

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:	:	
	:	
THE TOWN OF SMYRNA, DELAWARE,	:	
	:	Representation Petition
AND	:	<u>06-02-510</u>
	:	
AMERICAN FEDERATION OF STATE,	:	
COUNTY AND MUNICIPAL EMPLOYEES,	:	
COUNCIL 81.	:	

RE: METER TECHNICIAN

Appearances

*Thomas I. Barrows, Esq., Hudson, Jones, Jaywork & Fisher, for the Town of Smyrna
Perry F. Goldlust, Esq., Aber, Goldlust, Baker & Over, for AFSCME Council 81*

The Town of Smyrna, Delaware (“Town”), is a public employer within the meaning of §1302(p) 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

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, or which hereinafter 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.

AFSCME Council 81 is the exclusive bargaining representative of a bargaining unit of Smyrna employees defined as “All Town of Smyrna Electric Department employees, including Lead Lineman, Apprentices, and Journeyman Lineman, excluding all others.” AFSCME was certified as the exclusive bargaining representative of this bargaining unit through a secret ballot election conducted on January 10, 2006.

At the time of the processing of this petition, the Town and AFSCME are engaged in negotiations for an initial collective bargaining agreement for this bargaining unit.

On February 14, 2006, 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 Meter Technician position.

The Town objected to the petition, asserting Meter Technicians do not share a community of interest with the Electric Department bargaining unit positions.

A hearing was convened on May 18, 2006, at which time the parties were afforded full opportunity to present evidence and argument in support of their positions. Counsel provided oral argument at the conclusion of the introduction of evidence. This decision results from the record created by the parties in this matter.

ISSUE

Is the full-time Meter Technician position appropriate for inclusion in the bargaining unit of Town of Smyrna Electric Department employees currently represented by AFSCME Council 81?

POSITIONS OF THE PARTIES

AFSCME:

AFSCME argues the duties and responsibilities of the Meter Technician position are similar to those of other AFSCME bargaining unit positions in the Electric Department. Nothing in the class specification or the actual duties performed by the single incumbent in this position would prohibit the modification of the bargaining unit, as requested.

It asserts there is no statutory prohibition on the Meter Technician seeking representation within the existing bargaining. Where the Town chooses to place a position on its organizational chart is inconsequential to defining an appropriate bargaining unit. The change in the Meter Technician's responsibilities when the Town converted to a "drive-by" meter reading system and when the position was moved out of the Electric Department and into the IT/Billing department did not change the essential nature of the duties, but merely changed the method by which similar work was accomplished.

The Meter Technician is essentially a blue-collar position, that shares a community of interest with the Electric Department. The incumbent works in the field reading electric meters and locating electric utility lines for Miss Utility, both of which are similar functions to those he performed while part of the Electric Department. The City has not established any credible evidence to support its position that the Meter Technician does not share a sufficient community of interest with the bargaining unit.

Town of Smyrna:

The Town argues the Meter Technician position does not share a community of interest in terms of working conditions and job responsibilities with existing bargaining unit positions. As a result of the implementation of the new “drive-by” metering systems, the Meter Technician now has very little in common with Electric Department. The position was recently moved out of the Electric Department and into the IT/Billing Department in order to have the Meter Technician report directly to the Billing Office to enable the Town to realize greater efficiencies in its utility billing. To allow the Meter Technician to become part of the Electric Department bargaining unit would be contrary to the Town’s long-term goals of efficiency and economy.

The Town also argues that permitting one position in the IT/Billing Department to unionize would have an adverse impact on that department. It asserts that it would fragment the IT/Billing Department because its manager would have to deal with employees having different working conditions which would hurt productivity.

The Town moved to have the petition dismissed asserting AFSCME failed to establish by a preponderance of the evidence that a community of interest existed between the Meter Technician position and the employees in the Electric Department bargaining unit.

Preliminary Motion to Dismiss

Following the conclusion of AFSCME’s case in main, the Town moved for dismissal of the petition, asserting the union had failed to meet the requisite burden of establishing that the proposed modified bargaining unit met the “appropriateness”

standard in the statute. The Town argued AFSCME had only established what the Meter Technician position did currently and historically and did not address the other criteria.

There is no question that the employee in question has the right to seek representation. The PERA provides public employees with “the right of organization and representation”. 19 Del.C. §1301; §1303. Employees who are not statutorily excluded from this right are entitled to seek representation for purposes of collective bargaining. In order to promote effective bargaining, the statute requires that represented employees be included in appropriate bargaining units, which are established by PERB after consideration of the community of interest amongst and between the positions held by those employees, pursuant to 19 Del.C. §1310(d).

The Town’s motion to dismiss the petition is denied because the petition has been determined to be valid and properly supported. The question presented is whether the proposed modified bargaining unit is appropriate. In order to evaluate the appropriateness of the proposed modification, the evidence presented by both parties must be considered in order to determine how the statutory criteria may best be satisfied.

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 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).³ 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 community of interests including 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.

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).

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).

Underlying the community of interest standard is the principle that collective bargaining is most effective when members of a bargaining unit share a common interest that binds them together. The nature and extent of those common interests, however, are variable and depend upon the specific and unique facts presented by each case. The community of interest standard is sufficiently flexible to allow for considerable variation in unit composition, but is always fact-bound and case specific. The compelling interest in any case, however, is the right of public employees to be represented for purposes of collective bargaining under the statutory mandate.

Consideration of the statutory factors in this matter supports the conclusion that the Meter Technician position shares a community of interest with and is appropriate for inclusion in the bargaining unit currently represented by AFSCME.

Similarities of Duties, Skills and Working Conditions:

The Town of Smyrna's Meter Technician performs the following functions:

- Reads the electric meters each month for all residential and business customers. The majority of meters are read by a computer in a Town truck which uses "drive-by" metering technology. The Meter Technician is also required to read a small number of meters each month which still have the old "hand-held" technology that requires the reader come into physical contact with the meter.
- Follows up monthly readings to return to correct any "missed" or incorrect readings, as directed.
- Disconnects and reconnects electricity to customers as directed by the Billing Department.
- Locates underground wires for Miss Utility. This work sometimes requires the Meter Technician to enter transformers and secondary pedestals with live electricity. The incumbent spends a large part of his time performing this responsibility as a result of recent and sustained growth of the Town.
- Installs meters in new homes or facilities
- Tests meters in response to complaints

- Can be called in for an “emergency” when a request for electricity “turn-on” has been missed.

Testimony established that the Meter Technician position has changed in response to the new meters and “drive-by” technology which the Town installed in 2003-2004. By replacing old meters (which were read by hand-held computers that had to come into physical contact with the meters located in residences and businesses) with the new drive-by technology, the Town was able to reduce the number of man-hours required to gather the monthly usage data from six to eight days requiring five to eight people down to reading 99.8% of the meters by one person in less than one working day.

The Meter Technician position was moved from the Electric Department to the IT/Billing Department, a new department created eighteen months to two years ago. The creation of this department allowed the Electric Department to specialize its function to include stringing, maintaining, managing and operating the Town’s electricity distribution system, and centralized the billing function so data collection was more efficient. This restructuring enabled the Town to better manage its meter reading, billing, and customer satisfaction functions.

The Meter Technician is a pay grade 13 and reports to the Information Systems Manager. When the position was organizational moved from the Electric Department to the IT/Billing Department, neither the pay grade nor overall compensation for the position increased.

The Meter Technician is formally listed in the Town’s personnel system as a Meter Technician/Groundsman, as the job description had not been formally changed as of the date of hearing. There are, however, a number of duties in the Meter Technician/Groundsman description that the incumbent is no longer performing.

Specifically, because he no longer works out of the Electric Department (which is physically located in another building driving distance from the Town Hall), he does not provide ground support for the Line Crews. He does not use the full range of electrical tools. He does continue to do most of his work “in the field”, performing a number of the same duties he has always performed, including reading meters, locating underground wires, and turning electric service on and off. He spends more time performing the smaller range of duties as a result of increased demand for these services because of the Town’s growth.

The work the Meter Technician currently performs is not significantly different from that which he performed when the position was organizationally located with the Electric Department. The change in his responsibilities is in the volume and specialization of the work, rather than in the type of work performed. The Meter Technician is still required to enter residences and businesses to install new meters, check meters in response to customer complaints, turn electric service off and on, and locate underground utility lines. The organizational transfer of this position has not fundamentally changed the type of the work performed.

For these reasons, consideration of the similarity of duties, skills and working conditions supports a finding that this position is appropriate for inclusion in the existing bargaining unit of Electric Department employees.

History and Extent of Employee Organization

I take administrative notice that there are currently two represented bargaining units of Town employees: the sworn police officers, represented by the Smyrna Police Employees Association (an affiliate of the Fraternal Order of Police) and the newly

created unit of Electric Department employees represented by AFSCME Council 81, discussed herein.

There is no history of collective bargaining on behalf of the Meter Technician position. The Town argued in its closing that there is no evidence of record that its employees in the existing Electric Department bargaining unit support the petition to also include the Meter Technician. The Town's position is without merit; this petition was filed by AFSCME, which is the certified exclusive bargaining representative of the unit. As such, AFSCME has the right and responsibility to represent the interests of the bargaining unit. It is entitled the presumption that it is representing the bargaining unit's interest unless and until that presumption is appropriately challenged by members of the bargaining unit.

Consequently, this consideration does not affect the decision reached herein.

Recommendations of the Parties

AFSCME has petitioned to represent the Meter Technician position within the existing bargaining unit of Electric Department employees. The Town opposes the modification by arguing that because the position is not within the Electric Department, it is not appropriate for inclusion in that bargaining unit.

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

Effect of Overfragmentation

The statute requires that “the effect of overfragmentation on the efficient administration of government” be considered. “Overfragmentation” is a commonly understood term of art in labor relations:

“Overfragmentation” refers to the creation of an administratively burdensome number of bargaining units, each driven by the imperative to negotiate unique arrangements that will benefit a narrowly-focused constituency. This criterion is primarily directed at unions, which are the ones most likely to be petitioning for small or peculiar units that reflect their extent of organization. *“Unit Determination”*, *Labor Management Relations in the Public Sector*, Labor Relations Press, 1999, p. 94.

The Delaware PERB addressed the meaning of “efficient administration of government” in Lake Forest Education Assn. v. Bd. of Education, Del.PERB, Rep. Pet. 91-03-060, I PERB 651, 665 (1991):

The PERB accepts as valid the interpretation of other jurisdictions that the phrase “efficient administration of government” requires the designation of as few a number of appropriate bargaining units as possible balanced by the opportunity for the employees to exercise their rights under the statute. To do so minimizes the time, expenditure and possible disruption to [government operations].

The Town argues that permitting the Meter Technician to join the existing bargaining unit of blue-collar Electric Department employees would fragmentize the IT/Billing Department. It argues that having one represented employee in that department will lead to differences in working conditions with the unrepresented employees which will foster frustration, jealousy and anger, which don’t aid productivity.

Despite the Town’s fears, the statute provides public employees with the right to seek representation, and also defines exclusions from eligibility for representation for certain types of employees (supervisory and confidential employees). Consequently, most Delaware public employers who engage in collective bargaining with the exclusive

representatives of their represented employees also have unrepresented groups of employees for whom wages, salaries, hours and conditions of employment must also be established. That is a management function and one which is routinely administered daily all over the state.

The relationship of represented to unrepresented employees in a particular department is not a valid consideration in evaluating the effect of “overfragmentation on the efficient administration of government.” The proposal to add one additional position to the existing unit of blue collar Electric Department employees (rather than creating a separate bargaining unit of one position) is, however, consistent with the statutory purpose to avoid overfragmentation.

DECISION

Considering the record as a whole, there is sufficient evidentiary support to conclude that the Meter Technician shares a community of interest and is appropriate for inclusion in the bargaining unit of Smyrna’s blue collar Electric Department employees represented by AFSCME.

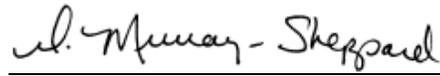
WHEREFORE, because this is a single incumbent position and the incumbent has testified and otherwise evidenced his support for the petition, an election is unnecessary. The bargaining unit is hereby modified and defined to include:

All Town of Smyrna Electric Department Employees
(including Lead Linemen, Apprentices, Journeyman Linemen)
and Meter Technicians, excluding all others.

The parties are required under 19 Del.C. §1304 to enter into negotiations concerning the terms and conditions of employment of the modified bargaining unit as they specifically relate to the Meter Technician “within a reasonable time” following

issuance of this decision.

IT IS SO ORDERED.



DEBORAH L. MURRAY-SHEPPARD
PERB Hearing Officer

DATED: 31 July 2006