

**STATE OF DELAWARE**

**PUBLIC EMPLOYMENT RELATIONS BOARD**

STATE OF DELAWARE, DEPT. OF TRANSPORTATION,	:	<b>PERB Review of the</b>
	:	<b>Executive Director’s</b>
Appellant,	:	<b>Decision</b>
	:	
v.	:	<b><u>Rep. Pet. 07-12-609</u></b>
	:	
AFSCME COUNCIL 81, LOCAL UNION 879	:	
	:	
Appellee.	:	

*Appearances*

*Aaron Shapiro, SLREP, for State of Delaware, DOT  
Perry F. Goldlust, Esq., for AFSCME*

**BACKGROUND**

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

AFSCME Council 81, Local 879 (“AFSCME”) is an employee organization within the meaning of 19 Del.C. §1302(i), and is the certified exclusive bargaining representative of “all Delaware State Highway employees in the New Castle County Maintenance Division” as defined in DOL Case 12. 19 Del.C. §1302(j).

On or about December 10, 2007, AFSCME filed a petition for Bargaining Unit Clarification seeking to clarify that DOT Maintenance employees assigned to the Chapman Road facility (“CRF”) were included in the bargaining unit defined by DOL Case 12 and represented by AFSCME Local 879.

The State objected to the petition asserting AFSCME was not the certified representative of the CRF employees. A public hearing was held on March 14, 2008, and the Executive

Director issued her decision on August 27, 2008, wherein she found:

For the reasons set forth herein, it is determined that the Division of Highway Maintenance and Operations positions defined in DOL Case 12 and assigned to the North District, including those at the Chapman Road Maintenance Facility, are included within the bargaining unit represented by AFSCME Local 879.

On September 3, 2007, the State requested the full Public Employment Relations Board review the Executive Director's decision. A complete copy of the record below was transmitted to each member of the Board. Additionally, the Board accepted written argument, which the State filed on September 15, 2008. AFSCME declined to file additional argument, asserting the record below provided adequate support for the Executive Director's decision.

The full Board convened a public hearing on September 17, 2008, to review the Executive Director's decision. AFSCME and the State were afforded the opportunity to make oral argument during the hearing.

This decision results from the deliberations of the Board based on the record created by the parties.

### **DISCUSSION**

Upon consideration of the record and arguments presented on appeal, the Board finds the Executive Director's decision is consistent with the law and PERB precedent, and is supported by the evidence of record.

The State argues that this case concerns the protection of representation rights of ten (10) Chapman Road Facility employees who have not been transferred or promoted since 2003. It asserts those ten (10) individuals hold CRF positions which were eligible to cast ballots in the 1987 decertification vote involving the Turnpike Administration bargaining unit defined in DOL Case 18, and because there has been no representation petition filed since that unit was decertified, those employees remain unrepresented. The State argues that the CRF has been and remains a stand-alone facility with an independent complement of positions.

This argument is belied, however, by the record evidence that there are at least fifty-six (56) CRF employees who hold identical classifications, perform identical work side-by-side with the ten employees the State is concerned about, all of whom are covered by the collective bargaining agreement and undisputedly hold represented positions within the bargaining unit defined in DOL Case 12.

The Department of Transportation abolished the Turnpike Administration and moved the maintenance and operations positions into the Division of Highways. The CRF subsequently became one of three maintenance facilities in the North District. Consequently, the CRF no longer constituted a discrete, stand-alone entity. Representation of Turnpike Administration positions was defined in DOL Case 18; Division of Highways positions are represented in the bargaining unit defined by DOL Case 12.

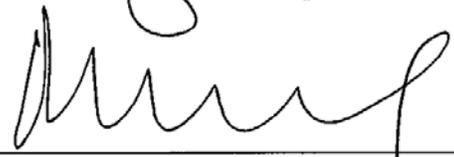
This case does not involve the recent modifications to the PERA, specifically the creation of State merit employee units for purposes of negotiating compensation under 19 Del.C. §1311A. This case presents a simple unit clarification question under 19 Del.C. §1310 and PERB Rule 3.4. The State is correct in its argument that the fundamental structure and process for determining bargaining unit composition and representation status has not changed. It errs, however, in its assertion that the ten positions in question are “unrepresented” and are therefore guaranteed the right to vote in a secret ballot election under the PERA. Bargaining units are defined by positions; the employees at the CRF hold positions in DOT, New Castle County Division of Highway Maintenance and Operations and fall within the DOL Case 12 bargaining unit. AFSCME Local Union 879 is the certified exclusive bargaining representative of all positions in that bargaining unit.

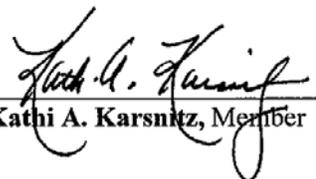
**DECISION**

For the reasons set forth above, following review of the complete record in this case and receipt and consideration of the arguments of the parties, the Public Employment Relations Board affirms the decision of the Executive Director clarifying that all Division of Highway Maintenance and Operations positions, including those assigned to the Chapman Road Maintenance Facility are included within the bargaining unit defined by DOL Case 12, as currently represented by AFSCME Local 879.

**IT IS SO ORDERED.**

  
Elizabeth D. Maron, Chairperson

  
R. Robert Currie, Jr., Member

  
Kathi A. Karsnitz, Member

DATED: 7 November 2008