

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

NEW CASTLE COUNTY, DELAWARE,

AND

**AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL 81, LOCAL 1607.**

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**Representation Petition
01-04-317**

RE: Customer Information and Assistance Coordinator

Appearances

Eric Episcopo, Esq. for New Castle County
Francis Lally, Field Representative, for AFSCME Council 81

New Castle County, Delaware (“NCC”), 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 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 AFSCME Local 1607 is the exclusive bargaining representative of a bargaining unit of New Castle County salaried employees. The unit includes a variety of County employees across multiple departments in Pay Grades 8 through 32.

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 election to come within this Chapter, or which employs 100 or more full-time employees.

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.

New Castle County and AFSCME Local 1607 have a long-standing collective bargaining relationship and are parties to a current agreement which term extends from April 1, 1999, through March 31, 2002.

On April 19, 2001, AFSCME filed with the Public Employment Relations Board (“PERB”) a Petition for Amendment or Clarification of Existing Certified Bargaining Unit, seeking to amend the existing unit to include the Customer Information and Assistance (“CIA”) position.

The County objected to the petition, asserting CIA Coordinators do not share a community of interest with other AFSCME Local 1607 bargaining unit positions.

A hearing was convened on July 17, 2001, at which time the parties were afforded full opportunity to present evidence and argument in support of their positions. The record closed on September 14, 2001, upon receipt of supplemental class specifications and organizational charts requested by the Hearing Officer. This decision results from the record created by the parties in this matter.

ISSUE

Are Customer Information and Assistance Coordinator positions appropriate for inclusion in the bargaining unit of salaried New Castle County employees currently represented by AFSCME Local 1607?

POSITIONS OF THE PARTIES

AFSCME:

AFSCME argues the duties and responsibilities of the Customer Information and Assistance Coordinator are similar to those of other AFSCME Local 1607 bargaining unit positions. Nothing in the class specification or the actual duties performed by the single

incumbent in this position would prohibit the modification of the Local 1607 bargaining unit, as requested.

AFSCME asserts the CIA Coordinator's primary responsibilities are more technical and clerical in nature, and therefore consistent with the responsibilities of other Local 1607 positions. The CIA Coordinator does not perform managerial, administrative, or professional duties, all functions which are included in a separate bargaining units represented by AFSCME Local 3109.

AFSCME argued that the hypothetical information relied upon by the County concerning what the three vacant CIA Coordinator positions will do is irrelevant. The existing incumbent has held the CIA Coordinator position since 1998, worked in both the Office of Community Governing and the Land Use departments, and testified from experience as to the scope of his duties and responsibilities.

New Castle County:

New Castle County argues the CIA Coordinator position does not share a community of interest in terms of working conditions and job responsibilities with other Local 1607 bargaining unit positions. The CIA Coordinator is a direct extension of the Office of the County Executive and serves a unique customer service function. Because the CIA Coordinator works with community groups and performs an outreach function requiring a flexible schedule to accommodate evening and weekend meetings, it shares a greater community of interest with the administrative employees represented by AFSCME Local 3109.

Preliminary Motions

At the opening of the hearing on July 17, 2001, the County moved to dismiss this petition because it erroneously stated there was one CIA Coordinator, rather than the four budgeted positions. Evidence presented during the hearing clarified that at the time of filing, there were, in fact, three vacant CIA Coordinator positions under the Office of Community Governing which

the County was in the process of filling, and one incumbent CIA Coordinator in the Office of Land Use.

PERB's "Petition for Amendment or Clarification of Existing Certified Bargaining Unit," requires a petitioner to complete the following information: "# of employees in Unit: Present ___ Requested _____." The information supplied in response to this question is used by PERB staff to preliminarily screen whether a sufficient number of cards have been filed with the petition, and to evaluate whether the unit description has been submitted with sufficient clarity once the employer's list of employees is received.

Obviously, there are no "employees" in vacant positions. AFSCME accurately supplied information establishing there was only one employee in the CIA Coordinator position at the time the petition was filed. Therefore, the County's motion to dismiss is denied.

Alternatively, the County moved that the processing of the petition be held in abeyance until the three vacancies are filled.

The CIA Coordinator classification is not new and was undisputedly created in 1998. Along with the current incumbent, Mr. Temple, at least two other individuals have held CIA Coordinator positions, Mr. Walton and Mr. Sheridan.³ There is nothing in this record which suggests there is any

ambiguity in the responsibilities or functions of the position. Because there is at least a three year history involving these positions, ample information and evidence was available to the parties to develop an accurate description of the scope and responsibilities of the position. Consequently, delaying the processing of the petition until the three vacancies are filled with new employees would not significantly enhance the information available to the parties or the Hearing Officer. Presumably, if the County has posted these vacancies, it has some clear idea of what the positions

³ The current vacancies include the two positions previously held by Mr. Sheridan and Mr. Walton plus one additional new CIA Coordinator position.

are it is seeking to fill. For this reason the County's motion to delay the processing of this petition is also denied.

Opinion

The Rules and Regulations of the Delaware Public Employment Relations Board provide:

3.4(8): Modification of a Bargaining Unit: In the event there is a substantial modification in the nature of the duties and working conditions of a position within the bargaining unit, or a new position is created which is not covered by the existing bargaining unit definition, or there is some other compelling reason for the Board to consider modifying the designated bargaining unit, the public employer and/or the exclusive bargaining representative may file a petition with the Board ...

PERB has previously held that compelling reason exists for PERB to consider a modification petition when unrepresented public employees seek to exercise their statutory right to choose to be represented within an existing bargaining unit for purposes of collective bargaining. Dover Police Dept. Lieutenants and FOP Lodge 15, Del. PERB, Rep. Pet. 98-08-242, III PERB 1831 (1999); *citing* Battalion Chiefs of the City of Wilmington Fire Department, Del. PERB, Rep. Pet. 95-06-142, III PERB 1253 (1995).⁴ This holding is particularly applicable where a petition concerns a position which has not been considered in a prior representation determination.

The factors to be considered in determining whether the proposed modified unit is appropriate are statutorily set forth at 19 Del.C. §1310(d):

In making its determination as to the appropriate bargaining unit, the Board or its designee shall consider such factors as the similarity of duties, skills and working conditions of the employees involved; the history and extent of the employee organization; the recommendations of the parties involved; the effect of overfragmentation of bargaining units on the efficient administration of government; and such other factors as the Board may deem appropriate.

⁴ Prior PERB rulings decided under the Public School Employment Relations Act, 14 Del.C. Chapter 40 (1982, 1989) and /or the Police Officers and Firefighters Employment Relations Act, 19 Del.C. Chapter 16 (1986), are controlling to the extent that the relevant portions of those statutes are identical to those of the Public Employment Relations Act, 19 Del.C. Chapter 13 (1994).

The statute does not require that all positions within an appropriate unit perform the identical functions but does require that the determination of appropriateness be tailored to the unique circumstances of the particular employment relationship. Caesar Rodney School District Instructional Aides, Del.PERB, Rep. Pet. 92-03-070, II PERB 821 (1992).

Consideration of the statutory factors in this matter supports the conclusion that CIA Coordinators share a community of interest with and are appropriate for inclusion in the bargaining unit with other salaried New Castle County employees currently represented by AFSCME Local 1607.

Similarities of Duties, Skills and Working Conditions:

The class specification for the Customer Information and Assistance Coordinator position (#0061, dated 9/18/98) provides:

GENERAL STATEMENT OF DUTIES: Coordinates the customer service and information activities within New Castle County Office of Customer Information and Assistance, the Office of Community Governing, or a specific department where multiple activities are administered and information is relayed from a designated work area; does related work as required.

DISTINGUISHING FEATURES OF THE CLASS: An employee in this class performs responsible work in the coordination of customer service activities by providing information, assistance and direction to the public, both by telephone and in person. This employee is responsible for complete follow through with the person requesting information to ensure customer satisfaction and provides the highest quality of customer service to the citizens and employees of the County. This employee researches and responds to questions relating to specific services offered by County government. Responsibilities also include problem solving and responding to complex inquiries. Work involves the knowledge of County-wide information relating to all County departments and services. This employee must exercise discretion in the course of the work. Work is performed under general supervision in accordance with designated procedures. This employee may supervise subordinates and coordinate activities of a small staff.

EXAMPLES OF WORK: (Illustrative Only)

- ◆ Coordinates the activities of employees involved in answering telephones and meeting with visitors to handle customer problems and concerns.
- ◆ Oversees the investigation, recording, analysis, reporting and response to related problems according to established policies and procedures.

- ◆ Analyzes policies, procedures and programs and determines actions needed to improve efficiency, work flow and service delivery.
- ◆ Provides information and direct assistance as necessary.
- ◆ Conducts surveys of users to determine the level of customer satisfaction.
- ◆ Audits cases to determine successful completion.
- ◆ Researches and responds to questions regarding the operation of the County.
- ◆ Prepares reports and makes recommendations as required.
- ◆ Performs routine office work as necessary.
- ◆ Makes presentations to the public.
- ◆ Attends meetings and activities during evenings and weekends.
- ◆ Promotes an ongoing attitude of dedication to excellent public service and ensures that external and internal customers are provided with the highest quality of service.
- ◆ Operates a data processing terminal, personal computer and other related equipment in the course of the work.

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES: Extensive knowledge of the departments and row offices of the County and their functions; good knowledge of office terminology, procedures and equipment; ability to exercise discretion and to maintain loyalty to the County; ability to communicate courteously and effectively, both verbally and in writing; ability to supervise others; ability to research information and to draw valid conclusions; ability to understand and follow verbal and written instructions; ability to make effective presentations before groups; ability to deal with individuals in a knowledgeable, helpful and pleasant manner; ability to establish and develop effective working relationships with employees, associates, government officials, agencies, organizations, and the public; ability to promote an ongoing attitude of dedication to excellent customer service; tact and courtesy; ability to pass a Class III County physical examination.

ACCEPTABLE EXPERIENCE AND TRAINING: At least five years experience in customer service activities, one of which must be at the supervisory level, and possession of a Bachelor's degree from an accredited college or university with major course work in business administration or related field; or any equivalent combination of experience and training which provides the required knowledge, skills and abilities.

There is one CIA Coordinator position assigned to the Customer Service division in the Department of Land Use. This position is held by Barry Temple. He reports to the Assistant Land Use Administrator, Carol Caldwell (a position which is not represented for purposes of collective bargaining). The Customer Service division also includes two Clerk Typists (PG 14, represented by Local 1607), three CIA Specialists (PG 20, which are not represented), one Code Inspector (PG 20; Local 1607), one Site Inspector

Supervisor (PG 24; Local 1607), one Assessment Analyst (PG 24; represented by Local 3109), and one Planner III (PG 30; Local 3109). [Organization Chart, NCC Office of Land Use].

There are three vacant CIA Coordinator positions which are organizationally located within the Office of Community Governing. These positions report to the Community Governing Administrator (PG 27), a position which is not represented for purposes of collective bargaining. There are a total of nine positions in this division, none of which are represented at this time. They include two Executive Assistant I (PG 22) positions, one Executive Assistant II (PG 26) position, and three additional unidentified vacancies. [NCC Organizational Chart for Offices of Community Governing, Code Enforcement and Customer Information and Assistance.]

Testimony established the responsibilities of the incumbent CIA Coordinator in the Office of Land Use are primarily limited in scope to issues concerning land use and zoning under the County's Unified Development Code ("UDC"). Mr. Temple testified he is responsible for answering questions and helping customers to obtain information and access County's processes as they relate to land use and building code issues. Mr. Temple relies upon reference materials such as the UDC and local building codes as well as personal contacts, both within and outside of County government, to gather information.

Most of the work Mr. Temple performs is generated by customer requests external to County government. He may also be required to respond to internal requests for information. His findings are reported both verbally and in written form, depending on the nature of the request. As a CIA Coordinator, Mr. Temple has never been required to supervise other employees, but he understands that he could be directed to do so under the class specification. He has been required to attend evening or week-end meetings on an infrequent basis, but has not done so within the last year.

The County's Chief Human Resource Officer, Patricia Lutz DiIenno, testified she is responsible for oversight of the development of all class specifications and that she is aware of the history of the CIA Coordinator position. She testified the position was created in 1998 to "coordinate customer information and assistance activities" within the CIA and the Office of Community Governing. She further testified the prior CIA Coordinators assigned to the Office of Community Governing were primarily responsible for dealing with civic associations and maintenance organizations.⁵ Those Coordinators were required to attend week-end and evening meetings of those organizations on a regular basis as part of their job duties.

The Division Manager of the Offices of Customer Information and Assistance, Community Governing and Code Enforcement, Janet Smith testified she supervised CIA Coordinators Walton and Sheridan. Their positions were specifically created to provide service to the maintenance organizations. Mr. Walton and Mr. Sheridan worked flexible schedules during their forty (40) hour work weeks and were required to attend evening and/or week-end meetings approximately two to three times each week.

The County relies heavily on the fact that CIA Coordinators work forty hour workweeks and may be required to work a flexible schedule outside of a standard work day to support its argument that this position does not share a community of interest with other classifications represented by AFSCME Local 1607. It infers that should CIA Coordinators be found appropriate for representation within Local 1607, the County would bear an additional cost because these employees would be restricted to working a

⁵ NCC witnesses explained that under County Law, once a developer has completed 75% of a project control of all of the development's open spaces must be turned over to an independent Maintenance Organization. CIA Coordinators work with NCC Land Use personnel to inspect these private open spaces in developments to be sure citizens are being provided with the types of spaces and facilities which were included in the development plan. Unlike Civic Associations (which are voluntary citizen organizations who provide community input on uses of County-owned and maintained communal open spaces), Maintenance Organizations must be created under the new County development laws.

“standard” work day, necessitating the payment of overtime compensation for any evening or week-end hours.

There is a fundamental difference between job function and responsibilities, which define and differentiate positions, and negotiated conditions under which employees work. Article 79(a) of the NCC/Local 1607 collective bargaining agreement provides that the regular workday for office employees and salary field employees, other than Dispatchers and Public Works Inspectors, consist of seven hours and the regular work week consists of thirty-five hours. Obviously, this is a negotiated term and condition of employment, and is not relevant to a consideration of the relative “similarities of duties, skills and working conditions” between bargaining unit positions.

The statute does not require that positions placed into an existing bargaining unit through a modification process automatically be covered by the terms of an existing collective bargaining agreement. Rather, once certified to a unit, the statute places a duty to bargain on both the employer and the union concerning terms and conditions of employment. It is evident from reviewing the existing collective bargaining agreement that NCC and AFSCME Local 1607 have successfully negotiated working conditions including alternative workweeks, schedules and split workdays, for sub-groups of unit employees where job function and operational duties require it.

For these reasons, the fact that CIA Coordinators work a different weekly and sometimes daily schedule than those negotiated in the collective bargaining agreement does not adversely impact the question of appropriateness.

“Coordinator” positions are found in the bargaining units represented by both Local 1607 and Local 3109. The three “Coordinator” positions represented by Local 1607 include Customer Service Coordinator (PG 15); Emergency Call Coordinator (PG17); and Special Services Equipment Coordinator (PG 25). All of these classifications require at least three years of experience in the specific type of work which the position coordinates. The class specifications

describe responsibilities which include coordinating and oversight to ensure that particular services or activities are performed. All of these classifications are responsible for functions which relate to the direct provision of services to “customers” of County services.

There are also three “Coordinator” positions represented by Local 3109, which include Compensation and Pension Systems Coordinator (PG 30); Information Systems Coordinator (PG 30); and Coordinator of Emergency Planning (PG 28). All of these classifications are responsible for “planning”, “directing”, and/or “maintaining” a program, such as the County’s benefits and retirement program, its information system, or the County’s emergency preparedness plans. The scope of the responsibilities for these positions are broader than those of the various “Coordinators” represented by Local 1607.

Thorough review of the record in this case supports the conclusion that the CIA Coordinator classification provides direct service to clients and organizations seeking information and assistance from the County. The scope of CIA Coordinator responsibilities is consistent with and shares a community of interest with the classifications represented by Local 1607.

History and Extent of Employee Organization

The majority of New Castle County’s employees are organized and represented for purposes of collective bargaining within five bargaining units. AFSCME Council 81 represents four of these units, which are descriptively referred to as:

- ◆ The “Blue Collar” unit, represented by Local 459;
- ◆ The “Salaried” unit, represented by Local 1607;
- ◆ The “Managers and Administrators” unit, represented by Local 3109;
- ◆ The “Professional” unit, also represented by Local 3109 and covered for purposes of convenience by a combined collective bargaining agreement with the managers and administrators unit.

The distinctions between the bargaining units represented by Locals 1607 and 3109 are not obvious on their face in many instances. The units are not descriptively defined to identify a community of interest, but are defined by a list of position titles or classifications. The list of bargaining unit classifications is found in the appendices to each of the collective bargaining agreements. These lists evidence that the “salaried” unit represented by Local 1607 includes positions in Paygrades 8 to 32, while the two units represented by Local 3109 cover positions in Pay Grades 19 to 34. Further obscuring the distinction between these units is the fact that each of the lists of bargaining unit classifications includes positions which are entitled “Analyst”, “Chief”, “Coordinator”, “Engineer”, “Manager”, “Officer”, “Specialist”, and/or “Supervisor.”

It is also clear from reviewing the representation records involving these bargaining units and the classification lists in the collective bargaining agreements that not every change to these units was processed through either the Governor’s Council on Labor or the PERB. It would appear that over time, the parties have mutually agreed on the placement of new or modified positions for representation purposes within these bargaining units. Consequently, there is not an abundance of decisional background which aids in understanding the differences which distinguish these bargaining units from each other.

Recommendations of the Parties

AFSCME has petitioned to represent the CIA Coordinator position within the bargaining unit of “salaried” employees represented by Local 1607. The County opposes the modification by arguing the position more properly belongs within the bargaining unit of managers and administrators represented by AFSCME Local 3109.

Because the recommendations of the parties are opposed, this consideration does not affect the conclusion reached herein.

Effect of Overfragmentation

This petition does not raise an issue of overfragmentation; consequently, this consideration does not affect the conclusion reached herein.

DECISION

Considering the record as a whole, there is a reasonable basis for concluding that the CIA Coordinator classification shares a community of interest and is appropriate for inclusion in the bargaining unit of salaried employees represented by AFSCME Local 1607. This decision recognizes that CIA Coordinators work a regular work week of forty (40) hours, and may be required to work flexible shifts in order to meet responsibilities including attending community meetings during the evening and/or week-end hours.

WHEREFORE, an election will be conducted within the next thirty (30) days to determine whether New Castle County employees holding the CIA Coordinator position desire to be represented for purposes of collective bargaining as part of the bargaining unit of salaried employees currently represented by o to be represented, New Castle County and AFSCME Local 1607 will be obligated to negotiate terms and conditions of employment for these employees.

IT IS SO ORDERED.

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

DATED: 25 October 2001