

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)
)

American Federation of State, County)
and Municipal Employees,)
Council 20,)

PERB Case No. 83-R-08
Opinion No. 70

Petitioner,)
)

and)
)

The District of Columbia Public)
Schools,)

Respondent.)
)
)

DECISION AND ORDER

On July 22, 1983, the American Federation of State, County and Municipal Employees, District Council 20 (AFSCME), filed a "Petition for Recognition and for Recognition Without an Election". AFSCME seeks a determination by this Board that a unit of wages-as-earned (WAE) employees in the Transportation and Warehouse Service Section of the District of Columbia Public Schools (Employer) is an appropriate unit for collective bargaining.

On September 15, 1983, the Employer filed its "Opposition" contending that the proposed unit is inappropriate and that recognition of the unit would do great harm to its operations. The Employer contends further that WAE employees are not "employees" eligible for collective bargaining and that the requested unit does not meet the statutory criteria that a bargaining unit promote effective labor relations and efficiency of agency operations. On September 22, 1983, AFSCME filed a "Reply" to the Employer's "Opposition" contending essentially that the Employer's position should be rejected by the Board.

The issue is whether or not this proposed unit of WAE employees is an appropriate unit for collective bargaining.

On October 5, 1983, the Board referred the matter to a hearing examiner for a report and recommendation. A hearing was convened on December 6 and continued on December 9, 1983. The Hearing Examiner's "Report and Recommendation" was filed with the Board and served on the parties on January 11, 1984. On January 20, 1984, the Employer filed written "Exceptions to the Hearing Examiner's Report and Recommendation."

The Hearing Examiner found that employees hired under the WAE wage status are clearly "employees" within the meaning of the Comprehensive Merit Personnel Act (CMPA) (D.C. Code Section 1.603.1(7)).^{1/} The Employer defines "employee", in Section 602.9 of its Rules and Regulations, as "any person employed by the District of Columbia Board of Education, with the exception of persons whose duties are of a temporary or casual nature." However, the Hearing Examiner found that, in actual practice this group of WAE employees are neither temporary or casual and even if they were, the Employer's Rules and Regulations cannot prevail if in conflict with the CMPA.

The Hearing Examiner found further that the proposed unit is identical to an existing unit of approximately two hundred five (205) permanent, full-time employees in the Transportation and Warehouse Services Section of the Employer's Division of Logistical Support. The proposed unit consists of approximately one hundred eighty (180) non-managerial, non-supervisory WAE employees in the Transportation and Warehouse Services Section of Employer's Division of Logistical Support. One hundred sixteen (116) are bus operators and sixty-four (64) are motor vehicle operators. The only difference between the existing unit and the proposed unit is the employees' wage status, i.e. the existing unit consists of permanent, full-time employees only while the proposed unit would consist of WAE employees only.

The Hearing Examiner also found that employees in the WAE wage status are not temporary, casual or intermittent as alleged by the Employer, but rather, are temporary only in the sense that they receive temporary appointments. Almost 90% of these employees are reemployed the following year and in some cases, have been reemployed for as many as eight consecutive years. With such a strong expectation of reemployment, the Hearing Examiner found that they have a substantial interest in their working conditions in the Transportation and Warehouse Service Section.

The Board adopts the findings of the Hearing Examiner and finds that these employees share a community of interest, that their duties and working conditions are related and that they share common supervision and work locations. The Employer does not challenge the existence of a community of interest and has not established that the proposed unit will not promote effective labor relations and efficiency of agency operations.

^{1/} Section 301(g) of the CMPA (D.C. Code Section 1-603.6(7) provides that:

"[t]he term 'employee' means, except when specifically modified in this chapter, an individual who performs a function of the District government and who receives compensation for the performance of such services."

After reviewing the entire record, including the "Report and Recommendation" of the Hearing Examiner and the Employer's "Exceptions", the Board adopts the Hearing Examiner's findings and recommendation that this proposed unit of WAE employees is an appropriate unit for collective bargaining concerning the compensation and terms and conditions of employment of these employees.

O R D E R

IT IS ORDERED THAT:

The unit, as proposed by AFSCME, is determined to be appropriate for collective bargaining. An election is authorized pursuant to Section 102 of the Interim Rules of the Board to determine whether these employees wish to be represented by AFSCME or not to be represented in bargaining concerning the terms and conditions of their employment with the Employer.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

April 23, 1984