

Notice: This decision may be orally revised before it is published in the District of Columbia Register. Parties should promptly notify the office of any formal errors to that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

In the Matter of:
Service Employees International
Union, Local 722, AFL-CIO,

Petitioner,

v.

District of Columbia
Department of Human Services,
Home Services Bureau,

Agency.

PERB Case No. 93-R-01
Opinion No. 383

**DECISION AND ORDER ON
COMPENSATION UNIT DETERMINATION**

On November 19, 1993, the Public Employee Relations Board (Board), in Opinion No. 358, certified the Service Employees International Union, Local 722, AFL-CIO (SEIU) as the representative of the following unit:

All regular full-time and part-time Personal Care Aides employed by the Home Care Services Bureau of the Department of Human Services, but excluding all management officials, confidential employees, supervisors, employees engaged in personnel work in other than 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.

On November 23, 1993, the Executive Director solicited from the parties' their comments concerning the appropriate compensation

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unit placement for this unit of employees. ^{1/} Following consideration of the parties' initial submissions, the Board directed the Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of the Department of Human Services, Home Service Bureau (DHS), to submit additional information concerning the personal care aides' (PCA) compensation, as well as any statutes, rules and regulations that govern the determination of PCAs' compensation.

The Board has now concluded its investigation pursuant to Board Rule 503.7, and for the reasons that follow, has decided to place this unit of personal care aides, at this time, in a separate compensation unit. ^{2/} We have reached this conclusion largely for

^{1/} Labor organizations are initially certified by the Board under the Comprehensive Merit Personnel Act (CMPA) to represent units of employees that have been determined to be appropriate for purposes of noncompensation terms-and-conditions bargaining. Once this determination is made, the Board then determines the compensation unit in which these employees should be placed. Unlike the determination of a terms-and-conditions unit, which is governed by criteria set forth under D.C. Code Sec. 1-618.9, unit placement for purposes of authorizing collective bargaining over compensation is governed by D.C. Code Sec. 1-618.16(b).

^{2/} SEIU asserts that these employees should be placed in Compensation Unit 1. OLRCB argues, on behalf of DHS, Home Care Service Bureau, that these employees belong uniquely in a separate compensation unit. Compensation Unit 1 is currently described as follows:

UNIT 1 - consisting of all career service professional, technical, administrative and clerical employees who currently have their compensation set in accordance with the District Service (D.S.) Schedule and who come within the personnel authority of the Mayor of the District of Columbia, the Board of Trustees of the University of the District of Columbia, the Board of Trustees of the University of the District of Columbia and District of Columbia Board of Library Trustees, except physicians employed by the Department of Human Services and Department of Corrections and registered nurses employed by the Department of Human Services.

This compensation unit primarily consists of employees who have their compensation set in accordance with the D.S. Schedule. PCAs currently are not compensated in accordance with any District Government classification or pay schedule, because they have

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practical reasons that are related to the unique issues that the parties will have to resolve in their first round of compensation negotiations. Once those negotiations have been concluded, it may well be appropriate for the Board to consider whether, for future negotiations, the PCAs should remain a separate compensation unit or be placed in some larger compensation unit. We will be ready to examine that issue at that time, either at the request of one of the parties or on our own motion.

The standard under D.C. Code Sec. 1-618.16(b) for determining the appropriate compensation unit expresses a strong preference for "broad units of occupational groups":

In determining an appropriate bargaining unit for negotiations concerning compensation, the Board shall authorize broad units of occupational groups so as to minimize the number of different pay systems or schemes. The Board may authorize bargaining by multiple employer or employee groups as may be appropriate.

Nevertheless, the special circumstances of this case make it impractical to place the PCAs in a broad unit at this time. Until we determined in our Opinion No. 358 that the PCAs were employees, they had previously been paid as independent contractors. Therefore, PCAs have never been assigned to or classified under any of the existing "pay systems or schemes" established for D.C. Government employees, in accordance with the CMPA, D.C. Code Sec. 1-612.1 et seq. Their first round of negotiations will likely be concerned in large part with establishing a pay system or scheme for the PCAs which will be consistent with their newly defined status as employees. This is an issue that is unique to the PCAs, and would not easily lend itself to being negotiated in the context of a broader compensation unit. Moreover, the nature of the compensation system that the parties negotiate may well influence the ultimate decision as to whether, for the long term, they belong in a separate unit or in a broader unit -- and, if the latter, which broader unit.

historically been treated by DHS as independent contractors rather than employees. Thus, their method of compensation as employees remains to be determined through negotiations. D.C. Code Sec. 1-604.4(h); 612.1; 612.2 and 612.3. The District Personnel Manual defines the career service as consisting of all positions of the D.C. Government with explicit exceptions that do not appear to apply to the employment status of PCAs.

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In view of the above, we are compelled to make an interim determination, for the period of the parties' first complete compensation negotiations, establishing a separate compensation unit for this unit of PCAs. Following the completion of the initial compensation agreement between SEIU and DHS, either party may petition the Board to examine again, or pursuant to Board Rule 503.4, the Board on its own motion will revisit this issue to determine if a different compensation unit for these employees is warranted, consistent with the statutory criteria under D.C. Code Sec. 1-618.16(b).^{3/}

ORDER

IT IS HEREBY ORDERED THAT:

1. The unit of personal care aides found appropriate for terms-and-conditions bargaining in Opinion No. 358, is also authorized as a separate unit for the purpose of negotiations concerning compensation as follows:

Compensation Unit 30.

All regular full-time and part-time Personal Care Aides employed by the Home Care Services Bureau of the Department of Human Services; but excluding all management officials, confidential employees, supervisors, employees engaged in personnel work in other than a purely clerical capacity and employees engaged

^{3/} This approach is similar to our determination regarding the licensed practical nurses under the personnel authority of the Mayor. As a class of employees, they were placed in a separate compensation unit, i.e., Compensation Unit 14. AFSCME, D.C. Council 20, AFL-CIO et al. and the Mayor of the District of Columbia, et al., 28 DCR 1762, Slip Op. No. 5, PERB Case No. 80-R-08 (1981). In 1990, OLRB, on behalf of the Government of the District of Columbia, filed a petition seeking to consolidate Compensation Unit 14 with Compensation Unit 1. In that case, the petition was granted, in part, because of the "striking similarities between the results of the [] negotiations" that had developed over the years by these two compensation units, notwithstanding separately conducted negotiations. Government of the District of Columbia and All Union Representing Employees in Compensation Unit 1 and Compensation Unit 14, 38 DCR 6707, 6708 Slip Op. No. 268 at 2, PERB Case No. 90-R-02 (1991).

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in administering the provisions of Title XVII
of the District of Columbia Comprehensive
Merit Personnel Act of 1978, D.C., Law 2-139.

2. Either party may petition the Board to, or the Board may sua sponte, review this determination in accordance with the criteria under the Comprehensive Merit Personnel Act, D.C. Code Sec. 1-618.16(b), following the completion of the parties' initial compensation agreement.

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

March 1, 1994

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)

Service Employees International)
Union, Local 722, AFL-CIO,)

Petitioner,)

and)

Department of Human Services,)
Home Care Services Bureau,)

Agency.)

PERB Case No. 93-R-01
Certification No. 71

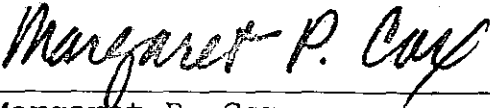
AUTHORIZATION

Pursuant to the District of Columbia Merit Personnel Act of 1978, as codified (D.C. Code Sections 1-605.2 and 1-618.16 (b)), the Public Employee Relations Board (Board) has determined that the unit described below, which was found appropriate by the Board for non-compensation bargaining in the Decision and Order issued on August 4, 1993, shall therefore constitute a unit for the purpose of compensation bargaining:

UNIT #30

All regular full-time and part-time Personal Care Aides who are being paid by the Home Care Services Bureau of the Department of Human Services, but excluding all management officials, confidential employees, supervisors, employees engaged in personnel work in other than 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.

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



Margaret P. Cox
Executive Director

March 1, 1994