

**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 formal 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**

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In the Matter of:		)
		)
American Federation of Government		)
Employees, Local 2553, AFL-CIO,		)
		)
Petitioner,		)
		)
and		)
	PERB Cases No. 97-RC-01	)
	and 97-UNC-01	)
	Opinion No. 523	)
D.C. Water and Sewer Authority,		)
		)
Agency.		)
		)
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**DECISION AND ORDER ON OBJECTIONS  
AND CERTIFICATION OF ELECTION RESULTS**

Pursuant to an Order of the District of Columbia Public Employee Relations Board (Board) issued on May 22, 1997, Slip Op. No. 506, a secret mail ballot election was held in the above-captioned proceeding with the tally, conducted by the Board's staff, taking place at the Board's offices on June 13, 1997.

On June 13, a tally of the ballots was conducted in the presence of party observers at the offices of the Board. The results of the tally of votes on the question of representation by the Petitioner, the American Federation of Government Employees, Local 2553, AFL-CIO (AFGE) were as follows:

"AFGE	<u>2</u>
No Union	<u>2</u>
Challenged Ballots	<u>1</u>
Void Ballots	<u>0</u> "

**Decision and Order on Objections  
and Certification of Election Results  
PERB Case No. 97-RC-01  
Page 2**

The one challenge was made by the Board based on the absence of the voter's name on the eligibility list. The parties were unable to resolve the challenged ballot during the tally of votes.

Pursuant to Board Rule 515.2, any party may file objections concerning the election proceeding within five (5) days after service of the report of election results. On June 19, 1997, the Petitioner filed Objections to the Election with supporting documents. The Petitioner's objections are two-fold. AFGE alleges that (1) the challenged voter was erroneously excluded from the eligibility list by the agency and was eligible to vote in accordance with Board Rule 511 and the Election Agreement; and (2) two of the employees who voted in the election were dues paying members of AFGE, Local 631, and "[a]s a result, the Agency has placed two voters within the subject bargaining unit who have apparent loyalties to another labor organization that has made two failed attempts to intervene in the instant proceeding." Obj. at 2. AFGE contends that these employees' participation in the election "reflects an improper influence and conflict of interest." Obj. at 3. In the event that the Board fails to certify AFGE, Local 2553 based on the outcome of the first objection, the Petitioner requests that a new election be held wherein the two employees in question be made ineligible to participate.

Pursuant to Board Rule 515.4, the Board conducted an investigation of the objections. In response to our investigation, the agency, the D.C. Water and Sewer Authority (WASA), agreed that the challenged voter's name was erroneously excluded from the eligibility list. WASA provided documentation confirming the employee's eligibility to vote in the election. Based on the evidence, we hereby overrule the challenge. Accordingly, the ballot shall forthwith be opened and tallied.

With respect to the second objection, the Petitioner does not dispute the two employees' eligibility to vote pursuant to Board Rule 511 and as set forth in the parties' Election Agreement.<sup>1/</sup> We further note that the Petitioner failed to dispute the inclusion of these employees on the eligibility list during the period provided under the Election Agreement (following the submission of the list). In addition, the Petitioner did not avail itself of the process for challenging employees during the election as provided

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<sup>1/</sup> The documentary evidence provided during the processing and investigation of the Petition establishes that the two employees are part of the collective bargaining unit found appropriate for the directed election.

**Decision and Order on Objections  
and Certification of Election Results  
PERB Case No. 97-RC-01  
Page 3**

under Board Rule 511.3 and the Election Agreement. The Petitioner's failure to timely challenge these employees gives rise to an apparent waiver of its right to treat the challenge to these employees' participation as part of its objections. See, Board Rule 514.3. Nevertheless, D.C. Code § 1-618.6(a)(2) provides employees with the right "[t]o form, join or assist any labor organization or to refrain from such activity". Therefore, notwithstanding the existence of a waiver, the basis of the objections contravenes these employees' rights under the Comprehensive Merit Personnel Act (CMPA).<sup>2/</sup> In view of the above, we deny this objection and the Petitioner's request that the election be rerun.

In accordance with this Opinion, the Executive Director, shall count the challenged ballot and issue a Certification of Election Results.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. Based on the foregoing discussion, the Board's challenge to one of the ballot is reversed;
2. The Board shall simultaneously herewith issue a Certification of Election Results; and, if appropriate, a Certification of Representative.

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

July 3, 1997

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<sup>2/</sup> In support of this objection, the Petitioner also alleges that WASA is currently deducting dues for AFGE, Local 631 from the salaries of the employees in question. This issue is beyond the scope of a representation petition proceeding. Moreover, as the Petitioner has indicated, it has made this charge the subject of an unfair labor practice complaint, i.e., PERB Case No. 97-U-10.