

STATE OF DELAWARE  
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:	:	
	:	
NEW CASTLE COUNTY	:	Representation Petition
	:	
DEPARTMENT OF HUMAN RESOURCES	:	<u>No. 96-06-181</u>
	:	
BENEFITS TECHNICIAN	:	

Appearances

*Vance E. Sulsky, for AFSCME Council 81*  
*James D. Doctson, for New Castle County*

**BACKGROUND**

New Castle County (“County”) is a public employer within the meaning of §1302 (n) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1994). Delaware Public Employees Council 81, American Federation of State, County and Municipal Employees, AFL-CIO (“AFSCME”), is an employee organization within the meaning of §1302 (h). AFSCME Local 1607 is the exclusive bargaining representative of the bargaining unit of County employees defined in DOL Case Nos. 22, 25 - 31, and 52, commonly referred to as the “white collar” or “clerical, technical and professional” bargaining unit.

On June 17, 1996, AFSCME filed a petition to amend the bargaining unit represented by Local 1607 to include the position of Benefits Technician. This position is organizationally located within the Human Resources Department, in the Pension and Benefits Section. The petition alleges that although this position was recently upgraded and the title was changed from the former bargaining unit position of Administrative Aide within the same department, the job duties have remained unchanged, and that the position should, therefore, remain in the bargaining unit.

The County responded to the petition by asserting that the Benefits Technician is not appropriate for inclusion in the bargaining unit of County employees represented by AFSCME Local 1607 because:

1. The position is solely responsible for assisting the Director of Personnel with objective real numbers used to support increases/decreases in the County's self-insured health care continuum. These numbers are part of the 'total compensation' which is an issue in collective bargaining negotiations; and
- 2) The Benefits Technician's responsibilities parallel those of other non-union employees of the Department of Human Resources.

A hearing was held on July 29, 1996, to receive evidence and argument concerning the eligibility and appropriateness of including the Benefits Technician within the bargaining unit represented by AFSCME Local 1607. This is the decision resulting therefrom.

#### ISSUE

Is the position of Benefits Technician, within the New Castle County Human Resources Department, Pension and Benefits Section, eligible and appropriate for inclusion in the bargaining unit of County employees represented by AFSCME Local 1607?

#### APPLICABLE STATUTORY PROVISION

"Confidential employee" means any employee whose essential job function and advanced knowledge about the issues involved in collective bargaining would make it unduly burdensome for the employer to negotiate effectively if the employee were a member of an appropriate bargaining unit. 19 Del.C. §1302(e).

#### POSITIONS OF THE PARTIES

##### AFSCME

AFSCME asserts that the Benefits Technician position is performing the same duties and responsibilities as the Administrative Aide position was prior to the upgrading and change in title, and the position should, therefore, remain in the bargaining unit.

AFSCME argues that the County is presenting an argument of convenience in this matter since it originally denied the reclassification request for this position on the basis that there had been no significant change in the duties performed.

AFSCME further argues that every other position in the Pension and Benefits section of the County Human Resources Department is represented in a bargaining unit, including the position which directly supervises the Benefits Technician; therefore, to exclude this position as confidential would be illogical. It also asserts that other confidential positions exist within the Department to which the County can assign confidential responsibilities, as defined by the statute.

### County

The County argues that the Benefits Technician position is a confidential employee within the meaning of 19 Del.C. §1302(e) because of the position's direct involvement in the administration of the County's benefit program. It further argues that the position is parallel to other non-union positions which exist within its Department of Human Resources.

### OPINION

The Pension and Benefits Section of the New Castle County Department of Human Resources is staffed by four positions. The Pension Systems Coordinator supervises the section. The Coordinator and the Pension System Analyst are both bargaining unit positions which are represented by AFSCME Local 3109. The Secretary in the section is also a bargaining unit position, but is represented by AFSCME Local 1607. The Benefits Technician is the fourth position in this section.

In March of 1995, Alicia Gallucio, the Administrative Aide in the Pension and Benefits section, filed a reclassification request asserting that her position should be reclassified as a result of increased responsibility for benefits administration under the County's self-insured benefits program. Her request was initially denied on the basis that while the duties of the position had increased, the nature of those

duties had not changed significantly. Ms. Gallucio filed a grievance under the collective bargaining agreement <sup>1</sup> between the County and AFSCME Local 1607 contesting this result.

Following the Step II grievance hearing, the Director of Personnel sustained the grievance and recommended that the position title be changed to "Personnel Assistant" and upgraded one pay grade to a PG 18. The Personnel Assistant position was not to be included within the bargaining unit represented by Local 1607. This decision was appealed to Step III.

The grievance was heard at Step III by a Hearing Officer, pursuant to section 16 of the collective bargaining agreement. The Hearing Officer ruled, "The County shall upgrade the pay grade for the grievant to pay grade 20, within Local 1607's bargaining unit." The County subsequently appealed the Hearing Officer's decision to arbitration.

The County's request for arbitration was withdrawn, however, upon AFSCME's agreement to the following County offer:

Create a new, non-union classification at pay grade 20. Our position [County] is that the position should not be in the bargaining unit; however, we recognize that the union has the right to petition for inclusion, and that the final decision would rest with the Public Employment Relations Board (PERB).

The Benefits Technician position (classification number 1255) was established on May 14, 1996. Ms. Gallucio is the incumbent in this position.

This petition raises a question in the first instance of eligibility under the Public Employment Relations Act, 19 Del.C. Chapter 13 (1994). The statute excludes "confidential employees" from the definition of "public employees" to whom the rights of representation and organization are extended. The confidential exclusion exists to protect both the public employer and the confidential employee from inherent conflicts of interest which result from the employee's "advanced knowledge about the issues involved in collective bargaining." In RE: Capital School District Benefits Specialist, Del.PERB, Rep. Pet. 94-09-103 ((1995), PERB Binder II @ 1175). <sup>2</sup>

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<sup>1</sup> The term of the current agreement between New Castle County and AFSCME Local 1607 extends from April 1, 1994, through March 31, 1997. It was signed by the parties on February 27, 1996.

<sup>2</sup> Prior PERB rulings decided under the Public School Employment Relations Act (14 Del.C. Chapter 40 (1982)) and/or the Police Officers and Firefighters Employment Relations Act (19 Del.C. Chapter 16 (1986)) are controlling

In the Capital School District Benefits Specialist case (Supra.), the test for confidentiality was established:

The determination of confidentiality is dependent upon the specific fact pattern in each case which is presented for resolution. In determining confidential status, the facts of each case must be examined to determine for whom the employee works, what that employee does and what knowledge and/or exposure the employee has to issues involved in collective bargaining. Finally a determination must be made as to whether, based upon the essential job functions and advanced knowledge regarding collective bargaining, the inclusion of the position within a bargaining unit compromise the employer's negotiating positions and make it unduly burdensome for the employer to effectively negotiate.

The Benefits Technician reports directly to the Pension Systems Coordinator, who is represented as a member of the bargaining unit represented by AFSCME Local 3109. Any confidential information to which the Benefits Technician is privy would also be available to her direct supervisor. No evidence was offered that problems had occurred in the past involving confidentiality concerns surrounding negotiations within this section, despite the fact that Ms. Gallucio's undisputed testimony established that she has been performing the same job functions for approximately five years.

The Benefits Technician primarily responds to questions concerning the various benefit plans offered by the County to its employees and retirees. Consistent with the classification specification for this position, her testimony confirmed that she does, in fact, serve as "a liaison with carrier agencies, vendors, private contractors, other departments, union representatives, employees and retirees concerning benefits program information."

No evidence was offered to support the statement in the classification specification for this position that: "This is a confidential position dealing with sensitive labor relations matters." Ms. Gallucio testified that she has never participated in labor negotiations between the County and any of the representatives of its organized employees. She has never prepared proposals for negotiations. She has never participated in a grievance other than those in which she, personally, was the grievant.

Although benefits generally are mandatory subjects of bargaining under the statutory framework, the County has negotiated with the unions representing its employees an alternative to traditional

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to the extent that relevant provisions of the statutes are identical to those of the Public Employment Relations Act (19 Del.C. Chapter 13 (1994)). Council 81, AFSCME, v. DelDOT, Div. of Highways, Del.PERB, ULP 95-01-111 ((1989) PERB Binder II @ 1279).

negotiation of benefits as part of the collective bargaining negotiations for successor agreements. In response to the rapidly changing nature of benefits, Article 99 of the collective bargaining agreement describes the County-wide Benefits Committee:

(a) The Benefits Committee shall be composed of six representatives designated by the County and the following union representatives:

<u>Union</u>	<u>Number of Representatives</u>
1607 [AFSCME]	2
459 [AFSCME]	1
3109 [AFSCME]	1
FOP (police)	1
FOP (deputy sheriffs)	1

(b) The Benefits Committee shall begin to meet no later than November 1 each year for the purpose of reviewing benefits available to County employees for the enrollment period in the following year.

(c) The objective of the Benefits Committee is to reach a consensus on a recommendation. The Benefits Committee will make a recommendation to the County and to the union negotiation teams for each of the County bargaining units. In all events, however, such recommendation must be by at least a two-thirds vote of the entire Benefits Committee and will be presented no later than January 1 of the year in which the proposed recommendation is to be implemented.

(d) The recommendation of the Benefits Committee shall be subject to review and approval by the County and membership of the County bargaining units. In the case of the County, the County Executive shall accept or reject the recommendation of the Benefits Committee within thirty (30) days of receipt of the recommendation. In the case of the County bargaining units, the recommendation of the Benefits Committee shall, within thirty (30) days of receipt of the recommendation, be submitted to a ratification vote by the membership of each bargaining unit. To the extent that the recommendation proposes changes in the respective collective bargaining agreements, no such change shall occur unless the proposed change are approved by the County Executive and ratified by the membership of each County bargaining unit. If, however, the membership in one or more bargaining units votes against such changes, the County may, if it is practical to do so, proceed with the changes for any bargaining units which ratify the proposed changes.

Ms. Gallucio has never participated as a member of the Benefits Committee.

A review of the entire record supports the conclusion that the Benefits Technician is not a confidential position within the meaning of 19 Del.C. §1302(e). No evidence was offered that this position has any advanced knowledge nor do her essential job responsibilities involve her in collective bargaining issues. Further, there is no evidence on the record that including this position within a bargaining unit would unduly burden the employer in its efforts to effectively negotiate.

Whether the Benefits Technician position “parallels other non-union positions within the Department” is not dispositive of the issue before the Hearing Officer. Other than position classification specifications for the positions of Personnel Assistant (#1260) and Personnel Technician (#1270), no testimony was offered as to what confidential duties these positions perform and/or how those functions are comparable to those performed by the Benefits Technician. Further, no inference is drawn from the fact that these positions are not in a bargaining unit. There has been no determination under the Public Employment Relations Act that these positions are “confidential” within the meaning of §1302(e).

Finally, having determined that the Benefits Technician position is not “confidential”, it is, therefore, eligible for representation. AFSCME Local 1607 has petitioned to have the bargaining unit definition modified to include this position. Beyond its position that the duties of this position make it ineligible for inclusion, the County has not objected to the appropriateness of the inclusion of this position within the Local 1607 bargaining unit. The collective bargaining agreement evidences that bargaining unit positions vary from pay grade 8 through pay grade 32, and include a variety of technicians and administrative positions. Ms. Gallucio has clearly indicated her desire to be represented within this unit.

#### DECISION

For the reasons set forth above, the position of Benefits Technician is eligible and appropriate for inclusion in the bargaining unit of New Castle County defined by DOL Case Nos. 22, 25 - 31, and 52, and represented by AFSCME Local 1607. The bargaining unit represented by AFSCME Local 1607 is hereby modified to include the Benefits Technician position.

IT IS SO ORDERED.

/s/Deborah L. Murray-Sheppard  
DEBORAH L. MURRAY-SHEPPARD  
Principal Assistant/Hearing Officer  
Del. Public Employment Relations Bd.

DATED: 3 October 1996