

**STATE OF DELAWARE**  
**PUBLIC EMPLOYMENT RELATIONS BOARD**

DELAWARE CORRECTIONAL OFFICERS ASSOCIATION,	:	
	:	
Charging Party,	:	<b>Review of Hearing</b>
	:	<b>Officer's Decision</b>
v.	:	
	:	<b><u>U.L.P. No. 01-07-326</u></b>
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) <sup>1</sup> by threatening to fire probationary employees unless DCOA agreed to extend their period of probationary employment.

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<sup>1</sup> (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.

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 constituted an unfair labor practice under the PERA, as alleged.

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 the Executive Director failed to consider the coercive effect of the State’s conduct on the Union. Affected probationary employees were simultaneously provided with copies of the Department’s request for the Union to agree to extend the probationary period. The employees were notified in the letter that if the Union did not agree to the extension, they would be terminated at the end of their probationary period.

DCOA argues it agreed during the last negotiations to extend the probationary period to one year, exceeding the merit system requirements by six months, in consideration of the Department’s need to hire additional employees to staff new and expanded facilities. When the State requested to further extend that one year period for another six months to one year, and the request was sent to DCOA within days of the expiration of the initial period, the State’s actions served to undermine the union in violation of the PERA.

DCOA also argues the Executive Director erred in ruling that pleading verification may be made by the person filing the pleading. PERB rules require verification be made by an agency employee. To hold otherwise, DCOA argues, moots the verification process.

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), (f) and (v).<sup>2</sup>

State of Delaware, DOC:

Article 9 of the parties' collective bargaining agreement states:

All new employees shall be considered probationary employees for a period of one year from the date of hire. The probationary period may be extended upon mutual agreement...

The State argues that where the collective bargaining agreement expressly permits agreement to extend a probationary period, it is illogical to assert that one party could violate its statutory obligations by seeking the other party's agreement. Therefore, the State argues the Executive Director's decision should be sustained as there is no evidence on the record that the State either interfered with, restrained or coerced any employee, or dominated, interfered with or assisted the union.

The State argues the Executive Director was correct in finding there was no violation of 19 Del.C. §1307(a)(1) and/or (2). 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 argues its Labor Relations Manager did not represent a party in this matter, but rather, was acting in his capacity of 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.

## DISCUSSION

Upon consideration of the record and the arguments of the parties, the Board unanimously affirms the Executive Director's decision to dismiss this Charge. Although the short time period between the State's request for extension to DCOA and the actual termination of the probationary period was unnecessarily short considering the State had a full year to assess the employees' performance, an appropriate time frame for notice to DCOA is an appropriate matter for collective bargaining. 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.

DCOA's argument that the State's Answer to the Charge is inadequate is likewise 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 on this record, in 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 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 that rule must be made to the promulgating agency and are not within the jurisdiction of this Board.

**WHEREFORE**, 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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<sup>2</sup> Rule 72 has been in effect since 1992 and sets for the requirements for out-of-state attorneys to practice 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