

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

**DELAWARE DEPARTMENT OF HEALTH,
AND SOCIAL SERVICES,**

AND

**AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL 81, LOCAL 2038.**

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Representation Petition

00-09-289

RE: Typist, DHSS Div. of State Service Centers

Appearances

Jerry M. Cutler, State Labor Relations Service, SPO, for DOL
Michael A. Begatto, for AFSCME Council 81

The Delaware Department of Health and Social Services (“DHSS”) is an agency of the State of Delaware and is a public employer within the meaning of §1302(n) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1994).¹ The Division of State Service Centers is a division of the Department of Health and Social Services.

The American Federation of State, County and Municipal Employees, Council 81 (“AFSCME”), is an employee organization within the meaning of 19 Del.C. §1302(h).²

¹ “Public employer” or “employer” means the State, any county of the State or any agency thereof, and/or any municipal corporation, municipality, city or town located within the State or any agency thereof, which upon the affirmative legislative act of its common council or other governing body has elected to come within the former Chapter 13 of this title, which hereinafter election to come within this Chapter, or which employs 100 or more full-time employees. 19 Del.C. §1302(n).

² “Employee organization” means any organization which admits to membership employees of a public employer and which has as a purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative, or agent of said organization.

In April, 1986, AFSCME was certified by the Department of Labor as the exclusive bargaining representative of a bargaining unit comprised of Human Service Workers I and II, and Receptionists employed by DHSS, Division of State Service Centers. (DOL Case 166)

In August, 1989, the bargaining unit was modified by the Department of Labor to reflect title changes to unit positions. The modified unit included Social Service Specialist I, II and III, and Receptionists. (DOL Case 166(a))

In August, 1996, PERB conducted an unsuccessful decertification election. At that time, the bargaining unit was defined in the Recognition Clause of the parties' collective bargaining agreement as: "non-supervisory employees of the Division of State Service Centers, as defined by DOL Case 166." By agreement of the parties, eligible voters were employees in the classifications of Social Service Specialists I, II, and III, and Public Information Clerk. (DOL Case 166(b))

In August, 2000, AFSCME filed the instant clarification petition seeking to, "... update the bargaining unit to reflect the current status of dues-paying members." Specifically AFSCME sought to clarify that Division of State Service Centers bargaining unit included employees in the "Typists" position.

By letter dated September 13, 2000, the State responded to AFSCME's petition:

In the Division of State Service Centers, the "Typist" class and its predecessors ³ have been in existence since the bargaining unit was first created, and the representation election held within that unit. However, this class title was never made part of the unit ⁴, either by agreement of the parties or by a previous amendment to certification filed by the union.

For this reason, the State believes that any effort to include this class title in the bargaining unit should be accomplished by means of an amendment to certification, rather than a clarification of the existing bargaining unit, accompanied by an election in which affected employees have the opportunity to cast their ballots.

³ Prior to being designated as "Typist", this class was previously titled, e.g., "Clerk Typist."

⁴ This is contrary to the situation in the Division of Social Services, where the class title has been part of the bargaining unit since at least as early as 1984.

Nonetheless, it appears that DHSS has been withholding and remitting dues to the union on behalf of at least some of the affected employees in the Typist class. Therefore, should the PERB determine that these employees can be placed in the bargaining unit via the unit clarification process, the State will not object to such a determination.

ISSUE

Are “Typists” employed by DHSS, Division of State Service Centers included in the existing bargaining unit, which is currently represented by AFSCME Local 1832/2030/2031?

OPINION

At all times relevant to this petition, the DHSS Division of State Service Centers, DHSS Division of Social Services and AFSCME Locals 1832/2030/2031 were parties to a collective bargaining agreement with a term of July 24, 1998 through July 23, 2001.⁵

This case involves the evolution of a bargaining unit originally certified by the Department of Labor, under the predecessor to the Public Employment Relations Act, 19 Del.C. Chapter 13. While the Department of Labor defined bargaining units by listing specific classifications at the time of the certification or modification, these unit definitions were static and proved difficult to maintain accurately in the fluid environment of public sector employment. Consequently, the unit definitions were often not formally modified or clarified to reflect the impact of reorganization, retitling and reclassification.

In order to alleviate this problem, the Public Employment Relations Board (since assuming responsibility for all public employees and the grandfathered DOL bargaining units in 1994) has encouraged parties to define bargaining units descriptively. At the time of the 1996 decertification election involving the Div. of State Service Centers employees, PERB adopted the

⁵ By agreement of the State and AFSCME, one contract was negotiated which covered the employees in two separate bargaining units. As of the date of this decision, no petition has been filed seeking to consolidate these bargaining units.

descriptive definition set forth in the parties' collective bargaining agreement ⁶, namely, "all non-supervisory employees of the Division of State Service Centers, as defined in DOL Case 166."

There is no dispute that Typists are non-supervisory positions and there is no question of appropriateness currently before the PERB. It is also undisputed that the State has been withholding union dues and remitting the collected monies to AFSCME from Typists working for the Division of State Service Centers.

The disposition of representation petitions depends heavily on the individual and specific conditions of employment and classification systems maintained within each employing agency. In this case, both the descriptive bargaining unit definition and the history of dues withholding by the State support the conclusion that Typists are included in the bargaining unit of non-supervisory Division of State Service Center employees represented by AFSCME.

DECISION

For the reasons set forth herein, it is determined employees in the Typist classification are included within the bargaining unit of "all non-supervisory employees of the Division of State Service Centers," as defined in DOL Case 166.

IT IS SO ORDERED.

/s/Deborah L. Murray-Sheppard
DEBORAH L. MURRAY-SHEPPARD
PERB Hearing Officer

DATED: 21 November 2000

⁶ At the time of the election, the parties were operating under the terms of the expired 1993-1995 agreement.