

PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF DELAWARE

MERIT EMPLOYEE UNIT 2 BARGAINING UNIT	:	
COALITION, INCLUDING AFSCME	:	
COUNCIL 81, LIUNA LOCAL 1029, AND	:	
PUBLIC HEALTH NURSES COUNCIL,	:	
DSEA/NEA,	:	ORDER OF DISMISSAL
	:	
Charging Party,	:	Unfair Labor Practice Charge and Counterclaim
	:	
v.	:	<u>ULP 12-12-882</u>
	:	
STATE OF DELAWARE, DEPARTMENTS OF	:	
AGRICULTURE; HEALTH AND SOCIAL	:	
SERVICES; SERVICES FOR CHILDREN,	:	
YOUTH AND THEIR FAMILIES; NATURAL	:	
RESOURCES AND ENVIRONMENTAL	:	
CONTROL; AND STATE,	:	
	:	
Respondents.	:	

1. The State of Delaware (“the State”) is a public employer within the meaning of §1302(p) of the Public Employment Relations Act (19 Del.C. Chapter 13, “PERA”). The Departments of Agriculture; Health and Social Services; Services for Children, Youth and Their Families; Natural Resources and Environmental Control; and State are agencies of the State of Delaware.

2. The American Federation of State, County and Municipal Employees, Council 81, AFL-CIO (“AFSCME”) is an employee organization within the meaning of 19 Del.C. 1302(i). Through its affiliated local unions, AFSCME is the certified exclusive bargaining representative of certain State of Delaware merit employees employed in the Departments of Agriculture; Health and Social Services; Services for Children, Youth and Their Families; Natural Resources

and Environmental Control; and State.

3. Laborers International Union of North America (“LIUNA”) is an employee organization within the meaning of 19 Del.C. 1302(i). Through its affiliated Local 1029, LIUNA is the certified exclusive bargaining representative of certain State of Delaware merit employees employed in the Department of Health and Social Services.

4. Public Health Nurses Council, an affiliate of Delaware State Education Association and the National Education Association (“PHNC”), is an employee organization within the meaning of 19 Del.C. 1302(i) and is the certified exclusive bargaining representative of certain State of Delaware merit employees employed in the Department of Health and Social Services.

5. The PERA provides at §1311A (a):

Notwithstanding any other provision of this Code, exclusive representatives of state merit employees, who are in the classified service and not working in higher education, shall collectively bargain in the units provided pursuant to subsection (b) of this section.

6. Subsection (b) of 19 Del.C. §1311A defines the unit at issue in this charge and counterclaim:

(b) For purposes of bargaining pursuant to this section, employees shall be classified in the following bargaining units, each of which shall independently bargain compensation:

...(2) Nonprofessional patient care workers which is composed of institutional care classes, including licensed practical nurses, nursing assistants, active treatment assistants, technicians, therapy aides and similar classes.

7. On or about April 29, 2008, the Public Employment Relations Board (“PERB”) certified AFSCME, LIUNA and PHNC to join together in a bargaining coalition to bargain collectively, pursuant to §1311A, for the unit identified in 19 Del.C. §1311A(b)(2) (hereinafter “Unit 2”). This coalition of bargaining representatives shall be hereinafter referred to as the

“Unit 2 Coalition”.

8. On or about December 28, 2012, AFSCME Council 81, on behalf of the Unit 2 Coalition, filed an unfair labor practice charge alleging the State had and continued to violate its obligations under the PERA at §1304, §1307(a)(5) and (6), §1311 and §1311A.

9. On or about January 9, 2013, the State filed its Answer to the Charge with New Matter and Counterclaim, wherein it denied some of the facts and all of the allegations made by the Unit 2 Coalition. The State asserted the Unit 2 Coalition has violated its duty to bargain in good faith and 19 Del.C. §1307(b)(2) and (b)(3), §1311A(a), §1313(c), §1302(e), and §1302(t).

10. A probable cause determination was issued on February 20, 2013, finding, “the Charge and Counterclaim raise for the first time a question concerning the scope of bargaining for state merit employee units established by 19 Del.C. §1311A and the obligation of the State and the coalition of bargaining representatives in negotiating thereunder.”

11. A hearing was convened on June 13, 2013 and written argument was received from the parties.

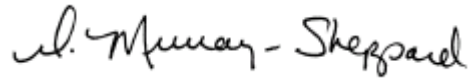
12. The decision in this matter was held in abeyance pending the parties continuing efforts to mutually and amicably resolve their dispute.

13. By letter dated March 25, 2015, AFSCME Council 81 on behalf of the Unit 2 Coalition notified the Public Employment Relations Board, “... the parties have reached an amicable resolution of the above matter and have determined a path forward in negotiating an agreement for Unit 2. Accordingly, the Merit Employee Unit 2 Coalition requests that the instant unfair labor practice charge be withdrawn.”

14. By letter dated March 26, 2015, the State also requested to withdraw its counterclaim charge in this matter.

Wherefore, as the parties have reached a mutually acceptable resolution and have jointly requested these matters be withdrawn pursuant to the agreement so reached, both the Charge and Counterclaim in this matter are hereby dismissed.

DATE: April 8, 2015



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