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**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)
)
District of Columbia Water and Sewer)
Authority,)
)
Petitioner/Agency,)
and)
)
American Federation of Government)
Employees, Local 872,)
American Federation of Government)
Employees, Local 631,)
American Federation of Government)
Employees, Local 2553,)
American Federation of State, County)
and Municipal Employees, Local 2091,)
National Association of Government)
Employees, Local R3-06,)
)
Respondents/Labor Organizations.)

PERB Case No. 03-UM-03
Opinion No. 898

DECISION AND ORDER

I. Statement of the Case:

On August 15, 2003, the District of Columbia Water and Sewer Authority (hereinafter Petitioner or WASA) , filed a "Petition for Modification of Bargaining Units". In its Petition WASA asserted that the unit modification was warranted and appropriate based on the existence of five (5) bargaining units of employees. The five (5) units, which are separately represented in terms and conditions of employment including compensation, are represented by the Respondent Unions. More specifically, WASA contends that the modification pursuant to PERB Rule 504.1 (a) is "appropriate at this time to account for the ongoing significant and substantive changes in the identity, operations and authority" (Petition, para.9), resulting from the enactment of WASA in 1996, pursuant to the

Water and Sewer Authority Establishment Act and the Department of Public Works Reorganization Act of 1996, D.C. Act 11-111, D.C. Code §§ 34-2201.01 *et seq.*

Respondent Unions oppose the Petition for Modification citing the following reasons: (1) the Petitioner's request to modify its bargaining units had been granted by the Board previously; and (2) a consolidation of the bargaining units was inappropriate under Board Rule 504.1(d), which authorizes the Board to consolidate only units that are represented by the same exclusive bargaining agent. Respondent Unions uniformly requested dismissal of the Petition.

This case was assigned to a Hearing Examiner who determined that the Petitioner failed to meet the criteria under the Board's rules for the consolidation of units and also failed to meet its burden of proof pursuant to the statutory requirements of D.C. Code § 1-617.9 (a). Under these provisions, it is incumbent upon the Petitioner to show that the existing bargaining units did not support the statutory objectives of "promot[ing] effective labor relations and efficiency of agency operations." The Hearing Examiner found that WASA did not support its assertion that a single agency-wide bargaining unit is appropriate for collective bargaining. Also, he determined that WASA's proof was not compelling on the central issue that the existing five bargaining units were "inappropriate".

In addition, the Hearing Examiner recommended the dismissal of the Petition without prejudice, and the realignment of the five bargaining units. Timely Exceptions to the Hearing Examiner's Report and Recommendations (hereinafter "R&R") were filed by all of the Respondent Unions. WASA, in response to the Exceptions filed by the noted Respondent Unions, submitted a filing styled: "WASA's Opposition to Exceptions". All pleadings and supporting documents, including the Hearing Examiner's R&R were submitted to the Board for disposition.

II. Background:

The following findings of fact, as noted by the Hearing Examiner in his Report, are not in dispute. WASA is the employing agency of approximately 1,100 employees, 750 of whom are represented by the Respondent Unions in 5 bargaining units. In 1996, WASA was established as a successor agency to the Water and Sewer Utility Administration or "WASUA", pursuant to D.C. Laws 111 and 11-84, codified at D.C. Code § 34-2201.01 *et seq.* The mission of the Petitioner is essentially the same as its predecessor - to provide water distribution services, sewage collection, treatment and disposal services to the District of Columbia, Montgomery and Prince George's counties in Maryland, and Loudon County, Virginia. The establishment of WASA - unlike its predecessor - created an independent agency with its own procurement, personnel, legal services and budget authority, separate from the rest of the D.C. Government. As a result, WASA is empowered with the ability to hire its own personnel directly and to set the compensation, benefits and other terms and conditions of employment subject, of course, to collective bargaining, where applicable.

The Respondent Unions in the instant proceeding were all previously certified to represent employees in designated bargaining units, prior to the establishment of WASA. Although there were several modification petitions entertained by PERB that led to the consolidation of a few smaller units represented by the Respondent Unions, WASA is seeking to consolidate all of the various non-compensation units into a single non-compensation unit. In view of the parties' agreement to engage in concerted bargaining, which resulted in a "Coalition Agreement" in 1996, WASA withdrew its prior Modification Petition. Between November 1996, and November 1997, the Board modified existing certifications to establish five non-compensation units.¹

The R&R describes in detail, the subsequent reorganizations of WASA that replaced the six bureaus with departments, and restructured other functions into broader groups: (1) financial and related matters under the Chief Financial Officer/Deputy General Manager; (2) internal housekeeping matters under an Assistant General Manager; and (3) operation of water, sewer and wastewater treatment services under the Chief Engineer/Deputy General Manager.

The parties to this proceeding executed a Coalition Agreement which provided that the parties would not insist on separate compensation and non-compensation agreements for each bargaining unit; rather there would be one Master Agreement that would cover all terms and conditions of employment, including compensation. The Coalition Agreement, executed in 1996, was to continue in effect for six years, unless any party provided 180-day advance notice of withdrawal. Consistent with the terms of the Coalition Agreement, the parties then executed a Master Agreement in 2001, which covered compensation and non-compensation items. By its terms, the Master Agreement remained in effect until September 30, 2003, and continued to remain in effect while the parties engaged in negotiations for a new agreement.

On February 11, 2003, AFGE Local 631, which represents the majority of bargaining unit employees in the Wastewater Treatment Department, gave notice of its withdrawal from the Coalition Agreement. Subsequently, the four remaining Unions advised of their withdrawal from the Agreement. Upon WASA's filing of the Petition for Modification on August 15, 2003, in the instant proceeding, the Unions rescinded their withdrawal announcements and sought to pursue the negotiations that had begun for a new agreement. Additionally, all of the Respondent Unions uniformly oppose WASA's Petition.

¹See Slip Op. No. 498, PERB Case No. 96-UM-03 (1996); Slip Op. No. 510, 96-UM-07 (1997); Slip Op. No. 526, 97-UM-06 (1997); and Slip Op. No. 510, 97-UM-01 (1997). The Board also established a new Compensation Unit 31 at WASA, consisting of employees in all five non-compensation units. (Slip Op. No. 510, PERB Case No. 97-CU-01 (March, 1997). There is no issue in the instant case that concerns the scope of Compensation Unit 31.

III. Hearing Examiner's Report:

WASA advanced arguments to the Hearing Examiner that the Petition for the modification of the existing bargaining units was warranted essentially for the following reasons: (1) the existing bargaining unit structure does not correspond to WASA's administrative structure; (2) a community of interest is evident in the common work rules and other terms and conditions of employment that crosses the lines of all of the units; and (3) the number, structure and organization of the existing bargaining units foster ineffective labor relations and inefficient operations. The Hearing Examiner considered the testimony of WASA's witnesses that the daily interactions of labor-management were ineffective and cumbersome. The Hearing Examiner noted that, at times, WASA witnesses contended that the different and overlapping bargaining units impeded the basic mission work of the agency. As a basis for favorable consideration of its Petition, WASA cited to Board cases in which a consolidation of bargaining units was found appropriate.²

The R&R notes that all of the Respondent Unions generally oppose WASA's Petition for the same reasons: (1) nothing in the CMPA or in the Board's Rules permit the granting of a petition for modification at an agency's request; (2) WASA's assertions that bargaining with separate units and representatives is ineffective, amounts to a claim of inconvenience which is not a criterion for unit modification; and (3) employees in the represented bargaining units may share common working conditions across unit lines - since they share the same employer; however, many of the units are separate and distinct, with dissimilar duties and functions from other units.

In addition to the general bases for opposition noted above, Respondent Union NAGE, which represents a relatively small group of employees in the Wastewater Treatment Department and in the Finance and Budget Division of the Chief Financial Officer/Deputy General Manager, argues that a single consolidated unit of employees would violate both the law and policy provided by the CMPA. The CMPA establishes the right of employees to form, join, and assist a labor organization, and to engage in collective bargaining through their chosen representatives, without fear of reprisal. NAGE asserts that WASA's effort to consolidate the bargaining units interferes with those rights by implication that failure to bargain successfully as a coalition will spur the effort to dissolve the bargaining units.

The Hearing Examiner found that WASA's Petition is premised on Board Rule 504.1(a) and/or Board Rule 504.1 (b) and (c) and D.C. Code § 1-617.09.

²WASA cites the Board's decision in *Washington Area Metal Trades Council, and Federal Employees and Transportation Workers, Local Union No. 960, LIUNA and District of Columbia Commission on Mental Health*, Slip Op. No. 173, PERB Case No. 87-R-16 (1987), in which the Board found that a bargaining unit of laundry employees was appropriately consolidated with a bargaining unit of construction, electrical, mechanical, and maintenance employees. It should be noted, however, that both units were represented by the same bargaining agent.

Board Rule 504.1 provides in part as follows:

A petition for unit modification of either a compensation or non-compensation unit may be filed by a labor organization, by an employing agency or jointly. A unit modification may be sought for any of the following purposes:

- (a) To reflect a change in the identity or statutory authority of the employing agency;
- (b) To add to an existing unit unrepresented classifications or employee positions created since the recognition or certification of the exclusive representative;
- (c) To delete classifications no longer in existence or which, by virtue of changed circumstances, are no longer appropriate to the established unit[.]

The Hearing Examiner found without merit WASA's claim that bargaining units established by the Board after WASA was created in 1996 and 1997, were no longer appropriate units. The R&R indicates that there was no supporting proof that the Petitioner's operations have resulted in any change in identity or statutory authority to warrant the requested consolidation. The Report further acknowledges WASA's internal reorganizations and changes in reporting relationships; but also notes that for the most part WASA's divisions and branches have remained intact.

With respect to the Petitioner's assertion that the CMPA provisions support the requested consolidation of units, the Hearing Examiner rejects this argument based on the plain language of the statutory provisions, which provide in pertinent part the following:

D. C. Code § 1-617.09 (a) provides as follows:

The determination of an appropriate unit will be made on a case-by-case basis and will be made on the basis of a properly-supported request from a labor organization. No particular type of unit may be predetermined by management officials, nor can there be any arbitrary limit upon the number of appropriate units within any agency. The essential ingredient in every unit is community of interest: Provided, however, that an appropriate unit must also be one that promotes effective labor relations and efficiency of agency operations. A unit should include individuals who share certain interests, such as skills, working conditions, common supervision, physical location,

organization structure, distinctiveness of functions performed, and the existence of integrated work processes. No unit shall be established solely on the extent to which employees in a proposed unit have organized; however, membership in a labor organization may be considered as a factor in evaluating the community of interest of employees in a proposed unit.

The Hearing Examiner determined that WASA cannot now argue that the current bargaining units actually predated the creation of the petitioning agency. In fact, as noted in the R&R, the parties in the instant proceeding - WASA and the five Respondent Unions - all stipulated to the appropriateness of the units in 1996-1997. The Hearing Examiner notes in his stated observations of the parties and witnesses that while the current state of labor-relations at WASA might not be a model of the most effective bargaining structure, it nonetheless was incumbent upon the Petitioner to prove the units as inappropriate pursuant to statutory dictates.

In his Report, the Hearing Examiner recommends that although WASA's Petition for the establishment of a single consolidated bargaining unit should be dismissed without prejudice, the certifications for the five bargaining units at WASA should be revised to reflect, in part, the current organizational structure and the integration of functions at WASA. His recommended revisions include the consolidation of units that are separately represented by the Respondent - Unions AFGE Local 2553, AFSCME Local 2091 and NAGE Local R3-06. This also entails the revocation of the certification held by Respondent Union AFGE, Local 2553, which currently represents approximately 9 employees in the Water Services Department, Pumping Division. In all instances, the Hearing Examiner noted that no question concerning representation was presented because of the relatively small number of employees affected.

IV. Exceptions

As stated previously, all of the Respondent Unions filed Exceptions to the R&R. The Respondents contend that the Hearing Examiner's Recommendations to allow WASA to file another petition in the future, to revoke a union's certification and the suggested realignment of units were inappropriate and erroneous in the application of the law. WASA filed a formal Opposition to Respondent Unions' Exceptions. WASA claims that the Unions' contentions amount to a mere disagreement with the Hearing Examiner's findings that the current unit descriptions required revisions, and the existing certifications needed to be updated or withdrawn to reflect the current realities.

V. Discussion

The Board adopts the Hearing Examiner's findings, insofar as they support the dismissal of the Petition for Modification without prejudice to refiling, based on the limited prerequisites of the

Board's Rules and as supported by the CMPA. We reject, however, the recommendation that the units be realigned as proposed, and that the certification of AFGE Local 2553 be revoked. The Board finds the Hearing Examiner's Report well-reasoned and thorough with respect to the Petitioner's evidence and arguments, as well as the Respondent Unions. We agree that there is no authority under either the Board's Rules or governing statutory authority that would allow us to consider a petition by an employing agency that fails to articulate and support the assertions that organizational and administrative restructuring rendered inappropriate the bargaining units which had been previously certified by the Board as appropriate. Based on a review of the record and the findings set forth in the R&R, there is insufficient support for the Board to revisit its earlier determination that the established units are appropriate.

Similarly, we find no compelling reasons to dismiss WASA's Petition with prejudice, in the event that there is a change in the identity or statutory authority of the agency that would require us to revisit these issues.

With respect to the Hearing Examiner's recommendations that the Board should revoke and change existing certifications of the Respondent Unions, the Board disagrees with the Hearing Examiner that such an action can be accomplished *sua sponte*. Although the Hearing Examiner suggests that there is no question concerning representation among the various units represented, we find no statutory or regulatory basis to decertify any union, or modify an existing certification absent a properly filed petition for the Board's review and consideration. This conclusion does not preclude future consideration of any properly filed and properly supported petition that seeks to clarify the existing units at WASA.

ORDER

IT IS HEREBY ORDERED THAT:

1. For the foregoing reasons, the Petition for Modification is hereby dismissed, without prejudice; and the Petitioner's request for the consolidation of bargaining units is hereby denied.
2. 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.

June 6, 2007

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 03-UM-03 was transmitted via Fax and U.S. Mail to the following parties on this the 6th day of June 2007.

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