

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

DELAWARE PUBLIC EMPLOYEES COUNCIL 81,	:	
LOCALS 936, 1832, 2030, 2031, 2305 & 3514,	:	
AFSCME, AFL-CIO,	:	
Charging Parties,	:	UNFAIR LABOR PRACTICE CHARGE
	:	<u>NO. 26-02-1527</u>
v.	:	
	:	PROBABLE CAUSE DETERMINATION
DELAWARE DEPARTMENT OF HEALTH AND SOCIAL	:	
SERVICES,	:	
Respondent.	:	

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 Health and Social Services (“DHSS”) is an agency of the State. 19 *Del. C.* §1302(p).

Delaware Public Employees Council 81 of the American Federation of State, County and Municipal Employees, AFL-CIO (“AFSCME”) is an employee organization within the meaning of 19 *Del. C.* §1302(i). By and through its affiliated Locals 936, 1832, 2030, 2031, 2305, and 3514, AFSCME is the exclusive representative of bargaining units of DHSS employees, within the meaning of 19 *Del. C.* §1302(j).

AFSCME Locals 936, 1832, 2030, 2031, 2305, 3514 and DHSS are parties to multiple current collective bargaining agreements which are placed in issue by this Charge. The Agreements for Locals 1832, 2030, 2031, 2305 and 3514¹ have terms of July 1, 2025 through June 30, 2028, as set forth in Articles 24, 26 and 30, respectively. The Agreement

¹ Charge Attachments B, C and D.

for Local 936² states in Article 24 that the agreement is effective from July 1, 2025 through April 30, 2028.

On February 10, 2026, AFSCME 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)(5), which states:

§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:
 - (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 the State unilaterally failed to implement the negotiated wage increases which were, by their terms, to be implemented effective November 30, 2025. As of the date of filing, the bargaining unit had received neither the negotiated increases nor the retroactive pay.

On March 13, 2026, the State filed an Answer to the Charge admitting some of the facts set forth in the Charge, denying others, and asserting it was unable to initiate the negotiated increase until a signed agreement was received from an AFSCME Local which is not party to this Charge. It asserts bargaining unit employees received the negotiated wage rate increases in their March 6, 2026 paychecks and that the State is still working on wage payments retroactive to November 30, 2025. The State included New Matter with its Answer, in which it asserts the Charge fails to allege any facts which, if true, would constitute a violation of §1307(a)(5), and allege the Charge is moot.

AFSCME filed its response to the State’s New Matter on March 23, 2026. While admitting the State had been in communication as to its decision to delay wage increases

² Charge Attachment A.

until a signed agreement was received from the local, which is not a party to this Charge, it denies that it agreed to any delay in processing the wage increases and retroactive payments. It further alleged that as of March 19, 2026, all bargaining unit members had not yet received the negotiated wage increases and retroactive pay.

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).

AFSCME cites Section 8(a) of the Fiscal Year 2026 State Budget Act³, which states, in relevant part:

[S]hould a bargaining agreement not be finalized by May 1 of each fiscal year, employees represented by the bargaining unit negotiating said agreement shall receive compensation pursuant to provisions of this section until such time as an agreement takes effect.” (emphasis added)

Each of the appended collective bargaining agreements begins the first section of its Wages Article with the preface. “Effective November 30, 2025...” AFSCME alleges that, by its own admission, the State “... delayed the process of implementing wage increases until after January 30, 2026, even though it had final and signed agreements from the Union on December 15, 2025.”⁴

In its defense to the Charge, the State asserts in its New Matter:⁵

After the agreements were signed, the State then began an arduous process to enable payment of the employees. This included, in this case, manually slotting (a tedious and time-consuming process) over 1,000 employees based on their pay grade and years of service with DHSS. This process cannot begin until an agreement is executed, as it is a time-consuming one. As such, to avoid prolonging the process of employees receiving their pay, the State did not create a separate pay plan for each AFSCME Local – 936, 1832, 2030, 2031, 2035- because that would further delay the creation of new plans for each local.

In its Response to New Matter, AFSCME states,

By way of further response, as recent as March 19, 2026, members of the Union indicated that they still have not received backpay to November 30, 2025. Further, from December 15, 2025 through at least March 6, 2026, the State withheld agreed upon wage increases from employees. Further the State’s actions are capable of repetition yet evading review.⁶

³ Charge, ¶7. DE LEGIS 62 (2025), 2025 Delaware Laws Ch. 62 (H.B. 225).

⁴ Response to New Matter, ¶19.

⁵ Answer and New Matter, §16.

⁶ Response to New Matter, ¶20.

The pleadings contain both factual and legal disputes. With all inferences drawn in the favor of the Charging Parties, the pleadings are sufficient to support the possibility that an unfair labor practice may have occurred. It will be AFSCME's burden to establish that the State had engaged in conduct which violates 19 *Del. C.* §1307 (a)(5), as alleged.

DETERMINATION

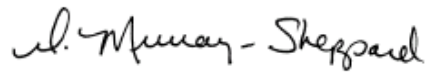
Considered in a light most favorable to the Charging Parties, the pleadings are sufficient to establish that the Respondent may have violated 19 *Del. C.* §1307 (a)(5), as alleged. The pleadings raise both questions of fact and law which can only be resolved following the creation of a complete evidentiary 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 STATE DEPARTMENT OF HEALTH AND SOCIAL SERVICES FAILED OR REFUSED TO BARGAIN COLLECTIVELY WITH AFSCME AND ITS AFFILIATED LOCALS 936, 1832, 2030, 2031, 2305, AND/OR 3514, WHEN IT FAILED TO PROMPTLY IMPLEMENT NEGOTIATED WAGE INCREASES WITH AN EFFECTIVE DATE OF NOVEMBER 30, 2025, AND TO PAY BARGAINING UNIT EMPLOYEES BOTH THE NEGOTIATED WAGE INCREASES AND RETROACTIVE WAGE PAYMENTS FOR NEARLY FIVE MONTHS, IN VIOLATION OF 19 *DEL. C.* §1307 (A)(5), AS ALLEGED.

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

DATE: March 31, 2026



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