



Decision and Order

PERB Case Nos. 04-UM-03, 05-U-17, 06-RC-02, and 08-UC-02

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authority, be included in a city-wide compensation unit composed of registered nurses employed by various agencies under mayoral personnel authority.<sup>2</sup> *Id.*; Report and Recommendation at 20. In PERB Case No. 06-RC-02, DCNA requested the Board certify the Union as the exclusive representative of the registered nurses. (Remand Report at 2). PERB Case No. 08-UC-02, a unit clarification petition, was consolidated with the other cases upon the agreement of the parties. *Id.*

The consolidated case was heard by Hearing Examiner Lois Hochhauser on four days between November 5, 2008, and January 27, 2009. The Hearing Examiner recommended: (1) with regard to PERB Case No. 08-UC-02, the Board should conclude that “When Actually Employed” (“WAE”) or “temporary” registered nurses were not currently part of the bargaining unit; (2) with regard to PERB Case No. 05-U-17, the Board should conclude that DMH did not meet its burden of proof that an unfair labor practice occurred; (3) with regard to PERB Case No. 06-RC-02, the Board should order an election to determine if the WAE registered nurses wished to be represented by the Union; and (4) with regard to PERB Case No. 04-UM-03, the Board should modify the existing unit to include a unit of DMH registered nurses, and a city-wide unit of registered nurses that included CFSA registered nurses. (Remand Report at 2; Report and Recommendation at 11).

On August 11, 2011, the Board issued a “Direction of Election and Remand Order,” adopting the Hearing Examiner’s recommendations in PERB Case Nos. 05-U-17, 06-RC-02, and 08-UC-02. *District of Columbia Nurses Association v. D.C. Dep’t of Mental Health and Government of the District of Columbia*, 59 D.C. Reg. 6089, Slip Op. No. 1013, PERB Case Nos. 04-UM-03, 05-U-17, 06-RC-02, and 08-UC-02 (2011). In PERB Case No. 04-UM-03, the Board agreed with the Hearing Examiner that the DMH registered nurses should be placed in a separate bargaining unit, but found “insufficient evidence to make a determination as to whether the remaining agencies<sup>3</sup> should be included in a city-wide bargaining unit consisting of registered nurses together with the Child and Family Services Agency.” Slip Op. No. 1013 at 19. The Board remanded that question to the Hearing Examiner, and directed her to develop a record regarding whether there was a community of interest among the registered nurses at CFSA, an

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<sup>2</sup> At the time 04-UM-03 was filed, DCNA was the exclusive representative of:

All registered nurses employed by the Commission on Mental Health Services, including registered nurses transferred from St. Elizabeth’s Hospital, U.S. Department of Health and Human Services, pursuant to P.L. 98-621, excluding nurses working at the Rehabilitation Center for Alcoholics, management executives, confidential employees, supervisors, employees engaged in a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978. See PERB Case No. 87-R-12, Certification No. 43.

DCNA was also the exclusive representative of “all other registered nurses in Compensation Unit 13.” See PERB Case Nos. 80-R-08, 90-R-03, and 90-R-07.

<sup>3</sup> The Board noted that at the time the petition was filed, the unit included the Department on Disability Services, the Department of Healthcare Finance, the Department of Youth Rehabilitation Services, the Department of Health, and the Office of the Chief Medical Examiner. The Board further stated that other agencies could be covered by a city-wide unit in the future if they were to hire nurses. (Slip Op. No. 1013 at p. 18, fn. 22).

independent agency, and a city-wide unit of registered nurses employed by the Government of the District of Columbia. *Id.*

A remand hearing was held on August 26, 2011, and the resulting Remand Report is before the Board for disposition. Neither party filed exceptions.

## **II. Discussion**

### **A. Hearing Examiner's Findings On Remand**

The Hearing Examiner found the following undisputed facts:

1. DCNA represents registered nurses in the bargaining unit certified in PERB Case No. 87-R-12, Certification 43. It is also the exclusive representative of registered nurses in Compensation Unit 13, employed by the Department of Health. DCNA was also certified as the exclusive representative for all registered nurses employed by CFSA.
2. DMH, the governmental entity responsible for providing inpatient and outpatient mental health services to District of Columbia residents, employs registered nurses. Registered nurses are also employed at the Department of Health Care Finance, the Department on Disability Services, and the Office of the Chief Medical Examiner, all of which are governmental agencies.
3. CFSA, the public child welfare agency in the District of Columbia responsible for protecting child victims and children at risk of abuse and neglect and assisting their families, also employs registered nurses. Unlike the other agencies identified in the previous paragraph, CFSA is an independent agency and is not under the Mayor's personnel authority.
4. This Board placed CFSA registered nurses in Compensation Unit 13 in 2006. In *DCNA and District of Columbia Child & Family Services Agency*, Slip Op. No. 854, PERB Case No. 06-CU-02 (2006), the Board concluded:

The Board, having considered the "Compensation Unit Determination Petition" filed by the District of Columbia Nurses Association and the Office of Labor Relations and Collective Bargaining, hereby determines that the appropriate compensation unit for all registered nurses employed by the District of Columbia Child and Family Services Agency is Compensation Unit 13.

5. At the time of the initial proceeding, Compensation Unit 13 consisted of all registered nurses "who work as registered nurses" employed by the District of Columbia Government, including registered nurses at CFSA, Department of Health, Department on Disability Services, and the Office of the Chief Medical Examiner. Only DMH

nurses were excluded from that unit and this was the basis for the modification petition.

(Remand Report at 5-6) (internal citations omitted).

On remand, the Hearing Examiner was asked to determine whether sufficient evidence existed to determine that a community of interest exists among the registered nurses at CFSA and a city-wide unit of registered nurses employed by the Government of the District of Columbia. (Remand Report at 3). In her Remand Report, the Hearing Examiner notes that the parties maintain that the Board placed CFSA registered nurses in Compensation Unit 13 in Slip Op. No. 854 in 2006, and that Slip Op. No. 854 constitutes "direct, controlling precedent" in the instant matter. (Remand Report at 7). Further, the parties assert that since approximately January 2007, DCNA registered nurses have been part of Compensation Unit 13, and have therefore been included in the compensation and non-compensation collective bargaining agreement. (Remand Report at 8). The Hearing Examiner noted testimony from the CFSA Acting Human Resources Director, Dexter Starkes, who testified that the CFSA registered nurses perform the same type of work as registered nurses at other District agencies, are classified in the same series, utilize the same pay scale, are subject to the same leave policies, and receive the same health and retirement benefits. (Remand Report at 7). Mr. Starkes also testified that CFSA registered nurses collaborate with registered nurses employed by other District agencies, and that the CFSA registered nurses share a community of interest with those nurses. *Id.*

The Hearing Examiner explained that the reason the evidence on the issue of registered nurses at CFSA was not thoroughly developed at the initial hearing is because "the evidence established that the Board has placed CFSA registered nurses in [Compensation Unit 13] several years earlier" in Slip Op. No. 854. (Remand Report at 8). The Hearing Examiner goes on to note that at the initial hearing, the parties stipulated "that CFSA was already a part of the Unit and would be included in the modified unit," and that "[i]t was assumed by all, including the Hearing Examiner, that the Board had determined to its satisfaction that all criteria had been met when it placed CFSA in the Unit, despite the fact that it had independent personnel authority." *Id.*

The Hearing Examiner recognized the general practice of establishing a separate compensation unit when an agency has independent personnel and bargaining authority. (Remand Report at 8). However, she found that the "rule is not without exceptions, particularly where there is an effort to minimize the number of different pay systems, or where pay schemes for occupation groups are considered unique." *Id.*; citing *SEIU, Local 722 v. D.C. Dep't of Human Services, Home Service Bureau*, 48 D.C. Reg. 8493, Slip Op. No. 383, PERB Case No. 93-R-01 (1994). Stating that the CFSA registered nurses and the other registered nurses in Compensation Unit 13 have the same license requirement, perform the same type of work, are classified in the same series, utilize the same pay scale, and share the same leave and benefits policies, the Hearing Examiner concluded that the record developed at the remand hearing "now contains sufficient evidence that the registered nurses at CFSA share a 'community of interest' with the other registered nurses in [the city-wide unit]." (Remand Report at 8-9). Additionally, the Hearing Examiner noted that the CFSA registered nurses have been part of Compensation

Unit 13 for a number of years without issue, the parties to this matter argued that the *status quo* should be maintained, and CFSA was participating in the contract negotiations occurring at the time of the remand hearing. (Remand Report at 9). The Hearing Examiner recommended that the CFSA registered nurses continue to be part of Compensation Unit 13. *Id.*

**B. Analysis**

The Board will affirm a Hearing Examiner's findings if those findings are reasonable, supported by the record, and consistent with Board precedent. See *Fraternal Order of Police/Metropolitan Police Dep't Labor Committee v. District of Columbia Metropolitan Police Dep't*, 59 D.C. Reg. 11371, Slip Op. No. 1302 at p. 18, PERB Case Nos. 07-U-09, 08-U-13, and 08-U-16 (2012). Determinations concerning the admissibility, relevance, and weight of evidence are reserved to the Hearing Examiner. *Hoggard v. District of Columbia Public Schools*, 46 D.C. Reg. 4837, Slip Op. No. 496 at p. 3, PERB Case no. 95-U-20 (1996).

In the instant case, the Board instructed the Hearing Examiner on remand to determine whether a sufficient community of interest exists between the CFSA registered nurses and the city-wide unit of registered nurses. Slip Op. No. 1013 at p. 19. The Hearing Examiner credited and gave weight to the testimony of the CFSA's Acting Human Resources Director, who listed the commonalities between the CFSA registered nurses and the registered nurses employed by other District agencies, and opined that the nurses share a community of interest. (Remand Report at 7). In addition, the Hearing Examiner relied on the parties' joint agreement that the CFSA registered nurses belonged in the Unit, and their urging to maintain the status quo. (Remand Report at 7-9). Finally, the Hearing Examiner relied on Board precedent in Slip Op. No. 854, in which the Board ordered that "the appropriate compensation unit for all registered nurses employed by the District of Columbia Child and Family Services Agency is Compensation Unit 13." (Remand Report at 8-9).

The Board finds that the Hearing Examiner's conclusion that there is sufficient evidence to show that a community of interest exists among the CFSA registered nurses and the city-wide unit of registered nurses employed by the District of Columbia is reasonable, supported by the record, and consistent with Board precedent. Therefore, the existing bargaining unit will be modified, and the remaining agencies in the bargaining unit and the CFSA will be included in a city-wide bargaining unit consisting of registered nurses.

**ORDER**

**IT IS HERBY ORDERED THAT:**

1. With respect to PERB Case No. 04-UM-03, we adopt the Hearing Examiner's recommendation that a community of interest exists among the registered nurses at the District of Columbia Child and Family Services Agency and a city-wide unit of registered nurses employed by the Government of the District of Columbia.

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2. Pursuant to Board Rule 504.5, the following unit of full-time registered nurses is appropriate:

All full-time registered nurse positions at all agencies under the personnel authority of the Mayor of the District of Columbia, and the District of Columbia Child and Family Services Agency, excluding management executives, confidential employees, supervisors, employees engaged in a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978.

3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

Washington, D.C.

July 30, 2013

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case Nos. 04-UM-03, 05-U-17, 06-RC-02, and 08-UC-02 was transmitted via U.S. Mail and/or e-mail to the following parties on this the 31st day of July, 2013.

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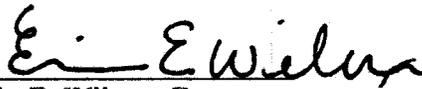
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