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**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)	
National Union of Law Enforcement Associations,)	
Petitioner,)	PERB Case No. 08-RC-01
and)	Opinion No. 976
Office of the Chief Medical Examiner of the District of Columbia,)	
Agency.)	
)	

DECISION AND ORDER

I. Statement of the Case:

On October 4, 2007, the National Union of Law Enforcement Associations (“NULEA” or “Petitioner”), in accordance with Section 502 of the Rules of the District of Columbia Public Employee Relations Board (“Board”), filed a Recognition Petition (“Petition”).¹ The Petitioner seeks to represent, for purposes of collective bargaining:

¹ 502.1 - Recognition Petition - Contents

A labor organization seeking exclusive recognition as the representative for an appropriate unit shall file a “Recognition Petition”; which in addition to meeting the requirements of Section 501 of these rules shall include the following:

(a) A description of the proposed unit including the name, address, and telephone number of the employing agency (and agency subdivision, if any), the number of employees in the proposed unit, and the general classifications of employees;

(b) The name, address and telephone number of any other labor organization known to the Petitioner that claims recognition as a representative of any employees in the proposed unit;

(c) A statement as to whether there is a collective bargaining agreement in effect covering the

all nonprofessional employees of the [Office of the Chief Medical Examiner of the District of Columbia ("OCME" or "Agency")], excluding management executives, confidential employees, supervisors or any employee engaged in personnel work in other than a clearly clerical capacity.

(R&R at p. 5)

At the time of the filing of the instant Petition, these employees were represented by the Federal Employees and Transportation Workers Local 572, Laborers International Union of North America ("LIUNA").²

The Petition was accompanied by a showing of interest meeting the requirement of Board Rule 502.1 and an "Alphabetical List of Proposed Unit Members and Comments Regarding Union's Petition for Exclusive Recognition" on November 30, 2007. (See Report and Recommendation ("R&R") at p. 1). "On May 2, 2008, the Board issued a notice to all employees, labor organizations and agencies associated with OCME informing them of the petition filed by NULEA. OCME submitted additional comments on May 19, 2008, to which NULEA responded on May 28, 2008." (R&R at p. 1) The matter was referred to a Hearing Examiner who issued a Report and Recommendation on November 22, 2008. On December 16, 2008, NULEA filed a document styled "Petitioner's Exceptions to the Hearing Examiner's Report and Recommendation to the Board ("Exceptions"). OCME filed a "Reply to the Petitioner's Exceptions to the Hearing Examiner's Report and Recommendation" (Agency's "Opposition") on December 31, 2008. The Hearing Examiner's Report and Recommendation, NULEA's Exceptions and the Agency's Opposition are before the Board for disposition.

proposed unit or any part of it, including the effective date and expiration date of any such agreement;

(d) A roster of the Petitioner's officers and representatives, a copy of its constitution, its articles of incorporation and bylaws, if any, and a statement of its objectives. The Petitioner shall include a statement that the petitioning labor organization subscribes to the standards of conduct for labor organizations, as set forth in the Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139 and 1703; D.C. Code Sec. 1-618.3.

² On April 28, 1977, the Board certified LIUNA as the exclusive representative of:

All nonprofessional employees of the Chief Medical Examiner, Department of Human Resources excluding management executives, confidential employees, supervisors or any employee engaged in personnel work in other than a clearly clerical capacity. PERB Case No 07-R-004 (1977).

II. Hearing Examiner's Report and Recommendation

The Hearing Examiner found the following facts to be undisputed:

1. NULEA is a union of law enforcement associations.³
2. In order to be eligible for membership in NULEA, its Constitution requires the individual to be:
 - (a) a sworn (commissioned), paid public safety officer as defined in the Public Safety Officers Definition; law enforcement officer employed by a public law enforcement agency;
 - (b) a person not sworn (commissioned) law enforcement officer employed in a support capacity by a public law enforcement agency;
 - (c) a person employed by a political subdivision who falls within the express jurisdiction of a duly chartered subordinate body;
 - (d) the duly elected chief executive officer of a subordinate body;
 - (e) ... a person employed by a political subdivision who is a member of a NULEA Council of Public Employees.

The Constitution further provides that:

The eligibility under this section rests with the Executive Committee acting under authority of the Executive Board. Neither the President nor any other body shall have the authority in that regard. The Executive Committee has the authority under this section and the chartering provision of this Constitution to interpret and apply this section with regard to membership of any individual or group seeking membership. (Ex P-1, Article II, Section 2).

3. OCME is an independent agency under the Mayor's personnel authority. It is responsible for certifying the deaths of individuals who die in the District of Columbia.

³ "Associations" refers to bargaining unit associations.

4. OCME is not a law enforcement agency.

5. NULEA's proposed unit includes "all nonprofessional employees of the [Office of the Chief Medical Examiner of the District of Columbia ("OCME") or "Agency"]], excluding management executives, confidential employees, supervisors or any employee engaged in personnel work in other than a clearly clerical capacity". (Petition for Exclusive Recognition, p. 2).

6. The proposed unit would have approximately 25 employees. NULEA states it has obtained a showing of interest of 56% or 14 employees. (Petition, p. 2).

7. On April 28, 1977, PERB certified the Federal Employees and Transportation Workers Local 572, Laborers International Union of North America (LIUNA) as the exclusive representative of:

All nonprofessional employees of the Chief Medical Examiner, Department of Human Resources excluding management executives, confidential employees, supervisors or any employee engaged in personnel work in other than a clearly clerical capacity. PERB Case No 07-R-004 (1977).

8. On September 10, 2007, a petition was filed with PERB asking the Board to decertify LIUNA. LIUNA did not respond to the petition or to the Order issued by PERB's Executive Director directing it to show cause why the decertification order should not be issued. (PERB Case No. 07-RD-01). Petitioner has requested a default judgment. This matter is presently pending before the Board. (Petition, p. 2, Tr, 15).

9. Transportation and janitorial employees employed by OCME are represented by the American Federation of State, County and Municipal Employees (AFSCME), Local 2092 and AFSCME Local 2020.

10. No Union intervened in this matter.

11. There is no contract bar at issue in this matter.

(R&R at pgs. 4-6).

The Hearing Examiner identified three issues for consideration:

Issue 1: Can [the Board] grant NULEA's Petition while the bargaining unit is represented by another union that is the subject of a decertification petition?

At the Hearing, NULEA argued that the Board can order an election despite the outstanding motion regarding LIUNA's decertification pursuant to Board Rule 502.12.⁴ (See R&R at p. 6). OCME countered that the Petition is premature and should be held in abeyance until the resolution of the decertification. (See R&R at p. 6). The Hearing Examiner determined that Board rules do not prohibit the matter of the recognition petition from proceeding despite the outstanding decertification petition and motion. (See R&R at p. 9).

Issue 2: Is the proposed unit overly broad?

NULEA conceded that it may need to amend the definition of the bargaining unit to "carve" out the janitors and transportation workers represented by AFSCME Locals 2092 and 2020, but that it could do so without filing a new petition. (See R&R at p. 6). OCME asserted that before any election could take place, the proposed unit description must be changed to exclude employees currently represented by AFSCME Locals 2092 and 2020. (See R&R at p. 7). The Hearing Examiner concluded that the current description of the bargaining unit complied with D.C. Code § 1-617.09, Unit Determination, but is "overly-broad as stated." (R&R at p. 9).⁵ The Hearing Examiner

⁴ **502.12 - Certification Without Election**

If the choice available to employees in an appropriate unit is limited to the selection or rejection of a single labor organization, the Board may permit the employing agency to recognize the labor organization without an election on the basis of evidence that demonstrates majority status (more than 50%), such as documentary proof not more than one (1) year old, indicating that employees wish to be represented by the petitioning labor organization. In case of voluntary recognition by the employer, the Executive Director shall review the evidence of majority status and shall recommend to the Board whether certification should be granted without an election.

⁵ **§ 1-617.09. 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 [one] 1 factor in evaluating the community of interest of employees in a proposed unit.

(b) A unit shall not be established if it includes the following:

found that the description would have to be revised to exclude janitors and transportation workers represented by AFSCME Locals 2092 and 2020. (See R&R at p. 9).

Issue 3: Should NULEA's petition be permitted to represent OCME employees in accordance with its Constitution?

NULEA's position at the hearing was that "its Executive Board has the sole authority to determine eligibility for membership, and since it has determined that the identified OCME employees are eligible for membership, it should be permitted to represent those employees." (R&R at p. 7). The Hearing Examiner found that although OCME employees are not law enforcement officers, NULEA contends that the described bargaining unit employees act in a support and assistance capacity to a law enforcement agency. (See R&R at p. 7). OCME asserted that "it is an autonomous agency with no law enforcement responsibilities. It performs medical functions, which are not law enforcement in nature." (R&R at p. 7). In addition, OCME maintained that "its employees are not law enforcement officers, are not supervised by law enforcement officers, do not support such functions and have minimal, if any, contact, with law enforcement." (R&R at p. 7).

The Hearing Examiner found that "employees in the proposed bargaining unit are not employed by a law enforcement agency, and have little if any nexus with law enforcement, that individuals within the proposed unit are not supervised by law enforcement officers, and rarely interface with law enforcement." (R&R at p. 10).

(1) Any management official or supervisor: Except, that with respect to fire fighters, a unit that includes both supervisors and nonsupervisors may be considered: Provided, further, that supervisors employed by the District of Columbia Public Schools may form a unit which does not include nonsupervisors;

(2) A confidential employee;

(3) An employee engaged in personnel work in other than a purely clerical capacity;

(4) An employee engaged in administering the provisions of this subchapter;

(5) Both professional and nonprofessional employees, unless a majority of the professional employees vote or petition for inclusion in the unit;

(6) Employees of the Council of the District of Columbia; or

(7) Employees within the Educational Service in the District of Columbia Public Schools and the Office of the State Superintendent of Education who serve without tenure pursuant to [§ 1-608.01(a)].

(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.

Although the Hearing Examiner agreed that NULEA was within its authority to interpret its Constitution, she also found that the "Board has specific responsibilities with regard to reviewing the internal workings of a union. The Board must ensure that the constitution and by-laws [of the union] protect its members and afford them due process. Other than that, the Board will not insert itself in the union's day-to-day functioning." (R&R at p. 10).

The Hearing Examiner determined that NULEA's interpretation of its Constitution substituted "clearly written language for language that would [affect] its goal of deeming the unit eligible for membership." (R&R at pgs. 10-11). Specifically, the Hearing Examiner's analysis points to the language in NULEA's Constitution, Article II, Section 2, which states: "to be eligible for active membership, a person must be ... a person not a sworn (commissioned) law enforcement officer employed in a support capacity by a public law enforcement agency." (Emphasis added) (R&R at p. 11). The Hearing Examiner found that NULEA's interpretation of the section substituted the word "of" for the word "by", and that the "language as written requires the civilian employees to be employed by a public law enforcement agency." (Emphasis added) (R&R at p. 11).

In light of these findings, the Hearing Examiner recommended the Board dismiss the petition filed in this matter without prejudice. (See R&R at p. 12).

III. Discussion

As stated above, NULEA filed Exceptions to the Hearing Examiner's Report and Recommendation. In addition, OCME filed an Opposition to NULEA's Exceptions. The first issue considered by the Hearing Examiner is: *whether the Board can grant NULEA's Petition, while the bargaining unit is represented by another union that is the subject of a decertification petition?* The Hearing Examiner found that the Board rules do not prohibit the matter of the recognition petition from proceeding despite the outstanding decertification petition and motion. (See R&R at p. 9). No exceptions were made concerning the Hearing Examiner's finding with respect to this issue. The Board notes that pursuant to Board Rule 502.9, this is not one of the conditions barring petitions for exclusive recognition.⁶ The Board finds the Hearing Examiner's findings and

⁶ 502.9 - Conditions Barring Petitions for Exclusive Recognition,

A petition for exclusive recognition shall be barred if:

- (a) During the previous twelve (12) months, a valid majority status determination has been made for substantially the same bargaining unit, or if during this same period a certification of representative has been issued, or the Board has determined the compensation unit placement, whichever is later.
- (b) A collective bargaining agreement is in effect covering all or some of the employees in the bargaining unit and the following conditions are met:

recommendations with respect to this issue are to be reasonable and supported by the record. Therefore, the Board adopts the Hearing Examiner's recommendation.

NULEA did file exceptions to the Hearing Examiner's Report and Recommendation regarding Issues 2 and 3. Specifically, NULEA contends that the Hearing Examiner "failed to consider important evidence that was in the record and included an irrelevant statute on which turned an important element of the case." (Exceptions at p. 1).

Issue 2: Is the proposed unit overly broad?

NULEA contends that "the existing language [in the description of the proposed bargaining unit] specifically excludes 'personnel work in other than purely clerical capacity.' NULEA Post-Hearing Brief at 8. Janitorial and transportation workers do not engage in purely clerical functions, so they must be excluded pursuant to the existing language of the Bargaining Unit definition." (Exceptions at p. 7) (Hearing Transcript at p. 21). In addition, NULEA argues that in "OCME's Alphabetical List of Proposed Unit Members and Comments Regarding Unions Petition for Exclusive Recognition (Agency List), none of the classifications of the Bargaining Unit included janitorial or transportation workers. . . . Therefore, NULEA asserts that the Hearing Examiner's Recommendation did not weigh the evidence in front of her when [she] draft[ed] her Recommendation." (Exceptions at p. 7).

OCME counters that NULEA's exception to the Hearing Examiner's determination that the proposed unit is overly broad is a "mere disagreement with [the Hearing Examiner's] factual determination and should be dismissed." (Agency's Opposition at p. 6).

The Board has held that "[c]hallenges to a Hearing Examiner's findings based on competing evidence do not give rise to a proper exception where, as here, the record contains evidence supporting the Hearing Examiner's findings." *Clarence Mack v. D.C. Dept of Corrections*, 43 DCR 5136, Slip Op. No. 467 at p. 2, at PERB Case 95-U-14 (1996). See also, *American Federation of Government Employees, Local 872 v. D.C. Dept of Public Works*, 38 DCR 6693, Slip Op. No. 266, PERB Case Nos. 89-U-15, 89-U-16, 89-U-18 and 90-U-04 (1991). Furthermore, issues concerning the probative value of evidence are reserved to the Hearing Examiner. See *University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia*, 39 DCR 6238, Slip Op. No. 285, PERB Case Nos. 88-U-33 and 88-U-34 (1991). In light of the

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- (i) The agreement is of three years or shorter duration; provided, however, that a petition may be filed between the 120th day and the 60th day prior to the scheduled expiration date or after the stated expiration of the contract; or
 - (ii) The agreement has a duration of more than three years; provided, however, that a petition may be filed after the contract has been in effect for 975 days.

above, the Board believes that NULEA's exception amounts to a mere disagreement with the Hearing Examiner's finding. Moreover, the NULEA is requesting that the Board adopt its interpretation of the evidence presented at the hearing and in its Post-Hearing Brief. As a result, we find that NULEA's exception lacks merit. Therefore, NULEA's exception is denied.

Issue 3: Should NULEA's Petition be permitted to represent OCME employees in accordance with its Constitution?

NULEA asserts that its interpretation of its Constitution "expands the interests of its members rather than narrows those interests. It allows for greater membership. NULEA's interpretation creates a larger pool of potential union members, opening its membership to individuals who support law enforcement agencies as well as individuals who are employed by law enforcement agencies." (Exceptions at p. 9). NULEA contends that the Hearing Examiner raised the issue of whether NULEA's interpretation of its Constitution was a standards of conduct violation *sua sponte*. (See Exceptions at pgs 8-10). NULEA claims that its interpretation does take into consideration the democratic principles the Board strives to protect pursuant to D.C. Code § 1-617.03(a).⁷

⁷ 1-617.03, Standards of conduct for labor organizations

(a) Recognition shall be accorded only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. A labor organization must certify to the Board that its operations mandate the following:

(1) The maintenance of democratic provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings;

(2) The exclusion from office in the organization of any person identified with corrupt influences;

(3) The prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members;

(4) Fair elections; and

(5) The maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) The Board may accept any of the following as evidence that a labor organization's operations meet the requirements of subsection (a) of this section:

(1) A statement in writing that the labor organization is a member of the American Federation of Labor-Congress of Industrial Organizations and is governed by and subscribes to the American Federation of Labor-Congress of Industrial Organizations Codes of Ethical Practice;

OCME argues that the Hearing Examiner did not raise the issue of NULEA's interpretation of its Constitution *sua sponte*, but that OCME raised the issue in its Post-Hearing Brief. (See Agency's Opposition at p. 9). OCME further asserts that the Hearing Examiner's determination that NULEA was attempting to change, rather than, interpret its Constitution, was proper and supported by the record. (See Agency's Opposition at p. 8).

The Union's Constitution requires that union members be employed by a law enforcement agency. According to Black's Law Dictionary plain meaning is "the meaning attributed to a document (usually by a court) by giving the words their ordinary sense, without referring to extrinsic indications of the author's intent." Black's Law Dictionary (8th ed. 2004), Plain Meaning- Rule. Moreover, Black's Law Dictionary provides that the plain meaning rule is "the rule that if a writing, or a provision in a writing, appears to be unambiguous on its face, its meaning must be determined from the writing itself without resort to any extrinsic evidence. Though often applied, this rule is often condemned as simplistic because the meaning of words varies with the verbal context and the surrounding circumstances, not to mention the linguistic ability of the users and readers (including judges)." Black's Law Dictionary (8th ed. 2004). "When the plain meaning of the statutory language is unambiguous, the intent of the legislature is clear, judicial inquiry need go no further. In determining the plain meaning, the words of the statute should be construed according to their ordinary sense and with the meaning commonly attributed to them." *Tippett v. Daly*, 964 A.2d 606 (D.C., 2009). Statutory construction requires that if the language of a provision is clear and unambiguous, then the interpretation of that provision is the *plain meaning* of the word or phrase which is employed. (See *Country Road Association of Michigan v. Governor*, 47 Mich 11, 705 N.W. 2d 680 (2005). "It is appropriate for a court to look to dictionary definitions to determine the ordinary meaning of words which are used in a statute but which are not defined in the statute or in related regulations." *Tippett v. Daly*, 964 A.2d 606 (D.C., 2009). Furthermore, a judicial body may consult a dictionary to determine the common, accepted meaning of a word used in a statute. (See *In re Washington*, 2007 WI 104, 735 N.W. 2d 111 (Wis. 2007).

In the present case, "by" is defined in Merriam-Webster's Dictionary as: in

(2) A copy of the labor organization's constitution and bylaws which contain explicit provisions covering these standards;

(3) A copy of rules and regulations of the organization which have been officially adopted by the membership, which contain explicit provisions covering these standards; or

(4) An official certification in writing from a labor organization stating that the labor organization subscribes to the standards of conduct for labor organizations, as set forth in this section.

(c) The Board shall prescribe the rules and regulations needed to effect this section. Any complaint of a violation of this section shall be filed with the Board.

proximity to, through or through the medium of, in conformity with, on behalf of. On the other hand, "of" is defined in Merriam-Webster's Dictionary as: used as a function word to indicate a point of reckoning, used as a function word to indicate the component material, relating to, used as a function to indicate belonging or a possessive relationship. The Hearing Examiner distinguished "by" and "of" as distinct terms. NULEA's exception merely disagrees with that determination. This is an argument that was raised by NULEA and rejected by the Hearing Examiner.

In addition, the Board finds the Hearing Examiner's findings and recommendations are reasonable and based on the record. Consequently, the Board denies this exception and adopts the Hearing Examiner's recommendation.⁸ The language at issue in this case is clear and unambiguous. Therefore, we find the "plain meaning" approach to be persuasive. As a result, we have adopted the Hearing Examiner's finding that the Union's position constitutes an amendment to the provisions of the Union's Constitution that require members to be employed by a law enforcement agency. In addition, the Board finds that the Union's arguments in its Petition represent a disagreement with this finding of the Hearing Examiner.

NULEA also contends that the Hearing Examiner failed to consider evidence that a similar bargaining unit in Norfolk, Virginia at the Department of the Navy is represented by NULEA. (See Exceptions at p. 10). Again, NULEA's exception is merely a disagreement with the weight the Hearing Examiner accorded the evidence submitted by the parties. In light of the above, the Board finds that NULEA's exception lacks merit. Therefore, NULEA's exception is denied.

IV. Conclusion

In light of the above, the Board finds the Hearing Examiner's findings and recommendations are reasonable and based on the record. The Board, therefore, adopts the Hearing Examiner's Report and Recommendation that the Petition be denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The National Union of Law Enforcement Associations' Recognition Petition is denied.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

⁸ The Board notes that NULEA relies on authority asserting that a court should defer to a union's interpretation of its constitution and bylaws. (See Exceptions at p. 9). However, the issue is not NULEA's interpretation of its Constitution, but its amendment of its Constitution.

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

September 30, 2009

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 08-RC-01 was transmitted via Fax and U.S. Mail to the following parties on this the 30th day of September 2009.

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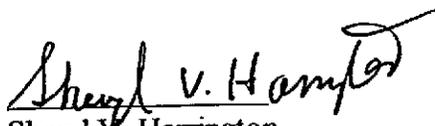
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