

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

in the Matter of:)

District of Columbia)
Protective Services Association,)

Petitioner,)

International Brotherhood of)
Police Officers, Local 445,)
Service Employees International)
Union, AFL-CIO,)

Intervenor,)

and)

District of Columbia)
Department of Administrative)
Services,)

Agency,)

PERB Case No. 96-RC-03
Opinion No. 504

DECISION AND DIRECTION OF ELECTION

On July 31, and August 20, 1996, the District of Columbia Protective Services Association (PSA) filed a Recognition Petition and Amended Recognition Petition (Petition), respectively. PSA seeks to represent, for purposes of collective bargaining, D.C. Department of Administrative Services (DAS) employees, who are currently represented by the International Brotherhood of Police Officers, Service Employees International Union, AFL-CIO (IBPO) in a unit described as follows:

All protective services officers; excluding management officials, confidential employees, supervisors, employees engaged in personnel work in other than purely clerical capacities and employees engaged in administering the provisions of Title XVII, of the District of Columbia Comprehensive Merit Personnel Act of 1978.^{1/}

^{1/} IBPO and Dept of General Services and AFSCME, D.C. Council 20, Local 2784, PERB Case No. 82-R-04, Certification No.

(continued...)

The Petition was accompanied by a showing of interest meeting the requirements of Board Rule 502.2 and a copy of the Petitioner's Constitution and Bylaws, subscribing to the standards of conduct for labor organizations as set forth in the Comprehensive Merit Personnel Act, as codified under D.C. Code § 1-618.3. The Petition was also accompanied by a roster of Petitioner's officers, as required by Rule 502.1(d).

The Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of DAS, filed a response to the Petition on September 20, 1996, wherein OLRCB expressed no opposition to the Petition. However, OLRCB stated that the unit is represented by IBPO and that a collective bargaining agreement between DAS and IBPO covering these employees is currently in effect.

The Board issued Notices concerning the Petition on September 25, 1996, for conspicuous posting at DAS for 15 consecutive days. The Notices required that requests to intervene and/or comments be filed in the Board's office not later than October 21, 1996. By letter dated September 25, 1996, IBPO was informed of its right to intervene as the incumbent labor organization pursuant to Board Rule 502.8(b). On October 8, 1996, OLRCB confirmed in writing that the Notices had been posted accordingly.

In accordance with Board Rule 501.14 and 502.7, IBPO filed a notice exercising its right to intervene during the time provided by the Board's Notice. IBPO also filed a "Motion to Dismiss Recognition Petition" (Motion) to which the Petitioner filed an Opposition. No other comments or requests to intervene have been filed.

IBPO's Motion is based on its contention that the Petition is barred by an existing noncompensation agreement. IBPO refers to a 1988-1991 agreement between it and DAS that was extended in a Memorandum of Understanding (MOU) to September 30, 1993. IBPO argues that the agreement remains a bar because in the 1991 ground rules governing the current negotiations, IBPO and DAS agreed to continue abiding by the 1988-1991 agreement until the effective date of a new agreement.

Board Rule 520.9(b)(ii) provides that "[a] petition for exclusive recognition shall be barred if ... [a] collective bargaining agreement is in effect covering all or some of the employees in the bargaining unit and the following condition are

¹(...continued)
17, November 30, 1982. The Department of General Services was the predecessor of the Department of Administrative Services.

met: ... [t]he agreement has a duration of more than three years; provided, however, that a petition may be filed after the contract has been in effect for 975 days." (emphasis added.) The date the instant Petition was filed, i.e., July 31, 1996, post-dates the last expiration date of IBPO's agreement with DAS by more than 975 days. Therefore, notwithstanding IBPO's contention that the 1988-1993 agreement was extended until a new one is reached, the extended agreement could not act as a bar to a petition once it had been in effect for 975 days after it was renewed, i.e., September 30, 1993.^{2/} See, e.g., Professional Employees Association, D.F.R.- D.C. and Dept of Finance and Revenue and AFSCME, D.C. Council 20, Local 2776, AFL-CIO, 41 DCR 1921, Slip Op. No. 309, PERB Case No. 92-R-02 (1992).

Based on our investigation and the entire record in this matter, the Board orders that an election be held to determine the will of the employees eligible to vote in the unit described above and previously found appropriate regarding representation in collective bargaining with DAS. ^{3/}

^{2/} IBPO raises an ancillary contention that the Petition is untimely filed since it was not "filed between the 120th and 60th day prior to the scheduled expiration date or after the stated expiration of the contract" as required under Board Rule 502.9(b)(i) for an "agreement [] of three years or shorter duration." IBPO refers to the date PSA amended its Petition, August 20, 1996. The amendment cured filing deficiencies in PSA's original Petition. Once the Petition was cured, in accordance with Board Rule 501.13, it was assigned a case number and its original filing date, i.e., July 31, 1996. This date is the 61st day prior to September 30, 1996.

Moreover, we did not determine that the agreement had an expiration date of September 30, 1996. IBPO acknowledges that the ground rule it relies upon gives the agreement "no specific expiration date." (Mot. at 2.) Therefore, Board Rule 502.9(b)(ii), not 502.9(b)(i), applies. Under this rule, the agreement could not act as a bar to the original or amended Petition since both were filed after the agreement had been in effect for 975 days. Moreover, in order for Board Rule 502.9(b)(ii) to be applicable, IBPO and DAS would have had to enter into another MOU establishing a new expiration date of three years or less following the September 30, 1993 expiration of the agreement. That simply did not occur.

^{3/} IBPO also challenges the Board's finding that the Petition properly met the showing of interest as required under Board Rule 502.2 by noting irregularities with respect to the
(continued...)

ORDER

IT IS HEREBY ORDERED THAT:

1. The International Brotherhood of Police Officers, Local 445, Service Employees International Union, AFL-CIO (IBPO) request to intervene is granted.
2. The Motion to dismiss is denied for the reasons stated in this Opinion.
2. An election shall be held in accordance with the provisions of D.C. Code §1-618.10 and § 510-515 of the Rules of the Board to determine whether or not all eligible employees desire to be represented for purposes of collective bargaining on compensation and terms and conditions of employment by IBPO or the D.C. Protective Services Association.

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

January 13, 1997

³(...continued)
names of eight employees supporting the Petition. Pursuant to Board Rule 502.8, "[t]he showing of interest determination shall not be subject to appeal." Moreover, we have held that in the interest of preserving the confidentiality of the showing of interest, such objections can be adequately resolved by the will of the bargaining unit employees in a secret ballot election. Vaughn Bennet, et al. and IAFF and DCFEMSD, Slip Op. No. 436, PERB Case No. 95-RD-01 (1995).