

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In The Matter Of:)

District 1199E-DC, National)
Union of Hospital & Health Care)
Employees, Service Employees)
International Union,)

Petitioner,)

and)

Department of Human Services,)
Commission on Public Health,)

Agency.)

PERB Case No. 91-R-01
Opinion No. 293

DECISION ON UNIT DETERMINATION
AND DIRECTION OF ELECTION

On November 2, 1990, District 1199E-DC, National Union of Hospital and Health Care Employees, Service Employees International Union, AFL-CIO (SEIU) filed a Recognition Petition with the Public Employee Relations Board (Board). SEIU seeks to represent, for purposes of collective bargaining, employees of the Commission on Public Health (CPH), Department of Human Services (DHS) in the following proposed unit:

"[A]ll unrepresented professionals employed by the Commission o[n] Public Health, Department of Human Services, excluding management officials, supervisors, confidential employees or employees engaged in personnel work in other than a purely clerical capacity, and employees engaged in administering the provisions of [Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978,] D.C. Law 2.139." ^{1/}

^{1/} The unit description appears as agreed upon between the parties in their "Joint Motion for Unit Certification and Election." SEIU originally sought a unit of "all unrepresented health care professionals" which, as noted later in the text, had been an initial point of dispute between the parties. The required showing of interest in support of the Petition, as prescribed by Board Rule 502.2, was determined based upon a list supplied on behalf of DHS of employees in the agreed-upon unit. Professional

The Petition was accompanied by a showing of interest meeting the requirements of Board Rule 502.2 and a copy of the Petitioner's Constitution and Bylaws and Roster of Officers, as required by Rule 502.1(d).

Notices concerning the Petition were issued on November 7, 1990, for conspicuous posting at CPH for 15 consecutive days. The Notice required that requests to intervene and/or comments be filed in the Board's office not later than December 1, 1990. CPH confirmed in writing on November 16, 1990, that the Notices had been posted accordingly.

CPH filed a Response to the Recognition Petition on November 29, 1990, asserting that the unit as described in the Petition was not appropriate. CPH asserted that a unit limited to "health care professionals" would not promote effective labor relations and efficiency of agency operations. Based on this contention, CPH proposed that the appropriate unit should include "all unrepresented professionals." (Resp. at 2.)

On January 14, 1991, the Coalition of Pharmacist Employees (COPE), purporting to represent the pharmacists employed at CPH, filed a letter of response to the Petition opposing the inclusion of pharmacists in the proposed unit. COPE claimed that the pharmacists lacked a community of interest with other employees in the proposed unit as required by D.C. Code Sec. 1-618.9. COPE further contended that its response to the Petition was not made by the Board's designated deadline of December 1, 1990, because the Notices were not posted conspicuously and COPE was therefore not aware of the Petition until after the comments were due.^{2/}

positions (Footnote 1 Cont'd.)

included within the proposed unit are chemist, nutritionist, pharmacist, social worker, audiologist, physical therapist, clinical psychologist, occupational therapist, speech pathologist, dietician, public health educator, and specialist in the areas of visual information, vocational rehabilitation, child development and speech education. This list is intended to be illustrative and not definitive of the scope of the proposed unrepresented-professional-employee unit at CPH.

^{2/} COPE made no claim with respect to having status as a labor organization nor of any right to intervene as accorded to labor organizations under Board Rule 502.7. Thus, COPE's responses were treated as "comments" regarding the Petition and were forwarded by the Board to the parties for any response.

On January 15, 1991, SEIU responded to COPE's letter maintaining that the proposed unit, including the pharmacists, is appropriate for collective bargaining. By letter filed January 16, 1991, CPH also responded to COPE's position. CPH argued that a unit which excluded the pharmacists would be inappropriate. CPH also averred that it had conspicuously posted the Notices by November 16, 1990, in accordance with the Board's November 7, 1990 directions and, consequently, COPE's January 14, 1991 filing with the Board--due no later than December 1, 1990--was untimely filed. Moreover, CPH argued, "the appropriate mechanism by which employees [,e.g., the pharmacists,] show support for or opposition to a proposed unit is through the election process."

On April 5, 1991, the parties filed a "Joint Motion for Unit Certification and Election" wherein they agreed that a proposed unit of all unrepresented professionals, as set forth above, was an appropriate unit for collective bargaining and requested that an election be conducted in the designated unit.

By Order dated April 25, 1991, the Board designated its Executive Director to hear and take evidence on all issues relevant to the disposition of this Petition.^{3/} The hearing took place on May 15, 1991. Following the timely submissions of

^{3/} The Petitioner asserts that "[n]otwithstanding the fact that the COPE is not a recognized and PERB certified labor organization; that COPE does not represent the interests of all of the potentially affected pharmacists; that the date for intervention ha[d] expired; and that the Union and the Employer respectfully submitted a joint motion for unit certification and an expedited election, the PERB just the same and in contravention of Board Rules held a hearing to determine the appropriateness of the unit as petitioned for." (Pet. Post Hearing Br. at 2, emphasis added.) Board Rule 502.10 provides that "[u]pon filing a petition . . . , the Board shall direct such preliminary investigation as it deems necessary and thereafter shall take appropriate action which may include . . . [h]olding a hearing[.]" Petitioner cites no statutory provision or Board Rule which abrogates or qualifies this action by the Board even if there is no dispute by the parties regarding the proposed unit. Moreover, the hearings are an extension of the Board's investigation and are not adversarial. The purpose of a hearing is to develop a full and factual record upon which the Board may make a decision. Therefore, despite the questions concerning COPE's status as a timely and appropriate intervenor, the Board was free to conduct a hearing regarding the appropriateness of the unit. (See Board Rule 502.11.)

post-hearing briefs, a Report and Recommendation was issued ^{4/} which concluded that the proposed unit was appropriate and recommended the direction of an election. No exceptions were filed to the Report and Recommendation.

D.C. Code Sec. 1-618.9(a) requires that a community of interest exist in a unit found appropriate by the Board for collective bargaining over terms and conditions of employment. Pursuant to this provision, the Board determines on a case-by-case basis whether employees in a proposed unit share certain interests. Pertinent to our determination on the appropriateness of the unit is the consideration of the employees' skills, common supervision and physical location, the organizational structure, the distinctiveness of functions performed and the existence of an integrated workforce. District Council 20, American Federation of State, County and Municipal Employees, AFL-CIO and District of Columbia School of Law, 35 DCR 8203, Slip Op. No. 235, PERB Case No. 89-R-03 (1989). We have ruled that some dissimilarity among positions within the proposed unit is not fatal to finding appropriate an agency-wide or department-wide unit as proposed here. Id.

Consistent with this criteria, the Report and Recommendation contained findings that notwithstanding the diversity of the disciplines within the proposed unit, they interacted together to provide a common objective, i.e., patient care, under a single organizational structure. (R&R at 6.) Moreover, the great majority of these professional employees "require common supervision and functional integration of the duties designed to address the patient's specific needs." (R&R at 6.)

Although these employees are located at several different sites throughout the city, the interdisciplinary nature of their duties and common objective -- patient care -- necessarily teams rather than divides employees representing a cross section of the various professions included in the proposed unit at these locations. (R&R at 6-7.) Furthermore, these employees are subject to and covered by the same rules, regulations and policies promulgated by CPH and the District of Columbia Personnel Manual. (R&R at 7.) Finally, there is no contention or evidence that the proposed unit would not promote effective labor relations and efficiency of agency operation in

^{4/} Due to unavoidable administrative constraints that existed during this period, the Board's Executive Director presided over the hearing and thereafter the record was assigned for purposes of making the findings and conclusions, to a Board-designated Hearing Examiner.

contravention of D.C. Code Sec. 1-618.9(a). ^{5/}

After reviewing the record, the arguments to the Hearing Examiner, post-hearing briefs and the Report and Recommendation, the Board concludes that the findings and conclusions contained in the Report and Recommendation are supported by the record. Accordingly, the Board adopts the recommendation and finds the proposed unit set forth above appropriate for bargaining over terms and conditions of employment. ^{6/}

To resolve the question concerning representation, the Board orders that an election be held to determine the will of the employees eligible to vote in the unit described above regarding representation in collective bargaining with DHS.

^{5/} Testimony was provided by a pharmacist that the level of security as well as the pay scale for pharmacists differed from the other professionals in the proposed unit. There also was testimony that the contact pharmacists have with other professionals, unlike other employees in the proposed unit, is essentially limited to dentists, doctors, and nurses. These professional groups are represented in their respective bargaining units and are not among the employees included in the unit proposed in this proceeding. However, as noted in the text above, some dissimilarities of a particular group of employees or the absence of a factor that is not shared to the same extent as the remainder of the unit is not controlling where, under the totality of the circumstances, a general community of interest prevails. The record as a whole reveals that the pharmacists share, more than not, a community of interest with respect to the factors noted above with other professionals in the proposed unit. Testimony asserting that pharmacists possess skills unique to the ability of pharmacists, although a relevant consideration, is not determinative. Such indicia is concerned more with the discipline that is peculiar to each of the various professions encompassed by this proposed unit and less with the terms and conditions of employment under which these employees work.

^{6/} In view of our Decision and Order finding the unit appropriate on a record which included COPE's participation at the hearing, and the lack of exceptions to the Report and Recommendation by the parties (as well as COPE), we find it unnecessary to reach any issue that may exist concerning COPE's standing in these proceedings.

ORDER

IT IS HEREBY ORDERED THAT:

1. The following unit is an appropriate unit for collective bargaining over terms and conditions of employment:

"All unrepresented professionals employed by the Commission o[n] Public Health, Department of Human Services, excluding management officials, supervisors, confidential employees or employees engaged in personnel work in other than a purely clerical capacity, and employees engaged in administering the provisions of [Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978,] D.C. Law 2-139."

2. An election shall be held in accordance with the provisions of D.C. Code Section 1-618.10 and Sections 510-515 of the Rules of the Board to determine whether or not the employees in the above-described unit wish to be represented by District Council 1199E-DC, National Union of Hospital & Health Care Employees, Service Employees International Union for purposes of collective bargaining for compensation and other terms and conditions of employment.

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

December 13, 1991