sergeant Ramon Taylor (hereinafter "Taylor" or "Petitioner") is a uniformed correctional officer and a "public employee" within the meaning of 19 Del.C. §1302(m) of the Public Employment Relations Act (hereinafter "PERA" or "Act"). The Delaware Correctional Officers Association (hereinafter "DCOA" or "Respondent") is the "exclusive bargaining representative" for various employees, including uniformed officers, of the Delaware Department of Corrections, within the meaning of 19 Del.C. §1302(i), of the Act.

On October 21, 1996, Petitioner filed the instant unfair labor practice charge alleging conduct by the DCOA in violation of §1307(b)(1) and (3), of the Act.

Section 1307, UNFAIR LABOR PRACTICES, provides, in relevant part:

(b) It is an unfair labor practice for a public employee or for an employee organization 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.

(3) 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.

New matter set forth in paragraphs 7 through 12 of Respondent's Answer filed on October 29, 1996, were denied by the Petitioner in its Reply filed on November 12, 1996. No supporting argument was presented by either party.

STIPULATED FACTS

1. On or about the 30th day of August, 1996, a vote was held by DCOA for a new contract that would effect all correctional officers in the bargaining unit. All non-union members were denied the opportunity to vote in the ratification of the contract even though association dues and fair share fees were adopted.
2. Pat Brooks is a representative of DCOA and works at Gander Hill Prison. Mrs. Brooks was working the voting box at Gander Hill.
3. Don Carlock, Veronica Watson, Melissa Lee, Winford Hudson, Joseph Medford, Jack Clay, Lillian Gressmer, Dale McFadden, James Hamilton, James Johnson, Lewis Jordan, Ramon Taylor, Joseph Bryant, Barry Taylor and Christopher Mullins are all non-union members of the bargaining unit at Gander Hill Prison as correctional officers and were denied the opportunity to vote. All other voting locations other non-union members were also denied the opportunity to vote.
4. If any other unidentified non-union members attempted to vote at Gander Hill or other locations they would have also been denied the opportunity to vote.

ISSUE

Whether DCOA's refusal to permit bargaining unit employees who were not members of the Union the opportunity to participate in the vote to ratify the collective bargaining agreement negotiated by the Delaware Correctional Officers Association with the Delaware Department of Corrections, violated 19 Del.C. §1307(a) and (b), as alleged?

DISCUSSION

The certified exclusive bargaining representative of an appropriate bargaining unit is required to represent all members of the unit equally without regard to union membership. 19 Del.C. §1302(i) (1994); Vaca V. Sipes, 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed.2d 842(1967); Ford Motor Co. v. Huffman, 345 U.S. 330, 73 S.Ct. 681, 97 L.Ed. 1048 (1953); International Ass'n. of Mach's. v. NLRB, 626 Fed.2d 119 (9th Cir. 1980).

The Act requires the parties to confer and negotiate in good faith with respect to terms and conditions of employment and to execute a written agreement once the negotiations are concluded. 19 Del.C. §1302(d). There is no requirement in the Delaware Public Employment Relations Act that a collective bargaining agreement must be ratified by the employees in order to constitute a legally binding document.

Although not previously addressed by the Delaware PERB, the singular and narrow issue raised by this petition has been previously considered in both the federal and other State jurisdictions. While decisions rendered in other jurisdictions are not binding upon the PERB when considering like issues, they often serve as a valuable analytical aid.

Citing the case of Houchon's Market of Elizabethtown, Inc. v. NLRB, 375 F.2d 208 (6th Cir. 1967), the Pennsylvania Commonwealth Court concluded that unions have the right to govern their internal affairs without judicial interference and that

the procedure for ratifying collective agreements is an internal union matter. Pa. Labor Relations Board v. Eastern Lancaster County Ed. Ass'n. Pa. Cmwlth, 427 A.2d 305 (1981).

The Oregon courts have similarly held that, in the absence of a statutory requirement for the exclusive bargaining representative to consult with the general membership before ratifying a contract, the means of contract ratification is best left to the discretion of the exclusive representative. Oregon City Federation of Teachers v. Public Employee Relations Board, 23 Or.App., 543 P 2d 297 (1975).

Dealing with the precise issue presented here, the courts of Louisiana upheld the legality of a contract ratification procedure restricted to only union members. Daigle v. Jefferson Parish School Bd., 345 So.2d 583 (La. App.1977) writ refused 347 So.2d 260 (1977).

In applying analogous federal law, the U.S. Court of Appeals for the Third Circuit held:

The law does not require that a collective bargaining agreement be submitted to a local union or the union membership for authorization, negotiation or ratification, in the absence of an express requirement in the agreement or in the constitution, by-laws or rules and regulations of the Union. Local 1 v. Rockwell-Standard Co., 81 LRRM 2117 1972.

In the absence of a statutory mandate it is well established that the determination of the method of ratifying a negotiated labor agreement is properly within the exclusive discretion of the exclusive bargaining representative.

The decision making authority of an exclusive bargaining representative is not without restraint. The protection afforded to the employees by the Act is that if a majority of the bargaining unit employees become dissatisfied with the judgment and

decisions made by the exclusive representative in furtherance of their collective interests, the representative can be decertified under established PERB procedures.

CONCLUSIONS OF LAW

1. Ramon Taylor is a public employee within the meaning of §1302(m) of the Public Employment Relations, Act, 19 Del.C. Chapter 13.

2. The Delaware Correctional Officers Association is an employee organization within the meaning of §1302(h) of the Act.

3. The Delaware Correctional Officers Association is an exclusive representative within the meaning of §1302(i) of the Act.

4. Consistent with the foregoing opinion and findings, the refusal by the Delaware Correctional Officers Association to permit bargaining unit employees who are not union members to participate in the ratification vote for a successor collective bargaining agreement does not violate §1307(b)(1) or (3), of the Act, as alleged.

WHEREFORE, the Charge is dismissed.

DATED: April 17, 1997

/s/Charles D. Long, Jr.

Charles D. Long, Jr., Executive Director,
Delaware Public Employment Relations Board