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**Government of the District of Columbia
Public Employee Relations Board**

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In the Matter of:)	
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International Federation of Professional and Technical Engineers,)	PERB Case No. 16-CU-03
)	
Petitioner,)	Opinion No. 1583
)	
and)	
)	
District of Columbia)	
Office of Administrative Hearings,)	
)	
Respondent.)	
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DECISION AND ORDER ON COMPENSATION UNIT DETERMINATION

On August 21, 2014, the D.C. Public Employee Relations Board, in Slip Op. No. 1483, certified the International Federation of Professional and Technical Engineers (“IFPTE”) as the exclusive representative for the following unit within the District of Columbia Office of Administrative Hearings (“OAH”):

All administrative law judges in the District of Columbia Office of Administrative Hearings (“OAH” or “Agency”) appointed pursuant to D.C. Official Code §§ 2-1831.06 and 2-1831.08, excluding all management officials, supervisors, confidential employees, 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 2-139.¹

¹ Petition at 2-3; *Int’l Fed’n of Prof’l and Technical Eng’rs and D.C. Office of Admin. Hearings*, 61 D.C. Reg. 9766, Certification No. 158, Slip Op. No. 1483, PERB Case No. 12-RC-03 (2014).

On May 19, 2016, IFPTE and OAH (collectively “Petitioners”) filed a Joint Petition for Compensation Unit Determination (“Petition”), in which Petitioners requested that PERB create new compensation unit for a bargaining unit in OAH that is represented by IFPTE.² On May 24, 2016, PERB issued a Notice about the Petition along with instructions to post the Notice “in conspicuous places on all employee bulletin boards at work site of employees in the proposed unit and distribute it in a manner by which notices are normally distributed,” and to do so “within seven (7) days of receipt of the Notice.” PERB further instructed that the Notice “shall remain posted for fourteen (14) consecutive days from the date of posting.” The Notice itself solicited comments concerning the establishment of a new compensation unit for the employees covered by IFPTE. The Notice further required that any labor organizations that wished to intervene in the matter must do so in accordance with PERB’s Rules within fourteen (14) days after the Notice was posted. On June 6, 2016, OAH filed a confirmation that the Notice had been posted as directed and had remained posted for fourteen (14) consecutive days. No comments or intervention petitions having been received, the Petition is now before the Board for disposition.

The Board authorizes compensation units pursuant to D.C. Official Code § 1-617.16(b), which provides:

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.

The compensation unit proposed by Petitioners is as follows:

All administrative law judges in the District of Columbia Office of Administrative Hearings (“OAH” or “Agency”) appointed pursuant to D.C. Official Code §§ 2-1831.06 and 2-1831.08, and compensated pursuant to § 2-1831.05 (a)(11), excluding all management officials, supervisors, confidential employees, 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 2-139.³

² 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 the purpose of non-compensation terms-and-conditions bargaining. Once this determination is made, upon request, the Board then determines the compensation unit in which the employees should be placed. The determination of a terms-and-conditions unit is governed by criteria set forth under D.C. Official Code § 1-617.09. Unit placement for purposes of authorizing collective bargaining over compensation is governed by D.C. Official Code § 1-617.16(b).

³ Petition at 3.

Petitioners stipulate and contend that:

[...]a new compensation unit is warranted because the unique and discrete statutory requirements governing OAH ALJs are irreconcilable with the scope of any existing compensation units in the District Government. First, the OAH Establishment Act requires that ALJs be appointed to the Excepted Service as statutory officeholders pursuant to D.C. Official Code § 1-609.08, upon the affirmative vote of a majority of the voting members of the Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings (COST).⁴ D.C. Official Code § 2-1831.08(b). In line with the provision for exclusivity of service under the CMPA provisions governing the creation of Excepted Service positions, persons appointed to the Excepted Service are not in the Career, Educational, Executive, Management Supervisory or Legal Service. D.C. Official Code §1-609.01. As such, Compensation Unit 1, which covers broad occupational groups and position classifications in the Career Service including professional positions, would not be an appropriate compensation unit for these Excepted Service ALJs.⁵

Similarly, even though these ALJs are attorneys,⁶ Compensation Unit 33, which covers Legal Service attorneys in the District would not be an appropriate compensation unit for the OAH ALJs because they are

⁴ Under the OAH Establishment Act, the COST has the final authority to appoint, reappoint, discipline and remove OAH ALJs. D.C. Official Code § 2-1831.06(b).

⁵ Compensation Unit 1 is described as:

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, and the District of Columbia Board of Library Trustees, except physicians employed by the Department of Human Services and the Department of Corrections and Registered Nurses employed by the Department of Human Services.

Am. Fed'n of State, Cnty. and Mun. Emp., et al. and Barry, et al., 28 D.C. Reg. 1764, Opinion No. 5, PERB Case No. 80-R-08 (1981), modified in PERB Case 95-RC-12, Certification No. 84 (1995).

⁶ Also, as relevant here, an ALJ must meet the following qualification requirements to be eligible for appointment: (1) must be a member in good standing of the District of Columbia Bar and remain in good standing throughout his or her tenure as an ALJ; (2) must have at least 5 years of experience in the practice of law, including experience with court, administrative, or arbitration litigation; (3) must possess judicial temperament, expertise, experience, and analytical and other skills necessary and desirable for an ALJ. *See* D.C. Official Code § 2-1831.08 (d). Regarding tenure, ALJs are initially appointed to serve a term of 2 years. ALJs appointed prior to December 6, 2005, were eligible for reappointment to a term of 10 years after their initial 2 year term. ALJs appointed after December 5, 2005, are eligible for reappointment to a term of 6 years after their initial 2 year term. After serving an initial reappointment term of 10 years or 6 years, ALJs are eligible for subsequent reappointment by the COST for 6 year terms. *See* D.C. Official Code § 2-1831.08 (c).

in the Excepted Service.⁷ Moreover, it would be impractical at best to include the OAH ALJs in Compensation Unit 33 since the pay scheme for the OAH ALJs is incongruent with the pay system/parity requirement for non-supervisory attorneys within the Legal Service under Compensation Unit 33, which provides that the “compensation of all [such] Legal Service Attorneys shall be competitive with that provided by the federal government General Schedule for attorneys in the Washington metropolitan area having comparable duties, responsibilities, qualifications, and experience.” D.C. Code § 1-608.58 (a)(2).

Rather, the salary range for OAH ALJs is governed by the OAH Establishment Act, D.C. Official Code § 2-1831.01 *et seq.*, which specifies that the Chief Administrative Law Judge shall “apply a pay scale and retention allowances equivalent to those that are available to Legal Service and Senior Executive Service attorneys in a manner designed to attract highly capable public and private sector attorneys to become Administrative Law Judges in the Office; provided that Administrative Law Judges shall receive a minimum annual compensation at that point on the Excepted Service pay scale that is equivalent to the mid-point of the LX-2 pay scale,” for the Legal Supervisory Service attorneys. D.C. Official Code § 2-1831.05(a)(11). In addition, the Establishment Act sets the maximum salary for OAH ALJs under D.C. Official Code § 2-1831.08(h), which provides that “compensation of an Administrative Law Judge shall not exceed the compensation level available to attorneys of the Senior Executive Attorney Service created by § 1-608.53.” As such, the law governing the OAH ALJs is incompatible with the pay system for non-supervisory attorneys within the Legal Service.

PERB Rule 503.3(d) requires a showing that the proposed compensation unit consists of broad occupational groups, which is consistent with the language under D.C. Code § 1-617.16(b) that in determining the appropriate compensation unit, the Board shall authorize broad units of occupational groups so as to minimize the number of pay systems or schemes. However, PERB has made exceptions for compensation units that consist of a single agency or occupational group where the pay scheme of the occupational group is so unique as to warrant a separate compensation unit determination. *SEIU, Local 722 and DHS/HSB*, 48 DCR 8493, Slip Op. No. 383, PERB Case No. 93-R-01 (1994) (Compensation Unit 30 was

⁷ Compensation Unit No. 33 includes “all attorneys within the Legal Service who come within the personnel authority of the Mayor of the District of Columbia and who are currently represented by labor organizations certified as exclusive bargaining agents for non-compensation bargaining by the Public Employee Relations Board.” *Am. Fed’n of Gov’t Emp., Local 1403 v. D.C. Office of the Corp. Counsel*, 50 D.C. Reg. 2405, Slip Op. No. 694, PERB Case No. 02-CU-01 (2002).

established for personal care aides employed by the Department of Human Services whose pay schemes resembled independent contractors). As demonstrated above, the OAH Establishment Act has created a unique pay scheme for the OAH ALJs that definitely warrants a separate compensation unit determination. *AFGE 1403 and Public Service Commission of the District of Columbia*, Slip Op. No. 772, PERB Case No. 04-CU-05 (2005) (PERB found it impractical to place the attorneys employed by the Public Service Commission (PSC) in a broad compensation unit for District attorneys in the Legal Service under Compensation Unit 33 and placed PSC attorneys in a separate compensation unit given PSC's independent personnel authority and authority to fix compensation for its attorneys).⁸

Based on the foregoing, Petitioners request that "PERB expeditiously grant the Parties' Joint Petition in its entirety as the Parties wish to submit their compensation agreement to the D.C. Counsel prior to its summer recess starting on July 15, 2016."⁹

In accordance with Petitioners' stipulations and contentions, and because no individuals or labor organizations filed any comments or intervention petitions to challenge the proposed compensation unit, the Board finds that a separate compensation unit for the administrative law judges described in the proposed compensation unit is appropriate.¹⁰ Accordingly, the Board grants Petitioners' Joint Petition for a separate compensation unit consisting of:

All administrative law judges in the District of Columbia Office of Administrative Hearings ("OAH" or "Agency") appointed pursuant to D.C. Official Code §§ 2-1831.06 and 2-1831.08, and compensated pursuant to § 2-1831.05 (a)(11), excluding all management officials, supervisors, confidential employees, 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.

⁸ Petition at 3-6 (original footnotes from the quoted portions of the Petition have been preserved as footnotes herein).

⁹ *Id.* at 6.

¹⁰ See *Am. Fed'n of Gov't Emp., Local 1403 and Pub. Serv. Comm'n of the Dist. of Columbia*, 52 D.C. Reg. 1660, Slip Op. No. 772, PERB Case No. 04-CU-05 (2005) (finding that when special circumstances make it impractical to place a bargaining unit into an existing broad compensation unit, the creation of a separate compensation unit for the employees is appropriate).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Petitioners' Joint Petition for Compensation Unit Determination is granted.
2. The unit of administrative law judges that was found to be appropriate for terms and conditions bargaining in *Int'l Fed'n of Prof'l and Technical Eng'rs and D.C. Office of Admin. Hearings*, 61 D.C. Reg. 9766, Certification No. 158, Slip Op. No. 1483, PERB Case No. 12-RC-03 (2014), is also authorized as a separate unit for the purpose of negotiations concerning compensation, as follows:

Compensation Unit No. 35:

All administrative law judges in the District of Columbia Office of Administrative Hearings ("OAH" or "Agency") appointed pursuant to D.C. Official Code §§ 2-1831.06 and 2-1831.08, and compensated pursuant to § 2-1831.05 (a)(11), excluding all management officials, supervisors, confidential employees, 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.

3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Yvonne Dixon, Ann Hoffman, Barbara Somson, and Douglas Warshof.

June 14, 2016

Washington, D.C.

**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)	
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International Federation of Professional and Technical Engineers,)	PERB Case No. 16-CU-03
)	
Petitioner,)	
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and)	
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District of Columbia)	
Office of Administrative Hearings,)	
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Respondent.)	
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AUTHORIZATION

Pursuant to D.C. Official Code §§ 1-605.02 and 1-617.16, the Public Employee Relations Board has determined that the unit of administrative law judges that was found to be appropriate for terms and conditions bargaining in *Int'l Fed'n of Prof'l and Technical Eng'rs and D.C. Office of Admin. Hearings*, 61 D.C. Reg. 9766, Certification No. 158, Slip Op. No. 1483, PERB Case No. 12-RC-03 (2014), shall constitute a unit for the purpose of compensation bargaining, as follows:

COMPENSATION UNIT No. 35:

All administrative law judges in the District of Columbia Office of Administrative Hearings (“OAH” or “Agency”) appointed pursuant to D.C. Official Code §§ 2-1831.06 and 2-1831.08, and compensated pursuant to § 2-1831.05 (a)(11), excluding all management officials, supervisors, confidential employees, 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.

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

June _____, 2016

Clarene Phyllis Martin
Executive Director

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-CU-03, Op. No. 1583 was sent by File and ServeXpress to the following parties on this the 30th day of June, 2016.

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