

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

IN RE:
PETITION TO CREATE A BARGAINING UNIT OF
SUPERIOR COURT BAILIFFS/PEACE OFFICERS

UFCW LOCAL 27,	:	
Petitioner,	:	
	:	Representation Petition
AND	:	
	:	<u>08-10-634</u>
SUPERIOR COURT OF THE STATE OF DELAWARE,	:	
Respondent.	:	

APPEARANCES

*Kiera M. McNett, Esq., Murphy Anderson PLLC, for UFCW Local 27
Jennifer D. Oliva, Esq., Deputy State Solicitor, and Ilona Kirshon, Esq.,
Deputy Attorney General, for the Superior Court*

This is an action before the Delaware Public Employment Relations Board (“PERB”) seeking dismissal of a representation petition filed by United Food and Commercial Workers International Union, Local 27 (“UFCW”), an employee organization within the meaning of Del.C. §1302(i).

On or about October 10, 2008, the UFCW filed a certification petition with the PERB seeking to represent a bargaining unit of all regularly scheduled full-time and part-time Bailiffs/Peace Officers employed by Superior Court of Delaware in New Castle, Kent and Sussex Counties. Specifically excluded from the petitioned-for unit were “all supervisory and confidential employees, including judges.”

The Respondent, Superior Court, filed its response to the petition on November 3, 2009. Its response was filed by the Director of Labor Relations and Employment Practices, OMB/HRM, on behalf of the Court, and states, in relevant part:

The Superior Court will agree to cooperate appropriately in allowing the process to go forward for a proposed bargaining unit consisting of the Court Security Officer II and Judicial Assistant job titles. A list containing the names of incumbents holding these job titles is attached.

Please note that the Court expressly reserves the right without limitation to challenge PERB's jurisdiction over this matter including but not limited to the right to raise a separation of powers issue.

UFCW verified the unit it seeks to represent is comprised of Superior Court positions holding the job titles of Court Security Officer II and Judicial Assistant. The petition was verified by PERB to be properly supported by at least thirty percent (30%) of the employees in those positions. PERB requested the Court set forth its jurisdictional objection at that time in order to avoid undue delay and expenditure of resources.

By letter dated November 14, 2008, the Department of Justice entered its appearance on behalf of Superior Court, challenging PERB's jurisdiction over the petition:

Specifically, the Superior Court maintains that the constitutional courts of Delaware cannot be subject to the jurisdiction of the PERB without infringing on the Supreme Court's constitutional authority in violation of the doctrine of separation of powers. The separation of powers doctrine forbids one branch of government to exercise powers properly belonging to another branch. *See, e.g., Evans v. State*, 872 A.2d 539, 547-48 (Del.2005) (citing *Trustees of New Castle Common v. Gordy*, 93 A.2d 509, 517 (Del.1952)). The judicial power of the Supreme Court under the Delaware Constitution includes not only the power to hear and decide cases, but also the general administrative and supervisory authority of the courts of this State. *See Del.Const., Art. IV, §13*. The Public Employment Relations Act ("PERA"), 19 Del.C. Ch. 13, and the PERB Rules and Regulations make it clear that if the relationship between the court and its employees were made subject to those statutory and regulatory provisions, the Supreme Court would forfeit a significant degree of control over the operations of the judicial

systems of Delaware. Moreover, if the PERA is applicable to the Supreme Court, the PERB would exercise adjudicative responsibility over that Court and any appeal from the PERB's determination would lie with the Superior Court, an inferior tribunal. Such a result would frustrate the constitutional mandate that the Supreme Court possesses central supervisory authority over the operations of the judicial branch and run afoul of the separation of powers doctrine.

Because this challenge to PERB's jurisdiction presents a complicated issue of first impression, the Superior Court is willing to provide a comprehensive brief in support of its position should you deem briefing necessary pursuant to PERB Rule 7.3.¹

The parties were afforded the opportunity to file responsive written argument. The final written submission was received on January 13, 2009. This decision on the Court's Motion to Dismiss for Lack of Jurisdiction is based upon a thorough review of the arguments of the parties and consideration of Delaware legal precedent.

DISCUSSION

The Public Employment Relations Board, as originally constituted and created in 1982 by 14 Del.C. §4006, is specifically empowered to administer the Public Employment Relations Act ("PERA") "under the rules and regulations which it shall adopt and publish." 19 Del.C. §1306. There is no dispute between these parties that the applicable law to be applied to these parties is the PERA, if the Court is determined to be a "public employer" as defined by 19 Del.C. §1302(p).

Prior to the PERA, the collective bargaining rights of public employees were circumscribed by the predecessor Chapter 13 of Title 19, Right of Public Employees to Organize, That law was administered by the Delaware Department of Labor, through the

¹ PERB Rule 7.3, Briefs/Oral Argument: Prior to the issuance of a decision, the Executive Director may require the parties to submit briefs or present oral argument as to questions of law and appropriate remedies. The Executive Director shall establish, when necessary, appropriate guidelines for briefs, including schedule and length.

Governor's Council on Labor. Like the current PERA, that statute covered (in relevant part) "the State of Delaware and any agency thereof."

In 1974, AFSCME Council 81 sought to represent employees of the Family Court of Delaware. At that time the Court raised similar constitutional and statutory objections to the Department of Labor's jurisdiction over the Court. Specifically, the Court raised three questions:

- 1) Whether the Family Court is a "State employer" within the terms of 19 Del.C. Chapter 13;
- 2) If the Family Court is such an employer, whether the jurisdiction of the Department of Labor is limited by statute; and
- 3) Whether the statutory jurisdiction of the Department of Labor amounts to an unconstitutional invasion of the powers of the judicial branch of government.

In an unreported decision, the Chancellor of the Court of Chancery (acting as a specially-appointed Superior Court judge) addressed each of these questions, finding that no prohibition existed at law on the jurisdiction of the Department of Labor, thereby allowing the petition to proceed. *Family Court of the State of Delaware v. Department of Labor and Industrial Relations and Council 81, American Federation of State, County, and Municipal Employees, AFL-CIO*, Del.Ch. 438 C.A. 1974, "Letter Opinion and Order on Application for Writ of Prohibition; Writ Refused" (*copy attached hereto*).

On the statutory question as to the whether Family Court constituted an agency of the State, in finding in the affirmative, Chancellor Quillen opined:

While I am inclined to agree with the petitioner that the word "agency" does not normally include courts unless the statutory context indicates some special intent to include courts, it seems to me that the definition of public employer as "the State of Delaware and any agency thereof" was designed to be all inclusive insofar as State employees are concerned. I think that all-inclusive legislative intent is key to this issue and eliminates the details of statutory construction.

...[T]he legislature might have included "the State of Delaware" to make sure all state employees were included even if not attached to an

agency. If so, the constitutional branches of government must have been within the legislative intent or the phrase “the State of Delaware” would be practically meaningless. By construing the phrase to include constitutional branches with their statutory extensions, such as the Family Court, a meaning is placed on all of the operative words used in the statute, and a consistent legislative purpose is attributed to the statute as a whole.² To construe the statute otherwise would reduce the phrase “State of Delaware” to mere surplusage, and render it meaningless. Such a construction is to be avoided.³

...[T]he phrase at 19 Del.C. §1301(a)(1) was intended to be all inclusive and should be construed consistent with that general intent... The employees of Family Court work for a public employer under 19 Del.C. Ch. 13. *Family Court v. DOL & AFSCME* (Supra., p. 2-3).

Chancery Court has more recently considered the similar question of what constitutes an agency of the State under the current statute, the PERA. In *Delaware State University v. DSU Chapter of the AAUP*⁴, Vice Chancellor Strine set forth the criteria to be applied in interpreting the question of “public employer”, in relevant part:

The legislative history of PERA also strongly indicates that the General Assembly intended to include DSU within the statute’s scope, particularly given the drafters’ retention of essentially the same jurisdictional language found in PERA’s predecessor and the longstanding participation of DSU and the other state institutions of higher learning under that labor relations scheme.

The prior Chapter 13 of Title 19, entitled “Right of Public Employees to Organize,” was enacted over thirty years ago and was administered by the Department of Labor with the help of the Governor’s Council on Labor. PERA’s predecessor also failed to precisely define the term “state agency,” let alone specify that DSU, the University of Delaware or Del Tech would qualify as “state agencies”. But when the General Assembly formally repealed the predecessor statute and adopted PERA, the drafters did not materially change the chapter’s jurisdictional language... It is therefore unlikely that PERA’s drafters intended to remove employers like DSU from the statute’s coverage –

² See *State v. Hollobaugh*, Del.Super., 297 A.2d 395 (1972); *In re Webb’s Estate*, Del.Ch., 269 A.2d 413 (1970) *aff’d* Del.Super., 276 A.2d 457 (1971); *State v. Brown*, 6 Storey 571, 577-578, 195 A.2d 379, 383 (Sup.Ct. 1963).

³ *DiSabatino v. Ellis*, 5 Storey 84, 90, 184 A.2d 469, 473 (Sup. Ct. 1962).

⁴ *Delaware State University v. Delaware State University Chapter of the American Association of University Professors*, Del.Ch., 2000 WL 33521111 (Civ.A. 1398-K), III PERB 1971, 1983 (2000).

and thereby effect a significant change in the operation of the law – without doing so explicitly.⁵ (*emphasis added*)

DSU's suggestion that the General Assembly intended to exclude DSU from the PERA is not only inconsistent with PERA's legislative history, but it also runs counter to the history of Delaware's public employment relations law. Between 1982 and 1994, when PERA was enacted, the General Assembly expended considerable energy in expanding, rather than contracting, the reach of Delaware's labor laws.⁶ Accordingly, the synopsis to the Senate Bill enacting PERA explains the statute's goal in expansive terms, stating that it was intended to "extend [] to *all public sector employers and employees* the right to collectively bargain" and "bring *all public sector employers and employees* under the jurisdiction of the Public Employment Relations Board."⁷ DSU's construction of the PERA therefore appears to be at odds with the General Assembly's attempts to achieve comprehensive coverage under Delaware's public employment relations statutes.

Family Court employees were organized in June, 1974, following a DOL election in which AFSCME was selected by the majority of bargaining unit employees to represent them for purposes of collective bargaining. Following the V.C. Strine's logic, because the predecessor to PERA was interpreted to cover the courts, and given that the drafters of the PERA did not change the scope of coverage of the law, "State and any agency thereof" must be interpreted to also include the Delaware courts.

Consistent with the interpretation of Chancery Court in *Family Court v. DOL & AFSCME* applying the definition of "State of Delaware and any agency thereof" and Chancery Court's interpretation of identical language under the PERA, the Superior Court of Delaware is a "public employer" as contemplated by the General Assembly in passing this statute.

⁵ See, e.g., *Ahner v. Delaware Alcoholic Beverage Control Commission*, Del.Supr., 237 A.2d 706, 708 (1967)("it would seem more reasonable to expect an important change of policy ... to be expressed in much more explicit and unequivocal language"); *State v. 0.0673 Acres of Land, More or Less*, Del. Supr., 224 A.2d 598, 602 (1966)("The General Assembly is presumed to have enacted legislation with knowledge of the existence and effect of prior law.").

⁶ During that time, the General Assembly enacted three statutes modeled on the federal NLRA.

⁷ S.B. No. 401, 137th General Assembly, 69 Del.Laws Ch. 466 (1994)(*emphasis added*).

In the *Family Court* decision, Chancellor Quillen also considered the constitutional arguments raised by Family Court, which are identical to the issues raised in this Motion by the Superior Court. He found “the mere existence of the [Chief Justice’s administrative and supervisory] power does not deprive court employees of the right to organize as conferred by state statute.”⁸ The Chancellor’s consideration of the constitutional issues is instructive:

There are two related constitutional considerations to the statute. One is that the statute may be in contravention of the Doctrine of Separation of Powers. This doctrine has been recognized in Delaware.⁹ Under this doctrine each branch of the government must respect the power given to the other two branches.¹⁰ A second possible objection is Article 4, Section 13 which establishes the Chief Justice as the administrative head of the courts, exercising general administrative and supervisory powers over them.

There is persuasive authority to the effect that the Legislature is without power to limit the constitutional power of the Judiciary as a separate branch of government to run its own house including a limitation on the power to discharge employees or a limitation by legislation providing for an administrative review within the executive branch of government of a discharge of an employee by the judicial branch.¹¹ The prohibition against a member of one branch of government exercising the powers of another branch was recognized in DuPont v. DuPont, *supra*, 32 Del. C. at 419, 85 A.2d at 728:

‘[T]he presumption easily follows that when a written constitution provides for the separation of the powers of government between three major branches, it is intended that within the scope of their constitutionally conferred fields of activity the three separate departments of government are to be independent, subject of course, to any limitation upon this presumption found in clear and express provisions of the constitution itself.’

⁸ *Family Court v. DOL & AFSCME*, *Supra.*, p. 10.

⁹ DuPont v. DuPont, 32 Del. Ch. 413, 419, 85 A.2d 724, 728 (Sup. Ct. 1951); Van Winkle v. State, 4 Boyce 578, 610, 91 A. 385, 398 (Sup. Ct. 1914); Poynter v. Walling, 4 Storey 409, 414-415 177 A.2d 641, 645 (Super. 1962).

¹⁰ State ex rel. Tate v. Cabbage, 8 Storey 430, 446, 210 A.2d 555, 564 (Super. 1965).

¹¹ Gray v. Hakenjos, 366 Mich. 588 115 N.W.2d 411 (1962); District Court v. Williams, Me., 268 A.2d 821 (1970). Compare Varbalow v. Civil Service Commission, 15 N.J. Misc. 444, 192 A. 88 (Sup. Ct, 1937).

Thus, it is clear that courts, as the judicial branch of government, necessarily possess “inherent” powers.¹² The term “inherent power of the judiciary” means that power which is essential to the existence, dignity, and functions of the court from the very fact that it is a court.¹³ Inherent powers exist irrespective of specific grant by constitution or legislation and such powers cannot be taken away or abridged by the legislature.¹⁴

Moreover, in policy matters, there can be no doubt that in Delaware the Chief Justice has by our constitution “general administrative and supervisory powers over all the courts.” Article 4, Section 13. It is hard to contemplate a broader delegation of authority to the head of the judicial branch of government.

But the question in the instant case is whether the mere existence of the inherent power of judiciary or the constitutional authority of the Chief Justice prevents employees in one of the courts from organizing pursuant to the statutory authority of Title 19, Chapter 13. It should be noted that the petitioner’s position is that it cannot lawfully participate in the statutory procedure.

But the inherent power of the judiciary is not limited. Its wants and needs must be proved by it to be reasonably necessary for its proper functioning and administration, and this is always subject to Court review.¹⁵ Reasonable necessity does not exist in vacuum; it relates to those powers as are essential to the existence of the court and necessary to the orderly and efficient exercise of its jurisdiction.¹⁶

There are of course possibilities for conflict between the efficiency of the judiciary, including the independence of the judiciary, and organized employees. However, 19 Del.C., §1312 currently forbids strikes by public employees. (If the law is changed in this regard, a different legal situation may arise.) And the possibilities of everyday deadlock are not overly threatening. Indeed, the interests of the courts and its organized employees in the governmental arena, competing for legislative dollars, are likely to coincide much more than conflict. The county clerk’s office of the Superior Court and the Court of Chancery in New Castle County have been organized with no loss of judicial independence and no apparent effect on judicial efficiency.

¹² 20 Am. Jur. 2d, Courts, §§78-79, p. 439-441.

¹³ Re Nebraska State Bar Assn., 133 Neb. 283, 275 N.W. 265, 114 A.L.R. 1512 (1937).

¹⁴ See cases cited at 20 Am. Jur. 2d, Courts, §78, ftnt. 4 and 5, p. 440.

¹⁵ Commonwealth ex rel. Carroll v. Tate, 442 Pa. 45, 274 A. 2d 193 (1971).

¹⁶ 20 Am. Jur. 2d, Courts, §78, ftnt 7, p. 440.

Administrators, appointed or elected, are increasingly and properly supplanting judges in the field of employee relations. It may be that an orderly negotiation procedure may well foster greater efficiency within the court system. In short, an employees' union does not seem to me to necessarily conflict with the independence of the judiciary, including its inherent powers.

Two caveats occur to me. There may be others.

First, in the performance of strictly judicial functions, that is the adjudication power of the Court and policy making and implementing powers necessarily incident there to, the Court must have complete and total control unfettered by any potential for conflict. For example, law clerks cannot have employment rights contrary to the desires of the judiciary since, in opinion writing, law clerks must be the alter ego for the judge. Similarly, judges must be able to select those persons in the hierarchy who make and implement judicial policy. Moreover, confidentiality demands that others such as judicial secretaries or certain administrative secretaries may, in a given context, have to be subject absolutely to judicial control. Such classes of persons cannot be organized without threatening the independence of the judiciary. In short, the mere organization of such person would be contrary to the inherent power of the judiciary. But, in the instant case, these classes of persons are the very ones who appear to have been excluded under 10 Del.C., §908(6) and the recommendations of the Governor's Council on Labor. Indeed, I understand from the result of the hearing that there is agreement in regard to such classifications. There is some risk that certain classes of employees have been misclassified in this regard and experience may show that the inherent power of the judiciary must be exercised as to their right to organize. But as a threshold problem, this appears to be a minor threat in the Family Court situation. It should be noted, however, that duties not job labels is the key to this necessary classification. But, at the moment, there appears to be no conflict in fact.

Second, there are situations when the inherent power of the judiciary can properly be exercised and will override other understandings and obligations including statutory creations. For example, in a riot situation, there can be no doubt that the Court could compel its employees to work unusual hours as a necessary incident to its existence and function as a Court. But I do not feel that the mere potential for such situation is such an inherent conflict that employees should be barred from organizing in the first instance. Indeed, such emergencies customarily bring cooperation by all concerned.

I do not mean to suggest that I have considered all the possibilities of conflict between the judiciary and its inherent power on the one hand and organized employees on the other. But nothing has been brought

to my attention which justifies the prohibition of organization because of the inherent power of the judiciary.

Turning to the constitutional authority of the Chief Justice, the problem is somewhat different since it is an express delegation of power by our State Constitution. There can be little doubt that that power can reach every employee within every court or court-related office of the state, whether he be on the state, county, or municipal payroll and whether he be employed, appointed or elected, unorganized or organized, merit system employee or unclassified. In short, like a similar constitutional provision in New Jersey, our constitutional provision is “absolute and unqualified”, “the broadest possible administrative authority”, and “encompasses all facets of the internal management of our courts.”¹⁷ It should be specifically noted that, insofar as “administrative and supervisory powers” are concerned, the power of the Chief Justice is “general” and not limited by [the] “reasonable necessity” concept discussed above. He can exercise his power based on his determination of convenience and desirability.

But there is no conflict between a legislative policy and the constitutional power of the Chief Justice until the constitutional power is exercised. This is not to say that the Chief Justice cannot exercise his administrative and supervisory power at any time. I think it is clear that he can. But the mere existence of the power does not deprive court employees of the right to organize as conferred by the state statute. The existence of the constitutional power and the statute do not conflict until the constitutional power is exercised in a manner contrary to the statute. This has not been done. *Family Court v. DOL & AFSCME*, (Supra., p. 4 – 10).

Finally, Superior Court in the present matter argues that if the PERA is held to be applicable to the Court, a conflict would be created “because it is well settled that Superior Court – and only Superior Court – is the forum to which a petition for writ of prohibition to the PERB properly lies.” *Superior Court’s Memorandum of Law*, (Dec. 8, 2008, p. 13). Chancellor Quillen’s decision in *Family Court* evidences that Superior Court can and has handled extraordinary cases such as this by appointing a judge from another court to act in a “specially-appointed” capacity.

¹⁷ Lichter v. County of Monmouth, 114 N. J. Super. 343, ___, 276 A.2d 382, 385 (App. Div. 1971) and cases cited therein.

Chancellor Quillen's decision on the issue of constitutionality is binding upon this agency and dispositive of the issues raised by Superior Court in support of its motion to dismiss the instant petition for lack of jurisdiction.

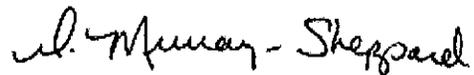
DECISION

Based upon Chancery Court's decision in *Family Court v. DOL & AFSCME*, and Chancery Court's interpretation of the jurisdiction of PERB under PERA in *DSU v. AAUP*, Superior Court's motion to dismiss for lack of jurisdiction is denied.

WHEREFORE, the Certification Petition filed by the UFCW on behalf of Bailiffs and Peace Officers of the Superior Court (as previously verified and determined to be properly supported) will proceed immediately to election.

IT IS SO ORDERED.

DATE: February 23, 2009



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

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

WILLIAM T. QUILLEN
CHANCELLOR

COURT HOUSE
WILMINGTON, DELAWARE

May 15, 1974

Victor F. Battaglia, Esquire
1206 Farmers Bank Building
Wilmington, Delaware 19801

David K. Brewster, Esquire
Deputy Attorney General
Farmers Bank Building
Wilmington, Delaware 19801

Harvey B. Rubenstein, Esquire
265 Delaware Trust Building
Wilmington, Delaware 19801

Re: Family Court of the State of Delaware v.
Department of Labor and Industrial Relations
and Council 81, American Federation of State,
County, and Municipal Employees, AFL-CIO,
438 C. A. 1974; Letter Opinion and Order On
Application for Writ of Prohibition; Writ
Refused

Gentlemen:

As to the issue of the jurisdiction of the Department to certify a bargaining representative, there are three questions which need to be faced. First, whether the Family Court is a "State employer" within the terms of 19 Del. C., Ch. 13. Second, if the Family Court is such an employer, whether the jurisdiction of the Department is limited by statute. Third, whether the statutory jurisdiction of the Department amounts to an unconstitutional invasion of the powers of the judicial branch of government.

While I am inclined to agree with the petitioner that the word "agency" does not normally include courts unless the statutory context indicates some special intent to include courts, it seems to me that the definition of public employer as "the State of Delaware or any agency thereof" was designed to be all inclusive insofar as State employees are concerned. I think that all-inclusive legislative intent is the key to this issue and eliminates the details of statutory construction.

On the one hand, the legislature might have included "the State of Delaware" to make sure all state employees were included even if not attached to an agency. If so, the constitutional branches of government must have been within the legislative intent or the phrase "the State of Delaware" would be practically meaningless. By construing the phrase to include constitutional branches with their statutory extensions, such as the Family Court, a meaning is placed on all of the operative words used in the statute, and a consistent legislative purpose is attributed to the statute as a whole. See State v. Hollobaugh, Del. Super., 297 A.2d 395 (1972); In re Webb's Estate, Del. Ch., 269 A.2d 413 (1970) aff'd. Del. Supr., 276 A.2d 457 (1971); State v. Brown, 6 Storey 571, 577-578, 195 A.2d 379, 383 (Sup. Ct. 1963). To construe the statute otherwise would reduce the phrase "State of Delaware" to mere surplusage, and render it meaningless. Such a construction is to be avoided. DiSabatino v. Ellis, 5 Storey 84, 90, 184 A.2d 469, 473 (Sup. Ct. 1962).

On the other hand, the legislature might have added the words "or any agency thereof" to include agencies of the State whose employees are not paid directly by the State of Delaware and so, in that sense, such employees do not have "the State of Delaware" as their employer. Wilmington Housing Authority v. Williamson, Del. Supr., 228 A.2d 782 (1967).

In either event, the phrase at 19 Del. C., §1301(a)(1) was intended to be all inclusive and should be construed consistent with that general intent. Additionally, it should be noted that Family Court employees with certain exceptions are included in the merit system, 10 Del. C., §908(6). The law contemplates generally that such employees have the right to collective bargain. See 29 Del. C., §5938 which defined in 1968 and prior to the Family Court Act the relationship of Chapter 59 of Title 29 to Chapter 13 of Title 19. The employees of the Family Court work for a public employer under 19 Del. C., Ch. 13.

I do want to consider one point not raised by counsel. It should be noted that the Family Court Act, 10 Del. C., Ch. 9, was enacted in 1971, several years after the 1965 Right of Public Employees to Organize Act. Thus, if the earlier act is repugnant to the Family Court Act, the Family Court Act will govern. Wright v. Husbands, 36 Del. Ch. 416, 429, 131 A.2d 322, 330 (Sup. Ct. 1957). It seems clear that 10 Del. C., §908(6) was designed to give exclusive powers to the judicial council in certain areas of employment relations. I do not believe it is necessary or wise

to try to list every potential conflict that could arise. But it does seem important to note that the statutory recognition of absolute control in the judicial council, insofar as certain employees (the administrator, the director of treatment services, the chief supervisors in each county, and the personal secretaries of the administrator and all judges) are concerned, precludes statutorily their inclusion in a "bargaining unit" under 19 Del. C., Ch. 13. This is not to say that appropriate bargaining unit must include everyone else. Indeed, as will appear infra, some additional exclusions may be constitutionally required. It is to say that it cannot include those employees specifically named in 10 Del. C., §908(6). This is no more than a statutory recognition that the independence of the judiciary means that the judges must be able to perform their judicial function with freedom and with certain employees unfettered by conflicting loyalties and accountability. This concept has constitutional implications as well.

I turn now to the question of whether the Constitution of the State of Delaware bars the organization of the remaining classifications of employee as permitted by the statute. There are two related constitutional considerations to the statute. One is that the statute may be in contravention of the Doctrine of Separation of Powers. This doctrine has been recognized in Delaware, DuPont v. DuPont, 32 Del. Ch. 413, 419, 85 A.2d 724, 728 (Sup. Ct. 1951); Van Winkle v. State, 4 Boyce 578, 610, 91 A. 385, 398 (Sup. Ct. 1914); Poynter v. Walling, 4 Storey 409, 414-415 177 A.2d 641, 645 (Super. 1962). Under this doctrine each branch

of the government must respect the power given to the other two branches, State ex rel. Tate v. Cabbage, 8 Storey 430, 446, 210 A.2d 555, 564 (Super. 1965). A second possible objection is Article 4, Section 13 which establishes the Chief Justice as the administrative head of the courts, exercising general administrative and supervisory powers over them.

There is persuasive authority to the effect that the Legislature is without power to limit the constitutional power of the Judiciary as a separate branch of government to run its own house including a limitation on the power to discharge employees or a limitation by legislation providing for an administrative review within the executive branch of government of a discharge of an employee by the judicial branch. Gray v. Hakenjos, 366 Mich. 588, 115 N.W.2d 411 (1962); District Court v. Williams, Me., 268 A.2d 821 (1970). Compare Varbalow v. Civil Service Commission, 15 N.J. Misc. 444, 192 A. 88 (Sup. Ct. 1937). The prohibition against a member of one branch of government exercising the powers of another branch was recognized in DuPont v. DuPont, supra, 32 Del. Ch. at 419, 85 A.2d at 728:

"[T]he presumption easily follows that when a written constitution provides for the separation of the powers of government between three major branches, it is intended that within the scope of their constitutionally conferred fields of activity the three separate departments of government are to be independent, subject, of course, to any limitations upon this presumption found in clear and express provisions of the constitution itself."

Thus, it is clear that courts, as the judicial branch of

government, necessarily possess "inherent" powers. 20 Am. Jur. 2d, Courts, §§78-79, p. 439-441. The term "inherent power of the judiciary" means that power which is essential to the existence, dignity, and functions of the court from the very fact that it is a court. Re Nebraska State Bar Assn., 133 Neb. 283, 275 N.W. 265, 114 A.L.R. 151 (1937). Inherent powers exist irrespective of specific grant by constitution or legislation and such powers cannot be taken away or abridged by the legislature. See cases cited at 20 Am. Jur. 2d, Courts, §78, ftnt. 4 and 5, p. 440.

Moreover, in policy matters, there can be no doubt that in Delaware the Chief Justice has by our constitution "general administrative and supervisory powers over all the courts." Article 4, Section 13. It is hard to contemplate a broader delegation of authority to the head of the judicial branch of government.

But the question in the instant case is whether the mere existence of the inherent power of judiciary or the constitutional authority of the Chief Justice prevents employees in one of the courts from organizing pursuant to the statutory authority of Title 19, Chapter 13. It should be noted that the petitioner's position is that it cannot lawfully participate in the statutory procedure.

But the inherent power of the judiciary is not unlimited. Its wants and needs must be proved by it to be reasonably necessary for its proper functioning and administration, and this is always subject to Court review. Commonwealth ex rel. Carroll v. Tate,

442 Pa. 45, 274 A.2d 193 (1971). Reasonable necessity does not exist in vacuum; it relates to those powers as are essential to the existence of the court and necessary to the orderly and efficient exercise of its jurisdiction. 20 Am. Jur. 2d, Courts, §78, ftnt. 7, p. 440.

There are of course possibilities for conflict between the efficiency of the judiciary, including the independence of the judiciary, and organized employees. However, 19 Del. C., §1312 currently forbids strikes by public employees. (If the law is changed in this regard, a different legal situation may arise.) And the possibilities of everyday deadlock are not overly threatening. Indeed, the interests of the courts and its organized employees in the governmental arena, competing for legislative dollars, are likely to coincide much more than conflict. The county clerk's office of the Superior Court and the Court of Chancery in New Castle County have been organized with no loss of judicial independence and no apparent effect on judicial efficiency. Administrators, appointed or elected, are increasingly and properly supplanting judges in the field of employee relations. It may be that an orderly negotiation procedure may well foster greater efficiency within the court system. In short, an employees' union does not seem to me to necessarily conflict with the independence of the judiciary, including its inherent powers.

Two caveats occur to me. There may be others.

DATE: May 15, 1974

First, in the performance of strictly judicial functions, that is the adjudication power of the Court and policy making and implementing powers necessarily incident thereto, the Court must have complete and total control unfettered by any potential for conflict. For example, law clerks cannot have employment rights contrary to the desires of the judiciary since, in opinion writing, law clerks must be the alter ego for the judge. Similarly, judges must be able to select those persons in the hierarchy who make and implement judicial policy. Moreover, confidentiality demands that others such as judicial secretaries or certain administrative secretaries may, in a given context, have to be subject absolutely to judicial control. Such classes of persons cannot be organized without threatening the independence of the judiciary. In short, the mere organization of such person would be contrary to the inherent power of the judiciary. But, in the instant case, these classes of persons are the very ones who appear to have been excluded under 10 Del. C., §908(6) and the recommendations of the Governor's Council on Labor. Indeed, I understand from the result of the hearing that there is agreement in regard to such classifications. There is some risk that certain classes of employees have been misclassified in this regard and experience may show that the inherent power of the judiciary must be exercised as to their right to organize. But as a threshold problem, this appears to be a minor threat in the Family Court situation. It should be

noted, however, that duties not job labels is the key to this necessary classification. But, at the moment, there appears to be no conflict in fact.

Second, there are situations when the inherent power of the judiciary can properly be exercised and will override other understandings and obligations including statutory creations. For example, in a riot situation, there can be no doubt that the Court could compel its employees to work unusual hours as a necessary incident to its existence and function as a Court. But I do not feel that the mere potential for such situation is such an inherent conflict that employees should be barred from organizing in the first instance. Indeed, such emergencies customarily bring cooperation by all concerned.

I do not mean to suggest that I have considered all the possibilities of conflict between the judiciary and its inherent power on the one hand and organized employees on the other. But nothing has been brought to my attention which justifies the prohibition of organization because of the inherent power of the judiciary.

Turning to the constitutional authority of the Chief Justice, the problem is somewhat different since it is an express delegation of power by our State Constitution. There can be little doubt that that power can reach every employee within every court or court-related office of the state, whether he be on the state, county, or

municipal payroll and whether he be employed, appointed or elected, unorganized or organized, merit system employee or unclassified. In short, like a similar constitutional provision in New Jersey, our constitutional provision is "absolute and unqualified", "the broadest possible administrative authority", and "encompasses all facets of the internal management of our courts." Lichter v. County of Monmouth, 114 N. J. Super. 343, , 276 A.2d 382, 385 (App. Div. 1971) and cases cited therein. It should be specifically noted that, insofar as "administrative and supervisory powers" are concerned, the power of the Chief Justice is "general" and not limited by "reasonable necessity" concept discussed above. He can exercise his power based on his determination of convenience and desirability.

But there is no conflict between a legislative policy and the constitutional power of the Chief Justice until the constitutional power is exercised. This is not to say that the Chief Justice cannot exercise his administrative and supervisory power at any time. I think it is clear that he can. But the mere existence of the power does not deprive court employees of the right to organize as conferred by state statute. The existence of the constitutional power and the statute do not conflict until the constitutional power is exercised in a manner contrary to the statute. This has not been done.

Accordingly, I am satisfied that no prohibition exists on

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and Rubenstein

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the jurisdiction of the Department at the present time and therefore the application for a writ of prohibition is denied and the petition dismissed. IT IS SO ORDERED.

Very sincerely yours,

William J. Sullivan

WTQ:pp

cc: Honorable William Marvel
Honorable Grover C. Brown
Register in Chancery
Mrs. Carol York
File