

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)	
The Doctors' Council of the)	
District of Columbia,)	
)	
Petitioner,)	PERB Case No. 84-R-12
)	Opinion No. 128
and)	
)	
The District of Columbia Government,)	
)	
Respondent.)	
)	
)	

DECISION AND ORDER

On September 20, 1984, the Doctors' Council of the District of Columbia (DCDC) filed a Recognition Petition with the District of Columbia Public Employee Relations Board (Board) seeking to represent all dentists, physicians, and podiatrists employed in the District of Columbia Departments of Corrections (DOC) and Human Services (DHS). The DCDC contends that no labor organization presently represents the employees in the DHS. Although the American Federation of Government Employees (AFGE) represent the medical officers in the DOC, the DCDC contends that the medical officers and professionals, have never voted as required by Section 1709 (b)(5) of the Comprehensive Merit Personnel Act (CMPA) to be included in a bargaining unit with nonprofessionals.

The proposed unit consists of approximately 115 employees. DCDC submitted a showing of interest of 84 employees or 73% of the eligible employees. About 20 of the employees work in the DOC with the remainder being employed by the DHS. Of the 20 employees who work in the DOC, 16 or 75% signed the showing of interest petition. The showing of interest was inspected and deemed authentic. On October 1, 1984, Board Notices were forwarded for posting to employee work sites.

On November 16, 1984, the D.C. Office of Labor Relations and Collective Bargaining (OLRCB) on behalf of the Employer filed comments opposing the Petition. The OLRCB states that the medical officers in the DOC have been represented by AFGE since 1978 and that Section 1711 (b) of the CMPA precludes any changes in bargaining units that were established prior to 1980. The OLRCB contends that podiatrists should not be included in the same unit as physicians and dentists. The OLRCB requested a hearing on this case.

On December 5, 1984, the Board referred this matter to a hearing examiner. On February 11 and 15, 1985, respectively, the Employer and the DCDC filed a "Post Hearing Brief". On February 27, 1985, the Hearing Examiner issued a "Report and Recommendation". On March 21, 1985, an amended "Report and Recommendation" was issued because the Hearing Examiner was not forwarded the DCDC's post-hearing brief until March 11, 1985.

The issues before the Board are:

- 1) Whether the proposed unit of medical officers in DHS is appropriate for collective bargaining; and
- 2) Whether the medical officers in the DOC should be severed from the DOC bargaining unit and included in the unit proposed by the DCDC.

Based on his findings of facts, the Hearing Examiner reached the following conclusions:

- 1) The petition filed by the DCDC was timely.
- 2) Dentists, physicians and podiatrists are appropriate for inclusion in the same unit.
- 3) Section 1711(b) merely establishes the presumptive appropriateness of units in existence at the time the OMPA became effective. A group of employees may be severed from an existing bargaining unit under the appropriate circumstances.
- 4) The professional employees in the DOC were added to the existing unit in 1978 after a proper showing of their desire for such inclusion.
- 5) The Petitioner has failed to show that the dentists, physicians and podiatrists have not been adequately represented in the established unit.
- 6) "The record fails to establish any circumstances that are now present that would justify the severance of the petitioned--for employees from the established unit."

The Hearing Examiner recommended that the Board find the unit as proposed in the DHS to be appropriate for bargaining and that the medical officers in the DOC should not be severed from the larger Corrections unit.

On April 18, 1985, the DCDC filed Exceptions to the Hearing Examiner's Report and Recommendations and requested oral arguments before the Board. The DCDC states that the DOC bargaining unit is presently being represented by the Teamsters, Local 246. The DCDC argues that the medical officers in the DOC should be given the opportunity to determine if they wish to be represented by the Teamsters. The DCDC contends that the Hearing Examiner ignored the rule well established by Westinghouse Electric Corp., 115 NLRB 530 (1956), which states "that all professionals have the right to opt for separate representation despite a past history of bargaining with nonprofessionals".

The Board concurs in the Hearing Examiner's finding that the proposed unit of medical officers is an appropriate bargaining unit. The Board also agrees that the OMPA does not preclude the medical officers from severing from the larger group under the appropriate circumstances.

The Board, however, disagrees with the Hearing Examiner's finding that this group should be denied severance based solely on the criterion of the adequacy of representation by the incumbent labor organization. The group in question consists of professionals now part of a unit with nonprofessional employees. While their placement there was apparently appropriate at the time the action was taken, the record of that proceeding indicates that they constituted but a portion of the employees categorized as professional and the record does not show whether this group, as a group, favored inclusion. Under these circumstances, we read Section 1-618.9(b) (5) as entitling this group now to choose whether they wish to be represented separately as professionals.

The Board finds that the medical officers in the DOC are entitled to be severed from the DOC bargaining unit if that is their choice. A majority of this group has indicated that it does so desire.

The Board finds that based on the majority of showing among the medical officers in the DOC that they be severed from the DOC bargaining unit. The Board also finds that the unit as proposed by the DCDC is appropriate for the purpose of collective bargaining for terms-and-conditions of employment.

Decision and Order
Case No. 84-R-12
Opinion No. 128
Page 4

ORDER

IT IS ORDERED THAT:

The unit as proposed by the Doctors' Council of the District of Columbia is an appropriate unit for the purpose of collective bargaining for terms-and-conditions of employment; Representation proceedings shall be conducted in accordance with Section 102 of the Interim Rules of the Board.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
December 6, 1985