STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

DELAWARE STATE AND FEDERAL EMPLOYEES LOCAL 1029, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO,	:	
APPELLANT,	:	**Unfair Labor Practice Charge No. 24-08-1427**
v.	:	
DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH, AND THEIR FAMILIES, DIVISION OF PREVENTION AND BEHAVIORAL HEALTH SERVICES,	:	**BOARD DECISION ON REVIEW**
APPELLEE.	:	

Appearances

Raymond G. Heineman, Esq., Kroll Heineman Ptasiewicz & Parsons, LLC, for LiUNA Local 1029

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

The Appellant, 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 §1302(i) of the Delaware Public Employment Relations Act ("PERA"), 19 *Del. C.* Chapter 13. LiUNA Local 1029 is the exclusive representative of a bargaining unit of DSCYF employees in the Division of Prevention and Behavioral Health Services ("DPBHS") within the meaning of 19 *Del. C.* §1302(j).

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 DPBHS is an organizational division within

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

On August 30, 2024, the Appellant 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). The Charge alleged the State unilaterally changed established terms and conditions of employment of the Behavioral Health Case Managers III ("BHCM IIIs") 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 and by directly communicating with the bargaining unit employees, bypassing LiUNA Local 1029, in order to implement the changes. On September 20, 2024, the State filed its Answer to the Charge, including new matter. The Appellant filed a response to that New Matter on October 7, 2024.

The Executive Director issued a Probable Cause Determination on November 12, 2024, and a hearing was held on March 27, 2025. The record closed following the submission of closing arguments.

On January 29, 2026, the Executive Director issued a decision finding the record was insufficient to support LiUNA Local 1029's allegation that DSCYF/DPBHS had failed or refused to bargain in good faith concerning a mandatory subject of bargaining when it adopted a new Performance Plan for Behavioral Health Case Managers III in March 2024. The Executive Director also found the record did not support a finding that DSCYF/DPBHS interfered with, restrained or coerced any employee because of the exercise of any statutorily guaranteed right, in violation of §1307(a)(1), when it met with Behavioral Health Case Manager IIIs to discuss revised job duties in March, 2024.

On or about February 3, 2026, the Appellant filed a request for review, challenging

the Executive Director's failure to find that DSCYF's conduct, in unilaterally implementing increases in the job duties of the BHCM IIIs, preempted the Union's efforts to evaluate the impact of increased duties and to formulate bargaining proposals in response to that impact. The Appellant requested that this Board direct DSCYF to bargain in good faith over the impact of the changes, to rescind all changes to terms and conditions of employment of BHCM IIIs before bargaining, and to make the affected employees whole for the changes.

On February 13, 2026, the State filed its response to the request for review in which it asserted the Executive Director's decision was based on substantial evidence and was not arbitrary, capricious, or otherwise contrary to law. The State noted the Appellant improperly attempts to re-argue the original Charge and requested the Board dismiss the Request and uphold 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 March 3, 2026, at which time a quorum of the Board met in public session to hear and consider the Appellant's request for review. The parties were provided with the opportunity to present oral arguments and to answer questions from the Board.

The decision reached herein is based upon consideration of the record and the arguments made 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 arguments of the parties on appeal, the Board must vote to either affirm, overturn, or remand the decision to the Executive Director for further action.

The Appellant confuses its bargaining rights under the PERA, as well as the employer's bargaining obligations. The public employer and the employee organization which is certified as the exclusive representative of the bargaining unit are obligated to "… enter into collective bargaining negotiations with the willingness to resolve disputes relating to terms and conditions of employment and to reduce to writing any agreements reached through such negotiations."[1]

Terms and conditions of employment are 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 prerogative of the public employer."[2] The PERA also reserves to the public employer's discretion matters of inherent managerial policy, on which the employer is not required to bargain, which include the employer's "… standards of service, … organizational structure and staffing levels and the … direction of personnel."[3]

This Board has consistently held that when an employer either proposes or implements a change, even if it concerns a permissive subject of bargaining, the employer still has an obligation to negotiate the *impact* of that change on mandatory subjects of bargaining.

> Once an exclusive bargaining representative is on notice that a change is proposed or initiated which impacts a mandatory subject of bargaining, the union has a right to demand to bargain with respect to the impact of the proposed or implemented change in terms and conditions of employment. The failure or refusal of an employer to engage in negotiations, upon demand, violates its statutory duty to

1 19 Del. C. §1301(2).

2 19 Del. C. §1302(t).

3 19 Del. C. §1305.

negotiate terms and conditions of employment in good faith.[4]

The Appellant was not seeking to negotiate the impact of the revised Performance Plan for the BHCM IIIs, but rather to negotiate the composition of the plan itself and provided specific suggested modifications to the performance plan language.[5] Even a year after implementation of the revised Performance Plan (when the hearing was held), the Appellant was unable to provide concrete examples of any detrimental effects on the terms and conditions of employment of the BHCM IIIs. There is no evidence on this record that there had been any change in the employees' hours of work, that the employees are being required to work extra hours in order to accomplish new duties, or that the expectations were so changed that the employees were unable to meet them. The only BHCM III who testified reported that she had been rated as exceeding expectations under the revised rubric.

When the determination was made by the Merit Employee Relations Board that Adolescent Treatment Services Coordinators were being required to perform the work of the higher rated BHCM IIIs with regularity, the logical step was to ensure that those higher rated duties were, going forward, clearly assigned to the BHCMs who were being compensated to perform that work. Management did include and inform LiUNA Local 1029 of its intent to clean up the allocation of responsibilities such that the duties which fell under the existing job description of BHCM IIIs were clearly defined in their performance plans.

The record supports the Executive Director's determination that the record is insufficient to conclude that there had been any change to the negotiated wages, hours,

[4] *IAFF Local 1590 v. City of Wilmington,* ULP 23-01-1341, PERB 9007, 9020 (2025)

[5] Union Exhibit 4

grievance procedure, or other working conditions for BHCM IIIs. Her conclusion that the employer's discussion of revised performance plans with employees did not restrain, coerce or interfere with the employees statutorily protected rights to be represented, is not arbitrary or capricious, and is not contrary to law. The record reveals that LiUNA Local 1029 representatives were invited to attend the meeting with the employees to discuss the revised performance plans, but they declined to attend.[6]

DETERMINATION

After reviewing the record, hearing and considering the arguments of the parties, the Board unanimously affirms the Executive Director's determination to dismiss the Charge for failure to establish that DSCYF/DPBHS either failed or refused to bargain in good faith concerning a mandatory subject of bargaining and/or interfered with, restrained, or coerced any bargaining unit employee because of the exercise of a right protected by the PERA. The decision is not arbitrary or capricious and is consistent with applicable law. The decision is supported by the record.

Wherefore, the decision is affirmed, and the appeal is denied.

IT IS SO ORDERED.

Dated: March 30, 2026

Elizabeth D. Maron, Chairperson

Kathi Karsnitz, Member

[6] See State Exhibit 1 in which the Appellant's Business Manager declined an invitation to attend the mandatory performance plan meeting with BHCM IIIs scheduled for and conducted on February 26, 2024.