

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)	
Local 383, American Federation of)	
Government Employees, AFL-CIO,)	PERB Case No. 85-U-02
)	Opinion No. 101
Complainant,)	
and)	
The District of Columbia Department of)	
Human Services, Mental Health Adminis-)	
tration, South Community Mental Health)	
Center,)	
Respondent.)	

DECISION AND ORDER

On October 5, 1984 Local 383 of the American Federation of Government Employees, AFL-CIO (AFGE) filed an Unfair Labor Practice Complaint (ULP) against the District of Columbia Department of Human Services (DHS) and the District of Columbia Office of Labor Relations and Collective Bargaining (OLRCB). The Complaint alleges that DHS and OLRCB violated Section 1-618.4 (a)(1)(2) and (3) of the Comprehensive Merit Personnel Act (CMPA) by arbitrarily and unilaterally removing nine (9) named employees from the bargaining unit, by changing their collective bargaining unit codes without prior authorization by this Board or negotiations with AFGE. The Complaint also alleged that the Shop Steward in Local 3871 was arbitrarily removed from her position.

AFGE seeks as a remedy an Order from the Board prohibiting DHS or OLRCB from changing bargaining unit codes without prior authorization by the Board or consultation with AFGE, a reinstatement of the employees allegedly removed from the unit, a clarification of the unit to include Mental Health Specialists and a posting of any Board Order in work areas for sixty (60) days.

On October 29, 1984 OLRCB filed its "Answer" denying any violation of the CMPA and contending that the nine (9) Mental Health Specialists are professionals who were erroneously included in the unit due to administrative error. When OLRCB discovered that the unit was limited to non-professionals, the collective bargaining unit codes of the nine (9) was changed. OLRCB requests that the Board dismiss the Complaint.

The issue before the Board is whether or not OLRCB violated the CMPA by changing the collective bargaining unit codes of professional employees who were erroneously placed in a unit limited to non-professional employees.

On January 17, 1979 our predecessor, the Board of Labor Relations, certified AFGE as the exclusive representative for a unit of employees of the District of Columbia Department of Human Services, Mental Health Administration, Community Mental Health Center described as follows:

"all non-professional employees in the Department of Human Resources, Mental Health Administration, Area "C" Community Mental Health Center excluding management executives, confidential employees, supervisors or any employee engaged in personnel work in other than a purely clerical capacity"

From January to June, 1984 DHS hired nine (9) new Mental Health Specialists to work in the Crisis Resolution branch and the Community Outreach branch of the Community Mental Health Center located on the grounds of D.C. General Hospital. Members of the unit described above also work in the same location. Due to a clerical error, the newly hired Mental Health Specialists were given the same collective bargaining unit code as non-professional members of the bargaining unit. On August 8, 1984, the error was discovered and corrected by the management of the Community Mental Health Center. AFGE does not deny that an administrative error was made but it appears to take the position that such an error, once made, cannot be corrected. It appears that management acted reasonably and expeditiously in correcting the error.

It appears that the Mental Health Specialists are clearly professionals and therefore ineligible for membership in this bargaining unit. The minimum educational requirement for a Mental Health Specialist is a post-graduate degree in Psychology, Social Work or Nursing. Most serve as members of a Crisis Resolution branch interdisciplinary team which also includes a Psychiatrist, Nurse, Para-medical and Mental Health Counselor. The Crisis Resolution branch is a kind of "mental health emergency room." The Mental Health Specialist conducts patient interviews to diagnose current problems and evaluates patient social history and financial resources. The educational requirements and the necessity for the exercise of independent judgment appears to justify their classification as professional employees. Under D.C. Code Section 1-618.9 professional employees cannot be placed in the same collective bargaining unit with non-professional employees unless the professional employees consent. AFGE has not shown nor alleged that these employees have ever consented to being placed in the unit.

The allegation that the Shop Steward of AFGE Local 3871 was unlawfully removed from her position by OLRCB has been previously examined by the Board in Opinion No. 91. In that case the Board found that this Shop Steward was never eligible for membership in the bargaining unit because she was originally a confidential employee and currently supervised seven (7) employees. AFGE has not presented any new facts or circumstances which might merit the Board's reexamination of this issue. Accordingly, this allegation appears to be devoid of merit.

O R D E R

IT IS ORDERED THAT:

The Complaint is dismissed due to its failure to establish a violation of the CMPA.