

**Decision on Unit Determination
and Direction of Election
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ship "involves confidential data such that it is not appropriate for these individuals to be included within this bargaining unit." Otherwise, OLRCB found the unit to be appropriate in accordance with the criteria set forth in the Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 1-618.9. AFGE was extended an opportunity to file, and provided, a response to OLRCB's objection.

Having concluded its investigation and review of the record in this matter, the Board finds that the unit set forth below meets the requirements for an appropriate unit for collective bargaining over terms and conditions of employment:

"All professional employees (including civil engineers, mechanical engineers, electrical engineers, general engineers, structural engineers and architects) and non-professional employees (including civil engineering technician, mechanical engineering technician, electrical engineering technician, engineering technician, program manager, contract specialist, construction representative, clerical and other support staff), in the Design Engineering Construction Administration and Bureau of Building Construction Services of the Department of Public Works; but excluding all management officials, confidential employees, supervisors, 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."^{1/}

^{1/} D.C. Code Sec. 1-618.9(a) requires that a community of interest exist for a unit to be found appropriate by the Board, for collective bargaining over terms and conditions of employment. Consistent with the statutory criteria, OLRCB presented in its comments certain facts supporting a finding that the proposed unit of employees, as set forth in the Petition, share a community of interest --including skills, common supervision, physical location, and organizational structure and mission-- with each other and will promote effective labor relations. Based on these factors, we find the proposed unit meets the criteria for an appropriate unit under the CMPA.

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With respect to the merits of OLRCB's contention that professional employees should be excluded from the unit because they handle "confidential data" when interfacing with private sector firms, OLRCB raised an identical objection as the basis for excluding professional employees in a similar unit found appropriate in DPW's Office of Engineering Services. See, American Federation of Government Employees, Local 631, AFL-CIO and D.C. Department of Public Works, ___ DCR ___, Slip Op. No. 354, PERB Case No. 93-R-02 (1993). There, we adopted the hearing examiner's conclusion which found no basis for not including the disputed professional employees as part of the proposed unit that he, otherwise, found appropriate. We have held that an employee is not a confidential employee under the CMPA merely because the duties of the position involve handling information that is restricted to authorized personnel, if that information "has no relationship to labor relations policy matters or to negotiation of a collective bargaining agreement." American Federation of Government Employees, Local 2978, AFL-CIO and D.C. Department of Human Services, 36 DCR 8207, 8208, Slip Op. No. 236 at 2, PERB Case No. 89-R-04 (1989). OLRCB does not contend that the employees in question encounter such data in their regular duties or that the private firms, with whom these employees interface, have any involvement with employees concerning labor relations policies.

Regarding the question of representation, the Board orders that an election be held to determine the will of the eligible employees in the unit described above regarding their desire to be represented by AFGE for purposes of collective bargaining with DPW on compensation and other terms and conditions of employment. To conform with the requirements of D.C. Code Sec. 1-618.9(b)(5), concerning the inclusion of professional employees and non-professional employees in the same unit, and consistent with Board Rule 510.5, eligible professional employees shall indicate their choice on separate ballots as to (1) Whether they desire to be represented for bargaining on terms and conditions of employment by AFGE; and (2) Whether they wish to be included in the consolidated unit with the non-professional employees. Eligible non-professional employees, in the same election, shall indicate their choice only as to the former question. ^{2/}

^{2/} Pursuant to D.C. Code Sec. 1-618.9(b)(5), a unit of professional employees will not be included in a unit with non-professional employees unless the majority of the professional employees vote for inclusion, as directed above.

ORDER

IT IS HEREBY ORDERED THAT:

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

"All professional employees (including civil engineers, mechanical engineers, electrical engineers, general engineers, structural engineers and architects) and non-professional employees (including civil engineering technician, mechanical engineering technician, electrical engineering technician, engineering technician, program manager, contract specialist, construction representative, clerical and other support staff), in the Design Engineering Construction Administration and Bureau of Building Construction Services of the Department of Public Works; but excluding all management officials, confidential employees, supervisors, 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."

2. Furthermore, an election shall be held in accordance with the provisions of D.C. Code Sec. 1-618.10 and Sections 510-515 of the Rules of the Board to determine whether or not (1) all eligible employees (1) desire to be represented for bargaining on terms and conditions of employment by the American Federation of Government Employees, Local 631, AFL-CIO; and (2) eligible professional employees wish to be included in the consolidated unit with the non-professional employees. Eligible non-professional employees, in the same election shall indicate their choice only as to the former question.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

August 10, 1994

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Direction of Election in PERB Case No. 94-R-03 was hand-delivered and/or mailed (U.S. Mail) to the following parties on the 10th day of August, 1994:

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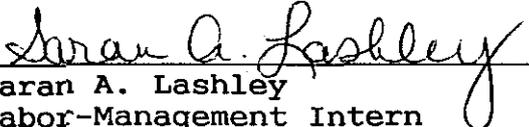
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Certificate of Service
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