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

In the Matter of:

Fraternal Order of Police/  
Department of Corrections  
Labor Committee,

Petitioner,

and

District of Columbia  
Department of Corrections,

Agency,

and

District of Columbia Department  
of Corrections Correctional  
Employees, Local Union No. 1714  
a/w International Brotherhood  
of Teamsters, Warehousemen,  
Chauffeurs and Helpers of  
American, AFL-CIO,

Incumbent-Intervenor,

and

Alliance of Independent  
Corrections Employees, Inc.,

Intervenor.

PERB Case No. 93-R-04  
Opinion No. 370  
(Motions to Dismiss)

DECISION AND ORDER

On September 2, 1993, the Public Employee Relations Board (Board) issued Opinion No. 362 in this proceeding directing that an election be held among eligible employees at the Department of

Corrections (DOC) to determine whether employees desire to be represented by the Petitioner, Fraternal Order of Police/Department of Corrections Labor Committee (DOCLC) <sup>1/</sup> or the Incumbent-Intervenor, District of Columbia Department of Corrections Correctional Employees, Local Union No. 1714 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO, CLC (Teamsters); or the Intervenor, Alliance of Independent Corrections Employees, Inc. (AICE). Furthermore, we ruled that the Petitioner, DOCLC, and the Intervenor, Teamsters and AICE, met all Board Rule requirements for labor organizations seeking exclusive recognition as the representative for a unit of employees found appropriate by the Board.

On September 17, 1993, the Teamsters filed two motions styled "Motion to Dismiss Petition of Fraternal Order of Police/Department of Corrections Labor Committee" and "Motion to Dismiss Petition of Alliance of Independent Corrections Employees For Lack of Service". DOCLC and AICE filed timely responses opposing the Motions on September 24, 1993. <sup>2/</sup> AICE also filed a response to the Teamsters' Motion to Dismiss DOCLC's Petition, joining in the Teamsters' request. <sup>3/</sup> For the reasons that follow, we deny these Motions. <sup>4/</sup>

In their first Motion, the Teamsters assert, in the main, that the DOCLC is not an appropriate organization to represent employees in the bargaining unit. They assert that DOCLC currently represents managerial and supervisory employees at DOC that also participate in the management of DOCLC's affiliate, the Fraternal Order of Police, and as such, DOCLC's representation of bargaining-unit employees would present an inherent conflict of

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<sup>1/</sup> In view of the contentions made in the Teamsters' Motion, the Board, for purposes of clarity and to avoid confusion, will refer to the Petitioner as DOCLC rather than FOP, the acronym we used in Opinion No. 362.

<sup>2/</sup> On October 12, 1993, the Teamsters filed a reply to DOCLC's response to its Motion. There being no objection to this submission or provision under our rules expressly prohibiting such replies, we have accepted this additional pleading.

<sup>3/</sup> AICE withdrew its response to the Teamsters' Motion to dismiss DOCLC's Petition by letter received and dated October 12, 1993.

<sup>4/</sup> We denied these Motions in Memorandum Opinion No. 369, issued on October 13, 1993, stating that the instant Opinion, providing the bases for our ruling, would follow.

interest. The Teamsters apparently base their assertion on a "flyer" allegedly posted or distributed at DOC reflecting DOC supervisors as members and officers of an association described as the "Fraternal Order of Police D.C. Corrections Supervisory Association" that was formed on July 31, 1993. (Mot. at 2.) Nowhere on this flyer is DOCLC mentioned or implicated in connection with the supervisory association, and the Board has no record that reflects DOCLC as the certified representative for any unit of employees, supervisory or otherwise, at DOC.

In view of the above, we find, contrary to the Teamsters' contentions, that the Petitioner, DOCLC and the D.C. Corrections Supervisory Association are not the same entity, notwithstanding their apparent common affiliation with the Fraternal Order of Police. The participation or membership by DOC supervisors or managers in the operation of the D.C. Corrections Supervisory Association presents no issue for the Board's determination with respect to DOCLC's capacity to represent the bargaining-unit employees that these supervisors supervise.<sup>5/</sup> Therefore, we find no inherent conflict should DOCLC become the representative for these bargaining-unit employees. We further note that unit description clearly excludes managerial and supervisory employees as part of the appropriate unit. Board Rule 511.4, providing for

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<sup>5/</sup> Nothing under the CMPA disqualifies an organization from being accorded the status of a labor organization for purposes of representing District government employees merely because some of its members are supervisors. Furthermore, the unit description clearly excludes supervisors and managers from being a part of the unit.

The National Labor Relations Board (NLRB) has developed a standard that there must be "a 'clear and present danger' of a conflict of interest interfering with the collective bargaining process" before an organization is disqualified from representing a unit of employees, that may include employees' supervisors, in collective bargaining. See, Arlington Memorial Hosp., 250 NLRB 683, (1980). While the NLRB has observed that the active participation of supervisors in the representational duties of an organization may call into question the organization's ability to "deal at arms length with the employer" with respect to the interest of the employees they represent, the Teamsters' Motion does not present such a scenario. Sierra Vista Hosp., Inc., 241 NLRB 631, 633 (1979). See, also, Arlington Hospital Association, 246 NLRB 992 (1979) (a professional association of registered nurses was not disqualified from representation, despite the inclusion of supervisors, because no supervisors were officers or members of the board of directors of the association representing employees).

the challenge of voters, affords the parties the appropriate opportunity for addressing the status of any particular employee with respect to their eligibility to participate in an election directed by the Board. Based upon our review of the uncontroverted evidence presented, we find no basis for dismissing DOCLC's Petition. <sup>6/</sup>

The Teamsters in a separate Motion contend, among other things, that AICE is not a proper Intervenor since AICE failed to serve the Teamsters, as a party to this proceeding, with a copy of its Petition to Intervene, as required by Board Rule 501.12. This omission, the Teamsters assert, has "precluded Local 1714 from making any comment, statement of position, objection or opposition to the petition filed by the Alliance, and in particular has precluded Local 1714 from making any determination as to whether or not to challenge the Alliance's status as a labor organization." (Mot. at 3-4.) For the reasons stated below we conclude that the service failure was inadvertent; that the Teamsters suffered no prejudiced and that we should adhere to our prior ruling that AICE met the Board's substantive and jurisdictional requirements to participate in this proceeding as an Intervenor.

In its response to the Motion, AICE attached an affidavit and documentation of its efforts to serve the Teamsters with its Petition, i.e., a copy of the returned envelope postmarked August 19 and 25, 1993. <sup>7/</sup> AICE also submitted a copy of its cover letter and Petition evidencing its eventual service of its Petition on the Teamsters by messenger on September 23, 1993. <sup>8/</sup>

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<sup>6/</sup> In view of our findings and conclusions above, we find no basis for the Teamsters' assertions that DOCLC's showing of interest was secured by "misleading" bargaining-unit employees. See, e.g., D.C. National Education Association and D.C. Public Schools, 32 DCR 2514, Slip Op. No. 108, PERB Case No. 85-R-03 (1985).

<sup>7/</sup> In response to the Board's Executive Director's notice of deficiency letter on August 16, 1993, AICE timely filed a "Corrected Petition to Intervene" on August 19, 1993. The post-marked envelope documenting AICE's attempt to concurrently serve the Corrected Petition upon the Teamsters reflects AICE's efforts to comply with Board Rule 501.12.

<sup>8/</sup> In its response, AICE states that timely service was attempted on two occasions. The failure of the first attempt -- made by AICE-- resulted from an incorrect suite number. AICE had no explanation as to why its second attempt on September 7, 1993, (continued...)

On October 7, 1993, the Board's Executive Director extended to the Teamsters an opportunity to respond to the content of AICE's Petition to Intervene. Therefore, the Teamsters did not incur any actual prejudice because of the failure to make concurrent service in accordance with Board Rule 502.12. The merits of the Teamsters' response are addressed in the margin below. <sup>9/</sup>

In view of (1) AICE's good faith attempt to comply with Board Rule 501.12, (2) the eventual service of AICE's Petition

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<sup>8</sup>(...continued)  
was not successful. The affidavit of an AICE member who made the second attempt was attached to AICE's Response.

<sup>9/</sup> On October 12, 1993, the Teamsters filed a "Response to Petition to Intervene Filed by Alliance of Independent Employees, Inc." AICE filed an unsolicited Reply to the Teamsters Response on October 19, 1993. The Teamsters' challenge to AICE's Petition is two-fold. The Teamsters contend that a provision in AICE's Constitution and Bylaws describing the jurisdiction of AICE as "all employees employed in the law enforcement and security occupations" precludes AICE from representing non-uniformed employees engaged in non-security functions that are part of the bargaining unit. AICE's Constitution and Bylaws expound upon this description as including "law enforcement- or security-related positions." (emphasis added.) To be accorded recognition under the CMPA, a labor organization must only certify that it "is free from corrupt influences and influences opposed to basic democratic principles." We are satisfied that AICE's Constitution and Bylaws reflect such principles. All employees in the bargaining unit enable DOC -- directly or by support-- to accomplish its mission of providing security and law enforcement and are, therefore, as least "related" to law enforcement and security.

The Teamsters' second objection challenges the showing of interest in support of AICE's Petition. The Teamsters submitted the affidavit of an ex-AICE officer in support of its contention that a significant amount of AICE's signatures exhibiting its employee support "were executed by employees who understood that the purpose of the Alliance was to protect the interest of non-uniformed employees against FOP and that their signatures were not to be used against the interest of [Teamsters] Local 1714." We have considered the Teamsters' contention and are satisfied that AICE has met the showing of interest required by Board Rules. The allegedly misled employees will have another opportunity to express their preferences in the election proceeding. Moreover, the adequacy of the showing of interest determination by the Board is not subject to appeal. (Board Rule 502.4.)

upon the Teamsters and (3) the lack of actual prejudice demonstrated by the Teamsters, we conclude that dismissing AICE as an Intervenor to this proceeding for failing to concurrently serve its Petition on the Teamsters, in accordance with Board Rule 501.12, would not best effectuate the intent and purposes of the Comprehensive Merit Personnel Act. See, Local 12, American Federation of Government Employees, AFL-CIO and D.C. Dept. of Employment Services and American Federation of State, County and Municipal Employees, AFL-CIO, 28 DCR 3943, Slip Op. No. 14, PERB Case No. OR006 (1981).

ORDER

IT IS HEREBY ORDERED THAT:

For the foregoing reasons, the Motions of the District of Columbia Department of Corrections Correctional Employees, Local Union No. 1714 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO, CLC requesting the dismissal of the Petitions of the Fraternal Order of Police/Department of Corrections Labor Committee and the Alliance of Independent Corrections Employees, Inc. are denied.

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

November 4, 1993