

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

COMMUNICATIONS WORKERS OF AMERICA,	:	
DISTRICT 2-13, AFL-CIO, CLC,	:	BOARD DECISION ON REQUEST
	:	FOR REVIEW
PETITIONER,	:	
	:	
AND	:	
	:	Representation Petition
STATE OF DELAWARE, DEPARTMENT OF	:	<u>23-12-1390</u>
STATE, OFFICE OF THE STATE BANK	:	
COMMISSIONER,	:	
	:	
RESPONDENT.	:	

**RE: DOS/OSBC CHIEF BANK EXAMINERS, REVIEW EXAMINERS,
AND INVESTIGATIVE SUPERVISORS**

Appearances

*Laurence M. Goodman & Joseph B. Salamon, Willig, Williams & Davidson
for CWA District 2-13*

Khrishna Hawkins, Labor Relations Manager, DHR/DELR, for DOS/OSBC

BACKGROUND

The Delaware Department of State (“DOS”) is an agency of the State of Delaware (“State”) and is a public employer within the meaning of §1302(n) of the Public Employment Relations Act (“PERA”), 19 *Del. C.* Chapter 13 (1994). The Office of the State Bank Commissioner (“OSBC”) is a division of DOS.

Communications Workers of America, AFL-CIO, CLC (“CWA”) is an employee organization within the meaning of §1302(i) of the PERA. On February 1, 2024, CWA was certified as the exclusive bargaining representative of a bargaining unit comprised of

all full-time and regular part-time non-supervisory employees of the OSBC. DOL Case 275.

During the processing of the certification petition filed by CWA, the State opposed the inclusion of the positions of Chief Bank Examiner, Review Examiner, and Investigative Supervisor, asserting that they are statutory supervisors within the meaning of 19 *Del. C.* §1302(s). A decision was issued by the PERB Executive Director on June 12, 2024, finding the Investigative Supervisor for Non-Depository Institutions and Compliance and the Review Examiner for Depository Institutions and Examinations to be statutory supervisors within the meaning of 19 *Del. C.* §1302(s), and therefore ineligible for inclusion in the bargaining unit by operation of 19 *Del. C.* §1310(d). Chief Bank Examiners and the Review Examiner for Licensee Examinations were determined to not be statutory supervisors.¹

On or about June 16, 2024, the State requested review of the Executive Director's decision. CWA's written response to the State's request for review was received on June 26, 2024.

A copy of the complete record in this matter was provided to each member of the Public Employment Relations Board. A hearing was convened on July 25, 2024, at which time a quorum of the Board met in public session to hear and consider the State's 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.

¹ *CWA District 2-13 v. DOS, OSBC*, REP 23-12-1390, IX PERB 8867, 8887 (6/12/24)

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.

The State asserts the Chief Bank Examiners "... are front-line supervisors who are responsible for determining if the employees they supervise meet certain benchmarks for promotions," while acknowledging that the Chief Bank Examiners work as a team in making recommendations concerning career-ladder promotions. Chief Bank Examiners, the State argues, "... initiate the promotional process after independently examining the performance of subordinates." It also argued that because both Review Examiners work under the same job classification, the Executive Director erred in finding one to be a statutory supervisor and the other one not to be a supervisor under the PERA.

CWA responded that the State failed to cite any facts in the record to support its conclusion that Chief Bank Examiners are front-line supervisors. Initiation of a promotional process is not sufficient to establish supervisory status. The Executive Director reviewed the record and concluded that Chief Bank Examiners do not exercise independent authority or effectively recommend promotion of the Bank Examiners below them in the organizational chart. It further notes that the State did not reference any evidence in the record to support its argument that the Review Examiner for Licensee Examinations is a supervisory employee simply based on the classification assigned to her by DHR.

The statute requires PERB to review an employee's authority and how that

authority, if any, is exercised in order to determine whether the employee is excluded from the right to be represented for purposes of collective bargaining. The Executive Director performed a thorough review of the record, as cited throughout the decision.

Supervisory duties must be fundamental and consequential responsibilities for which an employee is held accountable in order to disqualify that employee from the collective bargaining rights guaranteed by the PERA. The record supports the Executive Director's finding that Chief Bank Examiners are not supervisory employees. As noted in their performance plans, they are primarily responsible for the oversight of the examination process and resulting reports, and the training and development of bank examiners. They are accountable to be mentors and to evaluate the performance of examiners, neither of which fall within the supervisory definition. The record supports the finding that it is the Review Examiner for Depository Institutions and Examinations who exercises supervisory responsibility for assigning work to Chief Bank Examiners and Bank Examiners.

The State's reliance on the fact that the two employees holding the title of Review Examiner work under the same job description is unavailing. Their duties are very different, and the shared job description does not negate the fact that no other employee reports to or is subordinate to the Review Examiner for Licensee Examinations. The evaluation of supervisory status is dependent upon an employee's actual responsibilities. The Review Examiner for Licensee Examinations' performance plan reveals that she supervises process, rather than other employees. The record supports the conclusion that the Review Examiner for Licensee Examinations does not have fundamental, consequential responsibility for supervising other employees.

DECISION

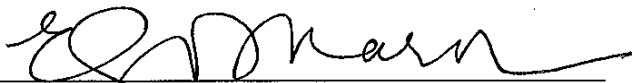
After reviewing the record, hearing, and considering the arguments of the parties,

the Board unanimously affirms the decision of the Executive Director finding the State did not meet its burden to prove that Chief Bank Examiners and the Review Examiner for Licensee Examinations are supervisory employees under the statute. The decision of the Executive Director is not arbitrary or capricious. It is supported by the record and is consistent with the PERA and prior decisions issued by this Board.

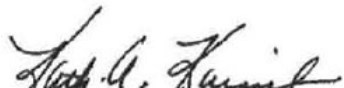
Wherefore, the decision is affirmed, and the appeal is denied. The bargaining unit certification will reflect that Chief Bank Examiners and the Review Examiner for Licensee Examinations are represented for purposes of collective bargaining.

IT IS SO ORDERED.

DATE: August 15, 2024



Elizabeth D. Maron, Chairperson



Kathi Karsnitz, Member