



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

## II. Hearing Examiner's Report and Recommendations

The Hearing Examiner made the following findings. On May 29, 1984, the Union was certified as the representative for the bargaining unit described as follows:

All employees in the following organizational components of the District of Columbia Department of Consumer and Regulatory Affairs: Occupational and Professional Licensure Administration; Insurance Administration; Business Regulation Administration; Office of Administration and Management; and Office of Compliance excluding management officials, supervisors, confidential employees ....<sup>4</sup>

On March 30, 2021, the Union learned that certain agency employees working as Grade 12 Public Affairs Specialists and Account Managers were not included in the Union's certified bargaining unit.<sup>5</sup>

Based on the record, the Hearing Examiner identified two issues regarding the Petition's merits: (1) whether employees in the disputed positions were confidential employees who should be excluded from the Union's bargaining unit pursuant to D.C. Official Code § 1-617.09 (b)(2); and (2) whether the positions were covered by the Union's certification.<sup>6</sup>

The Hearing Examiner first considered whether the Grade 12 Account Managers and Public Affairs Specialists were confidential employees who should be excluded from the Union's bargaining unit. The Hearing Examiner determined that DCRA had the burden of proof to establish that the employees were in confidential positions.<sup>7</sup> The Hearing Examiner noted that employees are excluded from collective bargaining pursuant to D.C. Official Code § 1-617.09(b)(2) if they "function in...confidential roles sufficiently involved in labor relations and policy formulation matters to justify their exclusion from the unit."<sup>8</sup> He further noted that the controlling factor was whether the employee's relationship to "labor relations policy matters or to negotiations to a collective bargaining agreement" would create a conflict of interest between management and the union for the incumbent of the position at issue.<sup>9</sup>

The Hearing Examiner determined that the Grade 12 Account Managers and Public Affairs Specialists were not confidential employees because the record failed to show that the employees

---

<sup>4</sup> Report at 2 (quoting *AFSCME, Local 2743 and D.C. Department of Consumer and Regulatory Affairs*, 31 D.C. Reg. 5140, Slip Op. No. 89, PERB Case No. 84-R-03 (1984)).

<sup>5</sup> Report at 1.

<sup>6</sup> See Report at 2-4.

<sup>7</sup> Report at 7.

<sup>8</sup> Report at 7 (quoting *Local 12, AFGE and D.C. Department of Employment Services and AFSCME*, 28 D.C. Reg. 3943, Slip. Op. No. 14 at 3, PERB Case No. 0R006 (1981)).

<sup>9</sup> Report at 8 (quoting *AFGE Local 2978 and Department of Human Services*, 36 D.C. Reg. 8207, Slip. Op. No. 236, PERB Case No. 89-R-04 (1989)).

in those positions were involved in labor relations policy formulation or labor relations matters, such as grievances or labor negotiations.<sup>10</sup> The Hearing Examiner found no evidence that these employees obtained advance information of management's position regarding contract negotiations, the disposition of grievances, or other traditional labor relations matters.<sup>11</sup> The Hearing Examiner also found that the record did not reflect that the employees attended meetings where sensitive labor management matters were discussed or had access to management materials concerning labor relations issues.<sup>12</sup> For these reasons, the Hearing Examiner found that DCRA did not meet its burden of establishing that either position was confidential within the meaning of D.C. Official Code § 1-617.09(b)(2).

The Hearing Examiner then considered whether the Grade 12 Account Manager and Public Affairs Specialist positions were within the scope of the Union's 1984 certification. The unit description provided that the Union represented employees in five organizational components of DCRA, including the Office of Administration and Management.<sup>13</sup> The Union contended that the Account Manager and Public Affairs Specialist positions were employed by the Office of Administration and Management.<sup>14</sup> DCRA asserted that the positions were employed by the Office of the Director and Office of Legislative and Public Affairs, respectively, neither of which was covered by the Union's certification.<sup>15</sup>

After reviewing the record, the Hearing Examiner determined that the two positions were not covered by the Union's certification. The Hearing Examiner found "undisputed evidence" that the Office of Administration and Management no longer existed and had not existed at DCRA since at least 2008.<sup>16</sup> He also found that the evidence showed that the Account Manager position was within DCRA's Office of the Director and the Public Affairs Specialist position was contained within DCRA's Office of Legislative and Public Affairs.<sup>17</sup> Because the two positions at issue were contained within organizational components not included in the Union's 1984 certification, the Hearing Examiner's Report recommended that the Grade 12 Account Managers and Public Affairs Specialists should not be included in the Union's existing bargaining unit.

### **III. Discussion**

The Board will adopt a Hearing Examiner's findings if those findings are reasonable, supported by the record, and consistent with Board precedent.<sup>18</sup> The parties did not file exceptions. For the following reasons, the Board adopts the Hearing Examiner's Report and Recommendations.

---

<sup>10</sup> See Report at 7-8.

<sup>11</sup> Report at 8.

<sup>12</sup> Report at 8.

<sup>13</sup> See Report at 10 (*quoting AFSCME, Local 2743, Slip Op. No. 89*).

<sup>14</sup> Report at 10.

<sup>15</sup> See Report at 10, 11.

<sup>16</sup> Report at 10.

<sup>17</sup> Report at 11.

<sup>18</sup> See *Fraternal Order of Police/Metropolitan Police Dep't Labor Committee v. District of Columbia Metropolitan Police Dep't*, 59 D.C. Reg. 11371, Slip Op. No. 1302 at 18, PERB Case Nos. 07-U-09, 08-U-13, and 08-U-16 (2012).

The Board concurs with the Hearing Examiner's determination that the Grade 12 Account Managers and Public Affairs Specialists were not confidential employees. That determination is fully supported by the record. The Board also concurs with the Hearing Examiner's determination that the Grade 12 Account Manager and Public Affairs Specialist positions were not within the scope of DCRA employees covered under the Union's 1984 certification. A union's certification must cover the agency or subcomponent in order for a position to be covered by the certification. The Hearing Examiner determined that there was "undisputed evidence" that the Office of Administration and Management no longer exists.<sup>19</sup> The Hearing Examiner also determined that the two positions at issue were contained within organizational components that were not included in the unit description of the Union's 1984 certification.<sup>20</sup> Based on a review of the record, the Board adopts the Hearing Examiner's findings that the positions were not covered by the Union's certification.<sup>21</sup>

The Board finds that the Hearing Examiner's Report and Recommendations are reasonable, supported by the record, and consistent with Board precedent. Accordingly, the Board adopts the Hearing Examiner's Report and Recommendations.

#### **IV. Conclusion**

The Board finds that the Grade 12 Account Manager and Public Affairs Specialist positions are excluded from the Union's certified bargaining unit. Therefore, the Petition is dismissed.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The unit clarification petition filed by the American Federation of State, County and Municipal Employees, District Council 20, Local 2743, is dismissed.
2. The Grade 12 Account Manager and Public Affairs Specialist positions are excluded from the bargaining unit for the reasons set forth in this Decision and Order.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

---

<sup>19</sup> Report at 10.

<sup>20</sup> Report at 11.

<sup>21</sup> Board Rule 505 outlines the procedures through which parties to a certification agreement may modify outdated unit descriptions. The Board's subject matter jurisdiction over unit modification petitions is limited to petitions filed by, or jointly with, affected labor organizations.

Decision and Order  
PERB Case No. 21-UC-03  
Page 5

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By vote of Board Chairperson Douglas Warshof and Members Mary Anne Gibbons and Peter Winkler. Board Member Renee Bowser abstained from voting.

October 20, 2022

**Washington, D.C.**

### **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.