

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)	
)	
Government of the)	
District of Columbia,)	
)	
Petitioner,)	
)	PERB Case No. 90-R-02
and)	Opinion No. 268
)	
All Unions Representing Employees in)	
Compensation Unit 1 and Compensation)	
Unit 14,)	
)	
Respondents.)	

DECISION AND ORDER

On January 9, 1990, the Government of the District of Columbia (Petitioner), through its representative, the Office of Labor Relations and Collective Bargaining (OLRCB), filed a Petition with the Public Employee Relations Board (Board) seeking to consolidate Compensation Bargaining Unit 14 with Compensation Bargaining Unit 1. Petitioner asked that the Licensed Practical Nurses (LPNs) who currently comprise the membership of Bargaining Unit 14 should be transferred into Bargaining Unit 1, which consists of "[a]ll career service professional, technical, administrative and clerical employees who currently have their compensation set in accordance with the District Service (DS) schedule...." ^{1/}

Notices concerning the Petition were duly posted and forwarded to the appropriate representatives, in accordance with Board Interim Rule 101.19, which was in effect at the time the Petition was filed.

In response to the Petition, comments were received by the Board on behalf of various labor organizations representing the affected employees. The Licensed Practical Nurses Association (LPNA), the certified bargaining agent for LPNs employed by the D.C. General Hospital (DCGH) opposed the Petition, citing the traditionally separate bargaining history over wages and other compensation issues on behalf of the LPNs in Unit 14. The American Federation of State, County and Municipal Employees (AFSCME), the certified bargaining agent for certain LPNs

^{1/} 28 DCR 1762, Slip Op. No. 5, PERB Case No. 80-R-08 (1981).

employed by the Department of Human Services, similarly opposed the consolidation of Units 1 and 14. The American Federation of Government Employees (AFGE), is also the exclusive bargaining agent of certain LPN units at DHS. AFGE initially opposed the Petition, but later withdrew its opposition. No other comments or requests to intervene in these proceedings were received.

Pursuant to Board Interim Rule 101.21, a hearing was held before a hearing examiner designated by the Board. All interested parties were duly notified and given an opportunity to appear at the hearing. ^{2/}

The Hearing Examiner's Report and Recommendations were received by the Board on October 18, 1990. The Hearing Examiner found that although separate negotiations had been conducted for Units 1 and 14 there were striking similarities between the results of these negotiations. He further found that the history of Unit 1 bargaining indicated an accommodation for the special needs of certain occupational groups within Unit 1. Accordingly, the Hearing Examiner concluded that any special needs of the LPNs could be addressed in compensation bargaining along with the other professional, administrative and technical employees in Unit 1. The Hearing Examiner acknowledged the Board's decision in PERB Case Nos. 90-R-03 and 90-R-07, but concluded that the Board's finding appropriate a separate compensation unit of LPNs at DCGH does not preclude the consolidation of Bargaining Units 1 and 14, for the reason stated in his Report at pp. 6 - 7. The Examiner recommended that the petition be granted.

No Exceptions having been filed, and the Board concluding that the Hearing Examiner's findings and conclusions are logical, persuasive and supported by the record, we adopt in its entirety the Hearing Examiner's Report and Recommendations. ^{3/}

^{2/} LPNA chose not to appear, presumably because the Board had issued, just prior to the scheduled hearing date, its Opinion in Case Nos. 90-R-03 and 90-R-07, which established a separate bargaining unit of LPNs at DCGH. Since LPNA represents LPNs only at DCGH, no LPNs whom it represents will be affected by the outcome of the instant proceeding.

^{3/} Copies of the Hearing Examiner's Report may be obtained at the Board's offices.

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ORDER

IT IS HEREBY ORDERED THAT:

Compensation Units 1 and 14 be consolidated; and that Board Opinion No. 5 be amended to reflect the inclusion of the licensed practical nurses, formerly assigned to Compensation Unit 14, in Compensation Unit 1.

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

February 25, 1991

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

OCT 18 1990
RECEIVED

In the Matter of	*	
GOVERNMENT OF THE DISTRICT OF COLUMBIA	*	PERB CASE No. 90-R-02
and	*	
AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, DISTRICT COUNCIL 20	*	

REPORT AND RECOMMENDATIONS

BACKGROUND

On February 19, 1981, the District of Columbia Public Employee Relations Board [PERB or Board] issued Opinion No. 5 in Case No. 80-R-08. In that Opinion, PERB established 15 compensation bargaining units. Among them were Units 1 and 14, defined as follows:

Unit 1: ... all career service professional, technical, administrative and clerical employees whose salaries are set in accordance with the District Service (D.S.) Schedule who come within the personnel authority of the Mayor ... [and] the District of Columbia General Hospital Commission ... except physicians at D.C. General Hospital, all Registered Nurses and all Licensed Practical Nurses

Unit 14: ... all Licensed Practical Nurses who come within the personnel authority of the Mayor ... and the District of Columbia General Hospital Commission

The Government of the District of Columbia petitioned PERB on January 9, 1990, asking that Compensation Units 1 and 14 be consolidated. [Hearing Examiner Exhibit (HE Ex.) 1.] The labor organizations that represented Licensed Professional Nurses [LPNs] were the American

Federation of Government Employees [AFGE], the American Federation of State, County, and Municipal Employees [AFSCME], and the Licensed Practical Nurses Association [LPNA]. All three opposed the petition.

The LPNA represents LPNs at D.C. General Hospital [DCGH]. By the time the hearing was held on the present case (July 30, 1990), PERB had issued its decision in Cases No. 90-R-03 and 90-R-07, Opinion No. 241. PERB ruled that LPNs at DCGH should have their own compensation bargaining unit, Unit 23. By this action, the LPNA ceased to be a party to this case.

The Office of Labor Relations and Collective Bargaining appeared at the hearing representing Petitioner Government of the District of Columbia. AFGE and AFSCME appeared in opposition. On September 5, 1990, David Schlein, National Vice President, AFGE District 14, wrote to PERB to state AFGE had changed its position and now supports the requested consolidation. [I now designate this letter as HE Ex. 10.]

Based on the evidence, the positions argued by the parties, and my observation of witnesses while testifying, I make the following findings and Recommendation.

FINDINGS OF FACT

There are 11,000 to 12,000 employees in Unit 1. It covers virtually all kinds of District Service [DS] employees, including those who provide health care services, except for doctors, nurses and LPNs. It includes such occupations as dental hygienists, dietitians, nutritionists, social workers, pharmacists, and occupational and physical therapists. [Transcript (Tr.) pp. 22-24.]

Unit 14 is now composed of 60 to 70 LPNs who work in various locations at the Department of Human Services. They are presently in working conditions units represented by AFGE and AFSCME respectively. These units are not separate LPN units; they also contain other employees such as nursing assistants, social workers, and clerical workers. In contrast, the approximately 150 LPNs at DCGH have their own working conditions unit. Other than Unit 14, the smallest compensation unit for which the Mayor has personnel authority is the nurses, Unit 13, with about 800 members. [Tr., pp. 30, 31, 41, 42.]

There have been three rounds of compensation bargaining since 1982. Wage adjustments for Units 1 and 14 have been exactly the same in each of the years 1982 through 1990 [Management Exhibit (ME) 3]. Optical benefits, annual leave buyouts, personal leave incentives, overtime/compensatory time, and mileage allowances have also been identical in the contracts for both units. [ME 4.] There have, however, been some differences in the contracts:

- there was a difference between the units in dental benefits, but the difference ended in 1985-87 [ME 4];
- differences which existed in previous contracts -- call-back overtime, standby/on call, and administrative closing benefits, and the health/life benefits task force -- ended in the 1988-90 bargaining round [ME 4];
- Unit 14 employees have uniforms supplied to them or receive a \$300 allowance [ME 4];
- Unit 1 employees shall not be covered by reduction-in-force, except in accordance with D.C. Code, §1-618.8(a)(3) [ME 4];
- all Unit 14 employees received a single pay step adjustment in 1988-90 in addition to the general wage increase. Certain employees in Unit 1 were also given special pay rates in addition to the general wage increase in 1988-90. These were corrections officers and employees in various health care, engineering, and clerical occupations. In prior years, special adjustments had been made for

certain occupations in Unit 1, based on recruitment and retention problems. [See MEs 1, 2, and 5, and Tr., pp. 24- 27, 47, 48.]

DISCUSSION AND CONCLUSIONS OF LAW

AFSCME's arguments against the petition are twofold. The first is that Unit 14 is an appropriate unit and that LPNs have a distinct community of interest. Second, LPNs have a history of bargaining separate compensation agreements with the District. AFSCME states that the existence of Unit 14 recognizes this separate community of interest and provides LPNs with the opportunity to raise issues of special and unique significance to them. Finally, if the petition is granted, the LPNs would be lost among the vast number of employees in Unit 1 and would lose the opportunity to have matters of special concern to them raised in negotiations.

I do not agree. It is my judgement that the two units should be consolidated. My reasons follow.

1. A consolidated unit would better meet the statutory criteria than does the present unit structure.

The criterion for compensation bargaining units is contained in D.C. Code §1-618.16. It states that "... the Board shall authorize broad units of occupational groups so as to minimize the the number of different pay systems or schemes."

Unit 14, as it exists at present, is composed of 60-70 LPNs employed in DHS. It is, by far, the smallest compensation unit under the personnel authority of the Mayor. The next smallest is Unit 13, which

has about 800 registered nurses. Unit 23 at DCGH is composed of about 150 LPNs.

Unit 14 is composed exclusively of LPNs at DHS. In their working conditions units, these same LPNs are in units which include social workers, nursing assistants, and clerical employees. The criteria for working condition and compensation units are different. The emphasis for the former is community of interest, while the latter stresses breadth of units. In view of these differences in criteria, the fact that LPNs are in broad-based working conditions units, argues persuasively against their being permitted to remain in a narrow, LPN-only compensation unit. It should also be remembered that if the units are consolidated, the LPNs will join numerous other employees engaged in health care services, including pharmacists, physical and occupational therapists, nutritionists and dietitians.

The fact that LPNs are in broad-based working conditions units at DHS establishes definitively that they share a community of interest with other occupational groups for working conditions issues. As will be discussed under item 2, this is also true for compensation issues.

2. A consolidated unit will permit adequate representation of the interests of the LPNs.

While separate negotiations have been conducted for Units 1 and 14, the results have been strikingly similar. Wage increases have been identical, as have been provisions regarding optical benefits, annual leave buyouts, personal leave incentives, overtime/compensatory time, and mileage allowances.

Many other variations in early contracts have vanished, and now there are identical provisions concerning dental and administrative closing benefits, call-back overtime, standby/on-call, and the health/life benefits task force. The only areas where differences remain are those concerning reduction-in-force, and uniforms.

The fact that a special one-step wage increase was negotiated for Unit 14 in 1988-90 does not establish that this was due to the existence of a separate bargaining unit for LPN's or that a separate unit is needed to meet their special concerns. Certain occupational groups in Unit 1 have received special pay rates in previous years and a number of them did so again in 1988-90.

The conclusions I draw from this are that, despite separate negotiations beginning in 1982, the results of compensation bargaining have been strikingly similar in both units. Where there were differences in earlier contracts, there has since been convergence on most of the earlier differences. Further, the history of Unit 1 bargaining shows that special arrangements have been worked out for the special needs of certain occupational groups within Unit 1. There is no reason to believe that the special needs of LPNs would not be treated similarly. Also, the fact that AFGE now supports the petition indicates its view that a consolidated unit is appropriate and viable for LPNs.

3. The Board's decision in PERB Cases 90-R-03 and 90-R-07 does not bar consolidation of Units 1 and 14.

In Cases 90-R-03 and 90-R-07 the Board refused to establish a combined unit of LPNs and technical employees at DCGH. Instead, it established a separate unit of LPNs, Unit 23. In its decision, the

Board stated, at footnote 11, that it would consider the present petition, 90-R-02, independently of the outcome of the former cases.

Unit 14 (60 to 70 LPNs) is considerably smaller than Unit 23 (approximately 150 LPNs). The Unit 14 LPNs, those at DHS, have historically been represented for working conditions matters in units which combine LPNs with other employees. This has not been the case with the LPNs at DCGH. They have traditionally been represented, for both compensation and working conditions matters, in units comprised only of LPNs.

RECOMMENDATION

That this petition be granted.



Charles Feigenbaum
Hearing Examiner

10/11/90
Date