

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 81, LOCAL 3472,	:	
	:	
	:	REPRESENTATION PETITION
	:	NO. <u>25-05-1460 (MOD)</u>
Petitioner,	:	
	:	
	:	DECISION AND ORDER
AND	:	OF DISMISSAL
	:	
UNIVERSITY OF DELAWARE,	:	
	:	
Respondent.	:	

RE: Operational Support Agents

Appearances

Lance Geren, Esq., O'Donoghue & O'Donoghue, for AFSCME LU 3472

Robert C. Nagle, Esq., Fox Rothschild LLP, for University of Delaware

The University of Delaware ("University") is a public employer within the meaning of §1302(p) of the Public Employment Relations Act ("PERA", 19 *Del. C.* Chapter 13).

The American Federation of State, County, and Municipal Employees, AFL-CIO, Council 81 ("AFSCME") is an employee organization within the meaning of 19 *Del. C.* §1302(i). AFSCME, through its affiliated Local 3472, is the exclusive bargaining representative of the University's "skilled trades" bargaining unit (as it is commonly referred to by the parties) within the meaning of 19 *Del. C.* §1302(j), as certified by the Governor's Council on Labor in DOL Case 16.

The University and AFSCME Local 3472 have a long-standing collective bargaining relationship and are parties to a current negotiated agreement with a term of January 1, 2024 through June 30, 2026.

On or about May 1, 2025, AFSCME Local 3472 filed a representation petition seeking to modify the existing skilled trades bargaining unit to include the position of Operational Support Agent (“OSA”).

By letter dated May 16, 2025, the University objected to the inclusion of the Operational Support Agents in the existing bargaining unit, asserting OSA’s do not share a community of interests with the skilled trade positions as required by 19 *Del. C.* §1310(d), and that AFSCME did not provide a sufficient basis for modifying the unit, pursuant to PERB Rule 3.4(8). AFSCME Local 3472 denied the University’s objections.

A hearing was scheduled and conducted on July 31, 2025, 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.

ISSUE

WHETHER OPERATIONAL SUPPORT AGENTS EMPLOYED BY THE UNIVERSITY OF DELAWARE SHARE A COMMUNITY OF INTERESTS WITH THE BARGAINING UNIT POSITIONS CURRENTLY REPRESENTED BY AFSCME LOCAL 3472 AND/OR WHETHER THIS PETITION IS PROPERLY FILED UNDER PERB REGULATIONS.

FACTS

Article II, Recognition, of the current collective bargaining agreement¹ defines the existing

¹ Joint Exhibit 1, p. 1

bargaining unit to include all employees in the following job classifications, including those hired into trainee positions to support any of these classifications:

Access Control Technician	Certified Refrigeration Technician	Senior Vehicle Technician
Access Control Technical Team Leader	Instrument Controls Mechanic	Sports Turf Technician
Arborist	Insulation Technician	Sports Turf Technician Assistant
Arborist Helper	Locksmith	Utility Mechanic/Dining
Boiler Mechanic	Maintenance Mechanic A	Utility Operator/Mechanic
Boiler Mechanic Technical Team Leader	Maintenance Mechanic B	Utility Plant Systems Instrument Control Technician
Building Systems Technical Team Leader	Operations Mechanic	Utility Plant Systems Technical Team Leader
Cabinetmaker	Painter	Network Technician
Carpenter	Pest Control Assistant	Senior Network Technician
Certified HVAC Technician	Pest Control Specialist	Vehicle Technician
Certified Plumber	Plasterer/Mason	Vehicle Technician Helper
Custom Upholsterer	Plumber	Welder/Boiler Mechanic
Electrician	Roofer	Skilled Trades Helper – Carpenter
Electronics Repairer	Electrician Technical Team Leader	Skilled Trades Helper – Electrical
Filter Changer	Electronics Repairer Technical Team Leader	Skilled Trades Helper – Electronics Repairer
Fire Door Inspector	Senior Heavy Refrigeration Mechanic	Skilled Trades Helper – HVAC
Fire Suppression Technician	Senior Insulation Technician	Skilled Trades Helper – Locksmith
Grounds Equipment Mechanic	Locksmith Technical Team Leader	Skilled Trades Helper – Plumber
Grounds Technician	Painter Technical Team Leader	Skilled Trades Helper - Boiler
Heavy Refrigeration Mechanic	Senior Plumber	
HVAC Technical Team Leader	Senior Roofer	

The bargaining unit positions are employed in multiple departments throughout the University campus.

The University employs five (5) Operational Support Agents (“OSAs”) in its Building and Maintenance Operations (“M&O”) Department, within the Office of Facilities, Real Estate and

Auxiliary Services. The OSAs report directly to the Customer Service Supervisor, who reports to the Associate Director of Facilities Information Services.² OSAs are not new to the University, and previously worked under the job title of “dispatcher”.

The OSA position description³ states, in relevant part:

CONTEXT OF THE JOB:

Under the general supervision of the Customer Service Supervisor, *[the OSA]* provides customer service and operational support for Facilities, Real Estate and Auxiliary Services (FREAS). The primary role is to interpret customer needs and process work requests and coordinate work activities of FREAS departments such as M&O, Custodial, Grounds, and Movers. The incumbent also researches and provides information on a wide range of FREAS-related inquiries from customers, management, and staff. Independent judgment and discretion are required to resolve routine and non-routine issues.

...

MAJOR RESPONSIBILITIES

- Communicate and interact effectively in a diverse University community of students, faculty, staff, mechanics, technicians, managers, visitors, contractors, and others.
- Receive and process requests for service from the University community via phone, electronic forms, email, two-way radio, and walk-up customers.
- Gather accurate, complete, pertinent information regarding service requests or other inquiries.
- Monitor calls for maintenance emergencies such as power outages, gas leaks, floods, etc. Handle emergencies appropriately per Standard Operating Procedures (SOP) and use good judgment when emergent situations don’t have SOP.
- Use sound judgment and reference materials to determine the proper response. Dispatch technicians and/or call managers when appropriate.
- Utilize Computerized Maintenance Management System (CMMS) to create work orders and enter pertinent information. Research CMMS data and provide information to customers or management as assigned.

² Employer Exhibit 1.

³ Joint Exhibit 2 includes five separate but identical job descriptions, differentiated only by “Position Number” and the name of the “Incumbent”.

- Research Miss Utility (MU) locate requests, create work orders if appropriate, update the MU system and interface with requestors such as contractors and project managers.
- Process Facilities Notification System (FNS) requests into notifications to the University community. Utilize FNS to stay abreast of projects that may cause customer calls.
- Reconcile after hours EM, Boiler Base, and Call-In logs into work orders or other appropriate summary for managers.
- Monitor request for billing-related issues such as reimbursable work, RFS requirements, purpose codes and labor/material charges as they pertain to FREAS response and work orders.
- Write, review and/or update SOPs and other documentation.
- Performs lead role on a primary function such as trainer; contact & reference administrator; Customer Response Matrix (CRM) Administrator.
- Performs support role on primary functions not assigned as the lead.
- Provides other operational support such as staffing the UDPD Command Post for events such as football games and Commencement.
- Creates and/or reviews, then publishes notification requests and updates in the Facilities Notification System (Creator-level system privileges). Communicates with requestors and customers as needed to ensure accurate and properly disseminated information.
- Provides input for recruitment and initial 90-day assessment of the office's miscellaneous wage, work study, and regular student workers.
- Perform other job-related duties as assigned. ⁴

Operational Support Agents serve a customer service function for facilities, maintenance, and operations at the University. They receive and triage service requests for maintenance and repairs from students, faculty, staff, and other customers. They staff intake of emergency calls from 6:30 a.m. through 11:00 p.m. week days. ⁵ Requests for service can be filed through email, telephone or a web-based service portal. They also coordinate utility stakeouts to ensure that any

⁴ Joint Exhibit 2.

⁵ From 11:00 p.m. until 6:30 a.m. on weekdays, boiler operators receive and triage emergency calls. Transcript ("TR") p. 117. OSA Cara Barr also testified that she works a 12-hour shift from 8:00 a.m. to 8:00 p.m. on weekends, during which it is assumed she handles emergency calls. TR, p.

work which requires digging does not occur near underground electrical lines.

OSAs handle all service requests, coordinate the work of plumbers and the electrical shop and boiler operators, as well as other groups of trades employees. Typically, they route all service requests either by completing and placing a “ticket” into the Computerized Maintenance Management System (“CMMS”) or by dispatching mechanics to respond immediately to emergency situations. OSA’s work in the General Services Building and each OSA has her own cubicle, computer, and is assigned a headset. Their responsibilities are primarily administrative in nature.

POSITIONS OF THE PARTIES

AFSCME Local 3472:

AFSCME argues that the OSAs are eligible for representation under the PERA, and in seeking representation, have provided compelling reasons for being permitted to be modified into the existing bargaining unit represented by AFSCME Local 3472. It notes that the standards to support a modification petition before the Delaware PERB are different than those of the National Labor Relations Board. The modification petition is properly filed under the PERB rules and precedent.

AFSCME asserts that OSAs share a community of interests with the existing bargaining unit positions. While their specific duties admittedly differ from those of skilled trades positions, the bargaining unit contains a variety of positions which require different certifications and licenses, use a variety of trade specific tools and equipment, and perform a wide variety of functions. There is no prior history of representation for OSAs. These positions do not share a greater community of interests with any of the other bargaining units at the University and creating a sixth unit with only five employees would violate the statutory prohibition on overfragmentation.

For these reasons, AFSCME requests the petition be granted and that a representation

election be conducted among the OSAs.

University of Delaware:

The University argues the modification petition is not properly brought to PERB because it does not present any compelling reason to modify the bargaining unit at this time. There has been, it asserts, no substantial change in the duties or working conditions of the OSAs or other bargaining unit position and the OSA is not a new position.

It further argues that the petition must fail because the OSAs do not share a community of interests with the represented skilled trades positions. The work of the OSAs is primarily clerical and customer service oriented. They are not trained to provide maintenance or repair work; do not perform manual labor; do not wear specialized protective equipment; do not perform skilled functions which require training, certification and/or licensing, and the use of specialized trade specific tools; and do not report within the same supervisory structure.

For these reasons, the University requests the petition be dismissed.

DISCUSSION

Propriety of the Modification Petition:

The Public Employment Relations Act grants public employees the right to organize for purposes of collective bargaining and to be represented by an exclusive bargaining representative of their choosing, as certified through an election process administered by the Public Employment Relations Board. 19 *Del. C.* §1303.

This Board has a long history of decisions holding public employees in Delaware have a fundamental statutory right to be represented for purposes of collective bargaining.⁶ The statutory

⁶ Del. Public Employees Council 81, AFSCME, AFL-CIO, Local 439 v. University of Delaware, Del.PERB, Rep. Pet. 95-04-126 (1995).

right extends to OSAs as public employees, as it extends to University employees in the bargaining units represented by AFSCME Local 3472, and those represented by AFSCME Local 439 (non-skilled employees and bus drivers), FOP Lodge 7 (University Police) and the AAUP (faculty).

Rule 3.4(8) of the Board's Rules and Regulations states:

3.4(8) Modification of a Bargaining Unit: In the event there is a substantial modification in the nature of the duties and working conditions of a position within the bargaining unit, or a new position is created which is not covered by the existing bargaining unit definition, or there is some other compelling reason for the Board to consider modifying the bargaining unit, the public employer and/or the exclusive bargaining representative may file a petition with the Board which shall include the following:

- (a) The name of the employer;
- (b) The name of the exclusive representative;
- (c) A description of the bargaining unit;
- (d) A brief statement explaining the reasons for a modification of the bargaining unit.

In applying Rule 3.4(8), the Board has held:

PERB Regulation 3.4(8) has been applied in circumstances where the employer and/or the exclusive representative of an existing unit seek to change the unit definition, through the addition or deletion of positions or general classifications of positions. A modification under Regulation 3.4(8) is precipitated by one of three circumstances; 1) there is a significant change in the duties and working conditions of "a position within the bargaining unit", 2) a new position is created, or 3) there is some other compelling reason for the PERB to consider modifying the designated unit. Permitting only the employer and the exclusive representative to file modification petitions is consistent with the transfer of rights which occurs once employees have chosen to be represented.

Regulation 3.4(8) does not apply, however, to a petition filed by an unrepresented group of employees seeking representation, even where the employees desire to be represented within an existing unit. It is the right of unrepresented employees to choose their representatives.

The fact that a group of unrepresented employees have filed a proper petition seeking representation, consistent with their statutory rights, is

sufficient to cause the PERB to consider the appropriateness of their inclusion in the desired bargaining unit.⁷

Appropriateness of proposed bargaining unit modification:

PERB has statutory authority to determine the composition of an appropriate bargaining unit of public employees for purposes of collective bargaining.

- (d) In making its determination as to the appropriate bargaining unit, the Board or its designee shall consider community of interests including such factors as the similarity of duties, skills and working conditions of the employees involved; the history and extent of the employee organization; the recommendations 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. The Board or its designee shall exclude supervisory employees from all appropriate units created subsequent to September 23, 1994.⁸

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.

The Delaware PERB has held a proposed bargaining unit need only be an appropriate unit under the criteria of §1310(d); it is not necessary that the proposed unit be the most appropriate unit.⁹ 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 to public employees. 19 *Del. C.* §1303.

A public 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 §1310(d). It is not sufficient to challenge the unit by asserting there may be an alternative or more appropriate

⁷ *In RE: Battalion Chiefs of the City of Wilmington Fire Department*, Del.PERB, Rep. Pet. 95-06-142 (1995, III PERB Binder 1253).

⁸ 19 *Del. C.* §1310. Bargaining Unit Determination.

⁹ *Lake Forest Education Association v. Board of Education of Lake Forest School District*, REP 91-03-060, I PERB 651, 655 (1991).

unit.¹⁰

The statute does not require that all members of a bargaining unit perform identical functions.¹¹ In determining whether positions share the requisite community of interests, 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).¹²

A determination as to the appropriateness must be tailored to the unique facts and circumstances presented by the parties.¹³ The analysis must begin and end with the application of the §1310(d) criteria.

Similarity of Duties, Skills and Working Conditions

The OSA job description begins:

... The primary role is to interpret customer needs and process work requests and coordinate work activities of [*Facilities, Real Estate and Auxiliary Services*] departments such as [*Maintenance Operations*], Custodial, Grounds, and Movers. The incumbent also researches and provides information on a wide range of FREAS-related inquiries from customers, management, and staff.

OSAs report directly to the Customer Service Supervisor. The Building Maintenance and

¹⁰ *In Re: Odyssey Charter School Education Assn., DSEA/NEA v. Odyssey Charter School*, REP 18-08-1156, IX PERB 8017, 8023 (2018).

¹¹ *In RE: Caesar Rodney School District Instructional Aides*, Rep. Pet. 92-03-070, II PERB 821, 831 (1992); *FOP Lodge 7 & University of Delaware*, REP 00-10-292, III PERB 2137, 2146 (2001), *affirmed* III PERB 2223, 2226 (2001); *Odyssey Charter*, at p. 8026.

¹² *FOP Lodge 7*, *Supra*.

¹³ *In RE: Kent County Vo-Tech Special Education Instructional Aides*, REP 91-06-065, I PERB 737, 743 (1992).

Operations organizational chart¹⁴ places the OSAs on the administrative side of the Department, reporting to the Associate Director of Facilities Information Services. There are no positions which are currently represented for purposes of collective bargaining on the administrative side of the organization.¹⁵ The skilled trades positions, on the operational side of the organizational chart, all report up through two General Managers to the Associate Director of Maintenance and Operations.¹⁶ All of the listed positions fix and/or repair systems, facilities, and/or equipment on University property.

All the skilled trades employees work out of shops located throughout campus. They all work with tools and generally perform mechanical work of some type.¹⁷ Many skilled trades employees are required to have licenses and/or certifications which are issued by external regulatory agencies. They are required to maintain their licenses and/or certifications as conditions of continued employment by the University. They perform primarily skilled manual tasks and are required to wear protective equipment while performing their work. They perform preventative maintenance and repair work campus wide.¹⁸

The OSAs have offices in the University's General Services Building. They are neither licensed nor required to hold certifications as a condition of employment and they are not required to wear protective equipment while performing their duties.

OSA Cara Barr testified that the OSAs are, "... like the hub of Facilities".¹⁹ They primarily

¹⁴ University Exhibit 1.

¹⁵ TR, p. 21-22.

¹⁶ University Exhibit 2. The organizational chart does not include trades people working the power plant, grounds, or information technology (IT) departments, all of which also include some bargaining unit employees, TR. p. 23 -26.

¹⁷ TR, p. 36

¹⁸ TR, p. 40 – 71.

¹⁹ TR, p. 119.

process requests for services and create and monitor work orders in the CMMS system, which direct the skilled trades employees to perform work in response to service requests. The work orders are issued either electronically to the trades employees on iPads or by two-way radio. She testified that she might issue work orders to door technicians (formally “access control technicians”), boiler mechanics, carpenters, HVAC technicians, plumbers, electricians, heavy refrigeration mechanics, locksmiths, maintenance mechanics, painters, pest control, and roofers. OSAs do not generally issue work orders for grounds or IT work.²⁰

The OSAs do not repair, maintain, build, install, or restore any part of equipment on the University campus. While the OSAs communicate with the skilled trades employees during the course of their work, they do not work with them in the workplace. They may be aligned with the skilled trades positions in the bargaining unit and may be required to know the types of work individual trades perform, but they do not perform similar work.

The Associate Director of Facilities Information Systems began his career as dispatcher. As he advanced through a series of promotions, he remained responsible for oversight of the OSA function, which he described in his testimony:

The job’s primarily answering phones, emails, electronic forms ... whatever multiple ways we have for the campus community to communicate with facilities, our customer service arm. That’s what they do.

And then they prioritize that to see what can be planned and put in the bucket for later, so to speak, versus work that has a speedy element. There’s a leak or something urgent, they’ll dispatch those out. The bulk of the job is, and the remainder of the job, is various administrative and clerical things like creating the work orders, updating our building contact lists. We do a facilities notification system that publishes information to the campus community. So a lot of electronic documentation.²¹

²⁰ TR, p. 125 – 131. Both Grounds and IT positions are included in the skilled trades bargaining unit.

²¹ TR, p. 88 – 89.

. . . Their key decision point is, is this [*a priority*] ... and we have a reference chart for priorities. So we can say, is this something that has to get attention now, you know, one of our “speedies”. In an urgent issue, or is it something that can wait, so to speak, right? So the jobs that can wait, generally, we’re thinking of corrective maintenance work versus, you know, service call, immediate stuff... A lot of that goes to the planners.²²

He clarified that the work that is not urgent goes into the “bucket” for corrective maintenance and the planners and schedulers work with the operations managers to schedule that work.²³

History and Extent of Organization

The Operational Support Agents have never been represented for purposes of collective bargaining. This criterion does not affect the required determination of appropriateness.

Recommendations of the Parties

AFSCME filed the petition seeking to modify the unrepresented OSAs into the existing bargaining unit of skilled trades positions. The University opposed the proposed modification, as summarized herein. Because the recommendations are contrary, this consideration does not affect the required determination of appropriateness.

Effect of Overfragmentation on Efficient Administration of Government

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

²² TR, p. 97.

²³ TR, p. 98.

administration of government.

As cited in *RE: Odyssey Charter School Education Assn.*²⁴, PERB looks 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 interests 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.²⁵

There are only five OSAs who are seeking to be represented. Creating a standalone unit of five employees would undoubtedly be inefficient for the OSAs, AFSCME and the University in bargaining. While a consideration of overfragmentation may favor finding the modification appropriate, it is not sufficient to overcome consideration of the similarities of duties, skills and working conditions.

The PERA provides employees with the right to organize and be represented for purposes of collective bargaining. 19 *Del. C.* §1301. The right to be represented, however, is limited by the requirement that the bargaining unit designated for such representation be appropriate. 19 *Del. C.* §1310. An employee representative can only become the exclusive bargaining representative of an appropriate bargaining unit. 19 *Del. C.* §1304.

The statute requires PERB to determine the appropriate bargaining unit and sets forth the

²⁴ *Odyssey Charter*, at p. 8024.

²⁵ *Park Manor Care Center, Inc., and Local 1199, Drug, Hospital and Health Care Employees Union 10*, 305 NLRB 872, 876 (1991).

criteria to be considered. 19 *Del. C.* §1310. Based on consideration of this record, the differences in duties, skills and working conditions of Operation Support Agents and the skilled trades positions in the existing bargaining are sufficient to establish that the employees do not share a community of interests, within the meaning of 19 *Del. C.* §1310(d). There are certainly other employees of the University with whom the Operation Support Agents do share a community of interests, but it is not with the skilled trades employees represented by AFSCME Local 3472.

DECISION

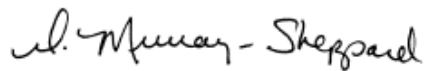
Based on the record, review, consideration of the arguments presented by the parties, and application of the PERA, the petition to represent the Operational Support Agents employed by the University of Delaware was properly filed as a modification petition.

The statutory criteria for determining an appropriate bargaining unit were applied to the facts of this matter. The record in this case is insufficient to support a finding that the Operational Support Agents, who are primarily tasked with administrative, support and customer service responsibilities, share a community of interests with the skilled trades positions in the bargaining unit currently represented by AFSCME 3472.

WHEREFORE, the petition is denied and dismissed.

IT IS SO ORDERED.

DATE: November 17, 2025



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