GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: American Federation of State, County and Municipal Employees, Local 2093, Petitioner, and District of Columbia Public Schools, Respondent.	PERB Case No. 83-R-03 Opinion No. 61

DECISION AND ORDER

On December 29, 1982, American Federation of State, County and Municipal Employees, Local 2093 (AFSCME) filed a Petition for Clarification of an existing bargaining unit with the District of Columbia Public Employee Relations Board (Board). AFSCME sought a Board ruling that the Transportation and Warehouse Service Unit of the District of Columbia Public Schools (Public Schools) included employees who have been hired on a "while actually employed" (WAE) basis as well as regular, full-time employees.

On February 4, 1983, the Public Schools filed a Response asserting that AFSCME's Petition was "ill-advised and totally without merit" and requesting that the Board dismiss the Petition.

The issue is whether or not temporary employees hired in the WAE category are included in the Public Schools' Transportation and Warehouse Service Unit even though the original unit description specifically limited the unit to regular, full-time employees.

On November 24, 1969, the Public Schools voluntarily recognized AFSCME, Local No. 1, as the exclusive representative of non-supervisory employees of the Transportation and Warehouse Service Unit. The unit was described as including "full-time positions associated with the Warehouse and Transportation Operations." At present, the Transportation and Warehouse Service Unit includes approximately two hundred and five (205) regular, full-time employees and approximately one hundred-eighty (180) workers hired under the WAE classification. One hundred-sixteen (116) WAE's are bus attendants and sixty-four (64) are motor vehicle operators.

An examination of the fourteen (14) year bargaining history between these parties discloses no evidence that workers hired under the WAE classification have ever been included in the bargaining unit. The WAE classification is used for this inherently transient category of employees who are hired on a temporary casual basis and who may refuse to work on a given day without adverse consequences.

A decision of tl Wisconsin Employee Relations Commission appears well reasoned in suggesting that:

> "In light of the fact that past bargaining history indicated that part-time employees were intended to be excluded from a unit of the city's regular, full-time employees, two temporary employees performing duties formerly performed by a full-time employee could not be included in the unit by accretion in a unit clarification proceeding." 5 NPER 51-13046 (WERC 05-21-82)

Moreover, the National Labor Relations Board has long held that, "as a matter of policy, the Board is ordinarily reluctant to disturb a prior unit determination by a contract unit established as a result of collective bargaining in the absence of compelling circumstances." Baltimore Transit Co., 92 NLRB No. 120 (1950); 27 LRRM 1148. AFSCME fails to cite any compelling circumstances which might justify an expansion of the unit to include WAE's.

Granting AFSCME's request would mean almost a doubling of the size of the unit from 205 to 385 without an election or other showing of interest by the employees. There is no evidence to suggest that a majority of 180 WAE employees desire representation by any labor organization. This, coupled with the 14 year bargaining history which discloses that WAE employees have never been included in the bargaining unit, gives the Board no sufficient basis for taking further action on this Petition.

IT IS ORDERED:

The Clarification Petition is hereby dismissed.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
May 24, 1983.