

**STATE OF DELAWARE**

**PUBLIC EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF:

STATE OF DELAWARE,	:	
	:	Representation Petition
and	:	
	:	<u>No. 10-04-741</u>
AMERICAN FEDERATION OF STATE, COUNTY,	:	(SB36 UNIT CLARIFICATION)
AND MUNICIPAL EMPLOYEES, COUNCIL 81;	:	
AND DELAWARE PUBLIC HEALTH NURSES	:	<b>UNIT 6</b>
ASSOCIATION, DSEA/NEA.	:	

**SB36 Unit 6 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 2305 and 3514, 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 numerous employees of the Delaware Department of Health and Social Services (“DHSS”).

4. 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.

5. On or about April 27, 2010, AFSCME filed a representation petition which raised the issue of the composition of the bargaining unit defined by 19 Del.C. §1311A(b)(6). That unit (“Unit 6”) is statutorily defined to include, “Professional Patient Care which is composed of registered nurses, public health nurses, psychiatric nurses, therapists, dietitians and similar professional classes.”

6. At PERB’s request, on or about April 28, 2010, the State provided a list of all State merit classifications which it believes fall within the statutory Unit 6 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.

7. The State’s list includes classifications with positions in the Department of Health and Social Services (“DHSS”), Department of Services for Children, Youth and Families (“DSCYF”), and the Department of State (“DOS”).

8. The list indicated that there are unrepresented positions in DHSS, DSCYF and DOS.

9. The State’s information was provided to AFSCME and DSEA for response.

10. Neither AFSCME nor DSEA registered objections to the list of Merit Classifications which fall within the Unit 6 definition, which includes:

Advance Practice Nurse  
Compliance Nurse  
Histotechnologist  
Nurse Consultant  
Nursing Supervisor  
Nutritionist I  
Nutritionist II  
Registered Nurse I  
Registered Nurse II  
Registered Nurse III  
Therapist III

11. The list of 350 Unit 6 positions provided by the State included:

- 107 positions currently represented by AFSCME and its affiliated Locals
- 88 positions currently represented by Public Health Nurses, DSEA/NEA<sup>1</sup>
- 155 currently unrepresented positions

12. Having determined the composition of the bargaining unit defined by 19 Del.C. §1311A(b)(6) 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).

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<sup>1</sup> DSEA's response of May 21, 2010, expressed concern that three (3) positions at DHSS/Delaware Hospital for the Chronically Ill which fall within the bargaining unit currently represented by the Public Health Nurses Council, DSEA/NEA, were improperly designated as "unrepresented". The status of these positions will be resolved prior to an election in this matter.

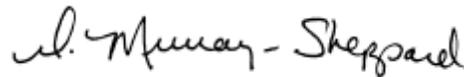
**WHEREFORE**, the State is required to provide a list of merit employees (employed statewide) in the following positions that are either unrepresented or currently represented by an AFSCME affiliate.

Advance Practice Nurse	Compliance Nurse
Histotechnologist	Nurse Consultant
Nursing Supervisor	Nutritionist I
Nutritionist II	Registered Nurse I
Registered Nurse II	Registered Nurse III
Therapist III	

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: 24 May 2010



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