

**STATE OF DELAWARE**  
**PUBLIC EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF:

<b>APPOQUINIMINK EDUCATIONAL SUPPORT</b>	:	
<b>PROFESSIONALS ASSOCIATION, DSEA/NEA,</b>	:	
	:	
Petitioner,	:	<b>REPRESENTATION PETITION NO.</b>
	:	
<b>AND</b>	:	<b><u>24-09-1431 (MOD)</u></b>
	:	
<b>APPOQUINIMINK SCHOOL DISTRICT,</b>	:	<b>APPROPRIATE BARGAINING UNIT</b>
	:	<b>DETERMINATION</b>
Respondent.	:	

<b>Appoquinimink School District Constables</b>
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*Appearances*

*Patricia McGonigle, Esq., General Counsel, Delaware State Education Assn., NEA*

*Michael P. Stafford, Esq., Young Conaway Stargatt & Taylor, LLP,  
for Appoquinimink School District*

The Appoquinimink School District (“District”) is a public school employer within the meaning of §4002(q) of the Public School Employment Relations Act (“PSERA”), 14 *Del. C.* Chapter 40 (1982).

The Delaware State Education Association, NEA (“DSEA”) is an employee organization within the meaning of 14 *Del. C.* §4002(i). Its affiliated local, the Appoquinimink Educational Support Professionals Association (“AESPA”), is the exclusive bargaining representative of a unit of the District’s non-certificated instructional and student support paraeducators within the meaning of 14 *Del. C.* §4002(j). The positions in the existing bargaining unit will be referred to herein as Educational Support Professionals or “ESPs”.

On September 30, 2024, DSEA filed a representation petition on behalf of AESPA seeking to modify the existing bargaining unit of ESPs to include Constables employed by the District.<sup>1</sup> DOL Case 205(b).

By letter dated October 10, 2024, the District opposed AESPA's request to modify the existing bargaining unit, arguing there is an insufficient community of interest between the District's Constables and ESPs. The District asserted:

... [I]t is clear that a sufficient community of interest does not exist between Constables and the current members of the [AESPA]. Constables are focused on safety and security, armed, and are subject to significantly different regulatory and licensure requirements, and work under a different supervisory structure. In contrast, Paraprofessionals assist teachers with instructional, clerical and data-collection tasks within a classroom setting. They also work directly with students. The positions have different requirements, different duties, and differences in supervision. Moreover, the exclusion of Constables would not lead to the overfragmentation of the workforce.<sup>2</sup>

By letter dated October 18, 2024, AESPA responded that the existing unit of paraprofessional employees does share a sufficient community of interest to include Constables and that the District cannot meet its burden of establishing that the proposed bargaining unit is "clearly inappropriate" under the statutory criteria.

In order to resolve the issues raised, a hearing was scheduled and conducted on December 3, 2024, at which the parties were provided the opportunity to submit documents and elicit testimony through direct and cross examination of witnesses. The record was closed with the submission of written argument by the parties. This decision results from the record thus created by the parties.

## **ISSUE**

WHETHER THE CONSTABLES EMPLOYED BY THE APPOQUINIMINK SCHOOL

<sup>1</sup> The District created the Constable position in 2020.

<sup>2</sup> District Response to Petition, 10/10/24, @ p. 3

DISTRICT SHARE A COMMUNITY OF INTEREST AND ARE APPROPRIATE FOR INCLUSION INTO THE EXISTING BARGAINING UNIT OF EDUCATIONAL SUPPORT PROFESSIONALS CURRENTLY REPRESENTED BY THE APPOQUINIMINK EDUCATIONAL SUPPORT PROFESSIONALS ASSOCIATION, DSEA/NEA?

### **APPLICABLE STATUTORY PROVISION**

#### **§4010. Bargaining unit determination.**

- (d) In making its determination as to the appropriate bargaining unit, the Board or its designee shall consider such factors as the similarity of duties, skills and working conditions of the employees involved; the history and extent of the employee organization; the recommendation of the parties involved; the effect of overfragmentation of bargaining units on the efficient administration of government; and such other factors as the Board may deem appropriate...

### **FACTS**

#### **Scope and Description of Constables:**

The position overview for District Constables states:

Under the direction of the Building Principal, District Administrators, and Lead Constable, Constables will be armed and will be assigned to an individual school or campus. They will play an important role in supporting school administrators to ensure the safety and security of the students and staff in their individual buildings.<sup>3</sup>

The Job Description includes a summary of essential duties and responsibilities of a Constable, with the proviso that the list is not exhaustive, and that other work may be assigned when deemed appropriate. The list includes:

- Follows directives of the Lead Constable, building, and District Administrators.
- Serves as the lead on the building/District comprehensive safety plans. Works with building/District Administrators and staff in the event of an actual crisis.
- Assists building administrators with fire drills, lock down drills, and bomb threats.

<sup>3</sup> District Exhibit 1.

- Monitors the interior and exterior of the school building and campus before, during and after school to ensure the safety and welfare of student, staff, volunteer and visitors, and to ensure the security of school facilities and assets. Is responsible for validating that exterior doors are secure throughout the school day.
- Provides crowd control in hallways, parking lots, and cafeteria, playground and or gathering spaces and intercedes in fights and other disturbances.
- Watches for disturbances, fights, unauthorized visitors and/or criminal activity. Assesses danger and intervenes to halt or prevent fights, disturbances and diffuses threatening or confrontational situations between students and others.
- Help to ensure order is restored and students are unharmed.
- Assists building administrators with student incidences, including but not limited to bullying, fights, thefts, weapons and substance abuse.
- May give guidance to district administrators with investigations as needed.
- Maintains familiarity with the Student Discipline Code.
- Communicates with students and staff to discuss altercations, behavior and/or progress, and to provide reinforcement of expected behavior.
- Assists SROs<sup>4</sup> and local and state law enforcement agency when required.
- Escorts unauthorized personnel from the school campus as needed.
- Attend ongoing training to maintain skills and safety practices.
- Performs other duties as assigned.
- Manage and maintain building Navigate360 and RAVE platforms.
- Monitor the building camera system periodically throughout the day.
- Coordinate all communications/activities with community police agencies.

The Lead Constable testified a subsequent portion of the Job Description, entitled “Leadership”, applied to him and not to rank and file Constables. He also testified that the Constable Job Description would be updated soon.

While the Constables are primarily responsible for building safety and security, they also spend a significant portion of their daily working hours interacting with students and staff in their assigned building. The nature of that student interaction varies based on whether they are assigned to an elementary, middle or high school. Constables serve as role models and mentors for students and may assist with student engagement at the request of a teacher. Constables monitor students arriving and departing on buses in the morning and afternoon. They also monitor the cafeterias

<sup>4</sup> School Resource Officers, who are sworn law enforcement officers assigned to individual schools.

and hallways during the school day. They may be asked to monitor students intermittently in response to an unanticipated need, e.g., a bus is delayed. They also are asked to work at after-school activities such as athletic events and back-to-school nights. They are encouraged to build positive relationships with students, staff and the school community.

### **POSITIONS OF THE PARTIES**

#### **Appoquinimink School District:**

The District asserts the Constables and ESPs do not share a significant community of interest because of the differences in their duties, skills and working conditions. It asserts that the differences in the prerequisites to attain and maintain their positions differentiate the positions. ESPs are required to have a high school diploma, have either a minimum of 60 college credits or a passing ParaPro score, and have a State Paraeducator Permit. Constables must possess (or be eligible for) certification by the State Board of Examiners for Constables, be licensed to carry and use a firearm, chemical spray and handcuffs, have First Aid and CPR certifications, and possess the physical stamina required to patrol school campuses and District properties.

It also differentiates their roles in the schools. ESPs assist teachers, the District argues, by performing tasks that promote student learning, including working with students individually and in small groups to reinforce instruction and monitoring student academic performance. ESPs are responsible for instructional and classroom management, as directed by the classroom teacher. They do not carry guns, chemical spray or handcuffs.

Constables, on the other hand, are armed, carry pepper spray and handcuffs, have the power to detain individuals, and are focused on ensuring the safety and security of the school, surrounding grounds, and everyone therein. They are required to be trained and comply with the District's Use of Force Policy, and to document if force is necessary in the course of their work. They do not work with students on academic tasks or collect data, implement student behavioral support plans

or work at the direction of a classroom teacher. They are assigned to monitor hallways and the cafeteria in order to provide security during the school day. Constables are required to break up fights; ESPs, including Behavioral Interventionists, are not.

Appoquinimink Educational Support Professionals Assn., DSEA/NEA:

AESPA argues the District has failed to meet its burden to establish that modifying the AESPA bargaining unit to include the Constables is “clearly inappropriate” under the PSERA. It notes that Constables, like ESPs, are expected to interact with students while they are in the building. The Chief Constable testified that Constables do far more than provide security and building safety, as they are an important part of the staff, serving as role models and positive law enforcement presence for students.

It disputes that the difference in required licensing and certifications between Constables and ESPs support the conclusion that the proposed modification is inappropriate. AESPA notes the differences between bargaining unit positions in the professional bargaining unit, which includes Teachers, Nurses, Speech Pathologists, and Occupational Therapists, all of which have different required licensing and certifications, which must be maintained as a condition of continued employment.

The AESPA argues that creating a separate bargaining unit consisting solely of the District’s twenty-two Constables would lead to unnecessary duplication in negotiations, unit governance and contract administration. It is concerned that creating a small, separate bargaining unit would make it difficult to pull together a team for bargaining, filling union leadership roles, and creating a member-representation team for purposes of representing fellow Constables in grievances or other meetings with administration.

**DISCUSSION**

The Public School Employment Relations Act grants public school employees the right to

organize for purposes of collective bargaining and to be represented by the exclusive bargaining representative of their choosing, as certified through an election process administered by the Public Employment Relations Board (“PERB”). 14 *Del. C.* §4003.

PERB has statutory authority to determine the composition of an appropriate bargaining unit of public school employees for purposes of collective bargaining. 14 *Del. C.* §4002(a); 4010. The determination of an appropriate bargaining unit results from a factual analysis of the specific facts and circumstances surrounding a request to create or modify a bargaining unit. There is, however, no bright line standard that resolves questions of appropriateness in every case.

As cited in *RE: Odyssey Charter School Education Assn., DSEA/NEA v. Odyssey Charter School*,<sup>5</sup> PERB looked to the decisions of the National Labor Relations Board for guidance:

[I]n exercising its discretion to determine appropriate units, the Board must steer a careful course between two undesirable extremes: If the unit is too large, it may be difficult to organize, and when organized, will contain too diversified a constituency which may generate conflicts of interest and dissatisfaction among constituent groups, making it difficult for the union to represent; on the other hand, if the unit is too small, it may be costly for the employer to deal with because of repetitious bargaining ... jurisdictional disputes and wage whipsawing, and may even be deleterious for the union by too severely limiting its constituency and hence its bargaining strength. The Board’s goal is to find a middle-ground position, to allocate power between labor and management by ‘striking the balance’ in the appropriate place, with units that are neither too large nor too small.<sup>6</sup>

Delaware PERB has held a proposed bargaining unit need only be an appropriate unit under the criteria of §4010(d); it is not necessary that the proposed unit be the most appropriate unit.<sup>7</sup> The petitioned-for bargaining unit is examined first, and if it is determined to be an appropriate unit, the examination ends. This process is consistent with the right of self-determination granted

<sup>5</sup> REP 18-08-1156, IX PERB 8017, 8024 (2018).

<sup>6</sup> *Park Manor Care Center, Inc., and Local 1199, Drug, Hospital and Health Care Employees Union 10*, 305 NLRB 872, 876 (1991).

<sup>7</sup> *Lake Forest Education Association v. Board of Education of Lake Forest School District*, REP 91-03-060, I PERB 651, 655 (1991).

to public school employees at 14 *Del. C.* §4003. A public school employer who challenges the appropriateness of a petitioned-for unit bears the burden of establishing the petitioned-for unit is clearly inappropriate under the criteria of §4010(d). It is not sufficient to challenge the unit by asserting there may be an alternative or more appropriate unit.<sup>8</sup>

The statute does not require that all members of a bargaining unit perform identical functions.<sup>9</sup> In determining whether positions share the requisite community of interest, this Board has again adopted NLRB guidance:

Factors which warranted consideration in determining the existence of substantial differences in interests and working conditions include: a difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions ...; the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining. *Kalamazoo Paper Box Corporation*, NLRB, 136 NLRB 10, 49 LRRM 1715 (1962).<sup>10</sup>

A determination as to the appropriateness must be tailored to the unique facts and circumstances presented by the parties.<sup>11</sup> The analysis must begin and end with the application of the §4010(d) criteria:

#### Similarity of Duties, Skills and Working Conditions

There are many similarities in the duties and working conditions of Constables and ESPs. They all work a 7.5 hour workday, with a 30 minute lunch. They have the same employment benefits (healthcare, paid leave, pensions, etc.). When they work summer school, Constables and

<sup>8</sup> *Odessey Charter*, at p. 8023.

<sup>9</sup> *In RE: Caesar Rodney School District Instructional Aides*, Rep. Pet. 92-03-070, II PERB 829, 831 (1992); *FOP Lodge 7 & University of Delaware*, REP 00-10-292, III PERB 2137, 2146 (2001), *affirmed* III PERB 2223, 2226 (2001); *Odessey Charter*, at p. 8026.

<sup>10</sup> *FOP Lodge 7*, *Supra*.

<sup>11</sup> *In RE: Kent County Vo-Tech Special Education Instructional Aides*, REP 91-06-065, I PERB 737, 743 (1992).



ESPs are paid at the same hourly rate.<sup>12</sup> They are part of the school team and are responsible for fostering and maintaining a positive and safe learning environment. They interact with students throughout the school day, have authority to intercede if there are disagreements between students, and are expected to provide support to students in successfully navigating their days.

Constables and ESPs are subject to daily direction by building level administration and faculty, who jointly evaluate their performance with another administrator. They work in the same buildings and are both responsible for monitoring arrivals and departures from the schools and student safety during hallway transitions.

There is no question that on a day-to-day basis, building level staff provide direction to Constables, much as classroom teachers provide direction to ESPs. Constables and ESPs are also under the supervision of Administrators, i.e., the Chief Constable and Building Principal (who may assign ESP evaluation duties to Assistant Principals)<sup>13</sup>, respectively.

Although Constables do carry firearms, chemical spray and handcuffs, testimony established that they are seldom, if ever, used. The expectation of Constables, like ESPs, is that they will employ de-escalation techniques which do not require adults to employ physical contact with students. Testimony established that both Constables and ESPs working in special programs receive Safety-Care training, for which they are required to be annually recertified.<sup>14</sup> Further, Constables are not the only employees in the school who are expected to intervene to quell disruptions. Neither Constables nor ESPs are responsible for assessing or administering discipline to students, and both are required to refer incidents to a building administrator for purposes of investigation.

On balance, the differences in the responsibilities of Constables and ESPs, and their relative

<sup>12</sup> TR p. 101-102; 132; 157.

<sup>13</sup> TR p. 63.

<sup>14</sup> TR p. 155-156.

licensing and certification requirements, are not so dissimilar as to support the conclusion that a combined bargaining unit is not appropriate under the PSERA.

#### History and Extent of Organization

Constables have never been represented for purposes of collective bargaining in the District, as the position was recently created. The District currently negotiates with three bargaining units represented by DSEA affiliates for its professional employees, its educational support professionals, and its food service workers. The District also negotiates with a fourth bargaining unit of custodians, groundskeepers and painters represented by AFSCME Local 581. This criterion does not impact the determination of appropriateness in this case, except to the extent that it may impact overfragmentation.

Consideration of the history of organization does not support a conclusion that the modification of the AESPA bargaining unit to include Constables would result in the creation of an inappropriate unit under the PSERA.

#### Recommendations of the Parties

AESPA filed the petition seeking to modify the unrepresented Constables into the existing bargaining unit of ESPs. The District opposed the modification and argued creating a new and separate bargaining unit better meets the statutory criteria for an appropriate unit. Because the recommendations are contrary, this consideration does not affect the required determination of appropriateness.

#### Effect of Overfragmentation on Efficient Administration of the Schools

The efficient administration of the schools requires this Board to certify the fewest number of bargaining units as is consistent with the right of public school employees to organize and be represented for purposes of collective bargaining by the employee organization of their choosing.

The statute defines the context in which overfragmentation must be considered, i.e., the effect of overfragmentation on the efficient administration of government.

The fifth separate bargaining unit the District asserts is the more appropriate would include only twenty-two Constables, a much smaller group than the other units. The District relies on the testimony of the DSEA UniServ Director (who serves the three DSEA bargaining units of Appoquinimink employees) who also serves bargaining units in other districts to support its assertion that bargaining units with 50 or fewer employees are not indicative of overfragmentation. There is no evidence, however, that any of the bargaining units of the employees of this District have 50 or fewer employees.<sup>15</sup> The Association's concern that creating a small bargaining unit consisting would be a strain on both the limited number of Constables, as well as on the District's ability to provide services efficiently and effectively if the negotiating team, shop stewards, and union officers were pulled periodically from their duties to participate in collective bargaining and related obligations is reasonable.

Consistent with the standard of creating the fewest units as is consistent with employee rights under the PSERA, this criterion favors a finding that creating a fifth bargaining unit is not appropriate under the statutory criteria.

Based on the totality of the record, the differences in duties, skills and working conditions of Constables and Educational Support Professionals are not sufficient to establish that the employees do not share a community of interest. Constables and ESPs work standard school days. They are required to maintain certifications annually which are issued by State regulators as a condition of their continued employment. Constables and ESPs are subject to direction and review by a building level administrator in the school to which they are assigned and are also subject to

<sup>15</sup> The Association stated, without refute, the existing bargaining unit of Professional Employees includes approximately 1,100 teachers and other professionals; the AESPA unit currently includes more than 350 employees; and there are 130-140 employees in the Food Service bargaining unit.

direction by a district-level administrator who is directly charged with overseeing their functions. Both Constables and ESPs provide support to students, monitoring arrivals and dismissals each day (as well as in the hallways and cafeteria) and are held accountable for providing a safe environment which supports student learning. They interact daily with students and serve as responsible, caring, adult role models in the schools. Neither are directly responsible for educational outcomes, but Constables and ESPs, by their presence and supportive interaction with students, enhance the culture and environment in the schools.

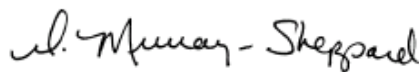
### **DECISIONS**

Based on the record created by the parties, review and consideration of the arguments presented by the parties, and application of the PSERA, the proposed modification of the bargaining unit of “full-time non-certificated instructional and student support paraeducators” currently represented by the Appoquinimink Educational Support Professionals Association, DSEA, NEA, to include Constables, is an appropriate unit within the meaning of 14 *Del. C.* §4010(d).

**WHEREFORE**, an election shall be scheduled and conducted forthwith by the Public Employment Relations Board among the Constables in order to determine whether they wish to be represented by AESPA for purposes of collective bargaining.

**IT IS SO ORDERED.**

DATE: April 14, 2025



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