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Re: *Superior Court of the State of Delaware v. State of Delaware Public Employment Relations Board*
Civil Action No. 09M-03-117 WBC

Dear Counsel:

I have reviewed the briefs filed by the Superior Court, in support of its petition for a writ of prohibition, and the Public Employment Relations Board in opposition. For the reasons briefly stated below, I deny the Superior Court's petition for a writ of prohibition.

I. BACKGROUND

The Public Employment Relations Act ("PERA") was enacted in 1994 to "promote harmonious and cooperative relationships between public employers and their employees and to protect the public by assuring the orderly and uninterrupted

operations and functions of the public employer."[1] The PERA grants public employees the right to organize and to bargain collectively for the terms and conditions of their employment. The Public Employment Relations Board ("PERB") administers the PERA and resolves disputes between public workers and employers. The PERB determines appropriate bargaining units and also certifies the unit representatives.[2]

On October 10, 2008, the United Food and Commercial Workers ("UFCW") submitted a petition to the PERB seeking to represent a bargaining unit of "[a]ll regularly scheduled full-time and part-time Bailiffs/Peace Officers employed by Superior Court in New Castle, Kent, and Sussex countries; excluding all supervisory and confidential employees."[3] On November 7, 2008, the PERB notified the Superior Court that it had verified UFCW's petition and it was postured to move to election. The Delaware Department of Justice, on behalf of the Superior Court, filed a letter on November 14, 2008 notifying the PERB of the Superior Court's intent to challenge the PERB's exercise of jurisdiction. The Superior Court and UFCW submitted memoranda to the PERB on the issue, and on February 24, 2009, the Executive Director of the PERB denied the Superior Court's motion to dismiss for want of jurisdiction. A hearing on the motion was conducted before the full membership of the PERB on March 11, 2009. On March 16, 2009, the PERB issued a decision affirming the Executive Director's decision and ordering the processing of the UFCW's petition.

On February 24, 2009, Chief Justice Myron T. Steele promulgated Administrative Directive No. 171, announcing a comprehensive revision of the Judicial Branch Personnel Rules ("Personnel Rules"). The Personnel Rules apply "to all non-judicial employees in the Judicial Branch holding job titles which are categorized as exempt from the State of Delaware Merit Rules."[4] According to the Personnel Rules, employees have the right to informal grievance discussions, during which they may "have union, where applicable, or other representation through the process."[5] The Rules go on to state that an "employee who is in a bargaining unit covered by a collective bargaining agreement shall process any grievance through the grievance procedure outlined in the collective bargaining agreement."[6] Additionally, employees "may be excused from work with

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[1] 19 *Del. C.* § 1301.
[2] 19 *Del. C.* §§ 1310-11.
[3] Pet'r Ex. A.
[4] Resp't Ex. 1.
[5] *Id.*
[6] *Id.*

pay . . . [t]o serve as a delegate to conventions of unions or employee organizations."[7]

On May 23, 2009, the Superior Court filed a petition seeking a writ of prohibition to enjoin the PERB from exceeding its lawful jurisdiction by proceeding on the UFCW's petition. The Superior Court also filed a motion to stay the PERB's March 16 decision. I was then designated by the Chief Justice of the Delaware Supreme Court to sit on the Superior Court to preside over this action. On April 21, 2009, I granted the Superior Court's motion to stay the PERB's decision to move to the election on the UFCW's petition. The PERB later filed a motion to dismiss, or in the alternative, to lift the stay, which I denied on May 19, 2009.

II. ANALYSIS

A writ of prohibition is issued by a superior court to an inferior court to prevent it from exceeding its jurisdiction.[8] It is the legal equivalent of the equitable remedy of an injunction, directed to a court, not an individual.[9] "In a writ of prohibition proceeding, the petitioner has the burden of demonstrating to this Court, by clear and convincing evidence, that the action contemplated by the trial court is in excess of its jurisdiction."[10] "The writ will be denied if the petitioner has another adequate and complete remedy at law for the correction of the asserted error of the court below."[11]

The Superior Court argues that the PERB cannot exercise jurisdiction over the UFCW application for three reasons. First, the Superior Court argues that an attempt by an inferior executive branch agency, board, or tribunal to exercise jurisdiction over a superior tribunal and constitutional court runs afoul of the doctrine of separation of powers. Second, the Delaware Constitution grants the Chief Justice of the Supreme Court "general administrative and supervisory powers over all the courts."[12] Application of the PERA to the judicial branch employees, argues the Superior Court, would infringe upon the Chief Justice's constitutionally granted authority and would thus violate the separation of powers doctrine. Finally, the Superior Court argues that the Delaware Code expressly and

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[7] *Id.*
[8] *Canaday v. Superior Court*, 116 A.2d 678, 681 (Del. 1955).
[9] *Abrahams v. Superior Court*, 131 A.2d 662, 670 (Del. 1957).
[10] *In re Hovey*, 454 A.2d 626, 629 (Del. 1988).
[11] *Canaday*, 116 A.2d at 682.
[12] Del. Const. art. IV, § 13.

unambiguously grants the Court the authority to determine the terms of its employment relationship with bailiffs and peace officers.[13] Thus, according to the Superior Court, the PERA must be construed to exclude the Superior Court and its employees.

The judicial branch Personnel Rules do not explicitly mention the PERA, but it is a reasonable interpretation to conclude that the Chief Justice intended to give non-judicial employees the right to organize collective bargaining units. The February 24, 2009 revisions to the Personnel Rules expressly allow for union representation for employees when filing grievances, for employees in collective bargaining agreement units to process grievances through the procedure outlined by their collective bargaining agreement, and for employees to be excused from work to serve as a delegate to a union or employee organization convention. To hold that the judicial branch Personnel Rules prohibit collective bargaining unit organization would lead to an absurd and unreasonable result—that the Chief Justice would allow union representation for non-judicial employees, but would not allow them to organize in the first place.

Furthermore, the judicial branch Personnel Rules do not specify a clear mechanism by which court employees may unionize if they so choose. In the absence of a clear mechanism, I am left to construe the Administrative Directive "in a way that will promote its apparent purpose and harmonize with other statutes".[14] Given this unenviable position, I conclude that one reasonable manner of interpreting the judicial branch Personnel Rules would be to follow the statutory regime established by the Legislature for other state employees—the PERA. Thus, I conclude that the Personnel Rules adopted by the Chief Justice for the judicial branch allow court employees to organize under the PERA, subjecting them to the administrative authority of the PERB.

The Superior Court has failed to meet its burden of demonstrating, by clear and convincing evidence, that the PERB has exceeded its jurisdiction. The Chief Justice exercised his Article IV, § 13 general administrative and supervisory powers by promulgating the judicial branch Personnel Rules, which grant non-judicial employees the right to organize collective bargaining units. Therefore, there is no infringement on the Judiciary's constitutionally or statutorily vested powers by the PERB's administration of PERA.

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[13] *See* 10 *Del. C.* § 522.
[14] *Eliason v. Englehart,* 733 A.2d 944, 946 (Del. 1999).

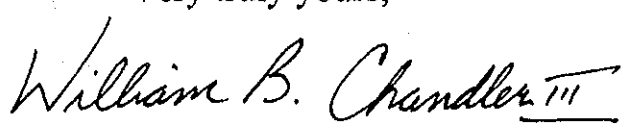
In the alternative, the Superior Court argues that 10 *Del. C.* § 522 grants the Court the authority to determine the terms of its employment relationship with bailiffs and peace officers. Although this statement is correct as far as it goes, it begs the ultimate question. Nothing in § 522 (or any other statute) prevents bailiffs and peace officers from choosing to organize a bargaining unit. The Chief Justice, acting pursuant to his Article IV, § 13 powers, has already weighed in on the issue and granted non-judicial employees the ability to unionize subject to the PERA. This action is consonant with § 522, as it will permit the employees described in § 522 to organize a bargaining unit for purposes of negotiating with Superior Court the terms of the employment relationship.[15] Therefore, I find no conflict between § 522's grant of authority to the Superior Court, and the PERA's application in instances where employees have organized a bargaining unit as permitted by the judicial branch Personnel Rules.

III. CONCLUSION

For the reasons set forth above, I deny the Superior Court's petition for a writ of prohibition and enter final judgment in favor of the PERB

IT IS SO ORDERED.

Very truly yours,



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[15] If, as the Superior Court appears to argue, a conflict exists between 10 *Del. C.* § 522 and PERA, the later in time statute (PERA) controls, and implicitly repeals the contradictory provisions of 10 *Del. C.* § 522. *Del. v. Fletcher*, Del. LEXIS 250 (Del. May 27, 2009).