

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so 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:)	
)	
American Federation of Government Employees,)	
Local 1403, AFL-CIO,)	
)	
Petitioner,)	PERB Case No. 04-CU-05
)	Opinion No. 772
)	
and)	
)	
)	
Public Service Commission of the)	
District of Columbia,)	
)	
Agency.)	
)	
_____)	

DECISION AND ORDER ON COMPENSATION UNIT DETERMINATION

On December 2, 2002, the Public Employee Relations Board (Board), in Slip Opinion No. 685, certified the American Federation of Government Employees ("AFGE"), Local 1403, as the exclusive representative for the following unit:

All attorneys employed by the Office of the General Counsel of the Public Service Commission of the District of Columbia, excluding management officials, supervisors, confidential employees, 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 July 13, 2004, AFGE, Local 1403, filed a "Petition for a Compensation Unit Determination" ("Petition"). AFGE, Local 1403 is seeking a determination of an appropriate unit for

the purpose of negotiations for compensation, for the unit of attorneys employed by the Office of the General Counsel of the Public Service Commission of the District of Columbia. Notices concerning the Petition were issued on October 7, 2004, for conspicuous posting at the Public Service Commission for the District of Columbia ("Public Service Commission" or "Agency"). The Notice solicited comments concerning the appropriate compensation unit placement for this unit of employees.¹ The Notice required that comments be filed in the Board's office no later than November 8, 2004. The Public Service Commission confirmed that the Notices had been posted. In addition, the Public Service Commission submitted comments concerning the Petition. AFGE's petition is before the Board for disposition.

The compensation unit proposed by AFGE is as follows:

All attorneys employed by the Office of the General Counsel of the Public Service Commission of the District of Columbia, who currently have their compensation set in accordance with the District Service (DS) Schedule, Series 905 and the DS Special Rate Schedule established pursuant to the Legal Services Establishment Act of 1998; but excluding management officials, supervisors, confidential employees, 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.

AFGE contends that the Public Service Commission is an independent agency with independent personnel authority. Therefore, AFGE is requesting that a new compensation unit be created for the attorneys at the Public Service Commission. AFGE claims that all these attorneys perform the same type of work activities.

Furthermore, AFGE asserts that pursuant to the Legal Services Establishment Act ("LSA") attorneys, employed by the District government including the attorneys at the Public Service Commission, are compensated pursuant to a unique compensation system that is not applicable to any

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 purpose of non-compensation 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 § 1-617.09 (2001 ed.), unit placement for purpose of authorizing collective bargaining over compensation is governed by D.C. Code § 1-617.16(b) (2001 ed.).

other group of employees of the District government. However, unlike the attorneys in the Office of the Attorney General ("OAG"), the attorneys at the Public Service Commission are not hired by the District's Attorney General or the Mayor. As a result, the attorneys at the Public Service Commission do not report to either the Mayor or the Attorney General. Instead, the attorneys at the Public Service Commission are under the direct supervision of the General Counsel of the Public Service Commission. In light of the above, AFGE claims that a separate compensation unit for attorneys at the Public Service Commission is appropriate.

The Public Service Commission submitted comments. In their comments, the Public Service Commission concurs with AFGE. Specifically, the Agency contends that a new compensation unit should be created for the attorneys employed by the Public Service Commission because Public Service Commission attorneys share a unique community of interest that would make their inclusion in a larger attorney compensation unit inappropriate.

The Agency notes that this unique community of interest is further highlighted by the source of the Public Service Commission Payroll funding defined in D.C. Code § 34-912(b)(1)-(6). Pursuant to this statute, all District funds provided to the Public Service Commission for, *inter alia*, payroll in a fiscal year must be reimbursed during that fiscal year by fees paid by electricity and telecommunication service providers under the regulation of the Public Service Commission. The Agency points out that, unlike other attorneys under the personnel authority of the Mayor or most other independent agencies, the attorneys which are the subject of this Petition derive their payroll funds from contributions from third party service providers rather than from appropriations.

The Public Service Commission claims that because of the independent nature of the agency's funding, the compensation unit that includes its attorneys must be limited to those attorneys alone. The Agency asserts that pursuant to D.C. Code § 34-912 (b)(2), "the formula by which fees assessed against third party service providers in order to pay, *inter alia*, [the Public Service Commission's] payroll obligations is to be determined annually. Such a system is known in the District government as Type O funding." (Agency's Comments at p. 3)

The Agency claims that O Type funding arises from other sources than, for example, agency appropriations for attorneys who work under the personnel authority of the Mayor. Therefore, O Type funded agencies like the Public Service Commission have different fiscal realities than those that receive their funding directly from the District's General Fund. In view of the above, the Public Service Commission contends that compensation negotiations with O Type funded agencies, differ from those funded through direct appropriations. As a result, such agencies have an "organization structure" so different from other agencies that the attorneys at the Public Service Commission do not share a community of interest with attorneys at other agencies. (See D.C. Code § 1-617.09(a).)

For the reasons noted above, the Public Service Commission contends that the following unit is the most appropriate unit for the purpose of negotiations for compensation pursuant to D.C. Code § 1-617.16 (2001 ed.):

All attorneys employed by the Office of the General Counsel of the Public Service Commission of the District of Columbia, who currently have their compensation set in accordance with the District Service (DS) Schedule, Series 905 and the DS Special Rate Schedule established pursuant to the Legal Services Establishment Act of 1998; but excluding management officials, supervisors, confidential employees, 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.

The standard under D.C. Code § 1-617.16(b) (2001 ed.) for determining the appropriate compensation unit expresses a strong preference for "broad units of occupational groups". Specifically, D.C. Code § 1-617.16 (b) (2001 ed.) provides as follows.

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 employers or employee groups as may be appropriate. (Emphasis added.)

Under this criteria, the Board has held that a compensation unit limited to a single agency does not meet the mandate that compensation units be based on "broad occupational groups." See, International Brotherhood of Teamsters, Local 246 and D.C. Department of Corrections, 34 DCR 3495, Slip Op. 152, PERB Case No. 85-R-07 (1987). In that case the Board observed that although working conditions for employees of that agency differed from other agency employees in existing compensation units, those issues could best be addressed in non-compensation negotiations. However, where an agency has independent personnel and compensation bargaining authority, the Board has held that a separate compensation unit for that agency is appropriate, notwithstanding the existence of occupational groups that the agency may have in common with agencies under an existing larger personnel authority.² (See, Government of the District of Columbia and D.C. General Hospital and Unions Representing Employees in Compensation Units 1, 2, 13, 14, and 19 who are employed by D.C. General Hospital, 37 DCR 5648, Slip Op. No. 241, PERB Case No. 90-R-03 and 90-R-07 (1990) and WASA and AFGE, Local 631, et al., 46 DCR 122, Slip Op. No. 510, PERB Case Nos. 96-UM-07, 97-UM-01, 97-UM-03 and 97-CU-01 (1997). The distinction turns on the

² An agency is accorded independent compensation bargaining authority to enable it to negotiate pay that may differ from existing pay systems.

purpose of the criteria for determining compensation units, i.e., "to minimize the number of different pay systems or schemes. The Board has also made one other exception where the pay scheme of the occupational group is so unique as to warrant a separate compensation unit determination. See, SEIU, Local 722 and DHS/HSB, 48 DCR 8493, Slip Op. No. 383, PERB Case No. 93-R-01 (1994) (Compensation Unit 30 was established for personal care aides employed by the Department of Human Services whose pay schemes resembled independent contractors). In both of the above-noted instances, the Board has determined as appropriate, compensation units that consist of a single agency or occupational group.

Both the Public Service Commission and AFGE, Local 1403 claim that the special circumstances of this case make it impractical to place the attorneys at the Public Service Commission in a broad compensation unit. We have reviewed the authority accorded the Public Service Commission under D.C. Code § 1-604.06 (b) (5) and D.C. Code § 34-803, and concluded that these sections of the D.C. Code have indeed vested the Public Service Commission with independent personnel authority and the authority to fix compensation for attorneys employed by the Agency. Therefore, we find that a separate compensation unit for attorneys employed by the Office of the General Counsel of the Public Service Commission, is appropriate. Accordingly, we grant AFGE's Petition for a separate compensation unit consisting of attorneys employed by the Office of the General Counsel of the Public Service Commission of the District of Columbia.

ORDER

IT IS HEREBY ORDERED THAT:

The unit of attorneys described below was found appropriate for terms-and-conditions bargaining in Slip Opinion No. 685, is also authorized as a separate unit for the purpose of negotiations concerning compensation:

Compensation Unit No 34:

All attorneys employed by the Office of the General Counsel of the Public Service Commission of the District of Columbia, who currently have their compensation set in accordance with the District Service (DS) Schedule, Series 905 and the DS Special Rate Schedule established pursuant to the Legal Services Establishment Act of 1998; but excluding management officials, supervisors, confidential employees, 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 ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.**

January 19, 2005

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

In the matter of:)
)
American Federation of Government)
Employees, Local 1403,)
)
Petitioner/Labor Organization,)
)
and)
)
Public Service Commission of the District)
of Columbia,)
)
Agency.)
)

PERB Case No. 04-CU-05

AUTHORIZATION

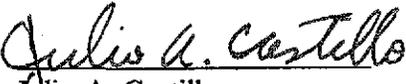
Pursuant to the District of Columbia Comprehensive Merit Personnel Act of 1978, as codified (D.C. Code Sections 1-605.02 (2001 ed.) and 1-617.16 (b) (2001 ed.)), the Public Employee Relations Board (Board) has determined that the unit described below, which was found appropriate by the Board for non-compensation bargaining in Opinion No. 685 issued on December 2, 2002, shall constitute a unit for the purpose of compensation bargaining:

COMPENSATION UNIT No. 34:

All attorneys employed by the Office of the General Counsel of the Public Service Commission of the District of Columbia, who currently have their compensation set in accordance with the District Service (DS) Schedule, Series 905 and the DS Special Rate Schedule established pursuant to the Legal Services Establishment Act of 1998; but excluding management officials, supervisors, confidential employees, 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.**

January 19, 2005


Julio A. Castillo
Executive Director

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 04-CU-05 was transmitted via Fax and U.S. Mail to the following parties on this the 19th day of January 2005.

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Public Service Commission
of the District of Columbia
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Washington, D.C. 20005

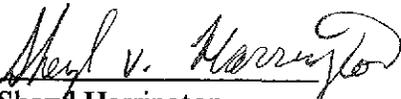
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