

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)
)

American Federation of)
Government Employees, Local 1975,)
AFL-CIO,)

Petitioner,)

and)

District of Columbia)
Department of Public Works,)

Agency.)

PERB Case No. 88-R-03
Opinion No. 195

DECISION AND ORDER OF ELECTION

On December 22, 1987, the American Federation of Government Employees, Local 1975, AFL-CIO (AFGE or Petitioner) filed a Recognition Petition before the District of Columbia Public Employee Relations Board (Board). The Petitioner seeks to represent, for purposes of collective bargaining, a group of professional employees in the Transportation Systems Administration, Bureau of Traffic Adjudication, Hearing Division, of the District of Columbia Department of Public Works (DPW), employed as hearing examiners. AFGE further requests that the Board include the proposed unit of hearing examiners in an existing consolidated unit of non-professional employees at DPW, for which AFGE is the certified exclusive bargaining representative. See District of Columbia Department of Public Works, and American Federation of Government Employees, Local 631, 872, 2553 and 1975, PERB Case No. 84-R-08, Certification No. 24 (1984).

Notices concerning the Petition were posted on January 11, 1988. There were no requests to intervene. DPW submitted comments in response to the Petition, objecting to the inclusion of the hearing examiners in the consolidated unit on the bases that there would be a potential conflict of interest, as well as occupational differences between the hearing examiners and the other employees in the proposed unit, and the historical exclusion of hearing examiners from bargaining units.

The Board, having investigated and considered this matter, found that the Petitioner had complied with Board Interim Rule 101.2 by submitting in support of its Petition, proof that at least thirty percent (30%) of the employees in the proposed unit desire representation by AFGE, Local 1975. The unit questions were referred to a hearing examiner.

A hearing was conducted by the duly designated Hearing Examiner on April 7, 1988. Post hearing briefs were filed by the parties. On July 25, 1988, the Hearing Examiner instructed the parties to respond to interrogatories. On August 26, 1988 the Hearing Examiner issued a Report and Recommendation finding appropriate a bargaining unit consisting of hearing examiners and recommending that an election be conducted to determine (1) if employees desire to be represented by AFGE and if so, (2) if employees choose to be included as part of a consolidated unit consisting of professional and non-professional employees in accordance with D.C. Code Section 1-618.9(b)(5).

In support of his conclusions, the Hearing Examiner found the employer's labor relations and collective bargaining functions to be centralized, and that there is commonality between the proposed separate and consolidated units in conditions of employment, organizational structure, physical location, work processes and personnel policies. The Hearing Examiner rejected DPW's argument that inclusion of the hearing examiners in the consolidated unit is precluded by D.C. Code Section 1-618.1(d) because of potential conflicts of interest resulting from unit members appearing before hearing examiners. The Hearing Examiner concluded that D.C. Code Section 1-618.1(d), does not provide a basis for determining the appropriateness of a bargaining unit.^{1/} In rejecting the Agency's claim that inclusion of the hearing examiners in the consolidated unit would create an appearance of impropriety or present a conflict, the Hearing Examiner found that the Agency's rules appropriately addressed these concerns and can be adjusted to resolve these issues.

No exceptions were filed to the Hearing Examiner's Report and Recommendations.

^{1/} D.C. Code Section 1-618.1(d) states in pertinent part "Subsection (b) of this section does not authorize participation in the management of a labor organization or activity as a representative of such an organization by a supervisor, or management official or by an employee when the participation or activity would result in a conflict of interest or otherwise be incompatible with law or with the official duties of the employee." (Emphasis added).

The Board, having investigated and considered the matter finds the following unit appropriate for bargaining for terms and conditions of employment:

"All unrepresented District Service (DS) professional employees in the Government of the District of Columbia Government, Department of Public Works, Transportation Systems Administration, Bureau of Traffic Adjudication, Hearing Division, employed as Hearing Examiners, excluding management officials, supervisors, confidential employees, 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."

The Board also finds inclusion of the above unit in the consolidated unit set forth in Certification No. 24 appropriate for bargaining for terms and conditions of employment. However, pursuant to D.C. Code Section 1-618.9(b)(5), the separate professional unit of hearing examiners will only be included in a unit with the non-professional employees if the majority of hearing examiners vote for inclusion in a secret ballot election.

Therefore, an election shall be conducted and eligible hearing examiners shall indicate their choice on separate ballots as to: (1) Whether they wish to be represented for bargaining on terms and conditions of employment by AFGE; and (2) Whether they wish to be included in the consolidated unit with the non-professional employees.

ORDER

IT IS ORDERED THAT:

An election be conducted to determine whether or not eligible employees in the above described separate unit wish to be represented for terms and conditions of employment by AFGE, and if so whether they wish to be included in the consolidated unit set forth in Certification No. 24.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.
October 31, 1988