

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

STATE OF DELAWARE,	:	
	:	Representation Petition
and	:	
	:	<u>No. 07-09-599</u>
AMERICAN FEDERATION OF STATE, COUNTY,	:	(SB36 UNIT CLARIFICATION)
AND MUNICIPAL EMPLOYEES, COUNCIL 81;	:	
DELAWARE PUBLIC HEALTH NURSES ASSN.,	:	UNIT 2
DSEA/NEA; AND LABORERS INTERNATIONAL	:	
UNION OF NORTH AMERICA.	:	

APPEARANCES

Jerry Cutler, SLEP/HRM/OMB, for the State
Perry F. Goldlust, Esq., for AFSCME Council 81
Jeffrey M. Taschner, Esq., for DSEA
Sheila Littleton, Local 1029 President, for LIUNA

SB36 Unit 2 Scope of Unit Definition Determination

1. The State of Delaware is a public employer within the meaning of §1302(p) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1994).

2. The American Federation of State, County and Municipal Employees, AFL-CIO (“AFSCME”), Council 81 is an employee organization within the meaning of 19 Del.C. §1302(i). AFSCME, through its affiliated locals 516, 640, 936, 1109, 1525, 1832, 2030, 2031, 2072 and 2305, is the exclusive bargaining representative of numerous employees of the Delaware Department of Health and Social Services (“DHSS”).

3. Delaware Public Health Nurses Association, DSEA/NEA (“DSEA”), is an employee organization within the meaning of 19 Del.C. §1302(i) and is the exclusive bargaining representative of a group of DHSS employees working in the Delaware Hospital for the Chronically Ill.

4. Laborers International Union of North America (“LIUNA”) is an employee organization within the meaning of 19 Del.C. §1302(i). LIUNA, through its affiliated Local 1029, represents employees of DHSS.

5. On August 2, 2007, the Governor signed SB 36 which modified the Public Employment Relations Act, 19 Del.C. Chapter 13 (“PERA”), to (along with other changes) include a new section 1311A, Collective Bargaining in the state service. This section identified twelve statewide bargaining units and stated:

The Board shall determine the proper assignment of job classifications to bargaining units and the bargaining unit status of individual employees and shall provide for certified bargaining representatives to combine bargaining units or portions of bargaining units of employees they represent within the bargaining units defined in this section based upon the job classifications of the employees represented.

6. On or about September 21, 2007, AFSCME filed a representation petition which raised the issue of the composition of the bargaining unit defined by 19 Del.C. §1311A(b)(2). That unit (“Unit 2”) is statutorily defined to include, “Non-professional patient care workers which is composed of institutional care classes including licensed practical nurses, nursing assistants, active treatment assistants, technicians, therapy aides, and similar classes.”

7. At PERB’s request, on or about October 16, 2007, the State provided a list of all State merit classifications which it believes fall within the statutory Unit 2 definition. The list also indicated whether the listed classifications were currently

represented for purposes of collective bargaining, and if so, identified the certified exclusive bargaining representative.

8. The State's list included classifications with positions in the Department of Agriculture ("DoA"), Department of Health and Social Services ("DHSS"), Department of Natural Resources and Environmental Control ("DNREC"), and the Department of State ("DOS").

9. The list indicated that there are unrepresented positions in DoA, DHSS, DNREC and DOS.

10. The State's information was provided to AFSCME, DSEA, and LIUNA for response.

11. A meeting of the parties was convened by PERB on December 18, 2007, at which time questions concerning the list were raised and subsequently addressed.

12. Following that meeting, the list was refined and, without objection from any party, was agreed to include the following classifications:

- Active Treatment Facilitator
- Active Treatment Supervisor **
- Activity Aide I, II
- Activity Therapist I, II
- Attendant Chauffeur
- Certified Nursing Assistant
- Clinical Aide
- Cosmetologist
- Dental Assistant
- Dietician's Assistant
- Laboratory Technician I, II, III
- Licensed Practical Nurse I, II, III
- Nursing Assistant

Psychological Assistant
Sheltered Workshop Production Assistant
Therapy Aide
Work Program Assistant

13. With respect to the Active Treatment Supervisor position, the State asserted in an e-mail of January 8, 2008, "We believe this is a statutory supervisory position. We would therefore propose excluding the currently unrepresented Active Treatment Supervisor positions at the DHSS/Administration location from the Unit." This e-mail was forwarded to all other parties to this matter, and no objections were received.

14. By e-mail dated January 15, 2008, the State finalized that there are 984 positions within Unit 2 of which

- 645 are currently represented by AFSCME and its affiliated Locals
- 38 are represented by Public Health Nurses, DSEA/NEA
- 205 are represented by LIUNA through its affiliated Local
- 96 are currently unrepresented.

15. Having determined the composition of the bargaining unit defined by 19 Del.C. §1311A(b)(2) and that the unit includes both represented and unrepresented employees, PERB shall initiate processing of AFSCME's petition in which it seeks to represent the unrepresented employees consistent with 19 Del.C. §1311 A(e).

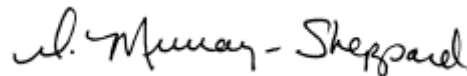
WHEREFORE, the State is required to provide a list of merit employees (employed statewide) in the following positions that are either unrepresented or currently represented by an AFSCME affiliate.

Active Treatment Facilitator	Dietician's Assistant
Active Treatment Supervisor **	Laboratory Technician I, II, III
Activity Aide I, II	Licensed Practical Nurse I, II, III
Activity Therapist I, II	Nursing Assistant
Attendant Chauffeur	Psychological Assistant
Certified Nursing Assistant	Sheltered Workshop Production Assistant
Clinical Aide	Therapy Aide
Cosmetologist	Work Program Assistant
Dental Assistant	

Please include on this list the employee's name, employing agency, work location and indicate if represented or unrepresented. This list should include employees who did not work during the most recent payroll period either because they were ill, on vacation or otherwise on leave of absence. PERB Regulation 3.4(1).

IT IS SO ORDERED.

DATE: 11 February 2008



DEBORAH L. MURRAY-SHEPPARD
Executive Director
Del. Public Employment Relations Bd.