

**STATE OF DELAWARE**  
**PUBLIC EMPLOYMENT RELATIONS BOARD**

<b>COMMUNICATION WORKERS OF AMERICA, AFL-</b>	:	
<b>CIO, LOCAL 13101,</b>	:	
	:	Unfair Labor Practice Charge
Charging Party,	:	<b><u>No. 18-08-1155</u></b>
	:	
v.	:	<b>PROBABLE CAUSE DETERMINATION</b>
	:	
<b>STATE OF DELAWARE, DEPARTMENT OF SAFETY</b>	:	
<b>AND HOMELAND SECURITY, DIVISION OF STATE</b>	:	
<b>POLICE,</b>	:	
	:	
Respondent.	:	

**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, 19 Del.C. Chapter 13 (PERA). The Department of Safety and Homeland Security (“DSHS”), Division of State Police (“DSP”) is an agency of the State.

The Communications Workers of America, AFL-CIO (“CWA”), is an employee organization within the meaning of 19 Del.C. §1302(i). By and through its affiliated Local 13101, the CWA is an exclusive bargaining representative, within the meaning of 19 Del.C. §1302(j). CWA Local 13101 represents two bargaining unit of DSP employees. One unit includes civilian employees and the second unit includes 911 Dispatchers. *DOL Case 261 and 260, respectively.*

DSP and CWA Local 13101 are parties to two collective bargaining agreements, one for each of the bargaining units described above. The parties entered into negotiations for successors to the collective bargaining agreements which expired on June 30, 2016. On June 8, 2018, the parties reached tentative agreements, thereby resolving all outstanding issues in the negotiations for terms of successor agreements.

On August 17, 2018, CWA Local 13101 filed an unfair labor practice charge alleging the State engaged in conduct which violates 19 Del.C. §1307(a)(1), (a)(5) and (a)(7), which state:

- (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
  - (1) Interfere with, restrain or coerce any employee because of the exercise of any right guaranteed under this chapter...
  - (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.
  - (7) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

The Charge alleges the parties agreed the negotiated salary tables would become effective on the first day of the first full pay period following July 1, 2017 for the Fiscal Year 2018 wage scales, and effective the first day of the first full pay period after July 1, 2018 for Fiscal Year 2019. CWA Local 13101 asserts the parties agreed the new salary tables and any and all retroactive pay would occur without delay. As of the date of the filing of the Charge, the State had implemented neither the Fiscal Year 2018 nor the Fiscal Year 2019 wage increases or provided the negotiated retroactive wages.

On September 4, 2018, the State filed its Answer to the Charge, admitting many of the facts as they relate to the negotiations and the agreements reached, but denying the legal conclusion that it has failed to implement the terms of the successor agreement, in violation of its statutory duties. The State specifically denied that the parties agreed to a date certain for when employees would begin receiving compensation at the increased rates. It asserts implementation of the new wage rates was complicated and required a three step implementation process. Under New Matter, the State asserts the Charge is moot because the increases were scheduled to begin on August 31, 2018, and initiation of the payments “constitutes complete relief with respect to the Charge.”

On September 14, 2018, CWA Local 13101 filed its Response to the new matter contained in the State’s Answer, denying the assertions contained therein. The CWA stated:

...[T]he parties agreed that the new salary tables, the salary increases and any and all retroactive pay for all employees would occur, without delay, on the first full pay period after July 1, 2018. After over two years of negotiations, over 200 State employees have had to patiently wait for long overdue wage increases, and continue to wait without any explanation as to the delay by the State. Given the negotiations regarding salary tables for employees began in February 2018, the State had more than ample time to take the steps necessary to implement the new salary tables, the salary increases and any and all retroactive pay, as agreed to, on the first full pay period after July 1, 2018.

In its response to New Matter, CWA Local 13101 requested expedited processing of this Charge. By email dated September 18, 2018, the State stated it was also amenable to expedited processing.

This probable cause determination is based on review of the pleadings submitted by the parties.

### **DISCUSSION**

Regulation 5.6 of the Rules of the Public Employment Relations Board requires:

- (a) Upon review of the Complaint, the Answer and the Response, the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with provisions set forth in Regulation 7.4. The Board will decide such appeals following a review of the record, and, if the Board deems necessary, a hearing and/or submission of briefs.
- (b) If the Executive Director determines that an unfair labor practice has, or may have occurred, he shall, where possible, issue a decision based upon the pleadings; otherwise he shall issue a probable cause determination setting forth the specific unfair labor practice which may have occurred.

For purposes of determining whether probable cause exists to support an unfair labor practice charge, factual disputes revealed by the pleadings are considered in a light most favorable to the Charging Parties in order to avoid dismissing a valid charge without the benefit of receiving evidence. *Flowers v. DART/DTC*, ULP 04-10-453, V PERB 3179, 3182 (2004).

The Charge alleges the State has failed or refused to meet its statutory obligations to bargain in good faith, to reduce the agreement reached through collective bargaining to writing and to sign the resulting collective bargaining agreement, and has thereby interfered with the rights of employees guaranteed by the PERA. In response the State asserts that the process for implementing the negotiated wage increases is complicated and that, “Until the State was sure that the first of a three-step implementation process has been successfully completed, it could not definitively state when employees would receive their first increase.”

It is undisputed that the terms of the negotiated successor agreement, including the wage increases, were reached on June 8, 2018. As of the date of the filing of the Answer to the Charge on September 4, 2018, the State does not assert that the negotiated increases and retroactive pay has been implemented.

The pleadings raise factual issues concerning how the process for implementing wage increases and retroactive pay for bargaining unit employees was effectuated, whether the State met its obligations to keep CWA Local 13101 informed concerning any delays, and how the process to reduce the negotiated agreement to writing and to implement its terms was accomplished. Whether State’s actions with respect to these processes were made in good faith and did not interfere with the rights of employees established by the PERA are legal questions raised by the charge.

### **DECISION**

Considered in a light most favorable to the Charging Parties, the pleadings are sufficient to establish that the State may have violated 19 Del.C. §1307 (a)(1), (a)(5), and/or (a)(7) as alleged. The pleadings raise both questions of fact and law which can only be resolved following the creation of a complete evidentiary record and consideration of argument based on that record.

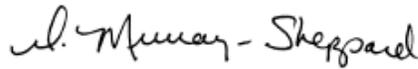
**WHEREFORE**, an expedited hearing will be promptly scheduled for the purpose of

developing a full and complete factual record upon which a decision can be rendered concerning:

WHETHER THE STATE, BY AND THROUGH THE DEPARTMENT OF SAFETY AND HOMELAND SECURITY, DIVISION OF STATE POLICE, FAILED OR REFUSED TO BARGAIN IN GOOD FAITH, TO REDUCE THE TERMS OF A NEGOTIATED AGREEMENT TO WRITING AND SIGN IT, AND/OR INTERFERED WITH THE RIGHTS OF BARGAINING UNIT EMPLOYEES, IN THE MANNER IN WHICH IT IMPLEMENTED THE TERMS OF SUCCESSOR COLLECTIVE BARGAINING AGREEMENTS, IN VIOLATION 19 DEL.C. §1307(A)(1), (A)(5) AND/OR (A)(7), AS ALLEGED.

Having found probable cause based on the pleadings, the State's assertion that the Charge is moot is denied.

DATE: September 28, 2018



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