

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

IN RE:

STATE OF DELAWARE, JUSTICE OF THE	:	Determination of Eligibility for
PEACE COURT CONSTABLES,	:	for Inclusion on §1311A
	:	Merit Unit #1
and	:	
	:	<u>Representation Petition 07-12-608(a)</u>
STATE OF DELAWARE.	:	

Appearances

*Neal Eastburn, for JP Court Constables
Jerry Cutler and Hannah Messner, SLREP, for the State*

BACKGROUND

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” or “Court”) is an agency of the State. JP Court employs Constables and Court Security Officers, which are merit system positions.

The Public Employment Relations Act was amended in August 2007, to expand the rights of State merit employees to collectively bargain for compensation as defined in 19 Del.C. §1311A. As a condition precedent to engaging in the expanded scope of bargaining, the General Assembly created a new bargaining structure, which was superimposed upon the existing structure of bargaining units created pursuant to §1310 of the PERA. Section 1311A(b) descriptively identifies twelve (12) bargaining units which are intended to ultimately include all Merit classifications.

The Public Employment Relations Board (“PERB”) was specifically charged with determining “...the proper assignment of job classifications to bargaining units and the bargaining unit status of individual employees and shall provide for certified bargaining

representatives to combine bargaining units or portions of bargaining units of employees they represent within the bargaining units defined in this section based upon the job classifications of the employees represented.” 19 Del.C. §1311A(b).

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 concerning 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).

At PERB’s request, the State, through the State Labor Relations and Employment Practices office, OMB/HRM, provided a list of merit positions statewide which it asserts fall under the §1311A Merit Unit 1 definition. Many of the identified positions were represented for purposes of collective bargaining in appropriate bargaining units established pursuant to 19 Del.C. §1310. AFSCME, United Food and Commercial Workers Local 27 (“UFCW”), and Laborers International Union of North America, Local 1029 (“LIUNA”) were identified as the certified representatives of the represented employees. The State’s list also included a number of positions which were identified as not being currently represented by a union.

Through a series of meetings and discussions involving PERB, the State, AFSCME, UFCW and LIUNA, agreements were reached concerning the scope of the Unit 1 definition. The agreements include 56 state merit classifications which are organizationally located within ten of the sixteen Cabinet level departments, the judiciary, and the State Fire School.

On or about August 22, 2008, a petition was filed by Justice of the Peace Court Constables which contests the inclusion of the Constable classification in Unit 1 and asserts the Constable position is not a “similar occupation” to other §1311A Merit Unit 1 classifications.

When the State opposed the Constables petition, a hearing was convened on October 24, 2008, for the purpose of receiving evidence on which a determination can be made as to whether the Constable classification falls within the Unit 1 definition. AFSCME and LIUNA did not participate in the hearing, but attended as observers. The UFCW did not oppose the Constables’ petition and did not attend the hearing.

Following the receipt of the hearing transcript, the Constables and the State filed closing argument. This decision results from the record thus created.

ISSUE

WHETHER THE STATE MERIT CLASSIFICATION OF CONSTABLE, FALLS WITHIN THE §1311A MERIT UNIT 1 DEFINITION, I.E., IS THIS CLASSIFICATION “SIMILAR TO” OTHER CLASSIFICATIONS AND OCCUPATIONS DEFINED UNDER THE PUBLIC EMPLOYMENT RELATIONS ACT AS “LABOR, MAINTENANCE, TRADES, AND SERVICE WORKERS”?

PRINCIPLE POSITIONS OF THE PARTIES

State:

The State argues Constables employed by Justice of the Peace Courts are appropriate for inclusion in Unit 1 because the unit definition includes “security officers.” It asserts one of the primary duties of Constables is to maintain the security of the Court.

The State asserts Constables and Court Security Officers II (“CSO”) share a community of interest premised on a similarity of duties, skills and working conditions.

It argues Constables and CSO's receive identical training, are accountable to the same reporting structure, are required to adhere to the same policies and procedures and follow the same standards of conduct and performance.

The State also argues that the fact that Constables and CSO's have a representational history¹ under 19 Del.C. §1310 of being part of the same bargaining unit should be dispositive of this matter. It argues that PERB has previously determined that these classifications share a community of interest.

The State asserts Constables are not appropriate for inclusion in any other State merit unit except for Unit 1. It argues Constables cannot be considered for inclusion in Unit 9 (Law-enforcement and investigative agents) because they are not certified by the Council on Police Training and are not covered by the Law Enforcement Officers Bill of Rights. The State also argues Constables do not share a community of interest with other Unit 9 classifications such as Investigators and Labor Law Enforcement Officers.

Consequently, the State concludes that Constables are only appropriate for inclusion in Unit 1.

Constables:

The Constables do not dispute that there has been and continues to be some commonality between the job duties of Court Security Officers II and Constables, but argue that is not the issue in this case. Rather, the issue before PERB is whether Constables constitute a classification similar to other Unit 1 classifications.

The Constables rely upon the evidentiary record to support their assertion that CSO's and Constables are not interchangeable positions and that Constables have

¹ Constables and Court Security Officers were represented in the bargaining unit defined by DOL Case 195. By notification to the PERB dated June 24, 2008, FOP Lodge 11 disclaimed its interest in continuing to represent this bargaining unit. At all times relevant to the processing of this petition, Constables and Court Security Officers employed by the JP Court are unrepresented for purposes of collective bargaining.

specialized knowledge and skills plus extensive additional training which places the Constable classification outside of the blue collar, trade and service classifications in Unit 1. While Constables are occasionally assigned to bolster security in the JP courts due to personnel shortages or special conditions, CSO's do not fill in for absent Constables. Constable Prange testified that in the one instance in which a CSO was used to under-fill a Constable vacancy, that CSO required extensive training and was only capable of the lowest level Constable duties after receiving training (i.e., affixing landlord/tenant summons to the doors of residences).

The Constables also point to the significant differences between the job duties, training and responsibilities of CSO's and Constables. Specifically, Constables are responsible to perform their duties in the community in locating defendants, often requiring that Constables investigate and interview other people in order to track down a defendant.

The Constables argue the State has offered no statistical, documentary or testimonial evidence to support the Court's conclusion that having Constables and CSO's in a different bargaining unit "has the potential to cause problems."

DISCUSSION

The process for identifying bargaining units under §1311A(b) requires PERB to evaluate which classifications properly fall within each of the defined §1311A merit units defined therein. In this case, the issue is whether the Constable classification is "similar" to other classifications which fall within Unit 1, labor, maintenance, trade and service workers and similar classes.

Determination of State merit units under §1311A is unrelated to the determination of a "traditional" or "terms and conditions" bargaining unit as defined by 19 Del.C.

§1310. In determining “appropriate bargaining units” under §1310, PERB is required to consider the “community of interests including such factors as the similarity of duties, skills and working conditions of the employees involved; the history and extent of the employee organization; the recommendations of the parties involved; the effect of overfragmentation of bargaining units on the efficient administration of government; and such other factors as the Board may deem appropriate.”

When the PERA was amended in 2007 to permit State merit employees to bargain compensation, it is logical and reasonable that the General Assembly would not have required a “community of interest” analysis for defining §1311A merit units (for purposes of compensation bargaining) because many State merit employees were already represented in existing appropriate bargaining units established pursuant to §1310.

Applying community of interest standards is therefore inapplicable to defining §1311A merit units. Existing appropriate bargaining units defined and certified under §1310 continue to exist and the certified exclusive bargaining representatives of those §1310 bargaining units have the right and responsibility to bargaining for the non-compensation interests of the employees represented therein.

The question presented by this case is whether Constables fall within the Unit 1 definition, i.e., is the Constable classification sufficiently similar to other classifications within the defined unit of “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 classifications.”

The State argues the bargaining history under §1310 (wherein both Constables and CSO’s were in the same bargaining unit) clearly establishes a community of interest

between these two positions. While this argument could be dispositive in determining an appropriate unit under §1310 (which requires consideration of bargaining history in order to determine a community of interest), §1311A sets a very different standard, i.e. that classifications included in the §1311A Merit unit be ‘similar occupations’. On its face, it is evident that prior bargaining unit history and unit composition under §1310 is irrelevant to a §1311A merit unit determination.

§1311A creates a totally new unit structure for purposes of statewide compensation bargaining which is designed to segregate and divide all State merit employees into units by functional classifications. By its own terms, §1311 fractionalizes existing §1310 bargaining units and divides currently represented employees into new §1311A merit units for purposes of compensation bargaining based exclusively on the “similarity” of classification.

Agency preference for bargaining with a limited number of bargaining units is irrelevant to PERB’s mandate for defining §1311A merit units. The law establishes a finite number of §1311A merit units and the sole criteria for including or excluding individual positions in each unit is the functional similarity between the classifications.

For the reasons discussed above, the State’s arguments concerning community of interest standards are misplaced and are not dispositive of the question of classification similarity within the Unit 1 definition.

Security officers are the only generic category within Unit 1 for purposes of establishing similarity to the Constable classification. Classification specifications are “descriptive and not restrictive”. They are designed to provide applicants, managers, and human resource administrators a sense of the basic functions and responsibilities of merit positions. The evidence presented in the hearing provided additional and supporting information as to the functions and scope of responsibilities of Constables and CSO’s.

It is important to recognize that the similarity to be examined is not just between Constables and CSO's but also between Constables and all other "security officer" type merit positions. The State of Delaware Human Resource Management Classification and Compensation Section provides an alphabetical listing of Job Classification Specifications for all merit system classifications on its website.² In addition to individual job specifications for all State merit classifications, it also classifies jobs by occupational group, occupational series and occupational class series. Included in this list are two merit security classifications, namely Security Officer (#MBDZ01) and Court Security Officer I and II (#MBDE01, #MBDE02). Both of these classifications are included in the Occupational Group: Public Safety; Occupational Series: Protection and Security Services; Occupational Class Series: Security Services.

The core function of the Security Officer classifications is "protecting State property from trespass, theft, and other hazardous conditions." The Nature and Scope of the classification is to:

... enforce institutional rules, regulations, and policies relative to safety, security, and orderliness. Incumbents patrol institutional grounds by foot or in a patrol vehicle on a regular basis as outlined in institutional regulations. Normally, Security Officers work from a central facility such as a guard house/security office. A significant aspect of the work involves the possibility of dealing with crisis or emergency situations. Incumbents may also be required to subdue personnel and/or patients behaving outside of normally acceptable patterns.

The Description of Occupational Work for Court Security Officer I and II includes:

"... enforcing courtroom and court facility policies and procedures relative to safety, security, and orderliness. Work involves activities such as giving directions to participants in court proceedings; setting up, operating and maintaining electronic courtroom equipment; and marking, logging and retrieving documents."

² <http://www.jobaps.com/de/auditor/ClassReports.asp>

The Constable classification job specification (#MBBZ01), however, is significantly different. This classification is also included in the Occupational Group: Public Safety, but significantly included in the Occupational Series: Law Enforcement and Public Safety and the Occupational Class Series: Law Enforcement and Public Safety Miscellaneous. The core function of a Constable is “serving and executing legal documents in accordance with court rules and procedures”. The Nature and Scope of the Constable classification is:

... court enforcement work, serving and executing a wide variety of legal documents consisting of civil and criminal court orders. Work includes exercising independent judgment and discretion in handling potentially explosive situations. In performing their work, employees in this class normally work alone, are responsible for covering large areas of the state and have the power of arrest. Typical contacts are with the public for the purpose of serving court-ordered documents, executing capias and other warrants, locating defendants and holding constable sales. A significant aspect of this work is dealing firmly but courteously with hostile members of the public.

Both the State and the Constables rely upon the Justice of the Peace Court Constable and Court Security Officer Handbook³ to support their positions. The Handbook is divided into two sections. Part I, entitled “Duties and Authority of Justice of the Peace Court Constables and Court Security Officers”, is prefaced:

The policies and procedures outlined in this handbook take effect on April 11, 2001 and shall apply to all Justice of the Peace Court constables, court security officer and any other person authorized by the Chief Magistrate to perform constabulary or court security functions.

The basic duties and authority of Justice of the Peace Court constables are found in the Delaware Code as follows:

A. The duties and authority of Justice of the Peace constables are derived from 10 Del.C. 2802 which states:

(a) The justice of the peace constables appointed pursuant to this chapter shall handle the process of the justices of the peace appointed pursuant to Chapter 92 of this title.

³ State Exhibit 2, Revised July 2003

- (b) Notwithstanding any other law, no constables appointed by any authority in this State shall be authorized to execute orders, warrants and other process directed to the constable by a justice of the peace pursuant to Chapter 92 of this title, unless the constable has been appointed pursuant to this chapter.
- (c) Notwithstanding any other law, a justice of the peace constable appointed pursuant to this chapter shall have the authority to undertake the following duties:
 - (1) Execute all lawful orders, warrants and other process directed to the constable by a justice of the peace;
 - (2) Execute all writs of possession issued pursuant to § 5715 of Title 25 directed to the constable by a justice of the peace;
 - (3) Execute on all civil judgments directed to the constable by a justice of the peace;
 - (4) Serve all civil summonses directed to the constable by a justice of the peace;
 - (5) Serve all subpoenas directed to the constable by a justice of the peace;
 - (6) Transport all detentioners or convicted offenders to any Department of Correction facility pursuant to a commitment order directed to the constable by a justice of the peace;
 - (7) Execute on all capiases directed to the constable by a justice of the peace and issued by a justice of the peace;
 - (8) Conduct Justice of the Peace Court judicial levies and sales directed to the constable by a justice of the peace;
 - (9) Maintain the security and order in any Justice of the Peace Court and arrest all persons who shall commit any breach of the peace or contempt in said Court; and
 - (10) Perform any other related law-enforcement function required to maintain the dignity, integrity and security of the Justice of the Peace Court system.

B. The authority of Justice of the Peace Court Security Officers is derived from 10 Del.C. 9223 which states:

All security personnel of the Court shall have the full powers of a Justice of the Peace Court constable, including the power of arrest, while performing Court-related functions throughout the State.

Part II of the Handbook, entitled “Procedures and Issues Relating to the Statutory Authority and Duties of Justice of the Peace Court Constables”, is prefaced as follows:

The purpose of this section is to provide you with guidance in carrying out the duties of the constable. This section attempts to outline the basic duties of a constable and to assist in resolving common concerns and issues. However, it cannot be all inclusive and you may encounter issues not addressed in the handbook. When this occurs, you should check with your supervisor to discuss your concern.

Part II then includes specific instructions and descriptions for serving civil summons and subpoenas, executing writs of possession, executing civil judgments, and executing capiases, which are directed at providing guidance specifically to Constables in the performance of their duties and responsibilities. This section makes no reference to CSO's.

The separation of this document into two sections does not establish that Court Security Officers perform the same primary job functions as Constables. To the contrary, a close reading does just the opposite. Part I of the handbook sets forth rules and guidelines on policies and procedures which apply to both Constables and CSO's, such as the dress code, standards of conduct, use of force policies, transportation of prisoners and security procedures. Part II of the handbook applies exclusively to Constables and establishes procedures for serving civil summons and subpoenas, and executing writs of possession, civil judgments and capiases.

The testimony of the witnesses during the hearing supported the differentiation between the primary job duties of CSO's and Constables. Constable Prange, who had been a Constable for four years prior to the hearing, testified about the difference in job duties, as he had previously worked for five years as a CSO:

There are a lot of differences between the two jobs. As a court security officer, my main job duties were to ensure the security of the court, safety of the employees, and the judicial staff, the witnesses and everybody that was in the Court. I processed individuals that came into the Court, I screened them through the magnetometer to determine if they didn't have any weapons on them, searched them if they needed to be searched and stood in the courtroom and ensured that everything went smooth in the courtroom. Those were my duties as a Court Security

Officer. *TR p. 72.* ... [As a Court Security Officer my work was] checking people into the Court, having them empty their pockets, sending them through the metal detector to determine if they had any weapons on them and telling them to have a seat. *TR p. 76.*

... Each Constable has certain areas that they're responsible for serving, doing their work at. When I come in, I have like 244 square miles that I cover and I sit down with all the work that's been assigned to me and determine it. Some it, like replevins have to be done in a certain amount of time, writs of execution have to be done in a certain amount of time. Sometimes a subpoena needs to be served that day because the Court case is the next day. I prioritize the work that I must do for that day and then I lay that work out based on my travel plans for the day as far as whatever would be expedient to get the work done. ... I go out to the vehicle, check the vehicle over before I go out, make sure it's safe to operate and then I go out and go around and do whatever was assigned to me that day. *TR p. 76.*

The evidence in this matter is sufficient to convince me that Constables are not primarily responsible for Court security, but rather spend the majority of their time executing civil subpoenas, writs, orders and judgments. Unlike CSO's who are primarily responsible for security within the courts and perform their job functions on site in the courthouses, Constables work in the field. *See testimony of Prange, TR p. 75-76.*

The State HRM classification and compensation section has classified Constables in the Law Enforcement and Public Safety occupational series. CSO's and Security Officers are grouped in the Protection and Security Services occupational series. It also weighs heavily that State HRM classification experts recently conducted a comprehensive evaluation of security positions statewide, which concluded in March, 2008. CSO's were included and their relative duties, functions and responsibilities were evaluated vis-à-vis other security classifications in the State merit system as part of the process. As a result of the evaluation, CSO's received an upgrade both in class and compensation. More importantly to this case, Constables were specifically not included in the statewide review of security classifications. *Testimony of Kennedy, TR 59.*

The State has argued that Constables must be included in Unit 1 because they are not appropriate for inclusion in any other §1311A merit unit, specifically noting that they cannot be included in Unit 9 (“Law-enforcement and investigative agents”) because Constables are not required to be trained and certified by the Council on Police Training (“COPT”). The Constables do not dispute that they are not COPT trained. The State’s argument is misplaced in this matter and is immaterial to the issue before me. There has been no determination as of the date of this decision on the scope of Unit 9, nor has there been a determination that only COPT trained law enforcement personnel are included in Unit 9. The question before me (as repeated many times) is whether Constables are similar to “security officers” or any other classification listed in the Unit 1 definition, not which §1311A merit unit Constables will ultimately be included in.

An objection was raised during the processing of this petition as to the standing of individual employees or groups of employees to question an agreement between the State and the unions to include a specific classification (in this case, Constable) in a specific §1311A merit unit. In cases where a given classification is currently represented by an exclusive bargaining representative, that certified representative “has the exclusive right and responsibility to be the collective bargaining agent of all employees in that bargaining unit” and has the right to represent those employees interests in this process. 19 Del.C. §1302(j).

Where employees are not currently represented, however, those employees have the right to be heard on the issue of their representation. The statute explicitly grants “to public employees the right of organization and representation”. 19 Del.C. §1301(a). Where positions are currently unrepresented, no labor organizations has presumed knowledge or familiarity with those classifications or the statutory right to represent the interest of unrepresented employees in the process of determining §1311A merit unit

status. While the unions may establish that they have particularized knowledge as it relates to unrepresented positions, this does not foreclose the opportunity for unrepresented employees to also be heard on the issue of similarity to other classifications included in the merit units defined by §1311A.

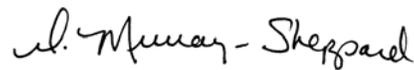
DECISION

For the reasons discussed above, 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.

It is so ordered.

Date: April 14, 2009



DEBORAH L. MURRAY-SHEPPARD
Executive Director, Delaware PERB