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

_____)	
In the Matter of:)	
)	
Department of General Services,)	
)	PERB Case No. 14-UM-02
Petitioner)	
)	Opinion No. 1575
and)	
)	
AFGE Local 631,)	
AFGE Local 2741,)	
AFGE Local 3444,)	
AFSCME Local 2091,)	
and Teamsters Nos. 639 and 730)	
)	
Respondents.)	
_____)	

DECISION AND ORDER

I. Statement of the Case

On June 27, 2014, the Department of General Services (“DGS” or “Agency”) filed a Unit Modification Petition (“Petition”), which was later amended on January 30, 2015 (“Amended Petition”). DGS filed the petitions due to the consolidation of certain agencies’ services into DGS, which resulted in a number of bargaining units being transferred to DGS. DGS requested that the Board make a unit determination regarding the consolidation of different bargaining units from different agencies into one agency, in which multiple labor organizations represented the same classifications within the agency.

Pursuant to Board Rule 504.3, a Notice was posted informing employees and interested labor organizations of their right to intervene. American Federation of Government Employees (“AFGE”) Locals 631, 2741, and 3444; American Federation of State, County and Municipal Employees Local, 2091 (“AFSCME”); and the International Brotherhood of Teamsters (“Teamsters”) Nos. 639 and 730 requested and were granted the right to intervene. The AFGE Locals and AFSCME opposed DGS’s Amended Petition.

The matter was referred to a hearing to build a factual record of the issues concerning the Amended Petition. A hearing took place and a Hearing Examiner's Report and Recommendation was issued. Exceptions and an Opposition were received. The Amended Petition is dismissed for the following reasons.

II. Background

The Hearing Examiner found the relevant factual background, which is quoted in full except as indicated:

DGS was created by an act of the City Council of the District of Columbia, an act entitled "Department of General Services Establishment Act of 2011" (Act). The purpose of the Act is to consolidate the acquisition and management of real property and building space for the government of the District of Columbia. Thus, this consolidation was not a mere reorganization by an agency head, but was the result of a statute passed by the D.C. City Council.

DGS began operations in the Fall of 2011, and as it is presently constituted, is composed of seven divisions, one of which is Facilities Management (FMD), and it was to that division that the trades, crafts and manual labor employees of four city agencies were transferred. The City Council was well aware of which agencies and which employees it wanted transferred to DGS. Thus, § 10-551.04 specifically stated that the Department of Real Estate Services (DRES) and the Office of Public Education Facilities Modernization (OPEFM) as well as the "capital construction and real property management function of other subordinate executive branch agencies..., as the Mayor considers necessary" were to be transferred to DGS.

The Act specified six activities that were to be the "primary organizational functions in the Department:" Agency Management, Capital Construction, Portfolio Management, Facilities Management, Contracting and Procurement and Protective Services. These functions became the divisions of the new DGS.

As noted above, the petition here is limited to the Facilities Management Division (FMD) and the unit sought is composed of "all employees occupying a trades, crafts or manual labor position" in the FMD. At the time of the amended petition, the employees in this unit were represented by six unions in the following numbers:

AFGE Local 2741 – 78 positions transferred from Department
of Parks and Recreation
AFGE Local 3444 – 1 position transferred from the

Metropolitan Police Department (MPD)
AFGE Local 631 – 31 positions transferred from DRES
AFSCME Local 2091 – 38 positions transferred from DRES
Teamsters Local 639 – 72 positions transferred from OPEFM
Teamsters Local 730 – 119 positions transferred from OPEFM

At the time of the transfer and consolidation of functions, the city discussed the matter with the affected unions. The City Administrator met with the unions, but the record does not reflect what agreements if any, were reached between the city and the unions. Dean Aqui, Interim Director of the Office of Labor Relations and Collective Bargaining testified that he was present at the meeting between the “CA (city administrator) and the union reps.” and that he was of the “opinion that we should have a new unit with one union representing all of the blue collar workers” and that his view “was shared with them.” Whatever else was discussed at the time is not reflected in the record, but it is clear that there was no agreement to consolidate the transferred employees into a single unit with an exclusive representative.¹

III. Discussion

As a threshold matter, the Board must consider whether it has subject-matter jurisdiction over the Agency’s Amended Petition, before proceeding to the merits of the Amended Petition. The AFGE Locals and AFSCME oppose the Amended Petition on jurisdictional grounds, arising from D.C. Official Code § 1-617.09(a). For the Board to determine whether it has subject-matter jurisdiction over the Amended Petition, it must find that it has statutory power to resolve the Amended Petition. The Amended Petition was filed by the Agency, requesting that the Board make a unit determination concerning the bargaining units that were transferred to DGS from different agencies. In order for the Board to make this unit determination, the Comprehensive Merit Personnel Act (“CMPA”), which governs the Board’s powers, must provide the Board with the authority to resolve this particular unit determination.

The following statutory provisions provide the Board’s subject-matter jurisdiction over unit determinations.

Section 1-605.02: The Board shall have the power to do the following: (1) Resolve unit determination questions and other representation issues (including but not limited to disputes concerning the majority status of a labor organization)....

Section 1-617.09(a): The determination of an appropriate unit will be made on a case-to-case basis and will be made on the basis of a properly-supported request from a labor organization. No particular type of unit

¹ Report and Recommendation at 2-4.

may be predetermined by management officials nor can there be an arbitrary limit upon the number of appropriate units within an agency. The essential ingredient in every unit is community of interest. Provided, however, that an appropriate unit must also be one that promotes labor relations and efficiency of agency operations. A unit should include individuals who share certain interests, such as skills, working conditions, common supervision, physical location, organization structure, distinctiveness of functions performed, and the existence of integrated work processes. No unit shall be established solely on the basis of the extent to which employees in a proposed unit have organized; however, membership in a labor organization may be considered as 1 factor in evaluating the community of interest of employees in a proposed unit.²

Section 1-605.02 appears to provide the Board with broad powers over resolution of unit determination questions, and section 1-617.09 appears to narrow the Board's powers over unit determinations.

The D.C. Court of Appeals has stated its "primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he [or she] has used."³ The Court of Appeals notes, "The first step in construing a statute is to read the language of the statute and construe its words according to their ordinary sense and plain meaning. If the statute is clear and unambiguous, we must give effect to its plain meaning."⁴

The Board finds that the language in sections 1-605.02(1), and the language of section 1-617.09(a) are both clear and unambiguous on their face. There is a conflict in statutory construction when these sections are read together. Section 1-605.02 vests in the Board broad jurisdictional powers over unit determination issues.

In contrast, section 1-617.09(a) limits the type of unit determination issues that the Board is permitted to resolve by requiring that a unit determination can only be considered by the Board "on the basis of a properly-supported request from a labor organization." The two statutory provisions create conflicting powers.

To resolve such conflicting statutory interpretation, the U.S. Supreme Court has stated, "It is a commonplace of statutory construction that the specific governs the general."⁵ The Court explained, "The general/specific canon is perhaps most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission. To eliminate the contradiction, the specific provision is construed as an exception to the general

² D.C. Official Code (2001 ed. & Supp. 2014).

³ *Corbin v. United States*, 120 A.3d 588, 597 (D.C. 2015) (citing *Wynn v. United States*, 48 A.3d 181, 188 (D.C.2012)).

⁴ *O'Rourke v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 46 A.3d 378, 383-84 (D.C. 2012)(citations omitted).

⁵ *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2071, 182 L. Ed. 2d 967 (2012)(citing *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384, 112 S.Ct. 2031, 119 L.Ed.2d 157 (1992)).

one.”⁶ The Court noted that, in the federal sector, this type of statutory construction is appropriate where “Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions.”⁷

In the present case, the D.C. Council enacted the CMPA, which created the Board and its broad jurisdictional powers, and then provided a comprehensive scheme for the exercise of each of the Board’s powers.⁸ The creation of the labor-management relations program is found in section 1-617.02(a), which provides that the Board “shall issue rules and regulations establishing a labor-management relations program to implement the policy set forth in this subchapter,” and the seven (7) areas of the program are enumerated in subsection (b):

- (1) A system for the orderly resolution of questions concerning the recognition of majority representatives of employees;
- (2) The resolution of unfair labor practice allegations;
- (3) The protection of employee rights as set forth in § 1-617.06;
- (4) The right of employees to participate through their duly-designated exclusive representative in collective bargaining concerning terms and conditions of employment as may be appropriate under this chapter and rules and regulations issued pursuant thereto;
- (5) The scope of bargaining;
- (6) The resolution of negotiation impasses concerning matters appropriate for collective bargaining; and
- (7) Any other matters which affect employee-employer relations.

These areas are detailed in the remainder of the subchapter. Through the D.C. Council’s enactment of specific statutory provisions governing each of the areas of the labor-management relations program, the Board finds that the D.C. Council intended to enact a comprehensive scheme and identified particular issues to be considered in a particular manner. The Board concludes that section 1-617.09(a) narrows the scope of the Board’s broad jurisdictional powers under section 1-605.02(1) to make unit determinations.

In order for the Board to have jurisdiction over the Amended Petition, the Amended Petition must meet the statutory requirements in section 1-617.09(a). The Agency is not a labor organization. It is clear in the record that no labor organization filed or supported the Amended Petition. AFGE Locals 631, 2741, and 3444, and AFSCME Local 2091 object to the Amended Petition. Teamsters Nos. 639 and 730 did not file a motion to dismiss, post-hearing briefs, or Exceptions; but there is no indication from the record that the Amended Petition is “properly-supported” by these labor organizations either. The Board finds that the Amended Petition is not properly supported by a labor organization, and as a consequence, the Board does not have subject-matter jurisdiction over the Amended Petition.

⁶ *RadLAX Gateway Hotel, LLC*, 132 S. Ct. at 2071.

⁷ *Id.*

⁸ The District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139, Title 5 § 502 created the general powers of the Board, and concurrently, Title 17 created § 1709 the Board’s powers regarding unit determinations (effective March 3, 1979).

The Board has held that subject-matter jurisdiction cannot be waived and may be raised by the Board at any time.⁹ The Board must dismiss the Amended Petition for lack of jurisdiction over the subject matter.

III. Conclusion

The Board finds that it does not have subject-matter jurisdiction over the Amended Petition. The merits of parties' arguments concerning the Amended Petition are rendered moot by the Board's lack of jurisdiction and have not been considered by the Board.

Order

IT IS HEREBY ORDERED THAT:

1. The Department of General Services' Amended Petition is dismissed.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

April 21, 2016

⁹ *FOP/MPD Labor Committee v. MPD*, Slip Op. No. 1372, PERB Case No. 11-U-52 (2013).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 14-UM-02 was served to the following parties via File & ServeXpress on this the 9th day of May 2016:

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