

**PUBLIC EMPLOYMENT RELATIONS BOARD
FOR THE STATE OF DELAWARE**

AMERICAN FEDERATION OF STATE, COUNTY,)	PERB Review of
MUNICIPAL EMPLOYEES, COUNCIL 81,)	Executive Director's
Appellant,)	Decision on Eligibility
v.)	for Inclusion in Unit 1
)	
STATE OF DELAWARE,)	<u>Rep. Pet. 07-12-608 (b)</u>
Appellee.)	

IN RE: State Merit Employee Unit #1

Dept. of Elections Senior Voting Machine Technician

Appearances

Perry F. Goldlust, Esq., for AFSCME Council 81

Aaron Shapiro, Office of Labor Relations & Employment Practices, for the State

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). The Board of Elections ("BoE") of each county is an agency of the State. Each county BoE employs a single Senior Voting Machine Technician ("SVMT") position, which is a merit system position.

On or about December 6, 2007, the American Federation of State, County and Municipal Employees, AFL-CIO, Council 81 ("AFSCME") filed a representation petition pursuant to 19 Del.C. §1311A seeking clarification as to the scope of §1311A Merit Unit 1, which is defined as:

Labor, maintenance, trade and service workers which is composed of generally recognized blue collar and service classes including mechanics, highway, building and natural resource maintenance, skilled craft, equipment operators, toll collectors, food service, custodial, laundry, laborers, security officers and similar classes. 19 Del.C. §1311A (b)(1).

On or about June 6, 2008, the State revised its position and sought to exclude the Senior Voting Machine Technician classification from Unit 1, asserting the positions are supervisory and therefore ineligible for representation.

In order to resolve the question of supervisory status and eligibility, a hearing was convened on December 3, 2008, for the purpose of receiving evidence. The parties were afforded the opportunity to file written argument, and the Executive Director issued her decision on May 6, 2009 finding:

[T]he State merit classification of Senior Voting Machine Technician (#MCCZ26) is determined to be a "supervisory employee" within the meaning of 19 Del.C. §1302(s). Consequently, this classification is not eligible for representation in a bargaining unit for purposes of collective bargaining. 19 Del.C. §1302(o). This classification is ineligible for inclusion in State Merit Unit 1.

On May 12, 2009, AFSCME requested review of the Executive Director's decision by the full Board; the State filed its response on May 15, 2009. A copy of the complete record in this matter was provided to each member of the Board.

The full Board convened in public session on May 28, 2009, to consider this request for review.

DISCUSSION

The Public Employment Relations Act requires that a supervisory employee have authority, in the interest of the public employer, to perform at least one of the enumerated functions defined in 19 Del.C. §1302(s), and requires that the employee use independent judgment to perform that function. The record supports the Executive Director's determination that Senior Voting Machine Technicians do assign work to casual/seasonal employees and that they are responsible for scheduling the hours of work of those employees, assign work and supervise the flow of work whenever the casual/seasonal employees are in the warehouses working on the electronic voting machines.

In dissenting, Member Karsnitz concludes the record supports the determination that the Senior Voting Machine Technician is a lead worker and that the casual/seasonal employees who work with the Technician are all performing the same functions as the full-time Technician. There is no need for supervision at the level defined by §1302(s) because all of the workers are performing the same work, have all been trained in the same manner, and all understand what work needs to be done. She concludes that the evidence does not support the conclusion that the Technician is accountable for the work product of the casual/seasonal employees, and therefore should not be considered a "supervisory employee" and should not be denied representational rights under the PERA.

The full Board is in agreement that the Merit Rule which limits supervisory function to two or more classified (i.e., Merit) employees does not impact the decision in this case.

DECISION

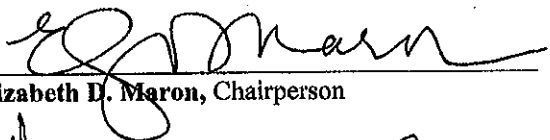
Upon consideration of the record and arguments of the parties, the Board finds the

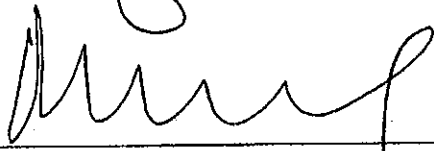
decision of the Executive Director was based on substantial evidence and was not contrary to law.

Consistent with the foregoing discussion, the decision of the Executive Director is affirmed by a vote of 2 -1.

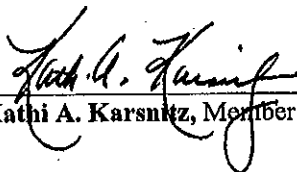
IT IS SO ORDERED.

CONCURRING:


Elizabeth D. Maron, Chairperson


R. Robert Currie, Jr., Member

DISSENTING:


Kathi A. Karsnitz, Member

DATE: June 12, 2009