



**State of Delaware
Public Employment Relations Board
4th Floor, Carvel State Office Building
820 N. French Street
Wilmington, Delaware 19801**

**Telephone: (302) 577-5070
Facsimile: (302) 577-3297**

**Questions to Consider in Preparing for
A Representation Hearing Before the
Delaware Public Employment Relations Board**

PERB Administrative Memo 99-01 (10/5/99)

In presenting a representation case before the Delaware Public Employment Relations Board, parties should address the following types of questions:

- I. If the petition involves creation of a new bargaining unit (whether proposed by the petitioner or the respondent):
 - ◆ What are the job responsibilities of the positions in the proposed unit and how are they normally performed?
 - ◆ To whom do these positions report? Where do they fit within the organization of the agency?
 - ◆ Where do employees in these positions work? What are their working conditions?
 - ◆ What similarities exist in the duties, skills and working conditions of the positions in the proposed bargaining unit?
 - ◆ Is there a history of representation by a labor organization or collective bargaining involving all or part of the positions in the proposed unit?
 - ◆ What are the recommendations of the parties?
 - ◆ Does creation of the proposed unit adversely affect the efficient operation of government? If so, how?
 - ◆ What facts support or oppose the appropriateness of the bargaining unit in question? Is there PERB or other case law supporting or opposing the appropriateness of the proposed bargaining unit? ¹

- II. If the petition seeks to modify an existing bargaining unit to include a group of unrepresented positions OR to exclude specific positions (whether proposed by the petitioner or the respondent):
 - ◆ Has there been a substantial change in the nature of the duties and working conditions of the bargaining unit position in question?
 - ◆ Does the petition involve a new position which was recently created and not covered by the existing bargaining unit definition?
 - ◆ Is there a compelling reason for the Board to consider modification of the bargaining unit? ²
 - ◆ What are the job responsibilities of the positions in the existing bargaining unit and of the position(s) proposed for inclusion/exclusion, and how are they normally performed?
 - ◆ To whom do the positions report? Where do they fit within the organization?

¹ See RE: Battalion Chiefs of Wilmington Fire Dept., Rep. Pet. 95-06-142, II PERB Binder 1253, 1259 (1995).

² See RE: Battalion Chiefs of Wilmington Fire Dept., (Supra),

- ◆ Where do employees in the position(s) work? What are their working conditions?
- ◆ What similarities exist in the duties, skills and working conditions between the positions in the existing bargaining unit and the positions proposed for inclusion/exclusion?
- ◆ Does the collective bargaining or representational history of either group support or oppose the modification of the existing unit? What are the recommendations of the parties?
- ◆ Would the creation of a separate bargaining unit adversely affect the efficient operation of government? If so, how?
- ◆ What facts support or oppose the appropriateness of the modification of the bargaining unit in question? Is there PERB or other case law supporting or opposing the appropriateness of the proposed bargaining unit?

III. If the petition involves a question of supervisory³ status under the statute:

- ◆ Does the position(s) in question have authority to act in the best interest of the employer? If so, how? What is the scope of that authority and how is normally exercised?
- ◆ Do employees in the position(s) have authority to engage in one or more of the activities listed in the statute, which include: “hire, fire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust their grievances”? If so, how? Does the exercise of this authority require the use of independent judgment? Does the employee in this position hold such authority in the interest of the employer?⁴
- ◆ Do employees in the position(s) effectively recommend the hiring, firing, transferring, suspension, layoff, recall, promotion, discharge, assignment, rewarding, disciplining, direction or adjustment of grievances of other employees? If so, how and under what circumstances?
- ◆ To whom do employees in the position report? Explain the organization’s chain of command.
- ◆ What are the job responsibilities of the position(s) in question and how are they normally performed? What are the working conditions of the employees in the position(s) in question?
- ◆ How are the daily responsibilities of the position(s) in question similar to/different from those of the position(s) they “supervise”?
- ◆ Was this position(s) represented prior to September 23, 1994, for employees covered by the Public Employment Relations Act (19 Del.C. Chapter 13) and July 18, 1990, for employees covered by the Public School Employment Relations Act (14 Del.C. Chapter 40)?
- ◆ What facts support or oppose a finding that the position(s) in question is supervisory within the meaning of the statutory definition? Is there PERB or other case law supporting or opposing a finding of supervisory status?

IV. If the petition involves a question concerning confidential status⁵ under the statute:

- ◆ What are the job responsibilities of the position(s) in question and how are they normally performed? What are the working conditions of employees in the position(s) in question?

³ “Supervisory employee” is defined under the Public Employment Relations Act at 19 Del.C. §1302(p), excluded from the definition of a “public employee” at 19 Del.C. §1302(m) and further limited from inclusion in a bargaining unit at 19 Del.C. §1310(d). “Supervisory employee” is similarly defined under the Public School Employment Relations Act at 14 Del.C. §4002(q), and restricted from inclusion in a bargaining unit with those supervised at 14 Del.C. §4010(d). There is neither a definition nor an exclusion related to supervisory employees under the Police Officers and Firefighters Employment Relations Act, 19 Del.C. Chapter 16.

⁴ Del. Dept. of Public Safety and Communications Workers of America, AFL-CIO, Rep. Pet. 96-07-187, III PERB Binder 1543 (1997).

⁵ “Confidential employees” are defined at 19 Del.C. §1302(e) of the Public Employment Relations Act and at 14 Del.C. §4002(f) of the Public School Employment Relations Act. Confidential employees are excluded from eligibility for inclusion in any bargaining unit in both statutes. The Police Officers’ and Firefighters’ Employment Relations Act does not define or otherwise address the issue of confidential employees.

- ◆ What role does the position play on behalf of the employer in collective bargaining functions?
- ◆ Which of the position's "essential job functions" involve the employer's collective bargaining process?
- ◆ What advanced knowledge does this position have of the issues involved in collective bargaining?
- ◆ How would inclusion of this position in a bargaining unit make it "unduly burdensome for the employer to negotiate effectively"?
- ◆ What facts support or oppose a finding this position is confidential within the meaning of the statutory definition? Is there PERB or other case law supporting or opposing a finding of confidentiality?

V. If the petition asserts the position in question results merely from a title change, and this assertion is disputed:

- ◆ What was the former position title and when did the title change occur?
- ◆ What are the former and current responsibilities of the position in question? What did an incumbent in this position do prior to the "title change"? When did the position responsibilities change, if at all?
- ◆ Has the reporting structure for this position changed? What is the impact of the change on the organization and surrounding positions?
- ◆ What process resulted in the position title being changed? Who initiated this process? When?