

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In The Matters Of:)	
)	
Teamsters Local Union No. 639,)	
a/w The International Brotherhood)	
of Teamsters Chauffeurs,)	
Warehousemen and Helpers)	
of America, AFL-CIO,)	
)	
Petitioner/Intervenor,)	
)	
and)	
)	
District of Columbia)	PERB Cases Nos. 92-R-04
Public Schools,)	and 92-R-06
)	Opinion No. 338
)	
Respondent,)	
)	
and)	
)	
American Federation of State,)	
County and Municipal Employees,)	
District Council 20, Local 2921,)	
AFL-CIO)	
)	
)	
Petitioner/Intervenor.)	

DECISION AND ORDER

On February 10, 1992, Teamsters Local Union No. 639, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Teamsters) filed a Recognition Petition (PERB Case No. 92-R-04) with the Public Employee Relations Board (Board). The Teamsters seek to represent, for purposes of collective bargaining, a proposed unit of approximately 45 employees employed by the District of Columbia Public Schools (DCPS) "consisting of all data entry classification clerks of the D.C. Board of Education." (Pet. at 1.) The Petition was accompanied by a showing of interest meeting the requirements of Board Rule 502.2 and a Roster of Petitioner's Officers, as required by Rule 501.1(d).^{1/}

^{1/} Copies of each Petitioners' Constitution and Bylaws, also required by Board Rule 501.1(d), have been previously submitted to the Board.

In accordance with Board Rule 502.6, Notices concerning the Petition were posted. The Notices required that requests to intervene and/or comments be filed in the Board's office not later than April 13, 1992. ^{2/}

As the asserted incumbent labor organization, the American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2921, AFL-CIO (AFSCME) filed a Request to Intervene on April 13, 1992, in accordance with Board Rule 502.8(b). AFSCME claims that, "pursuant to the Certification of Representative issued by the Board of Labor Relations of the Government of the District of Columbia on April 19, 1977, Case No. 6R008..., Intervenor is the 'official negotiating agent', and exclusive representative, of the employees in the proposed unit." ^{3/} (Request at 1-2.) AFSCME further asserts that a collective bargaining agreement covering these employees remains in effect until a new agreement is negotiated. On that basis, AFSCME requests that the Petition be dismissed.

On April 30, 1992, AFSCME, in accordance with Section 504 of the Board Rules, also filed a Petition for Unit Modification (PERB Case No. 92-R-06). The Petition concerns a unit of approximately 1,453 employees employed by DCPS for whom AFSCME is the exclusive representative. AFSCME seeks "the addition of the position title of 'data entry clerk'" to the existing unit. (Mod. Pet. at 3.)

In accordance with Board Rule 504.3, Notices concerning the Unit Modification Petition were posted. The Notices required that requests to intervene and/or comments be filed in the Board's office not later than May 29, 1992.

^{2/} DCPS' Response to the Petition was due not later than March 2, 1992; but was not filed until March 9, 1992. We have considered DCPS' Response as management's comments on the Petition since DCPS neither requested, nor did we authorize any extension for DCPS' Response to the Petition.

^{3/} The Board of Labor Relations (BLR) is the predecessor agency of the Public Employee Relations Board. The unit set forth in the Certification of Representative in BLR Case No. 6R008 is described as follows: "All full-time General Schedule personnel classified up to and including Grade GS-7, whose job responsibilities are primarily of a secretarial and/or clerical nature, excluding any management official, supervisor, or confidential employee."

On May 29, 1992, the Teamsters filed a Request to Intervene and Motion to Dismiss. The Teamsters assert that data entry clerks "have never been informed that they are covered by any collective bargaining agreement or represented by any labor organization." (Mot. at 3.) The Teamsters argue that "[s]uch a modification would deprive these employees [,i.e., data entry clerks,] of their fundamental right to select a representative of their own choice." Id. Therefore, the Teamsters request that AFSCME's Petition be dismissed.

AFSCME filed a timely Opposition to the Teamsters' Motion on June 9, 1992. AFSCME contends that its Unit Modification Petition is fully consistent with its claim, as the Intervenor in PERB Case No. 92-R-04, that it already represents data entry clerks in an existing unit since the "job functions and work these employees perform have historically been part of the AFSCME certified unit." (Op. at 2.) Therefore, its Unit Modification Petition merely seeks to have data entry clerks "formally named in its certification". Id. ^{4/}

By Order dated August 4, 1992, the Board referred PERB Case No. 92-R-04 to a Hearing Examiner duly designated by the Board to hear and take evidence on all issues relevant to the disposition of this Petition. The hearing took place September 14, 1992. The Hearing Examiner issued a Report and Recommendation, a copy of which is annexed hereto, in which he concluded: (1) employees employed as data entry clerks are part of the unit sanctioned by the Board's predecessor, i.e., the Board of Labor Relations, in Case No. 6R008; and (2) a proposed unit of data entry clerks does not meet the criteria set forth in D.C. Code Sec. 1-618.9(a) for an appropriate unit. The Hearing Examiner therefore recommended that (1) the Board grant AFSCME's request (made at hearing) that PERB Case No. 92-R-04 and PERB Case No. 92-R-06 be consolidated; (2) the Teamsters' Recognition Petition in PERB Case No. 92-R-04 be dismissed; and (3) AFSCME's Petition for Unit Modification be granted.

Neither party filed exceptions to the Hearing Examiner's Report and Recommendation. After reviewing the record and the

^{4/} Based on our disposition of this case, we hereby grant AFSCME's request to intervene in PERB Case No. 92-R-04 based on its status as the incumbent exclusive representative of employees in the proposed unit in accordance with Board Rule 502.8(b). We also grant the Teamsters' request to intervene in PERB Case No. 92-R-06 pursuant to Board Rules 504.4 and 501.15, based on its showing of interest in the very group of employees, i.e., data entry clerks, that AFSCME seeks in its Petition for Unit Modification.

Hearing Examiner's Report and Recommendation, the Board concludes that the findings and conclusions contained in the Report and Recommendation are supported by the record.^{5/} Accordingly, the

^{5/} The Hearing Examiner erroneously noted that the Teamsters did not specify whether its Recognition Petition, styled "Representation Petition", was "for a compensation or noncompensation unit, or for both." (R & R at 8.) Teamsters stated that its Petition was filed "pursuant to Public Employee Relations Board Rules, Section 502.1." (Pet. at 1.) Section 502 of the Board Rules specifically addresses "Exclusive Recognition and Non-Compensation Unit Determination." With respect to the proposed unit sought by the Teamsters, although D.C. Code Sec. 1-618.9(a) only requires that the unit be "an appropriate unit" and not the most appropriate unit, the determination of an appropriate unit is "made on a case by case basis." When, as here, there are competing unit compositions, an analysis which includes determining which unit is more appropriate, as undertaken by the Hearing Examiner herein, is proper. Moreover, the Hearing Examiner concluded that a unit of data entry clerks did not promote effective labor relations and efficiency of agency operations given their relationship with employees included in the existing unit represented by AFSCME. Rather, according to the findings of the Hearing Examiner, the unit proposed by the Teamsters appeared to "be established solely on the basis of the extent to which employees in [the] proposed unit have organized" in contravention of Section 1-618.9(a). (R & R at 9.)

With respect to AFSCME's Petition for Unit Modification, the Hearing Examiner found that the data entry clerks position was officially entitled "Data Entry Clerks (Typing), DS-033-4" and was created in 1988. The existing unit description, "[a]ll full time General Schedule personnel classified up to and including grade GS-7...", established in 1977, includes this personnel classification. (Pursuant to D.C. Law 2-139, D.C. Code Sec. 1-612.2 of the Comprehensive Merit Personnel Act, enacted in 1978, the Mayor reclassified the General Schedule (GS) classification assigned to District Government employees to District Schedule (DS)). The unit description, however, could not have included the employee position title "Data Entry Clerk" since it was not created until 1988. Board Rule 504.1(b) provides that a unit modification may be sought "[t]o add to an existing unit unrepresented classifications or employee positions created since the recognition or certification of the exclusive representative." (Emphasis added.) The evidence supports the objective requirements of Board Rule 504.1(b). It appears from
(continued...)

Board adopts the Hearing Examiner's recommendations.

ORDER

IT IS HEREBY ORDERED THAT:

1. PERB Case Nos. 92-R-04 and 92-R-06 are consolidated.
2. The Recognition Petition in PERB Case No. 92-R-04 is dismissed.
3. The Teamsters' Motion to Dismiss the Petition for Unit Modification in PERB Case No. 92-R-06 is denied.
4. The Petition for Unit Modification in PERB Case No. 92-R-06 is granted.
5. The non-compensation unit for which the American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2921, AFL-CIO (AFSCME) was certified as the exclusive representative, in Board of Labor Relations Case No. 6R008, is modified to include in the "unit description" set forth below the employee position "Data Entry Clerk."

UNIT DESCRIPTION:

All full-time District Schedule personnel classified up to and including Grade DS-7, whose job responsibilities are primarily of a secretarial and/or clerical nature including data entry clerks, excluding management officials, supervisors, confidential employees and employees engaged in personnel work in other than purely clerical capacities and employees engaged in administering the

⁵(...continued)

the record that the employee position, "Data Entry Clerks", is a new title given clerk-typists (undisputedly a part of the existing bargaining unit represented by AFSCME) utilizing new technology, i.e., computers, to perform similar if not identical duties.

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provisions of Title XVII of the District of
Columbia Comprehensive Merit Personnel Act of
1978, D.C. Law 2-139.

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

December 4, 1992