

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

CAPITAL SECRETARIES ASSOCIATION, :  
 :  
 : Petitioner, :  
 : Request for Declaratory Statement  
 : D.S. No. 96-02-170  
 :  
 and :  
 :  
 CAPITAL SCHOOL DISTRICT, :  
 :  
 : Respondent. :

The Capital School District (hereinafter "District") is a public school employer within the meaning of 14 Del.C. §4002(n). The Capital Secretaries Association (hereinafter "Association") is the exclusive bargaining representative of the members of the Capital School District for secretaries and clerks within the meaning of 14 Del.C. §4002(m). The District and the Association were parties to a collective bargaining agreement for the period of July 1, 1991 through June 30, 1994. The dispute in this matter has arisen during the course of negotiations of a successor agreement.

**BACKGROUND**

The Request for a Declaratory Statement was mutually filed by the parties on February 22, 1996.

The parties have stipulated to the following Statement of Facts:

1. The Capital School District currently is the fiscal agent for the Delaware Teacher Center, Educational Learning Resource Systems, Business in Education/Science Alliance and Child Services Cost Recovery Project. These are considered sub-agencies of the State of Delaware.
2. Secretaries and clerks in the above sub-agencies were listed as eligible voters in the initial bargaining election creating the Capital Secretaries Association.

3. Historically, the contract negotiated between the parties has included sub-agency secretaries and clerks.
4. During the current round of bargaining beginning in 1994, this became a topic of discussion when Article 12:1 was reviewed. The District proposed language excluding sub-agency employees from the bargaining unit, not just from some provisions of the contract as was already the case. The District maintains sub-agency secretaries and clerks are not employed by the Capital School District but by Boards of Directors of the sub-agencies or the State.
5. The District requested clarification on sub-agency employees and outlined its views on the subject in a letter to Deputy State Superintendent Michael Ferguson.
6. The District, in response to its inquiry, received a letter from Mr. Ferguson dated January 30, 1995.
7. The Association maintained that Mr. Ferguson did not have jurisdiction on the issue and the parties requested a meeting with the PERB Executive Director.
8. The parties met with representatives of the PERB on May 18, 1995, and were advised to seek resolution through DPI prior to officially bringing the matter to the PERB.
9. Dr. Wayne A. Barton, Education Associate met with the parties in June, 1995, to review the dispute, its ramifications and the role of the DPI in the process.
10. The October 16, 1995, letter from Dr. Barton tells the parties that DPI will not become involved in mediating the issue.
11. The parties agreed to jointly request a Declaratory Statement from the PERB in order to bring negotiations to a close.

In addition to the Stipulation of Facts included in the petition, the parties further agree that the secretaries and clerks of the sub-agencies are not employees of the State School Board.

### ISSUE

Are secretaries and clerks of sub-agencies within the confines of the Capital School District entitled to be members of the bargaining unit?

## POSITIONS OF THE PARTIES

### District:

The District argues that when the secretaries and clerks working for sub-agencies were permitted to participate in the initial selection of the bargaining unit representative, there was no PERB law controlling whether they were, in fact, employees sharing a community of interest with the District's secretaries. At the time, the Governor's Council merely looked to who signed their paychecks in determining their employment status.

The District maintains that although under the State's procedures sub-agency employees receive the same salary increases and benefits as the employees of the District, the only responsibilities of the District to the sub-agency employees are to pass through state salaries and benefits and monitor employee attendance. The District does not hire, fire or evaluate sub-agency employees, nor does it establish or control any of their work rules. This being the case, the District could not enforce any grievance resolution impacting the sub-agency employees in these areas. Additionally, the District risks exposure to law suits (for example, sexual harassment, affirmative action), based on activities over which it has no control.

The District does not challenge the right of the Delaware State Education Association to remain as the bargaining agent of the sub-agency employees in a separate bargaining unit and to negotiate directly with the respective sub-agencies.

For the reasons previously set forth, the District requests that the PERB determine that sub-agency secretaries and clerks are ineligible for inclusion in the bargaining unit.

**Association:**

The Association maintains there has been no change in working conditions or commonality of interest for sub-agency secretaries and clerks since the Department of Labor certified the bargaining unit in 1989. The bargaining history also supports the conclusion that the sub-agency employees are eligible for inclusion in the existing bargaining unit. Secretaries and clerks working in sub-agencies appeared on the eligible voting list, without challenge, in the bargaining election creating the Capital Secretaries Association. Traditionally, sub-agency employees are covered by the contract including the same salary and benefits, hours, holiday and vacation schedule as other members of the bargaining unit. The contract defines seniority rights for sub-agency secretaries and clerks. One of the sub-agencies, the Delaware Teacher Center, follows the work rules in the collective bargaining agreement between the parties. The Center also has two (2) representatives from the Capital School District serving on its Board of Directors.

Through the collective bargaining agreement, sub-agency secretaries and clerks have historically shared the same security, benefits and working conditions enjoyed by other members of the bargaining unit and the employees desire to continue that arrangement. Removal of an entire class of employees from the bargaining unit would leave sub-agency secretaries and clerks without any bargaining agent or contract to represent their interests.

To represent sub-agency employees as the District suggests in its reply is simply not practical since it would require the Association to petition for new bargaining units composed of less than five (5) employees in each sub-agency. Removing the sub-agency employees from the bargaining unit would greatly diminish the bargaining strength of sub-agency employees and, therefore, the quality of their work life. The Association requests the PERB to rule in favor of retaining the sub-agency secretaries and clerks as part of the bargaining unit.

### OPINION

The bargaining unit comprised of secretarial and clerical employees working in the Capital School District was initially certified by the Governor's Council on Labor, an agency of the State Department of Labor, pursuant to 19 Del.C. Ch. 13, The Right of Public Employees to Organize (DOL Case No. 80). In 1989, the school support personnel employed by the State's "public school employers" were offered the opportunity to be placed within the jurisdiction of The Public School Employment Relations Act, (hereinafter "PSERA"), administered by the Public Employment Relations Board (hereinafter "PERB"), an agency organizationally located within the State Department of Administrative Services. By request, the secretarial unit in the Capital School District was removed from the jurisdiction of 19 Del.C. Ch. 13 and placed under the jurisdiction of the PERB.

If the issue presented involved a question of whether or not the sub-agency employees are appropriate for continued inclusion in the existing unit, factors such as the history and extent of organization, similarity of duties, skills and working conditions, and desires of the parties would be valid considerations. However, the issue of whether the sub-agency employees are

entitled to be included in the bargaining unit of secretaries employed by the Capital School District is solely a question of their eligibility for coverage under the PSERA and must be resolved pursuant to the provisions set forth, therein.

Section 4001, of the PSERA, entitled Statement of Policy, provides:

It is the declared policy of the State and the purpose of this chapter to promote harmonious and cooperative relationships between reorganized public school districts and their employees and to protect the public by assuring the orderly and uninterrupted operations and functions of the public school system. These policies are best effected by:

(1) Granting to school employees the right of organization and representation;

(2) Obligating boards of education and school employee organizations which have been certified as representing their school employees to enter into collective bargaining negotiations with the willingness to resolve disputes relating to terms and conditions of employment and to reduce to writing any agreements reached through such negotiations; and (emphasis added)

(3) Establishing a public employment relations board to assist in resolving disputes between school employees and boards of education and to administer this chapter. (Emphasis added)

Section 4002, of the PSERA, entitled, Definitions, provides, in relevant part:

(a) "Appropriate bargaining unit" or "bargaining unit" means a group of school employees designated by the Public Employment Relations Board as appropriate for representation by an employee organization for purposes of collective bargaining. (emphasis added)

(m) "Public school employee" or "employee" means any employee of a public school employer except public school administrators and confidential employees of a public school employer; provided the exclusive representative of designated appropriate bargaining units certified under Title 19 informs the Secretary of Labor, the Executive Director of the Board and the public school employer in writing, by certified mail, that it elects coverage under the

provisions of this chapter; or provided that an employee organization has submitted a petition on behalf of public school employees pursuant to 4010 or 4011 of this chapter which includes a request to be covered under the provisions of this chapter prior to the submission of a similar petition pursuant to 1304 or 1305 of Title 19.

(n) "Public school employer" or "employer" means any board of education, school district, reorganized school district, special school district, and any person acting as an agent thereof. (Emphasis added)

The scope of the Act extends exclusively to public school employers and their employees. Consequently, only if sub-agency employees are public employees within the statutory definition of the PSERA are they eligible to be a part of the existing bargaining unit.

Although the sub-agency employees perform their responsibilities in offices located within the Capital School District, the District has no fiscal responsibility for them other than to pass through State salaries and benefits. Although the salaries and benefits of sub-agency employees are traditionally the same as those received by the District's employees, no portion of their wages or benefits are locally funded.

The only other service provided by the District to the sub-agency employees is to monitor their individual attendance records. Doing so, however, is merely a ministerial task which is insufficient to confer the status of "employee" required by Section 4002(m), of the Act.

Of greater significance than the ministerial service(s) provided by the District is the absence of any traditional indicia of a valid employer-employee relationship. The District does not hire, fire nor evaluate sub-agency employees. It does not direct nor is it responsible for their work product.

The continued reference to "sub-agency employees" further evidences an acceptance by the parties that the employees in question are, in fact, employees of the sub-agency and not of the District.

**DECISION**

For the reasons set forth above, the secretaries and clerks of the sub-agencies whose offices are located within the Capital School District are not "public school employees" within the meaning of Section 4002(m) and are not, therefore, eligible to be part of the bargaining unit of Capital School District Secretaries.

**IT IS SO ORDERED.**

*/s/Charles D. Long, Jr.*  
CHARLES D. LONG, JR.  
Executive Director, PERB

*/s/Deborah L. Murray-Sheppard*  
DEBORAH L. MURRAY-SHEPPARD  
Principal Assistant, PERB

DATED: March 29, 1996