

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:)	
)	
University of the District of Columbia,)	
)	PERB Case No. 10-UM-01
Petitioner,)	
)	Opinion No. 1352
v.)	
)	
American Federation of State, County,)	
& Municipal Employees, District 20, Local 2087,)	
)	
Respondent.)	
)	

DECISION AND ORDER

I. Statement of the Case

Petitioner University of the District of Columbia (“Petitioner” or “UDC”) filed the instant Petition for Modification of Bargaining Unit (“Petition”), asking the Public Employee Relations Board (“Board”) to “modify the Bargaining Agreement/Compensation Units 1 and 2” by “remov[ing] itself and the non-faculty bargaining unit represented by Local 2087 from this multi-agency/multi-union Compensation Bargaining Unit.” (Petition at 1, 3). Respondent American Federation of State, County, and Municipal Employees, District 20, Local 2087 (“Respondent” or “Union”) filed an Opposition (“Opposition”) and a Motion to Dismiss Petition for Modification of Bargaining Unit (“Motion”). UDC opposed the Motion. (“Opposition to Motion”).

On October 19, 2010, Hearing Examiner Lois Hochhauser conducted a hearing on the instant matter. In her Report and Recommendation (“Report”), the Hearing Examiner determined that the Petition should be dismissed, and she recommended that the Board grant the Union’s request for costs. (Report at 13). The Report is now before the Board for disposition.

II. Discussion

A. Findings of Fact

Respondent is the certified bargaining representative of non-faculty educational services employees and career service employees at UDC. (Report at 4). Prior to February 4, 2005, the bargaining unit members belonged to Compensation Unit 15. *Id.* On February 4, 2005, the Board granted a joint petition filed by the Government of the District of Columbia, UDC, and the Union, requesting that Compensation Units 1 and 15 be consolidated. *Id.*

The bargaining unit members represented by the Union share job classifications with other Compensation Unit 1 members at other D.C. government agencies. (Report at 5). The D.C. Office of Labor Relations and Collective Bargaining negotiates on behalf of all agencies in Compensation Unit 1, including UDC. *Id.* Respondent and Petitioner are parties to the Compensation Collective Bargaining Agreement between the District of Columbia and the Labor Organizations representing Compensation Units 1 and 2 (Effective through Fiscal Year 2010). *Id.*

On April 13, 2010, UDC informed the Union that UDC “formally withdraws effective immediately from joint collective bargaining regarding Compensation Units 1 and 2.” *Id.* UDC requested the Union consent to the withdrawal and commence negotiating a collective bargaining agreement directly with UDC. *Id.* The Union had previously declined an informal request to agree with UDC’s proposed actions. *Id.* UDC did not participate in any of the Compensation Unit 1 and 2 negotiations in 2010. (Report at 6).

B. Unit Modification

UDC stated that it seeks to withdraw from the multi-employer bargaining arrangement of Compensation Units 1 and 2, and instead bargain directly with the Union on compensation issues related to bargaining unit members. (Report at 6). UDC contended that its membership in Compensation Unit 1 is consensual, so it should be able to withdraw from Compensation Unit 1 as long as it does so before negotiations for a new contract are set. *Id.* UDC relied on National Labor Relations Board (“NLRB”) precedent to support this assertion. *Id.* Further, UDC alleged that as an agency with independent personnel and compensation bargaining authority, it meets the Board’s criteria to negotiate compensation matters independently. *Id.* UDC witnesses testified that UDC requires independence from Compensation Unit 1 in order to have the “flexibility” necessary to meet “its own policy objectives and mission.” *Id.*

The Union contended that the parties considered this issue in 2004, when they jointly requested the Board merge Compensation Unit 15 with Compensation Unit 1. (Request at 8). Further, the Union alleged that nothing has changed to justify removing the bargaining unit from Compensation Unit 1. *Id.* UDC’s Enabling Act has not changed with regard to personnel matters since 2002, and removing the bargaining unit from Compensation Unit 1 would reinstate the problems that prompted the parties to merge the compensation units in 2004. (Report at 9).

Further, the Union rejected UDC's reliance on NLRB precedent as "directly contradictory to the statutory terms of the Comprehensive Merit Personnel Act ("CMPA")." (Report at 8).

The Hearing Examiner acknowledged the statutory requirements for compensation units set forth by CMPA, specifically that "the Board shall authorize broad units of occupational groups so as to minimize the number of different pay systems or schemes." D.C. Code § 1-617.16(b). In her analysis of the issue, the Hearing Examiner considered the Board's two-pronged approach to determining whether a compensation unit is appropriate: first, whether the employees in the proposed unit are in broad occupational groups, and second, whether the proposed unit will minimize the number of pay systems in use. (Report at 9) (*citing American Federation of Government Employees, Local Union 1403 v. District of Columbia Government*, __ D.C. Reg. __, Slip Op. No. 806, PERB Case No. 05-CU-02 (2005)). She further noted that single-agency compensation units do not confirm with the requirement for "broad occupational groups" unless there is clear statutory authority for establishing a separate compensation unit, or where there are unique pay schedules. (Report at 9) (*citing International Brotherhood of Teamsters, Local 246 v. D.C. Department of Corrections*, 34 D.C. Reg. 3495, Slip Op. No. 152, PERB Case No. 85-RC-07 (1987); *D.C. Water and Sewer Authority v. American Federation of Government Employees, et al.*, Slip Op. No. 1308, PERB Case Nos. 96-UM-07, 07-UM-01, 07-UM-03, and 07-CU-01(August 15, 2012); *Service Employees International Union, Local 722 v. D.C. Department of Human Services/Home Services Bureau*, 48 D.C. Reg. 8493, Slip Op. No. 383, PERB Case No. 93-R-01 (1994)).

In applying Board precedent to the instant case, the Hearing Examiner concluded that UDC presented no statutory authority to merit removing the bargaining unit from Compensation Unit 1, and that UDC failed to establish that its mission and objectives would be undermined or destroyed by remaining in Compensation Unit 1. (Report at 11). Calling UDC's reliance on private sector and NLRB precedent "misplaced," the Hearing Examiner held that the CMPA "expressly makes compensation unit certification a matter of law, not contract." *Id.* The Hearing Examiner recommends that the Board dismiss the Petition. *Id.*

The Board will affirm a hearing examiner's findings if they are reasonable and supported by the record. *See American Federation of Government Employees, Local 872 v. D.C. Water and Sewer Authority*, Slip Op. No. 702, PERB Case No. 00-U-12 (March 14, 2003). Pursuant to Board Rule 520.14, the Board finds the Hearing Examiner's conclusions and recommendations to be reasonable and supported by the record. Therefore, the Board adopts the Hearing Examiner's conclusion on this issue, and the Petition is dismissed.

C. Request for Costs

The Union seeks an award of the costs incurred in defending against the Petition. (Request at 11). The Hearing Examiner concluded that UDC's claim was without merit, and that its actions, while not taken in bad faith, had the foreseeable impact of undermining the Union's position with its members. (Report at 12). Particularly important to the Hearing Examiner was the fact that "UDC made it clear to the Union, and thus its members, that it would not participate

in negotiations, and in fact it did not participate in negotiations. This would reasonably undermine the faith of bargaining unit members in [their] exclusive representative.” *Id.*

The Board finds that the Hearing Examiner’s conclusion is reasonable and supported by the record, as well as consistent with Board precedent. Therefore, the Board adopts the Hearing Examiner’s recommendation, and awards reasonable costs to the Respondent.

Thus, the Board adopts the Hearing Examiner’s Report, the Petition is dismissed, and UDC is ordered to pay reasonable costs to the Union.

ORDER

IT IS HEREBY ORDERED THAT:

1. The University of the District of Columbia’s Petition for Modification of Bargaining Unit is dismissed.
2. The University of the District of Columbia will pay the Union’s reasonable costs in defending against the Petition for Modification of Bargaining Unit.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

January 2, 2013

CERTIFICATE OF SERVICE

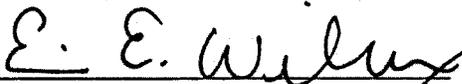
This is to certify that the attached Decision and Order in PERB Case No. 10-UM-01 was transmitted to the following parties on this the 2nd day of January, 2013.

Mr. Gary Lieber
Ford & Harrison, LLP
1300 19th St., NW, Ste. 700
Washington, DC 20036

U.S. MAIL & E-MAIL

Ms. Melinda Holmes
O'Donnell, Schwartz & Anderson, PC
1300 L St., NW, Ste. 1200
Washington, D.C. 20005

U.S.MAIL & E-MAIL


Erin E. Wilcox, Esq.
Attorney-Advisor