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

In the Matter of:

1199 Metropolitan District, D.C., National Union
of Hospital and Health Care Employees
(NUHHCE), AFSCEM, AFL-CIO

Petitioner,

v.

District of Columbia Office of the
Chief Medical Examiner,

Respondent.

PERB Case No. 03-CU-01

Opinion No. 1328

DECISION ON COMPENSATION UNIT DETERMINATION

I. Statement of the Case

On October 28, 2002, the Public Employee Relations Board (Board), in Slip Opinion No. 690, certified 1199 Metropolitan District, D.C., National Union of Hospital and Health Care Employees (NUHHCE), AFSCME, AFL-CIO, as the exclusive representative of the following unit:

All physicians assistants (medicolegal investigators) employed by the Office of the Chief Medical Examiner of the District of Columbia, excluding 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.

NUHHCE filed a "Petition for a Compensation Unit Determination," seeking a determination concerning the appropriate unit for the purpose of compensation negotiations, for the unit of physicians assistants (medicolegal investigators) employed by the Office of the Chief

Medical Examiner of the District of Columbia ("Office of the Chief Medical Examiner"). Notices concerning the Petition were issued on March 12, 2003, for conspicuous posting at the Office of the Chief Medical Examiner. The Notice solicited comments concerning the appropriate compensation unit placement for this unit of employees.¹ The Notice required that comments be filed in the Board's office no later than April 10, 2003. The Office of the Chief Medical Examiner confirmed that the Notices had been posted. In addition, the Office of Labor Relations and Collective Bargaining (OLRCB) submitted comments on behalf of the Office of the Chief Medical Examiner. In Slip Opinion Number 711, the Board issued an order granting the petition, noting that a decision would follow. The Board's decision and the reasons therefor are as follows.

II. Discussion

NUHHCE is seeking a determination concerning the appropriate unit for the purpose of negotiations for compensation, for a unit of physician assistants (medicolegal investigators) employed by the Office of the Chief Medical Examiner. The compensation unit proposed by NUHHCE is as follows:

All physician assistants (medicolegal investigators) employed in the Office of the Chief Medical Examiner of the District of Columbia, who currently have their compensation set in accordance with the District Service (DS) Schedule, Series 603; but excluding 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.

In its submission, NUHHCE indicates that an appropriate compensation unit placement for these employees is in Compensation Unit 1.² NUHHCE notes that the "only other option would be to place the Physician Assistants in a separate, new compensation bargaining unit—an approach the Union does not necessarily oppose but does not recommend at this time." (NUHHCE's submission at p. 1). OLRCB submitted comments on behalf of the Office of the Chief Medical Examiner. In their comments, OLRCB asserts that the appropriate placement for this unit of employees is in Compensation Unit 1. In view of above, the parties' proposed

¹ Labor organizations are initially certified by the Board under the Comprehensive Merit Personnel Act (CMPA) to represent units of employees that have been determined to be appropriate for the purpose of non-compensation terms-and-conditions bargaining. Once this determination is made, the Board then determines the compensation unit in which these employees should be placed. Unlike the determination of a terms-and-conditions unit, which is governed by criteria set forth under D.C. Code § 1-617.09 (2001 ed.), unit placement for the purpose of authorizing collective bargaining over compensation is governed by D.C. Code § 1-617.16(b) (2001 ed.).

² Compensation Unit 1 consists of all District Service career service professional, technical, administrative and clerical employees.

compensation unit description is as follows:

All physicians assistants (medicolegal investigators) employed by the Office of the Chief Medical Examiner of the District of Columbia, who currently have their compensation set in accordance with the District Service (DS) Schedule, Series 603, excluding 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.

Traditionally, the Board has authorized and established compensation units pursuant to the standard noted under D.C. Code § 1-617.16(b) (2001 ed.). Specifically, D.C. Code § 1-617.16 (b) (2001 ed.) provides as follows:

In determining an appropriate bargaining unit for negotiations concerning compensation, the Board shall authorize broad units of occupational groups so as to minimize the number of different pay systems or schemes. The Board may authorize bargaining by multiple employers or employee groups as may be appropriate.

“The Board has departed from strict adherence to [the above-noted] criteria where the employing agency has independent personnel and compensation bargaining authority, *e.g.*, D.C. General Hospital, D.C. Public Schools, the D.C. Water and Sewer Authority, notwithstanding the existence of occupational groups that the agency may have in common with other agencies and personal authority.” *Gov’t of the District of Columbia & All Unions in Compensation Units 1, 2, 13 & 19*, 45 D.C. Reg. 6725, Slip Op. No. 557 at p. 4, PERB Case Nos. 97-UM-02 and 98-CU-04 (1998). *See also WASA and AFG Local 631*, 46 D.C. Reg. 122, Slip Op. 510, PERB Case Nos. 96-UM-07, 97-UM-01, 97-UM-03 and 97-CU-01 (1997). “The Board has also made one other exception where the pay scheme of the occupational group is so unique as to warrant a separate compensation unit determination.” *AFSCME v. D.C. Pub. Schs., Office of Contracts & Acquisitions*, Slip Op. No. 962 at p. 3, PERB Case No. 08-CU-01 (Aug. 25, 2009)(Compensation Unit 30 was established for personnel care aides employed by the Department of Human Service whose pay schemes resemble independent contractors). In both instances, the Board authorized compensation units that consisted of a single agency or occupational group.

In the present case, the Office of the Chief Medical Examiner is an agency under the Mayor’s personnel authority. In addition, the physician assistants are paid in accordance with the District Service pay schedule. Furthermore, the physician assistants share a pay system with other employees who are currently in compensation unit 1. Therefore, consistent with the Board’s mandate under D.C. Code § 1-617.16(b)(2001 ed.), the physician assistants should be placed in compensation unit 1.

In addition, the Board has observed that D.C. Code § 1-617.16(b) (2001 ed.) has established a two-part test to determine an appropriate compensation unit:

- (1) The employees of the proposed unit comprise broad occupational groups and
- (2) The proposed unit minimizes the number of different pay systems or schemes.

The first prong of the test is met as NUHHCE seeks placement in a compensation unit comprised of a broad group of employees who possess certain general skills and who currently have their compensation set in accordance with the District Service (DS) Schedule.

The second prong of the test is also fulfilled. Simply put, a smaller number of compensation bargaining units would ultimately result in a smaller number of pay systems.

For the above-noted reasons, placing the physician assistants in compensation unit 1 effectuates the policies of the Comprehensive Merit Personnel Act of 1978. Therefore, the unit set forth below is appropriate for collective bargaining over compensation:

All physician assistants (medicolegal investigators) employed in the Office of the Chief Medical Examiner of the District of Columbia, who currently have their compensation set in accordance with the District Service (DS) Schedule, Series 603; but excluding 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.

For the reasons discussed, the Board grants NUHHCE's petition and places the physician assistants in Compensation Unit 1 as defined above.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

September 14, 2012

CERTIFICATE OF SERVICE

This is to certify that the attached Decision in PERB Case No. 03-CU-01 was served via U.S. Mail to the following parties on this the 14th day of September 2012:

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