

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

INTERNATIONAL BROTHERHOOD OF TEAMSTERS	:	Representation Petition
LOCAL 326,	:	
	:	<u>No. 22-06-1304 (CERT)</u>
PETITIONER,	:	
and	:	DETERMINATION OF APPROPRIATE
	:	BARGAINING UNIT AND
TOWN OF DELMAR POLICE DEPARTMENT,	:	ELECTION ORDER
	:	
RESPONDENT.	:	

APPEARANCES

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

BACKGROUND

The International Brotherhood of Teamsters, Local 326 (“Teamsters Local 326”) is an employee organization within the meaning of §1602 (7)¹ of the Police Officers’ and Firefighters’ Employment Relations Act, 19 *Del. C.* Chapter 16.

The Town of Delmar, Delaware (“Town”) is a public employer within the meaning of 19 *Del. C.* §1602 (13).²

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.

² “Public employer” or “employer” means the State or political subdivisions of the State or any agency thereof, any county, or any agency thereof, or any municipal corporation or municipality, city or town located within the State or any agency thereof, which:

On June 14, 2022, Teamsters Local 326 filed a petition to represent the bargaining unit of all certified Police Officers employed by the Town of Delmar, excluding the Chief of Police. The petition was supported by thirty percent (30%) or more of the police officers in the proposed bargaining unit, as validated by the Public Employment Relations Board (“PERB”) based upon the list of employees provided by the Town on June 24, 2022.

By letter dated June 24, 2022, the Town objected to the proposed creation of the bargaining unit asserting 1) there has been no determination that the Delaware PERB has jurisdiction to process this petition; 2) the petition improperly seeks to include a command position, namely the Lieutenant; and 3) the certification of the proposed bargaining unit will interfere with the existing bargaining unit of Delmar, Maryland police officers and is preempted by the collective bargaining agreement between that bargaining unit and the Town of Delmar, Maryland.

On August 3, 2022, Teamsters Local 326 filed its response to the Town’s objections. Included in its response, it withdrew its proposal to include the Lieutenant in the bargaining unit, without prejudice.

This determination results from a review of the documents and consideration of the arguments of the parties.

PROCEDURAL HISTORY

The history of the efforts by the Town of Delmar police officers to organize and be

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1. Upon the affirmative legislative act of its common council or other governing body has elected to come within Chapter 13 of this title;
 2. Hereafter elects to come within this chapter; or
 3. Employs 25 or more full-time employees. For the purposes of this paragraph, “employees” shall include each and every person employed by the public employer except:
 - A. Any person elected by popular vote; and
 - B. Any person appointed to serve on a board or commission.
- b. “Public employer” or “employer” includes the Town of Delmar, Delaware.

represented since 1997 is well documented in prior PERB decisions. *See International Brotherhood of Teamsters Local 326 and Town of Delmar Police Department*, REP 17-12-1131, IX PERB 8391 (Decision and Order of Dismissal, 5/17/21); affirmed by the PERB, IX PERB 8441 (8/17/21).³ In that decision, the Executive Director concluded:

... [T]he Petition for Bargaining Unit Determination and Certification of Exclusive Bargaining Representative filed by the International Brotherhood of Teamsters Local 326, is dismissed. 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 September 7, 2021, the Governor of the State of Delaware signed into law Senate Bill 181⁴ which modified both the POFERA and the Charter of the Town of Delmar, Delaware:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 1602, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1602. Definitions.

(1)(1) “Public employer” or “employer” means the State or political subdivisions of the State or any agency thereof, any county, or any agency thereof, or any municipal corporation or municipality, city or town located within the State or any agency thereof, which:

- (1)a. Upon the affirmative legislative act of its common council or other governing body has elected to come within Chapter 13 of this title;
- (2)b. Hereafter elects to come within this chapter; or
- (3)c. Employs 25 or more full-time employees. For the purposes of

³ On August 25, 2021, Local 326 filed a Writ of Certiorari in Superior Court (N21C-08-211 DJB) and also filed a Notice of Appeal of the decision in the Court of Chancery (2021-0733-PWG) seeking to reverse the Board’s decision and order of dismissal. Both actions remain pending as of the date of this determination.

⁴ 83 Del. Laws, c. 127.

this paragraph, “employees” shall include each and every person employed by the public employer except:

~~a~~.1. Any person elected by popular vote; and

~~b~~.2. Any person appointed to serve on a board or commission.

(2) “Public employer” or “employer” includes the Town of Delmar, Delaware.

Section 2. Amend Section 4 of the Charter of the Town of Delmar by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 4. Enumeration of Powers.

(c) Notwithstanding subsection (a) of this section or Section 18(a) of this Charter, all of the following apply:

(1) The Town is a “public employer” or “employer” as defined in § 1602 of Title 19 of the Delaware Code.

(2) Chapter 16 of Title 19 of the Delaware Code, including determinations made under Chapter 16 of Title 19 of the Delaware Code, applies to the Town, including in a cooperative agreement between the Town and the Town of Delmar, Maryland entered into before, on, or after [the effective date of this Act].

DISCUSSION

When the law was amended on September 7, 2021, it specifically and explicitly provided that the Town of Delmar, Delaware is a public employer under the Police Officers’ and Firefighters’ Employment Relations Act. 19 *Del. C.* §1602(13)(b). The Delaware PERB is charged with administering the POFERA; consequently, the issue of the Board’s jurisdiction was settled by statutory modification. Additionally, the charter of Delmar, Delaware was modified to clarify that it is a public employer under the POFERA and that determinations made under the statute apply “... to the Town, including in a cooperative agreement between the Town and the Town of Delmar, Maryland entered into before, on, or after the effective date of this Act.”

As the Town of Delmar, Delaware is a statutory public employer within the meaning of

§1602(13), its police officers are public employees as defined in §1602(12).⁵ The rights of public employees are set forth in §1603, Employee rights:

Employees shall have the right to:

- (1) Organize, form, join or assist any employee organization, provided that membership in, or an obligation to pay any dues, fees, assessments or other charges to, an employee organization shall not be required 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.

In order to be certified as an exclusive bargaining representative, an employee organization “... shall file a petition with the Board, accompanied by the uncoerced signatures of at least 30 percent of the public employees in the unit claimed to be appropriate, indicating a desire to be represented for the purpose of bargaining collectively with the public employer.”⁶ Teamsters Local 326 filed a certification petition on June 14, 2022, which was determined to be properly filed and accompanied by the requisite number of valid signatures as required by §1610(b).

The certification petition proposed the bargaining unit include all certified Police Officers employed by the Town of Delmar, excluding the Chief of Police. The Town objected to the inclusion of the Lieutenant in the unit asserting the Lieutenant, as the second in command to the Chief of Police, serves in a command position and is responsible for the management of operations and supervision of subordinate police officers. It further asserted that including the Lieutenant in the unit is inappropriate because it would “... interfere with management of the police department,

⁵ “Public employee” or “employee” means any police officer or firefighter employed by a public employer except those determined by the Board to be inappropriate for inclusion in the bargaining unit...

⁶ 19 *Del. C.* §1610(a).

place undue burdens on Delmar and the police department to manage their affairs, and would deprive Delmar of its discretion and authority to manage its employees and affairs.”

By responsive submission received on August 3, 2022, Teamsters Local 326 withdrew, without prejudice, its request to include the Lieutenant in the bargaining unit it seeks to represent, thereby eliminating the Town’s objection to the proposed unit composition. Consequently, the bargaining unit as amended is determined to be appropriate.

Once the appropriate bargaining unit is determined pursuant to §1611, the POFERA requires that an election be conducted by PERB to determine if the employees in that defined unit wish to be represented for purposes of collective bargaining.

(c) If the Board determines that a petition is properly supported, timely filed and covers the designated appropriate bargaining unit, the Board shall cause an election of all eligible employees to be held within a reasonable time after the unit determination has been made, in accordance with procedures adopted by the Board, to determine if and by whom the employees wish to be represented. The election ballot shall contain, as choices to be made by the voter, the name of the petitioning or certified employee organization, the name or names of any other employee organization showing written proof of at least 10 percent representation of the public employees within the designated appropriate bargaining unit, in accordance with rules and procedures adopted by the Board, and a choice that the public employee does not desire to be represented by any of the named employee organization(s).

(d) The employee organization, if any, which receives the majority of the votes cast in an election shall be certified by the Board as the exclusive representative. In any election where there are more than 2 choices on the ballot and none of the choices receives a majority of the votes cast, a run-off election shall be conducted. The ballot in the run-off election shall contain the 2 choices on the original ballot that received the largest number of votes.

The statutory conditions have all been met. An election will be conducted pursuant to PERB Rule IV, Election Procedures.

Finally, the Town’s asserts this certification petition is pre-empted by the 2021 – 2024 collective bargaining agreement between Teamsters Local 326 and the Town of Delmar,

Maryland. The Town's reliance on 19 *Del. C.* §1611(b) has without basis in the POFERA. The statute states:

(b) Where an employee organization has been certified as the exclusive representative, a group of employees within the bargaining unit may file a petition with the Board for decertification of the exclusive bargaining representative. The petition must contain the uncoerced signatures of at least 30 percent of the employees within the bargaining unit and allege that the employee organization presently certified is no longer the choice of the majority of the employees in the bargaining unit. If a lawful collective bargaining agreement of no more than 3 years' duration is in effect, no petition shall be entertained unless filed not more than 180 days nor less than 120 days prior to the expiration of such agreement. A decertification petition also may be filed if more than 1 year has elapsed from the date of certification of an exclusive bargaining representative and no collective bargaining agreement has been executed. *(emphasis added)*

A decertification petition is untimely if filed during the three-year term of an existing collective bargaining agreement between an employee organization representing a bargaining unit of public employees and the public employer under the Delaware Police Officers' and Firefighters' Employment Relations Act. The collective bargaining agreement relied upon by the Town is the agreement which exists between Teamsters Local 326 and the Town of Delmar, Maryland. At this point, there is no certified exclusive bargaining representative for a bargaining unit of Delmar, Delaware police officers under Delaware law. Whether the Town of Delmar, Delaware has agreed "to support and enforce" the collective bargaining agreement negotiated under the Maryland Labor Code is not dispositive of or relevant to the currently pending petition.

Notice of Bargaining Unit Determination and Election Notice will be provided with a copy of this decision to the Town of Delmar, Delaware to be posted in all areas where affected Delmar Police Officers work. PERB will schedule and conduct an election to determine whether the officers desire to be represented for purposes of collective bargaining under the Delaware POFERA.

DETERMINATION

1. By and through the modification to the Police Officers' and Firefighters' Employment Relations Act and the Charter of the Town of Delmar, Delaware on September 7, 2021, the Town of Delmar, Delaware is a public employer within the meaning of 19 *Del. C.* §1602 (13).

2. The police officers employed in whole or in part by the Town of Delmar, Delaware are public employees within the meaning of 19 *Del. C.* §1602 (12).

3. Teamsters Local 326 is an employee organization within the meaning of 19 *Del. C.* §1602 (7).

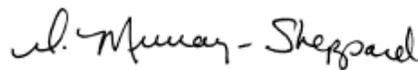
4. Teamsters Local 326 filed a certification petition seeking to represent Delmar police officers for purposes of collective bargaining on June 14, 2022.

5. The appropriate bargaining unit is determined to be "All Town of Delmar sworn police officers below the rank of Lieutenant", as the Town's objection to the inclusion of the Lieutenant in the unit was resolved by Teamsters Local 326's amended petition.

WHEREFORE, an election will be held forthwith in order to determine whether Delmar police officers below the rank of Lieutenant desire to be represented for purposes of collective bargaining under the Delaware Police Officers and Firefighters Employment Relations Act.

IT IS SO ORDERED.

DATE: August 16, 2022



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