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**Government of the District of Columbia
Public Employee Relations Board**

)	
In the Matter of)	
)	
National Association of Government Employees)	
)	
Complainant/Respondent)	PERB Case Nos. 21-U-10 & 21-UC-01
)	
v.)	Opinion No. 1815
)	
District of Columbia Department of Forensic Sciences)	
)	
Respondent/Petitioner)	
)	

DECISION AND ORDER

I. Statement of the Case

On January 19, 2021, the National Association of Government Employees (Union) filed an unfair labor practice complaint (Complaint) in the above-captioned PERB Case No. 21-U-10 against the District of Columbia Department of Forensic Sciences (Agency). The Union alleged that the Agency violated D.C. Official Code § 1-617.04(a)(1), (2), and (3) of the Comprehensive Merit Personnel Act (CMPA) when the Agency refused to recognize the Union as the exclusive bargaining representative of certain employees in the previously-certified bargaining unit: (1) Information Technology (IT), (2) Digital Evidence Unit (DEU), and (3) Quality Assurance Specialist (QAS) positions.¹ The Agency filed an answer denying the alleged violations.

On March 1, 2021, the Agency filed a unit clarification petition (Petition), in PERB Case No. 21-UC-01, requesting the Board to (1) clarify the Union’s bargaining unit and (2) dismiss the Union’s Complaint in PERB Case No. 21-U-10.²

The cases were consolidated and sent to a hearing. On May 17, 2022, the Hearing Examiner issued a Report and Recommendations (Report), recommending that the Board find that

¹ Generally, Complaint.

² Petition at 7. On April 28, 2021, PERB issued a letter informing the Union and the Agency that PERB had consolidated PERB Case Nos. 21-U-10 and 21-UC-01 for hearing.

the Agency violated D.C. Official Code § 1-617.04(a)(1) by unilaterally removing the IT, DEU, and Safety and Occupational Health Specialist (SOHS) positions from the Union's bargaining unit.³ The Hearing Examiner recommended that the Board direct the Agency to recognize the Union as the exclusive bargaining representative for those positions.⁴ The Hearing Examiner also recommended that the Board grant the Agency's request to exclude the QAS position from the Union bargaining unit and dismiss the Union's allegations that the Agency violated D.C. Official Code § 1-617.04(a)(2), and (3).⁵ The Union filed exceptions, which the Agency opposed.

For the reasons stated herein, the Board adopts the Hearing Examiner's Report and Recommendations.⁶

II. Hearing Examiner's Report and Recommendations

A. Hearing Examiner's Factual Findings

The Hearing Examiner made the following factual findings. On July 24, 2019, the Union filed a petition for exclusive recognition, seeking to represent the following collective bargaining unit of Agency employees:

All employees of the Public Health Laboratory, both professional and nonprofessional and all other professional employees of the Department of Forensic Sciences, excluding all management officials, supervisors, confidential employees or any employees engaged in personnel work other than in 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-2-139.⁷

A hearing was held related to the recognition petition. The hearing examiner found that the proposed unit was appropriate for collective bargaining, noting that the Agency did not raise any objections to the proposed coverage of the unit.⁸ As a result, the Board found that the proposed unit was appropriate and ordered an election. On July 14, 2020, the Agency entered into an election agreement, "which included the unit of employees described in [the] Union's July 24, 2019 petition."⁹ The Union provided a list of employees eligible to vote in the election, which included employees in the IT, DEU, QAS, and SOHS positions.¹⁰ The Agency did not object to the list.¹¹ On November 20, 2020, PERB tallied the election ballots and found that "the majority of the ballots cast were in favor of the Union."¹²

³ Report at 30.

⁴ Report at 30.

⁵ Report at 29-30.

⁶ Report at 29.

⁷ Report at 3.

⁸ Report at 3.

⁹ Report at 3.

¹⁰ Report at 3, 6.

¹¹ Report at 3.

¹² Report at 3.

The Hearing Examiner found that the events leading to the disputes underlying the present case began with an investigatory interview with an IT Specialist. In this regard, on November 20, 2020, the Agency emailed an IT Specialist, asking the employee to attend an investigatory interview that could possibly result in discipline.¹³ The IT Specialist stated he was a member of the Union bargaining unit and requested representation at the interview.¹⁴ The Agency initially expressed that it would grant the IT Specialist's request, but subsequently challenged the employee's bargaining unit membership and postponed the interview.¹⁵

On December 3, 2020, the Agency emailed the Union, stating that the D.C. Office of Labor Relations and Collective Bargaining had reviewed the job duties of the IT, DEU, and QAS positions at the Agency, and concluded that those positions were erroneously included in the election roll in the recognition petition proceedings.¹⁶ In its email, the Agency stated that the job duties of those positions were "incompatible with the statutory exclusions under the CMPA."¹⁷ On December 4, 2020, the Agency followed-up with the IT Specialist and informed him that he was not included in the Union bargaining unit and not entitled to union representation at the investigatory interview.¹⁸

On December 9, 2020, having received no objections concerning the election, the Board certified the Union as the exclusive representative of the employees specified in the unit description.¹⁹ On December 14, 2020, in a communication to the Agency, the Union asserted that the Agency did not have the authority to unilaterally exclude positions from the Board-certified bargaining unit, arguing that only the Board had the power to include or exclude positions from the bargaining unit.²⁰ On January 7, 2021, the Agency contacted all employees in the IT, DEU, and QAS positions who were included in the Board certification.²¹ The Agency informed those employees of the Agency's intent to file a unit clarification petition with PERB and stated that the Agency would not recognize the Union as the exclusive representative for those positions until such time as the Board ruled on the unit clarification petition.²² On January 8, 2021, the Union emailed the Agency, asserting that the Agency had committed an unfair labor practice by refusing to recognize the IT, DEU, and QAS positions as part of the unit until the Board rendered a decision on the Agency's petition.²³

In 2021, the Agency's administration changed.²⁴ As a result, on November 16, 2021, the Agency expressed to the Union that the Agency was "willing to agree that employees in IT and

¹³ Report at 3.

¹⁴ Report at 3-4.

¹⁵ Report at 4.

¹⁶ Report at 4.

¹⁷ Report at 4.

¹⁸ Report at 4.

¹⁹ Report at 3.

²⁰ Report at 5.

²¹ Report at 5.

²² Report at 5.

²³ Report at 5.

²⁴ Report at 5.

DEU may be (with or without some slight tweaking in responsibilities) eligible for bargaining unit membership.”²⁵ Accordingly, in December 2021, the new administration altered the responsibilities of the IT and DEU positions by transferring their investigatory functions to human resources.²⁶ However, the Agency asserted that three employees were erroneously included in the Union bargaining unit – two employees in the QAS position and one employee in the SOHS position.²⁷ The Agency contended that the QAS employees were ineligible for bargaining unit membership because of their role in assessing proficiency and recommending penalties, such as termination.²⁸ The Agency asserted that the SOHS position was ineligible for bargaining unit membership because employees in the SOHS position recommended discipline or termination based on safety violations at the Agency.²⁹

The Hearing Examiner found that the QAS position’s duties were integral to the Agency’s accreditation.³⁰ The Hearing Examiner noted that employees in the QAS position were responsible for ensuring that lab employees in the bargaining unit followed standard operating procedures (SOP) and met international standards for forensic labs.³¹ The Hearing Examiner determined that employees in the QAS position assisted with internal audits and coordinated external audits.³² If a lab employee failed to meet the standards, an employee in the QAS position would make a report, which could lead to discipline if the lab employee was found negligent or responsible for the failure.³³ Furthermore, based on those audits, an Agency employee could be prevented from testifying in court, which would likely result in an employee’s termination if testifying was an essential job duty.³⁴

The Hearing Examiner found that the SOHS was responsible for maintaining safety equipment and eliminating safety issues at the Agency public health laboratory, among other duties.³⁵ The official SOHS position description also stated that employees in the SOHS position were responsible for advising managers and supervisors of possible penalties for safety and health violations.³⁶ In practice, the SOHS was responsible for reporting unsafe conditions to a supervisor, and proceeding in accordance with the supervisor’s instructions.³⁷ The Hearing Examiner found that the SOHS supervisor, not the SOHS, was responsible for conducting investigations and

²⁵ Report at 5, 19.

²⁶ Report at 7.

²⁷ Report at 5-6.

²⁸ Report at 5-6.

²⁹ Report at 6.

³⁰ Report at 14.

³¹ Report at 14.

³² Report at 11.

³³ Report at 14. The quality assurance manual listed two types of reports – quality preventative action reports (Q-PAR) and quality corrective action reports (Q-CAR). Report at 11-12. Employees in the QAS position were responsible for initiating Q-CAR’s, which usually occurred during an internal audit. Report at 12.

³⁴ The U.S. Attorney’s Office had access to Q-CAR’s in cases that went to court. Report at 12. The existence of a Q-CAR pertaining to an Agency employee could influence the courts to place that employee on the *Brady-Giglio* or *Lewis* list, meaning that employee’s integrity was questioned, and they would not be permitted to testify in court. Report at 12 (citing *Brady v. Maryland*, 373 U.S. 83 (1963) and *United States v. Giglio*, 405 U.S. 150 (1972); *Lewis v. United States*, 408 A.2d 303 (D.C.App.Ct. 1979)).

³⁵ Report at 7-9.

³⁶ Report at 8.

³⁷ Report at 8.

determining the resultant penalties.³⁸ The SOHS's reports concerning egregious safety violations had the potential to result in discipline, but the SOHS did not make any recommendations or decisions on corrective actions.³⁹

B. Hearing Examiner's Recommendations

The Hearing Examiner considered the following issues:

- (1) Did the Agency commit an unfair labor practice when the Agency excluded the IT, DEU, QAS, and SOHS positions from the bargaining unit?
- (2) Are the positions of QAS and SOHS eligible for bargaining unit membership?
- (3) If so, what is the remedy?

1. IT and DEU Positions

On February 9, 2022, the parties jointly stipulated that “[t]he only positions at issue regarding inclusion in the bargaining unit in this case are Quality Assurance Specialist and Safety & Occupational Health Specialist.”⁴⁰ However, the Hearing Examiner addressed the Union's claim that the Agency violated the CMPA when the Agency excluded the IT and DEU positions from the bargaining unit.⁴¹

As a preliminary matter, the Hearing Examiner considered whether the Agency violated the CMPA when the Agency denied the IT Specialist union representation in his investigatory interview.⁴² The Hearing Examiner found that the Union had raised this issue for the first time in its post-hearing brief.⁴³ The Hearing Examiner further found that the Union did not seek to amend its Complaint to include this allegation.⁴⁴ The Hearing Examiner considered the Board's prior holding in *FOP/MPD Labor Comm. v. MPD*, which established that the Board will not find a violation based on an allegation not specified in the complaint or amended into the complaint.⁴⁵ Relying on this Board precedent, the Hearing Examiner concluded that the Agency did not violate the CMPA when it refused to honor the IT Specialist's request for union representation during his investigatory interview.⁴⁶

³⁸ Report at 8.

³⁹ Report at 10-11.

⁴⁰ Joint Stipulation at 3.

⁴¹ Report at 17-21.

⁴² Report at 18-19.

⁴³ Report at 18.

⁴⁴ Report at 18.

⁴⁵ Report at 18 (citing *FOP/MPD Labor Comm. v. MPD*, 59 D.C. Reg. 6972, Slip Op. No. 1226, PERB Case No. 11-U-50 (2014)).

⁴⁶ Report at 18-19.

However, the Hearing Examiner stated that the Agency's denial of the IT Specialist's request for representation served as a "backdrop" to the other CMPA violations that the Union alleged in its Complaint.⁴⁷ The incident concerning the IT Specialist influenced the Agency to conduct an extensive review of the job duties of the IT, DEU, and QAS positions included in the prior representation proceedings.⁴⁸ After concluding that those positions were erroneously included in the Board certification, the Agency altered the job duties of the IT and DEU positions to eliminate their investigatory functions.⁴⁹ However, the Hearing Examiner found that the Agency never formally recanted its position to the Union or the employees in those positions, and the parties never reached a settlement agreement pertaining to the IT and DEU employees involved.⁵⁰

Regarding the Union's claim that the Agency violated the CMPA when the Agency excluded the IT and DEU positions from the bargaining unit, the Hearing Examiner determined that the Agency had the burden to demonstrate that the IT and DEU positions were excluded from the bargaining unit under D.C. Official Code § 1-617.09(b)(2) or (3).⁵¹ In considering whether the IT and DEU positions were excluded from collective bargaining, the Hearing Examiner applied the Board's holding in *AFCSME v. DCRA* that an employee whose personnel work is routine, merely clerical, devoid of independent judgment, and does not create a conflict of interest with union representation is eligible for bargaining unit membership under D.C. Official Code § 1-617.09(b)(3).⁵² The Hearing Examiner also considered the Board's precedent in *AFGE, Local 1403 v. DBH*, which established that "the unilateral removal of an employee from a bargaining unit [constitutes] an unfair labor practice [under D.C. Official Code § 1-618.04(a)(1) and (5)] when the employee is not statutorily excluded from the unit..."⁵³

The Hearing Examiner concluded that the job duties of the IT and DEU positions did not statutorily exclude them from the bargaining unit.⁵⁴ Therefore, the Hearing Examiner concluded that the Agency violated D.C. Official Code § 1-618.04(a)(1) by unilaterally excluding the IT and DEU positions from the Union bargaining unit.⁵⁵ The Hearing Examiner "d[id] not find any evidence that the Agency dominated or interfered, or assisted in the affairs of a labor organization under D.C. [Official] Code § 1-618.04(a)(2); or that the Agency discriminated against employees in the manner set forth in D.C. [Official] § 1-618.04(a)(3)."⁵⁶ Therefore, the Hearing Examiner dismissed those allegations.⁵⁷

⁴⁷ Report at 19.

⁴⁸ Report at 19.

⁴⁹ Report at 19.

⁵⁰ Report at 21.

⁵¹ Report at 17 (citing *AFSCME v. DCRA*, 68 D.C. Reg. 3363, Slip Op. No. 1776, PERB Case No. 20-UC-01 (2021)).

⁵² Report at 17-18 (citing *AFSCME*, Slip Op. 1776).

⁵³ Report at 18 (quoting *AFGE, Local 1403 v. DBH*, 65 D.C. Reg. 12891, Slip Op. No. 1685 at 5, PERB Case No. 17-U-22 (2018)).

⁵⁴ Report at 21. The Hearing Examiner found that, even before the Agency made the adjustments to the job duties of the IT and DEU positions, those positions were not statutorily excluded from the bargaining unit.

⁵⁵ Report at 21 (citing *AFSCME*, Slip Op. 1776).

⁵⁶ Report at 21.

⁵⁷ Report at 21.

2. Quality Assurance Specialist Position

The Hearing Examiner turned to the Union's claim that the Agency violated the CMPA when the Agency excluded the QAS position from the bargaining unit. The Hearing Examiner considered whether the two employees in the QAS position were engaged in personnel work in other than a purely clerical capacity within the meaning of D.C. Official Code § 1-617.09(b)(3).⁵⁸ The Hearing Examiner relied on the Board's holding in *AFGE, Local 1403, and OAG*, which adopted the FLRA's position that:

The character and the nature of the involvement of the incumbents in personnel work must be more than clerical in nature, the personnel duties of the position in question are not performed in a routine manner, the incumbents must exercise independent judgment and discretion in carrying out their personnel duties and the personnel work must directly relate to the personnel operations of the employee's own agency which would create a conflict of interest between the employee's job and Union representation if included in the unit.⁵⁹

The Hearing Examiner relied on Board precedent in *AFSCME v. DCRA* which adhered to the FLRA's holding that, for the purpose of determining bargaining unit eligibility, "personnel work includes that which has 'a significant effect on personnel decisions.'"⁶⁰ The Hearing Examiner determined that employees in the QAS position were "critically involved" in setting standards for lab accreditation and ensuring those standards were implemented.⁶¹ The Hearing Examiner found that the QAS employees' audit and compliance monitoring involved making reports to senior management, which could potentially result in the discipline of other bargaining unit members.⁶² The Hearing Examiner noted that the QAS position job duties were not routine; required the exercise of independent judgment in the completion of personnel functions; and would create a conflict of interest with the Union's representation, if the QAS position was included in the bargaining unit.⁶³

Thus, the Hearing Examiner granted the Agency's petition for unit clarification to exclude the QAS position from the bargaining unit and dismissed the Union's unfair labor practice complaint against the Agency for the unilateral removal of the QAS position.⁶⁴

⁵⁸ Report at 22.

⁵⁹ Report at 22 (quoting *AFGE, Local 1403, and OAG*, PERB Case Nos. 05-U-32 and 5-UC-01, Slip. Op. No. 873 at 5 (2011). (quoting *United States Dep't of Transportation Fed. Aviation Admin. & Nat'l Air Traffic Controllers Ass'n, AFL-CIO*, 71 F.L.R.A. 28, 36 (Feb. 12, 2019)). The Hearing Examiner stated that the FLRA has overturned that holding and broadened its definition of personnel work that is "more than clerical in nature." Report at 23. Under this new FLRA standard, the Hearing Examiner stated, "personnel work that involves evaluating, advising, recommending, and making assessments is not purely clerical." Report at 23 (quoting *United States Dep't. of Veterans & Am. Fed'n of Gov't Emps.*, 70 F.L.R.A. 465, 467-469 (2018)). The Hearing Examiner determined that the Board has not adopted the new FLRA standard and applied the old standard. Report at 24.

⁶⁰ Report at 21-22 (quoting *AFSCME*, Slip Op. 1776 (quoting *United States Dep't. of the Army, Headquarter, 101st Airborne Division, Fort Campbell, Kentucky*, 36 F.L.R.A. 598 (1990))).

⁶¹ Report at 26.

⁶² Report at 26.

⁶³ Report at 26.

⁶⁴ Report at 26.

3. Safety and Occupational Health Specialist Position

The Hearing Examiner considered the Union's claim that the Agency violated the CMPA when the Agency excluded the SOHS position from the bargaining unit.⁶⁵ The Agency did not contest the bargaining unit eligibility of the SOHS until November 2021, after the Union filed its Complaint.⁶⁶ In February 2022, the parties filed a joint stipulation, contesting the bargaining unit eligibility of the SOHS position.⁶⁷ The Hearing Examiner recognized the joint stipulation as an amendment to the Complaint and concluded that this amendment gave the Hearing Examiner and the Board the authority to rule on the merits of the dispute concerning the SOHS position.⁶⁸

The Hearing Examiner determined that the Agency chose to exclude the SOHS position from the bargaining unit because the Agency challenged the credibility of the SOHS employee's testimony regarding the SOHS position's job duties.⁶⁹ However, the Hearing Examiner disagreed with the Agency, finding that the SOHS employee testified credibly that the SOHS did not perform all the duties listed in the SOHS job description.⁷⁰ The Hearing Examiner found that the SOHS position's job duties did not include investigating accidents and did not entail making penalty recommendations.⁷¹ The Hearing Examiner concluded that the SOHS's personnel work was clerical in nature, consisting of tasks such as stocking supplies and completing safety protocol checklists to submit to a supervisor.⁷² The Hearing Examiner found that employees in the SOHS position did not use the type of independent judgment that would warrant exclusion from the bargaining unit.⁷³

Thus, the Hearing Examiner found that the Agency violated D.C. Official Code § 1-617.04(a)(1) by unilaterally excluding the SOHS position from the Union's bargaining unit.⁷⁴ Accordingly, the Hearing Examiner denied the Agency's unit clarification request to remove the SOHS employee from the bargaining unit.⁷⁵

⁶⁵ Report at 27-29.

⁶⁶ Report at 27.

⁶⁷ Joint Stipulation at 3.

⁶⁸ Report at 27.

⁶⁹ Report at 27. The employee in the SOHS position filed a human rights case after the Agency afforded the employee an American with Disabilities Act accommodation, then reduced the employee's duties significantly and hired an additional employee to assume the SOHS position and share the job responsibilities. Report at 11. The Union alleged that the tension between the employee in the SOHS position and the Agency motivated the Agency to unilaterally exclude the SOHS position from the bargaining unit. Report at 27. However, the Hearing Examiner found that this tension was not the motive for the Agency's decision to exclude the SOHS position. Report at 27.

⁷⁰ Report at 27.

⁷¹ Report at 27.

⁷² Report at 29.

⁷³ Report at 29.

⁷⁴ Report at 29.

⁷⁵ Report at 29.

III. Discussion

The Board will adopt a hearing examiner's recommendations where those recommendations are reasonable, supported by the record, and consistent with Board precedent.⁷⁶ The parties did not file any exceptions to the Hearing Examiner's conclusions regarding the IT, DEU, or SOHS positions. After reviewing the record and applicable case law, the Board finds that the Hearing Examiner's recommendations for those positions are reasonable, supported by the record, and consistent with Board precedent.⁷⁷ Therefore, the Board adopts the Hearing Examiner's conclusions that: (1) the IT, DEU, and SOHS positions are included in the Union bargaining unit; and (2) the Agency violated D.C. Official Code § 1-618.04(a)(1) by unilaterally excluding the IT, DEU, and SOHS positions from the Union bargaining unit.

The Union filed exceptions to the Hearing Examiner's findings for the QAS position, disagreeing with the Hearing Examiner's determination that the QAS positions are excluded from the bargaining unit. In its exceptions, the Union argues that the record does not support the Hearing Examiner's finding that the QAS position was excluded from the bargaining unit.⁷⁸ The Union asserts that the Hearing Examiner's "determination that the [QAS] position engages in personnel work is unreasonable, and the decision does not adhere to [Board] precedent."⁷⁹ The Agency argues that the Union fails to raise any new issues and merely disagrees with the Hearing Examiner's factual findings and application of law."⁸⁰

The Hearing Examiner found that the QAS position is ineligible for bargaining unit membership and the Agency did not commit an unfair labor practice by unilaterally excluding the QAS position from the bargaining unit.⁸¹ In reaching that determination, the Hearing Examiner relied on Board precedent, which established that "personnel work includes that which has 'a significant effect on personnel decisions'" for the purpose of determining bargaining unit eligibility.⁸² The Hearing Examiner made factual findings concerning the jobs duties of the QAS position by conducting a comprehensive review of the record evidence, including witness testimony and written communications.⁸³ Based on these factual findings, the Hearing Examiner concluded that the QAS position was responsible for performing personnel work that had a significant effect on personnel decisions, thus excluding the QAS from collective bargaining.⁸⁴

⁷⁶ *WTU, Local*, Slip Op. No. 1668 at 6-7; *AFGE, Local 1403*, Slip Op. No. 873.

⁷⁷ *AFSCME*, Slip Op. No. 1776 (holding that the agency has the burden to demonstrate that a position is excluded from the bargaining under the CMPA); *AFGE, Local 1403*, Slip Op. No. 1685 at 5 (holding that unilateral removal of a position from a bargaining unit is an unfair labor practice where the position is not statutorily excluded from the unit); *FOP/MPD Labor Comm.*, Slip Op. No. 1226 (establishing that the Board will not find a violation based on an allegation which is not specified in or amended into a complaint).

⁷⁸ Union Exception at 5-8.

⁷⁹ Union Exception at 8.

⁸⁰ Agency Opposition at 1-3.

⁸¹ Report at 26.

⁸² Report at 21-22 (quoting *AFSCME*, Slip Op. No. 1776 (quoting *United States Dep't. of the Army, Headquarter, 101st Airborne Division, Fort Campbell, Kentucky*, 36 F.L.R.A. 598 (1990))).

⁸³ Report at 21-26.

⁸⁴ Report at 26.

Issues of fact concerning the probative weight of evidence are reserved to the hearing examiner.⁸⁵ Mere disagreement with a hearing examiner's decision does not constitute grounds for reversal.⁸⁶ Where the record supports a hearing examiner's conclusions, a challenge to the hearing examiner's determination with competing evidence does not constitute a proper exception.⁸⁷ The Union's exception is mere disagreement with the Hearing Examiner's determination concerning the QAS position. The Union does not raise any new issues. Rather, the Union proposes an alternate interpretation of the facts and an alternate interpretation of Board precedent. The record supports the Hearing Examiner's conclusions. Therefore, the Board finds that the Union's exception does not constitute grounds for reversing the Hearing Examiner's determination concerning the QAS position.

IV. Conclusion

The Board adopts the Hearing Examiner's Report and Recommendations and finds that: (1) the Agency violated D.C. Official Code § 1-617.04(a)(1) by refusing to recognize the Union as the exclusive bargaining representative of the IT, DEU, and SOHS positions; (2) the IT, DEU, and SOHS positions are included in the Union's certified bargaining unit; and (3) the QAS position is excluded from the Union's certified bargaining unit.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Agency shall cease and desist from refusing to recognize the Union as the collective bargaining representative for employees in the Information Technology, Digital Evidence Unit, and Safety and Occupational Health Specialist positions within the Union's certified bargaining unit and from refusing to recognize non-statutory exempt positions as part of the bargaining unit.
2. The Agency shall cease and desist in any like or related manner from interfering with, restraining, or coercing employees in the rights guaranteed to them under D.C. Official Code § 1-617.04(a)(1).
3. The Agency shall inform the Union and each of its employees in the Information Technology, Digital Evidence Unit, and Safety and Occupational Health Specialist positions individually, in writing, that the Agency recognizes the Union as the bargaining representative of the employees in those positions.
4. Within 14 days of service of this decision and order, the Agency shall post a notice at its facilities in Washington D.C. copies of the attached. An authorized representative of the Agency shall sign copies of the notice on forms PERB provides. Those notices shall be posted immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to bargaining unit employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed

⁸⁵ *McRae v. DOC*, 54 D.C. Reg. 3126, Slip Op. No. 868 at 5, PERB Case No. 02-U-09 (2007) (citing *Hatton v. FOP/DOC Labor Comm.*, 47 D.C. 769, Slip Op. No. 451 at 4, PERB Case No. 95-U-02 (2000)).

⁸⁶ *Id.*

⁸⁷ *AFSCME, Local 2087 v. UDC*, 67 D.C. Reg. 8903, Slip Op. No. 1751 at 4, PERB Case No. 18-U-03 (2020).

electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Agency customarily communicates with its employees by such means. The Agency shall take reasonable steps to ensure that the posted notices are not altered, defaced, or covered by any other material.

5. Within 21 days of service of this decision and order the Agency shall file with PERB a sworn certification of a responsible official attesting to the steps that the Agency has taken to comply.
6. 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 Douglas Warshof and Members Renee Bowser, Mary Anne Gibbons, and Peter Winkler.

July 21, 2022
Washington, D.C.

APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration, requesting the Board 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 provides 30 days after a decision is issued to file an appeal.