

STATE OF DELAWARE  
PUBLIC EMPLOYMENT RELATIONS BOARD

DELAWARE CORRECTIONAL OFFICERS ASSN., )  
THOMAS J. WHITEHALL & JAMES A. FRITSCH, )  
Charging Parties, )

and )

ULP No. 00-02-275

STATE OF DELAWARE, DEPARTMENT OF )  
CORRECTION, PATRICK CIRWITHIAN & AVERY )  
HARMON, )  
Respondents. )

PROBABLE CAUSE DETERMINATION

The Delaware Correctional Officers Association ("DCOA") is an employee organization within the meaning of Section 1302(h) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (1994) ("PERA"). Thomas J. Lighthall and James A. Fritsch are employees of the Department of Correction ("DOC") and public employee within the meaning of Section 1302(m), of the Act. The State of Delaware, Department of Correction, is a public employer within the meaning of Section 1302(n), of the Act.

DCOA filed an unfair labor practice charge on February 10, 2000, alleging conduct by Patrick Cirwithian and Avery Harmon, acting as designated representatives of DOC, in violation of Sections 1307(a)(1), (a)(3), (a)(4) and (a)(6), of the Act. Specifically, the Association contends reason employees Lighthall and Fritsch were bypassed for promotion because of union animus.

The State contends the unfair labor practice charge should be dismissed because it was not timely filed pursuant to PERB Rule 1.1. The State further maintains that Patrick Cirwithian and Avery Harmon are not "designated representatives" of the State as that term is used in Section 1307(a) of the Act and their conduct, even if proved, cannot be imputed to the State.

### **APPLICABLE STATUTORY PROVISIONS**

19 Del.C. §1307(a), 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:

(1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed by this Chapter.

(2) Encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.

(4) Discharge or otherwise discriminate against an employee because the employee has filed or signed an affidavit, petition or complaint or has given information or testimony under this Chapter.

(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 under this Chapter.

### **DETERMINATION**

Considered in a light most favorable to the Charging Parties, the factual issues raised by the pleadings constitute probable cause to believe that an unfair labor practice may have occurred.

A hearing shall be scheduled within forty-five (45) days for the purpose of receiving evidence concerning: (1) the underlying incidents resulting in the

specific violations alleged in the Charge; and (2) whether Mr. Cirwithian and Mr. Harmon acted as designated representatives of the Department. Argument will also be received concerning whether the Charge is timely filed,

March 14, 2000

(Date)

Charles D. Long, Jr.

Charles D. Long,  
Executive Director