GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
American Federation of State, County and Municipal Employees, District Council 20, Local 1959, AFL-CIO,	
Complainant,	PERB Case No. 91-U-07 Opinion No. 308
v.	
District of Columbia Public Schools,	
Respondent.	

DECISION AND ORDER

The duly designated Hearing Examiner issued a Report and Recommendation [1]/ in the above-captioned proceeding finding that the Respondent, the District of Columbia Public Schools (DCPS) committed unfair labor practices, as alleged in the Complaint filed by American Federation of State, County and Municipal Employees, District Council 20, Local 1959, AFL-CIO (AFSCME). Specifically, the Hearing Examiner found that DCPS violated D.C. Code Sections 1-618.4(a)(1) and (5) of the Comprehensive Merit Personnel Act (CMPA) by "refusing on January 3, 1991, and thereafter, to honor the Union's request for information, which was relevant and necessary to the Union in its role as employee representative in the grievance-arbitration process." (R&R at 4.) [2]/ No exceptions were filed to the Hearing Examiner's Report.

Pursuant to Section 1-605.2(3) of the District of Columbia Code and the Board Rule 520.14, the Board has reviewed the findings and conclusions of the Hearing Examiner and find them to be cogent, persuasive and supported by the record. We therefore adopt the recommendations of the Hearing Examiner finding that DCPS failed and refused to provide, upon request, information relevant and necessary to the performance of AFSCME's duties

[1]/ A copy of the Report is attached hereto as Appendix "A".

[2]/ AFSCME had requested the urine sample collected by DCPS from the grievant, for purposes of drug testing, and the attendant chain-of-custody statement.

under the CMPA, and that by this conduct the Respondent violated D.C. Code Sec. 1-618.4(a)(1) and (5) of the CMPA, for the reasons stated in the attached Report.

ORDER

IT IS ORDERED THAT:

1. The District of Columbia Public Schools (DCPS) shall cease and desist from refusing to furnish the American Federation of State, County and Municipal Employees, District Council 20, Local 1959, AFL-CIO (AFSCME), pursuant to its role as employees' representative under the negotiated grievance-arbitration process, with information relevant and necessary to the investigation and presentation of grievances, including chain-of-custody statements produced in connection with urine samples collected by DCPS from the grievant for purposes of drug testing. [3]/

2. DCPS shall cease and desist from interfering with, in any like or related manner, the rights guaranteed employees by the Comprehensive Merit Personnel Act.

3. DCPS shall post copies of the attached Notice conspicuously at all of the work sites, where notices to employees in the bargaining unit represented by AFSCME Local 1959 are customarily posted, for thirty (30) consecutive days.

4. DCPS shall notify the Public Employee Relations Board, in writing, within fourteen (14) days of the date of this Order that it has complied with this Order and that the Notices have been posted accordingly.

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

May 14, 1992

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[3]/ It was established at the hearing that AFSCME also requested the grievant's urine sample and that DCPS refused to produce it as well. However, the Hearing Examiner found that the urine sample was "inadvertently destroyed" by the testing clinic. (R&R at 2.) Thus, while we conclude, that the Grievant's urine sample is also information relevant and necessary to the representation of the Grievant, we are precluded from directing DCPS to provide that which no longer exists.

PERB Public Employee Relations Board

Government of the District of Columbia

415 Twelfth Street, N.W.
Washington, D.C. 20004
(202) 727-1822/23

NOTICE

TO ALL EMPLOYEES REPRESENTED BY THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, DISTRICT COUNCIL 20, LOCAL 1959, AFL-CIO AT THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS: THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE GOVERNMENT OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 308, PERB CASE NO. 91-U-07.

WE HEREBY notify our employees that the Public Employee Relations Board has found that we violated the law and has ordered us to post this notice.

WE WILL cease and desist from refusing to provide the American Federation of State, County and Municipal Employees, District Council 20, Local 1959, AFL-CIO, (AFSCME) with requested information relevant and necessary to its representational duties.

WE WILL provide AFSCME with information relevant and necessary to employees' grievances, including chain-of-custody statements produced in connection with urine samples collected by DCPS from grievant for purposes of drug testing.

WE WILL NOT in any like or related manner interfere with employees' or AFSCME's rights guaranteed by the Comprehensive Merit Personnel Act.

District of Columbia
Public Schools

Date:_____ By:_____
Superintendent

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning the Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 415-12th Street, N.W. Room 309, Washington, D.C. 20006. Phone 727-1822

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
American Federation of State, County and Municipal Employees, District Council 20, Local 1959, AFL-CIO,	
Complainant,	
v.	PERB Case No. 91-U-07
District of Columbia Public Schools,	
Respondent.	

HEARING EXAMINER'S REPORT AND RECOMMENDATION

This proceeding before the District of Columbia Public Employee Relations Board (PERB) arises out of an unfair labor practice complaint filed by the Complainant/Union on February 19, 1991. The complaint alleges that Respondent/School Board violated Section 618.4(a)(1) and (5) of the District of Columbia Comprehensive Merit Personnel Act (CMPA) and the D.C. Code by refusing to provide certain information and a urinalysis specimen requested by the Union. In an answer, duly filed, Respondent denies that it has engaged in any unfair labor practice. On September 13, 1991, PERB directed that a hearing be held in this matter. Thereafter, a hearing was held on October 21, 1991 before Robert J. Perry, Esq., the undersigned Hearing Examiner. At the hearing, the Union was represented by Robert E. Paul, Esq. and the Respondent was represented by Ellis A. Boston, Esq. The parties waived oral argument and instead filed post hearing briefs.

Background

Respondent and the Union are parties to a collective bargaining agreement which covers a unit of Transportation and Warehouse Services employees.[1] Included in the unit are school bus drivers and bus attendants. Also, Respondent has for many years implemented and maintained a unilaterally established policy of requiring employees to take an annual physical examination which includes testing for illegal drugs.[2] Pursuant to this policy, employee Edward

[1]Although the agreement has an expiration date of September 30, 199, the parties have agreed to continue it in full force and effect until a new agreement can be reached.

[2]At the present time, Respondent is not implementing its drug testing policies.

Lanier was directed to take his annual physical and, in September 1989, he was given a urinalysis test by the Arthur Capper Clinic which performs such services under contract with Respondent. On September 29, 1989, the Clinic informed the School Board that Lanier tested positive for the presence of cocaine. Although Lanier denied using cocaine and, in previous physicals had tested negatively for drugs, Respondent discharged him on October 2,1989 solely on the basis that he had tested positively for cocaine. The Union grieved the discharge under the grievance-arbitration provisions of the collective bargaining agreement, claiming that the specific chain of custody procedures were not followed and that the Clinic failed to meet professional standards. The School Board acknowledged that not all the requirements of the chain of custody procedures had been met, but it concluded that the grievance still should be denied. The Union moved the grievance to arbitration and requested that the School Board make available the urine sample and the chain of custody form for purposes of retesting. The Board refused, citing a uniform policy of not making urine samples available to a union. When this request was denied, the Union filed a Motion to Compel with the duly selected arbitrator, Joseph M. Sharnoff. Arbitrator Sharnoff concluded that he did not have the authority to compel the School Board to comply with the Union's request, but he postponed the hearing to allow the Union to seek compliance elsewhere. The Union responded by filing the instant unfair labor practice charge.

The Alleged Refusal to Bargain

When the Union first requested access to Lanier's urine sample on January 3, 1991, the School Board based its refusal on a long-standing policy of refusing such requests and a concern that the Union might tamper with the sample. The Union then countered with a proposal that the urine sample be sent to some other laboratory for retesting and, if that was not acceptable, that the specimen be retested by the Arthur Capper Clinic. These requests were also denied. Although Respondent has never honored a union's request for a urine sample and has consistently maintained that it is under no legal obligation to do so, Respondent does have a policy of retaining urine samples which have tested positively for illegal drugs. Such specimens are retained for a period of 18 months to safeguard against a legal challenge to the School Board's action. In the instant case, although more than 18 months had elapsed at the time of the hearing, the urine specimen should have been preserved in accordance with Arbitrator Sharnoff's directive to the School Board that Lanier's urine specimen be preserved pending the outcome of this litigation. However, at the hearing, counsel for the School Board advised that although the Arthur Capper Clinic had been instructed to preserve the Lanier specimen indefinitely, the specimen had in fact been inadvertently destroyed.

Issue

Whether or not the Union was entitled to the requested information in furtherance of its role as Lanier's representative in the grievance - arbitration proceeding?

Findings and Conclusions

The determination to be made in those circumstances is whether or not the information sought is relevant and necessary for the Union to properly exercise its role as Lanier's representative in the grievance - arbitration proceeding. The standard is one that has received general acceptance in the field of labor law and it is one that has been specifically accepted by

PERB.[3] In order to apply this standard, it is necessary to examine the grounds upon which the grievance is based. Here, the Union, on behalf of Lanier, is contending: (a) that the test sample was not handled in accordance with the procedures set forth in the School Board's drug testing directives and (b) that the actual test results are incorrect or inaccurate. This latter position is of course consistent with Lanier's claim that he did not use cocaine. At the hearing, the School Board went into great detail to show the documentation, including the original chain of custody statement, it made available to the Union and, from this, asked that I conclude that the Union was given sufficient documentation to process the grievance. The answer to this appears to me to be inescapable. If the Union were contending that the discharge was improper based solely upon procedural irregularities, then the documentation provided by the School Board might very well have been sufficient. However, the Union is also claiming that Lanier did not use cocaine and that the test results are false. That claim can only be established with any degree of certainty by a retesting of the urine specimen. The very result the Union was seeking when it requested Lanier's urine sample. Thus, on the face of it, it would seem access to Lanier's urine sample is an indispensable element to the processing of Lanier's grievance. However, Respondent raises other arguments in support of its position that the urine specimen should not be made available to the Union. It cites its long-standing policy of not making such specimens available and its fear that the Union might tamper with the evidence. As to the former, I find that Respondent's policy is in conflict with basic rights guaranteed under the CMPA and therefore, that such a policy can not be maintained or relied upon. As to the latter, I seriously question whether one can impugn the motives of the bargaining representative by suggesting that it would engage in a dishonest act and still be said to have met the obligation to bargain in good faith. But, aside from that fact, the Union offered two alternative proposals for the retesting of the sample where control over the specimen would remain with the School Board and they were also rejected. Accordingly, I find no merit in this latter contention. The Respondent also claims that the Union has waived its right to seek such information by: (a) not raising such matters before in cases where employees were discharged for drug abuse and (b) by seeking unsuccessfully to incorporate a drug testing provision in the collective bargaining agreement. In my opinion, both of these contentions are without merit. A waiver is not to be lightly inferred and surely, the mere failure to assert such a right in the past is not a basis for finding that the right no longer exists. Likewise attempts to memorialize an existing right in a collective bargaining agreement do not in any way limit the exercise of that right.[4] Lastly, Respondent urges that even if a violation

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[3]See American Federation of State, County and Municipal Employees, Council 20, AFL-CIO v. D.C. General Hospital, PERB Case No. 88-U-29, Slip Opinion 227.

[4]Counsel for the Union has by letter requested that the Hearing Examiner strike from Respondent's brief, all references to recent negotiations between the School Board and the Union and the brief's Exhibit B which purports to be a proposal made during these negotiations on the ground that this evidence is outside the record. Respondent has filed a letter in opposition, stating that the evidence in question is relevant to the issues in this case. At the hearing, I advised the parties that I would not consider any evidence which was outside the record, unless it was a matter of which I could properly take administrative notice. Obviously, I can not take administrative notice of what occurred in the parties bargaining negotiations and I reaffirm my ruling that I will consider only the evidence adduced at the hearing. Accordingly, the Union's request that such information be stricken from Respondent's brief is granted.

would otherwise lie, the complaint should be dismissed on the ground of mootness. The basis for this argument is that since the urine specimen in question is no longer in existence, it would serve no purpose to issue a remedial order. I disagree. The alleged mootness was not caused by some intervening event which was beyond the control of the Respondent. The urine specimen in question was at all times in Respondent's control and it was lost through the negligence of Respondent's agent. To find mootness in such circumstances would not foster the purposes of collective bargaining. Also, mootness is not found in situations where there is a likelihood that the violation will be repeated.[5] I find no merit in the argument that the complaint should be dismissed on the basis of mootness.

On the basis of the foregoing, I find that the Union has demonstrated that the information it was seeking (the urine sample and the chain of custody statement) was relevant and necessary for the Union to properly exercise its role as Lanier's representative in the grievance-arbitration proceeding. I further find that by refusing to provide the information requested, Respondent violated Section 618.4 (a) (1) and (5) of the CMPA and the D.C. Code.

Conclusion of Law

Respondent violated Section 618.4(a)(1) and (5) of the CMPA and the D.C. Code by refusing on January 3, 1991 and thereafter to honor the Union's request for information which was relevant and necessary to the Union in its role as employee representative in the grievance-arbitration process.

Recommendation

I recommend that Respondent be found to have violated Section 618.4(a)(1) and (5) of the CMPA and the D.C. Code by refusing on January 3, 1991 and thereafter to furnish the Union with information which was relevant and necessary to the Union in its role as employee representative in the grievance-arbitration process. I further recommend that Respondent be ordered to cease and desist from refusing to honor the Union's requests for information which is relevant and necessary to the grievance-arbitration process and affirmatively, that Respondent be ordered to provide the Union, upon request, with all information which is relevant and necessary to the grievance-arbitration process.

March 13, 1992
Dated

Robert J. Perry
Hearing Examiner

[5] International Brotherhood of Teamsters, Locals 639 and 730 v. D.C.P.S., PERB Case No. 88-U-10, Slip Opinion No. 226.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
Professional Employees Association, D.F.R. - D.C.,	
Petitioner,	
and	
Department of Finance and Revenue,	PERB Case No. 92-R-02
	Opinion No. 309
Agency,	
and	
American Federation of State, County and Municipal Employees, District Council 20, Local 2776, AFL-CIO,	
Intervenor.	

DECISION AND ORDER

On November 20, 1991, the Professional Employees Association-DFR-D.C. (PEA) filed a petition seeking exclusive recognition as the bargaining agent on behalf of the following proposed unit of employees:

> "All professional employees of the Department of Finance and Revenue excluding management executives, confidential employees, temporary employees, seasonal employees, supervisors or any employee engaged in personnel work in other than a purely clerical capacity."

PEA acknowledges in the Petition that the employees in the proposed unit above are currently a part of an existing unit covering all employees at the Department of Finance and Revenue (DFR), and are represented by the American Federation of State, County and Municipal Employees, District Council 20, Local 2776 (AFSCME) [1]/ PEA further notes that the professional employees of

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[1]/ See, National Association of Government Employees and American Federation of State, County and Municipal Employees, D.C.
(continued...)

DFR were permitted to vote on the question of whether they favored inclusion in a unit with non-professionals, at the same time that AFSCME was selected by these employees as the exclusive bargaining agent. Although the professional employees favored inclusion at that time, PEA asserts that they no longer do and requests that the Public Employee Relations Board (Board) find the proposed unit appropriate and certify PEA as their exclusive bargaining agent, or in the alternative, consider the Petition as a request to modify the existing unit pursuant to Section 504 of the Board's Rules. [2]/

In accordance with Board Rules 502.1(d) and 502.2, PEA submitted its Constitution and Roster of Officers, as well as a showing of employee interest in support of the Petition. [3]/

Notices concerning the Petition were posted for the prescribed period on January 17, 1992. On January 27, 1992, AFSCME timely requested intervention pursuant to Board Rules 502.7 and 502.8(b). We hereby grant AFSCME's request to intervene in this proceeding, based on its accorded right as the recognized bargaining agent for employees in the proposed unit. AFSCME also filed a Motion to Dismiss the Petition asserting,

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[1](...continued)
Council 20 and District of Columbia Department of Finance and Revenue, Certification No. 3, PERB Case No. 80-R-05 (1980). The unit set forth in the certification covers all employees at DFR with the exception of the same exclusions noted in the proposed unit above at p.1.

[2]/ A petition for the modification of a unit, in accordance with Section 504.1, may be sought for the following purposes: "(a) [t]o 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... of the exclusive representative; (c) to delete classifications [that] no longer exist or...are no longer appropriate to the established unit; or (d) [t]o consolidate two (2) or more bargaining units within an agency that are represented by the same labor organization."

We find that none of the above purposes are applicable to the Petitioner's expressed aim of severing from the existing unit, a proposed unit of professionals.

[3]/ Initially, PEA did not submit its Constitution and the showing of interest was unclear as to the designation of a bargaining agent. PEA, upon notice by the Board, cured these deficiencies.

inter alia, that D.C. Code Section 1-618.11 precluded the severance of the proposed unit from the existing unit.

On January 25, 1992, DFR filed "Agency's Response to Recognition Petition" also requesting that the Petition be dismissed. Among its arguments for dismissal, DFR states that employees in the proposed unit are covered by a collective bargaining agreement that expired on September 30, 1991, which by its terms remains in effect until a new contract is negotiated. Therefore, DFR contends, the contract bars the Petition in accordance with Board Rule 502.9(b). [4]/

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[4]/ In view of the basis for our disposition of this Petition, we have no occasion to rule on the parties' remaining arguments including, inter alia, the applicability of Board Rule 502.9(b) to DFR's and AFSCME's collective bargaining agreement, as a bar to PEA's Recognition Petition. However, in the interest of clarifying a misapprehension that appears to exist among the parties concerning Board Rule 502.9(b) we note the following:

Board Rule 502.9(b) provides:

> A petition for exclusive recognition shall be barred if:
>
> * * *
>
> (b) A collective bargaining agreement is in effect covering all or some of the employees in the bargaining unit and the following conditions are met:
>
> > (i) The agreement is of three years or shorter duration; provided, however, that a petition may be filed between the 120th day and the 60th day prior to the scheduled expiration date or after the stated expiration of the contract; or
> >
> > (ii) The agreement has a duration of more that three years; provided, however, that a petition may be filed after the contract has been in effect for 975 days. (emphasis added.)

Use of the term "duration" in 502.9(b)(i) and (ii) refers to the period of time during which the collective bargaining agreement is actually in effect, as may be prescribed by the agreement's

(continued...)

On February 6, 1992, PEA filed its Response to both AFSCME's and DFR's requests that the Petition be dismissed. PEA countered that neither a contract bar nor the provisions of D.C. Code 1-618.11(b) prevented the granting of its Petition. Furthermore, in response to the Respondents' claims that the Petition is deficient because the scope of the proposed unit is unclear, PEA amended the unit description to limit its coverage to DFR's audit division. PEA's amended description proposes the following unit:

> "All professional employees in the audit division of the Department of Finance and Revenue excluding management executives, confidential employees, temporary employees, seasonal employees, supervisors or any employee engaged in personnel work in other than a purely clerical capacity." [5]/

Having considered the parties' respective arguments, the pertinent statutory provisions and relevant case law, we conclude, for the following reasons, that the Petition must be dismissed.

The threshold issue in this proceeding is whether the Board can find appropriate a proposed unit of professional employees in the audit division at DFR, if these employees are covered by a unit that was established prior to the effective date of the CMPA. The relevant provisions of the CMPA, which we find controlling and dispositive of this issue are the following:

Sec. 1-618.11. Rights accompanying exclusive recognition.

* * *

(b) Bargaining units established at the time this chapter becomes effective shall continue to be recognized as appropriate units subject to Sec. 1-618.9(c), and labor organizations which have exclusive recognition in bargaining units existing at the time this chapter becomes effective

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[4](...continued)
terms or by further agreement of the parties. Board Rule 502.9(b)(ii) places a cap, i.e., 975 days, on how long an agreement's effective period will act as a bar to a recognition petition, notwithstanding prescribed or agreed upon durations for longer periods.

[5]/ This modification in the unit description from that described in the Petition does not alter the Board's finding that the Petitioner has met the requisite showing of interest in accordance with Board Rule 502.2.

shall continue to enjoy exclusive recognition in these units subject to Sec. 1-618.10(b)(2). (1973 Ed., Sec. 1-247.11; Mar. 3, 1979, D.C. Law 2-139, Sec. 1711, 25 DCR 5740.)

Sec. 1-618.10. Selection of exclusive representatives; elections.

* * *

[b](2) The Board shall issue rules and regulations which provide procedures for decertification of exclusive representatives upon the request of 30 percent of the employees or the District and the holding of an election. Such rules and regulations issued by the Board shall prescribe the criteria under which the District may request decertification such as lack of any unit activity over a period of time.

Sec. 1-618.9. Unit determination.

* * *

(c) Two or more units for which the labor organization holds exclusive recognition within an agency may be consolidated into a single larger unit if the Board determines the larger unit to be appropriate. The Board shall certify the labor organization as the exclusive representative in the new unit when the unit is found appropriate.

We find that each of the above-quoted provisions is clear and unambiguous. D.C. Code Sec. 1-618.11(b) preserves the continuity of pre-CMPA bargaining units and their designated bargaining agents subject only to a union's decertification (Sec. 1-618.10(b)(2)) or the consolidation of bargaining units (Sec. 1-618.9(c)). Neither of these circumstances are present with regard to the existing unit of DFR Employees. The parties do not dispute that (1) AFSCME was selected through an election proceeding, by both professional and non-professional employees at DFR as their exclusive bargaining agent; (2) professional employees were separately balloted and voted for inclusion in a unit with non-professionals; (3) AFSCME was certified by the PERB on August 18, 1980, as the bargaining representative for all DFR employees, with the exception of certain noted classifications; and (4) AFSCME continues to remain the certified representative for these employees.

In its Motion to Dismiss, AFSCME argues that since the existing bargaining unit was established prior to the effective date of Chapter 17 of the CMPA, D.C. Code Sec. 1-618.11(b) is

applicable to this case and thus precludes a finding that the unit proposed by the Petitioner is appropriate, or that the existing unit can be modified. AFSCME's arguments are premised upon factual assertions not directly disputed by the Petitioner. For example, AFSCME directs attention to the historical genesis of the CMPA. Specifically, the directives of Commissioner's Order 70-229, which implemented Chapter 25A of the District of Columbia Regulations, sets forth in Section 9 the standards for recognition and provides that the parties to a representation proceeding could stipulate to the scope of an appropriate unit. Moreover, Chapter 25A also provided that the District of Columbia Personnel Officer was authorized to find a proposed or stipulated unit appropriate.

This is contrary to the present directives in the CMPA, in which exclusive authority resides with the PERB to determine the scope of units. [6]/

Although the events surrounding the establishment of the DFR unit very closely paralleled the effective date of Chapter 17 of the CMPA, we are compelled to find that the unit, as AFSCME suggests, was established prior to the effective dates of Chapter 17 and thus the provisions of Sec. 1-618.11(b) are controlling. [7]/

Since neither exception to this provision is applicable under the circumstances, i.e., the decertification of AFSCME or the consolidation of two or more bargaining units upon request by a labor organization, we find no reason to disturb what the legislators sought to preserve upon the enactment of these provisions-- the continuity of recognized, established units of

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[6]/ See, D.C. Code Sec. 1-605.2(1) and 1-618.9(a).

[7]/ AFSCME appended to its Motion to Dismiss a copy of a Memorandum of Agreement dated May 22, 1980, which AFSCME asserts is evidence that the parties in PERB Case No. 80-R-05 had agreed upon the established unit of employees to be polled in an election proceeding. Therefore, AFSCME claims, the unit had been established prior to the effective date of the Chapter XVIII containing the provisions codified as D.C. Code Sec. 1-618.11(b). AFSCME calculates that the effective date is June 2, 1980, since D.C. Code Sec. 1-637.1(1) provides that the Chapter would become effective 60 days after the PERB rules are issued. As AFSCME notes, PERB promulgated its Interim Rules on April 4, 1980.

employees. [8]/

Accordingly, we grant AFSCME's Motion and DFR's request that the Petition be dismissed.

ORDER

IT IS ORDERED THAT:

The Petition for Recognition, or in the alternative, Modification, is dismissed.

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

September 29, 1992

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[8]/ We find the Petitioner's arguments without merit that such a result was not intended by these provisions. We reject PEA's assertions that employees are "forever restrain[ed]" from changing their minds about their statutorily protected right to select a representative. As the Petitioner acknowledged in its arguments set forth in the Response to Motion to Dismiss, an open period in an existing contract is at least one manner in which an incumbent labor union may be challenged as an exclusive representative. Employees may also seek to decertify an incumbent labor organization, as prescribed by the Board's rules.