Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 1000, Petitioner,	PERB Case Nos. 10-UM-02 and 13-RC-01
v.	Opinion No. 1438
District of Columbia, Department of Employment Services, Respondent.	

DECISION AND ORDER

I. Statement of the Case

The American Federation of Government Employees, Local 1000 ("Petitioner" or "Union") filed a petition for unit certification modification ("Petition"), naming as Respondent the District of Columbia, Department of Employment Services ("Respondent" or "Agency"). The Petition seeks to modify a bargaining unit in the Agency that a December 1981 certification of representative ("Certification") defined as follows:

> All non-professional employees of the Department of Employment Services; excluding all employees of the Office of the Director; all employees, except the Quality Control Unit, of the Office of Compliance and Independent Monitoring; all employees except those in purely clerical capacities of the Office of Budget and Accounting and Office of Equal Employment Opportunity; all Comprehensive Employment Training Act (CETA) employees; all management officials, confidential employees, and supervisors; any employee engaged in personnel work in other than purely clerical capacity; and any employee engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

(Petition ¶ 7).

The Union requested that the unit be modified by adding to it "all unrepresented District Service (DS) professional employees in the Government of the District of Columbia Department of Employment Services, Office of Labor Standards, Workers Compensation, Hearings and Adjudication, Administrative Law Judges." (Petition ¶ 8). The Union alleged that there were approximately ten (10) program analysts and approximately fifteen (15) administrative law judges involved. The reason given for the requested modification was that "[c]hanges in positions as well as changes in the organization of the Department of Employment Services necessitate a change in the certification of the group of employees by this Local." (Petition at p. 1).

The Agency filed comments ("Comments") in which it objected to the addition of the administrative law judges and the program analysts and objected to the procedure itself. The Agency argues that the administrative law judges do not share a community of interest with the rest of the unit as required by D.C. Code 1-617.09. (Comments at pp. 2-3). The Agency contends that program analysts are already in the unit, with the exception of program analysts who directly support deputy directors and associate deputy directors. Adding to the unit the program analysts who support deputy directors and associate deputy directors would, the Agency argues, create a conflict of interest because of their access to confidential personnel information and their involvement with the administration of the collective bargaining agreement. (Comments at p. 3). Procedurally, the Agency took the position that a recognition petition was the proper vehicle for this case because Rule 510.5 requires in elections involving a unit of professionals and non-professionals that the professionals vote separately on "whether they desire a combined professional and non-professional unit." Bd. Rule 510.5. On that ground, the Agency contends that the Petition should be dismissed. (Comments at p. 3).

The Executive Director sent the Petitioner a deficiency letter notifying it that Rule 504.2(e)'s requirement that a petition for unit modification contain a "statement setting forth the specific reason for the proposed modification" was not satisfied by the Petition's vague assertion that "[c]hanges in positions as well as changes in the organization of the Department of Employment Services necessitate a change in the certification of the group of employees by this Local." Pursuant to Rule 501.3, the Executive Director gave the Petitioner ten days to submit the required statement in an amended petition. After that period expired without the deficiency having been cured, the Board dismissed the petition. *AFGE, Local 1000 v. D.C. Dep't of Employment Servs.*, 59 D.C. Reg. 10749, Slip Op. No. 1277, PERB Case No. 10-UM-02 (2012). The Petitioner moved for reconsideration on the ground that it had not received the deficiency letter. The motion was granted. *AFGE, Local 1000 v. D.C. Dep't of Employment Servs.*, 59 D.C. Reg. 15194, Slip Op. No. 1337, PERB Case No. 10-UM-02 (2012).

The Union then filed a document styled "Unit Modification/Recognition Petition" ("Amended Petition"), which prayed for unit recognition or, in the alternative, unit modification. (Amended Petition at pp. 5, 7-8). The Amended Petition cured the deficiency as well as responded to the Agency's objection that the matter should be raised in a recognition petition. Because the Amended Petition is in substance a recognition petition as well as a unit

modification petition, it was assigned a recognition case number, 13-RC-01, in addition to its unit modification number.

The Amended Petition alleges that hearing examiners hired within the Agency after 1982 were included within the bargaining unit. (Amended Petition ¶ 4). Subsequently, the D.C. Council adopted the Workers' Compensation Administrative Law Judges Amendment Act of 2000, D.C. Act Law 13-229, which provides that the "Mayor shall reclassify Office of Workers' Compensation Hearing Examiners as Administrative Law Judges and raise their level of compensation." (Amended Petition ¶ 5). The Union asserts that the administrative law judges should remain in the bargaining unit notwithstanding the name change. (Amended Petition ¶ 8). The Union also seeks to add program analysts and paralegals to the unit. (Amended Petition ¶¶ 24-27). The Union contends that all three groups of employees fall within the professional employees that the Certification recognized as being represented by the Union. (Amended Petition ¶¶ 24, 26). The Amended Petition concludes:

> Local 1000 respectfully requests that the PERB grant recognition of the Administrative Law Judges, Program Analysts, and the Paralegals as qualified members within the collective bargaining unit of Local 1000. Alternatively, should the PERB determine to deny recognition of the Administrative Law Judges, Program Analysts, and Paralegals as qualified members within the collective bargaining unit of Local 1000, the Local 1000 requests that the PERB grant a unit modification to include the persons currently employed as Administrative Law Judges, Program Analysts, and Paralegals within the DOES.

(Amended Petition at pp. 7-8).

The Amended Petition was accompanied by a showing of employee interest in support of the Amended Petition. The Executive Director requested the Agency to transmit to the Board in accordance with Rule 502.3 an alphabetical list of all employees in the proposed unit along with any comments. The Agency submitted the list. It did not submit any comments with the list but stated that it "requests that documents filed in the case in its prior iteration (PERB Case No. 10-UM-02) be incorporated in the case under its current case number."

The Executive Director evaluated the showing of interest and determined pursuant to Rule 502.4 that the Petition was properly accompanied by a thirty percent (30%) showing of interest as required by D.C. Code Section 1-618.10(b)(2) and Rule 502.2. In accordance with Rules 503.4 and 504.3, notices concerning the Amended Petition were posted. No requests to intervene, comments, or objections were received by the Board.

II. Discussion

As noted, the Respondent contends that the Union is attempting to add professionals to the bargaining unit and has failed to demonstrate a community of interest between the

professionals and the existing members of the unit. The Union contends that professionals are already in the bargaining unit, alleging that the Union "was recognized as the exclusive representative for collective bargaining in December 1981. This representation included both non-professional and professional employe[e]s." (Amended Petition ¶¶ 18-19). The Union further alleges that the administrative law judges, program analysts, and paralegals fall within language of the Certification giving the Union representation of professional employees. (Amended Petition ¶¶ 24, 26).

The language upon which the Union relies is quoted in paragraph 3 of the Amended Petition, where the Union alleges that "the Certification Orders provided Local 1000 exclusive representation '[c]onsisting of all career service professional, technical, administrative and clerical employees who currently have their compensation set in accordance with the District Service (DS) schedule, [and] who come within the personnel authority of the Mayor of the District of Columbia. . . .'"

The Certification did no such thing. The Certification, which the Union attached to both of its petitions, gave the Union exclusive representation of a bargaining unit containing all non-professional employees of the Agency with certain exceptions. *See supra* p. 1. Then the Certification placed that bargaining unit in Compensation Unit 1. The language that the Amended Petition represents as giving the Union exclusive representation over professional employees in the Agency is the description of Compensation Unit 1:

> UNIT 1: "Consisting of all career service professional, technical, administrative and clerical employees who currently have their compensation set in accordance with the District Service (DS) schedule, who come within the personnel authority of the Mayor of the District of Columbia, the Board of Trustees of the University of the District of Columbia, the District of Columbia General Hospital Commission, the District of Columbia Armory Board, except physicians at D.C. General Hospital, all Registered Nurses and all Licensed Practical Nurses, and who are currently represented by labor organizations certified as exclusive bargaining agents for non-compensation bargaining by the PERB or its predecessor."

(Un-numbered Ex. to Petition and Amended Petition at p. 3).

The Certificate did not give the Union exclusive representation of all of Compensation Unit 1, but rather it gave the Union exclusive representation of a part of Unit 1 (the bargaining unit) along with other unions having exclusive representation of other parts of Unit 1. The Board explained the process in *D.C. Corrections Union v. D.C. Department of Corrections*:

> Labor organizations that have been certified by the Board as exclusive bargaining representatives, in accordance with the

> CMPA, are certified to represent a group of employees that have been determined to be an appropriate collective bargaining unit for purposes of noncompensation terms-and-conditions bargaining. Once this determination is made, the Board then determines in what preexisting or new compensation unit to place these employees. The designated exclusive bargaining representative of the terms-and-conditions collective bargaining unit also bargains over compensation. This is so, notwithstanding the fact the exclusive representative may bargain on behalf of employees who are part of a larger compensation unit in conjunction with other exclusive representatives.

41 D.C. Reg. 6103, Slip Op. No. 326 at p. 7 n.9, PERB Case No. 91-RC-03 (1992).

The submissions of the Petitioner do not establish that the existing unit contains professionals. Whether the unit contains professionals is one of the issues disputed by the parties. That issue affects another issue raised by the Respondent: whether the administrative law judges share a community of interest with the rest of the unit as required by D.C. Code 1-617.09(a). In addition, the parties appear to take different positions on whether hearing examiners and project analysts are already in the unit and whether the inclusion of currently excluded project analysts would create a conflict of interest. Therefore, pursuant to Rules 502.10(e) and 504.5(d), this matter will be referred to a hearing examiner for an investigation and recommendation. *See NAGE, SEIU, Local R3-07 v. D.C. Office of Unified Commc'ns*, Slip Op. No. 1253 at p. 2, PERB Case No. 12-UC-01 (Mar. 28, 2012).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Board's Executive Director shall refer this matter to a hearing examiner.

2. Pursuant to Board Rule 550.4, the notice of hearing shall be issued at least fifteen (15) days before the hearing.

3. Pursuant to Board Rule 559.2, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

October 31, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case Nos. 10-UM-02 and 13-RC-01 is being transmitted to the following parties on this 8th day of November 2013.

Johnnie Walker
National Representative
AFGE District 14
444 N. Capitol St. NW, suite 841
Washington, DC 20001

VIA FILE &SERVEXPRESS

Michael Levy
D.C. Office of Labor Relations &
Collective Bargaining
441 Fourth St. NW, suite 820 North
Washington, D.C. 20001

VIA FILE&SERVEXPRESS

David McFadden
Attorney Advisor