

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)	
)	
The American Federation of Government)	
Employees, Local 3871,)	PERB Case No. 84-U-07
)	Opinion 91
Petitioner,)	
)	
and)	
)	
The District of Columbia Office of)	
Energy,)	
Respondent.)	
)	
)	

DECISION AND ORDER

On May 17, 1984, Local 3871 of the American Federation of Government Employees, AFL-CIO (AFGE) filed an "Unfair Labor Practice Complaint" with the District of Columbia Public Employee Relations Board (Board) against the District of Columbia Office of Energy (DCOE) and the District of Columbia Office of Labor Relations and Collective Bargaining (OLRCB). The Complaint alleged that DCOE and OLRCB violated Section 1-618.4(a)(1)(2) and (3) of the Comprehensive Merit Personnel Act (CMPA) by arbitrarily and unilaterally removing ten (10) named members of the American Federation of Government Employees (AFGE), including its Shop Steward, from the bargaining unit without prior authorization by the Board or negotiation with AFGE. On May 30, 1984, OLRCB filed its "Answer" denying any violation of the CMPA and contending that the Complaint is frivolous, factually erroneous and untimely. OLRCB requested that the Board dismiss the Complaint. On July 19, 1984, AFGE amended its Complaint to allege that five (5) of its members, including its Shop Steward, had been removed, rather than ten (10).

The issue before the Board is whether or not DCOE violated the CMPA by issuing new position descriptions to all DCOE employees thereby causing some of the employees to become ineligible for continued membership in the collective bargaining unit.

The dispute arose when DCOE employees complained that their job descriptions did not accurately reflect their duties. In response, new position descriptions were approved for all DCOE employees in December, 1983. Each employee was allowed to draft his/her own position description which was then reviewed by the supervisor and approved by the Director. These new position descriptions indicated that three (3) employees had been performing supervisory duties for some time. On December 16, 1983, these three (3) employees were informed that they would be removed from the bargaining unit because of their supervisory status. These removals became effective on January 22, 1984.

DCOE contended that, of the five (5) employees, those three (3) were the only ones removed from the bargaining unit and denied that the other two (2) were ever in the unit. Section 1-618.9(b)(1) of the CMPA specifically excludes supervisors from membership in most collective bargaining units.

AFGE refused to provide documentation that the three (3) employees do not perform supervisory duties. It appears that these employees, themselves, wrote the new job descriptions. Therefore, we find that these three (3) employees were properly excluded from the unit.

Of the two remaining named employees, it appears that neither has ever been in the bargaining unit. These employees could not, therefore, have been removed from it by DCOE. One of these employees was mistakenly included in the list of eligibles when the unit was certified in November 1982. DCOE realized the mistake shortly after the list was submitted, and never changed this employee's pay code to reflect a bargaining unit status. AFGE has never before objected to her status and any objection, even if arguably meritorious, would now be untimely.

Finally, one of the employees is also an alleged Shop Steward for AFGE who was never in the bargaining unit because she was a confidential employee. When the unit was certified she occupied the confidential position of Administrative Officer. She has since been promoted to Executive Assistant where she supervises seven (7) employees. On March 9, 1984, AFGE notified DCOE that it had appointed her as Acting Shop Steward. On March 19, 1984, DCOE notified AFGE that it could not recognize her appointment because she was not a member of the bargaining unit and was, therefore, ineligible. On April 9, 1984, AFGE responded that it could choose whomever it wished as Shop Steward. From this exchange, it is clear that the Shop Steward was not unilaterally removed from the bargaining unit as AFGE contends. She was never eligible for membership in the bargaining unit because she was originally a confidential employee and is now a supervisor.

The Board, having reviewed this matter finds that there is insufficient evidence to support AFGE's contention that DCOE violated the CMPA.

O R D E R

IT IS ORDERED THAT:

The Complaint is hereby dismissed.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
October 10, 1984