

PUBLIC EMPLOYMENT RELATIONS BOARD
STATE OF DELAWARE

CORRECTIONAL OFFICERS ASSOCIATION)	
OF DELAWARE,)	
and)	Declaratory Statement
STEVEN FLOYD.)	<u>D.S. No. 11-02-790</u>

APPEARANCES

Lance Geren, Esq., Freedman & Lorry, P.C., for COAD
Steven Floyd, COAD Member, pro se

BACKGROUND

The Correctional Officers Association of Delaware (“COAD”) is an independent labor organization which is not affiliated with any other subordinate or parent labor organization. It is governed by its Constitution and the laws of the State of Delaware. COAD is the certified exclusive bargaining representative of a bargaining unit of State of Delaware merit employees of the Department of Correction (as defined in DOL Case 1) within the meaning of section 1302(j) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13.

Sergeant Steven Floyd is a public employee within the meaning of 19 Del.C. §1302(o) and is a member of COAD and the bargaining unit it represents. He is and has been a COAD shop steward at the James T. Vaughn Correctional Center (formerly the Delaware Correctional Center) since COAD was certified in 2002.

On or about February 24, 2011, COAD filed this Request for Declaratory Statement, stating a controversy exists concerning the constitutional and statutory rights of COAD members, including Sgt. Floyd, and the potential obligations of the COAD Executive Board. The petition states the parties have “consented to a final and binding resolution fashioned by PERB.” The petition requests “PERB determine the merits and, if applicable, a remedy associated with the averments of and documents set forth in this petition.”

Sgt. Floyd filed his response to the petition on March 1, 2011, in which he did not object to the substance of the petition, and alleged a number of other concerns relating to conduct by the Executive Board after his initial concerns about the conduct of an election were heard on February 15, 2011. He requested that after the merits of his concerns are considered by PERB that the election process be rerun, in compliance with the COAD Constitution.

A hearing was convened before PERB on March 22, 2011, at which time documentary and testimonial evidence was received. Both COAD and Sgt. Floyd were permitted to enter their arguments into the record. This decision results from consideration of the record thus created by the parties.

FACTS

The facts underlying this dispute are undisputed and are derived from evidence (both documentary and testimonial) presented in the pleadings and the hearing of March 22, 2011.

COAD was certified as the exclusive bargaining representative of State of

Delaware rank and file Correctional Officers following a representation election conducted by the Public Employment Relations Board, on or about June 12, 2002. COAD's Constitution establishes its governmental structure, which includes an Executive Board, a Board of Trustees, and a Judicial Panel.

The Executive Board is comprised of a President, Secretary and Treasurer who are elected on a statewide ballot, and also includes an Institutional Vice President from each correctional institutional, who is elected exclusively by members who work or are assigned to that institution. Article VI, section 1, sets forth the duties and responsibilities of the Executive Board:

The Executive Board shall be the chief executive agency of the COAD. The Executive Board shall decide all matters affecting the execution of obligations under this Constitution, and of effecting representation of the membership of the COAD, and the means by which to do so. The Executive Board shall set COAD policies, consistent with membership desires. The Executive Board is bound to comply, in all matters affecting policies, aims or the means of accomplishing the purposes of the COAD which are not specifically provided for in the constitution, with the action, if any, taken by the membership at a regular or special meeting where a quorum of the membership is present.

The Board of Trustees is constituted of a Chair, Co-Chair, Secretary and nine institutional trustees as defined in Article X, section 1. The Trustees are responsible to "oversee the actions of the Executive Board, but may not assume any of the executive authority of the Executive Board, but may accept such authority as is delegated to it by the Executive Board." Article X, section 2. The Board of Trustees is required to meet quarterly to review COAD operations.

The Judicial Panel is constituted of five members, including a Chair and Vice Chair who are elected by statewide election, and three Resident Officers who are elected by and from regional districts as set forth in Article IX of the Constitution. The Judicial

Panel has “authority to hear any matter and impose any penalty provided for in the Constitution, or in the Judicial Panel Rules of Procedure.” Article IX, section 6.

All members of the Executive Board, the Board of the Trustees, and the Judicial Panel are elected for two year terms in “regular, general elections.” Article VIII, Elections, of the COAD Constitution establishes the manner and method by which those elections are to be conducted:

SECTION 1. Terms of Office

- (a) All members of the Executive Board, Judicial and the Board of Trustees (collectively referred to as “Officials”) shall be elected for two (2) year terms, with regular, general elections commencing in February of 2003 and every two (2) years thereafter.
- (b) Newly elected officials shall be installed immediately upon acceptance of the report of the Election Committee at the first Executive Board meeting after the elections.

SECTION 2. Persons Entitled to Vote for Nominees

All Officials shall be elected by the membership at large, except for the Institutional Vice Presidents, Resident Officers serving on the Judicial Panel, and the Board of Trustees. Only the members primarily assigned to work in each of the respective institutions shall elect them.

SECTION 3. Time of Elections

General election for all Officials shall be held during the first week of February every second (2nd) year.

SECTION 4. Electronic Voting Machine

All Officials shall be elected by secret vote, and the vote shall be conducted so as to afford all members a reasonable opportunity to vote and shall be done by electronic voting machines when applicable and available. This type of voting process for any election after the general election shall be decided by the Executive Board and/or the membership.

SECTION 5. Districts and Institutions

- (a) There shall be three (3) Districts for the purpose of electing three (3) Judicial Panel members and three (3) Panel members for the Board of Trustees. Each panel member shall be elected from each of the Districts.
- (b) The ten institutions, listed below, are divided into three Districts,

as follows:

DISTRICT #1 –

1. Sussex Correctional Institutions
2. Sussex Community Correctional Center
3. Sussex Violation Center

DISTRICT #2 –

1. Delaware Correctional Center
2. Central Violation Center
3. Morris Community Correctional Center

DISTRICT #3 –

1. Howard R. Young Correctional Institution
2. Baylor Women's Correctional Institution
3. Plummer Community Correctional Center
4. Webb Correctional Facility

- (c) For purposes of this Section, a member who works in any of the following areas is considered to be a part of the Institution where the member's duty assignment is: Maintenance, Food Services, Prison Industries, K-9, and Supervised Custody.
- (d) Any institutions or facilities which are newly constituted or which are added to the bargaining unit after approval of this Constitution shall be in the District to which the closest existing institution is assigned. On motion by the President and confirmation by the membership at the next regular meeting, a new Institution may be declared.

SECTION 6. Election manual

All nominations and elections for officials shall be in accordance with the COAD Election Manual.

The Constitution requires the appointment of an Election Committee, prior to the nominations meeting, which must consist of "one (1) member from each Institution, none of whom shall be a candidate for office", and requires the Election Committee to conduct the election in compliance with the Election Manual. *COAD Constitution Article XII.*

The Constitution also states:

SECTION 2. Supplemental Rules

As to any issue not adequately addressed in the COAD Election Manual, the election committee shall meet and draw up rules and regulations, which shall be approved by the Executive Board and the majority of union

body, prior to the nomination hearing.

SECTION 3. Elections Disputes

The Election Committee, in accordance with the COAD Election Manual, shall investigate any dispute arising from nominations or elections.

SECTION 4. Appeal of Election Dispute Rulings

All decisions of the Election Committee concerning election protests and challenges may be appealed pursuant to the Judicial Panel Rules of Procedure.

On or about October 21, 2010, the Executive Board accepted nominations for candidates for elective COAD offices at a regularly scheduled membership meeting. At no point prior to or after the acceptance of these nominations did the Executive Board establish an Election Committee. The incumbent COAD Secretary (who was also a candidate for election) was charged with responsibility for conducting the election. No date was set or announced for the election at that meeting or any of the remaining meetings in 2010.

At a general membership meeting on January 20, 2011, the Executive Board announced the election would be conducted on February 1, 2011. Arrangements were made to have voting machines delivered and staffed by the Department of Elections officials from each of the three counties at each correctional institution.

During the afternoon of January 31, 2011, COAD Secretary McClure was contacted by a New Castle County Department of Elections (“NCC DoE”) official who advised him that because of a forecasted winter storm on February 1, it would not have staff available to conduct the polling in institutions for which it was supplying the machines. The official informed Secretary McClure that it was, therefore, postponing the election until Thursday, February 3, 2011.

In an e-mail sent to twenty individuals and copied to seven more (which

according to testimony at the hearing included all Executive Board members, some shop stewards and candidates for office), at 4:04 p.m. on Monday, January 31, 2011, Secretary McClure stated:

For those that are not already aware, the vote for New Castle county has been postponed due to weather. The vote in New Castle County will take place at the same times as previously scheduled, however, the date has been changed to Thursday, February 3rd.

The vote is **ON SCHEDULE** for Kent and Sussex Counties.

Those who are working the polls in New Castle County will report to work on Tuesday and have already been requested for release time on Thursday.

If for any reason there are cancellations in Kent or Sussex Counties I will contact those working the polls via the numbers I have on file. If there are further postponements in Kent or Sussex you will need to report to work as normal and we will fall back on Thursday as a backup date.

As for the process, it's pretty simple. The ballots that are taken tomorrow will be sealed at the polls. From there, they will be transported to the COAD hall by the COAD representatives at the polls and secured in the Treasurer's safe. There will be **NO** ballot counting until after the elections on Thursday; this includes Vice Presidential ballots.

If anyone has any questions, please don't hesitate to give me a call.

Sgt. Floyd responded to this email (by replying to all addressees) at 6:16 p.m., questioning why the balloting was being postponed only in New Castle County when the weather forecast was predicting severe weather in Kent and Sussex Counties as well. He stated, "I think that all the voting should be postponed until Thursday. This will eliminate any concerns that the body may have."

Secretary McClure responded to Sgt. Floyd's email (again by responding to all addressees of the original email) at 7:50 p.m.:

The reason the voting is postponed in New Castle County is because the Deputy Director of New Castle County has cancelled the vote with the approval of the Director. Even though the weather is only in a state of

“watch”, they are still canceling. The other two counties have no intention of canceling an election because of a weather *watch* and have relayed their concern with the decision by New Castle County. Specifically, the Weather Warning states, “*AREAS AFFECTED; THE NORTHEAST CORNER OF MARYLAND... **THE NORTH THIRD OF DELAWARE...** THE REMAINDER OR SOUTHEAST PENNSYLVANIA AND MUCT OF THE INTERIOR SOUTHERN NEW JERSEY UP TO COASTAL NORTHEAST NEW JERSEY”.

I understand you may be of the opinion that the postponement of the election for the entire state is the correct course of action, but I can assure you there were no other options, given the timeframe I was presented with. I received the call to postpone at 1445 this afternoon. That meant I that I had a total of about an hour:

- New election dates had to be arranged with the NCC DoE Technicians and staff
- Calls had to be made to confirm new pick-up dates for the DoE warehouse were available for Thursday, otherwise the machines would have been lost today
- Security Clearance had to be extended at HRYCI
- Wardens had to give permission for machines to stay in their facilities
- Release time had to be rescinded and re-approved for a new date; Mr. Machtinger was not available until 1535
- COAD poll personnel had to be notified so they could report back to work and know when to return for the vote
- Letters had to be re-written to DOC H.R. and forwarded to the three Wardens and a Deputy Warden before 1600hrs.

It would have simply been impossible to cancel and rearrange two other counties as well, taking into consideration most state offices are ghost towns after 1630. Unfortunately there was no committee formed to arrange this election and the failure to form such a committee had a direct impact on the arrangements of the election. Where there is one person doing the work of five, things tend to slow down and only so much can be done in the course of an hour or so.

As a Shop Steward you are in a unique position to assist in eliminating any concerns the body may have. Although I have not heard any concerns, please let everyone know that the integrity of the election is intact. The two Counties that are voting on time will simply have their ballots sealed at the polls at the end of the day and those sealed ballots will be signed across the seal. From there they will be transported to the COAD union hall where they will be placed for safekeeping. Those envelopes will not be removed from the safe until 1800hrs on Thursday.

If people are concerned that someone is going to peek at the results, please invite them to the union hall for the vote count on Thursday and they can take a look at the envelope before it's opened to see that there has been no tampering.

If any of the members in your section have questions about the election please don't hesitate to have them contact the Eboard.

Testimony established that no general notice was provided to COAD members of the change in the election arrangements by e-mail, telephone or other method of communication. It appears that some members may have received information concerning the change either when they appeared to vote on Tuesday or in conversations with some of the shop stewards.

The James T. Vaughn Correctional Center ("JTVCC") is located in New Castle County. All postings for job vacancies and other notices which require a designation of county include JTVCC in New Castle County. However, voting machines were provided to JTVCC for purposes of this election by the Kent County Department of Elections.

Polling was conducted as scheduled on Tuesday, February 1, 2011, for all State correctional institutions located in Kent and Sussex Counties. Polling was also conducted at JTVCC on February 1.

Polling was conducted for all correctional institutions in New Castle County (except for JTVCC) on Thursday, February 3, 2011. The election results were attached to the petition and indicate that a new President was elected on the statewide ballot (Geoff Klopp) and that Secretary McClure was elected to remain as COAD Secretary. There were no other statewide offices included in the Election Results spreadsheet which was provided, and testimony established there were no other statewide offices for which there were challenges to the incumbents; consequently, those offices were not included on the ballot. The tally of ballots indicates there were 688 ballots cast in the Presidential

election, and 664 cast in the election for Secretary. There were also at least three Institutional Vice Presidential positions on the Executive Board which were contested, but the tally of ballots only indicates an outcome for the Sussex Correctional Institution.

Testimony was given concerning the election process followed at JTVCC on February 1, 2011, and the parties agreed the testimony essentially reflected the manner in which polling is and has been conducted in all correctional institutions. The Institutional Vice President who is elected by members working at the institution is responsible for conducting the polling at the institution on election day. COAD rents voting machines from the Department of Elections in each county, and those machines are staffed and operated by DoE employees. The Institutional Vice President mans a table in front of the machines at which he or she confirms the eligibility of individuals who appear to vote, and has them sign in before allowing them to advance to the voting machines to vote. The Institutional Vice President is also responsible to sign off on the electronic tally from the voting machines at the end of polling and to seal those results and transport them to the Union Hall immediately following the closing of the polls at the end of the election. If the Institutional Vice President is unavailable or is a candidate for office, one or more of the institution's Shop Stewards¹ perform the responsibilities described above.

On or about February 6, 2011, Sergeant Floyd filed a formal complaint concerning the conduct of the election with the Executive Board, which states:

I would like for the Board Members to look into the election process that just took place this week. There were numerous things that went on during this election that shouldn't have taken place. Many members of JVTCC have voiced their concerns about this matter and I have questions that need to be answered as well.

¹ Institutional Vice Presidents are elected through the formal election process by the members assigned to work in each individual institution. Shop Stewards are selected for each institution by the general membership at regular union meetings.

The first question of concern is that Officer McClure was the Chairperson for the elections and also was running for Secretary. This is believed to be a conflict of interest because if you are a candidate then you shouldn't have any involvement in the election process.

The second question of concern is the notification to the membership about the elections. I wasn't able to make the union meeting for January 20, 2011 and found out on January 24, 2011 there was going to be an election held on February 1, 2011. This only gave the membership about seven to ten days to know that there was going to be an election. At the November meeting the E-Board put out that they weren't sure about the election date because of problems with getting the machines and there wasn't a meeting for the month of December. The only way to communicate effectively with the total membership is to mail a letter to all members and with the timeline that this election took place that would have never happen.

The third question of concern is after scheduling the election on February 1, 2011 due to the weather only Kent and Sussex Counties were able to vote on that day. New Castle County was rescheduled to vote on Thursday, February 3, 2011. This information was put out via state email and at that time I replied with my concerns. The decision was still to move on with the elections. The replay came from Office McClure and Officer Geoff Klopp whom both were on the ballot and shouldn't have been involved in the decision making about the elections. The envelopes from Kent and Sussex Counties were to be turned in at the Union Hall on Thursday, February 2, 2011 at 6:00pm. To take a look at the envelopes. I did show up to the Union Hall on this day and time and seen the envelopes which had tape going across the area where they were sealed at. Without seeing the envelopes prior to leaving each polling location there would have been no way for any member to know if they had been tampered with or not.

The fourth question of concern is that during the election at JTVCC it was brought to my attention that many of our members didn't know about the elections at all and didn't know who to vote for. Sgt. David Townsend (VP JTVCC) was handling the polls at our institution and he had Cpl. Jason Schaffer (Shop Steward JTVCC) assisting him for part of the time period that the polls were open. Several members (whom wanted to remain silent) informed me that Sgt. Schaffer was telling Officer to vote for Officer Klopp just before they went to vote. If this is true then that is a very big problem. I understand that if these individuals refuse to come forward that these accusations mean nothing but it still is a major concern.

The fifth question of concern is that the membership had requested after the last election (two or four years ago) that the voting would take place on more than one day to give all members the opportunity to vote. The way it works now is that every Officer has to vote at their assigned institution and if I live in Sussex County and work in New Castle, I have to go to New

Castle to vote. Officers that are scheduled off aren't going to make that trip to vote. I know this would probably create additional problems so may not be the fix that is needed. Collectively, we the Union need to explore other methods of voting that would be fair to our membership.

In closing, I ask that the E-Board take a serious look at the whole election process and come up with a decision that is just and fair to all of the membership. As the Elected Officers of this Union it is your duty and responsibility to take care of this. Thank you.

On or about February 8, 2011, the Executive Board (which included the individuals who were elected the week before) voted to schedule a hearing before the Board to allow Sgt. Floyd to address his concerns. The Executive Board hearing was conducted on February 15, 2011.

Although there was no documentary support provided to PERB (e.g., minutes or a written response to Sgt. Floyd following the meeting), the petition states:

At the conclusion of the hearing, the Executive Board determined that the constitution was silent on the notice issue, and therefore, Sergeant Floyd's complaint regarding the short notice of the election was without merit. Further the Executive Board found insufficient evidence to sustain the charge that there was improper electioneering at JTVCC. Finally the Executive Board found, and Sergeant Floyd appeared to agree, that the constitution was silent on the issue of conducting the election over multiple days, and this complaint was without merit.

With respect to the charge that the Executive Board had failed to establish an Election Committee, allowed a candidate to conduct the election, and the possible confusion stemming from the rescheduling of the election at JTVCC (namely the geographical limits of the Department of Election placing JTVCC in Kent County and not New Castle County), the Executive Board was unable to resolve these issues or fashion an appropriate remedy, and therefore, voted to submit these issues to the PERB for a final and binding determination. Sergeant Floyd consented to this procedure as well.

ISSUE

Whether the conduct of the February, 2011, COAD election did or could have interfered with the rights of bargaining unit employees under the Public Employment

Relations Act.

DISCUSSION

Section 4005 (h)(4) authorizes PERB to provide by rule a process for the filing and prompt disposition of petitions for declaratory statements which seek an expeditious determination of questions relating to potential unfair labor practices, *inter alia*. The instant petition establishes that a controversy (within the meaning of PERB Rule 6.1 (c)) exists concerning whether the statutory rights of bargaining unit employees were impacted by the manner and method by which COAD conducted its internal election for union officers on February 1 and 3, 2011. The record in this matter is sufficient to establish that the interests of the parties are mature, real and adverse, and that timely issuance of a declaratory statement by PERB (as jointly requested by the petitioners) will facilitate resolution of the controversy.

The record is sufficient to establish the violations of COAD's Constitution are significant and pervasive. The fair, democratic functioning of a labor organization which is the certified exclusive bargaining representative of public employees is central to fulfilling its representational responsibilities to the bargaining unit under the PERA. The union's Constitution is the framework for union operations on which the trust and understanding of union members are based. The COAD Constitution requires that all elected union officers be bound by an affirmative oath to uphold the provisions of the Constitution. Article XVII, §1.

The COAD Constitution is constructed to provide a series of checks and balances between the Board of Trustees, the Executive Board and the Judicial Panel to ensure that the Constitution is effectively and consistently implemented. The majority of each of

these bodies is comprised of representative members who are elected to that office by members who work in the institution or region represented. It is reasonable to presume that officers and officials elected to representative office by a specific institution or region would be familiar with issues, practices, and concerns at those institutions.

Article VII, §4, requires that voting for officers “shall be conducted so as to afford all members a reasonable opportunity to vote.” Implicit in any standard of reasonableness for an election procedure is adequate notice to eligible voters. There is a troubling and acknowledged lack of communication with and between the union leadership and bargaining unit members in this case. The record reveals that there was no formal written posting or mailed communication to bargaining unit members announcing either the scheduled election on February 1 (which was not scheduled until the January 20, 2011 General Membership meeting) or the change to February 3, 2011 election date for New Castle County institutions. Indeed the notification that the election was being postponed in New Castle County was sent by e-mail, at 4:00 p.m. on the afternoon before the scheduled election, to only twenty-seven individuals.

It is undisputed that the James T. Vaughn Correctional Center (“JTVCC”) is located in New Castle County. The postponement did not, however, affect this institution because the voting machines were provided by Kent County (rather than New Castle County). Testimony was presented that JTVCC employees believed that the postponement affected this institution (the largest adult correctional facility in Delaware) which affected the opportunity of employees who were off duty on February 1 to cast a ballot. Had an Election Committee been formed constituted of representatives of each institution who were made familiar with the election process prior to the nominations of candidates in November, perhaps there would have been a more effective communication

plan in place. Effective communication in a timely manner that an election will be held, timely notification to union members of the slate of candidates and their eligibility to vote in the election by formal, individual and regular process, posting notices of the election in the workplace or on a well-established electronic bulletin board to which all member has access, and making direct contact with members who are affected by a postponement are all required to insure the integrity of a valid election.

The internal union election for COAD officers of February 1 and 3, 2011, was not conducted in conformance with the COAD Constitution. This constitutes a serious breach of the union's responsibilities as a democratic organization responsible for the representation of its members. *COAD Constitution Article III*

The record, however, is not sufficient to conclude that the election was conducted in a manner other than that which this organization has employed in the past. To the extent that the officers were elected in a manner inconsistent with the requirements of COAD's Constitution, the lack of an Election Manual, Election Committee and Judicial Panel appear to be long-standing constitutional violations by this organization. It is not possible at this point to determine whether any of the current elected officers were placed in office under a constitutional process. Consequently, it would be patently unfair to remove newly elected officers while permitting other officers who were elected under the similar processes in previous elections to remain in office.

The ultimate authority to police the Constitution lies with the Board of Trustees, which is responsible for overseeing that the actions and policies adopted by the Executive Board are consistent with the Constitution. While it does not have the authority to direct the executive authority of the Executive Board, it does have responsibility to notify the Executive Board when it has taken an action in violation of the Constitution. *COAD*

Constitution Article X. The Board of Trustees should have held the Executive Board accountable for not developing an Election Manual and not appointing an Election Committee as required by Article VIII, in its quarterly meeting between November, 2010 and February, 2011.

The development of fair and regular elections practices and the compilation of an Election Manual are not complicated. There are many, readily available resources to assist in this process. There are many alternatives for insuring fairness and neutrality in internal union elections and a number of neutral agencies to which COAD can turn for models, guidance, and conduct of its elections.

It is unfortunate that COAD's internal procedures were compromised by the organization's failure to follow its own Constitution. The irregularities in COAD's operations have apparently continued because of a lack of oversight. Had this organization been subject to the LMRDA and federal Department of Labor jurisdiction, the election process would have been found to be at least inadequate. Delaware has not adopted a state corollary to the LMRDA for exclusively public sector labor organizations, but it was election irregularities (among other concerns) that led to the adoption of the strict regulation of private sector unions by the federal government.

The Respondent asserted the newly elected President and Secretary acted in violation of the will of the membership (as expressed in the vote of the General Membership on February 17, 2011) to stand down from their elected positions until concerns surrounding the election was resolved. The Constitution sets forth in Article XIII the process for removing an officer from his office, and states,

- (c) Any state wide held office (i.e. President, Treasurer, Secretary) may be removed by the body. The Body will have to submit a petition with thirty-five (35) percent of the union members in

good standing. Prior to the petition being submitted, a vote of no confidence will be made at the general or special meeting prior to the petition being filed. The motion must carry.

This process was not followed in the vote taken by those attending the General Membership meeting on February 17, 2011.

It is also alleged in the response to the petition that the newly elected officers were not properly installed by action of the Executive Board as required by Article VIII, section 1(b). That provision requires officers to be installed immediately upon acceptance of the report of the Election Committee by the Executive Board. As there was no properly constituted Election Committee, obviously there could not be a report to accept. The Executive Board should, however, install the newly elected officers and then move forward to conform all of its functions and operations to the mandates of its Constitution, in preparation for the next election.

Finally, there is perhaps a natural tendency in any organization which is facing a crisis such as that described herein to split into factions and to point fingers. It is clear that the lack of oversight and inaction which led to the current situation has existed perhaps since COAD was first certified to represent this bargaining unit in 2002. There is a clear need for leadership, cooperation and share responsibility to right this ship and to move the organization forward. Members must be willing to stand for office and to speak up to hold their organization accountable. Sgt. Floyd presented a thoughtful and responsible inquiry on behalf of the members who worked in JVTCC and for whom he had been chosen to act as a representative. He attempted to have his concern resolved internally under COAD procedures; unfortunately, the structure for resolution of this issue was not functional.

DECISION

The issue placed before PERB was whether the conduct of the February, 2011, internal COAD election did or could have interfered with the rights of bargaining unit employees under the Public Employment Relations Act. An employee organization selected for the purpose of collective bargaining by the majority of the employees in an appropriate collective bargaining unit is the exclusive representative of all the employees in the unit for such purpose and has the duty to represent all unit employees without discrimination. 19 Del.C. §1304(a). Bargaining unit employees have certain statutory rights as enumerated in 19 Del.C. §1303, which include the right to:

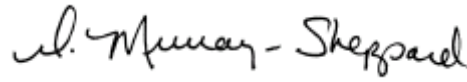
- (1) Organize, form, join or assist any employee organization except to the extent that such right may be affected by a collectively bargained agreement requiring the payment of a service fee as a condition of employment.
- (2) Negotiate collectively or grieve through representatives of their own choosing.
- (3) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the State.
- (4) Be represented by their exclusive representative, if any, without discrimination.

The ultimate responsibility for the fair and effective operation of this organization lies with its elected officers. The petition has revealed significant and pervasive violations of the COAD Constitution in the most fundamental operation of the organization, its internal union election process. Failure to address these issues and concerns promptly inevitably affects the effectiveness of the organization.

For the reasons set forth above, the COAD Executive Board should immediately undertake concerted efforts to conform its business practices to its Constitution, or, where necessary, modify that Constitution. COAD should take affirmative and immediate steps

to insure the Board of Trustees, Executive Board, and Judicial Panel are fully constituted and functioning effectively. It should also immediately develop an Election Manual as required by the Constitution. It is recommended that the COAD conduct a special, constitutionally compliant election for all officers by not later than February, 2012, in order to assure that its future actions cannot be called into question because its officers were not elected in a manner consistent with its Constitution.

DATE: May 4, 2011

A handwritten signature in cursive script, reading "D. Murray-Sheppard", is written above a horizontal line.

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