

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)

Council of School Officers)
Local 4, American Federation of)
School Administrators, AFL-CIO,)

Petitioner,)

and)

District of Columbia)
Public Schools,)

Agency.)

PERB Case No. 91-R-04
Opinion No. 294

DECISION AND ORDER

On July 30, 1991, the Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO (CSO), in accordance with Section 504 of the Rules of the Public Employee Relations Board (Board), filed a Petition for Unit Clarification/Amendment.^{1/} The Petition concerns a unit of employees employed by the District of Columbia Public Schools (DCPS) previously found appropriate by the Board and for whom CSO is the certified exclusive representative. Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO and District of Columbia Board of Education, PERB Case No. 88-R-06, Certification Nos. 19 and 51 (1988).

In accordance with the Board Rule 504.3, Notices concerning the Petition were posted. On August 26, 1991, comments were timely submitted in response to the Notice by Robert Mann, who states that he is employed by DCPS as an Assistant for Planning in the ET-6 classification. Mr. Mann requests that the Board clarify that his position is covered by the existing bargaining unit description. DCPS also timely responded to the Petition on August 27, 1991, advising the Executive Director that it had no

^{1/} Neither the Comprehensive Merit Personnel Act (CMPA) nor the new Board Rules promulgated pursuant thereto, provide for petitions for unit clarification. We therefore treat the Petition as a petition for unit modification as provided under Section 504 of the Board's Rules.

objection to the Petition. ^{2/}

The Petitioner seeks to add the position "ET-6 School Officers serving as Assistants for Planning" to the existing unit. (Petition at 2.) Petitioner states that "no other labor organization claims to represent these employees" nor "are they covered by any collective bargaining agreement, current or expired." (Petition at 3.) Inclusion of this employee position is requested by CSO "because of the general similarities with...the current units in levels of responsibility, salary, working conditions, and other terms and conditions of employment." (Petition at 3.)

The existing unit was found appropriate by the Board in Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO and District of Columbia Board of Education, 35 DCR 2975, Slip Op. No. 181, PERB Case No. 88-R-06 (1988). The unit, as described therein, includes "[a]ll employees employed by the [D.C. School] Board in the ET-6 through ET-12 classifications." The unit description contains no further specifications or reservations that limit the scope of employee titles or positions contained within the classification of ET-6 through ET-12 employees of DCPS. Therefore, the existing unit, on its face, covers all ET-6 employees employed by DCPS, with the exception of certain statutorily excluded positions. ^{3/} Our inquiry, however, does not end here.

Board Rule 504.1(b) provides that a unit modification may be sought "to add... unrepresented classifications or employee positions created since the recognition or certification of the exclusive representation." (emphasis added) Thus, despite the existing unit's unqualified description, by classification, of employees included within the scope of the unit, this broad unit description may not necessarily encompass employee positions not

^{2/} DCPS also indicated that it was of the belief that "other titles should also be included" in the proposed unit clarification and requested an extension of time until September 27, 1991, to confer with CSO on this matter. DCPS' request for an extension of time was denied as untimely pursuant to Board Rules 501.2, 501.3 and 501.12; however, the parties jointly agreed, in writing, to waive the time limit for DCPS' response in accordance with Board Rule 501.3. By letter dated October 15, 1991, the Board's Executive Director acknowledged the parties' agreement to further discuss whether additional positions should be covered by the Petition. DCPS subsequently advised the Board that there were no additional positions to be added to the proposed unit.

^{3/} See fn. 6, infra.

in existence when the unit was created. Therefore, a determination must be made whether the employee position, e.g., ET-6 School Officers Serving as Assistants for Planning, existed when CSO filed its recognition petition covering the unit, or whether it was created since that time.

According to two letters dated April 18, 1991, by the DCPS Director of Labor Relations ^{4/}, "[t]he position [of Assistant for Planning] was officially classified April 28, 1983...." The Recognition Petition seeking to represent a proposed unit that includes ET-6 personnel was filed on February 25, 1988. Thus, the establishment of the ET-6 Assistants for Planning clearly predates the filing of the Recognition Petition and is therefore encompassed in the unit subsequently found appropriate by the Board. ^{5/} DCPS asserts in these letters that "the position had never been certified to be included in the bargaining unit and, therefore, was not considered to be a bargaining unit position." When the Board found appropriate a unit of employees employed by DCPS in the ET-6 through ET-12 classifications in PERB Case No. 88-R-08, the finding was with respect to all existing positions at that time under the designated classifications. The parties do not cite nor are we aware of any subsequent petition addressing this unit which altered this determination.

The Board having investigated and considered this matter concludes that the position of ET-6 School Officers serving as Assistants for Planning is encompassed within the existing unit found appropriate in CSO Local 4, AFSA, AFL-CIO and DCBE, supra, ^{6/} and for whom Petitioner was certified as the exclusive

^{4/} The two letters were responses by DCPS to separate inquiries made by the Petitioner and Robert Mann "concerning...the inclusion of the position of Assistant for Planning, ET-06 in the ET Officers Bargaining Unit." (DCPS' letter to Petitioner, p.1.) The letters were attached to the comments, submitted by Robert Mann in response to the Board's Notice concerning this Petition.

^{5/} A review of Board certifications reveals that the existing unit, as described in fn. 6 infra., was first found appropriate by the Board in the Decision and Order in PERB Case No. 88-R-06 which was issued April 7, 1988.

^{6/} The existing unit consists of the following:

1. ET Officers Bargaining Unit: All employees employed by the Board in the ET-6 through ET-12 classifications; but excluding confidential employees, employees engaged in personnel work in other than a purely clerical capacity, employees engaged in administering the

bargaining representative. Certification No. 51 (1988). Thus, no basis exists for modifying or amending the existing unit to effect what the Petitioner seeks. Therefore, the Petition is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

The Petition is dismissed.

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

December 13, 1991

(Footnote 6 Cont'd.)

provisions of Title XVII of the Comprehensive Merit Personnel Act of 1978.

2. EG Officers Bargaining Unit: All full-time personnel employed by the Board who are rendering educational, technical and administrative support services in EG classifications 11 and 12; but excluding management, supervisors, confidential employees, any employees engaged in personnel work other than in purely clerical capacities and employees engaged in administering the provisions of Title XVII of the Comprehensive Merit Personnel Act of 1978.

CERTIFICATE OF SERVICE

I hereby certify that the attached Decision and Order in PERB Case No. 91-R-04 was hand-delivered, sent via facsimile transmission and/or mailed (U.S. Mail) to the following parties on this 13th day of December 1991:

Frank Bolden
President
Council of School Officers
Local 4, American Federation
of School Administrators, AFL-CIO
Backus Junior High School
South Dakota Ave. & Hamilton St.,
N.E.
Washington, D.C. 20017

U.S. MAIL

Cecelia E. Wirtz, Esq.
Legal Counsel
for Legal Services
D.C. Public Schools
415-12th Street, N.W.
Room 1114
Washington, D.C. 20004

HAND DELIVERED

Ellis A. Boston, Esq.
Deputy Director
Office of Labor Relations
D.C. Public Schools
415-12th Street, N.W.
Suite 200
Washington, D.C. 20004

HAND DELIVERED

Courtesy Copies:

Dr. Franklin L. Smith
Superintendent Of Schools
Chief State School Officer
415-12th St., N.W., Rm. 1209
Washington, D.C. 20004

HAND DELIVERED

Kenneth W. Nickoles
Director
Office of Labor Relations
D.C. Public Schools
415-12th Street, N.W.
Washington, D.C. 20004

HAND DELIVERED