

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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Decision of PERB on Review
REP PET.01-04-317

RE: Customer Information and Assistance Coordinator

BACKGROUND

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(i). ² AFSCME Local 1607 is the exclusive bargaining representative of a bargaining unit of New Castle County salaried employees, within the meaning of 19 Del.C. § 1302(j).

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 or which hereafter elects 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.

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 bargaining 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.³

A hearing was convened on July 17, 2001, and the record closed upon receipt of argument. On October 25, 2001, the Hearing Officer’s decision was issued, which stated:

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. (Hearing Officer’s Decision at 14).

On November 9, 2001, New Castle County filed a “Request for Review” of the Hearing Officer’s decision, and the matter was then considered by the full Public Employment Relations Board at its regular meeting of December 19, 2001.

DISCUSSION

When a modification petition is filed, PERB must consider whether the proposed change to the bargaining unit is appropriate. The Public Employment Relations Act requires consideration of the following factors in assessing “appropriateness”:

- The similarity of duties, skills, and working conditions of the employees

³ There are four CIA Coordinator positions, of which only one was filled at the time the petition was filed and when the Hearing Officer’s decision was issued. As of the date of the hearing before the Board, all four positions have been filled.

involved;

- The history and extent of employee organization;
- The recommendations of the parties involved;
- The effect of overfragmentation on the efficient administration of government; and
- Such other factors as the Board may deem appropriate.

The County asserts the Hearing Officer erred in finding the position of CIA Coordinator appropriate for inclusion in the bargaining unit of salaried County employees represented by AFSCME Local 1607. The County argues CIA Coordinators should “more appropriately” be included in the bargaining unit of professionals, managers and administrators, currently represented by AFSCME Local 3109.

Counsel for the County described CIA Coordinators as being “used primarily to be an interface between the County and the public, with respect to issues dealing with complaints in land use matters.” CIA Coordinators are expected to meet with community groups, organizations and other members of the public, sometimes necessitating the employee attend and participate in evening or week-end meetings.

The County argues that the contractual provisions of the collective bargaining agreement with AFSCME Local 3109 recognizes “professional time” with no obligation for the County to pay overtime to the professionals, managers and administrators in that bargaining unit. On the other hand, its collective bargaining agreement with AFSCME Local 1607, representing salaried employees, has a more structured work day schedule. Relying primarily upon this difference, the County argues Local 3109 is the more appropriate bargaining unit because of the professional time component of that agreement.

In reviewing the decision made by the Hearing Officer, we limit our review to the record created before the Hearing Officer, as supplemented by the arguments of the parties on appeal. We have reviewed the record to determine whether the decision is substantially supported by the record and whether an error of either law or fact has been committed.

In this matter, there is nothing in this record or in the arguments of the parties before the Board to indicate that the Hearing Officer's decision should be overturned. The record does not support a finding that CIA Coordinators are either professionals, managers or administrators suitable for inclusion in the Local 3109 bargaining unit as the County requests.

DECISION

The Board finds the decision of the Hearing Officer is supported by the record and finds no error of fact or law.

Accordingly, the Board affirms the Hearing Officer's determination that CIA Coordinator positions share a community of interest with and are appropriate for inclusion in the bargaining unit of salaried New Castle County employees represented by AFSCME Local 1607.

WHEREFORE, the Executive Director of the Public Employment Relations Board is hereby ordered to forthwith conduct a secret-ballot election among persons employed by the County of New Castle, Delaware, as CIA Coordinators to determine whether these persons desire to be represented for purposes of collective bargaining within the bargaining unit of salaried employees currently represented by AFSCME Local 1607.

IT IS SO ORDERED.

/s/Henry E. Kressman
HENRY E. KRESSMAN, Chairman
Public Employment Relations Board

/s/R. Robert Currie, Jr.
R. ROBERT CURRIE, JR., Member
Public Employment Relations Board

/s/Elizabeth Daniello Maron
ELIZABETH DANIELLO MARON, ESQ., Member
Public Employment Relations Board

DATED: 28 January 2002