

PUBLIC EMPLOYMENT RELATIONS BOARD
FOR THE STATE OF DELAWARE

STATE OF DELAWARE, DEPARTMENT OF	:	
SAFETY AND HOMELAND SECURITY,	:	
DIVISION OF STATE POLICE	:	
	:	
Charging Party,	:	
	:	<u>ULP No. 08-05-624</u>
v.	:	
	:	Probable Cause Determination
DELAWARE STATE TROOPERS	:	and Order of Dismissal
ASSOCIATION,	:	
	:	
Respondent.	:	

BACKGROUND

The State of Delaware (“State”) is a public employer within the meaning of §1602(1) of the Police Officers’ and Firefighters’ Employment Relations Act (“POFERA”), 19 Del.C. Chapter 16 (1986). The Department of Safety and Homeland Security, Division of State Police is an agency of the State.

The Delaware State Troopers Association (“DSTA”) is an employee organization which admits to membership the sworn police officers of the Delaware State Police from the ranks of Trooper through Major and has as a purpose the representation of those employees for purposes of collective bargaining, pursuant to 19 Del.C. §1602(g). DSTA is certified as the exclusive bargaining representative of the bargaining unit defined by DOL Case No. 75. 19 Del.C. 1602(h).

The State and DSTA were parties to a collective bargaining agreement, which had a term of July 1, 2005 through June 30, 2007. The parties entered into negotiations for a

successor agreement beginning on May 23, 2007, engaged in mediation and are currently involved in the binding interest arbitration process. The first day of hearing in the Binding Interest Arbitration was conducted on June 4, 2008, and additional days of hearing are scheduled for July 14, 15, and 16.

On or about May 22, 2008, the State filed an unfair labor practice charge alleging that DSTA violated 19 Del.C. §1607(b)(2) and (3):

§1607 (b) It is an unfair labor practice for a public employee or for an employee organization or designated representative to do any of the following:

- (2) Refuse to bargain collectively in good faith with the public employer or its designated representative if the employee organization is an exclusive representative.
- (3) 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.

The State's Charge alleges that during negotiations, DSTA proposed the creation of a new "First Sergeant" rank, which is a non-mandatory subject of bargaining. The State charges that continuing to advance this proposal through impasse resolution proceedings constitutes a violation of (b)(2) and (3), above.

On May 30, 2008, the DSTA filed its Answer to the Charge denying all material allegations. Included in its Answer was New Matter, asserting the charge fails to state a claim upon which relief can be granted, the charge is time barred, and that the parties were at impasse as to salary as well as with respect to the First Sergeant proposal.

The State filed its Response to DSTA's New Matter, denying all affirmative defenses to the Charge.

DSTA also filed a Counter-Charge alleging the State violated 19 Del.C. §1607(a)(5) and (6):

- §1607 (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
- (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit.
 - (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.

DSTA asserts the State's mischaracterization of the First Sergeant career development proposal as the creation of a "new rank" and the State's refusal to negotiate on a mandatory subject of bargaining (i.e., a career development proposal which affects wages and other terms and conditions of employment) is a *per se* violation of §1607(a)(5) and (6), above.

The State filed its Answer to the Counter-Charge denying all material allegations. Included in the State's Answer was New Matter, asserting affirmative defenses that the Counter-Charge fails to provide a clear detailed statement of facts constituting an alleged unfair labor practice, that characterizing DSTA's "First Sergeant" proposal as a "new rank" or "new position" does not constitute a violation of POFERA, and that the Counter-Charge is time barred.

On June 12, 2008, the DSTA filed a Response to New Matter denying the State's affirmative defenses to the Counter-Charge.

This Probable Cause Determination is based upon a review of pleadings filed with respect to both the State's Charge and DSTA's Counter-Charge.

DISCUSSION

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 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.

Both DSTA and the State have asserted that the Charge filed by the other party is time-barred because it does not meet the requirement of 19 Del.C. §1608(a) which requires, "... no complaint shall issue based on any unfair labor practice occurring more than 180 days prior to the filing of the charge with the Board."

The State became aware of DSTA's proposal for adding a First Sergeant step in the salary progression when the proposal was made on June 7, 2007, more than one year ago. As of the date of DSTA's request for mediation on September 17, 2007, the State was aware that DSTA's First Sergeant proposal was part of its positions going forward to the statutory impasse resolution proceedings. In fact, on or about October 3, 2007, the State responded to DSTA's request for mediation by admitting that DSTA,

...stated at the conclusion of the last bargaining session, September 5, 2007, that there was no need to schedule an additional negotiation sessions as neither party appeared willing to modify its proposals that had been rejected by the other party. The State agreed that there

would be little purpose served by scheduling another session if the Union continued to demand that the State agree to specific Union proposals on non-mandatory subjects of bargaining.

At that point in time, both parties were clearly on notice that there was a concern that at least one of the issues in the negotiations was not a mandatory subject of bargaining, and the statute of limitations for filing an unfair labor practice began to run. From October 3, 2007, the 180-day period closed on March 31, 2008, almost two months prior to the State's filing of this Charge, and DSTA's filing of its Counter-Charge.

The PERB is specifically charged with promoting harmonious and cooperative relationships and to protect the public interest through oversight of the collective bargaining process. The POFERA requires that charges of unfair labor practices be brought in a timely manner so that the resolution of those charges does not adversely affect the orderly and uninterrupted operations and functions of public safety services. 19 Del.C. §1601.

The statute also provides impasse resolution procedures, including mediation and binding interest arbitration, to facilitate the timely resolution of negotiations. In this case, these parties are currently involved in binding interest arbitration proceedings, with the first day of hearing completed and three additional days of hearing scheduled to complete the receipt of testimony. The arguments submitted in support of and in opposition to the consideration of First Sergeant will be considered by the arbitrator in reaching a determination as to which party's last, best final offer will be accepted in its entirety.

Having determined both the Charge and Counter-Charge were not filed within the statutory 180 day period, it is unnecessary to further consider the merits of the charges or defenses thereto.

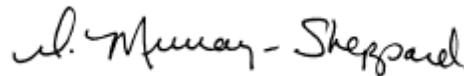
DETERMINATION

Consistent with the foregoing discussion, neither the State's Charge nor DSTA's Counter-Charge were filed within the 180 days required for the timely filing of an unfair labor practice charge. 19 Del.C. §1608(a).

Wherefore, both the Charge and Counter-Charge are dismissed with prejudice.

IT IS SO ORDERED.

DATE: July 7, 2008



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