GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 2000, Petitioner,	
and	
District of Columbia Public Schools, Agency,	PERB Case No. 88-R-02 Opinion No. 212 (Supplemental Motion for Reconsideration)
and	
Washington Teachers' Union, Intervenor.	

DECISION AND ORDER

On December 1, 1988, the Washington Teachers' Union (WTU) filed with the Public Employee Relations Board (Board) a Supplemental Motion for Reconsideration of the Board's earlier rulings (Slip Op. Nos. 186, 192 and 201), in which the Board had found appropriate a unit of attendance counselors in the EG-9 classification, placed WTU on the ballot as an intervenor along with the Petitioner Teamsters, Local 2000, directed an election, and denied an earlier WTU motion for reconsideration. For the reasons set forth below, we deny the Supplemental Motion and contemporaneously issue a Certification of the Results of the Election as reported to the parties on November 29, 1988, and a Certification of Representative.

The present Motion asserts that the Washington Teachers' Union (WTU) has just "come into possession of" a Certification of Representative which, WTU claims, "on its face" states that WTU is the exclusive bargaining agent "for the very employees petitioned-for herein." The Certification in question, PERB Certification No. 12 dated August 30, 1982, by its terms granted to WTU exclusive recognition for a unit of "All personnel employed by the District of Columbia Public Schools (DCPS) who are rendering educational services and receive compensation pursuant to the 'EG' Schedule...."

Even assuming that the attendance counselors who are the subject of this proceeding became part of the unit covered by Certification No. 12 when this position was created -- a matter not so clear as WTU would have it[1] -- we do not agree with WTU's assertion that our earlier rulings in this proceeding have resulted in or would result in "two conflicting certifications for the same employees." Rather, viewing the situation most favorably to the WTU position, we have an earlier certification and -- at a time long after any "certification year" had expired[2] -- a second, narrower certification for a distinct category of employees. The result is two non-overlapping units. Had WTU prevailed in the election held in this proceeding, it might have sought to consolidate the unit with yet another unit which WTU represents.[3] WTU did not prevail, however, and DCPS will not be subject to two conflicting claims when Teamsters, Local 2000, now certified as the exclusive representative of the attendance counselors, seeks to bargain on their behalf.

This proceeding began on December 2, 1987, when the Teamsters, Local 2000 petitioned for recognition in a proposed unit of attendance counselors at DCPS, who are classified as EG-9 personnel. In response to the Petition, WTU filed a request for intervention based on its claim to be the incumbent exclusive representative of these employees by virtue of accretion.

Following interim proceedings, including two earlier opinions of this Board cited above, a secret mail ballot election was conducted by the Board in the unit sought by the Teamsters. The election results were tallied on November 21, 1988 and a Report of Election Results was served on the parties on November 29, 1988, showing that the Teamsters received 17 votes, WTU 3 votes, and no votes were cast for the choice of "No Union." There were no challenged ballots and no objections were filed by any party. WTU, however, filed the present Motion during the time period designated by our Interim rules for filing objections concerning the conduct of the election.

---

[1]/ The uncertainty as to the inclusion vel non of the attendance counselors in Certification No. 12 is shown by, among other things, the fact that no party called that Certification to the Board's attention until December 1, 1988, after the election, the tally of ballots, and service of the election results upon the parties.

[2]/ Under Board Rule 101.8(a), a petition for exclusive recognition in a unit is barred during the twelve months following a certification of exclusive representation for a unit.

[3]/ The parties' election agreement contains a provision which states that if WTU prevails in the election, DCPS will not object to a petition for the consolidation of the attendance counselor unit with an existing ET-15 unit represented by WTU.

Thereafter, both unions responded to Board interrogatories and filed briefs on January 24, 1989.[4] DCPS on January 27, 1989 submitted a letter in which it maintained that it would compromise its neutrality if it were to address the interrogatories.

WTU in its brief contends that Certification No. 12 "establishes conclusively that the [Teamsters'] Petition is legally barred," as the attendance counselors "share an inextricable community of interest with the other EG-9 employees." The Teamsters contend and we agree, that the only effect that the discovery of Certification No. 12 can have upon this proceeding is to ensure what the Board has already permitted, ie., to secure a place for WTU on the ballot.

The Board has dealt with the appropriateness of the separate unit of attendance counselors in each of its prior opinions in this proceeding. Our Opinion No. 186 found the unit appropriate. Our Opinion No. 192, granting a WTU motion for reconsideration and granting it intervenor status, noted and rejected a WTU contention that the unit was inappropriate on the basis of an intended DCPS change in the classification (and thus the unit placement). And in our Opinion No. 201, concerning a renewed WTU argument as to an intended change in classification and unit placement, we again found that the proffered evidence as to such a change was insufficient to establish the fact for which it was offered.

WTU has not, in its present motion, presented an adequate basis for the Board now to reconsider the unit question. In substance, it does no more than reraise the arguments already rejected.

WTU also contends that the present election proceeding is barred by an agreement between WTU and DCPS. Again, this is not a new contention, but rather is one that we have previously considered and rejected for failure of proof. An additional document on DCPS letterhead that WTU submitted to the Board as an attachment to its most recent brief does not necessarily apply to the attendance counselors[5] and, more basically, bears no signatures and is entirely unexecuted, hence it cannot serve as an agreement, much less one barring an election. (cf. Empire Screen Printing, Inc., 104 LRRM 1198, 249 NLRB No. 101 (1980).

---

[4]/ The Board had requested that WTU also submit an affidavit describing the circumstances surrounding its "discovery" of Certification No. 12. It is not necessary for us to analyze that affidavit, as we conclude that the fact of the Certification, not whether or when or by whom it was known, is the only fact relevant to our decision herein.

[5]/ The document discusses the possible transfer of EG-9 employees who are "certifiable" and also refers to "EG-9 teachers."

Moreover, it is undisputed that DCPS has not bargained with WTU about the attendance counselors (see WTU brief received by the Board on January 24, 1989, p. 2, and DCPS letter to the Board's Executive Director dated January 27, 1989, p. 1). Indeed, WTU has complained of this fact bitterly (see citation immediately above). Notably, however, WTU has not filed a charge that the DCPS has thereby violated a legal duty to bargain. In this circumstance, for the Board now to reverse its unit determination would simply leave these attendance counselors without representation, and do so in the face of their clear expression, through the election, of a desire for representation. Such a result would, we believe, be contrary to the purpose of the Comprehensive Merit Personnel Act.

For all of the foregoing reasons, the Board denies WTU's supplemental motion for reconsideration.

ORDER

IT IS ORDERED THAT:

The Supplemental Motion For Reconsideration is denied.

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

March 8, 1989