

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

<b>CHRISTINE M. JONES,</b>	)	
	)	
<b>Charging Party</b>	)	
	)	
<b>v.</b>	)	<b>ULP No. 04-08-446</b>
	)	
<b>STATE OF DELAWARE, DEPARTMENT</b>	)	
<b>OF HEALTH AND SOCIAL SERVICES,</b>	)	
	)	
<b>Respondent</b>	)	

**PROBABLE CAUSE DETERMINATION**

The State of Delaware, Department of Health and Social Services, (“State”) is a public employer within the meaning of 19 Del.C. Chapter 13, the Public Employment Relations Act (“PERA” or “Act”), Section 1302(p).

Christine M. Jones (“Jones” or “Charging Party”) is a public employee within the meaning of Section 1302(o) of the PERA.

Charging Party first attempted to file the above-captioned unfair labor practice charge with the Public Employment Relations Board (“PERB” or “Board”) was August 12, 2004. The Charge was deficient in that there was no certificate of service upon the Respondent; no affidavit/verification signed by Charging Party; and no identification of the specific subsections of Section 1307(a) of the Act allegedly violated. On August 12,

2004, Charging Party was advised that, “In the interest of avoiding duplication, please refile the Charge, conforming paragraph 12 to identify the specific subsections of sec. 1307(a) you are alleging were violated, and including the appropriate Affidavit/Verification signed by Ms. Jones and a Certificate of Service.”

The Charge was officially refiled on November 8, 2004, and the parties were so notified by letter from the Executive Director dated November 15, 2004.

The Charge alleges a violation of Sections 1307(a)(1) and (4), which provide:

1307. Unfair Labor Practices

(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.

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

The Complaint alleges that on or about February 3, 2004, Jones filed a grievance through her Union. During the pendency of her grievance, Jones submitted an application to enroll in an educational program sponsored by the State known as the PM-17 Program. The PM-17 Program would entitle Jones to be fully compensated and work only one (1) day per week while pursuing an advanced nursing degree.

The Charge alleges that Jones was eligible to participate in the Program and was encouraged by management to do so.

It is alleged that on or about April 26, 2004, the Assistant Director of Nursing informed Jones that the management personnel in a position to approve her application into the PM-17 Program were upset about her filing the aforementioned grievance. Pressure was exerted upon Jones by the Assistant Director of Nursing to withdraw the grievance in exchange for the approval of her PM-17 application. Jones was unwilling to do so. At some time thereafter and in retaliation for having filed the aforementioned grievance, Jones was told that her application was not approved.

On November 19, 2004, the State filed its Answer denying the material allegations set forth in the Complaint and alleging that to be eligible to participate in the PM-17 Program employees were required to have one (1) year of service as a Merit System Employee, and asserted that Jones did not have the requisite service at the time her application was submitted.

Under New Matter, the State argues that the Complaint was not filed within 180 days following April 26, 2004, the only date of the act or event specifically relied upon by Charging Party as the retaliation for her having filed the grievance on or about February 3, 2004.

On November 23, 2004, Charging Party filed two (2) documents. One was an Answer to New Matter which provides, in relevant part:

7. . . . It is specifically denied that the “day or the act or event” specifically referenced by the charging party occurred “on or about April 26, 2004.” To the contrary, although the date is referenced in the Complaint, that date does not represent the date the adverse job action occurred for the purposes of the present claim. The violation occurred on June 15, 2004, as alleged in the Complainant’s Amended Complaint, attached

hereto and marked as Exhibit "A". A copy of the Complainant's Amended Complaint has been duly filed herewith.

8. . . . It is specifically denied that April 26, 2004 is the latest date "after which the designated period of time begins to run" pursuant to Rule 1.1, and the day of the "alleged violation" as specified in Rule 5.2(a). To the contrary, as alleged in the Complainant's Amended Complaint attached hereto and incorporated herein by reference as Exhibit "A", June 15, 2004 is the date of the adverse job action and is the latest date for which the time period begins to run and the day of the actual violation by the Respondent. See Exhibit "A".

9. It is specifically denied that the Complainant's Charge was filed on November 8, 2004. Instead, the Complainant originally filed her Charge with the State of Delaware Public Employment Relations Board on August 23, 2004.<sup>1</sup>

10. It is specifically denied that the charging party has failed to file her charge within one hundred eighty (180) days of the alleged violation. To the contrary, the Complainant has filed her charge in a timely manner. The Complainant filed her charge within one hundred eighty (180) days of the violation date, which is June 15, 2004. (See Exhibit "a"). The Complainant's Amended Charge is likewise timely and actually reflects this occurrence date.

The Amended Complaint also filed on November 23, 2004, inserts a revised paragraph 3(i), which deletes the word "Thereafter," as it appeared in the original complaint, and substitutes the date of "June 15, 2004" as the date Charging Party was informed that she was denied admission in the PM-17 Program.

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<sup>1</sup> As previously noted, the official filing date of Charging Party's Complaint was November 8, 2004, the first date on which the Charge was properly filed.

On December 2, 2004, the State filed its Answer to the Amended Charge denying the allegation of paragraph 3(i). The State's Answer also provides, in relevant part, "Moreover, though the Amended Charge is clearly designed to avoid a finding that it is time-barred, the actions which form the basis for the Charge occurred outside the 180-day period, and the State continues to maintain that the Charge should be dismissed on timeliness grounds."

### **DISCUSSION**

There is no basis for finding, and the Respondent does not argue, that the Amended Charge filed with the Board on November 23, 2004, was improper or impermissible. PERB Rule 5, Unfair Labor Practice Proceedings, provides, in relevant part:

#### 5.8 Amendment of Complaint and/or Answer

(a) At the discretion of the Board, upon due notice to all parties, any complaint may be amended, in such manner as the Board may deem just and proper, at any time before the issuance of a final decision and order, as long as no new cause of action is added after the statute of limitations has run.

Substantively, Paragraph 3(i) of the Amended Complaint substituted the date of June 15, 2004, for the term "Thereafter," in paragraph 3(i) in the original complaint as the date of the adverse job action which is the basis for the Complaint. The Complaint was filed on November 8, 2004, which is well within the 180 day filing period provided for in PERB Rule 5.2, Filing of Charges, which provides, in relevant part:

(a) A public employer, labor organization, or one or more

employee may file a complaint alleging a violation of 14 Del.C. §4007, 19 Del.C. §1607, or 19 Del.C. §1307. Such complaints must be filed within one hundred and eighty (180) days of the alleged violation. This limitation shall not be construed to prohibit introduction of evidence of conduct or activity occurring outside the statutory period, provided the Board or its agent finds it relevant to the question of commission of an unfair labor practice within the limitations period.

### **DECISION**

Having found that the Complaint was timely filed and in consideration of the factual issues raised by the pleadings it is determined that the pleadings are sufficient to establish probable cause to believe that an unfair labor practice may have occurred. The matter will be scheduled for hearing.

**IT IS SO ORDERED**

*/s/Charles D. Long, Jr.* \_\_\_\_\_

Charles D. Long, Jr.,  
Executive Director

Dated: December 9, 2004