

**STATE OF DELAWARE  
PUBLIC EMPLOYMENT RELATIONS BOARD**

<b>DELAWARE CORRECTIONAL OFFICERS</b>	)	
<b>ASSOCIATION,</b>	)	
<b>Charging Party,</b>	)	
	)	
<b>v.</b>	)	<b>ULP No. 01-07-326</b>
	)	
<b>STATE OF DELAWARE, DEPARTMENT</b>	)	
<b>OF CORRECTION,</b>	)	
<b>Respondent.</b>	)	

**PROBABLE CAUSE DETERMINATION**

The State of Delaware, Department of Corrections (“State”) is a public employer within the meaning of Section 1302(n) of the Public Employment Relations Act, 19 Del.C. Ch. 13 (1994 (“Act”). The Delaware Correctional Officers’ Association (“DCOA”) is an employee organization within the meaning of Section 1302(h) of the Act and the exclusive representative of certain employees of the DOC, as defined in Department of Labor Rep. Case No. 1(h), within the meaning of Section 1302(j) of the Act.

The unfair labor practice charge, as amended and refiled on July 24, 2001, alleges conduct by the State in violation of 19 Del.C. Section 1307(a)(1) and (a)(2). Specifically, the charge alleges that on or about June 30, 2001, the State requested, and the Association agreed, to extend the probationary periods of several probationary employees. Between June 15, 2001 and June 21, 2001, the State informed the Association that if the Association did not agree to such extensions the probationary employees would be terminated.

DCOA contends the by its conduct State has placed the Association in the untenable position of either foregoing the right to represent bargaining unit employees under Article 5.1, of the collective

bargaining agreement by extending the probationary period or causing the termination of the affected employees.

DCOA contends that by its conduct, the State has violated 19 Del.C. Sections 1307(a)(2) and (a)(3).

In its Answer filed on August 2, 2001, the State essentially admits the material allegations. Under New Matter, the State points out that Article 9, of the parties' collective bargaining agreement permits the probationary period to be extended by mutual agreement of the parties.

In its Response filed on August 8, 2001, DCOA denies the allegations set forth under New Matter. DCOA also contends that because the State's Answer was not verified by an employee of the Department of Correction it does not comply with the PERB's Rules. Consequently, the Answer is improperly filed so that the averments set forth in the Charge should be considered admitted and the charge sustained.

### **APPLICABLE STATUTORY PROVISIONS**

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:
  - (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.

### **ISSUE**

Whether the conduct alleged in the Charge constitutes probable cause to believe that an unfair labor practice may have occurred?

**DISCUSSION**

The Answer by the State was properly filed pursuant to PERB Regulation 5, Unfair Labor Practice Proceedings, Section 5.3, Answer to Charge.

The State's request to extend the probationary period and/or its position that in the absence of a mutually agreed to extension probationary employees will be terminated is contractually authorized and cannot, therefore, constitute a violation of either 19 DeIC, Section 1307(a)(1) or (a)(2), as alleged.

**DETERMINATION**

Consistent with the foregoing discussion, there is no reason to believe that an unfair labor practice may have occurred.

Accordingly, the Charge is dismissed with prejudice.

August 20, 2001  
(Date)

/s/Charles D. Long, Jr.  
Charles D. Long, Jr.,  
Executive Director