

**STATE OF DELAWARE**

**PUBLIC EMPLOYMENT RELATIONS BOARD**

STATE OF DELAWARE, DEPARTMENT OF HEALTH	:	
AND SOCIAL SERVICES, DIVISION OF DEVELOP-	:	
MENTAL DISABILITY SERVICES, STOCKLEY	:	<b>REVIEW OF THE EXECUTIVE</b>
CENTER,	:	
	:	<b>DIRECTOR'S DECISION</b>
Appellant,	:	
v.	:	
	:	<b><u>U.L.P. No. 08-08-628</u></b>
DELAWARE STATE AND FEDERAL EMPLOYEES	:	
LOCAL UNION NO. 1029, A/W LABORERS	:	
INTERNATIONAL UNION OF NORTH AMERICA,	:	
	:	
Appellee.	:	

**Appearances**

*Aaron Shapiro, SLREP, on behalf of the State*

*Stephen C. Richman, Esq., Markowitz & Richman, on behalf of LIUNA Local 1029*

**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 (“PERA”), 19 Del.C. Chapter 13 (1994). The Department of Health and Social Services, Division of Developmental Disability Services (“DHSS/DDDS”) is an agency of the State. The Stockley Center is a facility operated by DHSS/DDDS.

Laborers International Union of North America (“LIUNA”), Local 1029, is the exclusive bargaining representative of certain State employees working at the Stockley Center and has as a purpose the representation of those employees for collective bargaining pursuant to 19 Del.C. §1302(j).

On August 5, 2008, LIUNA filed an unfair labor practice charge alleging DHSS/DDDS violated 19 Del.C. §1307(a)(5) by refusing to engage in negotiations for a successor agreement. The State filed its Answer on August 13, 2008, denying all material allegations and asserting under New Matter that the Charge should be deferred to the negotiated arbitration procedure. LIUNA responded by denying the State's New Matter.

A Probable Cause Determination was issued by the Executive Director on September 11, 2008. A full hearing was conducted on November 12, 2008 and written argument was submitted by the parties.

On February 4, 2009, the Executive Director issued her decision denying the State's Motion to Defer to arbitration and finding that "by failing to respond to the March 3, 2008 notices and/or failing to advise LIUNA in a timely manner to redirect the notice of its intent to reopen negotiations, the State violated its duty to bargain in good faith and 19 Del.C. §1307(a)(5)."

On or about February 9, 2009, the State requested review of the Executive Director's decision.

A copy of the complete record in this matter was provided to each member of the Board and the full Board convened in public session on February 18, 2009, to consider the State's request for review. The parties were permitted the opportunity to make argument and answer the questions of the Board at that time.

### **DISCUSSION**

Upon consideration of the record below and arguments presented on appeal, the Board finds the decision of the Executive Director is supported by the record and that she did not commit an error of law or otherwise abuse her discretion.

The State is mistaken in its assertion that this case is "first and foremost a contractual

matter.” Deferral is appropriate and required where the resolution of a contractual question will resolve the statutory charge. Compliance with the notice provision of the collective bargaining agreement in this case is not a prerequisite to satisfying the statutory duty to bargain in good faith.

The concept of good faith encompasses numerous considerations. The statute does not condition bargaining on negotiating a notice provision; in fact, the statute requires that “negotiations shall commence at least 90 days prior to the expiration date of any collective bargaining agreement.” 19 Del.C. §1313(a). There is no support in this record for any conclusion that LIUNA waived its substantive statutory duty or right to bargain in good faith by agreeing to a procedural notice provision in the collective bargaining agreement.

This case does not turn on whether a contractual notice requirement was met nor is it an allegation by LIUNA that the State has instituted a unilateral change in terms and conditions of employment in violation of §1307(a)(5) similar to the circumstances under which the NLRB’s *Collyer*<sup>1</sup> deferral doctrine was first enunciated in 1971 or the circumstances in *City of Wilmington v. WFFA Local 1590*, Del.Supr., 385 A.2d 720 (1978).

Neither the Delaware Chancery Court<sup>2</sup> nor Delaware Supreme Court<sup>3</sup> decisions in *DSU v. DSU-AAUP Chapter* are on point in this case. That case dealt with the obligation of an employer to provide information the Union believed necessary in order investigate a potential grievance and an alleged violation of 19 Del.C. §1307(a)(3). The Courts held that PERB should have stayed its consideration of the unfair labor practice charge since the arbitration procedure had already resolved the dispute. Further, the Court commented that the Union had waived its right to file an unfair labor practice charge when it agreed to include a provision in the collective bargaining agreement which specifically addressed the discovery process to be followed in the grievance procedure.

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<sup>1</sup> *Collyer Insulated Wire*, 192 NLRB 837, 77 LRRM 1931 (1971).

<sup>2</sup> *DSU v. DSU-AAUP Chapter*, Del.Ch., C.A. 1389-K, 2002 WL 385350, IV PERB 2483 (2002).

The question here is one of good faith. The Executive Director found LIUNA established a good-faith reason for consulting with the Human Resources Manager at Stockley Center concerning who to notify and its desire to negotiate a successor agreement. While the State's counsel may argue that LIUNA's Business Manager could or should have contacted someone else or that she might have pursued another method for finding an answer to her question, the record establishes that the method Littleton used was reasonable. She was familiar with the Human Resources Manager at the Stockley Center who had been a member of the management bargaining team for the last negotiations, and who held a position wherein her advice was entitled to reasonable reliance. The State ignores the fact that there are individuals in management other than the Deputy Director for Employee Relations who act as agents of the State and to whom the duty of good faith also applies.

The issue in this case is a fundamental question of what constitutes good faith when initiating negotiations for a successor collective bargaining agreement. There are no factual disputes in this matter and the parties agree the Executive Director accurately set forth those facts in her decision. There is no dispute that at least four persons holding Human Resources and Labor Relations positions in DHSS were on notice (one by verbal communication and three upon signed receipt of certified written communication) that LIUNA wished to initiate negotiations for a successor agreement.<sup>4</sup> At the point in time that those individuals chose to ignore LIUNA's notice and failed to make a good faith effort to advise either the appropriate person in management of their receipt of such notice or to advise LIUNA of the insufficiency of its notice in a timely manner, those individuals, acting as agents of the State, violated the duty to bargain in good faith.

The State's argument that PERB's declination to defer under the limited and unique

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<sup>3</sup> *DSU v. DSU-AAUP Chapter*, Supr.Ct., C.A. 1389-K, IV PERB 2765 (2003).

<sup>4</sup> Additionally, the Deputy Director for Employee Relations was also on notice as of May, 2007 that LIUNA wanted to reopen the negotiations (well in advance of the 60 day notice requirement). *State Exhibit 1*

circumstances in this case will undercut all collective bargaining and emasculate all negotiated grievance and arbitration procedures is overblown and unconvincing. It is puzzling to this Board that the State argues that the Executive Director should have waited for an arbitration decision interpreting the contractual provision before considering the statutory allegation. The parties established at the Board meeting that the arbitration of LIUNA's grievance concerning the contractual application of the Article 31.1 is not scheduled to be held until May, 2009, nine months after the charge was filed and more than fourteen months after first LIUNA requested negotiations.


The statute requires that parties enter into and conduct good-faith negotiations in order to establish terms and conditions of employment. The time and effort spent in processing this Charge, indeed in its continuation through this appeal, could have been put to better use by simply engaging in negotiations, as required by the statute. PERB is charged with encouraging and supporting collective bargaining and with effectively and efficiently resolving disputes. The decision in this case comports with that mandate.

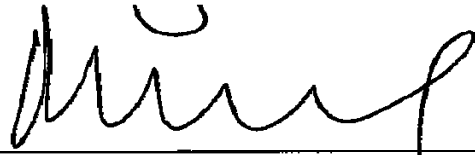
### **DECISION**

For the reasons set forth above, following review of the complete record in this case, the Public Employment Relations Board unanimously affirms the decision of the Executive Director.

**WHEREFORE**, consistent with that decision, the parties are ordered to immediately enter into negotiations and to advise the Executive Director of the status of those negotiations within sixty (60) days.

**IT IS SO ORDERED.**

  
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**Elizabeth D. Maron**, Chairperson



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**R. Robert Currie, Jr., Member**



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**Kathi A. Karsnitz, Member**

DATED: March 9, 2009