

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

AMERICAN FEDERATION OF STATE, COUNTY, & MUNICIPAL EMPLOYEES, COUNCIL 81, LOCAL 247, LOCAL 516, LOCAL 640, LOCAL 837, LOCAL 879, LOCAL 936, LOCAL1036, LOCAL 1443, LOCAL 1525, LOCAL 1832, LOCAL 2030, LOCAL 2031, LOCAL 2072, LOCAL 2305, LOCAL 2362, LOCAL 3514,	:	
	:	
Charging Parties,	:	
	:	
v.	:	
	:	<u>ULP No. 09-07-693</u>
STATE OF DELAWARE DEPARTMENT OF HEALTH AND SOCIAL SERVICES, STATE OF DELAWARE DEPARTMENT OF CORRECTION, AND STATE OF DELAWARE DEPARTMENT OF TRANS- PORTATION,	:	
	:	
	:	
	:	
	:	
	:	
Respondents.	:	

Appearances
Perry F. Goldust, Esq. for AFSCME Council 81
Aaron Shapiro, State Labor Relations & Employment Practices, for the State

BACKGROUND

The State of Delaware (“State”) is a public employer within the meaning of §1302(p) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1995). The State Departments of Health and Social Services, Corrections, and Transportation (“Departments”) are all cabinet departments of the State of Delaware.

The American Federation of State, County, & Municipal Employees (“AFSCME”) is an employee organization which has as a purpose the representation of State merit employees in collective bargaining pursuant to 19 Del.C. §1302(i). Council 81 and its

affiliated Locals enumerated in the caption of this Charge are certified exclusive bargaining representatives of State employees who work in the Departments of Health and Social Services, Corrections, and Transportation, within the meaning of 19 Del.C. 1302(j).

On or about July 15, 2009, AFSCME and its affiliated Locals filed an unfair labor practice charge alleging the State had violated 19 Del.C. §1307(a)(2), (3), (5), and (6). Specifically, the Charge alleged the Departments (DHSS, DOT and DOC) unilaterally implemented a new method for calculating overtime and communicated that change directly to bargaining unit employees in violation of the State's obligations under the PERA.

On or about July 27, 2009, the State filed its Answer to the Unfair Labor Practice Charge, denying all material allegations contained therein. The Answer included New Matter in which the State: 1) challenged PERB's jurisdiction over the issue; 2) asserted pay for overtime service was not a negotiable subject of bargaining because the change was mandated by statute in the FY 2010 Appropriations Act; and 3) asserted there was no conduct alleged which could constitute a violation of any of the statutory prohibitions cited by AFSCME in the Charge.

On or about August 4, 2009, AFSCME filed its Response to New Matter denying all material allegations contained therein.

A Probable Cause Determination was issued on October 6, 2009, finding probable cause to believe that there may have been a violation of 19 Del.C. §1307(a)(2) and/or (a)(5). A hearing was commenced but the parties subsequently entered into a factual stipulation and then submitted written argument to the Executive Director on the legal issues raised.

By decision dated February 22, 2011, the Executive Director found the language of

§8(j) of the FY 2010 Appropriations Act clearly and unequivocally establishes the conditions which must be met for employees to be eligible for overtime compensation. This statutory mandate removes this issue from the scope of negotiability for these State bargaining units. Consequently, the State was found not to have violated 19 Del.C. §1307(a)(2) and/or (a)(5) as alleged, and the Charge was dismissed in its entirety.

On or about February 25, 2011, AFSCME requested the full Public Employment Relations Board review the Executive Director's decision, asserting it was contrary to law and unsupported by the record. AFSCME requested the Executive Director's Decision be reversed and an Order be issued to the State requiring that the State return to the *status quo ante*, compensating the members of the charging parties' collective bargaining unit in accordance with the pay practices in effect prior to July 1, 2009.

The State filed its response to AFSCME's request for review on February 28, 2011, requesting AFSCME's request be denied because the decision was based on substantial evidence and correctly applied controlling law.

A copy of the complete record in this matter was provided to each member of the Public Employment Relations Board. A hearing was convened on March 16, 2011, at which time the full Board met in public session to hear and consider AFSCME's request for review. The parties were provided the opportunity to present oral argument and the decision reached herein is based upon consideration of the record created by the parties below.

DISCUSSION

The Board's standard of review of a decision of the Executive Director is limited to the record created by the parties and consideration of whether that decision is arbitrary, capricious, contrary to law or unsupported by the record.

AFSCME provided no oral argument in support of its request for review, but stated it relied upon the argument it had presented to the Executive Director. The State argued it is the Appellant's burden to support its assertion that the decision below was contrary to law and unsupported by the record.

Upon review of the record and the arguments of the parties before the Executive Director, the Board finds the Executive Director's decision is well-reasoned and correct. The overtime provisions of the FY 2010 Appropriations Act superseded any merit rules and/or collective bargaining provisions to the contrary. The decision is not contrary to law.

DECISION

After reviewing the record and considering the arguments of the parties, the Board unanimously affirms the decision of the Executive Director finding §8(j) of the FY 2010 Appropriations Act removed overtime eligibility and computation from the legal scope of bargaining for the bargaining units at issue in this case. Consequently, the State did not violate 19 Del.C. §1307 (a)(2) or (a)(5) as alleged.

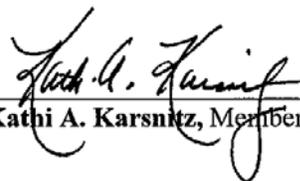
Wherefore, the Charge is dismissed in its entirety is affirmed.



Elizabeth D. Maron, Chairperson



R. Robert Currie, Jr., Member



Kathi A. Karsnitz, Member

DATE: March 21, 2011