

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

STATE OF DELAWARE, JUSTICE OF THE PEACE)	PERB Review of
COURT,)	Executive Director's
Appellant,)	Decision on Eligibility
v.)	for Inclusion in Unit 1
)	
JUSTICE OF THE PEACE COURT CONSTABLES,)	<u>Rep. Pet. 07-12-608 (a)</u>
Appellee.)	

**IN RE: State Merit Employee Unit #1
Justice of the Peace Court Constables**

Appearances

*Hannah Messner, Office of Labor Relations & Employment Practices, for the State
Constable Thomas J. Cleary, for the Justice of the Peace Court Constables*

The State of Delaware is a public employer within the meaning of §1302(p) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1994). The Justice of the Peace Court (“JP Court”) is an agency of the State that employs Constables. All JP Court Constables hold State merit system positions.

On or about December 6, 2007, the American Federation of State, County and Municipal Employees, AFL-CIO, Council 81 (“AFSCME”) filed a representation petition pursuant to 19

Del.C. §1311A seeking clarification as to the scope of §1311A Merit Unit 1, which is defined as:

Labor, maintenance, trade and service workers which is composed of generally recognized blue collar and service classes including mechanics, highway, building and natural resource maintenance, skilled craft, equipment operators, toll collectors, food service, custodial, laundry, laborers, security officers and similar classes. *19 Del.C. §1311A (b)(1)*.

On or about August 22, 2008, a group of JP Court Constables filed a petition asserting that the Constable classification was not “similar to” other classes included in the Unit 1 definition, and was not therefore appropriate for inclusion in Unit 1. The State opposed the Constables’ petition.

In order to resolve the question of classification similarity, the Executive Director convened a hearing on October 24, 2008, for the purpose of receiving evidence. The parties were afforded the opportunity to file written argument, and the Executive Director issued her decision on April 14, 2009 finding:

...the State merit classification of Constable (#MBBZ01) is determined NOT to be a similar occupation to “Labor, maintenance, trade and service workers which is composed of generally recognized blue collar and service classes including mechanics, highway, building and natural resource maintenance, skilled craft, equipment operators, toll collectors, food service, custodial, laundry, laborers, security officers and similar classes.”

Consequently, Constables are not included in §1311A Merit Unit 1. *In Re: JP Court Constables and State of Delaware*, Rep. Pet. No. 07-12-608(a), VI PERB 4215 4229 (4/14/09)

On April 21, 2009, the State requested review of the Executive Director’s decision by the full Board and the Constables filed a response on May 4, 2009. A copy of the complete record in this matter was provided to each member of the Board.

The full Board convened in public session on June 17, 2009, to consider this request for review.

DISCUSSION

The scope of the Public Employment Relations Board's review of the Executive Director's decision is limited to the record below and consideration of whether the decision rendered is arbitrary, capricious, contrary to law and/or based on conclusions that are unsupported by the record.

The State argues that the Executive Director's decision is contrary to law and unsupported by the record. Specifically the State asserts the Executive Director committed an error of law in basing her decision, in part, on a comparison of the State's Job Classification specifications for Constables, Court Security Officers and Security Officers. The State contends these documents were not introduced into the record by the parties during the hearing, and therefore could not be considered.

To support its argument, the State cites the recent binding interest arbitration decision involving the Delaware State Troopers Association and the Delaware State Police, in which the Executive Director opined, "I cannot take administrative notice of information that is not before me or within PERB records." *Delaware State Troopers Association v. State of Delaware, Department of Safety and Homeland Security, Division of State Police, BIA 08-01-612, VI PERB 4083, 4099 (10/20/08)*.

The State's argument is unpersuasive for a number of reasons. The quote it relies upon from the *State Troopers* decision is based on a completely different factual circumstance. In that case, the State requested that the arbitrator "take administrative notice" of the magnitude of difference in population and geographic scales, "despite the absence of any other factual information." The Public Employment Relations Board does not maintain, have general access to, nor is it aware that the State provides publicly available information on the relative

population and geographic scales of police departments in the State of Delaware and/or comparable police departments outside of Delaware.

In this representation case, the PERA requires that PERB certify §1311(a) Merit Units “based upon the job classification of employees.” The Executive Director correctly identified the functional similarity between classifications as the mandated criteria for determining whether merit positions fall within a specific §1311A unit. The record establishes that Classification Specifications for Constables, Court Security Officer, Capitol Police Officer, Alcohol & Tobacco Enforcement Agent and DNREC Enforcement Officer¹ were entered into the record during the hearing.

Further, correspondence concerning the processing of the underlying Unit 1 determination included a listing of all positions which the parties stipulated should be included in the unit. That list included the Security Officer classification. The State Office of Management and Budget provides a publicly available listing of all Job Classification specifications on its Human Resource Management website, from which all of the Classification Specifications at issue in this case were printed. The Executive Director did not err by considering the Security Officer Classification Specification for purposes of assessing functional similarities as required by statute.

The State’s argument that the parties were denied the opportunity to provide argument on comparability of Constables to Security Officers is equally unpersuasive. The hearing before the Executive Director was for the purpose of determining whether the Constables constituted a “similar class” to other Unit 1 classifications. Security Officer was one of the classifications the parties stipulated they believed fell within the Unit 1 definition. In determining the status of

¹ The Classification Specifications describe and define the occupational group and occupational series for the class.

Constables, the Executive Director was required to consider similarity with classifications the parties suggested as appropriate for Unit 1.

The PERA charges this agency with determining the proper assignment of merit classifications within each of the §1311A units. In order to do this, PERB must exercise its expertise and discretion to make these determinations. As with all questions concerning bargaining unit composition, the decision is highly fact bound and temporally specific, based upon the circumstances which exist at the time the question is raised and the decision rendered.

The record is sufficient to support the Executive Director's decision that Constables do not function within the broad category of blue-collar, service-oriented classifications that constitute Unit 1.

It is also important to note at this point in the development of §1311A merit units, that the question before the Executive Director was not to which unit the Constables properly belonged, but rather whether they fell within the Unit 1 definition, based upon the similarity between this classification and others within that unit.

In the final analysis, §1311A requires that all State Merit system classifications be sorted and assigned to one of the twelve statutorily defined units. To which particular unit a specific classification is assigned is secondary to the statutorily protected right of the employees to choose to be represented for purposes of collective bargaining. The decision rendered in this case did not deprive the Constables of the right to organize and to choose to be represented. It was simply a determination, based on the record created, that this classification did not share functional similarity with other Unit 1 classifications. The Board questions the State's interest in challenging the Executive Director's decision as it did not impact the State's rights and obligations as a public employer under the PERA.

DECISION

Upon consideration of the record and arguments of the parties, the Board finds the decision of the Executive Director was based on substantial evidence and was not contrary to law.

Consistent with the foregoing discussion, the decision of the Executive Director is unanimously affirmed.

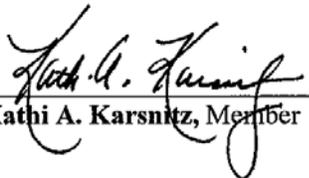
IT IS SO ORDERED.



Elizabeth D. Maron, Chairperson



R. Robert Currie, Jr., Member



Kathi A. Karsnitz, Member

DATE: July 28, 2009