

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)

David Russell, et al.,)

Petitioners,)

and)

District of Columbia)

Department of)

Human Services,)

Agency.)

PERB Case No. 89-R-01

Opinion No. 222

DECISION AND ORDER

On November 18, 1988, David Russell, and others (Petitioners) filed a "Petition For Recognition Or To Amend Unit Certification" with the Public Employee Relations Board (Board). This Petition seeks to add employees classified as firefighters at St. Elizabeths Hospital who are jointly represented by the American Federation of State, County and Municipal Employees, Local 2095 (AFSCME) and the American Federation of Government Employees, Local 383 (AFGE) to an existing unit of firefighters in the employ of the District of Columbia Fire Department (DCFD), which is represented by the International Association of Firefighters, Local 36 (IAFF). The Petition asserted that the St. Elizabeths firefighters have a substantial community of interest with firefighters of DCFD on the basis of job functions and interchange of employees with DCFD.

The Petition also sought to add communication operators in the same unit at St. Elizabeths Hospital to a unit of DCFD employees represented by the Communication Workers of America, Local 2336 (CWA).

Attached to the Petition was a list of signatures purportedly of the St. Elizabeths firefighters with the statement:

We the members of the St. Elizabeth's Hospital Fire Department (Engine Company 34, Washington, D.C.) wish to express our sincere desire to change bargaining units. Presently, we are represented by AFSCME, Council 20 of the District of Columbia. However it is our intention with this petition and our signature as evidence that we demonstrate our desire to be represented by the International Association of Firefighters, Local 36 Washington, D.C.

A second list of signatures was attached to the Petition, purportedly those of communications operators employed by St. Elizabeths Hospital, with the statement:

We the members of the St. Elizabeth's Hospital Fire Department Communications Center (Communication Operators) are presently represented by AFSCME Local 2095. It is however our intent to demonstrate our sincere desire to change from the bargaining unit of AFSCME to the Communication Operator's [sic] of America Local 2336 of Washington, D.C. We offer our signatures below as evidence.

Also attached was a letter dated January 7, 1988 from the Counsel for AFSCME to the Counsel for IAFF, stating that "AFSCME is prepared to cede jurisdiction over the firefighters to IAFF." The letter further stated that AFSCME was prepared to join in a unit clarification proceeding or other such proceeding as required.

On November 30, 1988 the Executive Director of the Board wrote to Counsel for the Petitioner that "the Interim Rules of the [Board] provide in Sections 101.1(f) and 101.3 that the Petitioner seeking exclusive recognition is a labor organization with a slate of officers, representatives, a constitution and by-laws.... Therefore, absent a petition filed by a labor organization(s) claiming to represent the employees currently identified as the "Petitioners" in this matter, I cannot process this petition." The Executive Director solicited comments from the Agency, IAFF, and AFSCME and indicated that the matter would be held in abeyance for thirty (30) days pending the receipt of further information.

IAFF Counsel responded by letter dated December 27, 1988 disclaiming any interest in representing the Petitioners.

Also on December 28, 1988 the Petitioners filed a response contending that even if the Petition was not endorsed or adopted by Local 36, any standing issue should be resolved by the Board, or alternatively the Executive Director should convene a meeting of the parties.

The Department of Human Services filed its Response to the Petition on December 30, 1988. ^{1/} The Agency contended that a unit consisting of St. Elizabeths and DCFD firefighters is not

^{1/} Pursuant to P.L. 98-621, in October, 1987 St. Elizabeths Hospital had been transferred from the Federal government to the jurisdiction of the District of Columbia Department of Human Services.

appropriate. The Agency also sought dismissal of the Petition on the ground that the Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Code Sections 1-618.9 and 1-618.10, and Board Rules 101.1 and 101.3, together required that a representation petition be filed by a labor organization. The Agency also pointed to IAFF's disclaimer of interest.

The issue here is whether members of a bargaining unit represented by a certified collective bargaining representative have standing to file a representation petition seeking representation of a different labor organization which has disclaimed any interest in representing these employees. The Board concludes for the following reasons that such unit members lack the requisite standing. ^{2/}

D.C. Code Section 1-618.9(a) provides in pertinent part, "The determination of an appropriate unit... "will be made on the basis of a properly-supported request from a labor organization." [Emphasis added]. This statutory language is clear and unambiguous. Board Rules 101.1(f), 101.3, and 101.10, implement that plain, unambiguous wording of the Act. ^{3/}

The Petitioners point out that D.C. Code Sections 1-618.1 (b), 1-618.2 and 1-618.6 together grant employees the right not to be represented by a labor organization, if a majority of the employees in the appropriate unit so choose. However, the present Petition seeks not to decertify the current bargaining agents, but rather to substitute different labor organizations one of which, moreover, has disclaimed any interest in these employees.

The Petitioners also argue that since nothing in the legislative history of the CMPA suggests an intent to prevent individual employees from filing petitions for recognition or amendment of certification, or to prevent the Board from accepting petitions only filed by labor organizations, the term "by a labor organization" is "descriptive, not prescriptive. [sic]."

The legislative history of D.C. Code Section 1-618.9(a) sheds no light on the instant issue even if recourse to legislative history were appropriate here, which it is not. The unambiguous wording of D.C. Code Section 1-618.9(a) permits representation petitions to be filed only "by a labor organization".

^{2/} It is immaterial whether the Petition is characterized as one for recognition or to amend a unit certification.

^{3/} Relevant provisions of the D.C. Code and the Board's Interim Rules are set forth in the Appendix to this Decision and Order.

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ORDER

IT IS ORDERED THAT:

The Petition For Recognition Or To Amend Unit Certification
is dismissed.

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

May 1, 1989

Appendix

Provisions of the D.C. Code

Section 1-618.1. Policy.

(a) The District of Columbia government finds and declares that an effective collective bargaining process is in the general public interest and will improve the morale of public employees and the quality of service to the public.

(b) Each employee of the District government has the right, freely and without fear of penalty or reprisal:

(1) To form, join and assist a labor organization or to refrain from this activity;

Section 1-618.2. Labor-management relations program established; contents; impasse resolution.

(a) The Public Employee Relations Board (hereinafter in this subchapter referred to as the "Board") shall issue rules and regulations establishing a labor-management relations program to implement the policy set forth in this subchapter.

(b) The labor-management relations program shall include:

(1) A system for the orderly resolution of questions concerning the recognition of majority representative of employees;

* * *

(3) The protection of employee rights as set forth in Section 1-618.6;

(4) The right of employees to participate through their duly-designated exclusive representative in collective bargaining concerning terms and conditions of employment as may be appropriate under this chapter and rules and regulations issued pursuant thereto;

* * *

(7) Any other matters which affect employee-employer relations.

Section 1-618.6. Employee rights.

(a) All employees shall have the right:

(1) To organize a labor organization free from interference, restraint or coercion;

(2) To form, join or assist any labor organization or to refrain from such activity; and

(3) To bargain collectively through representatives of their own choosing as provided in this subchapter.

Section 1-618.9. Unit determination.

(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. No particular type of unit may be predetermined by management officials nor can there be any arbitrary limit upon the number of appropriate units within an agency. The essential ingredient in every unit is community of interest: Provided, however, that an appropriate unit must also be one that promotes effective labor relations and efficiency of agency operations. A unit should include individuals who share certain interests such as skills, working conditions, common supervision, physical location, organization structure, distinctiveness of functions performed and the existence of integrated work processes. No unit shall be established solely on the basis of the extent to which employees in a proposed unit have organized; however, membership in a labor organization may be considered as 1 factor in evaluating the community of interest of employees in a proposed unit.

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

(a) Exclusive recognition shall be granted to a labor organization which has been selected by a majority of employees in an appropriate unit who participate in an election, conducted by a secret ballot, or by any other method in conformity with such rules and regulations as may be prescribed by the Board.

* * *

(f) A labor organization seeking exclusive recognition shall submit to the Board and the appropriate agency a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

Provisions of the Interim Rules of the Board

REPRESENTATION PROCEEDINGS

Appropriate Bargaining Unit
Recognition Petition

101.1 Any request for recognition shall be entitled "RECOGNITION PETITION" and shall contain the following information set forth in numbered paragraphs:

* * *

(f) The name, address and telephone number of the petitioning organization and the petitioning organization's affiliation, if any.

101.3 A labor organization seeking exclusive recognition shall submit to the Board and the employing agency:

- (a) a roster of its officers and representatives;
- (b) a copy of its constitution and bylaws;
- (c) a statement of its objectives.

* * *

Decertification, Consolidation, Clarification or
Amendment Petition

101.9 A petition filed to determine whether a labor organization shall cease to be the exclusive representative of an appropriate unit shall be of the same form and contain the same information, as appropriate, that is required by Section 101.1 for a petition requesting recognition, plus a statement that the recognized labor organization no longer represents a majority of employees in the unit although such organization asserts a claim to continue as the majority representative. A decertification petition shall require a showing that the exclusive representative has not actively represented the employees in the bargaining unit for a period of one year.

101.10 A petition filed for consolidation of two or more existing units or for clarification of an existing unit or for amendment of recognition or certification may be filed by the agency or by the labor organization which is a party to the recognition or certification and shall be in the same form and contain the same information (as appropriate) that is required by Section 101.1 for a petition requesting recognition.