

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. 25-09-1506</u>
	:	
v.	:	
	:	PROBABLE CAUSE DETERMINATION
DEPARTMENT OF TRANSPORTATION, DIVISION OF	:	
MOTOR VEHICLES,	:	
	:	
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 Transportation (“DOT”) is an agency of the State. The Division of Motor Vehicles (“DMV”) is an organizational division within DOT.

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 DOT/DMV employees within the meaning of 19 *Del. C.* §1302(j). At the time of the incident giving rise to the Charge, LiUNA Local 1029 represents a bargaining unit which included:

All regular, non-supervisory Full-Time and Part-Time Delaware Department of Transportation, Division of Motor Vehicles employees, statewide. The unit includes the following classifications/positions: Motor Vehicle Specialists I and II, Senior Motor Vehicle Specialists, Motor Vehicle Technicians I and II, Senior Motor Vehicle Technicians, Motor Vehicle System Specialists; Driver Improvement Officers and Driver Improvement Hearing Officers

(excluding supervisory employees as defined in 19 *Del. C.* §1302(s).
DOL Case No. 24.

At all times relevant to this Charge, LiUNA Local 1029 and the Department of Transportation are and were parties to a collective bargaining agreement which has a term of April 25, 2024 through June 30, 2027.

On September 29, 2025, 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), (a)(3) 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 in or because of the exercise of any right guaranteed under this chapter.
 - (3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.
 - (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.

Specifically, the Charge alleges the State used surveillance camera footage as the basis for potential discipline and disciplined a union shop steward who engaged in protected activity during an investigatory meeting. LiUNA requests PERB issue an Order rescinding the discipline issued to its shop steward and order the State to cease and desist from violating bargaining unit employees’ statutorily protected rights, as set forth in §1303 of the PERA¹.

¹ § 1303. Public employee rights. Public employees shall have the right to:

- (1) Organize, form, join or assist any employee organization except to the extent that such right may be affected by a collectively bargained agreement requiring the payment of a service fee as a condition of employment.

On October 20, 2025, the State filed its Answer to the Charge denying many of the facts and all of the legal conclusions included in the Charge. In new matter included in its Answer, the State asserts the Charge fails to allege facts sufficient to support a claim that the PERA has been violated, as alleged.

LiUNA Local 1029 filed its response to the New Matter on November 5, 2025, in which it denied the legal defenses and conclusions asserted by the State.

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 submission of briefs.
- (b) If the Executive Director determines that an unfair labor practice 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.

FN 1 (continued)

- (2) Negotiate collectively or grieve through representatives of their own choosing.
- (3) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the State.
- (4) Be represented by their exclusive representative, if any, without discrimination.

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).

The Charge alleges that the State violated its duty to bargain in good faith when it unilaterally used surveillance camera footage as the sole basis for potential disciplinary action related to DOT Dress Code Guidance and then distributed the captured image widely in a manner that embarrassed and humiliated a bargaining unit employee. It also alleges that the State violated §1307(a)(3) when it disciplined a union shop steward for comments he made in a meeting with management concerning the surveillance camera incident. By and through its actions, the Union asserts the State has violated the protected rights of the employees as protected by 19 *Del. C.* §1303.

The State asserts the use of surveillance cameras in the workplace is matter of inherent managerial policy² which is excluded from terms and conditions of employment³ on which it is required to negotiate⁴, and that the cameras were in use prior to the

² §1305. Public employer rights. A public employer is not required to engage in collective bargaining on matters of inherent managerial policy, which include, but are not limited to, 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.

³ §1302(t) “Terms and conditions of employment” means 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.

⁴ §1302(e) “Collective bargaining” means the performance of the mutual obligation of a public employer through its designated representatives and the exclusive bargaining representative to confer and negotiate in good faith with respect to terms and conditions of employment, and to execute a written contract incorporating any agreements reached. However, this obligation does not compel either party to agree to a proposal or require the making of a concession.

certification of LiUNA Local 1029 as the exclusive bargaining representative of the DMV bargaining unit. The State asserts neither the union shop steward nor the bargaining unit employee was disciplined, but had they been, that discipline would have been subject to challenge through the negotiated grievance procedure. It also asserts that the union's shop steward was counselled (but not disciplined) for engaging in threatening behavior during the meeting because it violated DOT's Code of Conduct and Standards of Conduct.

LiUNA specifically denies the shop steward was not disciplined, providing emails referencing the written reprimand issued to him. It cites National Labor Relations Board decisions which recognize the leeway an employer is required to accord union officials during heated labor relations interactions. It also argues that while the installation of cameras in the workplace to protect workers and the public, as well as the security of state facilities, may be an issue which falls within the employer's discretion, the union has a right to bargain the impact of the use of cameras on bargaining unit employees' terms and conditions of employment.

The pleadings in this matter are sufficient to establish probable cause to believe an unfair labor practice may have occurred. It will ultimately be LiUNA's burden to establish by a preponderance of the evidence that the State violated the statute, as alleged.

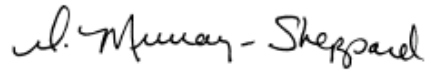
DETERMINATION

Considered in a light most favorable to the Charging Party, the pleadings are sufficient to establish that the State may have violated 19 *Del. C.* §1307 (a)(1), (a)(3), and/or (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 a decision can be made concerning:

Whether the State failed or refused to bargain in good faith with LiUNA Local 1029, the exclusive representative of the DOT/DMV bargaining unit employees, engaged in conduct which discouraged membership in the union by discrimination concerning terms and conditions of employment, and/or interfered with the rights guaranteed to employees by §1303 of the Public Employment Relations Act, in violation 19 *Del. C.* §1307(a)(1), (a)(3), and/or (a)(5), as alleged.

DATE: April 29, 2026



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