

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

DELAWARE DEPARTMENT OF CORRECTION,

AND

**AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL 81, LOCAL 247.**

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**Representation Petition
01-03-309**

RE: Dept. of Correction, Food Service Director I

Appearances

*Julie Kitze, OLR/SPO, for the State, DOC
Perry F. Goldlust, Esq., Heiman, Aber, Goldlust & Baker, for AFSCME Council 81*

The Delaware Department of Correction (“DOC”), is a public employer within the meaning of §1302(n) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1994). ¹

The American Federation of State, County and Municipal Employees, Council 81 (“AFSCME”), is an employee organization within the meaning of 19 Del.C. §1302(h). ² AFSCME Local 247 is the exclusive bargaining representative of a bargaining unit of Department of Correction employees as defined by the Department of Labor in case #123.

¹ “Public employer” or “employer” means the State, any county of the State or any agency thereof, and/or any municipal corporation, municipality, city or town located within the State or any agency thereof, which upon the affirmative legislative act of its common council or other governing body had elected to come within the former Chapter 13 of this title, which hereinafter election to come within this Chapter, or which employs 100 or more full-time employees.

² “Employee organization” means any organization which admits to membership employees of a public employer and which has as a purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative, or agent of said organization.

On March 16, 2001, AFSCME filed with the Public Employment Relations Board (“PERB”) a Petition for Amendment or Clarification of Existing Certified Bargaining Unit, seeking to clarify that the Food Service Director I is a bargaining unit position. The petition alleged this position resulted from the retitling of the bargaining unit position of CO/Chef.

DOC objected to the petition, asserting the Food Service Director I is a new position which resulted from the critical reclassification process pursuant to State Merit Rule 3.08000. (State Exhibit 1).

A hearing was convened on June 14, 2001, at which time the parties were afforded full opportunity to present evidence in support of their positions. The record closed upon receipt of argument. This decision results from the record created by the parties in this matter.

ISSUE

Are Food Service Director I positions within the Department of Correction included in the bargaining unit defined by DOL Case 123 and currently represented by AFSCME Local 247?

POSITIONS OF THE PARTIES

AFSCME:

AFSCME argues the C/O Chef position is and has been a bargaining unit position and that the change from C/O Chef to Food Service Director I constitutes a title change, rather than a reclassification based on significant changes in duties and responsibilities. AFSCME contends the bargaining unit represented by Local 247 has historically included multiple supervisory levels and that Food Service Director I’s, like C/O Chefs, continue to supervise C/O Cook Managers and report to the Director of Food Service Operations. AFSCME contends that on a day-to-day basis Food Service Director I positions are performing significantly similar tasks to those

performed by C/O Chef positions. Any changes involve increased workload due to prison growth, rather than the addition of new responsibilities.

State:

The State asserts that neither the C/O Chef nor the Food Service Director I position is included in the existing bargaining unit certification.

The State argues the movement of three (3) C/O Cook Managers and one (1) C/O Chef to Food Service Director I positions was not a retitling, but rather was a reclassification based on substantial changes in duties and responsibilities. In support of its position, the State points to the increase of four paygrade levels from the C/O Cook Manager positions and the change in the scope of responsibilities from a single kitchen to a food service region. It also argues the Food Service Director I position requires a higher level of education and training, including Dietary Manager certification based upon eighteen months of instruction and successfully passing a national certification examination.

OPINION

This petition seeks clarification as to whether this position results from the retitling of the CO/Chef position. For the reasons below, I find the Food Service Director I position is included within the existing bargaining unit.

Bargaining Unit History:

With the passage of the PERA in 1994, responsibility for representation functions involving DOC employees and bargaining units was transferred from the Department of Labor to the Public Employment Relations Board. The new law provides at 19 Del.C. §1318:

An employee organization that has been certified as the exclusive representative of a bargaining unit deemed to be appropriate prior to September 23, 1994, shall so continue without the requirement of an election and certification until such time as a question concerning representation is appropriately raised under this chapter in accordance with 1311(b) of this title, or until the Board finds the unit not to be appropriate in accordance with §1310(f) of this title.

At the time the representational functions were transferred to the PERB, all of the Department of Labor records concerning existing bargaining units and representation petitions filed before the Governor's Council on Labor were physically transferred to the PERB. A thorough review of the history of the DOC bargaining unit defined by DOL Case 123 reveals:

- ◆ In 1965, a single bargaining unit of Department of Correction employees was certified as appropriate. This unit included all DOC employees below the rank of Warden. AFSCME was certified as the exclusive bargaining representative of this unit on July 17, 1965. DOL Case 1.
- ◆ In 1980, supervisory employees and employees who worked for centralized sections of the agency were removed from the DOC bargaining unit. DOL Case 1(a).
- ◆ In April, 1982, AFSCME was certified as the representative of a second bargaining unit of DOC employees which included the following positions:
 - Correctional Captain
 - Correctional Staff Lieutenant
 - Correctional Lieutenant
 - C/O Laundry Supervisor
 - C/O Cook Manager
 - C/O Chef
 - C/O Building Maintenance Supervisor
 - C/O Farm Manager
 - C/O Automotive Supervisor
 - Physical Plant Maintenance Supervisor
 - Counselor Supervisor
 - Education Supervisor
 - Correctional Institution Purchasing Services Officer

Excluded from this bargaining unit were the positions of Warden, Correctional Security Superintendent (Deputy Warden), Correctional Treatment Superintendent, and Administrative Officer II. DOL Case 123

- ◆ Unsuccessful decertification elections were conducted for this “supervisory and managerial” bargaining unit in January, 1985; April 1986; and December 1988. DOL Case 123(a), (c), and (d).
- ◆ This unit was modified in July 1985 to also include:
 - Senior Secretary
 - Inmate Classification Officer
 - Accountant I
 - Statistical Clerk II
 - C/O Field Instructor
 - Administrative Officer I
 - Assistant Accountant
 - Recreational Program Supervisor

The Identification Records Supervisor was removed from the non-supervisory bargaining unit defined in DOL Case 1 and moved into this DOL Case 123 unit. DOL Case 123(b).

- ◆ In December, 1988, the unit was amended to reflect title changes and to add the position of C/O Prison Industries Operations Manager. The retitled positions included:
 - C/O Laundry Manager (formerly C/O Laundry Supervisor)
 - C/O Fleet Manager (formerly C/O Automotive Supervisor)
 - C/O Plant Maintenance Trades Foreman (formerly Building Maintenance Supervisor)
 - Support Service Officer, DCC (formerly Administrative Officer II)
 - Administrative Assistant II (formerly Assistant Accountant) DOL Case 123 (e).

◆ The unit was again modified in 1989 to include the CO/Stores Warehouse Supervisor position and in 1997 to include the Master Correctional Counselor position. DOL Case 123(f) and (g).

◆ In 1998, following amendment of the PERA, PERB conducted an election to determine whether specified non-uniformed DOC employees represented by Delaware Correctional Officers Association (“DCOA”) ³ as part of the non-supervisory bargaining unit defined by DOL Case 1, wished to be represented within the unit defined by DOL Case 123. As a result of the election, the following positions were transferred to the unit defined by DOL case 123 and represented by AFSCME Local 247:

- Account Technician
- Correctional Counselor
- Senior Correctional Counselor
- Voluntary Service Coordinator
- Recreational Program Leader I
- Administrative Assistant I
- Telephone Operator
- Teacher
- Secretary
- Data Entry Technician
- Community Work Program Coordinator
- Unit Operations Clerk
- Chaplain II
- Office Clerk
- Typist
- Paralegal II [DOL Case 123(h); 1 (i)]

◆ This unit was modified in December 1998 to reflect the retitling of the former C/O Field Instructor to Staff Development Officer, and then in September, 2000, to reflect that this position had again been retitled to Trainer Educator I, II and III. DOL Case 123 (i) and (j).

It is clear in reviewing these records that both the C/O Cook Manager and C/O Chef positions have been included in this bargaining unit since it was created in 1982. There is no

evidence in these historical records that any party ever petitioned the Department of Labor or the PERB to remove either of these positions from the unit.

In fact, in reviewing the records from the processing of PERB Representation Petition 96-12-202⁴ concerning the transfer of the non-uniformed positions from the DCOA unit to the AFSCME unit, the C/O Chef position was listed in numerous correspondences from PERB to the parties which referenced the composition of the existing AFSCME Local 247 bargaining unit. That representation petition did not affect any of the positions in the existing bargaining unit, but rather concerned which non-uniformed positions would be transferred from the DCOA unit. There is nothing in that record documenting that the C/O Chef position was discussed or that any affirmative action was taken by any party or the PERB to remove it from the unit.

Therefore, the record establishes that the C/O Chef position was at all times relevant to this dispute included in the bargaining unit defined by DOL Case 123 and represented by AFSCME Local 247.

Evolution of DOC Food Service Director I positions:

Prior to July 1, 1998, the Department of Correction employed approximately nine (9) C/O Cook Managers, who were responsible for the operation of a prison kitchen and the supervision of C/O Cooks and inmate workers assigned to that kitchen. (State Exhibit 7, p. 9; State Exhibit 4.) DOC also employed one C/O Chef, who was assigned to the Delaware Correctional Center, the State's largest adult correctional facility. The C/O Chef was responsible for managing and coordinating several different full food service operations and providing second level supervision to two C/O Cook Managers, C/O Cooks and inmate workers assigned to the

³ AFSCME had originally represented the bargaining unit of non-supervisory employees defined by DOL Case 1; however, there were a number of successful decertification elections held for this unit. At the time of this representation petition, the unit was represented by DCOA.

⁴ Referenced above as DOL Case 123(h); 1 (i).

kitchen. (State Exhibit 6.) The C/O Chef reported directly to the DOC Director of Food Services.

On or about April 16, 1998, DOC forwarded to State Personnel requests for reclassification of three C/O Cook Manager positions to C/O Chef positions. The requests were accompanied by Job Analysis Questionnaire Sheets (“JAQS”) documenting the proposed scope of duties and responsibilities of these three positions. (State Exhibits 7, 8, and 9.) Although each of the JAQS listed the name of an individual C/O Cook Manager, none were signed by that employee nor did they contain employee responses to the questions.

DOC’s Director of Human Resources testified the reclassification requests were based on a proposed reorganization of DOC’s Food Service unit in response to massive growth in the prison population and facilities, as well as an effort to remedy historical problems in the Food Service management. Appended to each of the JAQS was a proposed organizational chart, reflecting DOC’s desire to “regionalize” its food service operation.

Effective July 1, 1998, the three C/O Cook Manager positions were reclassified to C/O Chef positions and upgraded from paygrade 9 to paygrade 11. As a result, four (4) authorized C/O Chef positions now existed in the Food Service unit of the Bureau of Administration which were responsible for four food service regions. The three individuals named on the JAQS were promoted to the new C/O Chef positions. At least six (6) C/O Cook Manager positions continued to exist and reported to the C/O Chef positions. Testimony established that at or near this time, the incumbent in the pre-existing C/O Chef position left that position, which remained vacant until some time after April, 1999.

There is no question that the reclassification of the three (3) C/O Cook Manager positions to C/O Chef was based on a significant change in duties and responsibilities and did not constitute merely a change in title. The crux of this case, however, concerns the subsequent change from C/O Chef to Food Service Director I.

The DOC Director of Human Resources testified that at some time after July 1, 1998 and prior to February 2, 1999, his staff became aware that positions very similar to the C/O Chef position existed in other institutional kitchens operated by the State, such as hospital and nursing home kitchens. Those positions were classified as Food Service Directors and compensated two paygrades higher, at paygrade 13. DOC requested State Personnel examine these two classifications. There was no evidence presented that additional documentary support was provided to State Personnel in considering this second request for review.

On February 2, 1999, the State Personnel Office Manager of Classification recommended to the “Critical Committee”⁵ that the CO/Chef classification be abolished and be replaced by the title of Food Service Director I. The memorandum provided:

Department of Corrections [*sic*] submitted critical reclassification requests for three CO/Cook Managers to be reclassified to CO/Chef that were approved effective July 1, 1998. At the time of the request, the department felt that CO/Chef was the appropriate classification for these positions and based on our review of the class specification we concurred with their suggested classification. The Department of Correction, until recently, was hesitant to use classifications other than CO/ for those positions that supervise inmates.

Several months later, the Bureau Chief, Joyce Talley, contacted me asking for an explanation as to why the CO/Chef classification was assigned a PG 11 and a Food Service Director I class used in DHSS was a PG 13.

Having reviewed both class specifications, I would agree that the two specifications are sufficiently similar that they do not warrant the current differences in paygrade. To resolve this inequity, it is my recommendation to abolish the CO/Chef classification at PG 11 and correct the critical reclassifications effective July 1, 1998 to the more general classification of Food Service Director I, PG 13. The revision in the critical reclassification would only effect incumbents’ salaries if they fall below the minimum of PG 13. These positions would continue their eligibility for a 40 hour work schedule. The Department of Correction is agreeable to classifying positions into more general classes.

The Critical Committee unanimously approved the Classification Manager’s recommendation as evidenced by their signatures on State Exhibit 10, the last of which is dated February 17, 1999.

⁵ The “Critical Committee” is constituted of the State Personnel Director, the State Budget Director, and the Controller General. It must sign off on all reclassification and other personnel requests which have a fiscal impact.

On or about April 9, 1999, DOC separately requested the vacant original C/O Chef position also be reclassified to a Food Service Director I position. A supporting JAQS was prepared and signed by the DOC Bureau of Management Chief on February 2, 1999. That JAQS is identical in form and content to those previously submitted to support the reclassification of the other three (3) positions to C/O Chef. (State Exhibit 11.) DOC also prepared a “Statement of Criticality” which was forwarded to State Personnel in support of its request. (State Exhibit 12.) The final C/O Chef position was reclassified to a Food Service Director I position at some unspecified time thereafter, and was subsequently posted and filled.

The State argued the Food Service Director I positions differ from the prior C/O Chef positions in that a “Special Requirement” is placed on persons hired into these positions to hold or enroll within one year of appointment in a Certified Dietary Manager Program. (State Exhibit 14.) The three (3) JAQS submitted in support of the reclassification of the three (3) C/O Cook Manager positions establish this requirement was considered in reclassifying those positions to C/O Chef. Those documents indicate that the type of State Certification/Licenses under “Minimum Level of Education or Equivalent Experience” include “Certified Food Manager”, and that the type of national and/or professional organization certification or license required included being a member of the “Dietary Managers Association”, a membership available only to persons holding the national Food Service Manger certification, according to the testimony of the DOC Director of Food Services. As this requirement was considered in reclassifying the positions to C/O Chef, it cannot also serve as a distinguishing characteristic between the C/O Chef and Food Service Director I classifications.

DECISION

Considering the record as a whole, there is a substantial basis for holding that the change from C/O Chef to Food Service Director I constituted a retitling which served to bring these DOC

positions into conformity with similar positions in other State institutional kitchens. The fact that the C/O Chef position was abolished to remedy this inequity supports this conclusion. The record does not support a finding that there are substantial and significant differences between the duties and responsibilities of the positions of C/O Chef and Food Service Director I.

Further, the CO/Chef position has been included in the bargaining since its initial creation in 1982, and no action has been taken at any time since by either the Governor's Council on Labor or the Public Employment Relations Board which would result in the exclusion of that position from the bargaining unit.

WHEREFORE, the bargaining unit certification is hereby clarified to replace the former position of CO/Chef with the new classification of Food Service Director I. This clarification is retroactive to the retitling of this position which was effective July 1, 1998.

IT IS SO ORDERED.

/s/Deborah L. Murray-Sheppard
DEBORAH L. MURRAY-SHEPPARD
PERB Hearing Officer

DATED: 22 August 2001