STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

Barry R. Newman, Jr.,	)	
Charging Party,	)	
	)	
v s	)	**Case No. 02-12-374**
	)	
Delaware Correctional Officers	)	
Association; Correctional Officers		
Association of Delaware and State	)	
of Delaware, Department of Corrections,	)	
Respondents.		

DISPOSITION OF MOTION TO DISMISS

BACKLGROUND

In June 2001, the State terminated the employment of the Charging Party, Barry Newman. The Delaware Correctional Officers Association ("DCOA") which, at the time, was the exclusive bargaining representative of a bargaining unit of correctional officers employed by the State Department of Corrections ("DOC"), initiated a grievance on behalf of Charging Party protesting his termination. Unable to resolve the matter the grievance was scheduled to be heard at an arbitration hearing on July 26, 2001.

On June 13, 2002, a decertification election resulted in the Correctional Officers Association of Delaware ("COAD") replacing DCOA as the exclusive bargaining representative of the bargaining unit of correctional officers employed by the State.

As of June 13th, and thereafter, DCOA and COAD each contend that it has no obligation to represent Charging Party at the arbitration hearing. Consequently, the arbitration hearing did not occur on July 26, as scheduled.

On December 17, 2002, Charging Party filed the current unfair labor practice charge naming DOC, DCOA and COAD as respondents. Only DCOA filed an Answer to the Complaint.

DOC subsequently filed a Motion to Dismiss the State as a named party to this action. DOC's Motion was withdrawn following a letter from Charging Party confirming that the Complaint did not allege improper conduct by DOC and that DOC was named as a party solely because DOC has an interest in the disposition of the Complaint.

On January 13, 2003, the Delaware Correctional, Officers Association (COAD) filed a Motion to Dismiss for the reasons set forth in paragraph 1, paragraph 2 and paragraph 3 of its Motion, which provide:

> 1. Plaintiff Barry R. Newman, Jr., contracted with the Delaware Correctional Officers Association to represent him in all employer/employee related matters.
>
> 2. There is no signed agreement or contractual relationship or legal obligation between the Delaware Correctional Officers Association and the Correctional Officers of Delaware for COAD to assume the obligations of or the legal responsibility for any of the members of the Delaware Correctional Officers Association of Delaware under any prior or existing collective bargaining agreement.
>
> 3. There is no signed agreement or contractual relationship or legal obligation between plaintiff Newman and COAD for the purpose of providing representation to the plaintiff in any Employer/ Employee relations matter or proceeding.

On January 15, 2001, DCOA filed its Answer to the Complaint denying certain paragraphs in the Complaint.

The following is the ruling disposing of COAD's Motion to Dismiss.

DISCUSSION

Contrary to the allegation in paragraph 2 of its Motion, there was no contractual agreement between Charging Party and DCOA requiring that DOCA represent the grievant at his grievance arbitration hearing. The only relationship between Charging Party and DCOA resulted from DCOA's role as the exclusive bargaining representative of the bargaining unit including Charging Party.

The Complaint raises an issue of first impression before the PERB, as to whether DCOA and/or COAD has a responsibility as the exclusive representative of a bargaining unit of correctional officers, to process the grievance filed by Charging Party through DCOA prior the time COAD replaced DCOA as the exclusive bargaining representative on June 13, 2002?

The duty and responsibility of DCOA and/or COAD to represent the grievant at the arbitration hearing concerning his discharge is not dependent upon any agreement between the DCOA and COAD, be it contractual or otherwise. Rather, the dispute over whether DCOA or COAD is obligated to represent Charging Party at his grievance arbitration raises a legal issue requiring the interpretation and application of the Public Employment Relations Act, 19 Del. C. Chapter 13.

Consequently, jurisdiction to resolve this matter rests with the Public Employment Relations Board.

DECISION

WHEREFORE, Consistent with the foregoing discussion. the Motion to Dismiss filed by COAD is denied.

January 16, 2003
(Date)

/s/Charles D. Long, Jr.
Charles D. Long, Jr.
Executive Director