

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

AFSCME COUNCIL 81, LOCAL UNION 1109,	:	PERB Review of the
Appellant,	:	Executive Director's
	:	Decision
and	:	
	:	
STATE OF DELAWARE, DEPT. OF HEALTH AND SOCIAL	:	<u>D.S. No. 08-04-621</u>
SERVICES, DIVISION OF DEVELOPMENTAL DISABILITY	:	
SERVICES,	:	
	:	
and	:	
	:	
LABORERS INTERNATIONAL UNION OF NORTH AMERICA,	:	
LOCAL 1029,	:	
Appellees.	:	

Appearances

Perry F. Goldlust, Esq., for AFSCME
Hannah Messner & Jerry M. Cutler, SLREP, for State of Delaware

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 Health and Social Services, Division of Developmental Disability Services (“DHSS/DDDS”) is an agency of the State.

AFSCME Council 81, Local 1109 (“AFSCME”) is an employee organization within the meaning of 19 Del.C. §1302(i), and is the certified exclusive bargaining representative of Active Treatment Facilitators and Attendant Chauffeurs employed by the Division of Developmental Disability Services, within the Delaware Department of Health and Social Services. 19 Del.C. §1302(j).

Laborers International Union of North America (“LIUNA”), Local 1029, is an employee organization which admits public employees to membership, and has as a purpose the

representation of those employees for purposes of collective bargaining pursuant to 19 Del.C. §1302(i).

The decertification petition which is at issue in this case was filed by Tracy Johnson, an DHSS/DDDS employee whose position is included in the bargaining unit currently represented by AFSCME LU 1109. The petition sought to decertify AFSCME as the exclusive bargaining representative of Active Treatment Facilitators and Attendant Chauffeurs employed by DHSS/DDDS.

The Public Employment Relations Board (“PERB”) validated the petition, determined that it was properly supported by at least thirty percent (30%) of the bargaining unit, and ordered that a decertification election be held by mail ballot.

On or about April 25, 2008, AFSCME filed a motion entitled, “Emergency Petition to Cancel Pending Election Or, in the Alternative, To Stay Election Proceeding and Impound Ballots Pending a Hearing on AFSCME’s Objections to the Validity of the Petition and Election.” After receiving responsive submissions from the State and LIUNA, the Executive Director impounded the ballots and then issued an expedited ruling in the form of a Declaratory Statement, denying AFSCME’s request to stay the election, holding:

... AFSCME’s petition to stay the Decertification election involving DHSS/DDDS Active Treatment Facilitators and Attendant Chauffeurs is denied.

It is the statutory right of Delaware public employees to negotiate collectively through representatives of their choosing. Those exclusive bargaining representatives are selected through a secret ballot election process in which the employees have the opportunity to express their choice.

The decertification petition at issue in this case was properly filed by a bargaining unit employee, adequately supported by a showing of interest, and timely and properly noticed to bargaining unit employees (both through Notices in the workplace and Notices provided in the ballot packets mailed to their homes) as required by the Public Employment Relations Act and PERB Rules and Regulations. *AFSCME 1109 & DHSS/DDDS, LIUNA 1029*, Del. PERB, D.S. 08-04-621, VI PERB 3981, 4001 (2008).

The Executive Director ordered that the impounded ballots be counted on June 18, 2008.

On June 12, 2007, AFSCME requested the full Public Employment Relations Board review the Executive Director's decision and filed a Motion to Stay the Counting of the Ballots in the decertification election, pending consideration of the appeal

The full Board convened a public hearing on June 25, 2008, to review the Executive Director's decision. AFSCME and the State were afforded the opportunity to make oral argument during the hearing; neither LIUNA nor the Petitioner appeared to be heard.

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 did not abuse her discretion, commit an error of law, or err in her application of the law in rendering the declaratory statement, ordering that the decertification election concerning the bargaining unit currently represented by AFSCME LU 1109 proceed and that the ballots be counted.

In reaching this decision, the Board adopts and incorporates herein by reference the Executive Director's findings of fact as included in the Background section of the decision below. *AFSCME 1109 & DHSS/DDDS, LIUNA 1029* (Supra, p. 3983-3992).

AFSCME argues that the cards which were submitted in support of the decertification petition¹ evidence the employees' support for continuing to be represented, by replacing the existing exclusive bargaining representative (AFSMCE LU 1109) with another labor organization

¹ The record indicates that a set of cards was submitted by the Petitioner, Ms. Johnson, in support of the decertification petition. Those cards were not submitted by LIUNA. See paragraph 11 of the Background in the decision below. *AFSCME 1109 & DHSS/DDDS, LIUNA 1029* (Supra, p. 3986).

(LIUNA Local 1029). AFSCME argues that when LIUNA withdrew from the ballot, the cards filed in support of the petition were effectively negated because they indicated the employees wished to be represented by LIUNA, thereby leaving the decertification petition as only being supported by its single signatory, the Petitioner.

AFSCME's construction of the intent of the signers of the cards is speculative and ignores both the language of the statute and the language of the petition. The petition indicates the employees' desire to discontinue their current representation. The statute requires that "a choice that the public employee does not desire to be represented by any of the named employee organization(s)" must be included on all initial ballots. 19 Del.C.§1311(c). It is the actual election which determines the desires of the employees in the unit, not the cards submitted in support of the petition.

Section 1311(b) of the Public Employment Relations Act (19 Del.C. Chapter 13) defines a decertification petition:

§1311(b): Where an employee organization has been certified as the exclusive bargaining representative, a group of employees within the bargaining unit may file a petition with the Board for decertification of the exclusive bargaining representative. The petition must contain the uncoerced signatures of at least 30 percent of the employees within the bargaining unit and allege that the employee organization presently certified is no longer the choice of the majority of the employees in the bargaining unit...

Although the petition was signed by a single bargaining unit employee, the cards filed in support of the petition evidence the intent of "a group of employees." The signer of the petition effectively serves as the point of contact for the group of employees who support the petition. It is, however, the actual election which determines the desire of the employees in the bargaining unit.

The Board affirms the Executive Director's interpretation and application of §1311(b) and PERB Regulation 3.3 ² wherein she found that the evaluation of the showing of support is an

² PERB Reg. 3.3: A petition for decertification may be filed by a public employee or group of public employees. An employee organization or public employer may not file a petition for decertification...

administrative function “adopted to enable the Board to determine for itself whether or not further proceedings are warranted and to avoid needless dissipation of the government’s time, efforts, and funds.” *AFSCME 1109 & DHSS/DDDS, LIUNA 1029* (Supra., p. 3997). The Board also notes that its Regulation 3.7 specifically provides:

The signatures constituting a showing of interest under ... 19 Del.C. §1310 or §1311 ... shall not be disclosed to any of the parties. The Executive Director shall determine the adequacy of the showing of interest as part of his investigation of the petition.

AFSCME’s argument that PERB must conduct a free and fair election and that the voters in this case are not clear as to what they are voting on is premature. PERB election procedures provide a period following the election (i.e., counting of the ballots) and posting of the results wherein any party may file objections to the conduct of the election or to conduct affecting the results of the election. PERB Regulation 4.8. There is currently nothing on the record which supports AFSCME’s assertion that the eligible voters are unclear or confused by either the Notices of Election which they received in their voting packets or the ballot.

Consistent with the mandates of the statute, the employees are entitled to cast their ballots in secret indicating whether they desire to continue to be represented by AFSCME LU 1109 for purposes of collective bargaining. Should AFSCME receive a majority of the votes which have been cast in this election, the issues raised by the instant appeal will be moot. The employees should be afforded their statutory rights and the ballots should be counted forthwith. Objections to the conduct election or to conduct affecting the election results can be raised at that point and evidence in support of those objections would be received and evaluated.

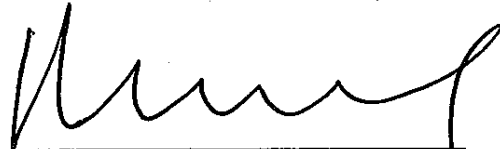
DECISION

For the reasons set forth above, following review of the complete record in this case, the Public Employment Relations Board affirms by a 2 – 1 vote the decision of the Executive Director.

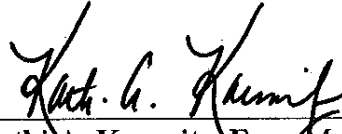
WHEREFORE, the Executive Director is ordered to release the ballots from impoundment and complete the election process by counting the ballots within fifteen (15) days of the issuance of this decision.

IT IS SO ORDERED.

Concurring:

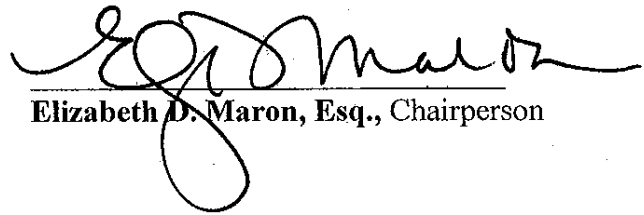


R. Robert Currie, Jr., Member



Kathi A. Karsnitz, Esq., Member

Dissenting:



Elizabeth D. Maron, Esq., Chairperson

DATE: August 19, 2008