

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF DELAWARE, DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES,	:	
	:	
	:	
Appellant,	:	PERB Review of Executive
	:	
v.	:	Director's Decision
	:	<hr/>
DELAWARE STATE AND FEDERAL EMPLOYEES, LOCAL 1029, LIUNA,	:	ULP No. 20-04-1227
	:	
Appellee.	:	

Appearances

Khrishna Hawkins, State Labor Relations & Employment Practices, for DSCYF
Gurvis Miner, Business Manager, LiUNA Local 1029

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 Services for Children, Youth and Their Families (“DSCYF”) is an executive branch department of the State. The Division of Prevention and Behavioral Health Services (“DPBHS”) is an agency of DSCYF.

The Delaware State and Federal Employees Local 1029, Laborers International Union of North America, AFL-CIO (“LiUNA Local 1029”), is an employee organization and is the exclusive bargaining representative of a unit which includes all regular Full-Time and Part-Time Non-Supervisory DSCYF/DPBHS Child and Family Care Coordination Unit employees. 19 Del. C. §1203(i) and (j).

LiUNA Local 1029 and the State are parties to a current collective bargaining agreement which has an expiration date of April 30, 2021.

On or about April 27, 2020, LiUNA Local 1029 filed an Unfair Labor Practice Charge with the Public Employment Relations Board (“PERB”) alleging that DSCYF had refused to bargain collectively in good faith and interfered with the rights of bargaining unit employees, in violation of 19 Del. C. §1307(a)(1) and (a)(5).

On May 8, 2020, the State filed an Answer to the Charge on behalf of DSCYF in which it admitted material facts and denied the legal conclusions asserted in the Charge. The Answer included New Matter, to which LiUNA Local 1029 responded on May 26, 2020.

On July 10, 2020, the Executive Director issued a decision on the pleadings,¹ consistent with PERB Rule 5.6(a), in which she found the State committed a *per se* violation 19 *Del. C.* §1307(a)(5) by failing or refusing to convene grievance meetings and to issue decisions as required by the parties’ negotiated grievance procedure. The Executive Director further found that by so doing, the State interfered with the rights of the represented employees to grieve through the representatives of their choosing. The State was directed to cease and desist from failing or refusing to abide by the terms of the negotiated grievance procedure and to immediately process the grievance at issue in this Charge and all future grievances in accordance with Article 17 of the collective bargaining agreement. It was further directed to advise PERB within thirty (30) days of the date of this decision of its compliance with this Order.

On July 15, 2020, the State requested review of the Executive Director’s decision

¹ *Delaware State and Federal Employees, Local 1029, LiUNA, v. State of Delaware, Department of Services for Children, Youth and Their Families*, ULP 20-04-1227, IX PERB 8281 (7/17/20).

by the full Public Employment Relations Board. On July 23, 2020, LiUNA Local 1029 filed its response to the State's request for review.

A copy of the complete record in this matter was provided to each member of the Public Employment Relations Board. A public hearing² was convened on August 19, 2020, at which time the full Board met in public session to hear and consider this request for review. The parties were provided the opportunity to present oral argument and to answer questions from the Board. The decision reached herein is based upon consideration of the record and the arguments presented by the parties.

DISCUSSION

The Board's scope of review is limited to the record created by the parties and consideration of whether the Executive Director's decision is arbitrary, capricious, contrary to law, or unsupported by the record. After consideration of the record and the arguments of the parties on appeal, the Board must vote to affirm, overturn, or remand the decision to the Executive Director for further action.

The grievance procedure is a term and condition of employment. 19 *Del. C.* §1302(t). The parties have a mutual obligation to confer and negotiate in good faith with respect to terms and conditions of employment and to execute a written contract incorporating the agreements reached. 19 *Del. C.* §1302(e). The Executive Director's decision is consistent with nearly thirty years of PERB precedent requiring parties to adhere to the clear and explicit terms of the grievance procedure they negotiated and incorporated into their collective bargaining agreement. *Indian River Education Association v. Bd. of*

² In accordance with Governor Carney's March 13, 2020 Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat, the hearing was conducted by video conference, using the Zoom platform. The timely notice of the public meeting was made and log-in instructions were provided to the parties and members of the public prior to the hearing.

Education, ULP 91-09-053, I PERB 667 (1991); *Cape Henlopen Education Association v. CHSD*, ULP 01-05-319, III PERB 2239 (2001); *AFSCME Local 3109 v. New Castle County*, ULP 11-07-819, VII PERB 5141 (2011); *Fraternal Order of Police, Lodge No. 5 v. New Castle County*, ULP 17-07-1109, IX PERB 6967 (2017).

The State's arguments in support of its request for review are all related to the merits of the grievance. Those substantive and procedural merits, however, including whether the grievance was timely filed, were not before the Executive Director nor are they within the scope of this Board's review.

The only issue raised by the Charge is whether the State implemented a unilateral change when it failed or refused to adhere to the steps of the grievance procedure which it had agreed to follow in Article 17 of the parties' collective bargaining agreement. Article 17 clearly and explicitly requires that a meeting be scheduled at Step 2 and again at Step 3, that the meeting be convened by identified management representatives (or their designees) at each step, and that a decision be issued within ten (10) calendar days following the meeting. The management representative responsible for hearing the grievance at any step could deny the grievance if she or he decided the grievance was procedurally deficient or on its merits, but that decision must follow a required meeting with the grievant and the union representative to discuss the grievance.

In this case, there was no opportunity for the decision-maker at Step 2 or Step 3 to hear and consider the evidence and arguments of the grievant and LiUNA because the meetings were neither scheduled nor held. Identification of the applicable trigger for determining timeliness was at issue in the underlying grievance. The pleadings establish that a human resources specialist unilaterally determined the grievance was procedurally deficient (based on her determination of the appropriate trigger date). Based on this

determination, DSCYF then declined and refused to schedule the meetings required for Steps 2 and 3 by Article 17 of the negotiated collective bargaining agreement.

The State argued that if DSCYF is “forced to hold grievance hearings even if a grievance is untimely, then the time limits negotiated by the parties are meaningless.” To the contrary, if meetings are not convened by the designated management representatives in accordance with the negotiated procedure, then the entire grievance procedure is meaningless. The purpose of the grievance procedure is clearly stated in §17.1 of the parties’ collective bargaining agreement which states, in relevant part, “The purpose of this grievance procedure is to provide an orderly method for the settlement of grievances, defined as a dispute between the parties over the interpretation, application or claimed violation of any of the provisions of this Agreement; or the unjust application of the rules and regulations of the Department, Division or facility...” In this case, the grievance, in part, raises a dispute as to the application and interpretation of §17.2 which sets forth the parties agreement on the effect of time limits in processing this grievance. The parties negotiated into their collective bargaining agreement that disputes concerning application or interpretation of contractual provisions would be resolved through the negotiated process.

By refusing to convene the meetings before the identified decision makers at Steps 2 and 3 as required in Article 17, the State unilaterally modified a mandatory subject of bargaining and interfered with the rights of the employees to grieve through representatives of their choosing. The State is directed to comply with the Executive Director’s order to “cease and desist from failing or refusing to abide by the terms of the negotiated grievance procedure and to immediately process the grievance at issue in this Charge and all future grievances in accordance with Article 17 of the collective bargaining agreement.” It is also

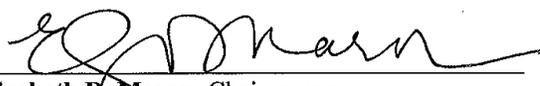
directed to immediately notify this Board of all steps taken to comply with the order, including notification that the Notices of Determination provided to the State on July 10, 2020, have been posted in the workplace.

DECISION

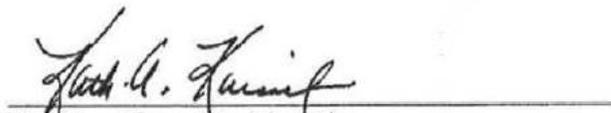
After reviewing the record, hearing and considering the arguments of the parties, the Board unanimously affirms the decision of the Executive Director finding the State, by and through the actions of the agency, committed a *per se* violation of its duty to bargain in good faith by failing to convene the meetings and issue decisions by identified officials (or the official's designee) as required by parties' collective bargaining agreement. By failing and refusing to abide by the negotiated procedure, the State further interfered with the rights of bargaining unit employees to grieve through representatives of their choosing. By these actions, the State has violated 19 *Del. C.* §1307(a)(1) and (a)(5).

Wherefore, the State's appeal is denied.

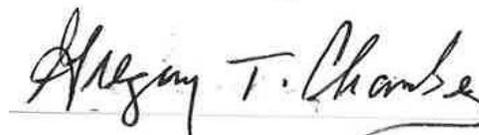
IT IS SO ORDERED.



Elizabeth D. Maron, Chairperson



Kathi Karsnitz, Member



Gregory T. Chambers, Member