

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

DELAWARE STATE AND FEDERAL EMPLOYEES	:	
LOCAL 1029, LABORERS INTERNATIONAL UNION	:	
OF NORTH AMERICA, AFL-CIO,	:	
	:	Unfair Labor Practice Charge
Charging Party,	:	<u>No. 22-08-1316</u>
	:	
v.	:	
	:	PROBABLE CAUSE DETERMINATION
DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH,	:	AND ORDER OF DISMISSAL
AND THEIR FAMILIES,	:	
	:	
Respondent.	:	

The State of Delaware (“State”) is a public employer within the meaning of 19 Del. C. §1302(p). The Department of Services for Children, Youth and Their Families (“DSCYF”) is an agency of the State. The Division of Prevention and Behavioral Health Services (“DPBHS”) is an organizational division within DSCYF.

The Delaware State and Federal Employees Local 1029 of the Laborers International Union of North America, AFL-CIO, (“LiUNA Local 1029”) is an employee organization within the meaning of 19 Del. C. §1302(i) and is the exclusive bargaining representative of a bargaining unit of DSCYF employees within the meaning of 19 Del. C. §1302(j). LiUNA Local 1029 represents the bargaining unit which includes “ All regular full and part-time Psychiatric Social Workers I, II, III; Family Services Specialists; Family Service Assistants I, II; Adolescent Treatment Services Coordinator; Administrative Specialist, Administrative Specialists I, II, III employed by DSCYF/DPBHS, Child & Family Care Coordination Units; and Medical Records Technicians employed by DSCYF/DPBHS (excluding Treatment Team Leaders and all other supervisory employees

as defined in 19 Del. C. Chapter 13).”¹ DOL Case 236(a). *Answer, Exhibit A.*

LiUNA Local 1029 and the State are parties to a fully executed collective bargaining agreement which has a term of April 14, 2022 through June 30, 2025. *Answer, Exhibit B.*

On August 16, 2022, LiUNA Local 1029 filed an unfair labor practice charge with the Delaware Public Employment Relations Board (“PERB”) alleging conduct by the State in violation of 19 Del. C. §1307(a)(1) and (a)(5), 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.

The Charge alleges that the State unilaterally changed established terms and conditions of employment of Medical Records Technicians by failing to implement the negotiated wage increases and unilaterally withdrawing recognition of LiUNA Local 1029 as the exclusive bargaining representative of the Medical Records Technicians.

On August 26, 2022, the State filed its Answer to the Charge denying many of the facts set forth in the Charge. In new matter included in its Answer, the State asserts 1) the Charge is untimely; 2) the Charge fails to allege facts sufficient to support a claim that the PERA has been violated as alleged; and 3) authority to establish bargaining units and

¹ LiUNA Local 1029 was certified to represent the bargaining unit of “all Regular Full-Time and Part-Time Non-Supervisory DSCYF/DPBHS Child and Family Care Coordination Unit employees” on September 28, 2017. REP 16-09-1080. The certified bargaining unit was modified to include “Medical Records Technicians employed by DSCYF/DPBHS” following an election conducted on July 2, 2019.

certify exclusive bargaining representative rests exclusively with the PERB. The State requests the Charge be dismissed in its entirety.

LiUNA Local 1029 filed its response to the New Matter on September 8, 2022, in which it denied the legal defenses and conclusions asserted by the State therein.

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 a 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).

Prior to any consideration of the merits of an unfair labor practice charge, it must first be established that the Delaware Public Employment Relations Board has authority to issue a complaint based on LiUNA Local 1029's charge. Section 1308 of the Public Employment Relations Act, Disposition of Complaints, states:

- (a) The Board is empowered and directed to prevent any unfair labor practice described in §1307(a) and (b) of this title and to issue appropriate remedial orders. Whenever it is charged that anyone has engaged or is engaging in any unfair practice as described in §1307(a) and (b) of this title, the Board or any designated agent thereof shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charge and including a notice of hearing containing the date and place of hearing before the Board or any designated agent thereof. Evidence shall be taken and filed with the Board; ***provided, that no complaint shall issue based on any unfair labor practice occurring more than 180 days prior to the filing of the charge with the Board.*** (emphasis added)

The State asserts the Charge is untimely because the Medical Records Technician positions were reorganized out of the DPBHS organizational unit and into the Division of Management Support Services ("DMSS") effective July 1, 2020. *Answer Exhibit D*. By copy of correspondence dated January 24, 2022, the State notified LiUNA Local 1029, "... these classifications no longer fall under the bargaining unit description(s) as certified by the PERB and are not represented pursuant to PERA." Because this letter was dated January 24, 2022, and the Charge was not filed until August 16, 2022, the State asserts it is untimely.

LiUNA Local 1029 argues that the charge was timely filed because the State failed and refused to apply the terms of the parties' negotiated collective bargaining agreement to the Medical Records Technicians on July 28, 2002. By way of background, LiUNA Local 1029 asserts in its Response to the State's timeliness allegation:

On July 2, 2019 an election was held for DSCYF/DPBH Medical Records Technicians and the Union was certified by the PERB, in Representation Petition 16-09-1080, and Bargaining Unit Clarification 19-05-1185. On July 24, 2020 Cabinet Secretary for DSCYF Josette

Manning signed an Addendum to the parties' collective bargaining agreement that included the Medical Records Techs into the existing bargaining unit. Thereafter, the Respondent and the Union continued to apply the terms of the Agreement to the Medical Records Technicians, including Alena Conway. For example, on or about May 3, 2021, the Union submitted dues authorization forms to DSCYF and the Respondent implemented payroll deductions from the Medical Record Technicians.

On January 24, 2022, the Union received a letter (via e-mail) from Khrishna Hawkins from Delaware DHR indicating that DSCYF reorganized its Division of Management Support Services. The letter stated that this reorganization occurred on July 1, 2020. However, the Union never received a written 90 day notice that DSCYF desired to terminate, modify or amend the Addendum signed by Cabinet Secretary Manning as required by the CBA. Thereafter, the parties continued to bargain over a renewal CBA, including wages for the Medical Records Technicians and on or about April 14, 2022 the parties entered into a successor agreement that included the Medical Record Technicians. At no time did the asserted reorganization result in a community of interest change for the Medical Record Technicians. These employees continued to work in the same locations, carried out the same responsibilities and reported to the same management structure.

Respondent made no changes in the employees' terms and conditions until July 28, 2022, when it refused to implement the negotiated wage increase for the Medical Records Technicians and repudiated its bargaining obligation. Accordingly, the charge was timely filed.

The January 24, 2022 letter from the State Labor Relations and Employment Practices Coordinator to the LiUNA Local 1029 Business Manager states:

On July 1, 2020, the Department of Services for Children, Youth, and Their Families (DSCYF) reorganized and moved the Medical Records Technician classification to the Division of Management Support Services. As such these classifications no longer fall under the bargaining unit description(s) as certified by PERB and are not represented pursuant to the PERA.

Your attention to this matter is greatly appreciated. If you have any questions or concerns please do not hesitate to contact me.

LiUNA Local 1029 acknowledges receipt of this communication and includes it as an attachment to its pleading. The cause of action (triggering event) for a complaint of a unilateral modification of the bargaining unit arose at the time LiUNA Local 1029 admits

it received this letter, January 24, 2022. This Unfair Labor Practice Charge was filed on August 26, 2022, two hundred and fourteen (214) days later.

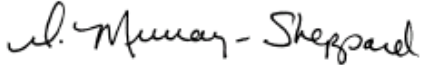
The Union's argument that the State's "alleged reorganization" did not result in changes to the community of interest between the Medical Records Technicians and the other positions within the bargaining unit is misplaced. All of the positions in the certified bargaining unit are employed by DSCYF/ Division of Prevention and Behavioral Health Services. The January 24, 2022 letter makes clear that the Medical Records Technicians were reorganized and moved to the Division of Management Support Services. LiUNA Local 1029's argument that it never received a written 90-day notice that DSCYF desired to terminate, modify, or amend the Addendum signed by Cabinet Secretary Manning is unavailing. If it believed a violation of the collective bargaining agreement occurred, it was required to advance that claim through the negotiated grievance procedure.

DETERMINATION

Considered in a light most favorable to the Charging Party, the Charge is not timely filed. The PERA provides that no complaint shall issue based on any alleged unfair labor practice occurring more than 180 days prior to the filing of a charge with the Board. The triggering event in this dispute is the January 24, 2022 letter issued by the State notifying LiUNA Local 1029 that the Medical Records Technician positions were moved to the Division of Management Support Services.

Consequently, this charge is dismissed as it was not timely filed.

DATE: January 13, 2023



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