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

In the Matter of:	)	
	)	
American Federation of Government Employees, Local 631	)	
	)	
Petitioner	)	PERB Case No. 22-RC-01
	)	
and	)	Opinion No. 1816
	)	
	)	
D.C. Office of the State Superintendent of Education, Division of Student Transportation,	)	
	)	
Respondent	)	
	)	

**DECISION AND ORDER ON UNIT DETERMINATION  
AND DIRECTION OF ELECTION**

**I. Statement of the Case**

On November 18, 2021, the American Federation of Government Employees, Local 631, (Petitioner), filed a petition for exclusive recognition and a noncompensation unit determination (Petition) <sup>1</sup> seeking to represent the following proposed bargaining unit at the District of Columbia Office of Superintendent of Education, Division of Student Transportation (OSSE) for the purpose of collective bargaining:

Eighteen (18) employees in Fleet Maintenance Assistant and Fleet Maintenance Assistant (Operator) positions RW-5701 with the Office of the State Superintendent of Education, Division of Student Transportation, Fleet Maintenance.

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<sup>1</sup> As required by Board Rule 503.1, the Petition was accompanied by a copy of AFGE Local 631's by-laws and a roster of officers. In addition, Petitioner submitted evidence of the employees' showing of interest in AFGE Local 631 as their exclusive representative for collective bargaining. Pursuant to Board Rule 503.4, the Executive Director determined that Petitioner had the requisite showing of interest.

On December 10, 2021, as required by Board Rule 503.2, OSSE provided a list of all employees in the proposed unit.<sup>2</sup> In addition to the employee list, OSSE filed comments (Comments). In its Comments, OSSE requested that the Board dismiss the Petition on the grounds that: (1) the proposed unit included employees explicitly excluded from eligibility for representation by D.C. Official Code § 1-617.09(b)(7) as Educational Service employees serving without tenure; (2) even if eligible, these employees would be represented by Teamsters Local 639 under its pre-existing collective bargaining agreement; and (3) the employees within the proposed unit did not meet the statutory requirement that they share a community of interest.<sup>3</sup>

On January 7, 2022, Teamsters Local 639 filed a request to intervene and petition for recognition. The matter was sent to a hearing. Prior to the hearing, Teamsters Local 639 withdrew its intervention and recognition petition.<sup>4</sup> The Hearing Examiner issued a Report and Recommendations (Report), recommending that the Board find the bargaining unit appropriate for collective bargaining.

For the reasons stated herein, the Board finds the proposed unit appropriate for collective bargaining.

## **II. Hearing Examiner's Report and Recommendations**

### **A. Issues Presented to the Hearing Examiner**

The Hearing Examiner considered the parties' arguments.<sup>5</sup> OSSE argued that the employees included in the proposed unit were ineligible as employees within the Educational Service pursuant to D.C. Official Code § 1-617.09(b)(7).<sup>6</sup> OSSE also argued that the employees in the proposed unit did not share a community of interest. Additionally, OSSE argued that a bargaining unit represented by another labor organization already existed that the proposed employees "could fall under."<sup>7</sup>

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<sup>2</sup> Exhibit 1 to Agency's Response to & Comments on Union's Petition for Exclusive Recognition.

<sup>3</sup> Comments at 2-4. After receiving OSSE's Comments, on December 20, 2021, the Executive Director issued OSSE instructions to post a Notice of Petition pursuant to Board Rule 503.10.<sup>3</sup> After requesting and receiving an enlargement of time to comply, OSSE provided a status update on January 19, 2022, indicating that it had posted the required notice in all required locations on that date.

<sup>4</sup> Teamsters Local 639 filed its Request to Intervene prior to OSSE's posting of the required notices. The Board granted Teamsters Local 639's request to withdraw on March 9, 2022.

<sup>5</sup> During the March 4, 2022, pre-hearing conference, the parties agreed that they would submit briefs in lieu of a hearing, as no facts were in dispute. Report at 2.

<sup>6</sup> D.C. Official Code § 1-617.09(b)(7) excludes "employees within the Educational Service in the District of Columbia Public Schools and the Office of the State Superintendent of Education who serve without tenure pursuant to [§ 1-608.01a]" from collective bargaining.

<sup>7</sup> Report at 2 (citing OSSE's Brief).

Petitioner argued that 5 DCMR 1000.1(c) and (e) excluded the proposed unit of employees from “educational employees” under D.C. Official Code § 1-617.09(b)(7). Petitioner argued that 5 DCMR 1000.1(c) and (e) covered “bus drivers and other drivers involved in the transportation of persons, equipment, materials or inventory and technicians involved in the operation or maintenance of machinery, vehicles, and equipment.”<sup>8</sup> Petitioner asserted that the proposed unit of employees located in the Division of Student Transportation “perform maintenance, perform repairs, and assure operation of buses, shuttles, and vans of the Student Transportation Division are in a safe operating condition.”<sup>9</sup>

Petitioner contended that it met the requirements of Board Rule 503 for finding the proposed unit appropriate for collective bargaining. Petitioner argued, “[N]o dispute exists in this case that a community of interest exists for the proposed unit....The common supervision, shared work location, organizational structure and integrated work processes will assure effective labor relations and efficiency of operations.”<sup>10</sup>

Petitioner also claimed that the requirements of Board Rule 503.17 had been met, and asserted that the Board should approve recognition as the exclusive representative for collective bargaining without an election.<sup>11</sup>

## **B. Hearing Examiner’s Recommendations**

The Hearing Examiner determined that OSSE’s arguments failed to justify dismissing the Petition. The Hearing Examiner found that 5 DCMR 1000.1(e) exempted the employees in the proposed bargaining unit from the Educational Service based on the type of work they performed.<sup>12</sup>

The Hearing Examiner stated, “It is clear from a review of the position descriptions...that the employees in the proposed unit are excluded from the definition of the Education Service because they are ‘technicians involved in the operation or maintenance of machinery, vehicles, equipment, or the processing of materials and inventory.’”<sup>13</sup> The Hearing Examiner concluded

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<sup>8</sup> Union’s Brief at 2 (citing 5 DCMR 1000.1(c) and (e)). *See also* D.C. Official Code § 1-603.01(6)(C) and (E), which provide exclusions to the term “educational employee” for “bus drivers and other drivers involved in the transportation of persons, equipment, materials or inventory” and “technicians involved in the operation or maintenance of machinery, vehicles, equipment or the processing of materials and inventory.”

<sup>9</sup> Union’s Brief at 2.

<sup>10</sup> *Id* at 3.

<sup>11</sup> Board Rule 503.17 states, “If the choice available to employees in an appropriate unit is limited to the selection or rejection of a single labor organization, the Board may approve the employing agency to recognize the labor organization without an election on the basis of evidence that demonstrates majority status (more than fifty percent (50%) support for the petitioning labor organization), such as documentary proof not more than one year old, indicating that a majority of employees wish to be represented by the petitioning labor organization. The Executive Director must determine majority status and must recommend to the Board whether certification should be granted without an election.”

<sup>12</sup> Report at 3.

<sup>13</sup> Report at 3.

that the employees in the proposed bargaining unit were not statutorily excluded from collective bargaining.<sup>14</sup>

The Hearing Examiner further concluded that the Fleet Maintenance Assistant and Fleet Maintenance Assistant (Operator) positions “do share interests, including skills, working conditions, common supervision, physical location, organization structure, and the existence of integrated work processes,” and thus met the requirements of D.C. Official Code § 1-617.09(a) that the proposed unit have a shared community of interest and would promote effective labor relations and efficiency of agency operations.

The Hearing Examiner dismissed OSSE’s argument that these positions “could fall under” an existing unit represented by Teamsters Local 639 on multiple grounds. The Hearing Examiner found that no collective bargaining agreement covered any of the employees in the proposed unit.<sup>15</sup> The Hearing Examiner further found that D.C. Official Code § 1-617.09(a) “makes clear that ‘no particular type of unit may be predetermined by management officials nor can there be any arbitrary limit upon the number of appropriate units within an agency [sic].’”<sup>16</sup> The Hearing Examiner also found that Teamsters Local 639’s withdrawal of its petition showed that it “no longer seeks to represent this proposed unit.”<sup>17</sup> The Hearing Examiner further stated, “The existence of an established bargaining unit at the same Agency does not, in and of itself, prevent the recognition of a proposed unit where...a community of interest exists amongst the employees in the proposed unit.”<sup>18</sup>

The Hearing Examiner recommended that the Board find that the proposed bargaining unit is appropriate for collective bargaining. Further, the Hearing Examiner recommended that “per Board Rule 503.17, in the event [Petitioner] has demonstrated to [the Board] evidence of majority status (more than fifty percent support for the petitioning labor organization), the petition certifying the labor organization be approved.”<sup>19</sup>

### **III. Discussion**

D.C. Official Code § 1-617.09(a) states that 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.

The essential ingredient in every unit is that a community of interest exists among employees for a unit to be found appropriate by the Board for collective bargaining over terms

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<sup>14</sup> Report at 4.

<sup>15</sup> Report at 4.

<sup>16</sup> Report at 4.

<sup>17</sup> Report at 4.

<sup>18</sup> Report at 4.

<sup>19</sup> Report at 4.

and conditions of employment. An appropriate unit must also promote effective labor relations and efficient agency operations.<sup>20</sup>

The proposed unit comprises eighteen (18) employees working as Fleet Maintenance Assistants, RW-5701-07, and Fleet Maintenance Assistants (Operators), RW-5701-08, who share a community of interest.<sup>21</sup> The employees in the proposed bargaining unit fall under the exceptions to the restriction on collective bargaining by Educational Service employees.<sup>22</sup> Furthermore, after reviewing the record and the Hearing Examiner's Report and Recommendations, the Board adopts the Hearing Examiner's findings on the appropriateness of Petitioner's proposed bargaining unit.<sup>23</sup>

In the present case, Petitioner has submitted more than a fifty percent showing of interest not older than one year, in accordance with Board Rule 503.17.<sup>24</sup> Although the Board has previously permitted agencies to voluntarily recognize unions that provide evidence of a showing of interest by a majority of the employees in the proposed bargaining unit,<sup>25</sup> OSSE in this case has not affirmatively stated that it will voluntarily recognize the proposed bargaining unit. Therefore, the Board finds that an election is necessary, unless OSSE notifies the Board of its intention to voluntarily recognize the unit.

#### **IV. Conclusion**

The Board finds that the proposed unit is appropriate for collective bargaining. In the absence of voluntary recognition by OSSE, an election will be held.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The following unit is an appropriate unit for collective bargaining over terms and conditions of employment:

Eighteen (18) employees in Fleet Maintenance Assistant and Fleet Maintenance Assistant (Operator) positions RW-5701 with the Office of the State Superintendent of Education, Division of Student Transportation,

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<sup>20</sup> See D.C. Official Code § 1-617.09(a).

<sup>21</sup> Petition at 1-2.

<sup>22</sup> See 5 DCMR 1000, Educational Service, 1000.1(e). See also D.C. Official Code § 1-603.01(6)(C) and (E).

<sup>23</sup> The parties did not file exceptions.

<sup>24</sup> Petitioner mailed dues authorization cards directly to PERB, which the Board has determined are adequate showing of interest documents pursuant to Board Rule 507.10.

<sup>25</sup> See *FALJ and OAH*, 63 D.C. Reg. 4585, Slip Op. No. 1562 at 2, PERB Case No. 16-RC-01 (2016) (where the Board granted a recognition petition based on the Executive Director's determination that a majority of the employees in the proposed bargaining unit desired to be represented by the petitioner and the respondent's notification to the Board of its intent to voluntarily recognize the petitioner as the exclusive representative).

Fleet Maintenance, excluding managers, supervisors, confidential employees, or any employees engaged in personnel work other than in 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.

2. An election shall be held in accordance with the provisions of D.C. Official Code § 1-617.10 and Board Rule 510 in order to determine whether a majority of eligible employees in the above-described unit desire to be represented for bargaining on terms and conditions of employment by the American Federation of Government Employees, Local 631 or no union.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By vote of Board Chairperson Douglas Warshof and Members Renee Bowser, Mary Anne Gibbons, and Peter Winkler.

July 21, 2022  
**Washington, D.C.**

## **APPEAL RIGHTS**

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration, requesting the Board reconsider its decision. Additionally, a final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1-605.2(12) and 1-617.13(c), which provides 30 days after a decision is issued to file an appeal.