

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**

National Association of Government Employees	)	
	)	
	)	
Petitioner	)	
	)	PERB Case No. 25-UC-01
and	)	
	)	Opinion No. 1953
District of Columbia Office of the Chief Medical Examiner	)	
	)	
Respondent	)	
	)	

DECISION AND ORDER

I. Statement of the Case

On May 6, 2025, the National Association of Government Employees (NAGE) filed a second amended¹ petition (Petition) for clarification of a bargaining unit—established in Certification No. 166—at the District of Columbia Office of the Chief Medical Examiner (OCME). NAGE seeks clarification of that unit to include Fatality Review Program Specialists (FRP Specialists), who work within the Fatality Review Division at OCME. NAGE asserts that the FRP Specialists are appropriate for inclusion in the unit as they are nonprofessional employees who do not fall within any of the exclusions set forth in the existing certification. On May 30, 2025, OCME filed a response, opposing the Petition on the grounds that the FRP Specialists are professional employees responsible for performance oversight of some current unit members, thereby creating a conflict of interest.²

On November 18, 2025, PERB held a hearing on this matter. On February 18, 2026, the Hearing Examiner issued a Report and Recommendations (Report), advising the Board to find that FRP Specialists are professional employees and therefore, pursuant to D.C. Official Code § 1-617.09(b)(5), cannot be included in the unit of nonprofessional employees established under Certification No. 166.³ Neither party filed exceptions.

¹ The amended petition cured deficiencies identified in the initial petition, filed April 7, 2025, and the first amended petition, filed April 8, 2025.

² Report at 2.

³ Report at 18.

For the reasons stated herein, the Board adopts the Hearing Examiner's Report and Recommendations.

II. Hearing Examiner's Report and Recommendations

A. Hearing Examiner's Factual Findings

The Hearing Examiner made the following factual findings. On March 21, 2019,⁴ PERB issued Certification No. 166, establishing a bargaining unit of all nonprofessional employees at OCME, excluding all management officials, supervisors, confidential employees, employees engaged in personnel work in other than a clerical capacity, and employees engaged in administering the provisions of the Comprehensive Merit Personnel Act (CMPA).⁵

Within OCME, the Fatality Review Division conducts monthly meetings regarding deaths among sensitive populations living in the District of Columbia, including infants, children, maternal, opioid, and deaths from violence.⁶ The meetings are attended by personnel from the District of Columbia Department of Health, the District of Columbia Fire and Emergency Medical Services Department, the District of Columbia Child and Family Services Agency, the District of Columbia Council, managed care organizations, and various physicians.⁷

Prior to the monthly review meetings, FRP Specialists contact various bodies to obtain behavioral health records, autopsies, police reports, medical reports and other pertinent information regarding cause of death.⁸ FRP Specialists analyze the fatality case information and consult with their supervisor—the Supervisory Fatality Review Program Manager (Program Manager)—for input, judgment, and feedback as to the amount of information to put in the reports.⁹ The Program Manager reviews the case information and provides a final report to the FRD committees¹⁰ and boards before the monthly meetings.¹¹ The Program Manager uses their discretion to determine what information is included in the report, and occasionally attends monthly meetings.¹²

Regarding the qualifications needed to become an FRP Specialist, a recent vacancy announcement for the position noted that, at a minimum, applicants must have attained an education above the high school or specialized level, but do not need to possess licensure or a certification.¹³ The position description for the role does not indicate that a college degree or any

⁴ The Report inaccurately states that Certification No. 166 was issued on March 19, 2021. However, this minor error is inconsequential to the instant determination.

⁵ Report at 2.

⁶ Report at 5.

⁷ Report at 5.

⁸ Report at 6. The various bodies include the District of Columbia Metropolitan Police Department, Department of Health and the District of Columbia court system.

⁹ Report at 6.

¹⁰ The five FRD committees are the Child Fatality Review Committee and Infant Mortality Review Sub-Committee; the Developmental Disabilities Fatality Review Committee; the Violence Fatality Review Committee; the Maternal Mortality Review Committee; and the Opioid Fatality Review Board.

¹¹ Report at 3-5.

¹² Report at 5-6.

¹³ Report at 7.

professional licenses or certifications are required.¹⁴ It does, however, include the classification code “0601,” which indicates the requirement of a bachelor’s degree, and candidates are asked about their educational backgrounds during the interview process.¹⁵ Many FRP Specialists hold college degrees, and they are advised to attend relevant training sessions related to their duties.¹⁶ The vacancy description for the role states that FRP Specialists are responsible “for planning and coordinating case reviews as required by the assigned fatality review committee,” as well as “for all activities required specifically for reviewing records and preparing comprehensive summaries of cases ranging from all causes and manners of deaths of decedents of all age ranges.”¹⁷ As stated in the vacancy announcement, the FRP Specialist role does not include supervisory duties.¹⁸ FRP Specialists do not provide any input regarding performance evaluations of other Agency employees. FRP Specialists are not responsible for hiring or disciplining employees at the Agency.¹⁹ FRP Specialists are not currently included in the bargaining unit.²⁰

The Fatality Review Division also includes Staff Assistants. According to the position description, the Staff Assistants have primary responsibility for “providing substantive administrative and management support work, requiring administrative and analytical skills; and the ability to research problems and issues.”²¹ Staff Assistants, like FRP Specialists, report to the Program Manager.²² FRP Specialists provide Staff Assistants with feedback regarding record collections.²³ Staff Assistants are currently included in the bargaining unit.²⁴

B. Hearing Examiner’s Recommendations

The issue before the Hearing Examiner was whether the FRP Specialists within the Fatality Review Division are eligible for inclusion in the NAGE bargaining unit, as defined in Certification No. 166.

At the hearing, NAGE contended that FRP Specialists are not supervisory employees under D.C. Official Code § 1-617.01(d)²⁵ because they do not have the authority to formally evaluate, hire, promote, discipline, or reward other OCME employees.²⁶ OCME asserted that FRP Specialists are, nonetheless, professional, as they provide performance feedback for Staff Assistants, which would create a conflict of interest were they to be included in the bargaining unit.²⁷ OCME contended that the work of FRP Specialists is intellectual and varied.²⁸ OCME also

¹⁴ Report at 4.

¹⁵ Report at 4.

¹⁶ Report at 4, 7 and 16.

¹⁷ Report at 4.

¹⁸ Report at 4 and 7.

¹⁹ Report at 5.

²⁰ Report at 4.

²¹ Report at 4.

²² Report at 3.

²³ Report at 6.

²⁴ Report at 5.

²⁵ Under D.C. Official Code § 1-617.01(d), an employee is supervisory only if they have the authority to hire, discipline, promote, reward, direct, or formally evaluate other employees using independent judgment.

²⁶ Report at 11.

²⁷ Report at 11.

²⁸ Report at 16-17.

argued that the position description classifies the role as professional, noting it is listed as “US OPM Job Family Standard for Professional Work in the Medical and Healthcare Group.”²⁹ NAGE acknowledged this fact but stated that nothing in the description indicates a professional license, certification, or graduate-level education is required.³⁰

The Hearing Examiner noted that, under the CMPA, a bargaining unit shall not be established if it includes both professional and nonprofessional employees, unless a majority of the professional employees vote or petition for inclusion in the unit.³¹ The Hearing Examiner found that FRP Specialists are not supervisory employees as they do not make formal recommendations in personnel decisions and do not assign work or handle matters regarding job performance of other OCME employees.³² The Hearing Examiner concluded that FRP Specialists do not perform any of the functions listed under D.C. Official Code § 1-617.01(d).³³ The Hearing Examiner found that while they may provide informal feedback, or note inconsistencies in certain work product prepared by Staff Assistants, formal personnel authority comes from the OCME supervisory staff.³⁴ The Hearing Examiner found that FRP Specialists do not assist in hiring and disciplining processes, do not write or contribute to formal evaluations of other employees, and do not have any authority regarding corrective action of other employees.³⁵ The Hearing Examiner determined that the FRP Specialists work in a collaborative environment as peers, and that OCME’s supervisors have authority over all performance management of the employees.³⁶ The Hearing Examiner found that this collaborative process does not create a conflict of interest warranting exclusion from the bargaining unit.³⁷

The Hearing Examiner concluded that while FRP Specialists are not supervisory employees, they fall under the Federal Labor Relations Authority’s (FLRA) definition of “professional employee.”³⁸ The Hearing Examiner relied on the FLRA standard, as there is no formal definition for a professional employee under the CMPA.³⁹ The Hearing Examiner

²⁹ Report at 14.

³⁰ Report at 14.

³¹ D.C. Official Code § 1-617.09(b)(5).

³² Report at 11.

³³ Report at 11.

³⁴ Report at 11.

³⁵ Report at 12.

³⁶ Report at 12.

³⁷ Report at 12.

³⁸ Report at 13. The FLRA uses the definition contained in 5 U.S.C. 7103 (15), which provides that a “professional employee” is “(A) an employee engaged in the performance of work- (i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in a performance of routine mental, manual, mechanical, or physical activities); (ii) requiring the consistent exercise of discretion and judgment in its performance; (iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and (iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or (B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A)(i) of this paragraph and is performing related work under appropriate discretion or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph.”

³⁹ Report at 13.

determined that the FRP Specialists analyze District deaths in an attempt to improve various systems, as well as prevent future fatalities, noting that their duties include taking substantial time to compile information and data for reports, thoroughly reviewing case details, and identifying patterns in the deaths.⁴⁰ The Hearing Examiner also observed that FRP Specialists work closely with the FRD committees, holding meetings with them, providing them extensive reports and analysis regarding the causes of the deaths as well as the involvement of various District services, and answering their questions.⁴¹ Additionally, the Hearing Examiner determined that FRP Specialists maintain autonomy over how they introduce cases at the monthly meetings, and that their supervisors typically provide minimal non-substantive feedback.⁴²

Regarding NAGE's argument that the position description does not include a professional degree or licensure requirement, the Hearing Examiner noted that a combination of specialized experience and education can meet the requirement of advanced knowledge to be considered a professional in a field.⁴³ The Hearing Examiner found that although the position description does not require that FRP Specialists hold an advanced degree, the position has an advanced knowledge requirement.⁴⁴ Further, the Hearing Examiner observed that the position is intellectual in nature, as FRP Specialists do extensive research, provide recommendations and advice to committee members at monthly meetings, and decide what information to provide to the FRD committees.⁴⁵ The Hearing Examiner also determined that the FRP Specialists' case review includes extensive analysis of risk factors and discussion associated with the deaths under review.⁴⁶

Applying the FLRA standard, the Hearing Examiner concluded that, based on the FRP Specialists' day-to-day responsibilities, duties, and educational requirements (as opposed to the position description), they are professional employees.⁴⁷ Thus, pursuant to D.C. Official Code § 1-617.09(b)(5), the Hearing Examiner deemed FRP Specialists ineligible for inclusion in the nonprofessional bargaining unit established under Certification No. 166, and recommended that the Board deny the Petition.

III. Discussion

The Board will adopt a hearing examiner's report and recommendations if they are reasonable, supported by the record, and consistent with Board precedent.⁴⁸ The parties did not file exceptions to the Hearing Examiner's Report and Recommendations. PERB reviews a hearing examiner's report and recommendations even if no exceptions are filed.⁴⁹ Upon review, the Board

⁴⁰ Report at 14 and 16.

⁴¹ Report at 14 and 16.

⁴² Report at 16.

⁴³ Report at 15. *See United States Department of the Navy, Naval Air Station, Joint Reserve Base, New Orleans, Louisiana and National Association of Independent Labor*, 67 FLRA No. 113, 67 FLRA 422 (May 30, 2014). *See also U.S. Attorney's Office for the District of Columbia and AFSCME, Capital Area Council*, 37 FLRA 1077 (1990) (finding that a college degree is not always a requirement for an employee to be found to be a professional).

⁴⁴ Report at 15.

⁴⁵ Report at 17.

⁴⁶ Report at 17.

⁴⁷ Report at 14.

⁴⁸ *WTU, Local 6 v. DCPS*, 65 D.C. Reg. 7474, Slip Op. 1668 at 6-7, PERB Case No. 15-U-28 (2018). *See AFGE, Local 1403 v. OAG*, 59 D.C. Reg. 3511, Slip Op. No. 873, PERB Case Nos. 05-U-32 and 05-UC-01 (2012).

⁴⁹ *AFGE, Local 631 v. WASA*, Slip Op. No. 1648 at 5, PERB Case No. 16-UM-01 (2018).

finds that the Report is reasonable, supported by the record, and consistent with Board precedent.⁵⁰ Therefore, the Board adopts the Hearing Examiner's Report and Recommendations.

IV. Conclusion

The Board finds that Fatality Review Program Specialists at OCME are professional employees and therefore, pursuant to D.C. Official Code § 1-617.09(b)(5) of the CMPA, are ineligible for inclusion in the bargaining unit of nonprofessional employees established under Certification No. 166.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Unit Clarification Petition is Denied; and
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By vote of Board Chairperson Peter Winkler and Members Mary Anne Gibbons, Renee Bowser, and Douglas Warshof.

April 17, 2026

Washington, D.C.

⁵⁰ *WTU, Local 6*, Slip Op. No. 1668 at 6; *see also AFGF, Local 1403*, Slip Op. No. 873.

APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration within fourteen (14) days, requesting the Board to reconsider its decision. Additionally, a final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1-605.2(12) and 1-617.13(c), which provide thirty (30) days after a Board decision is issued to file an appeal.