

**PUBLIC EMPLOYMENT RELATIONS BOARD
FOR THE STATE OF DELAWARE**

AMERICAN FEDERATION OF STATE, COUNTY, AND)	
MUNICIPAL EMPLOYEES, AFL-CIO, COUNCIL 81,)	PERB Review of
LOCAL 439,)	Hearing Officer's
Petitioner,)	Decision
v.)	
)	REPRESENTATION PETITION
UNIVERSITY OF DELAWARE,)	<u>NO. 05-04-476</u>
Respondent.)	

Appearances

Phillip S. Williams, Sr., for AFSCME Local 439

*James J. Sullivan, Jr., Esq., Klett, Rooney, Lieber & Schorling,
for University of Delaware*

BACKGROUND

The University of Delaware (“University”) is a public employer within the meaning of section 1302 (p) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (“PERA”) and is the Respondent in this representation matter.

The Petitioner, American Federation of State, County and Municipal Employees, AFL-CIO, Council 81, Local Union 439 (“AFSCME”) is an “employee organization” within the meaning of §1302(i) of the PERA and is the exclusive bargaining representative of a bargaining unit of University employees within the meaning of 19 Del.C. §1302(j).

AFSCME and the University have a long-standing collective bargaining relationship. They were parties to a collective bargaining agreement which had a term of January 1, 2003, through December 31, 2005.

On or about April 25, 2005, AFSCME filed a bargaining unit clarification petition seeking a determination as to whether "part-time workers employed by the University in the Dining Services Department" were excluded from the bargaining unit of blue collar University employees represented by AFSCME Local 439. The University objected to the filing of the petition and contested PERB's jurisdiction to rule on the matter, asserting that part-time dining services employees were solely employed by ARAMARK with whom the University subcontracts for dining services.

A hearing was convened on August 23, 2005. During the hearing, a partial stipulation of facts was entered into the record by the parties. The receipt of written post-hearing argument concluded on October 7, 2005.

The Hearing Officer issued her decision on January 26, 2006, in which she found:

[T]he part-time employees in Dining Services are determined to be jointly employed by the clear and unambiguous language of the parties 1991 agreement. Part-time employees have a right to organization and representation under 19 Del.C. §1301, and to petition PERB to secure those rights. Such petition, if filed, will be processed in accordance with the Board's unit modification procedures.

On February 2, 2006, the University requested review of the decision below by the full Board; AFSCME filed its response on February 8, 2006. The parties were provided the opportunity to file written argument in support of their positions on review; the University filed written argument on March 3, 2006, while AFSCME declined to file written argument. A copy of the complete record in this matter was provided to each member of the Board in advance of the scheduled hearing.

The full Board convened in public session on March 15, 2006, to consider this request for review. Following consideration of the record below and the arguments of the parties on review, the Board unanimously reached the following decision.

DISCUSSION

Upon consideration of the record and arguments of the parties, we find the Hearing Officer did not abuse her discretion, commit an error of law, nor did she err in her application of the law to the facts. Therefore, we affirm the Hearing Officer's decision.

On appeal, the University argues that the Hearing Officer erred by failing to apply the four-part analysis used to determine which entity is the employer of a group of employees as required by the Delaware Supreme Court in White v. Gulf Oil Corporation, Del.Supr., 406 A.2d 48 (1979). This argument, however, ignores the clear and unambiguous language of both the Letter of Agreement and the joint Stipulation of the Parties in this case. Paragraph 7 of the Stipulation provides, "ARA Serve and the University are deemed joint employers of all food service employees." Consequently, there is no issue as to which of these entities is the sole employer necessitating an application of the Gulf Oil analysis, but rather what, if any impact their joint employment has on the representation status of the employees.

The community of interest between full-time and part-time employees is a consideration when and if a petition is filed which seeks to amend the existing bargaining unit to include the part-time employees. It is not a factor in determining whether this Board has jurisdiction over these employees.

The question raised by this petition is whether the part-time dining services employees working in the University's dining facilities are eligible for representation for purposes of collective bargaining under the Public Employment Relations Act. Based on the record created by the parties, and the identical circumstances under which the majority of full-time and part-

time dining services employees are hired, supervised, and work, it would be logically inconsistent to conclude that the part-time employees are so differently situated as to remove them from the protections of the statute.

The University's argument that the jurisdiction of the PERB to determine the representation status of the part-time employees in question must be based upon interpretation of the Letter of Agreement (which it asserts applies only to the full-time current bargaining unit employees) is misplaced. Parties cannot through contractual devices extend or deprive employees of their statutory rights to organize.

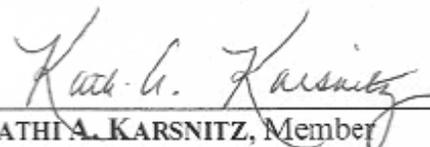
DECISION

Consistent with the foregoing discussion, the decision of the Hearing Officer is affirmed.

IT IS SO ORDERED.


ELIZABETH D. MARON, Acting Chairperson


R. ROBERT CURRIE, JR., Member


KATHIA A. KARSNITZ, Member

DATE: 27 April 2006