

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

FRATERNAL ORDER OF POLICE, LODGE #3,)	
)	
Charging Party,)	ULP 09-10-711
)	
v.)	ORDER OF DISMISSAL
)	
STATE OF DELAWARE, DEPARTMENT OF NATURAL)	
RESOURCES AND ENVIRONMENTAL CONTROL,)	
)	
Respondent.)	

Appearances

Jeffrey M. Weiner, Esq., for FOP Lodge #3

Aaron Shapiro, OMB/HRM/SLREP, for DNREC

1. Fraternal Order of Police Lodge #3 (FOP) is an employee organization within the meaning of §1302(i) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (PERA). The FOP is the exclusive bargaining representative of a unit of DNREC Enforcement Officers, within the meaning of 19 Del.C. §1302(j).

2. 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 Department of Natural Resources and Environmental Control (DNREC) is an agency of the State.

3. On or about October 21, 2009, the FOP filed an unfair labor practice charge with the Public Employment Relations Board (PERB) alleging DNREC had engaged in conduct which violated 19 Del.C. §1307 (a)(5) and (a)(6). The Charge specifically alleged, “... the State unilaterally announced and implemented a new method of calculating overtime, whereby employees would only receive overtime paid at time and one-half their regular hourly rate after working 40 hours in a week, and hours worked would only include hours actually worked, and not

vacation time, sick time, holiday time, or other benefit time.” The FOP asserted this was a mandatory subject of bargaining.

4. On or about October 30, 2009, DNREC filed its Answer and New Matter. The FOP responded to DNREC’s New Matter on November 10, 2009.

5. The Charge was held in abeyance pending the resolution of two similar unfair labor practice charges filed contesting related matters filed by AFSCME Council 81.

6. On February 22, 2011, PERB’s Executive Director issued a decision on the merits in *AFSCME Council 81 et al. v. State*¹ finding “...§8(j) of the FY 2010 Appropriations Act voided any collectively bargained [*overtime*] provision to the contrary and further precluded bargaining on this topic for State employees under §1311A...” The Charge was dismissed in its entirety. On review, the full Public Employment Relations Board affirmed the Executive Director’s decision on March 21, 2011.²

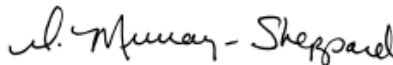
7. On February 28, 2011, PERB’s Executive Director issued her decision on the merits in *FOP Lodge 10 v. State*³, dismissing the Charge in its entirety. There was no appeal of this decision.

8. Because the decision in *AFSCME Council 81 et al. v. State* and in *FOP Lodge 10 v. State* directly address the substance of this Charge and conclude there was no unfair labor practice committed, this Charge is also dismissed.

WHEREFORE, this unfair labor practice charge is hereby dismissed in its entirety.

IT IS SO ORDERED.

DATE: January 24, 2017



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

¹ ULP 09-07-693, VII PERB 4885 (2/22/11)

² ULP 09-07-693, VII PERB 4947 (3/21/11)

³ ULP 09-08-698, VII PERB 4907 (2/28/11)