

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:)

Marion Barry, Jr., Mayor,)

Government of the)
District of Columbia,)

and)

District of Columbia)
General Hospital,)

Petitioners,)

and)

All Unions Representing)
Employees in Compensation Units)
1, 2, 13, 14 and 19, employed by)
the District of Columbia)
Hospital Commission,)

Respondents.)

PERB Cases No. 90-R-03
and 90-R-07
Opinion No. 241

DECISION AND ORDER

On March 13, 1990, the Government of the District of Columbia (District Government) filed a document styled "Petition for Amendment of Compensation Bargaining Units." (PERB Case No. 90-R-03) ^{1/} The District Government requests that the Public Employee Relations Board (Board) remove all represented employees at D.C. General Hospital (DCGH) from compensation bargaining units 1, 2, 13, 14 and 19, and place them in compensation bargaining units at DCGH. ^{2/} The District Government bases its request upon the recent amendments to the D.C. Comprehensive Merit Personnel Act of 1978 (CMPA) and the D.C. General Hospital Commission Act, effective March 16, 1989 (D.C. Act 7-303, D.C.

^{1/} By letter dated March 15, the District Government requested that certain corrections be made to its Petition, which included the caption being changed to include "Marion Barry, Jr. as the petitioner, the name and address of the petitioner's representative and a description of the pay and retirement systems covered by the proposed units.

^{2/} The units proposed by the District Government in its Petition are set out in Appendix "A".

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Law 7-228), which authorize DCGH to negotiate compensation matters and to administer its own personnel operations.

Notices concerning the Petition were posted at appropriate locations within DCGH on March 26, 1990, and each labor organization that holds exclusive recognition for employees in the compensation units affected by the Petition was served with a copy of the Notice advising of its right to intervene and/or comment on the Petition. Comments in response to the Petition were also solicited from DCGH.

There were no requests to intervene. DCGH submitted comments and supports the D.C. Government Petition's request to remove employees from existing compensation units, however, it differs as to the appropriate composition of three of the proposed units. (See p.2, *infra*) The District of Columbia Nurses Association filed comments stating that it supports the creation of a separate compensation unit for all registered nurses at DCGH. Both the Doctors' Council of DCGH and the Doctors' Council of the District of Columbia filed comments stating that neither organization has any objection to the Petition to the extent that it creates a separate compensation bargaining unit for DCGH physicians, dentists and podiatrists, currently included in existing Compensation Unit 19. ^{3/}

The District Government requests expedited consideration of its Petition since DCGH employees are currently covered by compensation bargaining agreements that are scheduled to expire on September 30, 1990, and bargaining is required to commence ninety (90) days prior to the expiration date of the agreements.

In support of its Petition, the District Government cites the following provisions of D.C. Law 7-228, Section 3(a), D.C. Code Section 32-220(20), authorizing DCGH to negotiate compensation matters as an independent personnel authority:

Section 32-220 - Duties and Powers.

In addition to those powers conferred elsewhere in this Chapter, the Commission is hereby charged with the duty to govern all affairs of D.C. General Hospital and shall have all powers necessary or convenient to

^{3/} The other labor organizations that are the exclusive representatives for employees at DCGH did not submit requests to intervene or comments in response to the Petition.

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carry out the purposes of this Chapter including, but not limited to, the following:

* * *

(20) Enter into negotiations and contracts with labor unions on all issues including compensation.

OLRCB also cites portions of the legislative history as further evidence of the legislative intent to grant authority to DCGH to engage in collective bargaining concerning compensation matters with labor organizations representing its employees. ^{4/}

Finally, OLRCB observes that the establishment of separate compensation bargaining units limited to an agency with compensation bargaining authority is not unique or precedential. The Board has found appropriate compensation bargaining units within the Board of Education, the Armory Board and most recently at the D.C. School of Law. ^{5/}

On April 10, 1990, DCGH filed a document styled "Petition For Consolidation and Amendment of Bargaining Units (PERB Case No. 90-R-07)." DCGH agrees that its represented employees should be removed from compensation bargaining units 1, 2, 13, 14 and 19, but proposes bargaining units different from those proposed by the District Government. Notices concerning DCGH's Petition were posted on April 19, 1990, and the comment period was extended until May 18, 1990.

^{4/} OLRCB directs attention to the testimony of DCGH Commission Chairperson Marilou King urging the City Council's Committee on Government Operations to grant "full autonomy for the administration of its personnel" thus allowing DCGH to negotiate with labor unions on all issues including pay. (Attachment "B" Petition pp. 8-9) OLRCB also cites Committee Chair Betty Ann Kane's Report to the Council stating that the legislation would give the "Commission authority to independently bargain with the certified bargaining units on all issues, including compensation...." Committee Report, October 27, 1988 on Bill 7-536, p.2). (Attachment "C" to Petition).

^{5/} See, PERB Case No. 80-R-08, 28 DCR 1762, Slip Op. No. 5, as amended February 19, 1981; PERB Case No. 85-R-01, 32 DCR 4683, Slip Op. No. 119 (1985); PERB Case No. 89-R-03, 36 DCR 8203, Slip Op. No. 235.

DCGH proposes in its Petition that the clerical employees be placed in a separate compensation unit, instead of including them, as now, in a unit consisting of career service professionals, administrative and technical employees. DCGH also proposes the placement of Licensed Practical Nurses in a compensation unit with technical employees. ^{6/}

AFSCME and the Licensed Practical Nurses Association (LPNA) are two of the labor organizations that exclusively represent units of employees at DCGH. On May 18, 1990, AFSCME submitted comments in response to the DCGH Petition stating that it had no opposition to the units proposed by DCGH. LPNA also submitted comments, but they were untimely and thus the Board did not consider them. No other labor organization filed a request to intervene or submitted comments in response to the DCGH Petition.

The Board is authorized by D.C. Code Section 1-605.2(1) to resolve unit determination questions. In determining the appropriate compensation units, D.C. Code Section 1-618.16(b) mandates that broad units of occupational groups be established by the Board, so as to minimize the number of different pay systems or schemes. Moreover, the Board may authorize bargaining by multiple employer or employee groups as may be appropriate.

Under the current compensation bargaining unit structure, DCGH employees are included in city-wide bargaining units consisting of broad occupational groups of employees in several personnel authorities, and are represented by several different labor organizations. ^{7/} The District Government asserts that pursuant to D.C. Code Section 1-618.16 the Board is required to establish separate compensation units for DCGH employees, consistent with D.C. Law 7-228, and proposes what those units should be.

^{6/} The proposed units, as set forth in DCGH's Petition, are listed in Appendix "B". We note that in its comments responding to the District Government's petition DCGH stated that it proposed that security guards be placed in the same compensation unit as clerical employees. DCGH did not, however, include guards in the proposed units set forth in its petition. We can only conclude, therefore, that DCGH is proposing a unit consisting only of clerical employees.

^{7/} See, PERB Case No. 80-R-08, 28 DCR 1762, Slip Op. No. 5, as amended February 19, 1981; PERB Case No. 85-R-01, 32 DCR 4683, Slip Op. No. 119 ((85)); PERB Case No. 87-R-03, 36 DCR 8203, Slip Op. No. 235.

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We agree with the Government that compensation units encompassing DCGH employees must be amended by virtue of the recent legislation that requires DCGH to develop its own personnel administration system and to bargain with unions representing its employees over compensation and other terms and conditions of employment. The question for the Board to resolve is what are the appropriate compensation units for the placement of DCGH employees. By Order dated May 18, 1990, the Board directed that consideration of the Petition filed by DCGH (Case No. 90-R-07) be expedited and that both Petitions be considered together at the Board's meeting on June 13, 1990.^{8/} Since, as explained in that Order, we could not decide the Government's petition without simultaneously considering DCGH's petition, we have consolidated these cases for discussion and analysis of the issues presented.

At the outset, we note that both Petitioners agree as to the establishment of the following two compensation units:

All Registered Nurses employed by the District of Columbia General Hospital Commission, and who are represented by labor organizations certified as exclusive bargaining agents by the PERB or its predecessor.

All qualified medical officers (physicians, dentists and podiatrists) employed by the District of Columbia Hospital Commission who are represented by labor organizations certified as exclusive bargaining agents by PERB or its predecessor.^{9/}

DCGH proposes, however, units different from those proposed by the District Government for the licensed practical nurses, service and maintenance employees, clerical employees, technical employees and other classifications of professional employees. Although DCGH states in its comments responding to the Government's Petition that it is proposing the restructuring of compensation units, it is evident to the Board that DCGH also proposes the consolidation and restructuring of working

^{8/} In our Order the date that the District Government filed its Petition was mistakenly referred to as "March 19, 1990." The correct filing date was March 13, 1990.

^{9/} Compensation Unit 12 consisting of interns and residents at DCGH is not affected by either petition.

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conditions units as well as compensation units. Thus, DCGH discusses the criteria set forth in D.C. Code Section 1-618.9 pertaining to the establishment of working conditions units (community of interest, common supervision, skills, working conditions, etc.) However, D.C. Code Section 1-618.9(a) and (c) which are controlling as to terms and conditions units provide the following:

(a) The determination of an appropriate unit will be made on a case-to-case basis and will be made on the basis of a properly-supported request from a labor organization. (Emphasis added)

* * *

(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. (1973 Ed., Section 1-347.9; March 3, 1979, D.C. Law 2-139, Section 1709, 25 DCR 5740.)

Under these provisions, only a labor organization may propose a working conditions unit, and the only units that may be consolidated are those units for which the same labor organization is designated as exclusive bargaining agent, and which meet the criteria for an appropriate terms and conditions unit. Accordingly, the Board is constrained to deny DCGH's request to restructure the existing units previously found appropriate for collective bargaining over terms and conditions of employment.

The Board finds no merit in DCGH's claims that a compensation unit consisting of technicians and licensed practical nurses and a unit of clerical employees are appropriate and consistent with the statutory directives of D.C. Code Section 1-618.16(b). Under the existing compensation bargaining units, technicians and clericals are included in Compensation bargaining Unit 1, along with other employees whose salaries are set in accordance with the District Service Schedule. The Board finds no basis for creating separate compensation units for these occupational groups which have traditionally shared a common bargaining history on compensation matters. Moreover, all of these occupational groups (professional, technical, administrative and clerical) are covered by the same retirement systems.

The Board has avoided establishing narrow occupational groups (e.g. clericals, technicians, guards, etc.), consistent with the statutory intent to minimize the number of different pay systems and schemes. ^{10/}

Turning to the licensed practical nurses at DCGH, however, we conclude that their long history of bargaining over compensation apart from other occupational groups, justifies the establishment of a compensation unit consisting only of licensed practical nurses. ^{11/}

The Board finds appropriate for compensation bargaining the following units of DCGH employees on the basis that they encompass broad occupational groups of employees and thereby minimize the number of different pay systems:

UNIT # 20 - Consisting of all career service professionals, technical, and administrative and clerical employees who currently have their compensation set in accordance with the District Service Schedule (DS), who come within the personnel authority of the District of Columbia General Hospital Commission, except qualified medical officers (physicians, dentists and podiatrists), and registered and licensed practical nurses, who are represented by labor organizations certified as exclusive bargaining agents by the PERB or its predecessor.

UNIT # 21 - Consisting of all career service trade and craft employees who currently have their compensation set in accordance with the regular wage grade (RW) and leader wage (LWS), who come within the personnel authority of the District of Columbia Hospital Commission and who are currently represented by labor organizations certified as

^{10/} See, 34 DCR 4062, Slip Op. # 166, PERB Case No. 87-R-01 (1987.)

^{11/} We are aware of a pending petition (PERB Case No. 90-R-02) which seeks to shift the licensed practical nurses (LPNs) currently included in Compensation Unit 14, to Compensation Unit 1. That petition does not affect the LPNs at DCGH since, as we have concluded in this opinion, recent legislation creates a separate personnel administration at DCGH. The Board will consider that petition independent of the determinations made in this proceeding regarding the appropriate placement of LPNs.

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the exclusive bargaining agent by the PERB or its predecessor.

UNIT # 22 - Consisting of all Registered Nurses employed by the District of Columbia General Hospital Commission, and who are represented by labor organizations certified as exclusive bargaining agents by the PERB or its predecessor.

UNIT # 23 - Consisting of all Licensed Practical Nurses employed by the District of Columbia General Hospital Commission, who currently have their compensation set in accordance with the Special Rate District Service Schedule and who are represented by labor organizations certified as exclusive bargaining agents by the PERB or its predecessor.

UNIT # 24 - Consisting of all qualified medical officers (physicians, dentists and podiatrists) employed by the District of Columbia General Hospital Commission and who are represented by labor organizations certified as exclusive bargaining agents by PERB or its predecessor.

ORDER

IT IS HEREBY ORDERED THAT:

The Board's Order in PERB Case No. 80-R-08 is hereby amended to exclude DCGH employees and the above-described units are the appropriate units for compensation bargaining at D.C. General Hospital.

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

June 25, 1990

APPENDIX "A"

The District Government claims in its Petition that the following compensation units are appropriate:

"-All career service professional, technical, administrative and clerical employees employed by the District of Columbia General Hospital Commission, except qualified medical officers (physicians, dentists and podiatrists), registered nurses and licensed practical nurses, who are represented by labor organizations certified as exclusive bargaining agents by the PERB or its predecessor.

-All career service trade and craft employees employed by the District of Columbia General Hospital Commission who are represented by labor organizations certified as exclusive bargaining agents by the PERB or its predecessor.

-All Registered Nurses employed by the District of Columbia General Hospital Commission, and who are represented by labor organizations certified as exclusive bargaining agents by the PERB or its predecessor.

-All Licensed Practical Nurses employed by the District of Columbia General Hospital Commission, and who are represented by labor organizations certified as exclusive bargaining agents by the PERB or its predecessor.

-All qualified medical officers (physicians, dentists and podiatrists) employed by the District of Columbia General Hospital Commission and who are represented by labor organizations certified as exclusive bargaining agents by PERB or its predecessor."

APPENDIX "B"

The following are the proposed unit descriptions set forth in DCGH's petition: (PERB Case No. 90-R-07):

1. Professional Unit - All career service professional and administrative employees employed by the District of Columbia General Hospital Commission, except qualified medical officers (physicians, dentists and podiatrists), registered nurses and licensed practical nurses, who are represented by labor organizations certified as exclusive bargaining agents by the PERB or its predecessor.
2. Technicians Unit - All career service technical employees employed by the District of Columbia General Hospital Commission, including LPNs, and who are represented by labor organizations certified as exclusive bargaining agents by the PERB or its predecessor.
3. Clerical Unit - All career service clerical employees employed by the District of Columbia General Hospital Commission, and who are represented by labor organizations certified as exclusive bargaining agents by the PERB or its predecessor.
4. Service and Maintenance Unit - All career service trade, craft and service employees employed by the District of Columbia General Hospital Commission, and who are represented by labor organizations certified as exclusive bargaining agents by the PERB or its predecessor."