

merit employees to bargaining compensation for the first time. Twelve specific coalitions of merit positions were identified in the statute as compensation bargaining units for the purpose of bargaining wages. The bargaining unit of DATE Agents was included in State Merit Bargaining Unit #9, defined as “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.”²

On May 4, 2020, Teamsters Local 326 filed an unfair labor practice charge alleging the State engaged in conduct in violation 19 Del. C. §1307(a) (5). On May 18, 2020, the State filed its Answer to the Charge which raised new matter in its defense. On May 27, 2020, Teamsters Local 326 filed its Response to the Town’s New Matter in which it denied the State’s legal conclusions.

On October 27, 2020, the Executive Director issued a Probable Cause Determination finding the pleadings were sufficient to establish that the State may have violated 19 Del. C. §1307 (a)(5), as alleged. A hearing was held on February 23, 2021 for the purpose of establishing a record from which to determine whether the State committed an unfair labor practice.

A decision on the merits was issued on September 3, 2021 finding the State violated its duty to bargain in good faith when it failed or refused to engage in negotiations with Teamsters Local 326 concerning compensation issues (as defined in 19 Del. C. §1311A(a)(1)) for the bargaining unit of DATE Agents after January 1, 2020. The State was directed to engage in good faith negotiations with Teamsters Local 326 as to terms and conditions of employment, including compensation matters which are not covered by the 2019-2023 Merit Unit 9 Agreement.

² 19 Del. C. §1311A(b)(9); *PERB Exhibit 1*.

By email received on September 9, 2021, the State requested review of the Executive Director's decision.

A copy of the complete record in this matter was provided to each member of the Public Employment Relations Board. A hearing was convened on October 27, 2021, at which time the full Board met in public session to hear and consider the State's request for review. The parties were provided the opportunity to present oral argument and to answer questions from the Board. This is the Board's decision 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 either affirm or reverse the Executive Director's decision or remand the case to the Executive Director for further action.

On appeal the State seeks to have this Board prohibit Teamsters Local 326 from negotiating premium payments in their negotiations for a successor to the 2013-2015 terms and conditions agreement.³ It argues the right of DATE Agents to negotiate with respect to premium payments (including increases in a clothing allowance, stand-by pay, court pay, and gym membership reimbursement) is precluded by the existing 2019 - 2023 Merit Unit 9 Compensation Bargaining Agreement ("Unit 9 Agreement"). It asserts the modified language of §1311A(e) of the PERA provides the State a "respite" from all compensation bargaining until the current Unit 9 Agreement expires. The statute states:

(e) ... Existing collective bargaining agreements regarding

³ Transcript @ p. 7.

compensation will remain in effect until such time as they, by their terms, expire...

The State does not dispute that the existing Unit 9 Agreement does not address any of the premium payments Teamsters Local 326 seeks to negotiate. It argues instead that these premium payments should have properly been proposed, discussed and negotiated during Unit 9 negotiations in 2019. The State also does not dispute that the Unit 9 Agreement is limited in scope to wage tables, hours and a grievance procedure for that collective bargaining agreement. The State argues it did not refuse to negotiate premium payments but rather that it was statutorily prohibited from doing so because compensation issues for this bargaining unit could not be bargained until the Unit 9 Agreement expires on June 30, 2023.

As noted in the Executive Director's decision, this case arises during a period of transition for the bargaining rights of DATE Agents. Compensation bargaining units like Unit 9 were eliminated from the PERA as of January 1, 2020. From that point forward, the modified law required:

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(b).

The law further provides that “parties may engage in collective bargaining for compensation simultaneously or separately from collective bargaining for terms and conditions.” 19 Del. C. §1311A(d). Teamsters Local 326 seeks to negotiate premium payments within the context of terms and conditions bargaining for a successor to their

2013-2015 collective bargaining agreement between the Department of Safety and Homeland Security, Department of Alcohol and Tobacco Enforcement and Teamsters Local 326.⁴ The Teamsters Local 326 proposals for premium payments do not disturb or interfere with the terms of the Unit 9 Agreement. We concur that there has been no allegation that either party has failed or refused to abide by the terms of the Unit 9 Agreement.

These parties have included a clothing allowance (as an example of the premium payments at issue here) in their collective bargaining agreement for many years, including throughout the period of 2007 – 2020 when the merit system compensation bargaining provisions of the PERA stated that compensation could only be negotiated by enumerated and defined coalition bargaining groups. Pursuant to §1311A(d) of the January 1, 2020 modified PERA, Teamsters Local 326 seeks to negotiate an increase to the clothing allowance and other premium payments simultaneously with the terms and conditions covered by the 2013-2015 collective bargaining agreement. None of these premiums are covered by or addressed in the Unit 9 Agreement.

The Board finds the Executive Director did not err as a matter of law and that the decision is supported by the record created by the parties. Further, the decision was neither arbitrary nor capricious.

DECISION

After reviewing the record and hearing and considering the arguments of the parties, the Board unanimously affirms the decision of the Executive Director finding the State violated its duty to bargain in good faith when it failed or refused to engage in

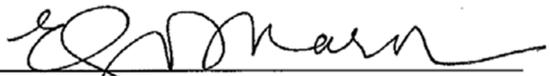
⁴ The Board notes that the 2013-2015 collective bargaining agreement included an annual clothing allowance of \$600, a payment which constitutes compensation within the meaning of §1311A(a).

negotiations with Teamsters Local 326 concerning compensation issues (as defined in 19 Del. C. §1311A(a)(1)) for the bargaining unit of DATE Agents after January 1, 2020. By this act, the State has violated 19 Del. C. §1307(a)(5) as alleged.

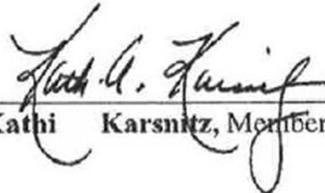
Wherefore, the appeal is denied.

IT IS SO ORDERED.

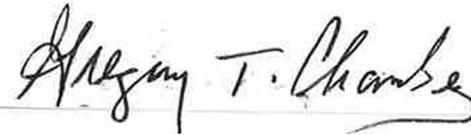
DATE: November 9, 2021



Elizabeth D. Maron, Chairperson



Kathi Karsnitz, Member



Gregory T. Chambers, Member