

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
	:	<u>No. 22-08-1316</u>
Appellant,	:	
	:	_____
V.	:	
STATE OF DELAWARE, DEPARTMENT OF	:	DECISION ON REVIEW OF EXECUTIVE
SERVICES FOR CHILDREN, YOUTH AND	:	DIRECTOR’S ORDER OF DISMISSAL
THEIR FAMILIES,	:	
	:	
Appellee.	:	

Appearances

Gurvis Miner, Business Manager, for LiUNA Local 1029

*Khrishna Hawkins, Manager, State Labor Relations & Employment Practices, DHR,
for the DSCYF*

The State of Delaware (“State”) is a public employer within the meaning of 19 Del. C. §1302(p) of the Public Employment Relations Act (“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”) and the Division of Management Support Services (“DMSS”) are both divisions of 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). It is the exclusive bargaining representative of a bargaining unit of DPBHS employees within the meaning of 19 Del. C. §1302(j). It was at all times relevant to the facts giving rise to this Charge, and remains,

the exclusive bargaining representative of the unit of “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).” DOL Case 236(a).

On August 16, 2022, LiUNA Local 1029 filed an unfair labor practice charge alleging the State violated 19 Del. C. §1307 (a)(1) and (a)(5) by unilaterally withdrawing recognition of the union as the exclusive bargaining representative of Medical Records Technicians and failing to implement the negotiated wage increase for those employees. The State filed its answer to the Charge on August 26, 2022, including an assertion that the Charge was untimely as it was filed more than 180 days after the union was notified that the Medical Records Technicians had been reorganized and were no longer employed at DPBHS. LiUNA filed its response to new matter included in the State’s Answer on September 8, 2022.

On January 13, 2023, the Executive Director of the Public Employment Relations Board dismissed the Charge finding it was not timely filed, concluding:

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.

On January 18, 2023, LiUNA Local 1029 requested review of the Executive Director’s decision by the Board. The State responded in writing to the request for review

on January 30, 2023.

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 February 9, 2023, at which time the full Board met in public session to hear and consider LiUNA Local 1029's request for review. The parties were provided the opportunity to present oral argument and to answer questions from the Board.

The decision below 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 either affirm or reverse the Executive Director's decision or remand the case to the Executive Director for further action.

The Executive Director dismissed the Charge, after reviewing the pleadings, finding it was not timely filed based on application of the 180 day statute of limitations set forth in §1308 of the Public Employment Relations Act, 19 Del. C. Chapter 13.¹

LiUNA Local 1029 argues that DSCYF failed to provide notice on or before July

¹ § 1308. Disposition of complaints.

- (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.

1, 2020 to the union that it was reorganizing Medical Records Technician positions out of DPBHS and into DMSS. It asserts that the alleged notice provided by DHR State Labor Relations on January 24, 2022² was issued more than eighteen (18) months after the alleged reorganization. It also notes that DSCYF continued to negotiate terms and conditions of employment for Medical Records Technicians as evidenced by the DSCYF Secretary's signing of an Addendum to the [collective bargaining] Agreement on July 24, 2020.³ The Secretary later signed a collective bargaining agreement on May 3, 2022 which, by its terms, included Medical Records Technicians in the bargaining unit. Wage scales, based on title and years of service in the new collective bargaining agreement,⁴ include rates over the three-year period for Medical Records Technicians. LiUNA Local 1029 concludes that it did not receive direct notice that the positions had been moved out of the bargaining unit until the State refused to implement the negotiated wage increases for Medical Records Technicians in July, 2022. LiUNA Local 1029 asserts the Agency's failure to pay Medical Records Technicians in accord with the terms of the negotiated agreement, as executed on May 3, 2022, is the incident that triggers the application of the statute of limitations.

The State argues LiUNA Local 1029 was fully on notice that the positions had been

² On January 24, 2022, the State Labor Relations and Employment Practices Coordinator sent a letter to LiUNA Local 1029 which stated:

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 the 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. *Answer, Exhibit D.*

³ The Addendum "applies exclusively to Medical Records Technicians working at DSCYF/DPBHS and incorporates by reference the terms of the aforementioned Agreement and specifically modifies certain items enumerated herein."

⁴ The new collective bargaining agreement has a term of April 14, 2022 – June 30, 2025.

moved as of its direct communication with the union on January 24, 2022. It asserts that only PERB has the statutory authority to change a bargaining unit definition. The current bargaining unit definition includes “Medical Records Technicians employed by DSCYF/DPBHS.” Consequently, the State was required to bargain concerning these positions. There are, however, no longer any Medical Records Technician positions in DPBHS because, it contends, DSCYF moved the Medical Records Technician classification to the Division of Management Support Services (DMSS) in June 2020.

To the extent that the Executive Director’s decision is predicated on the charge being untimely based solely on the issuance of the January 24, 2022 letter, there are disputed issues of fact which must be resolved in order to determine when the statute of limitations began to run and/or whether either party’s conduct tolled the statute of limitations (assuming it began to run in January, 2022). The arguments of the parties raise many factual questions about what happened, when it happened and why it happened. Until there are factual findings on which to answer those questions, the Board cannot accept the decision of the Executive Director on the record before it.

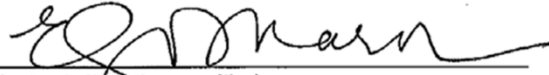
DECISION

After reviewing the record and hearing and considering the arguments of the parties, the Board unanimously finds the Executive Director erred in dismissing this unfair labor practice charge as untimely.

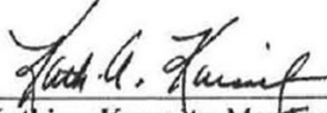
The Charge is remanded to the Executive Director for development of a record and determination as to when the statute of limitations began to run or, if the January 24, 2022 letter started the clock, whether the time period was suspended by the conduct of the Employer. If so, the Executive Director should proceed to a determination on the merits of the Charge.

IT IS SO ORDERED.

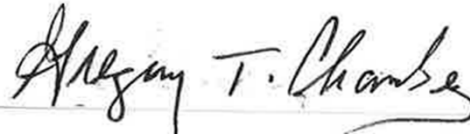
Dated: March 6, 2023



Elizabeth D. Maron, Chairperson



Kathi Karsnitz, Member



Gregory T. Chambers, Member