

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. 24-08-1427</u>
	:	
V.	:	
	:	DECISION AND ORDER OF DISMISSAL
DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH,	:	
AND THEIR FAMILIES, DIVISION OF PREVENTION	:	
AND BEHAVIORAL HEALTH SERVICES,	:	
	:	
Respondent.	:	

Appearances

Claiborne S. Newlin, Esq., Markowitz & Richman, *for LiUNA Local 1029*

Khrishna C. Hawkins, Labor Relations Manager, DHR/DELR, *for the State*

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 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 Child and Family Care Coordination Unit (“CFCCU”) is a sub-division of DPBHS.

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 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 III¹; Family Service 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).

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, Attachment 1.*

On August 30, 2024, 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 the Behavioral Health Case Managers III² by failing or refusing to negotiate concerning the impact on terms and conditions of employment of changes made by DPBHS to their duties and responsibilities. The Charge further alleges

¹ It is undisputed that in June, 2024, the State Department of Human Resources (“DHR”) retitled the Psychiatric Social Worker classifications to Behavioral Health Case Managers to comply with legislative changes effectively prohibiting the use of the “Social Worker” title unless the individuals were State licensed. *Laws of Delaware, Volume 84, Chapter 438 (SB 314).*

² In order to avoid confusion, the former Psychiatric Social Worker III’s will be referred to only by their new titles, “Behavioral Health Case Managers III” in this decision.

DPBHS bypassed LiUNA, as the exclusive bargaining representative, and dealt directly with bargaining unit employees to implement those changes.

On September 20, 2024, 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 asserted the Charge alleged insufficient facts to support a claim that the PERA had been violated and requested the Charge be dismissed in its entirety. LiUNA Local 1029 filed its response to the New Matter on October 7, 2024, in which it denied the legal defenses and conclusions asserted by the State.

A probable cause determination was issued on November 12, 2024, finding the pleadings were sufficient to establish that an unfair labor practice may have been committed. A hearing was convened on March 27, 2025, and the record was closed following the submission of closing arguments by the parties. The decision reached herein results from the record thus created by the parties.

ISSUE

WHETHER DSCYF/DBPHS FAILED OR REFUSED TO NEGOTIATE WITH THE EXCLUSIVE BARGAINING REPRESENTATIVE OF THE BEHAVIORAL HEALTH CASE MANAGERS III CONCERNING THE IMPACT OF CHANGES TO THEIR DUTIES AND RESPONSIBILITIES ON THEIR TERMS AND CONDITIONS OF EMPLOYMENT, IN VIOLATION 19 *DEL. C.* §1307(A)(1) AND (A)(5).

FACTS

In September, 2016, LiUNA filed a representation petition seeking to be certified as the exclusive bargaining representative of the bargaining unit of DPBHS employees working in the CFCC Unit. The State objected to the inclusion of Psychiatric Social Workers (now Behavioral Health Case Managers) in the unit asserting they were

supervisory employees and, therefore, excluded from eligibility to be represented for purposes of collective bargaining. Following receipt of evidence and argument on the underlying duties and responsibilities of Behavioral Health Case Managers, it was determined that the State had not met its burden to establish that Behavioral Health Case Managers met the statutory definition of a supervisor. The appropriate bargaining unit was determined to include:

All regular full and part-time non-supervisory employees of the Child & Family Care Coordination unit of DSCYF/Division of Prevention and Behavioral Health Services. This unit currently includes the following positions: Psychiatric Social Worker III; Family Service Assistant I, II; Adolescent Treatment Services Coordinator; and Administrative Specialist I, II, III.³

A representation election was conducted by the Public Employment Relations Board and LiUNA Local 1029 was certified as the exclusive bargaining representative of this unit.

In June, 2023, LiUNA filed grievances on behalf of thirteen bargaining unit employees with the Delaware Merit Employee Relations Board (“MERB”). All thirteen employees held Adolescent Treatment Services Coordinator (“ATSCs”) positions. The grievances alleged the ATSCs were being required to work in the higher rated position of Behavioral Health Case Manager and not being compensated appropriately, in violation of Merit Rule 3.2:

Employees may be required to perform any of the duties described in the class specification, any other duties of a similar kind and difficulty, and any duties of similar or lower classes. Employees may be required to serve in a higher position; however, if such service continues beyond 30 calendar days, the Rules for promotion or temporary promotion shall apply, and they shall be compensated appropriately from the first day of service in the higher position.

³ *LiUNA Local 1029 & DSCYF/DPBHS*, REP 16-09-1080, IX PERB 6907, 6924 (8/8/17). It is noted that at the time of the election on September 18, 2017, all the Behavioral Health Case Managers (f/k/a Psychiatric Social Workers) employed by DPBHS/CFCCU held PSW III positions.

After reviewing the record and considering the parties' legal arguments, MERB granted the grievances and concluded generally that the grievants were working out of class. Because not all thirteen Grievants had testified, MERB directed LiUNA and DSCYF to discuss and determine, if possible, which individuals were entitled to a benefit. The parties notified MERB on February 22, 2024 that an agreement on remedy had been reached and LiUNA withdrew the grievances.

During the course of their remedy discussions, the parties also discussed adjustments which might be made such that ATSCs were not required to work out of class performing the work of the higher rated Behavioral Health Case Managers. In response to a request by the DPBHS Director to meet to discuss how the work of ATSCs and Behavioral Health Case Managers might be better differentiated, representatives of LiUNA and the DSCYF Secretary met on February 6, 2024. In preparation for the meeting, the DPBHS Director reviewed the ATSC and Behavioral Health Case Manager job descriptions⁴ and the Performance Plans in effect for January 1, 2024, through December 31, 2024.⁵

The DPBHS Director drafted revised Performance Plans for Behavioral Health Case Managers which she provided to the LiUNA Representatives at the February 6, 2024 meeting, which she proposed would replace the existing Performance Plans and be effective from March 1, 2024 – December 31, 2024. The only substantive changes were in Goal 4: Duties and Responsibilities. The existing Performance Plan stated in Goal 4:

- A. Effectively manages complex cases as assigned by CFCCTL (i.e., Team Leader).
- B. May provide support to staff by accompanying them to Court

⁴ State Exhibit 4.

⁵ State Exhibit 3.

hearings and/or meetings as needed or requested.

- C. Provides administrative support [sic] the Treatment Team Leader and guidance and support to care coordination staff in meeting case management goals.
- D. Support the Treatment Team Leader in providing shadowing opportunities, skill development, role modeling, etc. for new and existing care coordination staff.
- E. Provides coverage for the cases of team members who are unavailable.
- F. Completes chart reviews for the team to assist with ensuring accuracy and completeness in accordance with CARF standards and CFCC unit expectations.⁶

The draft revisions for Goal 4 developed by the DPBHS Director included:

- A. Provides technical guidance to professional and para-professional staff in a psychiatric social work unit, and monitors quality level of services. Trains and orients new staff.
 - Provides initial training in unit operations to new ATSC and PSW III staff
 - Oversees annual training plan for ATSC staff (i.e., assurance of completing necessary training)
 - Provides shadowing opportunities for ATSC and PSW III staff to observe work activities
 - Accompanies ATSC and PSW III staff to observe their work and provides feedback to staffs' supervisor
 - Completes chart reviews of ATSC and PSW III to assist with ensuring accuracy and completeness in accordance with CFCC unit expectations
- B. Provides consultation to staff to enable them to intervene in crisis situations or directly handles explosive situations.
 - Provides consultation to ATSC staff as needed to manage crisis situations, effectively engage youth and families as well as other stakeholders
- C. Oversees the operation of a psychiatric social work unit.
 - Assists with the planning and facilitation of unit monthly meetings
- D. Assists in analysis of operations, making recommendations with a view to improving division/department policy and procedures.

⁶ State Exhibit 3, p. 3.

- Prepares statistical reports to support CFCC unit operations
- E. Provides consultative services to state and private agencies and may participate in community projects.
- Represents DPBHS on external committees as assigned
 - Provides case coverage for ATSC and PSW III as needed.⁷

The LiUNA and DSCYF/DPBHS representatives met again on February 9, 2024 to finalize the settlement of the MERB case. At this meeting, the LiUNA representatives disputed the DPBHS Director's understanding of what the MERB directive required and expressed concerns that in the draft revised Performance Plan she had added multiple duties which they characterized as "supervisory in nature."⁸ The DPBHS Director also stated she intended to meet with the BHCMS before the end of the month to explain the differences between the Performance Plans and to "address any questions or concerns".

In an email dated February 16, 2024, the DPBHS Director notified the LiUNA Business Manager that she was hopeful he would provide any questions from the BHCMS concerning her draft revised Performance Plan.⁹

Thereafter, the LiUNA Business Manager responded by email promptly on the afternoon of February 16, 2024:

Please find attached the PSW III Performance Review Modification. I believe that while the review of the performance plan is a work in progress, the proposed changes that have been agreed to are enough to satisfy the differentiation between the ATSC and the PSW III. However, LiUNA is committed to keep working on this task until an amicable agreement is obtained. I further believe we can satisfy the MERB's order by agreeing to pay the 13 grievances with an understanding that the compensation obligation will expire on February

⁷ Union Exhibit 7, p. 3-4

⁸ Transcript ("TR") at p. 26-31.

⁹ State Exhibit 2, p. 3.

29th. Please confirm receipt of this email and provide your thoughts.¹⁰

The email included suggested revisions to the PSW III essential functions and to the draft

Performance Plan in which the PSW IIIs agreed only to the following changes:

- Provide mentorship ~~orientation~~ to new ATSC and PSW III staff during onboarding
- Provides shadowing opportunities for [new] staff to observe PSW III in work activities
- Accompanies [new] ATSC and PWS III staff to observe their work and provide feedback to staffs' supervisor

They sought to strike these provisions:

- ~~Provide training to assigned ATSC and PSW III staff~~
- ~~Provide initial training in unit operations to new staff~~
- ~~Oversees annual training plan for staff (i.e. initial approval of training and assurance of completing necessary training)~~
- ~~Assists with the planning and facilitation of unit monthly meetings.~~

The attachment asserted the other duties were those of the Treatment Team Leader and expressed concern that additional duties to represent DPBHS on external committees would be difficult due to caseloads and staff shortages.¹¹

The DPBHS Director responded by email on February 19, 2024:

When we met on 2/9, you were going to have further discussion with the PSW III staff and provide me a list of questions they had raised for me to address. However, what you provided me was revision to the new language for the performance plans. As you know, I worked hard to take the information in the two classifications that differentiates them and to update the performance plan consistent with that language.

I would suggest we quickly get a meeting with you and the PSW IIIs since the plans are going to be updated to go into effect 3/1. My schedule is extremely full, but I will do my best to accommodate your availability this week. Please advise when you can be available for one

¹⁰ State Exhibit 2, p. 2

¹¹ Union Exhibit 4.

hour this week.¹²

While the parties were attempting to arrange a mutually acceptable time to meet, the DPBHS Director communicated directly with the BHCM IIs by email dated February 22, 2025:

My understanding is that [LiUNA's Business Manager] has spoken with you about the need to make changes to your performance plans based on the recent MERB hearing decision and he let me know you had questions regarding the changes. Since the changes will go into effect on 3/1/24, I want to make sure there is an opportunity for you to meet with me to discuss your questions. I am going to send meeting invites to the group for two one-hour meetings and you are welcome to join one or both to share your questions.¹³

A number of the BHCMS responded directly to the Director that they were concerned that the LiUNA Local 1029 Business Manager had not been included in the email chain. The Business Manager responded to the Director, the DSCYF Cabinet Secretary and all the BHCMS by email the next day, accusing the Director of being deceptive, describing the impact study LiUNA conducted, and confirming that he had provided the Director with the proposed mark-up of her draft performance plan revisions on February 16.¹⁴ Four individual BHCMS sent emails to the Director and the other BHCMS, copying LiUNA, to express their concerns about the impact of the revised performance plan on their conditions of employment and their concerns that the proposed changes affecting their job functionality had not been negotiated.¹⁵

At some point thereafter, the revised Performance Plans were implemented.

¹² State Exhibit 2, p. 2.

¹³ Union Exhibit 5, p. 5 – 6.

¹⁴ *Supra.*, p. 1 – 2.

¹⁵ Union Exhibit 8. It is noted that all four emails from BHCMS are identically worded. The emails do not provide details as to how the revised performance plans will impact conditions of employment for BHCMS.

POSITIONS OF THE PARTIES

LiUNA Local 1029:

LiUNA asserts the State unilaterally modified the duties of BHCM IIIs, implemented those changes, and refused to bargain over the impact of the changes on the BHCM's terms and conditions of employment. It also alleges the State bypassed LiUNA, the exclusive bargaining representative of the employees, in order to coerce the BHCMS to comply with the changes. LiUNA requests the PERB direct the State to bargain in good faith over the changes, to rescind all changes to the terms and conditions of employment of BHCMS, and to make the employees whole.

State:

The State asserts that LiUNA has failed to meet its burden to prove that DSCYF/DPBHS violated either its duty to bargain in good faith or that it interfered, restrained or coerced any employee in violation of the PERB. It has provided no evidence that the revised performance plans have impacted the bargaining unit employees' terms and conditions of employment.

It notes that the PERA does not require a public employer to negotiate with respect to discretionary subjects which are specifically defined to include the matters excluded from bargaining for State merit employees.¹⁹ *Del. C. §1302(h)*.¹⁶ It cites to 29 *Del. C. §5915* (Classification; uniformity; appeal of classification), to conclude that the duties and responsibilities of merit classifications are not mandatory subjects of bargaining. Despite LiUNA's protestations to the contrary, it is clear that they were attempting to negotiate the

¹⁶ "Discretionary subject" means, for the State as an employer only, any subject covered by the merit rules which apply pursuant to §5938(c) of Title 29, and which merit rules have not been waived by statute."

duties and responsibilities of the BHCM IIIs, rather than the impact of revised performance plans on their terms and conditions of employment.

The State asserts LiUNA has failed to establish the revised performance plans, which are drawn directly from the BHCM III job description, have any impact on wages, hours, grievance procedures or other terms and conditions of employment.

DISCUSSION

Preliminarily, Behavioral Health Case Managers III (formerly Psychiatric Social Worker III) were and are specifically included in the bargaining unit and remain bargaining unit positions. Based on their duties in 2017, PERB determined the appropriate bargaining unit composition to be:

All regular full and part time non-supervisory employees of the Child & Family Care Coordination unit of DSCYF/Division of Prevention and Behavioral Health Services. This unit currently includes the following positions: Psychiatric Social Worker III; Family Service Assistant I, II; Adolescent Treatment Services Coordinator; and Administrative Specialist I, II, III.¹⁷

The decision held the employer had not met its burden to establish that Behavioral Health Case Managers III exercised consequential supervisory authority, as defined by 19 *Del. C.* §1302(s). Specifically, the Hearing Officer held the Behavioral Health Case Managers III “... provide administrative support to the Team Leaders and guidance and support to ATSCs in meeting case management goals...”¹⁸ Changes to job duties or performance plans which fall within the existing job description do not alter the bargaining unit status of a position which is explicitly included in the unit definition.

¹⁷ *LiUNA Local 1029 & DSCYF/DPBHS*, REP 16-09-1080, IX PERB 6907, 6924 (8/8/17). It is noted that at the time of the election on September 18, 2017, all the Behavioral Health Case Managers (f/k/a Psychiatric Social Workers) employed by DPBHS/CFCCU held PSW III positions.

¹⁸ *LiUNA Local 1029 & DSCYF*, REP 16-09-1080, *Ibid.*, p. 6924.

The decision rendered by the Merit Employee Relations Board (“MERB”) on June 24, 2024¹⁹ held:

The record establishes that ATSCs perform Duties A-D as needed, and that neither ATSCs nor [BHCMS] perform Duty E.²⁰ Because ATSCs and [BHCMS] work in teams, they perform these duties based on experience, with more senior ATSCs providing extensive on-the-job training to other ATSCs and [BHCMS]. In recent years, the Agency has experienced turnover and extended vacancies in [BHCM] III positions, which necessitated ATSC’s assuming [BHCM] IIIs workload.

After reviewing and considering the parties’ legal arguments, the Board granted the grievances and concluded generally that the grievants were working out of class. The record, however, did not include specifics for all thirteen grievants, individually. The Board further found that the determination of which grievants were entitled to receive compensation at the higher rate of a [BHCM] III (both back pay compensation for the 30 days prior to filing of the individual grievances and compensation going forward) would be determined by whether each individual grievant qualified for compensation, based on the extent to which each grievant performed tasks which fell within the [BHCM] III classification.

The Board directed [LiUNA Local 1029] and [DSCYF/DPBHS] to discuss and determine, if possible, which individuals were entitled to a benefit from his/her grievance. The Board deferred its decision on the remedy for a period of thirty (30) days.

By email dated February 22, 2024, counsel for the Grievants notified the Board ‘... that the parties have mutually resolved [the grievances] and entered into an agreement consistent with MERB’s ruling.’ The Grievants requested to withdraw their grievances...²¹

This decision does not support the extensive and repeated testimony of the DPBHS Director that the MERB mandated that she reassign duties to BHCM IIIs. The MERB decision has no impact or relevance to resolution of this unfair labor practice charge.

The Charge alleges the State unilaterally implemented a change or changes to

¹⁹ *Grinnage, et. al, v. DSCYF, DPBHS*, MERB Docket 23-06-882 through 23-06-894 (June, 2024).

²⁰ “E. Completes chart reviews for the team to assist with ensuring accuracy and completeness in accordance with CARF standards and CFCC unit expectations.” *Supra.*, p. 4.

²¹ *Grinnage*, p. 4 – 5.

mandatory subjects of bargaining in violation of 19 *Del. C.* §1307(a)(1) and (a)(5). The status quo of a mandatory subject of bargaining is subject to change only through the collective bargaining process.²² A unilateral change in the status quo of a mandatory subject of bargaining constitutes a *per se* violation of the duty to bargain in good faith.²³ “Terms and conditions of employment” are statutorily defined to mean, “...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 prerogative²⁴ of the public employer.”²⁵

LiUNA properly notes in its Response to New Matter:

The narrow issue raised by this unfair labor practice charge does not involve the merits of the substantive changes to the duties of PSW IIIs, effective March 1, 2024. It also does not involve their change in classification, effective June 11, 2024, to the classification of Behavioral Health Case Manager III.

The issue alleged in the Charge is whether the Respondent committed the unfair labor practices alleged when it failed or refused to bargain over the changes and the impact of the changes in duties on the terms and conditions of employment of the PSW IIIs.

²² *New Castle County Vo-Tech Education Assn. v. Bd. of Education*, ULP 88-05-025, I PERB 257, 259 (1988); *Christina Education Assn. v. Bd. of Education*, ULP 88-09-026, I PERB 359, 366 (1988).

²³ *AFSCME Council 81 v. Delaware Dept. of Transportation*, ULP 95-01-111, II PERB 1279, 1290 (1995), affirmed by full Board at II PERB 1201 (1995); *CWA Local 13101 v. Kent County Levy Court*, ULP 14-08-971, VIII PERB 6321, 6326 (2014); *AFSCME 218 v. Christina School District*, ULP 15-03-994, IX PERB 7031, 7036 (2018); *IAFF Local 1590 v. City of Wilmington*, ULP 20-12-1253, IX PERB 8573 (2022, Probable Cause Determination and Order of Dismissal), affirmed by full Board at IX PERB 8609, 8611 (2022).

²⁴ This Board has previously held that the “exclusive prerogative” as used in §1302(t) are matters which constitutes subjects of bargaining on which the employer is expressly prohibited, by statute, from bargaining. *FOP Lodge 1 v. City of Wilmington*, ULP 23-12-1389, IX PERB 8849, 8857 (April 11, 2024).

²⁵ 19 *Del. C.* §1302(s).

In order to prevail in this matter, LiUNA must establish that there has been a unilateral change to a mandatory subject of bargaining. LiUNA has not specified, either in its Charge or its argument, which terms and conditions of employment it believes DSCYF has unilaterally modified. The record is insufficient to support a finding that the negotiated wages, hours, grievance procedure or other working conditions of employment for Behavioral Health Case Managers III have been affected by the revised performance plan implemented in 2024.

The prohibition on failing or refusing to negotiate in good faith excludes a duty to negotiate with respect to discretionary subjects of bargaining. Discretionary subjects are defined by the PERA, referring only to the State as the employer, to any subject which is covered by the State merit rules which apply to represented merit employees, as set forth in 29 *Del. C.* §5938 (c) which states:

(c) The rules adopted or amended by the Board under the following sections shall apply to any employee in the classified service represented by an exclusive bargaining representative or covered by a collective bargaining agreement under Chapter 13 of Title 19, except in the case of collective bargaining agreements reached pursuant to § 1311A of Title 19: §§ 5915 through 5921, 5933, 5935, and 5937 of this title.

The State argues that LiUNA's effort to compel negotiations concerning performance plans is prohibited because classification is expressly identified as a discretionary subject of bargaining. 29 *Del. C.* §5915²⁶ As repeatedly noted, this charge does not concern a change

²⁶ § 5915. Classification; uniformity; appeal of classification.

- (a) The rules shall provide for the preparation, maintenance and revision of a position classification plan for all positions in the classified service and all merit comparable positions, based upon similarity of duties performed and responsibilities assumed so that uniform qualifications and pay ranges shall apply to all positions in the same classification...

in classification nor an effort by LiUNA to negotiate with respect to the BHCM job duties, as circumscribed by the job description established pursuant to 29 *Del. C.* §5915. Consequently, 29 *Del. C.* §5915 also has no relevance to resolution of this Charge.

The PERA reserves to the employer the right to decline to negotiate on matters of inherent managerial policy, "... which include, but are not limited, such areas of discretion or policy as the functions and programs of the public employer, its standards of services, overall budget, utilization of technology, the organizational structure and staffing levels and the selection and direction of personnel." This Board has held, since its earliest decisions, that a public employer may choose to negotiate on matters of inherent managerial policy, but may not be compelled to do so, i.e., they are permissive subjects of bargaining.²⁷ Reorganizations and changes to the distribution of work within agencies are reserved to the State as a matter of inherent managerial policy.²⁸

LiUNA cites decisions rendered under the National Labor Relations Act which establish the duty for an employer to negotiate with regard to the effects of its management decisions on terms and conditions of employment. Both *Allison Corporation*²⁹ and *First National Maintenance Corporation*³⁰ concern situations wherein the employer eliminated bargaining unit positions, either through lay-off or because of termination of the employer's contract with a customer. In both cases, the employer's decision had a direct impact on the continued employment of bargaining unit employees. In this case, there is

²⁷ *Woodbridge Education Assn. v. Bd. of Education*, ULP 90-02-048, I PERB 537 (1990); *IDSU-AAUP v. Delaware State University*, ULP 97-12-224, PERB 2693, 2701 (2002).

²⁸ *AFSCME Local 1385 and Delaware Dept. of Finance*, REP 22-07-1310 (CLAR), IX PERB 8763, 8775 (6/28/23).

²⁹ 330 NLRB 1363 (2000).

³⁰ 452 US 666 (1981).

no threat, either explicit or implied, to the continued employment, wages, salaries, hours, negotiated grievance procedure or other terms and conditions of BHCMS III.

The United States Supreme Court opined in *First National*:

[I]n establishing what issues must be submitted to the process of bargaining, Congress had no expectation the elected Union representative become an equal partner in the running of the business enterprise in which the Union's members are employed...[T]here is an undeniable limit to the subjects about which bargaining must take place.³¹

The decision made by DSCYF/DPBHS to clarify the employees' duties and responsibilities, including the issuance of new performance plans developed under the existing job description, does not impact the conditions under which BHCMS perform their work. Neither the job description nor the bargaining unit status of BHCMS III were changed by the revised performance plans, although BHCMS may feel they are being asked to perform new or different duties. If the employees believe they are required to work outside of their job description the recourse is to seek resolution through the merit grievance process, as was done by the ATSC's in 2023.³²

LiUNA's argument that the State was obligated to negotiate concerning the revised performance plans because the BHCMS might be subject to discipline for failure to meet the new performance standards is unavailing. The negotiated collective bargaining agreement between LiUNA and DSCYF/DPBHS requires the employer to have just cause before it takes any disciplinary action and includes a grievance procedure through which bargaining unit employees can challenge discipline.³³ The issuance of revised Performance Plans does not impact or affect the access of bargaining unit employees to use

³¹ *Supra.*, p. 676.

³² Grinnage, *Supra.*

³³ Answer, Attachment 1, Articles 16 and 17.

the grievance procedure. Being held accountable to perform one's duties in compliance with a performance plan which falls within the parameters of the existing job description does not threaten the employee's continued employment.

For these reasons, LiUNA's charge that the State has failed or refused to bargain in good faith in violation of 19 *Del. C.* §1307(a)(5) is dismissed.

As there was no duty to bargain over the implementation of the revised performance plan under which BHCMs III are hired and evaluated, LiUNA's charge that the State violated 19 *Del. C.* §1307(a)(1) must also fail. The employer's discussion of the performance plans did not concern a matter in which LiUNA had either a representational right or responsibility. The revised performance plans did not establish either new working conditions nor did they make changes to the terms and conditions of employment of BHCMs. For these reasons, LiUNA's charge that the State has failed or refused to bargain in good faith in violation of 19 *Del. C.* §1307(a)(1) is dismissed.

CONCLUSIONS OF LAW

1. 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 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 Child and Family Care Coordination Unit ("CFCCU") is a sub-division of DPBHS.

2. 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 representative

of a bargaining unit of DSCYF employees within the meaning of 19 Del. C §1302(j).

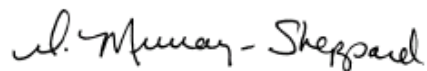
3. LiUNA Local 1029 and DSCYF/DPBHS are parties to a fully executed collective bargaining agreement which has a term of April 14, 2022, through June 30, 2025. That Agreement was applicable at all times relevant to this Charge.

4. The record is insufficient to support a finding that DSCYF/DPBHS interfered with, restrained or coerced any employee because of the exercise of any right guaranteed in violation of §1307(a)(1), when it met with Behavioral Health Case Manager IIIs to discuss revised job duties in or before March, 2024.

5. The record is insufficient to support a finding that DSCYF/DPBHS failed or refused to bargain in good faith with LiUNA Local 1029 concerning a mandatory subject of bargaining when it adopted new performance plans for Behavioral Health Case Manager IIIs in March, 2024.

WHEREFORE, this Charge is dismissed in its entirety.

DATE: January 29, 2026



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