

STATE OF DELAWARE  
PUBLIC EMPLOYMENT RELATIONS BOARD

In Re:	)	
FOP, LODGE NO. 9,	)	
	)	
Petitioner,	)	
	)	
and	)	<u>REP. PET. NO. 97-08-215</u>
	)	
TOWN OF DELMAR,	)	
	)	
Respondent	)	

RULING ON RESPONDENT'S MOTION TO DISMISS

BACKGROUND

Delmar, Delaware, a municipal corporation of the State of Delaware, has a population of approximately 1,000 people and is governed by an elected Mayor and Council. The town of Delmar, Maryland, a municipal corporation of the State of Maryland, has a population of approximately 2,500 people and is governed by an elected Mayor and Commission. The two municipalities share a common border which is the Delaware-Maryland state line.

Over the years, the two municipalities have agreed to share responsibility for and jointly fund a pool of employees who provide to both municipalities certain services previously provided by each. An example is the Town Manager, Roberta Neilson, who serves both municipalities.

By a written agreement dated May 17, 1954, ("Agreement" (Employer Ex. No. 1)), the two municipalities created a Commission responsible for the overall

operation of a single police department. The Commission is comprised of the Mayors of Delmar, Delaware, and Delmar, Maryland; the Police Chief; the Town Manager; and, in alternating years, one Commissioner from Delmar, Maryland or one Council member from Delmar, Delaware.

On August 1, 1997, the Fraternal Order of Police, Lodge No. 9 ("FOP"), filed the above-captioned representation petition with the Delaware Public Employment Relations Board ("PERB") seeking certification as the exclusive bargaining representative of certain uniformed employees in the police department. On August 22, 1997, Respondent filed its response claiming the PERB lacked jurisdiction to process the Petition in the absence of a "public employer", as defined in Section 1602 (1) of 19 Del.C. Ch. 16, the Delaware Police Officers' and Firefighters' Employment Relations Act ("Act").

On August 28, 1997, Respondent filed a Motion to Dismiss for lack of jurisdiction. On September 21, 1997, the FOP filed an Answer to the Respondent's Motion to Dismiss asserting the Petition met the requirements of the Act.

A hearing was scheduled for November 24, 1997, at which time the parties presented testimony and documentary concerning the limited issue of jurisdiction. Argument was submitted in the form of responsive post-hearing memoranda, the last of which was received on January 23, 1998.

### ISSUE

Does the Delaware Public Employment Relations Board possess jurisdiction under 19 Del.C. Ch. 16, the Police Officers' and Firefighters' Employment Relations Act, to process the representation petition filed on behalf of certain uniformed employees of the police department serving the towns of Delmar, Delaware, and Delmar, Maryland?

## APPLICABLE STATUTORY PROVISIONS

19 Del. C. §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 state employee covered under the State Merit System.

19 Del.C. §1602 (l). provides:

“Public Employer” or “Employer” means the State or political subdivisions of the State or any agency thereof; 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 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) employs 25 or more full-time employees. For purposes of paragraph (3) of this subsection, “employees” shall include each and every person employed by the public employer except: (a) any person elected by popular vote; and (b) any person appointed to serve on a board or commission.

## PRINCIPAL POSITIONS OF THE PARTIES

**Respondent:** The Respondent argues the Commission created in 1954 is the employer of the police officers on whose behalf the representation petition was filed. The Commission is responsible for the administration of the police department performing management functions such as the payment of the police officers' salaries; the hiring, firing and assignment of officers; and providing the necessary equipment. Funding of the police department is provided not only by each of the two municipalities but also by the States of Delaware and Maryland which fund or provide special programs including State Aid to Local Law Enforcement funding (Del.), Emergency Illegal Drug Enforcement funding (Del.), police retirement pensions (Del.), unemployment and worker's compensation (Md.) and health benefits (Md.).

The Respondent maintains the Commission is the equivalent of a bistate agency similar to the Delaware River and Bay Authority created by the agreement of Delaware and New Jersey. By analogy, the Respondent argues that in the absence of specific circumstances, not present in this matter, the Commission is not subject to the laws of either state. Local 68 v. DRBA, 688 A.2d 569 (N.J. 1997).

Should it be determined the Commission is not the employer of the police officers, the Respondent argues the Town of Delmar, Delaware, does not qualify as a public employer under the Act since it does not employ twenty-five (25) full-time employees, as required by Section 1602 (l), of the Act. Nor does Delmar, Maryland qualify as a public employer since it is not located within the state of Delaware, as required by Section 1602 (l), of the Act.

In the absence of a valid public employer, the Respondent contends the Petition must be dismissed.

**Petitioner:** The FOP argues that, when considered within the context of its purpose and relationship to both municipalities, the Commission does not qualify as

the employer of the affected police officers. The FOP maintains that as to the employees serving both communities there is but one town of Delmar which employs or has approved and funded positions for more than twenty-five full time employees which, therefore, qualifies as the statutory employer of the police.

Should it be determined the Commission is the employer, the FOP argues the PERB retains jurisdiction since the Commission is simply an authorized agency of the town of Delmar.

### DISCUSSION

Contrary to the position of the Respondent, the Commission does not qualify as a public employer within the meaning of Section 1602 (1), of the Act. The Commission, created by the agreement of both municipalities and administered jointly by elected representatives of each, functions as an administrative agency. Funding for the Commission is provided equally by both municipalities. Police officers are subject to not only the policies and procedures promulgated by the Commission but also the personnel policies and procedures jointly promulgated by the two municipalities which apply to all employees serving both municipalities.

The Commission is analogous to a bistate agency. In Local 68 v. DRBA (Supra.) the Supreme Court of New Jersey held that a bistate agency is subject to the jurisdiction of one of the creating states only when: (1) The creating compact recognizes such jurisdiction; (2) The creating states agree to such jurisdiction; (3) The agency consents to single creator jurisdiction by either voluntarily cooperating with the creating state in its exercise of jurisdiction or agrees to be so bound; or (4) when complimentary and parallel statutes exist in each of the creator states.

The conclusion reached by the New Jersey Supreme Court is both logical and persuasive. No reason is offered why it should not apply in this matter to a

Commission created by the authorized agreement of two independent municipal corporations within different states.

Even if the Commission qualified as the employer of the police officers, it would not qualify as a public employer under Section 1602 (1), as the FOP contends. The Commission is subject to the oversight of two municipalities, one of which is totally within and subject to the jurisdiction of the state of Maryland. As such, it is not an agency of a municipality within the State of Delaware, as required by Section 1602 (1), of the Act.

The record is replete with references to the "Town of Delmar". Such references are misplaced. The record fails to establish the existence of a single, independent and viable municipality of Delmar. Only for efficiency and convenience have the two municipalities agreed to jointly fund and oversee the administration of the public safety responsibilities provided by a single police department to the citizens of each.

Finally, neither the town of Delmar, Delaware, nor the town of Delmar, Maryland, qualifies as a public employer under Section 1602 (1), of the Act. Although located entirely within the state of Delaware, Delmar, Delaware, does not employ twenty-five full-time employees over whom it has exclusive authority. The same circumstances apply to Delmar, Maryland, which, perhaps more importantly, is not located within the state of Delaware and is not, therefore, subject to Delaware law.

#### DECISION

For the reasons set forth above, the Delaware Public Employment Relations Board does not possess jurisdiction under 19 Del.C. Ch. 16, the Police Officers' and Firefighters' Employment Relations Act, to process the representation petition filed on behalf of certain uniformed employees of the police department serving the municipalities of Delmar, Delaware, and Delmar, Maryland.

The Respondent's Motion To Dismiss is granted.

February 13, 1998

(Date)

Charles D. Long

Charles D. Long,  
Executive Director

