

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of)	
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Local 12, American Federation)	
of Government Employees, AFL-CIO)	
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Petitioner)	
)	
and)	
)	
The District of Columbia)	Case No. ORO06
Department of Employment Services)	
)	PERB Opinion No. 14
)	
Agency)	
)	
and)	
)	
The American Federation of State,)	
County and Municipal Employees,)	
AFL-CIO)	
)	
)	
Intervenor)	
)	
)	

DECISION AND ORDER

Essentially, this case concerns a group of employees of what is now known as the District of Columbia Department of Employment Services. In 1962, Local 12, American Federation of Government Employees became the exclusive bargaining agent for the 5,000 employees of the U.S. Department of Labor. In 1974, subsequent to enactment of the D.C. Home Rule Law in 1973, a component known as the District of Columbia Manpower Administration consisting of approximately 350-400 employees, was transferred from the U.S. Department of Labor to the D.C. Government. By agreement of the parties, Local 12's representation of the transferred employees was accepted by the D.C. Department of Manpower and the existing contract considered applicable. In September, 1974 the D.C. Department of Manpower petitioned the D.C. Board of Labor Relations (hereafter, BLR) to certify Local 12 as the exclusive representative of employees of the Department of Manpower. In Case No. 5R011, dated March 19, 1975, the BLR declined to issue the requested certification due to the absence of any showing of majority interest by said employees. The BLR further declined to carry over the recognition from the U.S. Department of Labor because the transferred employees constituted only 8% of U.S. Department of Labor Unit. The BLR, therefore, dismissed the petition.

Subsequently, on August 18, 1975, Local 12 filed a "recognition petition" with the D.C. Personnel Office. The parties apparently reached and entered into a voluntary agreement resulting in Local 12 serving a representational function for this group of employees and the Department of Manpower withholding dues on behalf of Local 12. It is Local 12's contention that the Department's actions in entering into the agreement, which is still in effect, constitutes recognition for all practical purposes. Local 12 contends further that the BLR's decision in Case No. 5R011 should not be dispositive of the question of successorship since the petition therein was filed improperly by the employer and not by a labor organization as required.

This matter arose as a result of a Request for Recognition filed by Local 12, American Federation of Government Employees (hereafter, "Petitioner"), and forwarded to the BLR by the District of Columbia Office of Labor Relations and Collective Bargaining on April 1, 1980.

The authority of the Public Employee Relations Board (hereafter, the "Board") to consider cases originally filed with the BLR arises from the District of Columbia Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139) as amended by Section 2(d) of D.C. Law 3-81. Chapter 25(A) of the District of Columbia Personnel Manual was the applicable law at the time this case was filed and is the controlling authority in the processing of this case.

On July 8, 1980, District Council 20, American Federation of State, County and Municipal Employees, AFL-CIO (hereafter, "AFSCME") filed a timely "Request to Intervene".

A hearing was held by the Board designated Hearing Examiner, Louis Aronin, on July 30, 1980 and continued on September 23 and October 30, 1980. The Post-Hearing Brief filed by the Department of Employment Services (hereafter, "Agency" and formerly the "Department of Manpower") was received by the Board on January 30, 1981. The Post-Hearing Brief of the Petitioner was filed on February 2, 1981.

On March 18, 1981, the Hearing Examiner filed his Report and Recommendations with the Board. Exceptions to the Hearing Examiner's Report were filed by AFSCME and the Agency on April 6, 1981 and April 13, 1981, respectively.

Upon consideration of the Hearing Examiner's Report and Recommendations and the record in this matter, the Board finds no basis upon which to conclude that Petitioner is the exclusive representative of an appropriate unit of employees of the D.C. Department of Employment Services. The fact that Petitioner was previously recognized as the exclusive representative of the employees of the U.S. Department of Labor, which included some of the employees involved in this proceeding, is not either dispositive or controlling.

Petitioner sought to have AFSCME denied Intervenor status due to the failure of AFSCME to serve a copy of the "Request to Intervene" on the Petitioner as required by BLR Rules 102.301 and 102.302 (Board Rule 100.23).

The Hearing Examiner concluded that the failure of AFSCME to comply with a simple rule of the Board invalidated the Request to Intervene, but noted, "...the Board has its opportunity in this case to determine how liberally it wishes to apply its rules".

Accordingly, considering the fact that a period of seven (7) years has expired since these employees were transferred from the U.S. Department of Labor to the District of Columbia government and in the interest of employee rights, pursuant to BLR Rule 101.202 (Board Rule 100.12), the Board grants Intervenor status to AFSCME so as to best effectuate the intent, purposes and provisions of Chapter 25(A) of the District of Columbia Personnel Manual, and the District of Columbia Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139). The Board admonishes, however, that future failures to properly follow the Rules of the Board will not be tolerated.

There are a number of issues involved in determining the appropriate non-compensation bargaining unit for employees of the D.C. Department of Employment Services. The Hearing Examiner's recommendations regarding the appropriate unit have been carefully reviewed and are adopted except as stated herein. The Board finds that employees in the Office of the Director and the Office of Compliance and Independent Monitoring function in either managerial or confidential roles sufficiently involved in labor relations and policy formulation matters to justify their exclusion from the unit.

The Board finds further that employees of the Office of Budget and Finance and the Office of Equal Employment Opportunity, except for those in purely clerical positions, function in either managerial or confidential roles sufficiently involved in labor relations and policy formulation matters to justify their exclusion from the unit.

Finally, the Board finds that, because of the transient nature of the Comprehensive Employment and Training Act (CETA), CETA employees cannot be included in the appropriate unit for the purpose of voting.

ORDER

Based upon the findings and conclusions noted herein the Board:

1. Orders that that portion of the Petition seeking successorship be dismissed.
2. Grants the American Federation of State, County and Municipal Employees Intervenor status.
3. Determines that the appropriate non-compensation bargaining unit consists of all employees of the Department of Employment Services except for all employees in the Office of the Director and the Office of Compliance and Independent Monitoring.

Further, all employees, except those in purely clerical capacities, of the Office of Budget and Finance and the Office of Equal Employment Opportunity are excluded from the unit. CETA employees are excluded from the appropriate bargaining unit for purposes of voting. Additionally, all other management officials or supervisory personnel, employees engaged in personnel work in other than purely clerical capacities, and employees engaged in administering the provisions of Chapter 25(A) of the District of Columbia Personnel Manual or Title 17 of the District of Columbia Comprehensive Merit Personnel Act of 1978, are excluded from the unit.

This case is remanded to the Personnel Officer of the District of Columbia for appropriate action in accordance with this Order pursuant to Section 9(d) of Chapter 25(A) of the District of Columbia Personnel Manual.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

July 8, 1981