

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:)

American Federation of Government Employees,)
Local 2725,)

Petitioner,)

and)

District of Columbia Department of)
Consumer and Regulatory Affairs,)

Respondent.)

PERB Case No. 02-RC-06

Opinion No. 743

DECISION ON UNIT DETERMINATION

The American Federation of Government Employees, Local 2725 (“AFGE” or “Petitioner”), filed a Recognition Petition (“Petition”) in the above-captioned proceeding. AFGE seeks to represent for purposes of collective bargaining, a proposed unit of seven attorneys employed by the District of Columbia Department of Consumer and Regulatory Affairs, Office of Compliance (“DCRA” or “Respondent”). The Petition was accompanied by authorization cards signed by each of the attorneys in the proposed unit, a roster of the Petitioner’s Officers, and a copy of the Petitioner’s Constitution and Bylaws, as required by Board Rules 502.2 and 502.1(d).

On October 30, 2002, DCRA, through its representative Office of Labor Relations and Collective Bargaining (“OLRCB”), objected to the proposed unit on the ground that the DCRA is a subordinate Agency under the District of Columbia Legal Services Act (“LSA”).¹ In making its objection, OLRCB asserted that a city-wide unit of all subordinate agency attorneys is the only

¹ The District of Columbia Legal Services Act is codified at D.C. Code §1-608.51-62, Subchapter VIII-B. (2001 ed.). This Act establishes “within the District government a Legal Service for independent and subordinate agencies to ensure that the law business of the District government is responsive to the needs, policies and goals of the District and is of the highest quality.”

appropriate unit for their representation. After a preliminary investigation into this matter, the Board's Executive Director, referred this matter to a Hearing Examiner in order to determine what the appropriate unit should be.² A hearing was scheduled for January 30, 2003.

The day before the scheduled hearing, the original parties to this proceeding, along with the District of Columbia Office of Corporation Counsel ("OCC") and other "subordinate" agencies, filed a document styled "Joint Stipulation for Exclusive Non compensation Unit Determination" ("Joint Stipulation").³ In this Joint Stipulation, the named parties agreed upon and suggested that the appropriate unit for representation be the following: "[all] attorneys within the Legal Service who come within the personnel authority of the Mayor...excluding attorneys employed exclusively by the OCC."⁴ (R & R at p.2).

The hearing in this matter convened on January 30, 2003. Upon consideration of the Joint Stipulation, the Hearing Examiner concluded that additional information and legal argument was required before she could make an informed recommendation as to the appropriateness of the stipulated city-wide unit.⁵ After reviewing the parties' submissions, relevant Board precedent and other information gathered during the proceeding, the Hearing Examiner concluded that a multi agency unit is appropriate and permissible.⁶

² Normally, non compensation units are comprised of one unit at one agency, instead of multi-agency units. As a result, further investigation was needed in order to determine whether a proposed city wide unit of attorneys was a unique situation.

³ By their Joint Stipulation, the parties requested that the Board issue a Decision and Order finding the city-wide unit appropriate and order an election for that unit, absent a petition for intervention by any other labor organization. In addition, the Joint Stipulation requested that a revised list of potential unit employees be prepared.

⁴The Joint Stipulation also named each of the agencies, other than DCRA, that were to be included in the unit. As a result, they assumed the position of Respondents in this matter through their representative, OLRCB, even though they were not named as Respondents in the original filing of this matter.

⁵After the hearing concluded, the parties agreed to provide additional submissions concerning the issue no later than February 26, 2003 and to be available for a follow up teleconference once their submissions were in. The follow up teleconference was held on March 7, 2003 and the parties were asked to submit further information concerning the number of affected employees and the lines of supervision. OLRCB submitted the requested information on March 26, 2003 and the record closed.

⁶ D.C. Code §1-617.09(a) provides, in pertinent part, that the determination of an appropriate unit will be made on a case by case basis. In reviewing the appropriateness of this

No other party sought to intervene and no additional comments were received.⁷ The Hearing Examiner's Report and the Joint Stipulation are before the Board for disposition.

In her report, the Hearing Examiner is recommending that the: (1) Unit proposed by the parties' Joint Stipulation be accepted by the Board and (2) Board find that the proposed multi agency unit is an appropriate unit.⁸ There were no exceptions filed concerning the Hearing Examiner's Report.

AFGE seeks to represent the following proposed unit:

All attorneys within the Legal Service who come within the personnel authority of the Mayor of the District of Columbia, excluding attorneys employed exclusively by the Office of the Corporation Counsel, management officials, supervisors, confidential employees, employees engaged in personnel work in other 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.

Board Rule 502.2. provides in pertinent part that, a "petition for exclusive recognition shall be accompanied by proof, not more than one (1) year old, that at least thirty percent (30%) of the

proposed unit, the Hearing Examiner found that the Board's Rules and case precedent do not prohibit the establishment of terms-and-conditions (non compensation) units that cut across agency lines. See, Doctors Council of the District of Columbia and District of Columbia Government, 33 DCR 3912, Slip Op. No. 139, PERB Case No. 84-R-12 (1986). In fact, in Doctors Council of the District of Columbia and District of Columbia Government, the Board found that a unit of physicians, dentists and podiatrists employed in the Department of Human Services and the Department of Corrections was appropriate. Id. In a later case, the Board modified its earlier certification to include physicians employed by the Department of Public Works. See, Doctors Council of the District of Columbia and District of Columbia Government, et.al., 41 DCR 1593, Slip Op. No. 298, PERB Case No. 92-R-01 (1992). On this basis, the Hearing Examiner concluded that a unit of attorneys from different independent agencies would be appropriate. In view of the above, we find that the Hearing Examiner's finding on this issue is reasonable and consistent with Board precedent. Therefore, we adopt the Hearing Examiner's conclusion that a multi agency unit is appropriate.

⁷ A representative of AFGE, Local 1403, the exclusive representative for attorneys employed by OCC, attended the January 30, 2003 hearing and was given an opportunity to file an intervention petition. However, the representative failed to make a submission.

⁸In her decision, the Hearing Examiner stated that she concludes that "the totality of the circumstances establish a community of interest among nonsupervisory attorneys employed at the subordinate agencies". (R & R at pg. 9). In addition, she concluded that "a city-wide unit would promote effective labor relations and efficiency of agency operations." (R & R at pg. 9).

employees in the proposed unit desire representation by the Petitioner.” The Original Petition was supported by a showing that at least 30% of the attorneys at DCRA desired to be represented by AFGE, Local 2725. However, the Joint Stipulation and request was not accompanied by any additional showing of interest, which would constitute a 30% showing of interest for the larger proposed unit.⁹ In light of the above, AFGE has not yet met the showing of interest requirement of Board Rule 502.2.

Our review of the Joint Stipulation, Hearing Examiner’s Report, parties’ supplemental submissions, and exhibits reveal the following concerning the proposed consolidated unit. The proposed unit consists of the following employee positions: “all attorneys within the Legal Service who come within the personnel authority of the Mayor...excluding attorneys employed exclusively by the Office of the Corporation Counsel.” Under the terms of the Joint Stipulation, in addition to DCRA, subordinate agencies would include: the Office of Cable Television and Telecommunications; Department of Corrections; Department of Health; Department of Employment Services; Department of Public Works; Department of Insurance and Securities Regulation; Department of Human Services; Office of Contracts and Procurement; Office of Banking and Financial Institutions; Office of the Chief Medical Examiner; Alcoholic Beverage Regulation Administration, and the Department of Parks and Recreation. Although the attorneys in this proposed unit are assigned to the General Counsel’s offices of different subordinate agencies, they still have reporting responsibility to the OCC. As noted earlier in footnote 6, we find that the Hearing Examiner’s finding that the proposed multi agency unit is appropriate is reasonable and consistent with Board precedent. In view of the above, we adopt the Hearing Examiner’s finding on this issue.

D.C. Code §1-617.09(a) (2001 ed.), requires that a community of interest exist among employees in order for a unit to be found appropriate by the Board for collective bargaining over terms and conditions of employment. An appropriate unit must also promote effective labor relations and efficiency of agency operations.

In this case, the Hearing Examiner found that subordinate agency attorneys share many indicia of the community of interest required by D.C. Code §1-617.09(a). For instance, they share common skills and common supervision at one step removed from their immediate supervisors. In addition, they are subject to common control¹⁰, common standards and common objectives for the

⁹Based on the preliminary evidence submitted in response to the Hearing Examiner’s inquiries, this unit would cover 15 agencies and approximately 50 positions.

¹⁰According to the “Respondents’ Position Paper Concerning the Appropriate Unit” (“Respondents’ Position Paper”), as supported by an affidavit from Darryl Gorman, OCC exercises authority in the hiring, firing, and disciplining process, as well as performance evaluations, reduction-in-grade, and incentive awards. (Respondents’ Position Paper at pgs. 8-

performance of their work¹¹. The Board has held that common overall supervision is probative of community of interest and "some dissimilarity among positions" need not preclude a finding of appropriateness where under the total circumstances, a general community of interest prevails. See, Washington Teachers' Union, Local 6, AFT-AFL-CIO and Public Schools of the District of Columbia, 29 DCR 1048, Slip Op. No. 34 at p.2, PERB Case No. 80-R-09 (1982); District 1199E-DC, National Union of Hospital and Health Care Employees, Service Employees International Union and Department of Human Services Commission of Public Health, 39 DCR 8651, Slip Op. No. 298 at p.4, PERB Case No. 91-R-01 (1992); and Committee of Interns and Residents and D.C. General Hospital Commission, 37 DCR 737, Slip Op. No. 237, PERB Case No. 89-R-02 (1990). The Hearing Examiner also indicated that she was not troubled by the differences in work locations because the Board has often found appropriate units that include employees at different locations throughout the city.¹² (R & R at pg. 9).

We believe that the Hearing Examiner's finding on this issue is reasonable and consistent with Board precedent. As a result, we conclude that sufficient factors exist for the Board to find that these employees share a community of interest. Finally, there is no collective bargaining agreement in effect covering any of these employees. In view of the above, we find that the proposed unit would promote effective labor relations and the efficiency of agency operations.

Regarding the question of representation, we believe that the proposed unit listed above is an appropriate unit for a representation election. However, at this time, no election can be ordered in this case because no labor organization has presented a recognition petition supported by an adequate showing of interest. Therefore, in this case, it would remain for AFGE or any other interested labor organization to file a recognition petition supported by an adequate showing of interest. Only after those submissions are received can the Board make a showing of interest determination and order that an election be held in accordance with the provisions of D.C. Code §.1-617.10 (2001 ed.) and Board Rules 510-515, in order to determine whether or not all eligible

11). Mr. Gorman is the Senior Deputy Corporation Counsel, whose primary area of responsibility is the supervision of Agency Counsel working in various subordinate agencies of the District of Columbia. (Respondents' Position Paper at pgs. 8-11).

¹¹The Attorneys' methods of drafting regulations, legislation and opinions, are generally similar and circumscribed by the requirements established by the OCC. (See, R & R at p. 9)

¹²The Hearing Examiner points to examples of teachers and police officers who are located at different places throughout the city; nevertheless, the Board certified the Unions to represent these individuals. See, e.g., Washington Teachers' Union, Local 6, AFT, AFL-CIO and Public Schools of the District of Columbia, 29 DCR 2358, Slip Op. No. 39, PERB Case No. 81-S-01 (1982); Fraternal Order of Police/Metropolitan Police Department Labor Committee and District of Columbia Metropolitan Police, 28 DCR 4608, PERB Case No. 81-R-05, Slip Op. No. 17 (1981).

employees desire to be represented by AFGE, Local 2725 or another labor organization for purposes of collective bargaining.

ORDER

IT IS HEREBY ORDERED THAT:

1. The following unit is an appropriate unit for collective bargaining over terms and conditions of employment:

All attorneys within the Legal Service who come within the personnel authority of the Mayor of the District of Columbia, excluding attorneys employed exclusively by the Office of the Corporation Counsel, management officials, supervisors, confidential employees, employees engaged in personnel work in other 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 2-139.¹³

2. The American Federation of Government Employees, Local 2725 and any other interested labor organization who desires to represent the above noted unit, is hereby notified by the Board that it is to file a recognition petition supported by the appropriate showing of interest in order to represent this unit and prior to any election being ordered.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

March 31, 2004

¹³We note that the Board has already certified one unit of attorneys at the D.C. Public Services Commission, an independent Agency. See, American Federation of Government Employees, AFL-CIO and Public Service Commission of the District of Columbia, Certification No. 124, PERB Case No. 02-RC-04 (December 2002). As a result, the proposed unit does not include attorneys who are currently employed at the Public Service Commission of the District of Columbia.

CERTIFICATION OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 02-RC-06 was served via Fax and U.S. Mail to the following parties on this 31st day of March 2004.

Lola Reed
Business Agent
AFGE, Local 2725
P. O. Box 75960
Washington, D.C. 20013

FAX & U.S. MAIL

Walter Wojcik, Esq.
Supervisory Labor Relations Specialist
Office of Labor Relations
and Collective Bargaining
441 4th Street, N.W.
Suite 820 North
Washington, D.C. 20001

FAX & U.S. MAIL

Courtesy Copy:

Eric Bunn, President
AFGE, Local 2725
P.O. Box 75960
Washington, D.C. 20013-5960

U.S. MAIL

David Clark, Director
Department of Consumer
and Regulatory Affairs
941 North Capitol Street, N.E.
Washington, D.C. 20002

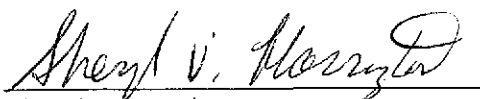
U.S. MAIL

Carmel P. Ebb, Hearing Examiner
4532 Broad Branch Road, N.W.
Washington, D.C. 20008

U.S. MAIL

Mary Leary, Director
Office of Labor Relations
and Collective Bargaining
441 4th Street, N.W.
Suite 820 North
Washington, D.C. 20001

U.S. MAIL



Sheryl V. Harrington
Secretary