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

In the Matter of:)	
)	
American Federation of Government Employees, Local 631,)	
)	
Petitioner,)	PERB Case Nos. 04-UM-01 and 04-UM-02
)	
and)	Opinion No. 1263
)	
Government of the District of Columbia, ¹)	Petition for Unit Modification
)	
Respondents.)	

DECISION AND ORDER

I. Statement of the Case

The American Federation of Government Employees, Local 631 (“Union”, or “Local 631”) filed a Petition for Unit Modification (“Petition”) regarding the certification of several bargaining units located at various District agencies: Department of Environment, Energy Division; and Department of Administrative Service/Mail Room (“Agencies”).² The Union seeks modification “to reflect the changes in the identity of the employing agency; to add unrepresented positions created since the recognition or certification was granted; and to delete the classifications or employee positions that no longer exist.” (Petition at pgs. 1-2). The Office of Labor Relations and Collective Bargaining (“OLRCB”) represents the District of Columbia agencies/Respondents in this matter. The OLRCB filed its comments in opposition to the proposed unit modifications in October 2009. During the intervening time, the District engaged in multiple reorganizations that have an effect on the outcome of these proceedings. No interveners filed an appearance in this proceeding.

The matter was submitted to a hearing examiner for development of the record. A hearing was held and the parties were provided the opportunity to submit post-hearing briefs.

¹ Named Respondents include: Office of Zoning; Office of Planning; Department of Public Works, Energy Office; Office of Property Management; Department of Transportation; and Department of Real Services.

² The Petitioner filed a Petition, and Amended Petition and a Second Amended Petition. The Petitioner also amended agency names at the hearing, reflecting agency reorganizations.

The Hearing Examiner issued a Report and Recommendation (R&R) which recommended granting the Petition. The Hearing Examiner's R&R is before the Board for consideration.

II. Procedural History of PERB Case Nos. 04-UM-01 and 04-UM-02

On February 5, 2004, AFGE, Local 631 filed a petition for unit modification, pursuant to Board Rule 504.1(a)-(d), to modify PERB Case No. 82-R-15, **Certification No. 14** (1982) (DC Office of Planning and Development); PERB Case No. 82-R-16, **Certification No. 15** (1982), (Energy Office); and **Certification No. 44** (1987) (Department of Administrative Services/mail room) for the purpose of non-compensation bargaining to: (1) reflect the change of the name of the local union; (2) reflect changes in the identity of the employing agency; (3) add unrepresented positions created since the recognition or certification was granted; (4) delete classifications or employee positions that no longer exist; and, (5) consolidate two or more units within OPM and the Department of Public Works ("DPW"). (See R&R at p. 14).

In addition to the modifications requested in its February 5, 2004 Petition, on February 9, 2004, AFGE, Local 631 filed an Amended Petition for unit modification seeking to modify PERB Case No. 84-R-08, Certification No. 24 (as amended March 22, 1989), for the purpose of non-compensation bargaining. Based upon various reorganizations within DPW, Local 631 seeks to eliminate the consolidation order in Certification No. 24. (See Amended Petition). On July 1, 2004, Local 631 filed a Second Amended Petition amending the petition in PERB Case No. 04-UM-02 seeking, *inter alia*, to amend Certification No. 14, Certification No. 15, Certification No. 44, and seeking to change the name of the union from AFGE, Local 3871 to AFGE, Local 631. Notices were posted and the petitions were consolidated for hearing. (See Second Amended Petition).

A hearing in this matter was held on September 1, 2009.³ On September 13, 2009, AFGE, Local 631 amended the petition to substitute the "Department of Environment, Energy Division" for the "Department of Public Works, Energy Office", reflecting a governmental reorganization. On October 29, 2009, the Respondents filed comments on Petition No. 04-UM-01 (Certification No. 44), representing the affected agencies (Office of Zoning, Office of Planning, Department of Real Estate Services, and Department of the Environment, Energy Office). OLRCE asserted that the 1998 merger of AFGE, Local 3871 into AFGE, Local 631 was invalid because Local 3871 did not vote on the action 12 years prior.

The hearing continued on March 15 and 16, 2010. (See R&R at p. 15). On March 15, 2010, the Respondents opposed the Amended Petition taking the position, as it had in the submitted comments, that that the 1998 merger of AFGE, Local 3871 into AFGE, Local 631 was invalid because AFGE, Local 3871 had not voted on the merger action 12 years prior. (See R&R at p. 15). The Respondents also offered a new argument in support of their opposition, stating that "the Project Manager position under the Construction Division at Department of Real Estate

³ The Hearing Examiner was unable to continue the hearing and another Hearing Examiner was assigned for the remainder to the proceedings.

Services (DRES) is “aligned with management and as a result, is excluded from the bargaining unit.”⁴ (R&R at p. 16).

The hearing continued on March 16, 2010. The Hearing Examiner directed the Respondents to submit affidavits stating what the project manager does, attached to the DRES project manager’s current position description and a statement as to why any project manager should be excluded from the bargaining unit. The Petitioner was granted the opportunity to file a reply brief. The Respondents filed 21 affidavits without position descriptions attached, and the Hearing Examiner issued a show cause order on May 25, 2010. No position descriptions were submitted and a subpoena was issued to 21 DRES employees, directing them to give testimony. Twelve employees appeared and one produced an official position description. The Hearing concluded on July 7, 2010 and the record closed on August 7, 2010. (See R&R at p. 18).

The Hearing Examiner found that the District implemented multiple reorganizations that have an effect on the outcome of these proceedings and provided a time line of District reorganizations as well as bargaining unit certifications affected.

The following changes in the District Government’s organizational structure were cited:

1. D.C. DPW was established by law in 1984. In 1993, the District’s Weatherization Assistance Program, and employees then represented by AFGE, Local 3871, was transferred from the Department of Housing and Community Development to the Energy Office, within the Department of Public Works. (R&R at p 10).
2. In 1998, the Council of the District of Columbia established the Office of Property Management (OPM), abolished the Department of Administrative Services (DAS) and moved then-members of AFGE, Local 631 in accord with that reorganization. (R&R at p. 11).
3. In 2000, the Council transferred all authority previously delegated to the Department of Consumer and Regulatory Affairs concerning historic preservation to the Office of Planning along with employees then represented by AFGE, Local 3871. (R&R at p. 11).
4. In 2002, the Council established the Department of Transportation. (R&R at p. 11).

⁴ The Respondents also opposed the petition asserting that two maintenance mechanic positions in the Facilities Division of DRES “are coded under AFGE 631 and ... the overwhelming majority of those positions have been coded and included in AFSCME [Local] 2091.” The Respondents argued that “all employees in the maintenance mechanic position in DRES Facilities Division, Maintenance Operation, should be members of AFSCME 2091 and not AFGE 631. After testimony by James Ivey, President of AFSCME, Local 2091 that he relinquished those positions to AFGE, Local 631, the Respondents abandoned this position. (See R&R at p. 17).

The Respondents also alleged for the first time, at the third day of hearing, that two Contract Specialist position in DPW, (Office of Administrative Services, Equal Employment Opportunity (EEO) Specialist and the Americans with Disabilities Act (ADA) Specialist in the District Department of Transportation), should be excluded from the bargaining unit. The Hearing Examiner granted the Petitioner’s motion to exclude any testimony opposing the inclusion of these positions because the Respondents had failed to raise the issue during the previous six (6) years and raised it for the first time during the hearing with no prior notice to the Petitioner. (See R&R at n. 36).

5. In 2009, by Executive Order, the Mayor of the District of Columbia re-designated OPM as the District of Columbia Department Real Estate Services (DRES). (R&R at p. 11).
6. Prior to the issuance of the Executive Order creating DRES, the District re-named two positions in the soon-to-be-extinct OPM, i.e., Project Manager, Construction Division (DS-13) and Project Manager, Construction Division (DS-14). In re-naming these positions, the District simply changed the position title from "General Engineer (Project Manager)" to "Project Manager." Subsequent new hires entered employment with the job title "Project Manager," in the new DRES. Also, the District transferred the newly named positions of "Property Manager" position from OPM to the newly-created DRES. Thus, DRES "Project Manager" positions are equivalent to those of construction managers. Neither position is classified as supervisory nor managerial. (R&R at p. 12).
7. OPM unilaterally determined that positions now designated "Project Manager" were not covered by a collective bargaining unit. Thus, applicants for the position in the summer of 2009 were advised on the DRES website that the positions were not covered by a collective bargaining unit. The Hearing Examiner determined that the position does not entail the development of agency policy. Employees encompassed by the following certifications currently are employed in DRES: Certifications No. 77, No. 82, No. 85 and No. 92. (R&R at p. 13).

The following bargaining unit certifications pertain to AFGE, Local 631:

8. (1965) D.C. General Hospital ("DCGH"), Repairs and Improvements, Department of Buildings and Grounds.
9. (1972) D.C. Board of Labor Relations ("BLRB") certified AFGE, Local 631, *inter alia*, as the exclusive bargaining unit Building and Grounds Management Section, Administrative Service Division, the Maintenance Section of DCGH and the Central Support Branch, Administrative Services Division, Department of Human Resources. BLR Case No. 3R002.
10. (1976) BLRB certified issued an order clarifying that AFGE, Local 631 was the bargaining unit representative for the Department of Environmental Services assigned to the Mount Olivet Shops. BLR Case No. 3R003, 5R007.
11. (1976) BLRB certified AFGE, Local 631 as the exclusive representative for employees in the city's Mobile Equipment Management Division, Office of Executive Management, Department of Environmental Services. BLR Case No. 5R003.
12. (1984) The Public Employee Relations Board ("PERB" or "the Board") granted OLRCB's unopposed petition to consolidate four (4) separate units (AFGE, Locals 631, 872, 1975 and 2553) into one department-wide non-compensation unit within the District of Columbia Department of Public Works ("DC DPW"). (BLR Case No. 84-R-08; DC

DPW and AFGE, Local 631, 872, 2553 and 1975, PERB Case No. 84-R-08, Certification No. 24).

13. (1994) The Board certified AFGE 631 as the exclusive representative for all professional and non-professional employees in the Design Engineering Construction Administration, Bureau of Building Construction Services, DC DPW. (*See, AFGE, Local 631 and DC DPW, Design Engineering Construction Administration, Bureau of Building Construction Service, PERB Case No. 94-RC-03, Certification No. 77*).
14. (1995) The Board granted certification of exclusive representation to AFGE, Local 631 for all professional and non-professional employees of DPW, Facilities Operation and Maintenance Administration (FOMA), Office of Contract Support, and the Office of Standards Enforcement, thereby modifying PERB Case No. 84-RC-08, Certification No. 24. (*See AFGE , Local 631 and DC DPW, Design Engineering and Construction Administration, Office of Contract Administration, Contract Management Division, PERB Case No. 95-RC-13; and AFGE, Local 631 and DC DPW , Facilities Operation and Maintenance Administration, Office of Contract Support and the Office of Standards and Inspection, PERB Case No. 94-RC-06, Certification No. 82; AFGE, Local 631 and DC DPW, Design Engineering and Construction Administration, Office of Contract Administration, Contract Management Division, PERB Case No. 95-RC-13, Certification No. 85. See also, AFGE, Local 631 and DC DPW, Design Engineering and Construction Administration, Office of Contract Administration, Contract Management Division, PERB Case No. 96-UM-07, Certification No. 95*).
15. (1995) The Board certified AFGE, Local 631 as the representative for all unrepresented non-professional employees of the Department of Public Works, Office of Management Services, Administrative Services Branch. (*See, AFGE, Local 631 and DC DPW, Office of Management Services, Administrative Services Branch, PERB Case No. 95-RC-18, Certification No. 91*).
16. (1996) The Board issued a certification of representation of by AFGE, Local 631 for all professional and non-professional employees of the city's Water and Sewer Authority, Office of Engineering Services and Bureau of Water Waste Treatment, Laboratory Division, and of the Wastewater Treatment, Solid Processing Division and Wastewater Division, those in the Office of Administrative Services, Water Conservation Division and the Procurement and Facilities Division, Goods and Services Branch. (*See, AFGE, Local 631 and DC WASA, PERB Case No. 96-UM-03, Certification No. 92*).
17. (1997) The Board issued an order consolidating several AFGE locals then representing District employees, including Certification No. 24 at the Department of Public Works. (*See, DC DPW and AFGE, Locals 631, 872, 2553 and 197, PERB Case No. 84-RC-08 (Consolidation Order); AFGE, Local 872 and DCWASA, PERB Case No. 98-UM-07, Certification No. 95*).
18. (1999) The Board certified AFGE, Local 631 as the exclusive representative for a consolidated unit described as "[a]ll professional and non-professional employees in the

Department of Public Works, Office of Materials Development within the Design, Engineering and Construction Administration; and all non-professional employees within the Design, Engineering and Construction Administration, Office of Contract Administration, Contract Management Division. This supersedes previous Certification Nos. 85 and 92 and establishes a consolidated unit under Certification No. 108. (See, *DC DPW and AFGE, Local 631*, Certification No. 108).

19. (1999) OLRCB sought and was granted by the Board an order consolidating three (3) collective bargaining units represented by AFGE, Local 631 at DPW which included "all employees employed by [DC DPW] under the Mobile Equipment Management Division, Office of Executive Management; excluding shop and office employees assigned to the Mt. Olivet Shops; and all non-professional employees employed by DPW under the Office of Management Services, Contract Support Division and the Administration Services Branch." This certification changed the identity of the employing agency for one of the consolidated units from the Department of Environmental Services ("DES") to the Department of Public Works. (See, *DC DPW and AFGE, Local 631*, PERB Case Nos. 99-UM-06 and 99-UCN-04, Slip Op. No. 614; *DC DPW and AFGE, Local 631*, PERB Case Nos. 99-UM-06 and 99-UCN-04, Certification No. 111).

The following bargaining unit certifications pertain to AFGE, Local 3871:

20. (1982) The Board certified Local 3871 as the exclusive representative, non-compensation, for all employees of the District's Energy Office and its Office of Planning and Development. (See, *AFGE, 14th District, Local 3871 and DC Office of Planning and Development*, PERB Case No. 82-R-15, Certification No. 14; *AFGE, 14th District, Local 3871 and DC Energy Office*, PERB Case No. 82-R-16, Certification No. 15).
21. (1987) The Board certified AFGE, Local 3871 as the exclusive representative for non-compensation, for all employees in the Mail Management Branch (Mail Room), Department of Administrative Services. (See, *AFGE, Local 3871 and DC Office of Administrative Services*, PERB Case No. 86-R-02, Certification No. 44).
22. (1994) AFGE, National Executive Council imposed trusteeship on Local 3871. The National Vice President, David J. Schlein, notified OLRCB that the "American Federation of Government Employees is disbanding AFGE Local 3871 currently in trusteeship and merging it with AFGE, Local 631. The dues and service fees deducted from employees should be raised to the level of that currently paid to Local 631, which is \$12.00 per pay period.... The dues and service fee deduction checks should be sent to the treasurer of Local 631. OLRCB did not oppose the merger prior to the filing of the petition at issue here and the office was on notice since at least 2003 that the petitioner had requested, and was receiving, dues payments on behalf of former members of AFGE Local 3871." (R&R at p. 9).
23. (2000) Pursuant to a subsequent District reorganization, certain employees responsible for historic preservation duties were transferred to the office of Planning in October 2000.

24. (2003) AFGE, District 14 notified OLRFCB that “[a]s the result of the merger of Local 3871 with AFGE, Local 631 [the employees formerly represented by AFGE, Local 3871] are now represented by Local 631. A clarification of unit petition memorializing the merger will be filed with the Board as soon as possible.” (R&R at p. 10).

25. Bargaining unit certification pertaining to AFGE, Local 1975:

(1984) AFGE, Local 1975 became part of a four-unit consolidation unit for non-compensation collective bargaining purposes. (See *DC DPW and AFGE, Locals 631, 872, 2553 and 1975*, PERB Case No. 84-R-08, Certification No. 24). Later, the District refused to bargain with AFGE, Local 631 until AFGE, Local 1975 was severed from Certification No. 24. (See R&R at p. 10).

AFGE, Local 3871 was issued Certificate Nos. 14 and 15 in 1982, and 44 in 1987. In 1994, the AFGE national union imposed a trusteeship on AFGE, Local 3871 and in 1998, merged it into AFGE, Local 631. The Hearing Examiner addressed the Respondents’ opposition to the unit modification based on the argument that the merger of the two AFGE Locals was invalid since members of AFGE, Local 3871 did not vote on the merger. Assuming the Respondents’ argument to be timely, the Hearing Examiner found that the argument was not supported by the record, noting that the AFGE national constitution authorizes its National Executive Council (“NEC”) to take all necessary actions in furtherance of broader union goals.⁵ (See R&R at p. 21).

The Hearing Examiner determined that “in approving the merger between its locals, the AFGE NEC acted within the parameters of its national constitution.” (R&R at p. 21). The Hearing Examiner noted that AFGE, Local 8371 and Local 631 are locals within AFGE, District 14. In addition, the Hearing Examiner found that the national union’s decision to cease the operations of AFGE, Local 3871 and transfer the employees in the bargaining unit to the authority of AFGE, Local 631, does not raise a question concerning representation for the post-affiliate union, as there has been unbroken continuity with the pre-affiliate union. Consequently, the Hearing Examiner found no impediment to granting the petition for unit modification under PERB Rule 516.1,⁶ nor under Board case precedent. Furthermore, the testimony established that

⁵ The AFGE national constitution states as follows:

The NEC also shall utilize every legitimate means and effort to consolidate existing compatible locals into larger segments or councils for the purpose of creating stronger union entities and eliminating fragmented organizations. District boundaries will not be a barrier to any merger or consolidation deemed beneficial and for the protection of union members.

⁶ PERB Rule 516.1 provides as follows:

An exclusive representative shall file a petition...to amend its certification whenever there is a change in the identity of the exclusive representative that does not raise a question concerning representation (e.g., whether the employees have designated a particular organization as their bargaining agent). A change

the merger was willingly accepted by both locals and no bargaining unit members filed a complaint in this regard. (See R&R at p. 22).

With regard to the Petitioner's request for name change and consolidation, the Hearing Examiner stated that "the Bureau of Repairs and Improvements became a part of FOMA under DPS, later moved to OPM, now resides in DRES, and that AFGE, Local 631 has represented its trade workers continuously through the various moves for more than two decades.... There is no question of continuity in representation here." (R&R at p. 23). The Petitioner seeks a name change to reflect the Respondents' multiple reorganizations. The Respondents contend that the DRES Project Manager position should be excluded from the unit alleging that such positions are aligned with management. The Hearing Examiner found that the record does not support a finding that the DRES Project Manager position is managerial in nature and thus should not be excluded from the bargaining unit. (See R&R at p. 23). The Hearing Examiner found no evidence that any of the incumbents occupying the Project Manager position "operate with virtual autonomy with respect to analyzing, evaluating, and effectively recommending action to be taken concerning broad agency policy objectives and program goals." (R&R at p. 24).

III. The Hearing Examiner made the following recommendations:

1. The Petitioner has met its burden of demonstrating a community of interest among employees represented by AFGE, Local 631 and those represented previously by AFGE, Local 3871 and no change has occurred in the continuity of the post-affiliation union with the pre-affiliation union. Therefore, the Board should grant the petition, as follows:

AFGE, Local 631 is recognized as the exclusive representative of:

- [a] All employees in the District of Columbia Office of Planning; excluding management officials, supervisors, confidential employees, employees engaged in personnel work in other than clerical capacities and employees engaged in administering the provisions of Title XVIII of the CMPA of 1978, *as amended*; and,
- [b] All employees in the District of Columbia Office of Zoning; excluding management officials, supervisors, confidential employees, employees engaged in personnel work in other than clerical capacities and employees engaged in administering the provisions of Title XVIII of the CMPA of 1978, *as amended*; and

in the identity of the representative that does not raise a question concerning representation may include a change in the name of the labor organization.

- [c] All employees in the Energy Office of the District of Columbia Department of Environment; excluding management officials, supervisors, confidential employees, employees engaged in personnel work in other than clerical capacities and employees engaged in administering the provisions of Title XVIII of the CMPA of 1978, *as amended*; and,
- [d] All employees in Fleet Management Administration, Department of Public Works, and all unrepresented non-professional employees, in the Administrative Services Branch, Office of Management Services in the Department of Public Works; excluding management officials, supervisors, confidential employees, employees engaged in personnel work in other than clerical capacities and employees engaged in administering the provisions of Title XVIII of the CMPA of 1978, *as amended*; and
- [e] All professional and non-professional employees in the District Department of Transportation Office of Contracting and Procurement and Administrative and Management Support Services, Office Integrity and Compliance; excluding management officials, supervisors, confidential employees, employees engaged in personnel work in other than clerical capacities and employees engaged in administering the provisions of Title XVIII of the CMPA of 1978, *as amended*; and,
- [f] All employees in the Mail Services in the Department of Real Estate Services, Facilities Division, Facilities Management; and for all professional and non-professional employees in the Department of Real Estate Services Facilities Division – Operations and Facilities Division - Facilities Management Areas I, II, II, IV, and V; Facilities Division Building Maintenance Operations, Areas I, II, IV and V; and Building Maintenance – DC Warehouse formerly employed in the Office of Property Management, Facilities Operation Maintenance Administration (FOMA), including positions of Secretary, mail Assistant, maintenance Mechanic, Electrician, Electrical Worker, Plumber, Pipefitter, A/C Equipment Mechanic, Locksmith Leader, Locksmith, Carpenter Leader, Carpenter, Wood Crafter, Masonry Worker, Sheet Metal Worker, Mechanic, Welder; in the Department of Real Estate Services, the Construction Division, for all professional employees (including civil engineer, mechanical engineers, electrical

engineer, general engineer, structural engineer and architect) and non-professional (including civil engineering technician, program manager, clerical and other support staff), formerly employed in the Office of Property Management, Capital Construction Services Administration (CCSA); and for all employee in the Contracts Unit, Department of Real Estate Services, Facilities Division, Excluding management officials, supervisors, confidential employees, employees engaged in personnel work in other than clerical capacities and employees engaged in administering the provision of Title XVIII of the CMPA of 1978, *as amended*.

2. There being no opposition to granting the petition insofar as the petitioner asserts that Certification of Representation No. 24 no longer is an appropriate consolidated bargaining unit due to reorganizations within the District of Columbia Government, the Board should grant the petition, as follows:

AFGE, Local 1975 is recognized as the exclusive representative of all non-professional District Service (DS) and Wage Grade (WG) employees within the Department of Public Works, except Fleet Management Administration and the Office of Management Services, Administrative Services Branch, who previously were assigned to bargaining units within DPW AFGE, Local 1975 on July 23, 1984 in Certification of Representation No. 24 as follows:

- [a] Non-professional DS employees granted recognition on May 3, 1972, in the Department of Highways and Traffic including Bureau of Construction and Maintenance; Design Engineering and Research; Traffic Engineering and Operation; and Office of Planning and Programming and Business Administration; and now in the Department of Transportation in Bureaus of Construction and Maintenance; Design, Engineering and Research; Traffic Engineering and Operations; and Office of Transportation Policies and Plans; and Office of Controller; excluding management officials, supervisors, confidential employees, employees engaged in personnel work in other than clerical capacities and employees engaged in administering the provisions of Title XVIII of the CMPA of 1978, *as amended*; and
- [b] All Wage Grade employees granted exclusive recognition on June 2, 1967 in the Department of Highways and Traffic, including Bureaus of Construction and