

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

AMERICAN FEDERATION OF STATE, COUNTY)	
AND MUNICIPAL EMPLOYEES, COUNCIL 81,)	
LOCAL 2305,)	
)	<u>ULP No. 03-10-407</u>
Petitioner,)	
)	Probable Cause Determination
STATE OF DELAWARE, DEPARTMENT OF)	
HEALTH AND SOCIAL SERVICES, DIVISION OF)	
ALCOHOLISM, DRUG ABUSE & MENTAL HEALTH,)	
)	
Respondent.)	

BACKGROUND

The State of Delaware (“State”) is a public employer within the meaning of §1302(p) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1986). The Department of Health and Social Services, Division of Alcoholism, Drug Abuse and Mental Health is an agency of the State.

American Federation of State, County and Municipal Employees, Council 81 (“AFSCME” or “Council 81”) is an employee organization which admits to membership employees of a public employer and which has as a purpose the representation of such employees in collective bargaining, pursuant to 19 Del.C. §1302(i). AFSCME, by and through its Local 2305, represents a bargaining unit of DHSS/DADAMH Registered Nurses employed at the Delaware State Hospital (as defined by DOL Case #35) and a bargaining unit of DHSS/DADAMH Licensed Practical Nurses employed at the Delaware State Hospital (as defined by DOL Case #46) for purposes of collective bargaining and is certified as the exclusive bargaining representative of those units. 19 Del.C. §1302(j).

On or about October 14, 2003, AFSCME filed an unfair labor practice charge alleging the State violated 19 Del.C. §1307(a)(5) and/or (a)(8), which provide:

- (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
 - (5) Refuse to collectively bargain 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.
 - (8) Refuse to disclose any public record as defined by Chapter 100 of Title 29.

The Charge alleges that during the course of collective bargaining for a successor to the parties' agreement (which expired on January 7, 2003), AFSCME requested a copy of a document entitled "2001 Nurse Consultant Report". AFSCME asserts the information contained in this document is necessary for it to effectively negotiate a successor collective bargaining agreement and that this document constitutes public information as defined by 29 Del.C. Chapter 100. By failing and refusing to provide this document, AFSCME charges the State has violated the Public Employment Relations Act, 19 Del.C. §1307.

The State filed its Answer to the Charge on or about October 22, 2003, in which it admits that it did not provide a copy of this document to AFSCME but denies that the information contained therein is either necessary for effective negotiations or that it constitutes public information as defined by 29 Del.C. Chapter 100.

The State's Answer did not include new matter. This Probable Cause Determination is based upon a review of AFSCME's Charge and the State's Answer.

DETERMINATION

Regulation 5.6 of the Rules of the Delaware Public Employment Relations Board requires:

- (a) Upon review of the Complaint, the Answer and the Response, the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with the provisions set forth in Regulation 7.4. The Board will decide such appeals following a review of the record, and, if the Board deems necessary, a hearing and/or submission of briefs.

- (b) If the Executive Director determines that an unfair labor practice has, or may have occurred, he shall, where possible, issue a decision based upon the pleadings; otherwise he shall issue a probable cause determination setting forth the specific unfair labor practice which may have occurred.

Construed in a light most favorable to the Charging Party, the pleadings constitute reason to believe that an unfair labor practice may have occurred. Specifically, the issue is whether the State violated 19 Del.C. §1307 (a)(5) and/or (a)(8) when it failed and/or refused to provide AFSCME with the requested document, “2001 Nurse Consultant Report”.

The pleadings raise both factual and legal questions which must be resolved on a record created by the parties. Specifically these questions relate to whether the State is obligated to provide the requested information to AFSCME under its statutory duty to bargain in good faith and/or whether the requested information constitutes “public information” as defined by 29 Del.C. Chapter 100.

PERB will convene an informal conference with the parties in order to discuss whether a hearing is necessary or whether the parties can agree to a stipulated set of facts on which argument can be made and a decision rendered in lieu of a hearing.

DATE: 24 November 2003

/s/Deborah L. Murray-Sheppard

DEBORAH L. MURRAY-SHEPPARD
Hearing Officer
Del. Public Employment Relations Bd.