

PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF DELAWARE

LABORERS' INTERNATIONAL UNION OF)	
NORTH AMERICA, LOCAL 1029,)	
)	
Charging Party,)	
)	<u>ULP No. 08-08-628</u>
v.)	
)	
STATE OF DELAWARE, DEPARTMENT OF HEALTH)	Probable Cause
AND SOCIAL SERVICES, DIVISION OF)	Determination
DEVELOPMENTAL DISABILITIES SERVICES,)	
STOCKLEY CENTER,)	
Respondent.)	

BACKGROUND

The State of Delaware (“State”), is a public employer within the meaning of §1302(p) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (1994) (“PERA”). The Department of Health and Social Services (“DHSS”) is an agency of the State and the Stockley Center is a facility operated by DHSS, Division of Developmental Disabilities Services.

The Laborers’ International Union of North America, Local 1029, (“LIUNA”) is an employee organization which admits to membership public employees and has as a purpose the representation of employees in collective bargaining pursuant to 19 Del.C. §1302(i). LIUNA is the exclusive bargaining representative, within the meaning of 19 Del.C. §1302(j), of employees of the Stockley Center, as certified in DOL Case No. 4.

LIUNA and the State are parties to a collective bargaining agreement with a term of June 8, 2004 through June 8, 2007.

On August 5, 2008 LIUNA filed an unfair labor practice charge alleging the State violated 19 Del.C. §1307(a) (5)¹. Specifically, the Charge alleges the State refused to engage in negotiations for a successor agreement by failing or refusing to respond to LIUNA's March 3, 2008 notice to reopen negotiations.

On August 13, 2008, the State filed its Answer denying the material allegations and charges. The State's Answer also contained New Matter contending that the unfair labor practice charge should be deferred to the parties' contractual arbitration procedure.

On August 14, 2008, LIUNA filed its Response denying the New Matter set forth in the State's Answer to the Charge.

DISCUSSION

I. Probable Cause for the Unfair Labor Practice Charge

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

- (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 there is no probable cause to believe that an unfair labor practice may have 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 review 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

¹ 19 Del.C. §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:

- (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.

issue a probable cause determination setting forth the specific unfair labor practice charge which may have occurred.

For the purpose of reviewing the pleadings to determine whether probable cause exists to support the charge, factual disputes revealed by the pleadings are considered in a light most favorable to the Charging Party in order to avoid dismissing a valid charge without benefit of receiving evidence in order to resolve factual differences. *Flowers v. DART/DTC*, Del. PERB Probable Cause Determination, ULP No. 04-10-453, V PERB 3179, 3182 (2004).

The duty to negotiate collective bargaining agreements establishing terms and conditions of employment is the fundamental premise of the PERA. 19 Del.C. §1301. Considered in a light most favorable to the Charging Party, the pleadings in this case constitute probable cause to believe that an unfair labor practice may have occurred.

II. Deferral to Arbitration

Having determined that probable cause exists to believe an unfair labor practice may have occurred, it is necessary to consider the impact, if any, of PERB's pre-arbitral deferral policy on this case. The State alleges this dispute should be deferred to the parties' contractual grievance and arbitration procedure. It asserts this case is well suited for deferral because: 1) the parties have a long standing and well established collective bargaining relationship which has resulted in a current collective bargaining agreement which includes a grievance and arbitration procedure which covers this dispute; 2) there is currently a pending grievance on this issue which is being processed and has been scheduled for a pre-arbitration meeting on September 17, 2008; and 3) the decision in this unfair labor practice charge turns on interpretation of Article 31.1 of the collective bargaining agreement which states:

This Agreement shall be effective as of June 8, 2004 and shall continue in full force and effect until June 8, 2007. It shall be automatically renewed from year to year thereafter, unless either party gives the other party written notice of its desire to terminate, modify or amend (“reopen”) this Agreement. Such notice shall be given to the other party in writing by certified mail at least 60 days prior to June 8, of the year it desires to reopen the Agreement. Any such notice by the Union shall be sent to the State Deputy Director of Employee Relations.

LIUNA opposes the State’s request for deferral, asserting the Charge alleges a statutory violation of the duty to bargain. Article 31.1 of the parties’ Agreement establishes a procedural notice requirement but does not constitute a waiver of LIUNA’s right and obligation to bargain on behalf of its members based upon an alleged failure to abide by those notice provisions. Consequently, resolution of the underlying contractual question will not resolve the statutory charge.

In addition to the legal questions of deferral and waiver raised by the State’s New Matter and LIUNA’s response thereto, the Charge includes certain factual allegations which the State contests.

DETERMINATION

A review of the pleadings supports the finding that there is probable cause to believe there may have been a violation of 19 Del.C. §1307(a)(5) as alleged, specifically:

Whether the State violated its duty to bargain in good faith by failing or refusing to enter into negotiations for a successor collective bargaining agreement with the exclusive bargaining representative of an appropriate bargaining unit, in violation of 19 Del.C. §1307(a)(5)

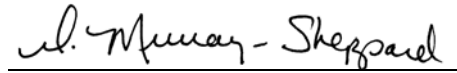
The pleadings raise both factual and legal questions.

WHEREFORE, in the interest of expeditiously processing this charge, a hearing will be scheduled forthwith to create a record on which argument can be made. The

deferral and waiver issues will be addressed as preliminary matters in the decision.

IT IS SO ORDERED

DATE: 11 September 2008

A handwritten signature in cursive script that reads "D. Murray-Sheppard". The signature is written in black ink and is positioned above a horizontal line.

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