

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF DELAWARE, DEPARTMENT OF	:	
HEALTH AND SOCIAL SERVICES,	:	
	:	
Petitioner,	:	Representation Petition
	:	<u>98-12-249</u>
	:	
v.	:	[Request for Review of
	:	Hearing Officer's Decision]
	:	
AMERICAN FEDERATION OF STATE,	:	
COUNTY AND MUNICIPAL EMPLOYEES,	:	
COUNCIL 81,	:	
	:	
Respondent.	:	

A public hearing on State's request for Review of the Hearing Officer's decision was conducted by the full Public Employment Relations Board on August 25, 1999. The Chairman of the Board declined to participate in these deliberations because he had served as the Chairman of the Governor's Council on Labor on a related matter previously. The opinions of the remaining two PERB members were as set forth below:

Opinion of Member Daniello:

At the request of the Delaware Department of Health and Social Services, the Public Employment Relations Board reviewed the decision of its Hearing Officer to certify a bargaining unit composed of Senior Social Workers/Case Managers employed by the Division of Mental Retardation. The Department believes that decision should be overturned.

No evidence was presented to conclude that employees shared a community of interest with employees in the Division of Social Services unit. The shared job description does not necessarily establish that responsibilities are identical, or even similar, to each other. In addition, no evidence was presented to establish that the creation of a new unit would adversely affect the division, department, or the State.

Having heard and considered the record, the evidence presented, the arguments of the parties, and the criteria set forth in the Delaware Code, the Hearing Officer's decision that the appropriate bargaining unit be all Senior Social Workers/Case Managers employed by the Division of Mental Retardation should be affirmed.

Opinion of Member Maher:

In the matter before the Public Employment Relations Board, the Petitioner has asked that a separate bargaining unit be established for certain employees of the Department of Mental Retardation. The Division ("DMR") is one of eleven (11) divisions within the State Department of Health and Social Services ("DHSS"). The Petitioner sought authorization to organize a new bargaining unit comprised exclusively of Senior Social Workers/Case Managers employed by DMR. The State objected to the creation of a new unit asserting that it was inappropriate within the meaning of the Act because it would constitute overfragmentation of bargaining units.

At the time of the petition, an active and viable bargaining unit exists between the Petitioner and the Department of Health and Social Services that includes within it the classification of Senior Social Worker/Case Manager.

The Hearing Officer found the new bargaining unit to be appropriate and therefore granted the petition. Based upon the record below and a review of the decision of the Hearing Officer, I would overturn the decision of the Hearing Officer.

I believe the Petitioner has the burden of showing that a separate divisional bargaining unit is appropriate and that the combined bargaining unit would be inappropriate. In the absence of any evidence to the contrary, it is my belief that there is a presumption of community of interest where individuals work in similar classifications for the same management and have similar duties and qualifications to those already within a bargaining unit.

In the matter now before the Board, the Petitioner submitted no evidence. Accordingly if failed to carry its burden. The Respondent presented some minimal evidence. Under the circumstances, I would therefore have denied the creation of a new separate bargaining unit. It appears to me to be a dangerous precedent to establish that a divisional bargaining unit is

presumptively appropriate. A divisional distinction is something that the State can create or change at will. This would mean that divisional bargaining units could be created or extinguished at the convenience of management. This I do not think services the underlying purposes of the Public Employment Relations Act.

There being no majority on the Public Employment Relations Board to support the overturning of this decision, the Hearing Officer's decision stands in this matter.

IT IS SO ORDERED.

/s/ Henry E. Kressman
HENRY E. KRESSMAN, PERB Chairman

/s/ John D. Daniello
JOHN D. DANIELLO, PERB Member

/s/ James F. Maher
JAMES F. MAHER, Esq., PERB Member

DATED: 30 September 1999