

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

<b>GENERAL TEAMSTERS LOCAL 326,</b>	:	
	:	
Charging Party,	:	
	:	<b><u>ULP No. 20-05-1228</u></b>
V.	:	
	:	
<b>DEPARTMENT OF SAFETY AND HOMELAND</b>	:	<b>PROBABLE CAUSE DETERMINATION</b>
<b>SECURITY, DIVISION OF ALCOHOL &amp; TOBACCO</b>	:	
<b>ENFORCEMENT,</b>	:	
	:	
Respondent.	:	

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”) is an executive branch department of the State. The Division of Alcohol and Tobacco Enforcement (“DATE”) is an agency of DSHS.

General Teamsters Local 326 (“Teamsters 326”) is an employee organization within the meaning of 19 Del. C. §1302(i). It is the exclusive bargaining representative of a bargaining unit of all full-time sworn DATE officers, as defined in DOL Case 91.

Teamsters 326 and DSHS/DATE are parties to a collective bargaining agreement which has a nominal term of January 1, 2013 through December 31, 2015. This agreement has been automatically renewed year to year.

The bargaining unit of DATE officers are also included in State merit bargaining unit #9, which is comprised of “Law enforcement and investigative agents which is

composed of agency police officers, natural resource and environmental control officers, deputy fire marshals I through V, investigators and similar occupation.”<sup>1</sup>

On May 4, 2020, Teamsters 326 filed an unfair labor practice charge with the Delaware Public Employment Relations Board (“PERB”) alleging conduct by the State in violation of its obligations under the PERA. The Charge alleges violations of 19 Del. C. §1307(a) (5), which states:

(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.

Teamsters 326 alleges the State violated the PERA by failing or refusing to negotiate with respect to working conditions unique to DATE officers. Specifically, the Charge alleges the State has refused to negotiate any working conditions which results in a monetary cost payment. It asserts that negotiated benefits such as a clothing allowance, standby and/or call back pay may be monetary payments but do not constitute wages or salaries.

On May 18, 2020, the State filed its Answer to the Charge in which it admitted some facts, denied or qualified other asserted facts, and raised new matter in its defense. The State asserts the Charge should be dismissed because the Charge fails to state a claim for which relief can be granted under the PERA. Specifically, it argues that working conditions do not include compensation as defined in §1311A(a), and that compensation could only be negotiated in the Unit 9 compensation negotiations.

Teamsters 326 filed its Response to the Town’s New Matter on May 27, 2020 in

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<sup>1</sup> 19 Del. C. §1311A(b)(9).

which it denied the State's legal conclusions.

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

### **DISCUSSION**

Rule 5.6 of the Rules and Regulations of the Delaware Public Employment Relations Board provides:

- (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 the 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 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 reviewing the pleadings to determine whether probable cause exists to support the charge, factual disputes revealed by the pleadings are considered in a light most favorable to the Charging Party in order to avoid dismissing a valid charge without the benefit of receiving evidence in order to resolve factual differences. *Flowers v. DART/DTC*, ULP 04-10-453, V PERB 3179, 3182 (Probable Cause Determination, 2004).

The pleadings raise an issue of first impression concerning the scope of mandatory negotiations for State merit employees. The PERA mandates that parties negotiate concerning terms and conditions of employment, i.e., "matters concerning or related to wages, salaries, hours, grievance procedures and working conditions; provided however,

that such term shall not include those matters determined by this chapter or any other law of the State to be within the exclusive prerogative of the public employer.”

Section 1311A, Collective bargaining in the state service, further defines the scope of negotiations for State merit employee bargaining units and states, in relevant part:

(a) Notwithstanding any other provision in this Code, exclusive representatives of the state merit employees, who are in the classified service and not working in higher education, shall collectively bargain in the units as determined pursuant to subsection (b) of this section. The scope of bargaining shall include:

(1) Compensation, which shall be defined as the payment of money in the form of hourly or annual salary, and any cash allowance or items in lieu of a cash allowance to a public employee by reason of said employee’s employment by a public employer, as defined in this chapter, whether the amount is fixed or determined by time, task, or other basis of calculations. Position classification, health care and other benefit programs established pursuant to Chapters 52 and 96 of Title 29, workers compensation, disability programs, and pension programs shall not be deemed to be compensation for purposes of this section; and

(2) Any items negotiable for state merit employees pursuant to § 5938 of Title 29... *19 Del. C. §1311A*

The 2013-2015 collective bargaining agreement between the State, DSHS/DATE and General Teamsters Local 326<sup>2</sup> includes terms which require monetary payments to bargaining unit employees, including an annual clothing allowance (§15.4) and reimbursement for loss of personal property (§15.5). The monetary terms of the Unit 9 compensation agreement (2019-2023)<sup>3</sup> appear to be limited exclusively to wages (Article 5).

It is noted that the PERA, as it relates to the scope and process for bargaining for State merit employees, was modified between the time when agreement was reached on

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<sup>2</sup> Charge, Exhibit A.

<sup>3</sup> Charge Exhibit D.

the Unit 9 Compensation Agreement in the late spring of 2019 and when the State and Teamsters Local 326 initiated negotiations for the successor to the 2013-2015 terms and conditions agreement in February 2020. Effective January 1, 2020, the compensation bargaining coalitions (including Unit 9) were deleted from §1311A of the PERA. Coalition bargaining for compensation was replaced with a new bargaining structure for represented State merit system employees:

(b) Each exclusive representative shall bargain for compensation for the members of its exclusive bargaining unit or units in a mutually agreed upon consolidated manner. The exclusive representative shall work with the Secretary of the Department of Human Resources to determine how its exclusive bargaining unit or units shall be consolidated. If the exclusive representative and the Secretary of the Department of Human Resources are unable to reach an agreement regarding the manner in which to consolidate the bargaining unit or units, negotiations will default to the individual bargaining units as certified by the Public Employment Relations Board... *19 Del. C. §1311A*

### **DETERMINATION**

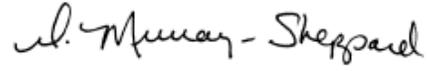
Considered in a light most favorable to the Charging Party, the pleadings are sufficient to establish that the State may have violated 19 Del. C. §1307 (a)(5), as alleged. The pleadings raise both questions of fact and law which can only be resolved following the creation of a complete evidentiary record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

**WHEREFORE**, a prehearing conference will be promptly scheduled for the purpose of discussing the next steps in processing this charge. The ultimate issue to be decided is identified as:

DID THE STATE OF DELAWARE, DSHS/DATE VIOLATE SECTION 1307 (A)(5) OF THE PUBLIC EMPLOYMENT RELATIONS ACT (19 DEL. C. CHAPTER 13) BY FAILING OR REFUSING TO NEGOTIATE WITH GENERAL TEAMSTERS LOCAL 326 ON MATTERS INCLUDING COURT PAY, CALL-BACK PAY, INCREASES TO CLOTHING ALLOWANCE, ETC., DURING NEGOTIATIONS FOR A SUCCESSOR TO THE 2013-2015 COLLECTIVE

BARGAINING AGREEMENT?

DATE: October 27, 2020



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