

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

IN RE:  
PETITION TO CREATE A BARGAINING UNIT OF  
SUPERIOR COURT BAILIFFS/PEACE OFFICERS

<b>SUPERIOR COURT OF THE STATE OF DELAWARE,</b>	:	
	:	<b>REVIEW OF THE EXECUTIVE</b>
Appellant,	:	<b>DIRECTOR’S DECISION</b>
v.	:	<b>DENYING COURT’S</b>
	:	<b>MOTION TO DISMISS</b>
<b>UFCW LOCAL 27,</b>	:	
	:	<b><u>Rep. Pet. 08-10-634</u></b>
Appellee.	:	

**Appearances**

*Jennifer D. Oliva, Esq., Deputy State Solicitor, on behalf of Superior Court*  
*Kiera M. McNett, Esq., Murphy Anderson PLLC, for UFCW Local 27*

**BACKGROUND**

This is an appeal before the full Public Employment Relations Board (“PERB”) seeking review of the Executive Director’s denial of Superior Court’s (“Superior Court”) Motion to Dismiss a representation petition filed by United Food and Commercial Workers International Union, Local 27 (“UFCW”), an employee organization within the meaning of Del.C. §1302(i).

The February 23, 2009 decision held:

Based upon Chancery Court’s decision in *Family Court v. DOL & AFSCME*, and Chancery Court’s interpretation of the jurisdiction of PERB under PERA in *DSU v. AAUP*<sup>1</sup>, Superior Court’s motion to dismiss for lack of jurisdiction is denied.

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<sup>1</sup> *Delaware State University v. DSU Chapter of the American Association of University Professors*, 20000 WL 33521111 (Del.Chan. 2000) at p. 5-6, III PERB 1971, 1983.

WHEREFORE, the Certification Petition filed by the UFCW on behalf of Bailiffs and Peace Officers of the Superior Court (as previously verified and determined to be properly supported) will proceed immediately to election.

On or about February 27, 2009, Superior Court requested review of the Executive Director's decision and moved to stay her Order. The UFCW responded on March 4, 2009, opposing both the appeal and Superior Court's Motion to Stay.

A copy of the complete record in this matter was provided to each member of the Board and a quorum of the Board convened in public session on March 11, 2009, to consider Superior Court's request for review. The parties were permitted the opportunity to make argument and to answer the questions of the Board at that time.

### **DISCUSSION**

Upon consideration of the record and arguments of the parties, the Board finds the Executive Director did not abuse her discretion, commit an error of law, nor did she err in her application of the law. The decision of Chancellor Quillen in *Family Court of the State of Delaware v. Department of Labor and Industrial Relations and Council 81, American Federation of State, County, and Municipal Employees, AFL-CIO* (Del.Ch., C.A. No. 438, May 15, 1974, Quillen, C.), is binding and dispositive of the matter before this Board.

In considering the constitutional issues raised in 1974 (and mirrored in the Superior Court's arguments in this case), the Chancellor specifically addressed the constitutional courts and "their statutory extensions such as Family Court" (*id.* at p. 2) to hold:

There is no conflict between a legislative policy and the constitutional power of the Chief Justice until the constitutional power is exercised... The mere existence of the power does not deprive court employees of the right to organize as conferred by state statute. The existence of the constitutional

power and the statute do not conflict until the constitutional power is exercised in a manner contrary to the statute. This has not been done.<sup>2</sup>

The Board finds nothing in this record to support Superior Court's argument that the Chief Justice has exercised a constitutional power in a manner contrary to the PERA.

Since Chancellor Quillen's decision and the organizing of Family Court employees in 1974, there has been ample opportunity to expressly exclude employees of the judicial branch from the protections and guarantees afforded other State and public sector employees to collectively bargain. When the Public Employment Relations Act ("PERA") was enacted to replace the former "Right of Public Employees to Organize" statute, there was no change to the scope of coverage. Upon consideration of the scope of the prior statute and the PERA, Vice Chancellor Strine concluded in *Delaware State University v. DSU Chapter of AAUP* "... when the General Assembly formally repealed the predecessor statute and adopted PERA, the drafters did not materially change the chapter's jurisdictional language ..." He further concluded that the intent of the General Assembly between 1982 and 1994 was to achieve comprehensive coverage under Delaware's public employment relations statutes. *Id.*

The Board finds Superior Court's argument that its employees cannot be permitted to collectively bargain under the PERA framework because Superior Court is responsible for reviewing the decisions of inferior tribunals like the PERB to be unsubstantiated. The employees on whose behalf the UFCW filed this petition are merely seeking an election to determine an exclusive bargaining representative for purposes of collective bargaining. Questions which relate to application of the PERA in representation proceedings are subject to review in Superior Court. PERB decisions in both unfair labor practice and binding interest arbitration proceedings, however, are statutorily subject to review in the Chancery Court.

The Board also takes notice that collective bargaining rights are extended to similarly-

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<sup>2</sup> *Family Court of the State of Delaware v Dept. of Labor, et al., id.* at p. 10.

situated court employees in the neighboring states of Pennsylvania and New Jersey, as well as a majority of the other states which guarantee collective bargaining rights for public employees.

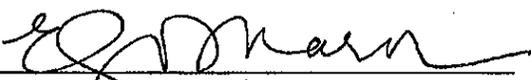
Finally, the purpose of the PERA is to promote harmonious and cooperative labor-management relationships through collective bargaining. PERB does not dictate the terms and conditions of employment for any of the public employers, employees or unions under its jurisdiction but rather monitors the conduct of the collective bargaining process. Moreover, the scope of bargaining does not and cannot include those matters determined by the PERA or any other law of the State to be within the exclusive prerogative of the public employer. 19 Del.C. §1302(t).

### **DECISION**

For the reasons set forth above, following review of the complete record in this case, the Public Employment Relations Board unanimously affirms the decision of the Executive Director to deny the Motion to Dismiss.

WHEREFORE, the Executive Director is directed to proceed with the processing of the underlying Certification Petition and Superior Court is directed to comply with the Executive Director's order of February 23, 2009, to immediately post the Notice of Proposed Bargaining Unit Determination and Election Order

**IT IS SO ORDERED.**

  
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Elizabeth D. Maron, Chairperson

  
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Kathi A. Karsnitz, Member

DATED: March 16, 2009