

STATE OF DEAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF ELECTRICAL)	
WORKERS, LOCAL UNION 2270,)	
)	
Charging Party,)	
)	
v.)	<u>ULP No. 16-12-1089</u>
)	
STATE OF DELAWARE, DEPARTMENT OF)	Decision on the Merits
TRANSPORTATION, DELAWARE TRANSIT)	
CORPORATION,)	
)	
Respondent.)	

APPEARANCES

George Kepley, President and Business Manager, for IBEW Local 2270
Khrishna C. Hawkins, OMB/HRM/SLREP, for Delaware Transit Corp.

BACKGROUND

The State of Delaware (“State”) is a public employer within the meaning of 19 Del.C. §1302(p) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (“PERA”). The Delaware Transit Corporation (“DTC”) is an agency of the State.

The International Brotherhood of Electrical Workers (“IBEW”) is an employee representative within the meaning of §1302(i) of the PERA. By and through its affiliated Local 2270, the IBEW is the exclusive bargaining representative of a bargaining unit of Paratransit Automotive Technicians, Service Technicians, and Automotive Parts/Inventory

Control Specialists statewide (excluding supervisory employees and employees represented by OPEIU Local 32) employed by DTC. 19 Del.C. §1302(j); DOL Case 213. George Kepley is the current President of IBEW Local 2270.

Automotive Technician Timmothy Nofftz (“Nofftz”) is member of the bargaining unit represented by IBEW Local 2270.

The IBEW and DTC are parties to a collective bargaining agreement with a term of July 1, 2015 through June 30, 2019. The current agreement includes at Section 7 a negotiated grievance procedure which culminates in final and binding arbitration conducted by a neutral arbitrator mutually selected by the parties. The collective bargaining agreement also provides in Section 6 that no employee may be disciplined or discharged without just cause. *Joint Exhibit 8.*

On December 1, 2016, the IBEW filed an unfair labor practice charge with the Public Employment Relations Board (“PERB”) alleging conduct by DTC in violation of 19 Del.C. §1307(a)(1), (2), (3), (4), (5) and (6)¹ of the PERA. The Charge alleges DTC

¹ 19 Del.C. §1607, 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.
 - (2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization.
 - (3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.
 - (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.
 - (5) Refuse to bargain collectively 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.
 - (6) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.

provided incomplete information in response to the IBEW's request for information which is reasonable and necessary for it to represent Nofftz in two grievances which were pending arbitration.

On December 12, 2016, DTC filed its Answer to the Charge denying the legal conclusions and charges made by the IBEW. The Answer included New Matter, asserting the Charge failed to state a claim for which relieve could be granted and should therefore be dismissed. Alternatively, DTC asserted the Charge should be deferred for resolution to the contractual grievance and arbitration procedures.

On December 19, 2016, the IBEW filed a Response to New Matter denying the New Matter contained in DTC's Answer.

On February 21, 2017, a Probable Cause Determination was issued finding the pleadings sufficient to establish probable cause to believe that an unfair labor practice in violation of 19 Del.C. §1307(a)(1) and/or (a)(5) may have occurred. The allegations that DTC had otherwise violated 19 Del.C. 1307(a)(1), (2), (3), (4) and/or (6) were dismissed because they were insufficient to establish probable cause.

A hearing was held on March 20, 2017, and the record closed following receipt of written argument submitted by the parties.

This decision is based upon review of the record created by the parties and consideration of their arguments and related case law.

FACTS

The facts included herein are derived from the documentary and testimonial evidence presented by the parties. On March 7, 2016, Automotive Technician Nofftz was

issued a 20-day suspension² after a pre-termination hearing conducted on February 25, 2016, for an incident which occurred on February 16, 2016, for refusing to accept and perform a work assignment. The IBEW filed and pursued a grievance on Nofftz' behalf through the steps of the negotiated grievance procedure, which culminated in an arbitration hearing on March 7, 2017.³

On September 15, 2016, DTC dismissed Nofftz for violating DTC's maintenance safety regulations when he raised a bus using only three of four required wheel lifts. This matter also proceeded through the grievance process and is scheduled for arbitration.

On October 26, 2016, the IBEW sent a request for information to DTC's Labor Relations Manager Andrew Markovitz ("Markovitz") requesting the following information/documents by November 11, 2016:

1. All Dover, Delaware DTC maintenance shop surveillance files, capturing the inside shot and parts counter on the following date: February 16, 2016.
2. The name of all witnesses that the Company will use at arbitration.
3. The specific issues the witnesses for the Company will be testifying to.
4. Copies of all written statements that the Company will enter into evidence.
5. A list of all other employees disciplined for similar incidents/violations between July 2013 and July 2016.
6. Copies of the discipline issued and the personnel files of the employees listed in Item #5.
7. Copies of all work orders maintenance and repair logs

² On February 17, 2016, Nofftz was notified that he was suspended pending termination for an incident on February 16, 2016. The pre-termination recommendation stated "...You were assigned to repair the cover for the restraint belt on the wheel chair lift that had been knocked off on bus 1501. You were asked by your supervisor if you could fix this and snap it back on. You refused to put it on again unless you had a new one. You were asked again if you could take care of this and again you refused, stating, 'you wouldn't do it without a new part.' The job was then assigned to another technician who made the repair." The notice also states Nofftz was suspended pending termination, "as a result of your refusal to accept a work assignment." *Union Exhibit 12.*

³ As of the date of the hearing on this Charge, the parties were awaiting the arbitrator's decision.

pertaining to bus 1501 for the time spans of January 2015 through September 2016.

8. Copies of notes of all persons who supplied information to the employer, which contributed to the employer's decision to discipline Nofftz.

Joint Exhibit 1.

Markovitz testified that upon receipt of this request, he searched DTC's disciplinary files. He testified that once a grievance is processed to arbitration, the Office of Management and Budget ("OMB") handles all matters relating to that grievance as DTC's representative, including requests for information. Consequently, he transmitted the information he retrieved which was requested by the IBEW to OMB.

On November 10, 2016, Khrishna Hawkins ("Hawkins"), State of Delaware Labor Relations and Employment Practices Specialist, OMB, responded in writing to the IBEW's request as follows:

1. The requested surveillance video does not exist anymore due to the length of time that has elapsed. However, I will provide the surveillance footage capturing the Greivant's *[sic]* interaction with his supervisor on February 16, 2016. Additional time is needed to provide the video in order to determine if IBEW would need specific software to view the video.
2. DTC intends to call Vehicle Maintenance Director Charles H. Megginson; South District Maintenance Manager John Syryla, and Assistant South District Maintenance Manager Jerry Hodges. The Department reserves the right to add or subtract witnesses from this list. The witnesses' testimonies will focus on the incident that occurred on February 16, 2016 and the resulting disciplinary action.
3. See response to request Number 2.
4. DTC will not be entering any written statements as evidence.
5. Please find attached all other employees that have been disciplined for insubordination during the period July 2013 through July 2016.
6. See response to request Number 5.
7. Please find attached the maintenance record for bus 1501.

8. None.

Joint Exhibit 2. DTC did not establish during the course of this proceeding, exactly what documents were appended to its November 10, 2016, response.

On November 23, 2016, IBEW President George Kepley (“Kepley”) sent an email to Hawkins stating that several responses to the November 12, 2016, request for information were “incomplete or have not been provided.” Specifically, the IBEW requested (for a second time): (1) the video surveillance of the February 16, 2016 incident; (2) a list of all other employees disciplined for similar incidents/violations between January 2013 and October 2016; and (3) copies of the discipline/warning issued to those employees.

Joint Exhibit 3. With his email, Kepley provided two sample disciplinary documents which he asserted were “similar” to that issued to Nofftz which were in the IBEW’s possession. He asserted these documents indicated DTC had not fully responded to his request for information regarding employees who had been similarly disciplined.

Hawkins replied by email, stating that she was still waiting to receive the video footage from DTC, and that the IBEW was “not entitled to their entire disciplinary file.”

Joint Exhibit 3.

On January 13, 2017, the IBEW submitted a second document request pertaining to Nofftz’ termination for alleged safety violations. In that request, Kepley asked for the following documents by January 27, 2017, in order to prepare for the arbitration hearing:

1. A list of all other DTC employees disciplined for safety and or similar incidents/violations in the past (5) years.
2. Copies of the discipline issued and the disciplinary files of the employees listed in Item #1.
3. A list of all other DTC employees who have been terminated in the last (5) years.
4. Copies of the discipline issued and the disciplinary files of the employees listed in Item #3

5. The disciplinary file of employee Larry Deats.
6. A copy of the DTC Policies and Procedures for Operators.
7. A copy of the DTC Employee Handbook.
8. A copy of the DTC Safety Manual.
9. A summary of job description and duties for all DTC Supervisor positions.
10. The Dover, DTC maintenance shop surveillance files, for all angles, on August 11, 2016, capturing the lifting of the bus referenced in Nofftz, letter of termination.
11. The name of all witnesses that the Company will use at arbitration.
12. The specific issues the witnesses for the Company will be testifying to.
13. Copies of the notes of all persons who supplied information to the employer which, contributed to the employer's decision to terminate Timmothy Nofftz.

*Union Exhibit 3.*⁴

As of the date of the PERB hearing on March 20, 2017, DTC had provided no written response to the IBEW's January 13, 2017, information request related to the termination.

ISSUE

WHETHER DTC VIOLATED ITS DUTY TO BARGAIN IN GOOD FAITH AND 19
DEL.C. §1307 (A)(1) AND/OR (A)(5) BY FAILING OR REFUSING TO PROVIDE
INFORMATION WHICH IS NECESSARY AND REASONABLY RELATED TO THE

⁴ The IBEW submitted the January 13, 2017 request for information during the hearing on March 20, 2017, effectively amending the Charge to include a second information request. At no point during the hearing or in the argument filed thereafter did DTC object to the amending of the Charge.

Under PERB Procedures, an unfair labor practice charge can be amended "at the discretion of the PERB and upon due notice to all parties, at any time prior to 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." PERB Rule 5.8(a) (emphasis added). *Fraternal Order of Police, Lodge 10 v. State of Delaware, Dept. of Corrections*, ULP 98-07-238; III PERB 1751, 1754 (1998) The State had a full and fair opportunity to present evidence on this matter at the hearing, did not object to the introduction of Union Exhibit 3 (the January 13, 2017 Request for Information), and provided testimony regarding its response to this request. PERB Hearing Transcript ("TR") p.48, 49 and 59.

PERFORMANCE OF THE IBEW'S REPRESENTATIONAL RESPONSIBILITIES,
AS ALLEGED?⁵

DISCUSSION

It is well established that the duty to bargain in good faith under the Public Employment Relations Act obligates a public employer to provide information to an exclusive bargaining representative that is necessary and relevant to that organization in performing its representational duty. *AFSCME 320 & 1102 v. City of Wilmington*, ULP 10-08-761, VII PERB 4757, 4760 (Probable Cause Determination, 2010). This obligation has been recognized by this Board, the Court of Chancery and the Delaware Supreme Court. *Bd. of Education of Colonial School District v. Colonial Education Association, DSEA/NEA*, CA 14383, II PERB 1343 (Del.Ch.,1996), *affirmed Colonial Education Assn. v. Bd. of Education*, 685 A.2d 361, III PERB 1519 (Del., 1996), (citing *Brandywine Affiliate, NCCEA/DSEA/NEA v. Brandywine School District*, ULP 85-06-005, I PERB 131, 149 (1986)); *AAUP v. DSU*, Decision on Remand, ULP 95-10-159, III PERB 2177 (2001); *Delaware Correctional Officers Association v. Delaware Department of Correction*, ULP 00-07-286, III PERB 2209, 2214 (2001), *AFSCME v. DSU*, ULP 10-04-739, VII PERB 4693, 4705 (2010); *AFSCME Locals 320 & 1102 v. City of Wilmington*, ULP 10-08-761, VII PERB 4867, 4878 (2010); *ATU Local 842 v. DTC*, ULP 12-02-850, VII PERB 5493,

⁵ During the March 20, 2017 hearing, the IBEW introduced into evidence three letters addressed to DTC's Labor Relations Manager, which the IBEW asserted for the first time were grievances to which DTC had not replied. *Union Exhibits 6, 7, and 10*. TR p. 24. DTC correctly identified that each of letters raises procedural issues which arise directly from and are related to the discipline issued to Nofftz. On cross-examination, Kepley conceded the letters raise due process concerns related to the disciplinary actions. TR p. 35.

Due process issues may be properly raised as part of a just cause challenge to discipline under the negotiated collective bargaining agreement. Union Exhibits 6, 7, and 10 are not addressed in this decision because they were not previously placed into issue by this Charge and because they are subject to resolution through the negotiated grievance and arbitration procedure under the just cause challenges to Nofftz' discipline, both of which were pending arbitration at the time of this hearing.

5497 (Probable Cause Determination, 2012); *IBEW Local 2270 v. DTC*, ULP 14-01-941, VIII PERB 6001, 6005 (Probable Cause Determination, 2014); *ILA 1694-1 v. DSPC*, ULP 14-10-982, VIII PERB 6383, 6385 (Interim Decision on Preliminary Issue, 2015).

If not otherwise privileged, the employer has a duty to provide information that “includes access to relevant information necessary for the bargaining representative to intelligently determine facts, assess its position and decide what course of action, if any, to pursue.” *NCCEA/DSEA/NEA v. Brandywine Sch. Dist.*, supra at 149. Where requested information relates to a potential grievance, the test for relevance is liberal. *AFSCME v. DSU*, supra at 4704. PERB adopted the *Otay River Constructors*⁶ standard for furnishing information in response to the request of the certified exclusive bargaining representative in *AFSCME Local 320 & 1102 v. City of Wilmington*, (supra at 4879):

... The general rule is that an employer is obligated to provide the employees’ statutory bargaining representative with information in its possession relevant to collective bargaining. *Detroit Edison Co. v. NLRB*, 440 US 301 (1979); *NLRB v. Acme Industrial Co.*, 385 US 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 US 149 (1956); *Curtiss- Wright Corp. v. NLRB*, 347 F.2d 61 (3d Cir. 1965); *Fafnir Bearing Co.*, 146 NLRB 1582 (1964), enf’d. 363 F.2d 716 (2d Cir. 1968). Furthermore, the Board in *Sheraton Hartford Hotel*, 289 NLRB 463, 463-464 (1988) said 8(a)(5) obligates an employer to provide a union with the requested information if there is a probability that the information would be relevant to the union in fulfilling its statutory duties as bargaining representative. When the requested information concerns wages, rates, job descriptions, and other information pertaining to employees within the bargaining unit, the information is presumptively relevant. *Postal Service*, 332 NLRB 635 (2000).

Moreover, information that is “potentially relevant and will be of use to the union in fulfilling its responsibilities as the employees’ exclusive bargaining representative” must be produced. *Acme Industrial*, supra at 435-436; *Conrock Co.*,

⁶ 351 NLRB 1105, 1108 (2007)

263 NLRB 1293, 1294 (1982). The requested information need not be dispositive of the issue for which it is sought but need only have some bearing on it. Information pertaining to employees within the bargaining unit is presumptively relevant. *Sheraton Hartford*, supra, and *Postal Service*, supra.

The duty to furnish information requires a reasonable, good faith effort to respond in a timely manner to the union's request for information. Both the request for information and the response to that request must be made in good faith. The requesting party (in this case the IBEW) has the initial burden to establish the relevance of the requested information, but "the burden is not exceptionally heavy."⁷ All of the information requested by the IBEW on October 26, 2016, (relating to Nofftz' suspension) is limited to information directly related to the pending arbitration and requests records of discipline issued to other employees for "similar incidents/violations" in a three year period. On its face, this request is for information which is presumptively relevant and necessary to the IBEW to fulfill its representational responsibilities.

Once the presumption of relevance is established, the burden shifts to the employer to respond in a good faith in a reasonable and prompt manner. The parties remain under a good faith obligation to attempt to resolve any issues concerning the scope of the request and the methods of production. *AFSCME Locals 320 & 1102*, VII PERB at 4882.

DTC's November 10, 2016 response to the IBEW's October 26, 2016 request for information related to Nofftz' suspension did not include a list of employees who were disciplined during the requested period of July 2013 through July 2016. *Joint Exhibit 2*. Rather, DTC simply attached a Step 4 decision and Last Chance Agreement for Paratransit Specialist Basher dated June 30, 2016, and a July 30, 2015 arbitration award involving

⁷ *AFSCME v. DSU*, VII PERB at 4705.

Mechanic's Helper Green. *Joint Exhibits 5 and 6*. Neither employee was an IBEW Local 2270 bargaining unit member; rather, both were members of a separate unit of DTC employees represented by ATU Local 842. DTC's response did not raise any concerns with regard to the nature or scope of the request, nor did it assert that any portion of the requested documents was privileged, that the request was overbroad, or that IBEW was already in possession of some of the requested documents.

Thirteen days after its initial response and following an IBEW request for missing information, DTC asserted the union was not entitled to the disciplinary files, without further explanation or support for this position. *Joint Exhibit 3*. DTC did not identify or assert the disciplinary files were privileged and therefore not subject to disclosure. PERB has held that "general, broad brush responses that the employer will only respond to valid, relevant requests for documents violate the employer's good faith obligations under §1307(a)(5)." *AFSCME v. DSU*, VII PERB at 4705.

Labor Relations Manager Markovitz' testimony was often vague and contradictory. He testified that once a grievance is processed to arbitration by the IBEW, the Office of Management and Budget ("OMB") becomes DTC's representative in that case and that any matters relating to pending arbitrations are forwarded directly to OMB.⁸ This testimony is consistent with the November 10, 2016 response to the IBEW's information request related to the suspension grievance. The response was authored by the Labor Relations and Employment Practices Specialist in the OMB Human Resource Management office.⁹

⁸ Markovitz testified, "On the specific request for evidence that he's asking for... OMB is supplied what I have and they determine what's going to be submitted to the requesting party." TR p. 64.

⁹ The November 10, 2016 responsive letter was signed by Khrishna Hawkins, who also represented DTC in the processing of this Charge.

The IBEW's second request for information (concerning Nofftz' termination) which was dated January 13, 2017, however, was never responded to in writing by either OMB or DTC. Despite Markovitz' testimony that OMB handles all matters relating to pending arbitrations, he also testified that he had "numerous phone calls" with Kepley regarding the IBEW's information requests (although his testimony did not clearly establish when these conversations occurred or the information request to which they related). If OMB is responsible for all matters relating to a pending arbitration and related information requests, it is misleading (at best) for Markovitz to engage in discussion concerning these matters with a requesting party. The record supports the conclusion that DTC sent conflicting messages to the IBEW concerning who was responsible for responding to the information requests and that DTC did not, either directly or through its representative, act in good faith in responding to legitimate requests for information directly related to pending grievances.

Markovitz, in his role as DTC's Manager of Labor Relations testified he is responsible for maintaining disciplinary records for all DTC employees. He testified concerning the electronic search he conducted of DTC disciplinary records, which are maintained in *PeopleSoft*, in response to IBEW's information request related to Nofftz' suspension. The pretermination notification issued to Nofftz on February 17, 2016 states he was disciplined for his "refusal to accept a work assignment." *Union Exhibit 12*. I note the IBEW requested a list of all other employees disciplined "for similar violations" and copies of the disciplinary files for those employees. *Joint Exhibit 1*. It was OMB, in responding on November 10, 2016, which referred to the discipline as "insubordination." *Joint Exhibit 2*. I further note that all four disciplinary notices ultimately provided by DTC in response to the IBEW request refer to "insubordinate" actions by the disciplined

employees. *Joint Exhibits 5, 6, 7, and 8.* Both of the disciplinary documents provided by the IBEW to DTC refer to “failure to follow the directive of a supervisor.” *Union Exhibit 5.*

On direct examination, Markovitz testified his search of the electronic records returned two disciplinary records; one from the bargaining unit represented by IBEW Local 2270 and a one from the maintenance department employee bargaining unit represented by ATU Local 842.¹⁰ The two documents provided to the IBEW by OMB on November 10, 2016, however, included a grievance settlement in June, 2016 for a Paratransit Specialist (Basher) and a January, 2015 arbitration award for a Mechanic Helper (Green), both of whom were members of the bargaining unit represented by ATU Local 842. Both employees had been terminated and both terminations were reduced to suspensions, the first at Step 4 and the second at arbitration. Neither involved an employee in the bargaining unit represented by the IBEW. The documents which were transmitted with the OMB response on November 11, 2016, raise a question as to the veracity of Markovitz’ testimony.

Markovitz also testified he never provided a copy of the discipline he found which involved a Maintenance employee represented by the IBEW to Kepley because he “knew” the IBEW already had that document. What Markovitz knew or believed about documents that may have been in the IBEW’s possession did not relieve DTC of the obligation to respond to the IBEW’s request for information, if only to ask if the IBEW needed a copy of the disciplinary record involving a member of its bargaining unit.

On cross-examination, Markovitz testified he provided all of the disciplinary records he found during his records search to OMB “at approximately the same time.” The

¹⁰ TR p. 47.

record, however, clearly establishes that OMB provided two documents on November 10, 2016 (Basher and Green) and then did not provide any other documents until February 21, 2017, only two weeks prior to the March 7, 2017, arbitration hearing on Nofftz' suspension. This second transmission occurred nearly four months after the IBEW made its initial request, and after three additional reminders from Kepley. This delayed response supports the conclusion that DTC did not meet its statutory good faith obligations to respond to the October 26, 2016 request for information in a reasonable and prompt manner.

It is further noted that Nofftz was originally issued a letter recommending his employment be terminated for the February 15, 2016 incident. Following a pre-termination hearing, the discipline was reduced to a twenty-day suspension. During March 20, 2017 hearing concerning this unfair labor practice charge, DTC introduced evidence that the discipline had again been reduced just days prior to the arbitration hearing. The final reduction to a five day suspension was not a settlement with the IBEW, but was a unilateral reduction by DTC. Markovitz testified he personally placed Kepley on notice that DTC was going to reduce the suspension by 75% just prior to the March 7, 2017 arbitration.¹¹

With regard to IBEW's Second Request, DTC had not responded in writing at all as of this hearing on March 20, 2017. Markovitz' vague and disjointed testimony that he had verbal conversations with Kepley in which he discussed the overbreadth of Kepley's Second Request does not establish that DTC met its duties under PERA.¹² DTC's assertions in its post-hearing brief that the requested documents contained confidential and

¹¹ Markovitz, TR p. 66.

¹² DTC claims that Markovitz discussed narrowing the scope of the Second Request by telephone with Kepley. However, the testimony on this is vague and unclear, and does not satisfy DTC's burden under PERA, particularly in light of its written response to the First Request. Moreover, even if portions of the request were found to be overbroad, this does not excuse DTC from responding at all, to any of the items sought in the Second Request.

sensitive information and were overbroad or irrelevant, come too late and follow a pattern of behavior indicating a lack of good faith in responding to the IBEW's requests. DTC had a responsibility to furnish the requested information in a timely manner, or demonstrate good faith by engaging in a dialogue and articulating its defenses. DTC failed to do either.

The negotiated grievance procedure is central to the continuing collective bargaining relationship in order to resolve disputes concerning interpretation or application of the terms of the collective bargaining agreement. Indeed, the PERA requires all collectively bargained agreements shall include a grievance procedure.¹³ If the purpose of the statute is to promote harmonious and cooperative relationships in order to assure the orderly and uninterrupted operations and functions of public employers, the integrity of the negotiated grievance procedure must be recognized and protected by PERB. If requested information is not privileged, the employer has a statutory obligation to provide information if there is a probability that it will be relevant to the union in performing its statutory duties as a bargaining representative. If the employer believes that information is privileged, it has an affirmative duty to assert the claimed privilege.

The record in this matter supports the conclusion that DTC's responses, or lack thereof, to both the First and Second Request violated its statutory obligations and 19 Del.C. §1307(a)(1) and (5).

CONCLUSIONS OF LAW

1. The State of Delaware ("State") is a public employer within the meaning of 19 Del.C. §1302(p) of the Public Employment Relations Act, 19 Del.C. Chapter 13 ("PERA"). The Delaware Transit Corporation ("DTC") is an agency of the State.

¹³ 19 Del.C. §1313(c).

2. The International Brotherhood of Electrical Workers (“IBEW”) is an employee representative within the meaning of §1302(i) of the PERA. By and through its affiliated Local 2270, the IBEW is the exclusive bargaining representative of a bargaining unit of Paratransit Automotive Technicians, Service Technicians, and Automotive Parts/Inventory Control Specialists statewide (excluding supervisory employees and employees represented by OPEIU Local 32) employed by DTC. 19 Del.C. §1302(j).

3. IBEW and DTC are parties to a collective bargaining agreement which has a term of July 1, 2015 through June 30, 2019.

4. DTC violated its statutory obligations when it failed to provide information requested by IBEW which was relevant and necessary for the union to meet its statutory duties as a bargaining representative, related to the discipline of a bargaining unit employee. By this action, DTC has violated 19 Del. C. § 1307(a)(1) and (5).

WHEREFORE, DTC is hereby directed to take the following affirmative actions:

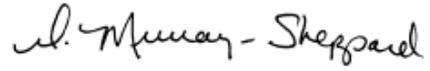
1. DTC is ordered to cease and desist from failing or refusing to provide information requested by IBEW Local 2270 which is necessary and relevant to the union in performing its representational function and to immediately provide the information requested by IBEW Local 2270 in its information request of January 13, 2017.

2. Immediately post a copy of the Notice of Determination in all places where notices of general interest to the bargaining unit members are usually posted. The notice shall remain posted for a period of thirty (30) days.

3. DTC is directed to notify the Public Employment Relations Board within thirty (30) days of the date of this decision of the steps taken to comply fully with this Order.

IT IS SO ORDERED.

Dated: June 7, 2017



DEBORAH L. MURRAY-SHEPPARD
Executive Director
Del. Public Employment Relations Bd.