STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 326, Appellant,

v.

TOWN OF DELMAR POLICE DEPARTMENT, Appellee.

PERB Review of Executive Director’s Decision

Representation Petition
17-12-1131 (CERT)

Appearances
Jeffrey M. Weiner, Esq. for IBT Local 326
Aaron Shapiro, Esq., Connolly Gallagher, LLP, for Town of Delmar

BACKGROUND

The International Brotherhood of Teamsters, Local 326 (“IBT Local 326”) is an employee organization within the meaning of §1602(g) of the Police Officers and Firefighters Employment Relations Act (“POFERA”), 19 Del. C. Chapter 16.

The “Town of Delmar” consists of two municipal governments: the Maryland municipal corporation of Delmar, Maryland, and the Delaware municipal corporation of Delmar, Delaware. By mutual agreement of the governing bodies of the Maryland and Delaware municipalities, the two towns created and operate a joint enterprise for the provision of public services, including a unified police department, which is called the

1 “Employee organization” means any organization which admits to membership police officers and or firefighters employed by a public employer and which has as a purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative or agent of said organization.
“Town of Delmar Police Department.” The Chief of Police is jointly hired by the Joint Council (comprised of the elected Mayor and four Councilpersons of Delmar, Delaware and the elected Mayor and four Commissioners of Delmar, Maryland). All Town of Delmar police officers are trained and certified in both Delaware and Maryland. Delmar, Maryland funds sixty percent (60%) of the costs of the police department operations, while Delmar, Delaware funds forty percent (40%).

On December 11, 2017, IBT Local 326 filed a Petition for Bargaining Unit Determination and Election, seeking to represent Police Officers below the rank of Chief of Police employed by the Town of Delmar Police Department. The Town of Delmar, Delaware opposed the petition, asserting the Delaware PERB did not possess jurisdiction to process the petition.

On May 17, 2021, the Executive Director issued a decision dismissing the petition, holding:

... The Delaware Public Employment Relations Board does not have jurisdiction under the Police Officers and Firefighters Employment Relations Act to conduct certification proceedings for the “Town of Delmar” which is an agency formed by the mutual agreement of the Town of Delmar, Delaware and the Town of Delmar, Maryland in order to provide unified public safety services to the residents of both municipalities. The “Town of Delmar” is not a municipal corporation, or municipality, city or town located within the State of Delaware or an agency thereof.

On May 20, 2021, IBT Local 326 filed a request for review of the Executive Director’s decision. On June 2, 2021, the Town of Delmar filed its response opposing the IBT’s request for review.

A copy of the complete record in this matter was provided to each member of the Public Employment Relations Board. A public hearing was convened on July 21, 2021, at which time the full Board met in public session to hear and consider this request for review.
The parties were provided the opportunity to present oral argument and to answer questions from the Board. The decision reached herein is based upon consideration of the record and the arguments presented by the parties.

DISCUSSION

The Board’s scope of review is limited to the record created by the parties and consideration of whether the Executive Director’s decision is arbitrary, capricious, contrary to law, or unsupported by the record. After consideration of the record and the arguments of the parties on appeal, the Board must vote to affirm, overturn, or remand the decision to the Executive Director for further action.

On appeal IBT Local 326 argues that Delaware law, specifically the POFERA, must take precedence over any agreement between Delmar, Delaware and Delmar, Maryland. The parties do not dispute that Delmar, Delaware is a “municipal corporation or municipality, city or town located within the State” under §1602(l) of the POFERA. 2

The IBT challenges the Executive Director’s holding that:

The State of Delaware does not have authority to create laws or to provide authority to its agencies which limit or circumscribe the authority of the State of Maryland, absent an instrument executed by the two states which create such authority. Consequently, Delaware cannot create an agency with powers and authorities the State itself does not have. The Delaware PERB has explicit jurisdiction over municipal corporations or municipalities located within Delaware. 19 Del. C. §1602(l). 3

The IBT notes that Delmar, Maryland passed Ordinance #709 in 2009 creating

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2 In order to be a “public employer” under the POFERA, the municipality must also meet a second condition, namely, elect to be covered by the POFERA by an affirmative legislative act of its common council or other governing body, or employ 25 or more full-time employees (excluding anyone elected by popular vote or appointed to serve on a board or commission.

3 IBT Local 326 and Town of Delmar Police Department, REP 17-12-1131, IX PERB 8391, 8402 (Decision and Order of Dismissal, 5/17/21).
collective bargaining rights for police officers in Delmar, Maryland. Consequently, it argues the Executive Director erred in concluding that there is no corollary to Ordinance #709 passed by either Delmar, Delaware or the Joint Council because the POFERA itself is the corollary.

The Town asserts Ordinance #709 applied only to the Delmar, Maryland expenditures and funding for the unified police department. IBT Local 326 argued before the Board that it was seeking a similar decision by PERB, i.e., that the POFERA applies only to police funding and expenditures for Delmar, Delaware. It argued that the agreement between Delmar, Delaware and Delmar, Maryland to create the unified police department has no impact on the statutory obligations of Delmar, Delaware and it is irrelevant to the representation petition it filed to represent the officers of the Town of Delmar Police Department.

This is the first time in these proceedings in which the IBT has made an argument for what can only be characterized as bifurcated bargaining with the two separate municipalities for the terms and conditions of employment for the unified police force. While interesting as a proposition, it was not the basis for the petition filed by IBT Local 326, which specifically sought to be certified as the exclusive bargaining representative of all police officers below the rank of Chief, employed by the “Town of Delmar Police Department.”

The administrative agency known as the Town of Delmar Police Department was jointly and cooperatively created by two municipalities which are separately and independently chartered in two different states. It is the unified entity known as the “Town of Delmar” (which is jointly managed and operated by those two municipalities) which employs more than twenty-five full time employees. There is no sovereign jurisdiction
over that administrative entity under the Delaware POFERA. The twenty-five employee threshold applies only after the employing agency is determined to meet the primary condition of being a municipal corporation or municipality located within the State of Delaware.

IBT Local 326’s argument that the Executive Director’s decision permits a Delaware public employer covered by the POFERA to avoid its statutory obligations simply by entering into an agreement to cooperatively provide services with a non-covered employer is speculative and without basis in fact or law. There are many ways that the employees involved in this matter might become covered by the POFERA, e.g., if the officers were employed by Delmar, Delaware and Delmar, Maryland contracted for their services from Delmar, Delaware. Similarly, as pointed out in the decision, a bi-state compact or agreement might be reached which grants authority to PERB to oversee collective bargaining between the unified Town of Delmar and its police officers.

The Board concurs that nothing has changed which would affect this decision since similar petitions were filed in 1997 and 2009. The decision of the Executive Director is not arbitrary or capricious, is supported by the record and consistent with prior decisions. In reaching this decision, the Executive Director did not commit an error of law.

**DECISION**

After reviewing the record, hearing and considering the arguments of the parties, the Board unanimously affirms the decision of the Executive Director dismissing the certification petition filed by IBT Local 326 to represent the police officers of the unified police department of Delmar, Delaware and Delmar, Maryland.

Wherefore, the appeal is denied.
IT IS SO ORDERED.

Elizabeth D. Maron, Chairperson

Kathi Karsmitz, Member

Gregory T. Chambers, Member

Dated: August 17, 2021