

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:)	
)	
National Association of Government)	
Employees, Local R3-05)	
)	
Petitioner)	PERB Case Nos: 15-UM-01
)	15-CU-02
and)	
)	
Metropolitan Police Department)	Opinion No. 1519
)	
and)	
)	
Department of Forensic Sciences)	
)	
Respondents)	
)	
_____)	

**DECISION AND ORDER ON UNIT MODIFICATION
AND COMPENSATION UNIT DETERMINATION**

I. Statement of the Case

On October 23, 2014, the National Association of Government Employees, Local R3-05 filed a unit modification petition and a petition for a compensation unit determination for a group of employees who were transferred from the Metropolitan Police Department ("MPD") to the Department of Forensic Sciences ("DFS").¹ A Notice was posted at MPD and DFS. No objections or requests to intervene were received from any employees or labor organizations.²

¹ The Board certified NAGE Local R3-05 as the exclusive representative for the affected employees when they were employed at MPD. *District of Columbia Board of Labor Relations*, Case No. 0R002 (December 14, 1979).
² MPD did not submit any comments to the petitions.

On March 2, 2015, NAGE and DFS submitted a Joint Letter of Agreement, stating that the parties agreed to all the claims made in the unit modification and compensation unit determination petitions.³ For the reasons stated below, the Board grants the petitions.

II. Background

On December 14, 1979, NAGE Local R3-05 was certified as exclusive representative of:

All non-professional employees of the Metropolitan Police Department excluding wage grade employees of the Property Division and the Fleet Management Division, management executives, confidential employees, supervisors or any employee engaged in personnel work in other than a purely clerical capacity.⁴

These employees were placed in Compensation Unit 1.⁵

In 2011, the Department of Forensic Sciences was established as an agency “to provide high-quality, timely, accurate, and reliable forensic science services....”⁶ D.C. Official Code § 5-1501.08(a) provides for “the orderly transfer to the Department [of Forensic Sciences] all of the authority, responsibilities, duties, assets, and functions of MPD pertaining to forensic science services, including ... personnel and authority for vacant and filled positions....”⁷ On October 1, 2012, employees in MPD’s fingerprint comparison and firearms departments were transferred to DFS.⁸ On October 1, 2013, employees in MPD’s DNA analysis, trace analysis, and computer forensics were transferred to DFS.⁹

III. Discussion

NAGE Local R3-05 requests the Board to modify the above-described unit to reflect the transfer of employees from MPD to DFS. NAGE Local R3-05 proposes the following bargaining unit at DFS:

All non-professional employees of the Department of Forensic Sciences, excluding employees in the Public Health Laboratory, managers, supervisors, confidential employees, or any employee engaged in personnel work in more 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.

³ DFS submitted comments, but withdrew its comments when it submitted the Joint Letter of Agreement.

⁴ *District of Columbia Board of Labor Relations*, Case No. 0R002.

⁵ Petition at 4.

⁶ D.C. Official Code § 5-1501.02(b).

⁷ D.C. Official Code § 5-1501.08(b) provided that the transfers occur not later than October 1, 2012.

⁸ Petition at 4.

⁹ *Id.*

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In the Joint Letter of Agreement, the parties agreed “that a modified order to reflect the change in identity of the employing agency is made necessary by the transfer of employment positions formerly under the authority of the Metropolitan Police Department (MPD) to the new Department of Forensic Sciences.”¹⁰ During a conference call with PERB staff, DFS and NAGE Local R3-05 stated that the parties have continued to operate under the same collective bargaining agreement, as when the affected employees were employed at MPD.

Board Rule 504.1(a) provides that a unit modification may be sought “[t]o reflect a change in the identity or statutory authority of the employing agency.” Further, the Board has held that “when the functional role and employees of a public employer/agency are transferred to a new entity established to perform in the same capacity, ... the new agency is not a new employer for the purposes of collective bargaining.”¹¹ The basis for the requested modification is the statutory creation of DFS and the transfer of employees from MPD to DFS. The parties do not dispute that the employees continue to share common working conditions, organizational structure, and supervision. DFS and NAGE Local R3-05 continue to operate under the collective bargaining agreement that covered the affected employees when they were employed by MPD. Based on these factors, the Board finds that the employees in the unit, as modified, meet the community of interest criteria for finding an appropriate unit under D.C. Official Code § 1-617.09(c).¹² The Board finds that the modified unit will continue to promote effective labor relations and efficiency of agency operations. The requested modification does not give rise to a question concerning the representation of the unit that would necessitate an election. Therefore, the Board concludes for the foregoing reasons that the modified unit is appropriate for collective bargaining with DFS.

As the Board has determined that the unit is appropriate for non-compensation bargaining, the Board considers the petition for compensation unit determination for the employees in the modified unit. 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.

¹⁰ Joint Letter of Agreement at 2.

¹¹ *American Federation of State, County and Municipal Employees, District Council 20 and Local 2921 v. D.C. Public Schools & Office of the State Superintendent of Education*, 60 D.C. Reg. 16499, Slip Op. No. 1440, PERB Case No. 13-U-09 (2013).

¹² See *D.C. Department of Public Works and American Federation of Government Employees, Local 631*, Slip Op. No. 614, PERB Case Nos. 99-UM-06 & 99-UCN-04, for factors that the Board considers for modification of unit.

The Board recognizes a two-part test from this provision to determine an appropriate compensation unit: (1) the employees of the proposed unit comprise broad occupational groups; and (2) the proposed unit minimizes the number of different pay systems or schemes.¹³

In the petition and the Joint Letter of Agreement, the parties assert that Compensation Unit 1 is the appropriate unit for compensation bargaining.¹⁴ The description of Compensation Unit 1 is:

Compensation Unit 1 – Consisting of all career service professional, technical, administrative and clerical employees who currently have their compensation set in accordance with the District Service (DS) 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.

The parties state the employees are currently compensated under Compensation Unit 1. In addition, the parties do not dispute that the employees fall within broad occupational groups included in Compensation Unit 1. The parties also do not dispute that incorporating the employees into Compensation Unit 1 will result in fewer pay systems. The Board finds that its two-prong test has been satisfied and grants the Petition for Compensation Unit Determination.

ORDER

IT IS HEREBY ORDERED THAT:

1. The non-compensation unit for which NAGE Local R3-05 is certified as the exclusive representative in District of Columbia Board of Labor Relations, Case No. 0R002, is modified and will be described as set forth below. Nothing in this Order is to be construed as altering the scope of the bargaining unit except in the manner discussed in this Decision.

Unit Description:

All non-professional employees of the Department of Forensic Sciences, excluding employees in the Public Health Laboratory, managers, supervisors, confidential employees, or any employee engaged in personnel work in more than a purely clerical capacity and employees

¹³ *AFSCME, D.C. Council 20, Local 2401 v. D.C. Pub. Schs.*, 59 D.C. Reg. 4954, Slip Op. No. 962 at p. 3, PERB Case No. 08-CU-01 (2009).

¹⁴ Petition at 5.

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engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

2. The employees in the above-described unit are placed in Compensation Unit 1.
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, Member Ann Hoffman, Member Keith Washington and Member Donald Wasserman. Member Yvonne Dixon was not present.

Washington, D.C.

April 24, 2015

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order and Certification in PERB Case No. 15-UM-01/15-CU-02 was served to the following parties via File & ServeXpress on this the 30th day of April 2015:

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