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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:)	
)	
American Federation Government Employees, Local 2725,)	
)	
Petitioner,)	PERB Case No. 01-RC-04
and)	Opinion No. 729
)	
District of Columbia Department of Health, State Center for Health Statistics Administration,)	
)	
Agency.)	
)	
)	

**DECISION ON UNIT DETERMINATION AND
DIRECTION OF ELECTION**

The American Federation of Government Employees, Local 2725 (“AFGE” or “Petitioner”), filed a Recognition Petition¹ (“Petition”) in the above-captioned proceeding. AFGE seeks to represent, for purposes of collective bargaining, a unit of unrepresented professionals employed by the District of Columbia Department of Health (“DOH”), State Center for Health Statistics Administration. The Petition was accompanied by a showing of interest meeting the requirements of Board Rule 502.2, a roster of Petitioner’s officers and a copy of the Petitioner’s constitution, as required by Board Rule 502.1(d).

Notices concerning the Petition were issued on December 30, 2002, for conspicuous posting where Notices to employees are normally located at the District of Columbia Department of Health. The Notices indicated that requests to intervene and/or comments should be filed in the Board’s office no later than January 14, 2003. The District of Columbia Department of Health, confirmed in writing

¹In response to a deficiency notice sent by the Board’s Executive Director, AFGE filed an amended Petition so that its filing would comply with the Board’s rules. The parties later, by stipulation, sought to exclude the Librarian position from the proposed unit.

that the Notices were posted. Also, the District of Columbia Department of Health, through its representative, the Office of Labor Relations and Collective Bargaining (“OLRCB”), does not dispute the appropriateness of the proposed bargaining unit pursuant to the criteria set forth under the Comprehensive Merit Personnel Act (CMPA) as codified under D.C. Code § 1-617.09 (a) (2001 ed.). However, OLRCB opposed the Petition on the ground that Local 2725 sought to organize a group of employees which were already represented.² This matter was referred to a Hearing Examiner in order to determine whether this unit of employees was already represented.³ Subsequently, a hearing was held. During the hearing, OLRCB argued that the professionals which made up the proposed unit were already represented. However, in its post hearing brief, OLRCB withdrew its argument and indicated that the Agency no longer opposed AFGE’s Petition. There were no other comments received in this matter.

The Hearing Examiner determined that the employees were not represented by another union.⁴ In making her determination, the Hearing Examiner considered the fact that the language contained in the earlier certifications stated that the professionals described in those certifications were “patient care” professionals, as opposed to “administrative professionals.” Therefore, she concluded that the “administrative professionals” in the present case did not share a community of interest with the “patient care” professionals described in the earlier certifications. In addition, the Hearing Examiner considered the fact that employees in the proposed unit all shared an employee code of “XAA”, which the District of Columbia Office of Personnel often uses to identify employees who are not represented by a union. Based on the foregoing and other reasons described in more detail in the Hearing Examiner’s Report and Recommendation (R & R), the Hearing Examiner

²Specifically, OLRCB asserted that the Statistician and Health Statistician positions were represented by District 1199E-DC, National Union of Hospital and Health Care Employees, Service Employees International Union, AFL-CIO, CLC (“SEIU-1199E”). To support its claim, OLRCB contended that in 1992, the Board issued a certification for a unit covering these positions. OLRCB claimed that the certification was issued prior to the transfer of Department of Human Services functions to the Department of Health and while these employees were a part of the Department of Human Services’ Commission on Public Health. In addition, OLRCB contended that three of the positions (Computer Specialist, Program Analysts and Public Health Advisor) fell within the unit certified by the Board’s predecessor (Board of Labor Relations) in 1980 and represented by the American Federation of Government Employees, Local 383 (“AFGE, Local 383”). The parties later stipulated that the Public Health Advisor position should be properly titled “Public Health Analyst.” (R & R at pg. 2, Footnote 3).

³Carmel Ebb was the Hearing Examiner assigned to this matter.

⁴The Board finds that this conclusion is reasonable and supported by the record. Therefore, we adopt the Hearing Examiner’s finding on this issue.

concluded that there is no existing bar to AFGE's Recognition Petition and that the proposed Unit is consistent with the Board's bargaining unit precedent.⁵ See, D.C. Council 20, AFSCME and District of Columbia School of Law, 36 DCR 8203, Slip Op. No. 235, PERB Case No. 89-R-03 (1989). She recommended that the following unit be certified, with the exclusion of the Librarian position, as stipulated to by the parties.⁶

All professional employees in the District of Columbia Department of Health, State Center for Health Statistics Administration, including statisticians, program analysts, computer specialists, and health analysts; excluding non-professional employees, 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.

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.

Our review of the Petition and exhibits, as well as the Hearing Examiner's Report and Recommendation, reveals that the proposed unit should consist of the following employee positions: statisticians, program analysts, computer specialists, and health analysts. All of these employees are assigned to the District of Columbia Department of Health, State Center for Health Statistics Administration. In addition, all of these employees share a common mission within the District of Columbia Department of Health, State Center for Health Statistics Administration. No other labor organization represents these employees. Also, we conclude that there is no collective bargaining agreement in effect covering any of these employees.

In view of the above, we believe that sufficient factors exist for the Board to find that these employees share a community of interest. Such a unit of all professional employees sharing a

⁵The Hearing Examiner declined to address other issues and defenses raised by the parties once the opposition to the petition was withdrawn. She did provide a discussion of some city-wide problems that surfaced during the record of this case. (R & R at pg. 6).

⁶The Original Recognition Petition included a Librarian position in the Unit description. However, at the hearing in this matter, the parties stipulated that the Librarian position not be included in this unit because the parties could not determine whether or not the position was properly classified as professional. An amended Petition was filed which excluded the Librarian position and the Unit described above reflects the fact that the Librarian position is not included.

common mission, would in our view, promote effective labor relations and efficiency of agency operations and thereby constitute an appropriate unit under the Comprehensive Merit Personnel Act.

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 below), regarding their desire to be represented by AFGE for purposes of collective bargaining with the District of Columbia Department of Health, State Center for Health Statistics Administration. Finally, we believe that a mail ballot election is appropriate in this case.

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 in the District of Columbia Department of Health, State Center for Health Statistics Administration, including statisticians, program analysts, computer specialists, and health analysts; excluding non-professional employees, patient care professionals, librarians, management officials, supervisors, confidential employees, employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.⁷

⁷The original petition did not make reference to “patient care” professionals. However, the Board adopted the Hearing Examiner’s recommendation that there was a difference between “patient care professionals” and “administrative professionals.” In addition, the parties stipulated that the “librarian” position would be eliminated. Consistent with the Hearing Examiner’s findings and the parties’ stipulations, the Board added “patient care professionals” and “librarians” to the list of excluded positions in this unit description.

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2. A mail ballot election shall 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 employees desire to be represented for bargaining on terms and conditions of employment by either the American Federation Government Employees, Local 2725 or No Union;
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.

September 30, 2003