

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

ASSOCIATION OF DEPUTY ATTORNEYS GENERAL.	:	
	:	<b>Unfair Labor Practice Charge</b>
Charging Party,	:	<b><u>No. 25-06-1473</u></b>
	:	
V.	:	
	:	<b>PROBABLE CAUSE DETERMINATION</b>
DELAWARE DEPARTMENT OF JUSTICE, DEPARTMENT	:	
OF HUMAN RESOURCES, AND OFFICE OF	:	
MANAGEMENT AND BUDGET,	:	
	:	
Respondents.	:	

The State of Delaware (“State”) is a public employer within the meaning of §1302(p) of the Delaware Public Employment Relations Act (“PERA”), 19 *Del. C.* Chapter 13. The Departments of Justice (“DOJ”) and Human Resources (“DHR”) and the Office of Management and Budget (“OMB”) are each agencies of the State.

The Association of Deputy Attorneys General (“ADAG”) is an employee organization within the meaning of 19 *Del. C.* §1302(i). ADAG is the exclusive representative of a bargaining unit within the meaning of 19 *Del. C.* §1302(j). ADAG was certified as the representative of the bargaining unit of all Deputy Attorneys General (“DAGs”) below the level of Division Director on February 14, 2025.

On June 3, 2025, ADAG filed an unfair labor practice charge with the Delaware Public Employment Relations Board (“PERB”) alleging conduct by the Respondents in violation of 19 *Del. C.* §1304 and §1307(a)(2) and (6), which state:

§1304. Employee organization as exclusive representative.

...

- (c) The public employer shall deduct from the payroll of the public employee the monthly amount of dues or service fee as certified by the secretary of the exclusive bargaining representative and shall deliver the same to the treasurer of the exclusive bargaining representative as follows:

...<sup>1</sup>

- (3) A deduction under subsection (c) of this section commences upon the exclusive representative's written request to the employer. Such right to deduction remains in force for so long as the employee organization remains the exclusive bargaining representative for the employees in the unit.

...

#### §1307. Unfair labor practices.

- (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
  - (2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization;
  - (6) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.

The Charge alleges the Respondents have failed or refused to process dues deductions authorized by bargaining unit members for approximately two months prior to the filing of this Charge. By this conduct, the Respondents have interfered with, restricted and prevented ADAG from collecting moneys necessary to carry out its representational responsibilities effectively; have failed to comply with their obligations to collect dues as set forth in §1304 and DHR "Employee Union Dues Options Policy and Procedure";<sup>2</sup> and have acted in bad faith in response to ADAG's lawful request to have dues deducted from its members. ADAG requests the Respondents be found to have violated the PERA as alleged; that they be ordered to expeditiously implement the deduction of dues from the

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<sup>1</sup> Subsections (c)(1) and (c)(2) relate exclusively to the withholding of Fair Share Fees, as set forth in §1319. This section of the PERA was superseded by the U.S. Supreme Court's decision in *Janus v. AFSCME Council 31*, 138 S.Ct. 2448, 201 L.Ed. 2d 924 (June 27, 2016). It has no relevance to this Charge.

<sup>2</sup> Charge, Exhibit 1. The Policy does not have an assigned policy number (indicating "To be assigned."), but includes an effective date of October 31, 2022.

wages of the 208 bargaining unit members who electronically submitted authorization cards under the DHR procedure; and that the Respondents be directed to pay damages to ADAG "... in the amount of \$6,195.00 representing the two pay periods (May 16<sup>th</sup> and May 30<sup>th</sup>) that Respondents failed to remit Union dues to ADAG, with additional continuing damages of \$3,120.00 for each payroll period after May 30, 2025 that Respondents fail to remit union dues to ADAG."

On June 17, 2025, the Respondents filed their Answer to the Charge admitting many and denying some of the facts set forth in the Charge. In new matter included in its Answer, the Respondents assert the Charge fails to state a claim for relief under either §1307(a)(2) and/or (a)(6) of the PERA.

Charging Parties filed their response to the New Matter on July 3, 2025, denying the legal and factual conclusions contained 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 the submission of briefs.

- (b) If the Executive Director determines that an unfair labor practice has, or 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. DOT/DTC*, ULP 04-10-453, V PERB 3179, 3182 (Probable Cause Determination, 2004).

DOJ and ADAG are and were at all times relevant to this Charge engaged in their negotiations for an initial collective bargaining agreement.

The Charge alleges the Respondents violated both the statute and DHR's policy in failing and/or refusing to promptly process ADAG's notification to and the authorization of individual bargaining unit members for the deduction of union dues from their wages. DHR's "Employee Union Dues Options Policy and Procedures" ("Policy").<sup>3</sup>

The Respondents assert the cited Policy "... applies only to Executive Branch agencies with bargaining unit certifications and collective bargaining agreements managed by Respondent DHR". Consequently, Respondents assert, the DHR policy is neither relevant nor controlling, and it does not provide a cause of action under the PERA.

The pleadings also place into issue various communications and the multiple agencies involved in the process of activating the withholding of union dues from the wages of bargaining unit employees who authorize withholding, as required by 19 *Del. C.* §1304.

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<sup>3</sup> Charge, Exhibit 1. The policy is not numbered but can be found on the DHR website at: ["DHR Employee Union Dues Options Policy and Procedures - Internal"](#), dated October 31, 2022.

The pleadings contain both factual and legal disputes. With all inferences drawn in the favor of the Charging Party, the pleadings are sufficient to support the possibility that an unfair labor practice may have occurred. It will be ADAG's burden to establish that the Respondents, individually or collectively, engaged in conduct which violates 19 *Del. C.* §1304, §1307(a)(2) and/or (a)(6), as alleged.

### **DETERMINATION**

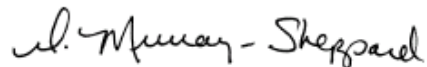
Considered in a light most favorable to the Charging Parties, the pleadings are sufficient to establish that the Respondents may have violated 19 *Del. C.* §1304, §1307(a)(2) and/or (a)(6), as alleged. The pleadings raise both questions of fact and law which can only be resolved following the creation of a complete evidentiary record and the consideration of argument.

**WHEREFORE**, a hearing will be promptly scheduled for the purpose of developing a full and complete factual record upon which argument can be made and a decision rendered concerning:

WHETHER THE RESPONDENTS, DELAWARE DEPARTMENT OF JUSTICE, DEPARTMENT OF HUMAN RESOURCES, AND/OR THE OFFICE OF MANAGEMENT AND BUDGET, ENGAGED IN CONDUCT WHICH DOMINATED, INTERFERED WITH OR ASSISTED IN THE FORMATION, EXISTENCE OR ADMINISTRATION OF THE ADAG; AND/OR REFUSED OR FAILED TO COMPLY WITH ANY PROVISION OF THE PERA OR WITH RULES AND REGULATIONS ESTABLISHED BY THE BOARD THEREUNDER, IN VIOLATION OF 19 *DEL. C.* §1304, §1307(A)(2) AND/OR (6), AS ALLEGED.

A hearing on the merits of this matter will be scheduled promptly.

DATE: July 17, 2025



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