

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)	
)	
The Government of the)	
District of Columbia,)	PERB Case No. 87-R-05
)	Opinion No. 182
Petitioner,)	
)	(As Amended June 17, 1988)
and)	
)	(As Amended August 2, 1988)
Doctors' Council of the)	
District of Columbia,)	
)	
Union,)	
)	
and)	
)	
Doctors' Council of)	
D.C. General Hospital)	
)	
Intervenor.)	

AMENDED DECISION AND ORDER*

On May 20, 1987, the District of Columbia Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of the District of Columbia Department of Human Services and the District of Columbia Department of Corrections (DHS/C), filed a "Petition For Amendment of Compensation Unit" with the District of Columbia Public Employee Relations Board (Board). In the Petition, DHS/C seeks to add DHS/C doctors, dentists and podiatrists to a previously existing compensation unit of doctors, dentists and podiatrists located at the District of Columbia General Hospital (DCGH).

* This decision further amends the Board's previous opinion in this matter, which was issued on May 6, 1988 and amended on June 17, 1988. The Doctors' Council of the District of Columbia filed "Motion For Reconsideration and/or to Amend PERB Opinion No. 182, as amended June 17, 1988," specifically requesting that the unit description be changed to reflect the descriptions set forth in the certifications of the two units and to strike the language in the authorization: "for purpose of compensation bargaining for fiscal years including and following 1988." Based on the Board's review of this matter and the Petitioner's concurrence with the request for an amendment, the decision is hereby further amended to reflect the changes described above.

On May 26, 1987 the DHS/C representative, the Doctors' Council of the District of Columbia (DCDC) filed its "Response To Employer's Petition for Amendment of Compensation Bargaining Unit." Essentially, DCDC opposes the amendment for the following reasons:

- (1) The number of doctors in the DHS/C unit alone is larger than the existing unit and thus it is unfair to impose the totally new DCGH classification and compensation system on such a large number of employees;
- (2) A separate compensation bargaining unit for DCDC will not create a precedent of splitting up existing compensation units,
- (3) The combined unit would not promote effective labor relations and efficiency of agency operation; and
- (4) The unit would not be in the best interests of D.C. General Hospital (DCGH).

On June 10, 1987, Notices concerning the Petition were forwarded for posting at employee work sites.

By letter dated June 22, 1987, John Dandridge, Jr., Executive Director of DCGH expressed the Hospital's opposition to the petition, asserting that physicians at DHS/C and DCGH lack a community of interest and that the proposed amendment would not promote effective labor relations or the efficiency of operations at DCGH.

The Doctors' Council of DCGH, which represents the existing unit, submitted a request to intervene (received by the Board June 22, 1987) in opposition to the petition and by letter dated June 17, 1987, requested an opportunity to testify in any proceeding regarding the Petition. 1/

Pursuant to Section 101.12(d) of the Board's Interim Rules, the Board referred this matter to a Hearing Examiner for a Report and Recommendation on the issues raised. On July 24, 1987 a hearing was convened and continued until August 16, 1987. Post-Hearing briefs were filed by DHS/C and DCDC. The Hearing

1/ The Doctors' Council of DCGH appeared at the hearing and questioned witnesses, but did not submit any briefs in support of its position.

Examiner filed his "Report and Recommendation" with the Board on November 30, 1987, recommending that the Petition be granted based on his finding that a combined unit of DHS/C and DCGH employees met the statutory criteria for an appropriate compensation unit. On December 29, 1987 DCDC filed written "Exceptions to Hearing Examiner's Report and Recommendation" and requested oral argument.

The issues before the Board are:

1. Whether the appropriate statutory criteria for determining a compensation unit under the Comprehensive Merit Personnel Act of 1978 (CMPA) are found in D.C. Code Section(s) 1-618.16(b) and/or Section 1-618.9(a)?
2. Would granting the Petition fulfill the applicable statutory criteria of the CMPA?
3. Would granting the Petition violate D.C. Code Section 1-612.1(a)(2) and Section 1-612.3(a)(2) which establish the principle of "equal pay for substantially equal work?"
4. Would granting the Petition conflict with D.C. Code Sections 1-618.16(a), 1-618.17(m) and 1-618.17(g), which require that compensation and non-compensation negotiations be conducted at the same time (and that compensation agreements have a duration of not less than three (3) years)?

As stated previously, the Hearing Examiner recommended that the Petition be granted. Specifically, he found that D.C. Code Section 1-618.16(b) expressly sets forth the criteria for establishment of compensation bargaining units and therefore overrides D.C. Code Section 1-618.9(a), which sets forth the criteria for the establishment of bargaining units without distinguishing between compensation and terms-and-conditions bargaining units. D.C. Code Section 1-618.16(b) requires that the proposed unit constitute a broad occupational group so as to minimize the number of different pay systems or schemes. The Hearing Examiner found that the proposed unit meets this statutory mandate.

Assertions by DCDC that granting the Petition violates the statutory dictate of equal pay for substantially equal work, are irrelevant, according to the Hearing Examiner, since this issue goes to the legality of the pay system in the existing (DCGH) compensation unit and not to the propriety of the proposed unit. The Hearing Examiner concluded that granting the petition would not be violative of D.C. Code Sections 1-618.16(a) and 1-618.17(m), which require that compensation and non-compensation bargaining take place at the same time, since negotiations for

the new compensation agreement unit are currently ongoing. Granting the Petition would not call into question D.C. Code 1-618.17(g) (compensation agreements must have a duration of not less than three years) in that DHS/C employees would not be inserted into the existing unit since the current contract is due to expire shortly.

In its Exceptions, DCDC asserts that each of the Hearing Examiner's conclusions and recommendations is flawed. According to DCDC, the correct test for appropriateness of the unit includes D.C. Code 1-618.9(a), which establishes a "community of interest" requirement. The community of interest standard is not met here because of, inter alia, different working conditions, on-call and call-back responsibilities and frequency, supervision, physical location, organization structure, distinctiveness of functions and specialty skills, different budget authority and revenue sources.

Granting the Petition would also not serve the statutory purpose of D.C. Code Section 1-618.16(b) in that it would not minimize the number of pay systems. Employees in the existing unit are on a compensation system which resulted from the FY '85-88 compensation negotiations. This system (or matrix) bases salary on type of medical specialty, certifications and experience (up to eight years unless the employee becomes Board certified prior to eight years). Conversely, doctors and dentists of DHS/C are on the medical officers or dentists pay scale which is based on skill type and longevity, and is similar to the "DS" system in structure (though the salaries are higher than the DS scale). DHS/C podiatrists are on the DS system. Due to the allegedly higher salaries of these DHS/C doctors and dentists, when compared to the DCGH salary structure, the salaries of a larger number of DHS/C physicians and dentists do not correspond to the DCGH matrix. Thus, even if the DCGH matrix system was applied to these DHS/C employees, the number of different pay systems would not be minimized due to the totally different salaries between the two groups.

DCDC further asserts that the requirement of D.C. Code 1-618.17(g), that compensation agreements be at least three years in duration, would be violated since the DHS/C medical officers would be inserted mid-term into a three year compensation agreement that expires FY '88. DCDC notes that the Hearing Examiner conceded that approving the Petition would violate D.C. Code Sections 1-618.16(a) and 1-618.17(m), but he concluded that literally applying the statute would prove disruptive. The Board has never directly ruled on this issue and thus DCDC takes exception to this conclusion.

Decision and Order
Opinion No. 182
Page Five

The Board finds the Hearing Examiner's Report and Recommendation to be well-reasoned and correct. 2/ D.C. Code Section 1-618.16(b) directly addresses the criteria for an appropriate unit for compensation bargaining, whereas D.C. Code Section 1-618.9(a) is more general in scope. In past decisions we have consistently held that compensation units are to be established on the basis of broad occupational groups, in accordance with Section 1-618.16(b) of the D.C. Code. See International Brotherhood of Teamsters and D.C. Department of Corrections, 34 D.C. Register 3495, Opinion No. 152, PERB Case No. 85-R-07 (1987); Cf. The District of Columbia Government and AFSCME Council 20, Local 2087 and International Brotherhood of Police Officers, Local 445, Opinion No. 166, PERB Case No. 87-R-01 (1987) (Board adopted the Hearing Examiner's Report and Recommendation which, on the basis of D.C. Code Section 1-618.16(b) only, recommended the consolidation of two compensation bargaining units).

D.C. Code Section 1-618.16(b) has established a two part test to determine an appropriate compensation unit:

- (1) The employees of the proposed unit comprise broad occupational groups; and
- (2) The proposed unit minimizes the number of different pay systems or schemes.

The Board finds that the first prong of the test is met by the proposed compensation unit, since the Petitioner seeks to add a group of employees with certain general skills to another group of employees with the same general skills. Attempting to differentiate between sub-specialties of physicians for purposes of determining an appropriate compensation unit would be akin to holding that radiologists, pediatricians, etc. should each be in a separate unit, which is clearly contrary to the statute and would result in a proliferation of compensation units for each narrow sub-specialty.

The second prong of the test is also fulfilled. Simply put, a smaller number of compensation bargaining units would ultimately result in a smaller number of pay systems.

2/ As a threshold matter, the Board denies DCDC's request for oral hearing. DCDC has fully stated its position in its Opposition to the Petition, Post Hearing Brief, and Exceptions to Hearing Examiner Report and Recommendation. There are no material disputed questions of fact.

The Union's reliance on D.C. Code Sections 1-612.1(a)(2) and 1-612.3(a)(2), which requires equal pay for substantially equal work, is misplaced. As the Hearing Examiner correctly notes, this issue is immaterial in this representational proceeding. 3/

The Union's reliance on D.C. Code Sections 1-618.17(g) and (m) and 1-618.16(a), requiring the simultaneous negotiation of compensation and non-compensation items and that compensation agreements have a duration of at least three years, is likewise unpersuasive. The compensation contract for the existing unit expires on September 30, 1988. If the Petition is granted, the DHS/C employees as well as the DCGH employees will be part of the current negotiations for a new compensation agreement. Thus, D.C. Code Section 1-618.17(g) is not problematic. Similarly, there is no evident barrier to simultaneous negotiations over terms-and-conditions of employment. 4/

For the foregoing reasons, the Board finds that the proposed unit effectuates the policies of the Comprehensive Merit Personnel Act of 1978. The Board therefore concludes that the unit set forth below is appropriate for collective bargaining over compensation:

3/ In reaching this conclusion, the Board notes equal pay considerations may be addressed during the parties' negotiations for a compensation agreement covering both DHS/C and DCGH employees. There is nothing in D.C. Code 1-618.16 (b) concerning the appropriate criteria for determining compensation bargaining units that requires a different conclusion.

4/ DCDC now questions the Board's decision certifying it as the exclusive representative for terms-and-conditions bargaining. Doctors' Council of D.C. and The District of Columbia Government, Certification No. 42, PERB Case No. 84-R-12 (1987). DCDC claims that because the Doctors' Council of DCGH unit was certified for compensation and terms-and-conditions bargaining on the basis of a representation petition worded substantially the same as the Petition filed by DCDC, DCDC should also have been certified in a separate unit at DHS/C for compensation in addition to terms-and-conditions bargaining. DCDC might have sought review of the Board's decision by filing a motion for reconsideration addressing either the Certification or the Decision and Order requiring an election in the unit (as the Government of the District of Columbia did), or else by appealing the Board's decision. Since DCDC did not do so the decision is now binding upon DCDC.

Decision and Order
Opinion No. 182
Page Seven

UNIT:

"All qualified medical officers (physicians, dentists and podiatrists) employed by the District of Columbia General Hospital, excluding policy-making managerial and administrative medical officers, confidential employees, supervisors, employees engaged in personnel work in other than purely clerical capacities and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978."

"All dentists, physicians and podiatrists employed by the District of Columbia Department of Corrections and the District of Columbia Department of Human Services excluding management officials, supervisors, confidential employees, employees engaged in personnel work in other than purely clerical capacities, employees who are regularly scheduled for less than forty (40) hours per pay period and employees engaged in the administration of the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978."

ORDER

IT IS HEREBY ORDERED THAT:

The above-described unit is appropriate for collective bargaining over compensation. The Petition for Amendment of Compensation Unit is granted and the Board's Opinion No. 5 in PERB Case No. 80-R-08 is amended by the attached Authorization Order to reflect the placement of these employees in Compensation Unit 19.

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

August 2, 1988

PERB Case No. 87-R-05
Opinion No. 182

AUTHORIZATION

Pursuant to Sections 502(a) and 1716(b) of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Code 1-618.16(b) the Public Employee Relations Board (Board) determines that the unit certified for compensation bargaining in the attached "Amended Decision and Order" is appropriately included in the following unit, designated as Compensation Unit 19, for the purpose of collective bargaining concerning compensation.

UNIT:

"All qualified medical officers (physicians, dentists and podiatrists) employed by the District of Columbia General Hospital, excluding policy making managerial and administrative medical officers, confidential employees, supervisors, employees engaged in personnel work in other than purely clerical capacities and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978."

"All dentists, physicians and podiatrists employed by the District of Columbia Department of Corrections and the District of Columbia Department of Human Services excluding management officials, supervisors, confidential employees, employees engaged in personnel work in other than purely clerical capacities, employees who are regularly scheduled for less than forty (40) hours per pay period and employees engaged in the administration of the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978."

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

August 2, 1988



Margaret P. Cox
Executive Director