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GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In The Matter Of:)
)
District 1199E-DC of the)
National Union of Hospital)
and Health Care Employees,)
Service Employees International)
Union, AFL-CIO,)
)
Petitioner,)
)
and)
)
District of Columbia Commission)
on Mental Health Services,)
Department of Human Services,)
)
Agency.)
)

PERB Case No. 90-R-06
Opinion No. 292

DECISION ON UNIT DETERMINATION
AND DIRECTION OF ELECTION

On April 9, 1990, District 1199E-DC of the National Union of Hospital and Health Care Employees, Service Employees International Union, AFL-CIO (Petitioner or SEIU) filed a Recognition Petition with the Public Employee Relations Board (Board), seeking to represent a proposed unit of licensed social workers at the "Department of Human Services, Commission on Mental and Public Health (sic)." ^{1/}

The Petition was accompanied by a showing of interest meeting the requirements of Board (Interim) Rule 101.2. A copy of the Petitioner's Constitution and By-laws, including a statement of objectives and a roster of its officers were also

^{1/} The name of the agency is the Department of Human Services (DHS). DHS comprises, however, three separate subdivisions, i.e., the Commission on Mental Health Services (CMHS), the Commission on Public Health (CPH), and the Commission on Social Services (CSS). Consequently, as discussed (infra) in the text, the Petitioner's description of the agency, inter alia, was ultimately corrected and the Petition amended.

submitted, as required by Interim Board Rule 101.3. ^{2/}

SEIU filed an Amended Recognition Petition on April 20, 1991, which further described the proposed unit by worksite locations. Notices concerning the Amended Petition were posted on April 30, 1990. On May 7, 1990, the Office of Labor Relations and Collective Bargaining (OLRCB) filed a Response to the Petition and Amended Petition on behalf of DHS and objected to the proposed unit contending that: (1) the employees of the proposed unit share a community of interest with other Commission on Mental Health Services (CMHS) and Commission on Public Health (CPH) professionals; (2) the proposed unit would not promote effective labor relations and efficiency of agency operations as required by D.C. Code Sec. 1-618.9; (3) no unit should be established solely on the basis of the extent to which employees in a proposed unit have organized; and (4) the proposed unit conflicts with the position asserted by the D.C. Government regarding a proposed unit of psychologists in PERB Case No. 90-R-01.

On June 8, 1990, SEIU filed a Second Amended Recognition Petition in an attempt to correct the name and address of the employing agency of the employees in the proposed unit. Notices concerning the Second Amended Petition were duly posted. OLRCB filed a Response to the Second Amended Petition maintaining its objections to the appropriateness of the unit and disputing the correctness of the employing agencies as described in the Second Amended Petition. ^{3/}

^{2/} The Interim Rules in effect at the time the Petition was filed have since been replaced by the Board's Final Rules. The showing of interest requirement in Interim Rule 101.2, that proof is presented, not more than one year old, and that at least thirty percent (30%) of the employees in the proposed unit desire representation by the Petitioner, is identical to the requirement set forth in the Board's Final Rule 502.2. Interim Board Rule 101.3 is also identical to Final Board Rule 502.1(a).

^{3/} In the main, OLRCB contended, contrary to the representations set forth in SEIU's Second Amended Petition, that the employees in the proposed unit are not employed by two distinct agencies, i.e., CMHS and CPH. Rather, the two commissions are part of a single agency, i.e., the Department of Human Services. This objection was eliminated by SEIU's Third Amended Recognition Petition which excluded from the proposed unit employees at CPH and restated the name of the agency and agency subdivision (in

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On November 2, 1990, SEIU filed a Third Amended Recognition Petition which, inter alia, deleted from the proposed unit employees who worked for CPH. (See fn. 1 and 3.) Notices were again duly posted on November 16, 1990. OLRCB filed a Response to the Third Amended Petition on November 29, 1991, reaffirming its contentions set forth in the first Response to the Petition.

There have been no requests by a labor organization to intervene in this proceeding.

By Order dated July 3, 1990, the Board referred this matter to a Hearing Examiner duly designated by the Board to hear and take evidence on all issues relevant to the disposition of this Petition. By agreement between the parties, the originally designated hearing date of September 17, 1990, was rescheduled for November 6, 1990. The hearing convened on November 6, 1990; however, following opening statements, the parties agreed to adjourn the hearing until January 3, 1991. The parties subsequently agreed to postpone the hearing in view of the hearing examiner's recommendations in PERB Case No. 90-R-01.

Overlapping with this proceeding was the investigation of the Recognition Petition filed in PERB Case No. 90-R-01. In that case, the Petitioner, the American Federation of State, County and Municipal Employees, District Council 20, AFL-CIO (AFSCME) sought to represent another unit of professionals, i.e., psychologists, also employed by CMHS. A hearing was held regarding the Petition and on July 19, 1991, the Board issued a Decision and Order finding appropriate the proposed unit of psychologists and directing that an election be held. (See, American Federation of State, County and Municipal Employees, District Council 20, AFL-CIO and Commission on Mental Health Services, Department of Human Services, 38 DCR 5039, Slip Op. No. 278, PERB Case No. 90-R-01 (1991)). CMHS had contended in that proceeding that an appropriate unit should include all unrepresented professionals at CMHS -- including the social workers being sought by SEIU in the instant proceeding. Since there are common factual issues in both cases, and in view of the comprehensive record developed in PERB Case No. 90-R-01, we find that further investigation, including the continuation of

(Footnote 3 Cont'd)

accordance with Board Rule 502.1(a)) as the Department of Human Services, Commission on Mental Health Services.

the hearing in the instant proceeding ^{4/}, is unnecessary for our determination regarding the appropriateness of the unit.

For the reasons that we articulated in American Federation of State, County and Municipal Employees v. Commission on Mental Health Services, supra, finding appropriate a unit of psychologists, the Board finds appropriate here the proposed unit of licensed social workers.

In AFSCME v. CMHS, supra, we observed that although D.C. Code Sec. 1-618.9(a), provides that "essential to every unit is a 'community of interest' among the employees and an appropriate unit must be one 'that promotes effective labor relations and efficiency of agency operations[,]'" there is "nothing in either statutory dictate, Board precedent, or any compelling circumstances presented by the facts here that require the Board to reject the proposed unit as inappropriate." Id., at 3-4. We similarly do not find any authority or compelling circumstances presented by the facts here to warrant rejection of a separate unit of licensed social workers employed by CMHS. To the contrary, we find that there is sufficient evidence to support the finding that these employees share a community of interest, including common working conditions, skills, supervision, etc., as required by D.C. Code Sec. 1-618.9.

OLRCB has raised the same arguments against finding appropriate a unit of social workers as it raised regarding the unit of psychologists that we found appropriate in PERB Case No. 90-R-01. OLRCE contends that the proposed unit lacks a sufficiently separate and distinct community of interest apart from other professional employees in a "patient care group", which comprises, inter alia, social workers and psychologists. Consequently, a separate unit of social workers, argues OLRCE, would result in a "proliferation of bargaining units and fragmentation would neither promote efficiency of agency operations nor promote effective labor relations." (Resp. to

^{4/} PERB Case No. 90-R-01 was heard by a duly designated Hearing Examiner. The parties in that proceeding were afforded an opportunity to present evidence and the Examiner issued a Report. The record evidence developed in PERB Case No. 90-R-01 includes ample description of the duties, functions and other factors related to the community of interest among social workers, psychologists and other professionals at CMHS. Further proceedings addressing these issues would only, in the Board's view, result in a duplicative record.

Rec. Pet. at 4.)^{5/} OLRCB's contention is based largely on the structure of the terms and conditions of employment of social workers which mirror those of the psychologists and other health care professionals whose functions must often, as OLRCB characterizes, "integrate" to carry out the patient-care mission of the agency. While the Board is cautious to avoid the proliferation of working conditions units, we are nevertheless constrained to find that there are unique elements that distinguish these professionals one from another. Despite the integrated nature of these disciplines in the treatment of patients, we have found that this factor alone is not controlling in the determination of an appropriate unit. In so concluding, we reasoned that such a determination does not necessitate that the statutorily required community of interest be "separate and distinct" from other employees" Id., Slip at 4. The record clearly establishes that a community of interest exists among the social workers, e.g. education and training, professional duties, licensing requirements and ethical standards. (PERB Case No. 90-R-01; Tr. pp. 2, 8, 10, 11 and 21.) Moreover, we stated that "there is no Board policy that a proposed working conditions unit must be rejected where a more appropriate unit could be created by including additional groups of employees." AFSCME v. CMHS, supra, Slip Op. at 4.

With respect to OLRCB's contention that a separate unit of psychologists would not promote efficiency of agency operation or promote effective labor relations, we concluded the following:

CMHS cannot successfully defend its position that a separate unit of psychologists would be disruptive to labor relations when it has historically bargained with separate units of physicians and nurses -- employees whom the Hearing Examiner found also to be part of the

^{5/} OLRCB also makes an ancillary argument that a separate professional unit of Department of Human Services social workers limited to CMHS would "lead to inefficient operations and ineffective labor relations" by deviating from precedent establishing a single classification unit on a department wide basis. However, D.C. Code Sec 1-618.9(a) provides that "[t]he determination of an appropriate unit will be made on a case by case basis...." In view of our discussion above, we cannot find this factor, alone, controlling in the determination of the appropriateness of a separate unit of professional employees limited to CMHS.

patient care team and to share common working conditions with psychologists as well as other occupational groups comprising the treatment team. (AFSCME v. CMHS, supra, Slip Op. at p. 5.)

Similarly, in the instant case, we reject as unfounded OLRCB's assertions that the establishment of a unit of social workers "will create problems" to so as to preclude efficient agency operations and effective labor relations.

Turning to OLRCB's remaining arguments, in view of the amendments made to the Petition, and our findings and conclusions discussed above, we find no merit to CMHS' contention that, contrary to D.C. Code Sec. 1-618.9, a unit of social workers limited to CMHS is "established solely on the basis of the extent to which employees in a proposed unit have organized. . . ." OLRCB asserts that a unit of social workers at "certain locations within the Commission o[n] Mental Health Services and Public Health ^{6/}... does not include all licensed Social Workers at CMHS and CPH." (Resp. to Rec. Pet. at 5.). Such a unit, OLRCB contends, is "based solely or essentially on the extent of organization" and is thereby "inappropriate." *Id.* However, as previously noted, Petitioner's Third Amended Petition deleted from the proposed unit description those social workers at CPH. As amended, the proposed unit consists of all licensed social workers employed by CMHS without regard to their worksite locations. Since, as discussed above, we found that a community of interest exists among the licensed social workers employed by CMHS, ^{7/} the proposed unit as amended is not based solely on the

^{6/} OLRCB further asserts that the establishment of a separate unit of social workers limited to CMHS would run counter to precedent for units established on less than a department-wide basis. In support of this contention, OLRCB points to a less-than-department-wide unit consisting of both professional and non-professional employees (including social workers) at CSS. This unit, however, was established prior to the enactment of the CMPA and therefore, has no precedential value in the Board's consideration of the proposed unit in this proceeding.

^{7/} In American Federation of Government Employees, Local 387 and the Department of Administrative Services, 34 DCR 3492, Slip Op. No. 148, PERB Case No. 86-R-02 (1987), the Board ruled that where a community of interest is found to exist among employees in a proposed unit, the fact that the unit is limited to certain employees within a subdivision of the employing agency did not

extent to which employees have organized as proscribed by D.C. Code Sec. 1-618.9.^{8/}

Based on the foregoing discussion, the Board finds that OLRCB's objections to the proposed unit are without merit. In sum, we conclude that the proposed unit meets the community of interest requirements, will promote effective labor relations and efficiency of agency operation, and is thereby appropriate for terms and conditions bargaining under D.C. Code Sec. 1-618.9(a). The Board therefore directs that an election be held to determine the will of the eligible employees concerning representation in collective bargaining with DHS.

ORDER

IT IS HEREBY ORDERED THAT:

The following unit is an appropriate unit for collective bargaining over terms and conditions of employment:

"[All] Licensed Social Workers employed by the Department of Human Services, Commission on Mental Health Services...[excluding] all other classification of workers, all other classifications of Social Workers, all management officials or supervisors, confidential employees or employees engaged in personnel or in administering the labor relations of the Department of Human Services, Commission on Mental Health Services."

An election shall be held pursuant to Section 510 of the Rules of the Board to determine whether or not the unit employees wish to be represented by District 1199E-DC of the National Union of Hospital and Health Care Employees, Service Employees

(Footnote 7 Cont'd)

preclude finding such a unit appropriate.

^{8/} OLRCB's final contention that a separate unit of social workers is not appropriate because such a unit runs counter to the arguments it advanced on behalf of CMHS in AFSCME v. CMHS, supra, is moot in view of our determination in that case that a unit of psychologists sought by AFSCME is appropriate for collective bargaining.

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International Union, AFL-CIO, for purposes of collective bargaining over compensation and other terms and conditions of employment.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

March 10, 1992

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CERTIFICATE OF SERVICE

I hereby certify that the attached Decision on Unit Determination and Direction of Election in PERB Case No. 90-R-06 was hand-delivered, sent via facsimile transmission and/or mailed (U.S. Mail) to the following parties on this 10th day of March, 1992:

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