

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

SMYRNA POLICE EMPLOYEES ASSN.,)

Petitioner,)

v.)

THE TOWN OF SMYRNA,)

Respondent.)

Rep. Pet. No. 95-09-155

FRATERNAL ORDER OF POLICE,)
LODGE NO. 9,)

Petitioner,)

v.)

THE CITY OF SEAFORD,)

Respondent.)

Rep. Pet. No. 95-10-158

APPEARANCES

FOR THE SMYRNA POLICE EMPLOYEES ASSN.:
FOR THE TOWN OF SMYRNA:
FOR FOP, LODGE NO. 9:
FOR THE CITY OF SEAFORD:

Jeffrey M. Weiner, Esquire
John Terrence Jaywork, Esquire
Jeffrey M. Weiner, Esquire
James A. Fuqua, Jr., Esquire

BACKGROUND

On September 18, 1995, Representation Petition No. 95-09-155 was filed by the Smyrna Police Employees Association with the State Public Employment Relations Board (hereinafter "PERB") seeking to certify a bargaining unit composed of all police officers employed by the Town of Smyrna below the rank of Chief of Police including civilian employees in the position(s) of Police Dispatchers but excluding the Chief's Secretary.

On October 3, 1995, Representation Petition No. 95-10-158 was filed by Fraternal Order of Police (FOP), Lodge No. 9, seeking to certify a bargaining unit composed of all police officers employed by the City of Smyrna in the rank of Captain and below.

On October 5, 1995, the Town of Smyrna filed its Answer objecting to the inclusion of the civilian police dispatchers and the Administrative Sergeant.

On October 16, 1995, the City of Seaford filed a Motion to Dismiss alleging a lack of jurisdiction by the PERB to process the Petition filed by Lodge No. 9. Also on October 16, 1996, the Town of Smyrna also filed a Motion to Dismiss alleging a lack of jurisdiction by the PERB to process the Petition filed by the Police Employees Association.

The Respondents argue that because neither employs 25 or more police officers and firefighters it is not an "Employer" as defined in Section 1602(1), of the Act.

On October 20, 1995, the Town of Smyrna filed a Motion to Intervene in Representation Petition No. 95-10-158, pursuant to PERB Rule 1.7. The Motion was granted on November 7, 1995.

On October 30, 1995, the Smyrna Police Employees Association and FOP Lodge No. 9, jointly filed a position statement and argument opposing the Motions to Dismiss.

On November 8, 1995 and November 13, 1995, respectively, Respondents Seaford and Smyrna each filed a response to Petitioners filing of October 30, 1995. Attached to Respondent Smyrna's submission was a letter opinion dated October 4, 1995, issued by the State Attorney General's Office at the request of the Honorable Richard S. Cordrey, of the Delaware State Senate.

The opinion limits the scope of the word "employee," as it is used in Section 1602(1), to include only police officers and firefighters as opposed to municipal employees, generally.

ISSUE

Whether the Town of Smyrna and the City of Seaford are public employers within the meaning of 19 Del.C. §1602(1)?

OPINION

Section 1602 of the Act, Definitions, provides, in relevant part:

- (1) "Public employer" or "employer" means the State or political subdivisions of the State, any county, or any agency thereof, or any municipal corporation or municipality, city or town located within the State or any agency thereof, which, (1) upon the affirmative legislative act of its common council or other governing body has elected to come within Chapter 13 of this title, (2) hereafter elects to come within this Chapter, or (3) employees 25 or more full-time employees.

Neither the Town of Smyrna nor the City of Seaford has elected by affirmative legislative act to come within Chapter 13 of Title 19. Therefore, the sole issue raised by the Respondents is whether or not a municipality which employs less than 25 full-time police officers and firefighters is automatically covered by the POFFERA. Because the Petitions raise a single identical issue they are joined together for the purpose of this decision.

The Petitioners maintain that "the fundamental rule for the construction of statutes is to ascertain and give effect to the intention of the General Assembly. Alfieri v. Martelli, Del.Supr., 547 A.2d 52 (1944).

The Petitioners acknowledge, however, that if the statute as a whole is unambiguous and there is not reasonable doubt as to the meaning of the words used, a Court's role is limited to an application of the literal meaning of the words. Here, the Petitioners maintain that because there is ambiguity as to the meaning of the word "employee" in Section 1302(1), legislative history may

properly be considered to establish the legislative intent. Alfieri v. Martelli, supra; Coastal Barge Corp. v. Coastal Zone Indus. Control Bd., 492 A.2d 1242 (1985).

The Petitioners' position is supported in part upon the opinion from the Office of the Attorney General which provides that a reading of Section 1602(l) "could create confusion as to the meaning of the word 'employee.'" Having so concluded, the Petitioner argues, it was incumbent upon the Attorney General's Office to consider the legislative history of the Act in order to discern and give effect to the legislative intent which, the Petitioners argue, was to include both non-police and non-firefighter employees within the definition of "employee."

The Petitioners' argument is not persuasive. Section 1602 of the Act defines various terms used throughout the Act. Section 1602(k) provides:

"Public employee" or "employee" means any police officer or firefighter employed by a public employer except those determined by the Board to be inappropriate for inclusion in the bargaining unit; provided, however, that for the purposes of this chapter, this term shall not include any employee covered under the State Merit System.

Any perceived ambiguity in the term "employee" is resolved by Section 1602(k). The definition of "employee" set forth, therein, is clear and unambiguous. Therefore, resort to external factors in order to ascertain the legislative intent is unnecessary. L.C.V.A.C.C., Del.Fam.Ct., 407 A.2d 359 (1979), Opinion of the Justices, Del.Supr., 290 A.2d 645, 647 (1972).

Language which is clear and unambiguous is to be literally interpreted and given effect. Otherwise, the plain meaning of statutes could not be relied upon as a valid pronouncement of legislative intent. If, in fact, what the Legislature has authored does not accurately reflect that which the

Legislature intended, it is the Legislature's responsibility, and its alone, to correct the inaccuracy.

DECISION

Neither the Town of Smyrna nor the City of Seaford employs 25 or more full-time employees as defined by Section 1602(k), of the Act. Consequently, neither is a "public employer" as defined in Section 1602(l), of the Act.

Accordingly, Representation Petition Nos. 95-09-155 and 95-10-158 are dismissed for lack of jurisdiction.

IT IS SO ORDERED.

/s/Charles D. Long, Jr.
Executive Director
Del. Public Employment Rel. Bd.

/s/Deborah L. Murray-Sheppard
Principal Assistant
Del. Public Employment Rel. Bd.

DATED: November 27, 1995