

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF DELAWARE, DEPARTMENT)	
OF CORRECTION,)	
Petitioner,)	
)	
and)	
)	
DELAWARE CORRECTIONAL OFFICERS)	<u>DS 02-03-345</u>
ASSOCIATION,)	
Respondent,)	
)	
and)	
)	
TEAMSTERS, LOCAL 103,)	
Respondent.)	

The State of Delaware, Department of Correction (“State”) is a public employer within the meaning of Section 1302(n) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (1994) (“Act”). Delaware Correctional Officers Association (“DCOA”) is an employee organization within the meaning of Section 1302(i) of the Act and the exclusive representative of the bargaining unit defined in Department of Labor Case No. 1(h) which includes certain classifications of Correctional Officers of the Department of Correction within the meaning of Section 1302(j) of the Act. Teamsters Local 103 (“Teamsters”) is an employee organization within the meaning of Section 1302(i) of the Act.

BACKGROUND

On March 5, 2002, the State filed a Request for Declaratory Statement alleging that both DCOA and the Teamsters have asserted “conflicting rights and/or statutory obligations against the State, and the State has an interest in resolving these rights and/or statutory obligations.” Concerned about being charged with an unfair labor practice alleging conduct which violates section 1307(a)(5), of the Act, the State seeks to clarify its bargaining obligation as to the conflicting employee organizations. [1]

On March 13, 2002, DCOA filed its Answer to the State’s petition contending that the “Teamsters have no statutory or legal right to represent bargaining unit employees . . .” The Answer also contains New Matter which alleges, in essence, that any recognition by the State of the Teamsters as a bargaining representative of employees in the existing bargaining unit would constitute an unfair labor practice.

On March 12, 2002, the Teamsters filed a position statement contending that DCOA leadership has refused to comply with a valid vote of the bargaining unit members to have DCOA enter into a service contract with the Teamsters. The Teamsters contend the conduct by DCOA leadership is illegal, unconstitutional and constitutes a tortious interference with a contractual relationship.

On March 19, 2002, the State filed a Response denying the allegations set forth in DCOA’s New Matter.

On March 22, 2002, the Teamsters filed a Motion to Strike the Appearance of DCOA Counsel as the legal representative of the DCOA in this matter. The basis for the Teamsters’ position is that counsel DCOA was involved in the vote of the bargaining unit membership at which time, as Parliamentarian, he permitted the vote to take place. Consequently, the Teamsters intend to have DCOA counsel appear as a witness on the Teamsters behalf at any future hearing or judicial proceeding. The Teamsters allege that

[1] Section 1307, Unfair labor practices provides, in relevant part: (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.

as a potential witness concerning underlying substantive issues, DCOA counsel must remove himself as the legal representative of the DCOA in this matter. Because current counsel cannot serve as DCOA representative in this matter, any and all documents authored or filed by DCOA counsel are invalid.

On March 22, 2002, the Teamsters also filed a Motion to Strike DCOA's Answer to the State's Petition because all documents filed by DCOA's counsel are, for the reasons previously stated, invalid.

On March 22, 2002, DCOA filed a Motion to Strike the Appearance of Teamsters' counsel until such time as he complies with Delaware Supreme Court Rule 72 requiring that a Certificate be filed no later than the date of the first appearance [of] the attorney who seeks Admission Pro Hoc Vice before the Agency in the matter for which admission is sought. Prior to that time, DCOA argues, counsel is engaged in the unauthorized practice of law and all filings on behalf of Teamsters Local 103 should be stricken from the record.

DISCUSSION

The Teamsters' Motions to prohibit the appearance of DCOA's counsel and to strike the documents authored or filed by DCOA counsel are denied. The concern expressed by the Teamsters regarding the involvement of DCOA's counsel in the voting procedure are not so prejudicial as to constitute a valid reason for preventing him from representing DCOA in this matter.

The Teamsters' concern that DCOA's counsel may be called as a witness by the Teamsters on the underlying substantive issues is likewise unpersuasive. The PERB has not in the past precluded counsel in a particular matter from also appearing as a witness. Objections or procedural questions are properly raised at the time of the hearing.

DCOA's Motion to Strike Teamsters' counsel and all documents prepared or filed by him is likewise dismissed. Counsel was informed by written notice dated March 18, 2002, of the requirement for Pro Hoc Vice status and was again verbally reminded of the requirement on Friday, March 22, 2002.

The PERB's responsibility is to process matters before it in a timely manner. DCOA may raise the status of Teamsters' counsel, at its discretion, with the Supreme Court or other appropriate body

within the Delaware legal community. However, the question having been raised and addressed, herein, no further filings or participation by Teamsters' counsel before the PERB in this matter will be permitted until such time as counsel has complied with Delaware Supreme Court Rule 72.

Section 1318 of the Public Employment Relations Act controls the substantive issue raised by the State:

§1318. Status of existing exclusive representative.

An employee organization that has been certified as the exclusive representative of a bargaining unit deemed to be appropriate prior to September 23, 1994 shall so continue without the requirement of an election and certification until such time as a question concerning representation is appropriately raised under this chapter in accordance with §1311 (b) of this title, or until the Board finds the unit not to be appropriate in accordance with §1310(f) of this title.

19 Del.C. §1318.

Section 1311(b) provides:

(b) Where an employee organization has been certified as the exclusive representative, a group of employees within the bargaining unit may file a petition with the [PERB] for decertification of the exclusive bargaining representative. The petition must contain the uncoerced signature of at least 30 percent of the employees within the bargaining unit and allege that the employee organization presently certified

is no longer the choice of the majority of the employees in the bargaining unit. If a lawful collective bargaining agreement of no more than 3 years' duration is in effect, no petition shall be entertained unless filed not more than 180 days nor less than 120 days prior to the expiration of such agreement. A decertification petition also may be filed if more than 1 year has elapsed from the date of certification of an exclusive bargaining representative and no collective bargaining agreement has been executed, and the procedures for mediation and fact-finding have been invoked and completed as provided in this chapter.

Section 1310(f) provides:

(f) Any bargaining unit designated as appropriate prior to September 23, 1994, for which an exclusive representative has been certified, shall so continue without the requirement of a review and possible redesignation until such time as a question concerning appropriateness is properly raised under this chapter. The appropriateness of the unit may be challenged by the public employer, 30 percent of the members of the unit, an employee organization, or the [PERB] not more than 180 days nor less than 120 days prior to the expiration of any collective bargaining agreement in

effect on September 23, 1994. The continued appropriateness of any bargaining unit designated as appropriate prior to September 23, 1994, for which an exclusive representative is not certified, may be challenged by the public employer, 30 percent of the members of the unit, an employee organization, or the [PERB] at any time up until 30 days prior to the holding of an election to determine representation.

DCOA was certified as the exclusive representative of the bargaining unit of Correctional Officers in question by the Department of Labor on February 17, 1994, following a three-day election. DCOA and the State are parties to a collective bargaining agreement which term extended from October 1996 through October 1999. These parties have been engaged in negotiations for a successor agreement and have agreed to the extension of the terms of that collective bargaining agreement until a successor agreement has been negotiated.

This petition does not raise a question of bargaining unit appropriateness within the meaning of 19 Del.C. §1310(f), and clearly would not fall within the time frames established by that section.

The Teamsters do not have standing to file a decertification petition under 19 Del.C. §1311(b), and no such petition has been received from bargaining unit employees as of the date of this decision. Further, there is no allegation of a change of affiliation as addressed by the PERB in DSTA v. Division of State Police, Del.PERB, I PERB 559 (1990).

Consequently, there having been no change in nor challenge to DCOA's status as the exclusive bargaining representative under 19 Del.C. §1318, both the State and DCOA are obligated to fulfill their respective duties under 19 Del.C. §1304:

- (a) The employee organization designated or selected for the purpose of collective bargaining by a majority of the employees in an appropriate collective bargaining unit shall be the exclusive

representative of all employees in the unit for such purpose and shall have the duty to represent all unit employees without discrimination. Where an exclusive representative has been certified, a public employer shall not bargain in regard to matters covered by this chapter with any employee, group of employees, or other employee organization.

Constitutional issues, tortious contractual claims, and other issues outside of the scope of collective bargaining and the Public Employment Relations Act are beyond the jurisdiction of this Board and are properly addressed in the courts.

March 27, 2002
(Date)

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