

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF DELAWARE, DEPARTMENT OF SERVICES FOR	:	
CHILDREN, YOUTH, AND FAMILIES, DIVISION OF	:	
YOUTH REHABILITATION SERVICES, COMMUNITY	:	
SERVICES BRANCH,	:	REPRESENTATION
	:	PETITION
AND	:	<u>99-07-262</u>
	:	
AMERICAN FEDERATION OF STATE, COUNTY, AND	:	
MUNICIPAL EMPLOYEES, AFL-CIO, COUNCIL 81,	:	
LOCAL 3384.	:	

RE: Family Service Supervisors

Appearances

Jerry M. Cutler, for the State of Delaware
Perry F. Goldlust, Esq., Heiman, Aber and Goldlust, for AFSCME

The State of Delaware, Department of Services for Children, Youth and Families, Division of Youth Rehabilitation Services (“DSCYF/DYRS” or “State”) is a public employer within the meaning of §1302(n)¹ of the Public Employment Relations Act, 19 Del.C. Chapter 13 (1994).

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

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 had elected to come within the former Chapter 13 of this title, which hereinafter elects to come within this Chapter, or which employs 100 or more full-time employees.

§1302(h).² AFSCME is the exclusive bargaining representative of a bargaining unit of DSCYF/DYRS employees as defined in DOL Case #172.

AFSCME filed a petition on July 22, 1999, seeking to represent within the bargaining unit represented by Local 3384 Family Service Supervisors working in the Community Services Branch of the Division of Youth Rehabilitation Services. The petition included the following statement under “Other Relevant Factors”:

Presently Local 3384 represents several Family Service Supervisors; however, Management refuses to accept membership cards from some Unit Supervisors. Hence, an election is justified to avoid present discriminatory practice.

Authorization cards evidencing the support of at least thirty percent (30%) of the nine persons employed as DSCYF/DYRS Community Services Family Service Supervisors were submitted with the petition. The petition was determined to be valid and properly supported.

By letter dated August 17, 1999, the State objected to the proposed modification of the bargaining unit, asserting Family Service Supervisors are supervisory employees within the meaning of 19 Del.C. §1302(p)³, and are, therefore, ineligible for representation.⁴

At the October 13, 1999, informal conference convened by the Hearing Officer, the parties agreed to preliminarily process the petition as a Request for Unit Clarification.

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.

³ “Supervisory employee” means any employee of a public employer who has the authority, in the interest of the public employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such actions, if the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

⁴ 19 Del.C. §1302(m): “Public employee” or “employee” means any employee of a public employer, except: . . . (7) Supervisory employees of the public employer, provided however, that any supervisory position in a bargaining unit deemed to be appropriate prior to September 23, 1994, shall so continue, unless said unit is decertified in accordance with §1311 (b) of this title, or is modified in accordance with procedures authorized by §1310(e) of this title.

The parties were afforded full opportunity to present evidence in support of their respective positions during the November 17, 1999, hearing. The record closed upon receipt of written summations and argument. This decision results from the record created by the parties.

ISSUE

Does the classification of Family Service Supervisor result from the retitling of the Residential Unit Manager classification, which is included in the bargaining unit definition certified by the Governor's Council on Labor in DOL Case 172?

POSITIONS OF THE PARTIES

AFSCME:

AFSCME argues the position of Community Services/Family Service Supervisor is "merely a retitling or sub-part of the work that is covered by the Residential Treatment Unit Manager" classification, as set forth in the Recognition Clause of the parties' 1996- 1999 collective bargaining agreement. Formal position titles have changed often during the Department's evolution over the last fifteen years, but these titular changes have not substantially altered the content of these jobs. The responsibilities of Family Service Supervisors, Youth Rehabilitation Treatment Supervisors, Youth Rehabilitation Counselor Supervisors, and Residential Treatment Unit Managers are interchangeable.

AFSCME notes Family Service Supervisors and Youth Rehabilitation Treatment Supervisors have the same paygrade. It argues the only difference between these positions is that Family Service Supervisors perform their functions in a community setting, while Youth Rehabilitation Treatment Supervisors perform the same functions in an institutional setting.

For these reasons, AFSCME argues the bargaining unit definition should be modified to include Family Service Supervisors, in recognition of the retitling of this position.

State:

The State argues AFSCME has failed to support its claim that the position of Family Service Supervisors results from the retitling of Residential Treatment Unit Manager positions.

OPINION

As a result of passage of the PERA in 1994, the Public Employment Relations Board assumed responsibility for representation matters involving the Delaware Department of Services for Children, Youth, and Families (“DSCYF”) employees. This is a case where the bargaining unit determinations made by the Department of Labor (which preceded PERB in exercising responsibility for representation matters involving State employees) differ significantly from the recognition clause of the parties collective bargaining agreement. This petition is further complicated by the evolutionary changes DSCYF/DYRS has undergone over the last fifteen years and the proliferation of similar job titles and responsibilities which resulted from that evolution.

AFSCME first petitioned the Department of Labor in 1986 to represent an all-inclusive bargaining unit of DYRS employees. It later agreed to the State’s position that some of the requested classifications had supervisory responsibilities. Consequently, the original petition was amended to reflect a request for two bargaining units of DSCYF/DYRS employees. One bargaining unit (DOL Case #168) was defined to include the classifications of Counselor, Psychiatric Social Worker II, Classification Officer, Worksheet Coordinators, Recreation Specialist II, and Group Leader Supervisor, excluding all other classifications. AFSCME was certified as the exclusive representative of this unit on November 6, 1986. This unit was amended in 1991 to also include the Administrative Assistant II classification. The unit was again modified in August, 1999, by agreement of the parties, to include DYRS/Community Service employees in the positions of Family Service Specialist, Senior Family Service Specialist, Master Family Service Specialist, Family Therapist, Probation Officer and Senior Probation Officer.

Another unit of DSCYF/DYRS employees was simultaneously created in 1986 and defined to include Counselor Supervisors, Psychiatric Social Worker III, and Recreation Program Supervisors (DOL Case #172). AFSCME was also certified as the exclusive representative of this unit. This unit was later modified to include the classification of Residential Treatment Unit Managers in September, 1993, without objection from the State. The unit was again modified in February, 1999, to include the classification of RN Supervisor, again without State objection.

AFSCME Local 3384 represents both of these bargaining units.

AFSCME introduced two collective bargaining agreements into the hearing record. The Recognition Clause of the 1987-1990 agreement clearly reflects the two bargaining units created in DOL Cases #168 and #172.⁵ Inexplicably, the second collective bargaining agreement is for the contractual period of September 1, 1996 through August 31, 1999. There is no evidence of record of an intervening agreement for the 1990-1996 period.⁶ The Recognition Clause of the 1996-1999 agreement⁷ differs markedly from that of the 1987-1990 agreement. The '96-'99

⁵ Article 2, Union Recognition, Section 2.2: The term "employee" as use herein shall include employees of the Division of Youth Rehabilitative Services, State of Delaware, classified as follows in two separate bargaining units certified by the State Department of Labor in cases 168 and 172:

- | | |
|---------------|---|
| Unit 1. | Youth Rehabilitation Counselor
Psychiatric Social Worker II
Inmate Classification Officer
Worksite Coordinator |
| [FN 5, cont.) | Recreation Specialist II
Juvenile Group Leader Supervisor |
| Unit 2 | Recreation Program Supervisor
Psychiatric Social Worker III
Youth Rehabilitation Counselor Supervisor |

⁶ When DOL unit #172 was modified in 1993 to include Residential Treatment Unit Managers, a copy of the 1987-1990 agreement was entered into the record by AFSCME as the "current collective bargaining agreement." Presumably the parties continued to abide by the terms of the 1987-1990 agreement until its successor was reached and became effective on September 1, 1996.

⁷ Article 2, Union Recognition, Section 2.2: The term "employee" shall include employees of the Division of Youth Rehabilitative Services, State of Delaware, classified as follows:

- Youth Rehabilitation Counselor Supervisor
- Youth Rehabilitation Treatment Supervisor
- Youth Rehabilitation Treatment Specialist
- Family Service Specialist Services (located at Stevenson House and NCC Detention Center)
- Family Services Supervisor (who were formerly Residential Unit Managers)*
- Family Service Program Support Administrator (3 Contract Managers)*
- Recreation Program Specialist

Recognition Clause does not differentiate between the two bargaining units. There is, however, no record of these units being consolidated under the statutory procedures. The classifications listed in these two agreements differ significantly, with “Youth Rehabilitation Counselor Supervisor” being the only classification appearing in both recognition clauses.

The 1996-1999 contractual Recognition Clause explicitly includes the Family Service Supervisor classification, but notes, “. . . (who were formerly Residential Unit Managers *[sic]*).” This classification is also asterisked with the following note, “When the incumbents vacate their positions, these positions will no longer be part of the bargaining unit.” There is no statutory support for modifying bargaining units to exclude classifications based upon individual incumbents. The PERA specifically provides, “Any bargaining unit designated as appropriate prior to September 23, 1994, for which an exclusive representative has been certified shall so continue without the requirement of a review and possible redesignation until such time as a question concerning representation is properly raised under this chapter.” 19 Del.C. §1310(f)

There is no record in either the DOL files or in PERB files wherein these bargaining units were modified or amended, except as previously noted, prior to the parties entering into the 1996-1999 collective bargaining agreement. This hearing record establishes no clear evolutionary chain of organizational positions.

The job descriptions introduced into the record by the State evidence the Residential Treatment Unit Manager classification was established in July, 1991, whereas the classification of Family Service Supervisor was established in July, 1987.⁸ Clearly these are separate classifications which have co-existed for more than eight (8) years. Nothing in the record, other

Recreation Program Leader I
Recreation Program Leader II
Administrative Assistant II *
Staff Training and Development Officer

* When the incumbents vacate their positions, these classifications will no longer be a part of the bargaining unit.

⁸ The record contains only the Job Descriptions, which are dated to reflect when positions are “established” within the State classification system. There is no record as to when positions with these classifications first appeared within the Division of Youth Rehabilitation Services, or how these positions have been modified or moved during the various reorganizations of the department.

than the language of the 1996-1999 Recognition Clause, suggests Residential Treatment Unit Managers were converted to Family Service Supervisors at some point through a “retitling” process.

AFSCME petitioned to include Residential Treatment Unit Managers in the bargaining unit in 1993. There is no record establishing AFSCME petitioned to include Family Service Supervisors into one of the existing DYRS bargaining units at any point prior to the current petition.

The Public Employment Relations Act confers exclusive authority for creating and modifying bargaining units on the PERB. Where parties choose to negotiate recognition clauses into their collective bargaining agreement which differ from the established bargaining unit definitions, they act at their peril. PERB is not responsible for enforcing provisions of the parties’ collective bargaining agreement, but rather to administer, interpret and apply the provisions of the statute. A contractual provision is applicable only for the term of the agreement and is enforceable through the contractual grievance procedure, whereas PERB/DOL bargaining unit determinations are statutory in origin.

The rights of the Family Service Supervisors to seek representation are preserved by the standing petition supported by at least 30% of the Family Service Supervisors AFSCME seeks to represent. PERB has broadly construed public employees’ right to seek representation for purposes of collective bargaining. In RE: U.D. Bus Drivers, Del.PERB, Rep. Pet. 95-04-126 (II PERB Binder 1210 (1995)). Except for the most compelling reasons, “. . . eligible employees should not be denied access to the rights and protections to which they are otherwise entitled,” under the PERA. In RE: Internal Affairs Officer of the Wilmington Fire Department, Del.PERB, Rep. Pet. 95-06-142 (III PERB Binder 1397 (1996)). Under PERB precedent, the burden of proving supervisory status rests with the party asserting its existence. In RE: DOC Probation/Parole Supervisors, Del.PERB, Rep. Pet. 99-03-256 (III PERB Binder 1925 (2000)).

DECISION

The record does not support a finding the position of DSCYF/DYRS Community Services Family Service Supervisor resulted from the retitling of the Residential Treatment Unit Manager position. Consequently, the unit definition established by DOL Case 172, as amended, cannot be clarified to include Family Service Supervisor.

The standing petition is properly postured to consider a modification of the bargaining unit established by DOL Case 172. This matter shall be promptly scheduled for hearing and subsequent decision as to whether DSCYF/DYRS Family Service Supervisors are supervisory employees within the meaning of 19 Del.C. §1301(p).

DATED: 30 May 2000

/s/ Deborah L. Murray-Sheppard

DEBORAH L. MURRAY-SHEPPARD
HEARING OFFICER
DELAWARE PUBLIC EMPLOYMENT RELATIONS BD.