

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:
The Teamsters Local Unions Nos.
639 and 730,
 Petitioners,

and
The District of Columbia Public
Schools,
 Employer,

and
The American Federation of State,
County and Municipal Employees,
District Council 20, Local 2093,
AFL-CIO,
 Intervenor.

PERB Case No. 85-R-09
Opinion No. 134

DECISION AND ORDER

On June 21, 1985, the Teamsters Local Unions Nos. 639 and 730 (Teamsters) jointly filed a "Recognition Petition" with the Public Employee Relations Board (Board) seeking to represent all the employees of the D.C. Public Schools (DCPS) who are employed in the Transportation and Warehouse Service Unit, Operating Engineer Unit, Custodial Workers Unit, Cafeteria Workers Unit, and Cafeteria Managers Unit. These five units are currently represented by the American Federation of State, County and Municipal Employees, District Council 20, Local 2093 AFL-CIO (AFSCME). Although each of these units was certified separately, AFSCME has negotiated with DCPS a Master Agreement for both non-compensation and compensation. The term of the most recent contract expired on May 25, 1985. On June 24, 1985, AFSCME and DCPS initialed a new contract.

On June 26, 1986, Board notices were forwarded for posting at employee work sites. On July 10, 1985, AFSCME, the incumbent union, filed a "Motion to Intervene." As the incumbent union, AFSCME is not required to submit a showing-of-interest under Board Rule 101.7. On July 17, 1985, DCPS forwarded a copy of the employee list by unit. 1/

1/ This list was subsequently replaced by a more accurate list on July 30, 1985. Additional changes in the list were made by DCPS and forwarded to the Board. These changes corrected errors in some job titles and bargaining unit codes. These changes were finalized on August 16, 1985.

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On July 18, 1985, AFSCME filed a "Motion to Dismiss the Petition". On July 18, 1985, DCPS filed comments concerning the Petition. DCPS's position was that, while it remained neutral, it believes that the Petition is "untimely, improperly filed and procedurally defective."

The units consist of a total of approximately 2,384 employees. The Teamsters' showing-of-interest of at least 30 percent in each unit satisfies the requirements of Board Rule 101.2. All showing of interest cards and the employee list submitted by DCPS were inspected and deemed authentic. 2/

In its opposition to the Petition, AFSCME contended that the Board should dismiss the Petition on the grounds that the new contract was agreed to on Friday morning, June 21, 1985 and bars the Teamsters' Petition. AFSCME further argued that the Petition is not timely because it was not filed during the "window period" of 60-120 days prior to the expiration of the old contract on May 25, 1985. AFSCME requested that the Board adopt a rule that a recognition petition may not be filed by a rival union after a contract has expired as long as an employer and the incumbent union are actively engaged in the negotiation of a new contract. In addition, AFSCME argued that the Petition should be barred because it seeks recognition of a single unit when, in reality, there are five separate units. Finally, AFSCME argues that the Petition violates Board Rules 100.22 and 100.23 which require concurrent service on all parties.

2/ On July 29, 1985, the Teamsters supplemented its original showing of interest with 450 additional authorization cards. Because of the controversy that developed over service of the Petition, the Board did not process these additional cards, which in any event were not necessary to the showing of interest. The Teamsters also enclosed an Affidavit signed by two of its officers verifying that DCPS was served on Friday, June 21, 1985, and that AFSCME was served on Monday, June 24, 1985.

On September 4, 1985, the Board referred the matter to a Hearing Examiner for a Report and Recommendation. On October 21, 1985, the membership rejected ratification of the agreement between AFSCME and DCPS. The Hearing Examiner conducted a hearing on October 22, and November 1, 1985. All parties were afforded the opportunity to present oral and written testimony, to cross-examine witnesses and to file post-hearing briefs.

On December 24, 1985, AFSCME filed an Unfair Labor Practice Complaint (PERB Case No. 86-U-01) against DCPS and the Teamsters. 3/ On January 31, 1986, AFSCME filed a "Motion to Stay Further Proceedings" pending a ruling on its Unfair Labor Practice Complaint. 4/

On January 16, 1986, the Hearing Examiner filed his Report and Recommendations with the Board. The Hearing Examiner found that the successor agreement between AFSCME and DCPS was neither signed nor initialed on June 21, 1985 when the Teamsters' Recognition Petition was filed and, therefore, cannot act as a bar to the agreement. (Report and Recommendation (R.R.), page 14) He further found that there was actual as well as constructive notice of the Teamsters' Recognition Petition to both AFSCME and DCPS prior to their initialing the successor agreement on June 24, 1985 and that any defect in service of the Petition

3/ The Complaint alleged that certain statements and writings by a School Board member during his re-election campaign which were derogatory to AFSCME, were published and distributed by Teamsters. The statements were alleged to be in violation of the prohibition against an employer favoring one union over another and unlawfully assisting a union and unlawfully interfered with employee statutory rights. The Complaint also alleged that the Teamsters' actions in distributing the statements coerced and restrained the employees in violation of the CMAA. As a remedy, AFSCME requested that the Board dismiss the Recognition Petition.

4/ On February 3, 1986, the Teamsters filed an "Opposition to a Motion to Stay Further Proceedings." On February 10, 1986, AFSCME filed a "Supplemental Motion to Stay Further Proceedings."

was cured. (R.R., page 17) The Hearing Examiner ruled that a rival union may file a challenge to an incumbent after the contract expires, even if the rival union fails to file the Petition during the "window period" set aside for challenging the incumbent. (R.R., page 14) The Hearing Examiner specifically rejected AFSCME's requests to apply the "Connecticut Rule," which bars a rival union from challenging an incumbent union after expiration of the previous contract if the union is actively engaged in contract negotiations with management. (R.R., page 14)

Based on his findings of fact, the Hearing Examiner recommended that the Board hold that "the Petition was timely filed and that the imperfections in its service were not fatal and were essentially cured." (R.R., page 17) He also recommended that the Board find that both the five existing units and the one single unit covered by the AFSCME Master Agreement are appropriate for collective bargaining and that a self-determination election be ordered by the Board. (R.R., page 18)

On February 3, 1986, all three parties filed written exceptions to the Hearing Examiner's Report and Recommendations.

The Board's Findings and Conclusions

After concluding its investigation and reviewing the entire record, including the Hearing Examiner's Report and Recommendation and the exceptions filed by the parties, the Board adopts the Hearing Examiner's findings of fact and recommendation with the exception of his self-determination election recommendation. The Hearing Examiner's Report and Recommendation is based on evidence of the record in the hearing, the relevant case law, a detailed analysis of the facts, and the positions of the parties as presented in the post-hearing briefs. His interpretation of the "Connecticut Rule" is based on sound legal and policy grounds and cannot be objectively characterized as clearly erroneous, as alleged by AFSCME and DCPS. His ruling on the alleged defective service of the Petition is based on his finding of fact that both DCPS and AFSCME knew, or reasonably should have known, that the Teamsters' Recognition Petition had been filed with the Board before the successor agreement was initialed. There is a factual and legal basis for the Hearing Examiner's conclusion that "an agreement may not be considered to act as a bar to an otherwise proper petition unless it is signed or initialed by the parties."

The Board sustains the objections to the Hearing Examiner's self-determination election recommendation which were filed by both AFSCME and DCPS. The Teamsters' Recognition Petition sought recognition for either five units or one unit, in the alternative. (R.R., page 5) The five units were each certified separately at various dates between 1967 and 1970. The one Master Agreement was instituted as an efficiency measure so long as AFSCME maintained exclusive representation of the employees. Neither AFSCME nor DCPS has ever filed a consolidation petition to create a single large unit as required by Section 1709(c) of the CMPA, D.C. Code Section 1-618.9(c).

The proper unit determination is solely within the jurisdiction of the Board and was not, directly or indirectly, delegated to the Hearing Examiner. Since each of the units was certified separately and they have never officially been consolidated, each should have its own representation election. Accordingly, the Board orders a representation election in each of the five bargaining units to determine the exclusive representative for each. The elections shall be conducted simultaneously to minimize the possibility that the election results in one unit might influence the results in another unit.

The Board has concluded in PERB Case No. 86-U-01 that the Unfair Labor Practice charges should be dismissed. See Board Opinion No. 133. Accordingly we deny as moot AFSCME's "Motion and Supplemental Motion to Stay Further Proceedings".

With regard to the second Representation Petition filed in this case by the Teamsters on January 22, 1986, the Board finds it unnecessary to determine its validity since the original Petition filed on June 21, 1985 is valid.

O R D E R

IT IS ORDERED THAT:

Five elections are authorized pursuant to Section 102 of the Interim Rules of the Board to determine whether the eligible employees of each unit in the District of Columbia Public Schools, described in the Teamsters' petition wish to be represented by the Teamsters Local Unions Nos. 639 and 730; AFSCME, District Council 20, Local 2093; or no union in bargaining concerning compensation and the terms-and- conditions of their employment.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
March 27, 1986