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

In the Matter of:)
American Federation of State,)
County and Municipal Employees,)
District Council 20) PERB Case No. 17-UM-02
Petitioner) Opinion No. 1675
and)
Office of the State)
Superintendent of Education)
Respondent)
and)
International Brotherhood of)
Teamsters, Local 639)
Intervenor)

DECISION AND ORDER

I. Introduction

On March 13, 2017, American Federation of State, County and Municipal Employees, District Council 20 (“Union”) filed the instant Petition for Unit Modification. The Union requested that the Board amend Certification No. 25 to reflect the change in the identity of the employing agency from the District of Columbia Public Schools (“DCPS”) to Office of the State Superintendent of Education (“OSSE”) and more accurately describe the unit in modern terms.¹

¹ In 2007, all personnel and state-level functions delegated to the District of Columbia Board of Education, including DCPS, were transferred to the OSSE. Thereafter, the OSSE became the employing agency of the unit.

On March 22, 2017, OSSE filed a document styled Comments, opposing the Petition for Unit Modification asserting that the petition (1) sought to consolidate two or more bargaining units within OSSE that are represented by four different unions and (2) failed to meet procedural requirements as set forth in PERB Rule 504. On March 24, 2017, PERB Notices of the petition for unit modification were posted by OSSE within the agency. International Brotherhood of Teamsters, Local 639 (“Local 639”) filed a request to intervene. PERB granted the request. Thereafter, Local 639 filed a motion to dismiss the Petition which AFSCME opposed. After a protracted attempt to set a hearing, a hearing was set for May 1, 2018. On April 30, 2018, the day before the scheduled hearing the Union filed a document styled Amended Petition for Unit Modification (“Amended Petition”) modifying the unit description.²

On May 1, 2018, the parties proceeded to a hearing. During the hearing the parties caucused and subsequently agreed on a unit description agreeable to all parties. The parties read into the record the agreed upon unit description and requested the hearing examiner to recommend that PERB adopt the agreed-upon language for modifying the unit. For the reasons stated herein, the Board adopts the parties’ recommended language.

II. Background

On September 24, 1984, the Union was certified as the sole and exclusive bargaining representative of the following bargaining unit for the purpose of negotiating wages, hours, and working conditions:

All non-managerial, non-supervisory employees employed on a wages-as-earned basis in the Transportation and Warehouse Services Sections of the Division of Logistical Support in the D.C. Public School System excluding management officials, supervisors, confidential employees, clerical employees, and employees engaged in personnel work other than purely clerical capacities and employees engaged in the administration of the provisions on Title XVII, District of Columbia Comprehensive Merit Personnel Act of 1978.³

The Union explained that the certification refers to the employees as being employed on a “wages as earned” basis, meaning that they have a fixed tour of duty when in fact this has not been the case for nearly 30 years.⁴ The Union also noted that the certification references “warehouse employees,” but the Union does not represent warehouse employees.⁵

Additionally, the Union explained that the language needed to be amended to distinguish between its members, who are part-time, and the Intervenor’s members.

² Tr. 6.

³ Amended Petition at 2; *Am. Fed'n of State, Cty. and Mun. Emp., Dist. Council 20 v. D.C. Pub. Sch.*, Certification No. 25, PERB Case No. 83-R-08 (1984). The certification was amended on October 1, 1985 to include the unit in Compensation Unit 18.

⁴ Tr. 8.

⁵ Tr. 8.

The parties agreed to the description of the bargaining unit as follows:

All part-time Motor Vehicle Operators and part-time Bus Attendants employed in the Office of the State Superintendent of Education Division of Student Transportation, excluding full-time Motor Vehicle Operators and full-time Bus Attendants, management officials, supervisors, confidential employees, and employees engaged in personnel work other than in a purely clerical capacity and employees engaged in the administration of the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978.⁶

III. Discussion

PERB Rule 504.1(a) provides that a unit modification may be sought “[t]o reflect a change in the identity or statutory authority of the employing agency.” The Board has held that “when the functional role and employees of a public employer/agency are transferred to a new entity established to perform in the same capacity . . . the new agency is not a new employer for the purposes of collective bargaining.”⁷ The parties have requested a modification as a result of D.C. Official Code § 38-2602.1, which changed the identity of the employing agency from DCPS to OSSE. The parties also seek to change the language in the certification to more accurately describe the existing unit in modern terms. The parties do not dispute that the employees continue to share common working conditions, organizational structures, and supervision. The Union and OSSE continue to operate under the collective bargaining agreement that covered the affected employees when they were employed by DCPS.

Based on the foregoing, the Board finds that the employees in the unit, as modified, meet the community of interest criteria for finding an appropriate unit under D.C. Official Code § 1-617.09(c). The requested modification does not give rise to a question concerning the representation of the unit that would necessitate an election. The Board finds that the proposed modifications to Certification No. 25 would continue to promote effective labor relations and the efficiency of agency operations. Therefore, the Board grants the parties’ settlement agreement and modifies the bargaining unit as described in the Order.

ORDER

IT IS HEREBY ORDERED THAT:

1. The unit for which American Federation of State County and Municipal Employees, District Council 20 is certified as the exclusive representative is modified and will be described as set forth below:

⁶ Tr. 24-25.

⁷ *Am. Fed'n of State, Cty. and Mun. Emp., Dist. Council 20 & Local 2921 v. D.C. Pub. Sch. & Office of the State Superintendent of Educ.*, 60 D.C. Reg. 16499, Slip Op. No. 1440 at 5, PERB Case No. 13-U-09 (2013).

Unit Description:

All part-time Motor Vehicle Operators and part-time Bus Attendants employed in the Office of the State Superintendent of Education Division of Student Transportation, excluding full-time Motor Vehicle Operators and full-time Bus Attendants, management officials, supervisors, confidential employees, and employees engaged in personnel work other than in a purely clerical capacity and employees engaged in the administration of the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Chares Murphy and Board Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

July 26, 2018

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 17-UM-02, Op. No. 1675 was sent by File and ServeXpress to the following parties on this the 31st day of July, 2018.

Brenda C. Zwack, Esq.
Murphy Anderson PLLC
1401 K Street, NW
Suite 300
Washington, D.C. 20005

Kevin M. Stokes, Esq.
Office of Labor Relations and
Collective Bargaining
441 4th Street, NW
Suite 820 North
Washington, D.C. 20001

Mark J. Murphy, Esq.
Mooney, Green, Saindon, Murphy & Welch, P.C.
1920 L Street, NW
Suite 400
Washington, DC 20036

/s/ Sheryl Harrington
PERB