

Notice: This decision may be formally revised within thirty days of issuance 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 challenge to the decision.

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

_____)	
In the Matter of:)	
)	
American Federation of Government)	
Employees, District 14)	
)	
Petitioner)	
)	PERB Case No. 24-RC-03
and)	
)	Opinion No. 1901
District of Columbia Department of)	
Corrections)	CORRECTED
)	
Respondent)	
)	
and)	
)	
Fraternal Order of Police/Department of)	
Corrections Labor Committee)	
)	
Intervenor)	
_____)	

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

I. Statement of the Case

On July 12, 2024, the American Federation of Government Employees, District 14 (AFGE) filed a second amended¹ petition for exclusive recognition and noncompensation unit determination (Petition), seeking to represent the following proposed bargaining unit at the District of Columbia Department of Corrections (DOC):

720 Correctional Officers CS-0007-6-8, 57 Lead Correctional Officers CS-0007-9, 1 Library Technician CS-1411-5, 1 Door System Mechanic CS-4749-9, 3 Material Handlers CS-6907-4, 4 Mail Clerks CS-0305-5, 9 IT Specialists CS-

¹ AFGE filed its initial petition on June 19, 2024. The amended petition, filed on June 28, 2024, cured two deficiencies identified in the initial petition. The second amended petition included additional exhibits.

2210-11-12, 26 Clerical Assistants CS-303-7, 9 Maintenance Mechanics CS-4779-9, 2 Locksmith CS-4808-9, 3 Electrician Forman CS-2805-10, 4 Staff Assistants CS-303-9, 1 Masonry Worker CS-3603-8, 25 Legal Instrument Examiners CS-0963-9, 18 Case Managers CS-0101-11-12, 1 Sanitation Officer, 5 Lean Instrument Examiners CS-0963-9, 3 Plumber/Pipefitters CS-4206-9, 2 Payroll Technicians CS-0544-8, 1 Security Guard 0080-5, 1 Material Handlers, CS-6907-4, 1 AC Equipment Mechanic CS-5301-9, 1 Volunteer Service Assistant CS-0006-1.²

The proposed unit includes a total of eight hundred and ninety-eight (898) positions. As required under Board Rule 503.4, AFGE submitted signed dues authorization cards, demonstrating an adequate showing of interest. Four hundred and fourteen (414) cards were submitted, showing that at least thirty percent (30%) of employees in the proposed unit desired AFGE's representation.

On August 7, 2024, DOC submitted comments regarding the Petition. Pursuant to Board Rule 503.3, DOC's comments were accompanied by an alphabetical list of the seven hundred and seventy-seven (777) employees who occupied positions in the proposed unit. DOC contemporaneously filed a Motion to Dismiss the Petition, a Motion to Deny the Petition, and a motion to hold the instant matter in abeyance (Motion to Hold in Abeyance), pending resolution of a related appeal before the Superior Court of the District of Columbia.³ The related appeal, filed by the Fraternal Order of Police/Department of Corrections Labor Committee (FOP), seeks a judgment overturning the Board's recent decertification of FOP as the exclusive noncompensation bargaining representative for DOC employees.⁴ AFGE opposed DOC's motions. On September 9, 2024, the Executive Director issued a letter, denying the Motion to Hold in Abeyance.

On September 16, 2024, PERB issued a notice of recognition petition, which DOC posted in accordance with Board Rule 503.10. On September 27, 2024, FOP submitted an Intervention Petition, pursuant to Board Rules 503.11 and 503.12(b). The Intervention Petition asserted that FOP had a right to intervene in this matter, as the incumbent representative of employees in the proposed unit. AFGE opposed the Intervention Petition on the grounds that the Board previously decertified FOP as the unit's noncompensation bargaining representative.

On October 22, 2024, the D.C. Superior Court issued an Order in the related appeal, enjoining the Board from enforcing or recognizing the decertification of FOP until the appeal is resolved. The court's Order further established that the noncompensation collective bargaining agreement (CBA) between DOC and FOP shall remain enforceable during the appeal.

On October 31, 2024, the Executive Director issued a letter granting FOP's Motion to Intervene. The letter found that FOP had demonstrated an interest in the impending election, as

² Petition at 1-2.

³ *FOP/DOC Labor Comm. v. PERB*, Case No. 2024-CAB-003838.

⁴ *Bryant, et al. v. FOP/DOC Labor Comm.*, 71 D.C. Reg. 7891, Slip Op. No. 1871, PERB Case No. 22-S-05 (2024) (decertifying FOP as the exclusive noncompensation bargaining representative for DOC employees).

required under Board Rule 503.12(a). The letter denied DOC's outstanding Motion to Dismiss and Motion to Deny, stating that DOC had not demonstrated adequate grounds for dismissal or denial of the Petition.

On December 23, 2024, FOP submitted a motion, requesting that the Board either reaffirm FOP as the exclusive noncompensation bargaining representative for DOC employees, or stay this matter to comply with the temporary restraining order and preliminary injunctive relief issued by the D.C. Superior Court in its October 22, 2024, Order. In the alternative, FOP requested that the Board order an election.

The parties participated in an investigatory conference with the Executive Director on January 6, 2024. The same day, FOP submitted a request for expedited reconsideration, asking PERB to hold this matter in abeyance until the conclusion of the related D.C. Superior Court case. In the alternative, FOP asks that PERB delay the election for sixty (60) days and recuse itself from directing the election. For the reasons stated herein, a mail ballot election shall be held in this case.

II. Discussion

The issue presented is whether the Board may direct an election, given that the D.C. Superior Court has enjoined the Board from enforcing or recognizing the decertification of FOP until the related appeal has concluded. To resolve this issue, the Board evaluates whether the existing noncompensation CBA between DOC and FOP creates a contractual bar to an election.

The Board derives its contract and certification bar rules from the National Labor Relations Board (NLRB).⁵ The NLRB has established that contracts of a definite duration for terms of up to three years bar election petitions for the entire three-year period, after which time other labor organizations may petition for an election.⁶ Board Rule 503.14 echoes this principle and further establishes that an election shall be barred if, during the previous twelve (12) months, a valid majority status determination has been made for substantially the same bargaining unit, a certification of representative has been issued, or the Board has determined the compensation unit placement for the group of employees in question. Where no such contractual bar exists, Board Rule 503 permits employees who are currently represented by a labor organization to petition for a new representative.

In the present case, the existing noncompensation CBA between DOC and FOP spans a definite three-year duration from Fiscal Year 2016 through Fiscal Year 2019. There has not been a valid majority status determination, a new certification of representative, or a compensation unit placement for the employees at issue within the past twelve (12) months. Accordingly, while a noncompensation CBA exists between DOC and FOP, there is no contractual bar to the petitioned-for election. Under the Board rules, competing unions now have the opportunity to petition for an

⁵ *Bennett, et al. and IAF, Local 36 and FEMS*, 47 D.C. Reg. 10092, Slip Op. No. 445 at 2, PERB Case No. 95-RC-01 (2000).

⁶ *General Cable Corp.*, 139 NLRB 1123, 51 LRRM 1444 (1962).

election. The court's order returned the parties to the pre-revocation status quo. Interpreting that order as a bar to an election would grant FOP protection beyond the status quo and diminish the statutory rights of employees to select their representative.

III. Conclusion

A mail ballot election shall be held to determine whether a majority of eligible employees in the proposed unit desire recognition of AFGE, FOP, or no union as their exclusive representative. Pursuant to Board Rule 510.8, the procedural aspects of the election shall be determined by the parties' election agreement or by the Executive Director, if no election agreement is reached.

ORDER

IT IS HEREBY ORDERED THAT:

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

720 Correctional Officers CS-0007-6-8, 57 Lead Correctional Officers CS-0007-9, 1 Library Technician CS-1411-5, 1 Door System Mechanic CS-4749-9, 3 Material Handlers CS-6907-4, 4 Mail Clerks CS-0305-5, 9 IT Specialists CS-2210-11-12, 26 Clerical Assistants CS-303-7, 9 Maintenance Mechanics CS-4779-9, 2 Locksmith CS-4808-9, 3 Electrician Forman CS-2805-10, 4 Staff Assistants CS-303-9, 1 Masonry Worker CS-3603-8, 25 Legal Instrument Examiners CS-0963-9, 18 Case Managers CS-0101-11-12, 1 Sanitation Officer, 5 Lean Instrument Examiners CS-0963-9, 3 Plumber/Pipefitters CS-4206-9, 2 Payroll Technicians CS-0544-8, 1 Security Guard 0080-5, 1 Material Handlers, CS-6907-4, 1 AC Equipment Mechanic CS-5301-9, 1 Volunteer Service Assistant CS-0006-1.
2. A mail ballot election shall be held in accordance with the provisions of D.C. Official Code § 1-617.10 and Board Rule 510 to determine whether a majority of eligible employees in the proposed unit desire to be represented for bargaining on terms and conditions of employment by the American Federation of Government Employees, District 14, the Fraternal Order of Police/Department of Corrections Labor Committee, 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

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

January 16, 2025
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.