STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

DELAWARE CORRECTIONAL OFFICERS ASSOCIATION,	:	
	:	
Charging Party,	:	**Review of Hearing**
	:	**Officer's Decision**
v.	:	
	:	**U.L.P. No. 01-07-324**
DELAWARE DEPARTMENT OF CORRECTION,	:	
	:	
Respondent.	:	

Appearances

John F. Brady, Esq., for DCOA
Jerry M. Cutler, State Labor Relations Office, SPO for DOC

Background

The Delaware Correctional Officers Association ("DCOA") is an employee organization within the meaning of §1302(h) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (1994), ("PERA"). DCOA is the exclusive representative of uniformed correctional officers of the Delaware Department of Correction, within the meaning of §1302(i) of the PERA.

The Department of Correction is an agency of the State of Delaware ("State") and a public employer within the meaning of §1302(n) of the PERA.

On July 24, 2001, DCOA filed an amended unfair labor practice charge, alleging the State violated 19 Del.C. §1307(a)(1) and (a)(2) [1] by using an ion scanning device to screen bargaining unit employees entering the Sussex Correctional Institution on April 11, 2001 for exposure to drugs. DCOA charged that the scanning process: 1) was discriminatorily applied based upon sex; 2) violated Article 45 of the parties' collective bargaining agreement; 3) was untrustworthy and unreliable; 4) did not establish

[1] (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.

a reasonable suspicion under Delaware law; 5) was unsupported by regulations mandated by the collective bargaining agreement and State law; and 6) threatened the integrity and stability of DCOA as an exclusive bargaining representative.

On August 2, 2001, the State filed its Answer to the Charge, denying the material allegations of the charge and setting forth New Matter. On August 8, 2001, DCOA filed its Response denying the new matter.

On August 20, 2001, the Executive Director of the Public Employment Relations Board ("PERB") dismissed the Charge, finding there was no probable cause to believe the State's conduct, as alleged, constituted an unfair labor practice under the PERA.

On September 7, 2001, DCOA requested review of the Executive Director's dismissal of the charge, in accordance with the procedures established by PERB Regulation 7.4. Each member of the Public Employment Relations Board was provided with a copy of the record created before the Executive Director. The Board met in public session on October 17, 2001, to consider DCOA's request. At that time, both DCOA and the State presented oral argument.

POSITIONS OF THE PARTIES

DCOA:

DCOA argues on appeal that the Executive Director erred in failing to consider the coercive effect on bargaining unit members of using the ion scanner in a manner which was not consistent with either the collective bargaining agreement or DOC Policy 8.44. DCOA asserts only male officers were scanned on the evening of April 11, 2001, and that the machine was operated "with all bells and whistles operational and not silenced," as was required by a preceding arbitration award. Male officers going off duty were scanned as well as those reporting for duty.

DCOA also argues the Executive Director erred in ruling that verification of the pleading content may be made by the person filing the pleading. To require that verification may be made by someone other than an agency employee moots the verification process.

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

Finally, DCOA argues the State Labor Relations Manager, who was the State's representative in this matter but who is not an attorney admitted to the Delaware Bar, is required to comply with Delaware Supreme Court Rule 72 (b)(v) and (f). [2]

State of Delaware, DOC:

The State objected to the presentation of argument relating to issues which were not included in the initial pleadings and, therefore, were not before the Hearing Officer at the time of his decision. Namely, the State argues that neither the factual question of whether "the bells and whistles" were used during the scanning on April 11, 2001, or the legal question of whether the State's Labor Relations Manager is required to comply with Supreme Court Rule 72 were in the record upon which the Executive Director based his decision. By failing to place these matters in issue prior to the Board's review, DCOA deprived the Hearing Officer of the opportunity to consider the impact of the issues and attempted to burden the Board with responsibility for ruling in the first instance on matters which were never presented at the hearing level.

The State argues the Executive Director was correct in finding there was no violation of 19 Del.C. §1307(a)(1) and/or (2). When a ion scan is conducted in a prison setting, all persons entering the facility are scanned, including visitors, employees, vendors and all others. DCOA has failed to allege the State engaged in any conduct which dominates the administration of the union or interferes with the rights of employees.

The State Labor Relations Manager did not represent a party in this matter, but rather, was acting in his capacity as the State's designee for all matters relating to labor relations, per the Governor's Executive Order. Further, this issue is not properly placed before the PERB, because PERB Rule 7.4 provides that decisions of the Executive Director shall be subject to Board review. The Executive Director has not issued a decision on this issue.

[2] Rule 72, which has been in effect since 1992, sets forth the requirements for out-of-state attorneys to practice

DISCUSSION

Upon consideration of the record and the oral and written arguments of the parties, we unanimously affirm the Executive Director's decision to dismiss this Charge. The pleadings, even when viewed in a light most favorable to the Charging Party, do not provide a basis for concluding the State interfered with, restrained or coerced employees in the exercise of their rights under the PERA, or dominated, interfered with, or assisted in the existence or administration of DCOA.

We find DCOA's argument that the State's Answer to the Charge was inadequate unpersuasive. PERB Rule 1.2 requires that the original of any document filed with PERB must be "signed by the filing party, by an attorney or representative of record for the party, or an officer of the party." Further, PERB Rule 5.3 states: "[a]nswers shall be signed by the persons filing them, sworn to before any person authorized to administer oaths and shall then be filed with the Executive Director." There is nothing in this record, the PERB's Rules and Regulations, or prior practice which supports the Charging Party's argument that the required verification must be made by an employee of the Department of Correction, rather than by the State's Labor Relations Manager.

Finally, whether the State's Labor Relations Manager was engaged in the practice of law and therefore subject to Supreme Court Rule 72 was not raised before or decided upon by the Hearing Officer. Rule 72 was promulgated by the Delaware Supreme Court under its exclusive authority to regulate the conduct of attorneys within the State of Delaware. Any requests for enforcement of the rule must be made to the promulgating agency and are not within the jurisdiction of this Board.

DECISION

Consistent with the foregoing discussion, the Executive Director's decision to dismiss this Charge for failing to establish probable cause to believe that an unfair labor practice has been committed, is affirmed in its entirety.

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before Delaware courts and administrative agencies.

IT IS SO ORDERED

/s/Henry E. Kressman
HENRY E. KRESSMAN, Chairman
Delaware Public Employment Relations Bd.

/s/R. Robert Currie
R. ROBERT CURRIE, Member
Delaware Public Employment Relations Bd.

/s/Elizabeth D. Maron
ELIZABETH D. MARON, ESQ., Member
Delaware Public Employment Relations Bd.

Dated: November 27, 2001