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

In the Matter of:)	
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American Federation of State, County and Municipal Employees, AFL-CIO,)	
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Petitioner,)	
)	
and)	
)	PERB Case No. 99-AC-01
American Federation of State, County and Municipal Employees, Local 1033 and 2097,)	
)	Opinion No. 620
)	
Intervenors,)	
)	
and)	
)	
District of Columbia Health and Hospitals Public Benefit Corporation,)	
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Agency.)	
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DECISION AND ORDER AMENDING CERTIFICATION

On December 11, 1998, the American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME or Petitioner), filed a Petition to Amend Certification (Petition). AFSCME filed this Petition to amend Certification Nos. 71 and 103. The Petitioner contends that the proposed amendment "reflect[s] the administrative change in affiliation of Locals 1033 and 2097 from District Council 20 to the Metropolitan District 1199 DC, National Union of Hospital and Health Care Employees (NUHHCE).^{1/} (R&R at p.3).

^{1/} Certification Nos. 71 and 72 certified AFSCME, District Council 20, Local Union Nos. 1033 and 2097, respectively, as the representatives of two separate bargaining units at the District of Columbia General Hospital (DCGH). AFSCME, D.C. Council 20, Local Union Nos. 1033 and 2097, AFL-CIO and District of Columbia General Hospital, PERB Case No. 93-R-03 and 0R007, Certification Nos. 71 and 72. The bargaining units set forth in Certification Nos. 71

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The current certifications identify the exclusive representative for each unit as the “American Federation of State, County and Municipal Employees, D.C. Council 20, [Local 1033/Local 2097] AFL-CIO”. The District of Columbia Health and Hospitals Public Benefit Corporation (PBC or Agency), did not participate in these proceedings.

Board Rule 516.1 permits amendments to certification “whenever there is a change in the identity of the exclusive representative that does not raise a question concerning representation (e.g., whether the employees have designated a particular organization as their bargaining agent).”^{2/}

An investigation concerning this Petition was conducted pursuant to Board Rule 516.2. The investigation revealed that some members and officers of Locals 1033 and 2097 (Intervenors) objected to the Petition. The Intervenors’ objections are twofold. First, they contend that NUHHCE is not a subordinate body of AFSCME, but rather a separate entity. Second, the Intervenors raise due process issues concerning how AFSCME effected the change from D.C. Council 20 to NUHHCE.^{3/}

The above-noted objections, raised material issues of fact concerning the criteria noted in Board Rule 516. As a result, the Petition was referred to a Hearing Examiner, who issued a Report and Recommendation. No exceptions were filed. The Hearing Examiner’s Report and Recommendation is now before us for review and final disposition.

and 72 were modified when DCGH was reorganized into the District of Columbia Health and Hospitals Public Benefit Corporation (PBC). A new certification was issued to Local 2097 to reflect the modification in PBC and All Union Representing Bargaining Units Employed by the PBC, et al., 45 DCR 6743, Slip Op. No. 559, PERB Case No. 97-UM-05 and 97-CU-02, Certification No. 103 (1998). A new certification for the unit represented by Local 1033 was not issued pending the certification of election results pursuant to the Board’s directed election among employees in that unit. See, PERB Case No. 97-UM-05, Slip Op. No. 559.

^{2/} “A change in the identity of the representative that does not raise a question concerning representation may include a change in the name of the labor organization.” Board Rule 516.1

^{3/} In a related matter, representatives from AFSCME, Local 2095 filed an Unfair Labor Practice Complaint and Standards of Conduct Complaint (PERB Case Nos. 98-U-19 and 98-S-07). The Complaints allege unfair labor practice and standards of conduct violations based on AFSCME’s affiliation with NUHHCE. After AFSCME filed the instant Petition for Amendment of Certification, the parties requested that the Complaints be held in abeyance pending the disposition of the instant petition.

Objection Number 1-Representation Question

AFSCME asserts that the change in affiliation does not raise a question concerning representation. However, representatives from Locals 1033 and 2097 argue that NUHHCE is not a subordinate body of AFSCME, but rather is a national union and a separate entity.

The Hearing Examiner found that AFSCME is a national labor organization with three tiers. The top tier, the international, is the policymaking entity. She concluded that the middle tier consists of "councils" (R&R at p.5). In addition, the Hearing Examiner determined that this middle tier is regional. Also, she noted that the "rank-and-file", union members are in the "locals", which comprise the third tier. Based on these findings, the Hearing Examiner determined that: (1) NUHHCE and D.C. Council 20 are in the middle tier; and (2) Locals 1033 and 2097 are in the third tier. Therefore, the Hearing Examiner reasoned that the change from D.C. Council 20 to NUHHCE, involves a change in the middle or regional council tier.

In addition, the Hearing Examiner found that the servicing arm of AFSCME are its regional councils, e.g., D.C. Council 20. These regional councils provide such services as contract negotiations and the processing of grievances for local affiliates. In light of the above, the Hearing Examiner determined that under the proposed amended certification, NUHHCE would replace D.C. Council 20 as the servicing arm.^{4/}

The Hearing Examiner noted that pursuant to Board Rule 516.1, a request to amend certification may be granted unless the change raises a "question of representation". She observed that in assessing the impact of a change in affiliation, courts and the National Labor Relations Board (NLRB) look at the continuity of representation. Furthermore, she noted that "in reaching a decision on whether a union should retain its exclusive relationship with a bargaining unit, courts and the NLRB assess if the change or affiliation has disturbed the continuity of representation." (R&R at 5.)^{5/} She points out that critical factors in making such a determination are the extent of the changes in the union's structure, administration, by-laws and size. Another factor to be considered, are the changes in the "rights and obligations of union leadership and membership. . .[and] the relationships between the new bargaining agent and the employer". Id.^{6/}

^{4/} AFSCME and NUHHCE entered into an agreement in 1989 to affiliate with respect to locals in the health care field. It appears that AFSCME decided to make this change in affiliation from AFSCME regional councils to NUHHCE for all its local affiliates that represent healthcare employees. (Exh. H, p.3)

^{5/} Citing, Sun Oil Co. v. NLRB, 576 F.2d 553 (3rd Cir. 1978).

^{6/} Citing, NLRB v. Insulfab Plastics, 789 F.2d 951 (1st Cir. 1986).

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The Hearing Examiner found that the International AFSCME and the Local affiliates were not significantly altered by the change. In addition, she determined that the change in affiliation was not "sufficiently dramatic" to alter the union's identity. (R&R at 7.) Specifically, she found that there were some organizational changes, changes in staff and some location changes. However, she concluded that the locals remained intact. (R&R at 7.) Therefore, the change occurred almost exclusively in the middle tier, i.e. the servicing branch, previously District Council 20 and currently NUHHCE. Id. While allegations of more significant changes were asserted by the Intervenors, the Hearing Examiner found that no evidence was presented to support those charges. Id.^{7/} Furthermore, she found that the affiliation required NUHHCE and the affected Locals, i.e., Locals 1033 and 2097, to continue to adhere to AFSCME's constitution, by-laws, rules and regulations.

Based on her findings, the Hearing Examiner concluded that the change from D.C. Council 20 to NUHHCE brought changes. However, she found that the evidence showed that the "new union retained enough of its old character to render those changes insufficiently dramatic". (R&R at p.6). Also, the Hearing Examiner concluded that the burden of proof was on the party, i.e., the Intervenors, challenging the union's continuity. She found that the Intervenors failed to show that the change in affiliation altered the union's identity.^{8/} In light of the above, the Hearing Examiner concluded that a question of changed representation does not exist.

Objection Number 2-Due Process

The second objection concerned how AFSCME effected its change in affiliation. Representatives from Locals 1033 and 2097 contend that local union members were not informed of the proposed affiliation before it occurred. Also, they argue that members were not allowed to vote on whether or not they wanted to affiliate with NUHHCE. (R&R at 3-4; Tr. p. 17). They assert that even if proper procedures were used, they were not adequate to protect the membership. AFSCME contends that its constitution permits it to change affiliation without a vote from the membership.

The Hearing Examiner found that AFSCME's executive board voted to change the affected Locals' affiliation at its September 1997 meeting. (R&R at 5-6.) Subsequently, AFSCME issued

^{7/} The Intervenors initially contended that there were changes in the election of local officers and delegates. (Tr. P. 87.) However, the Hearing Examiner concluded that the Intervenors objections to the Petition stemmed more from their dissatisfaction with the NUHHCE staff than from any earnest belief in a change in the Locals' identity. (R&R at 7; Tr. at 25.)

^{8/} Citing NLRB v. Financial Institution Employees Local 1182, 485 U.S. 192, 206 (1986); Western Commercial Transport, 288 NLRB 214 (1988); and May Department Stores, 289 NLRB 88 (1988).

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notices of the executive board's action to the affected Locals. (Exh. D.) The record is silent with respect to whether or not the affected Locals received notice that the change in affiliation would be acted upon at the September 1997 executive board meeting. However, the Hearing Examiner found that AFSCME's constitution authorizes its International President to modify affiliations of subordinate bodies without a vote by the members of Local affiliates. (R&R at 7; Art V, Sec. 6.)^{9/} The Hearing Examiner determined that if a Local affiliate is dissatisfied with an affiliation/merger, it may appeal the action to the "International Executive Board" in accordance with Article IX of the AFSCME's Constitution. *Id.* She found that Locals 1033 and 2097 failed to exercise this right.^{10/}

Citing Texas Plastics Inc. and United Food and Commercial Workers International Union, 263 NLRB 394, 395 (1982), the Hearing Examiner noted that locals are "bound to the terms and conditions" of their constitution that permit an executive board to merge or affiliate with other unions. As a result, she reasoned that due process does not mandate that local members be given an opportunity to vote, even if the locals are affected by a proposed affiliation/merger. She observed that courts and the NLRB have considered due process rights protected, where locals have advance notice of a merger or affiliation and have an opportunity to be heard.^{11/} In the instant case, the locals received notice of the change prior to the effective date. Also, the Hearing Examiner determined that representatives from Locals 1033 and 2097 did not attend the September 17, 1997 executive board meeting at which the affiliation was discussed.^{12/}

Based on the above, the Hearing Examiner concluded that the Intervenors failed to show that: (1) the affiliation altered the union's identity, thereby raising a question of changed representation; and (2) the change affected their due process rights. As a result, the Hearing Examiner recommended that the Petition to Amend Certification be granted.

After reviewing the Hearing Examiner's Report and the applicable authority, we find for the

^{9/} The affected Locals do not challenge that they are bound by AFSCME's constitution. (R&R at p.6.)

^{10/} The Hearing Examiner noted that representatives from AFSCME, Local 2095 attended the September 1997. The affiliation was discussed at this meeting. Moreover, the representatives from Local 2085 were heard. (R&R at p.7).

^{11/} Citing F.W. Woolworth, 285 NLRB 854 (1987).

^{12/} The Hearing Examiner determined that another local affiliate, i.e., AFSCME, Local 2095, whose affiliation was also being changed at that meeting, appears to have been the only affected Local that attended the meeting. Representatives from the Local were permitted to and took the opportunity to be heard at the meeting. However, they did not object to the change in affiliation. (R&R at p. 7; n. 7 and 8.)

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reasons discussed below, that the Petition to Amend Certification should be granted.

The issue before us is whether the Petitioner's request to amend its certification should be granted. Pursuant to Board Rule 516.1, the request may be granted unless the change raises a "question of representation". This Board has not been presented before with a representation question concerning a change in union affiliation. Therefore, we find it appropriate to refer to the National Labor Relations Board's (NLRB) interpretation of analogous issues under the National Labor Relations Act.

The National Labor Relations Act, Section 9(c), 29 U.S.C. Section 159(c), describes a "question of representation" as "sufficient doubt" about the union's continuing status. The determination of whether a question of representation exists "is a question of fact". Seattle-First National Bank v. NLRB, 892 F.2d 792, 797 (9 Cir. 1989). Furthermore, the burden of proof is on the party challenging continuity. NLRB v. Insulfab Plastics, Inc., 789 F.2d 961 (1 Cir. 1986). Therefore, in the instant case, the burden is on the Intervenors.

The "[NLRB] has long held, and courts...have recognized, that organizational changes such as affiliations or mergers do not inevitably raise a 'question of representation' so as to necessitate a representation election. So long as the changes are not sufficiently dramatic to alter the union's identity." NLRB v. Insulfab Plastics, Inc., 789 F.2d 961, 965 (1st Cir. 1986). Therefore, the ultimate question is whether the union after affiliation, operates in substantially the same way as it did before the affiliation.^{13/} "Whether a union's identity has remained essentially the same or whether it has changed so substantially as to require a new representation election depends on a factual determination by the NLRB after it examines the various changes that affiliation may effect." Id. When making this determination, the NLRB generally considers a number of factors, including "structure, administration, officers, assets, membership, autonomy, by-laws, size", J. Ray McDermott & Co. v. NLRB, 571 F.2d 850,857 (5th Cir.), cert. denied, 439 U.S. 893 (1978). In addition, the NLRB looks for changes "in the rights and obligations of the union's leadership and membership, and in the relationship between the putative bargaining agent, its affiliate, and the employer". Id.

In the instant case, recognition was accorded to AFSCME, D.C. Council 20, Local 1033 and Local 2097. (Certification Nos. 71 and 72.) The Hearing Examiner found that recognition had been accorded to a union that consists of three components: AFSCME National; AFSCME, D.C. Council 20; and AFSCME, Locals 1033 and 2097. The Hearing Examiner concluded that a "sufficiently dramatic change" had not occurred in these unions because only the middle component, D.C. Council 20 had been changed. The Hearing Examiner based her conclusion, among other things,

^{13/} See, Seattle-First National Bank v. NLRB, 892 F.2d 792 (9 cir. 1989)

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on the fact that the constitution and by-laws of both the AFSCME National and the Locals remained intact.

We find that the affiliation brought changes. However, the record indicates that the transfer of representational duties from D.C. Council 20 to NUHHCE did not substantially change the structure of the AFSCME Locals or the status accorded local affiliates within AFSCME's three tier structure. Only the middle tier or the servicing arm of the union changed. Also, there is substantial evidence in the record, to support the Hearing Examiner's determination, that the new union retained enough of its old character to render those changes insufficiently dramatic to warrant a finding that there could be a question of representation. Specifically, the jurisdiction of the affected Locals remained the same after the merger. In addition, the rights and privileges of the employees represented by Locals 1033 and 2097 were unchanged by the merger. Moreover, the locals and their officers were also unchanged. Furthermore, the evidence shows that there has been no substantial impairment or reduction of the Locals' autonomy. In light of the above, we find that the continuity of the representative has been preserved.

Also, we reject the Intervenors' contention that the change in affiliation is improper because its members did not participate in or ratify the merger. We note that the local members, by their membership, were bound to the terms and conditions of AFSCME's constitution, which expressly authorized the International President to merge local affiliates with other unions. See, Texas Planters, Inc. and United Food and Commercial Workers International Union, 263 NLRB 394 (1982). Pursuant to this constitutional authority, the International President bound the local members, including those numbers of Locals 1033 and 2097, to become members of NUHHCE. We find that by electing AFSCME as their bargaining representative, employees agreed to this process. Article IX, Section 30, of AFSCME's constitution, provides in pertinent part that:

[a]ny subordinate bodies so directed to merge or consolidate shall, at their request, be granted a hearing before the International Executive Board prior to the effective date of the required merger or consolidation, and shall, in any case, be given a reasonable period of time in which to accomplish such merger or consolidation.

There is no evidence that the affected Locals made such a request.

We have reviewed the Hearing Examiner's Report and Recommendation and find her findings and conclusions reasonable and supported by the record. The intervening union members of AFSCME, Locals 1033 and 2097 have failed to present any evidence which demonstrates that the requested amendment to certification has given rise to a question concerning representation. Therefore, they have clearly failed to meet their burden of proof.

In view of the above, pursuant to Board Rule 516.2, we adopt the Hearing Examiner's

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findings, conclusions and recommendation, and grant the Petition to Amend Certification as set forth in our Order below.

ORDER

IT IS HEREBY ORDERED THAT:

1. Certification No. 103, PERB Case No. 97-UM-05, is amended to reflect a change in affiliation of the exclusive representative set forth therein from District Council 20 to Metropolitan District 1199DC, National Union of Hospital and Healthcare Employees (NUHHCE).
2. Certification No. 71, PERB Case No. 93-R-03, is amended to reflect a change in affiliation of the exclusive representative set forth therein from District Council 20 to NUHHCE, which shall be reflected in new Certification No. 116 issued simultaneously with PERB Case No. 97-UM-05, Slip Op. No. 619

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

April 7, 2000

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 99-AC-01 was served by first class mail, on the following parties on this 7th day of April, 2000.

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

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Petitioner,)	
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and)	PERB Case No. 99-AC-01
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American Federation of State, County and Municipal Employees, Local 1033 and 2097)	Certification No. 103
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Intervenors,)	
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and)	
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District of Columbia Health and Hospitals Public Benefit Corporation)	
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Agency.)	
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AMENDED CERTIFICATION OF REPRESENTATIVE

A representation proceeding having been conducted in the above-captioned matter by the Public Employee Relations Board (Board) in accordance with the District of Columbia Merit Personnel Act of 1978 and the Rules of the Board and it appearing that an exclusive representative has been designated;

Pursuant to the authority vested in the Board by D.C. Code §§ 1-605.2(1) and (2), 1-618.9(c); Board Rule 504.1(d) and 504.5(e); and the Health and Hospitals Public Benefit Corporation Act of 1996, D.C. Law 11-212 (Act), as codified under D.C. Code Sec. 32-262.8(j),

IT IS HEREBY CERTIFIED THAT:

The American Federation of State, County and Municipal Employees (AFSCME), Metropolitan District 1199DC, National Union

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of Hospital and Healthcare Employees, Local 2097, has been designated by a majority of the employees of the above-named public employer in the consolidated unit described below, as their preference for its exclusive representative for the purpose of collective bargaining concerning both compensation and terms-and-conditions matters with the employer.

Unit Description:

All wage-grade employees (excluding skill trade wage grade employees) employed by the D.C. Health and Hospitals Public Benefit Corporation (PBC); but excluding all management officials, confidential employees, supervisors, employees engaged in personnel and labor management relations work in other than a purely clerical capacity and employees engaged in administering the 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.

April 7, 2000



Julio A. Castillo
Executive Director