

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

FRATERNAL ORDER OF POLICE.
LODGE 10,

Charging Party

ULP No. 98-07-238

and

STATE OF DELAWARE,
DEPARTMENT OF CORRECTIONS,
Respondent

DECISION ON PRELIMINARY MATTERS

The Fraternal Order of Police, Lodge 10, (“FOP”) is an employee organization within the meaning of Section 1302(h) of the Public Employment Relations Act (“PERA”). 19 Del.C. Chapter 13 (1994). FOP is the exclusive representative of Probation and Parole Officers employed by the State of Delaware, Department of Correction (DOC). The Department of Correction is a public employee within the meaning of Section 1302(n) the PERA.

On July 30, 1998, Patrick Cronin, President of the FOP, as the named Charging Party filed an unfair labor practice charge against individually named management representatives of the DOC, as Respondents.

On August 7, 1998, the State of Delaware, Department of Correction, filed its Answer denying the substance of the charge and, by way of New Matter, asserting the following:

New Matter 1: Rule 2.2, of the PERB’s Rules and Regulations includes “public employer” but not named individuals in the definition of “party”. The statutory definition of “Public employer” provides, in relevant part: . “ . . the State, any county of the State or any agency thereof, and/or any county of the

State or any agency thereof, and or any municipal corporation, municipality City or town located within the State or any agency thereof”

Because individual named Respondents are not included in Rule 2.2 or the statutory definition of public employer they cannot be a party to the dispute. As a result, the Charge is fatally defective and should be dismissed.

New Matter II: Because the Charge requires the interpretation and/or application of Article 10 of the current collective bargaining agreement and otherwise satisfies the established criteria, the matter should be deferred to final and binding arbitration which is the final step of the contractual grievance procedure.

On August 13, 1998, Charging Party filed the following Response to the New Matter:

New Matter I: The individual named Respondents are agents of the DOC, as provided for in §1307(a) of the PERA; therefore, the Charge is properly filed.

New Matter II: While portions of the charge involve both Article 10 of collective bargaining agreement and Section 1307(a), of the PERA, other portions involve only the alleged failure to bargain in good faith, as required by Section 1307(a). Consequently, the charge is properly before the PERB and should not be deferred to arbitration.

PRELIMINARY ISSUES

1. Is the Charge properly filed pursuant to the PERB’s Rules and Regulations and the applicable statutory provisions?
2. Is the Charge a proper subject for deferral?

DISCUSSION

Issue No. 1: 19 Del.C. Section 1307, Unfair Labor Practices, provides, in relevant part:

- (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following: . . .
- (5) Refuse to bargain collectively in good faith with an

employee representative which is the exclusive representative of employees in an appropriate unit, except with respect to a discretionary subject. (emphasis added)

PERB Rule 1.9, Construction of the Regulations, provides:

These regulations set forth rules for the efficient operation of the Board and the orderly administration of the Act. They are to be liberally construed for the accomplishment of these purposes and may be waived or suspended by the Board at any time and in any proceeding unless such action results in depriving a party of substantial rights.

Rule 5.8, Amendment of Complaint or Answer, provides, in relevant part:

(a) At the discretion of the Board, upon due notice to all parties, any complaint may be amended, in such manner as the Board may deem just and proper, at any time before the issuance of a final decision and order, as long as no new cause of action is added after the statute of limitations has run.

The continuing involvement of the individuals initially named as Respondents in the activities which constitute the basis for the charge is undisputed. The State does not contend the individual named respondents acted outside the scope of their authority and were not, therefore, designated representatives of the DOC

In the Response to New Matter, FOP President Cronin changed the named Charging Party from himself to FOP, Lodge 10 and the named Respondent from individual management employees of DOC to State of Delaware, Department of Corrections.

The change in the named parties occurred within the permissible time limits for amending the Charge. Doing so effectively amended the Charge without prejudice to the State. As a result, the parties in this matter are FOP, Lodge 10 and State of Delaware, Department of Corrections. Accordingly, all service of documents upon the Respondent shall be to Jerry Cutler, Esquire, Labor Relations Manager, State Personnel Office, Carvel Building, 10th Floor, 80 French Street, Wilmington, DE 19801.

Issue No. 2: The State's argument concerning deferral to arbitration is correct insofar as it applies to those incidents or issues which satisfy the necessary criteria. The position of the FOP concerning the jurisdiction of the Board is correct insofar as it concerns the statutory obligation to bargain in good faith and unilateral changes to the status quo of terms and conditions of employment.

The pleadings do not define the those allegations which the State considers to be proper subjects for deferral or those which the FOP believes raise exclusively statutory issues. Consequently, an informal conference will be promptly scheduled for the limited purpose of identifying those incidents or issues, if any, which are properly placed before the PERB by the allegations set forth in the instant unfair labor practice charge.

August 26, 1998

(Date)

/s/Charles D. Long

Charles D. Long
Executive Director