

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

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In the Matter of:	)	
	)	
International Brotherhood of	)	
Teamsters, Chauffeurs, Warehousemen	)	
and Helpers of America, Local 2000,	)	
	)	
Petitioner,	)	
	)	
and	)	
	)	
District of Columbia	)	
Public Schools,	)	
	)	
Agency,	)	
	)	
and	)	PERB Case No. 88-R-02
	)	Opinion No. 201
	)	(Motion for Reconsideration)
Washington Teachers' Union,	)	
	)	
Intervenor.	)	
	)	

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DECISION AND ORDER

This matter is before the Public Employee Relations Board (Board), this time to consider a Motion for Reconsideration filed by the Washington Teachers' Union (WTU) on November 15, 1988. <sup>1/</sup> WTU seeks the Board's reconsideration of its earlier Decision and Order directing that an election be held to determine whether certain employees of the District of Columbia Public Schools (DCPS) desire representation for purposes of collective bargaining by the Teamsters, Local 2000, by the WTU or by neither of these labor organizations.

WTU claims that it is now in possession of evidence which substantially impacts upon this proceeding and which should compel the Board to stay the election proceeding, in which ballots were mailed on November 8, 1988 and order a hearing for the purpose of receiving the purported new evidence. Specifically, WTU asserts in its Motion for Reconsideration that the possibility of a conversion by DCPS of the designated classification of the employees who are the focus of these proceedings (EG-9 attendance counselors) to an ET-15 classification eliminates any question concerning representation since WTU is the certified exclusive representative for

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<sup>1/</sup> The Board considered and reached the conclusions in this Decision and Order, during a conference call on November 18, 1988.

for the ET-15 employees. In support of its claims, WTU has attached to its Motion two (2) exhibits. The first exhibit is a set of counterproposals, by WTU and DCPS, which are dated September 26 and September 29, 1988 and appear to address issues pertaining to the EG-9 employees. The second exhibit is a letter addressed to Mr. William H. Simons, President of WTU, from the Superintendent of DCPS, Andrew E. Jenkins, III. The letter is dated September 19, 1988 and states in pertinent part, the following:

"...[w]e would be willing to begin to convert immediately those EG-teacher positions requiring less than ten months' service and no more than a seven-hour work day under the following tentative plan. Those EG-9 teacher personnel who meet the ET-15 certification requirements and who wish to change their position classification would be converted to ET-15's. The remaining EG-9 teacher personnel would be allowed to retain their incumbency as EG-9's until such time as they either qualified for conversion to the ET-15 classification or vacated their positions by reason of resignation, retirement, etc. At such time as the EG-9 positions are vacated, they would automatically convert to an ET-15 classification."

WTU contends that these exhibits "confirm the accretion of the petitioned-for unit into the WTU's bargaining unit" and present a contract bar to the representation election. (Motion, p.2) WTU argues that if the Board permits the representation election to proceed, without allowing WTU the opportunity to be heard and to present its additional evidence, it will have deprived the Union of due process of law. Moreover, WTU urges that a hearing is required in this matter because it has evidence which supports the assertion that a separate unit of EG-9 attendance counselors would be inappropriate.

The issues before the Board are (1) whether the agreement between WTU and DCPS after the issuance of a decision and direction of election covering the EG-9 employees serves as a contract bar to an election proceeding; and if so, (2) whether sufficient evidence has been presented to imply the existence of such an agreement and its ratification; and (3) whether WTU has been accorded the opportunity to present evidence and argument on the issues which it now raises in its Motion for Reconsideration.

For the following reasons, the Board denies WTU's Motion for Reconsideration. We find that the matters claimed by WTU to constitute new and material evidence do not rise to a level of significance or sufficiency which would require the Board's reconsideration of its earlier opinion. Even if and when the conversion of the EG-9 attendance counselors is accomplished according to the tentative plan outlined in WTU's Exhibit No. 2, this does not mean that the EG-9 counselors would automatically be transferred to the ET-15 classification. Therefore, we are not persuaded by WTU's assertions that it is the exclusive representative of the EG-9 counselors, or that this unit is not appropriate for purposes of collective bargaining.

The Board's decision in Opinion No. 192, directing that an election be conducted and approving the agreement of the parties (including WTU) to poll the affected employees as to which, if any, labor organization they would choose (WTU or the Teamsters), was rendered on September 2, 1988. WTU and DCPS exchanged proposals concerning the employees in this unit presumably on September 26th and 29th. No evidence has been presented proving the existence of a fully executed and ratified agreement covering the EG-9 attendance counselors. <sup>2/</sup> More importantly, the Board has held that the negotiation of a tentative agreement is not a bar to the processing of a representation petition filed by a rival labor organization seeking to represent the same employees. (See, Teamsters and DCPS and AFSCME, Opinion No. 134, PERB Case No. 85-R-09) In the instant matter, the Board finds the circumstances even more compelling to reach the same conclusion. Here, WTU contends that an agreement negotiated after the Board has directed that an election be held presents a bar to the election proceeding. We disagree.

Similarly, we are not persuaded that a hearing is required on WTU's contention that a separate unit of attendance counselors would not constitute an appropriate unit. <sup>3/</sup> This assertion is apparently premised on WTU's claim that ultimately if the EG-9 employees are converted, the unit will be severely diminished in size. However, even a showing that the unit may shrink to the size that WTU predicts would not invalidate the Board's prior finding of an appropriate unit.

Based on the foregoing reasons we conclude that there is no basis for granting WTU's Motion.

#### ORDER

The Motion for Reconsideration is denied.

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

November 21, 1988

<sup>2/</sup> Cf. Empire Screen Printing Inc., 104 LRRM 1198, 249, NLRB No. 101 (1980), holding that for an agreement to achieve "bar quality" it must contain substantial terms and conditions and be signed by the parties to the agreement. The Board also notes that the cases cited by WTU in its Motion are not inconsistent with this conclusion.

<sup>3/</sup> The Board notes that a hearing was held in this case which resulted in an agreement by the parties to proceed with an election, placing both WTU and the Teamsters on the ballot. WTU did not at that time proffer any evidence that it represented the EG-9 employees by virtue of accretion or any other proof establishing its claim as the exclusive representative; nor did WTU in its prior Motion for Reconsideration submit such evidence. For these reasons, we cannot conclude that WTU has been denied due process, as it has had opportunities to present this evidence.