

physicians, dentists and podiatrists, institutional residents (inmates) employed by the Department, or any employees employed 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." ^{2/}

The Petition was accompanied by a showing of interest meeting the requirements of Board Rule 502.2 and a copy of the Petitioner's Constitution, Bylaws and Roster of Officers, as required by Rule 502.1(d).

On March 7, 1991, the Board issued Notices concerning the Petition for conspicuous posting at DOC for 15 consecutive days. The Notice required that requests to intervene or comments be filed in the Board's office not later than April 14, 1991. The Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of DOC, confirmed in writing on March 20, 1991, that said Notices had been posted accordingly.

As the incumbent labor organization, the Teamsters filed a Request to Intervene on April 4, 1991, in accordance with Rules 501.14 and 502.8(b). ^{3/} The Teamsters' Request was accompanied by a Motion to Dismiss asserting that pursuant to Board Rule 502.9(b), the Petition was "barred by the application of the PERB's contract bar rules...." Teamsters also requested that the Petitioner be ordered to pay costs pursuant to D.C. Code Sec. 1-618.13(d). IUPA timely responded to the Teamsters' Motion on April 18, 1991. No response to IUPA's Petition was filed on

^{2/} The Teamsters were certified as the exclusive bargaining representative of the above unit of employees in District of Columbia Department of Corrections and Teamsters Local Union No. 1714 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Teamsters Local Union No. 246 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, PERB Case No. 84-R-09, Certification No. 33 (Amended as of April 15, 1987). The exclusions described in the above unit appear as amended by Doctors' Council of the District of Columbia and the District of Columbia Government (Department of Corrections and Department of Human Services), PERB Case No. 84-R-12, Certification No. 42 (1987).

^{3/} As the incumbent labor organization for this unit of employees, the Board has allowed the Teamsters to intervene as a matter of right pursuant to Board Rule 502.8(b).

behalf of DOC. ^{4/}

By Order dated February 27, 1992, the Board referred this matter to a Hearing Examiner duly designated by the Board to hear and take evidence on all issues relevant to the disposition of this Petition. The hearing took place March 19 and 25, 1992. Following the timely submission of post-hearing briefs, the Hearing Examiner issued a Report and Recommendation, a copy of which may be reviewed or obtained at the office of the Board, in which he concluded that (1) "[t]he working conditions agreement in effect between Teamsters Local 1714 and the Agency [,i.e., DOC,] is valid and binding for contract bar purposes" and (2) "[t]he petition filed by IUPA on February 27, 1991, was untimely filed under Sec. 502.9 of PERB's Rules." (R&R at 6.) The Hearing Examiner therefore recommended that the Petition be dismissed.

The Hearing Examiner found that on June 27, 1990, the Teamsters and DOC entered into a memorandum of understanding (MOU) that renewed their noncompensation terms-and-conditions agreement --scheduled to expire on September 30, 1990-- for a 3-year period ending September 30, 1993. The Hearing Examiner further ruled that nothing under the Comprehensive Merit

^{4/} On May 7, 1991, the Foreign Medical Graduates Association (FMGA), purporting to represent "physician assistants" employed at DOC, filed a "Recognition Petition" and "Request to Intervene" opposing the inclusion of the physician assistants in the petitioned-for unit and seeking exclusive recognition as the representative of a proposed unit of physician assistants. Opposition to the FMGA Petition and Request to Intervene were filed by IUPA, the Teamsters and OLRCB. On March 18, 1991, FMGA withdrew its Petition and Request to Intervene. Therefore the issues raised by FMGA's petition are no longer before us.

We further note that the American Federation of State, County, and Municipal Employees (AFSCME) and the American Federation of Government Employees (AFGE) jointly submitted a Motion to File Amicus Brief on April 10, 1991. AFSCME and AFGE are neither parties to this proceeding nor did they request intervention in accordance with Rules 501.14 or 502.8. Consequently, they have no standing in this proceeding to file an amicus brief. Moreover, we cannot consider their "Amicus Brief" as comments in response to the Petition since the Motion was not filed during the time provided in the Board's Notice. Neither AFSCME nor AFGE have sought an extension of time to submit, as comments, its Amicus Brief for the Board's consideration. We therefore deny AFSCME's and AFGE's Motion and have not considered their Amicus Brief.

Personnel Act (CMPA) nor contained in the renewed noncompensation collective bargaining agreement requires ratification before such an agreement can be deemed valid and binding. Thus, contrary to the assertions and arguments made by IUPA, the Hearing Examiner concluded that ratification of the noncompensation agreement was "a mere formality and an intra-union matter" and not "a condition precedent to an agreement". (R&R at 4.) In so concluding, IUPA's contention that employees never ratified the noncompensation agreement since, during the ratification process, they considered both the compensation and noncompensation agreement as a package, were found to be irrelevant to the validity of the noncompensation agreement.

In view of his findings above, the Hearing Examiner ruled that it was improper to inquire into the ratification process to determine the contract bar issue. He concluded that the MOU renewing the noncompensation agreement between DOC and the Teamsters was duly executed and, as such, created "a valid binding agreement which under Sec. 502.9(b) of PERB's Rules would bar the instant petition." (R&R at 4-5.) The Hearing Examiner further concluded that the renewed noncompensation agreement was "valid and binding for purposes of contract bar" notwithstanding his finding that the District Council's disapproval of the compensation agreement "left [DOC and the Teamsters] with [only] the [noncompensation] working conditions agreement approved by the Memorandum of Understanding of June 27, 1990." (R&R at 5.) ^{5/}

IUPA filed Exceptions to the Hearing Examiner's Report and Recommendation maintaining that (1) employees' failure to ratify the noncompensation agreement independent of the compensation agreement has rendered the noncompensation agreement insufficient to act as a bar to its Petition; (2) absent binding compensation provisions, the noncompensation agreement does not constitute an agreement which contains substantial terms and conditions of

^{5/} The District Council is afforded a right to approve or disapprove compensation agreements under D.C. Code Sec. 1-618.17 (j). A similar right is not accorded the District Council under the CMPA with respect to noncompensation agreements. The right to approve or disapprove such agreements is extended to the Mayor and other respective personnel authorities under D.C. Code Sec. 1-618.15(a). Noncompensation terms-and-conditions agreements are submitted "to the [District] Council for its information [only]." D.C. Code Sec. 1-618.15(b).

employment sufficient to bar its Petition ^{6/}; and (3) permitting the June 27, 1990 MOU to act as a contract bar by rolling over the then existing noncompensation agreement between DOC and the Teamsters prior to its expiration defeats the Board's policy of maintaining an appropriate "balance" between "contract stability" and "the interest of employees in redetermining their exclusive representation." (Except. at 8.). No exceptions or responses to IUPA's exceptions were filed by DOC or the Teamsters.

We have considered the record before us, including the Hearing Examiner's Report and Recommendation and the parties' pleadings. For the reasons that follow, the Board finds no merit in IUPA's exceptions. The Hearing Examiner's findings and conclusions of law in support of his ruling that there exists a contract bar to IUPA's Petition are logical, persuasive and supported by the record. We therefore adopt the recommendation of the Hearing Examiner that the Petition be dismissed. All that remains for the Board to do is explain why, notwithstanding the arguments raised by IUPA's Exceptions, IUPA's Petition as filed is barred and must thereby be dismissed.

Turning to IUPA's first contention, the Hearing Examiner correctly observed that the Board has recognized a "distinction between ratification which is a condition precedent to an agreement and a situation where it is strictly an intraunion matter". (R&R at 4.) While, in Fraternal Order of Police, Department of Corrections Labor Committee and District of Columbia Department of Corrections and American Federation of Government Employees, Local 1550, 29 DCR 4611, Slip Op. No. 49 at 6, PERB Case No. 82-R-06 (1982), we left open the possibility that a situation may exist where union ratification may be required to make a new agreement effective, the instant record reveals no such situation. The Hearing Examiner correctly noted that neither the CMPA nor the terms of the parties' renewed noncompensation agreement requires ratification to effect a valid collective bargaining agreement. Thus, IUPA's contention that the noncompensation working conditions agreement was never ratified, separate and apart from the tentative compensation agreement, is of no significant consequence based on this record. The MOU renewing the noncompensation working conditions agreement became valid and binding between DOC and the Teamsters upon its execu-

^{6/} This exception appears to be at odds with the Hearing Examiner's finding that the parties were in agreement that "for contract bar purposes the existence or nonexistence of a compensation [collective bargaining] agreement is not relevant." (R&R at 4.)

tion, i.e., June 27, 1990.^{7/} Thus, how the noncompensation agreement was presented or voted upon during employee ratification is irrelevant to its validity. Whether or not such a collective bargaining agreement, absent compensation provisions or a valid coexisting compensation agreement, is sufficient to bar a recognition petition, as prescribed by Rule 502.9(b), is addressed below in our discussion of IUPA's second exception.

The crux of IUPA's next exception is that the Hearing Examiner extended a "flat rule" concerning the principle of contract bar which was established in the context of private sector collective bargaining where, invariably, compensation and noncompensation provisions are negotiated and reduced to a single collective bargaining agreement. IUPA correctly notes that this is not necessarily the case under the CMPA. Thus, since the renewed collective bargaining agreement consisted only of noncompensation working conditions, IUPA argues it should not be accorded the same contract bar effect as private sector collective bargaining agreements containing both compensation and noncompensation working conditions.

IUPA's argument is based largely on its misplaced reliance upon our Decision and Order in International Brotherhood of Police Officers and the University of the District of Columbia and American Federation of State, County and Municipal Employees, District Council 20, Local 2087, 29 DCR 5275, Slip Op. No. 51, PERB Case No. 82-R-08 (1982). IUPA asserts, quoting the Board, "that, for contract bar purposes 'a contract is only deemed to be fully in place when substantial terms and conditions sufficient to stabilize a labor-management relationship have been negotiated and ratified.'" Id. at 3. (Except. at 6.) Read in context, however, the Board was merely affirming the Hearing Examiner's reasoning that a compensation agreement, which had not been "ratified", i.e., approved, by the employer agency until after the recognition petition had been filed, is not "deemed to be fully in place" for purposes of being "considered a bar to the [recognition] petition...." ^{8/} Id. (emphasis added.) In finding

^{7/} It is important to note for reasons we discuss, *infra*, that the renewed noncompensation collective bargaining agreement did not itself become effective until immediately after the September 30, 1990 scheduled expiration date of the prior agreement.

^{8/} Significantly, the petitioning union argued that "the Compensation Agreement should not bar the petition because it concerns wages and fringe benefits only and does not cover substantial terms and conditions of employment", i.e.,
(continued...)

no contract bar under those facts, the Board sustained the petition principally on a finding that a disputed extension of a noncompensation collective bargaining agreement had "no definite expiration date", Id. at 2, an issue that does not confront us here.

At the time IUPA's Petition was filed, i.e., February 27, 1991, the noncompensation collective bargaining agreement was "fully in place". We find such an agreement, which embodies the bargaining unit's noncompensation terms and conditions of employment, is sufficiently substantial to ensure a stable labor-management relationship and thus constitutes a collective bargaining agreement, as prescribed by Board Rule 502.9(b). ^{2/} Thus, we reject IUPA's suggestion that a noncompensation collective bargaining agreement is insufficient "to stabilize a [specific] labor-management relationship" and therefore, standing

⁸(...continued)
noncompensation working conditions. Id. at 3. The Board observed that "the situation was simply that the Compensation Agreement was not in effect when [the recognition] petition was filed." Id.

^{9/} 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. In short, authorization by the Board for collective bargaining over compensation involves primarily the determination of an appropriate compensation unit, not questions concerning representation. The latter issues are resolved in the context of recognition petitions to determine the exclusive representative for an appropriate terms-and-conditions collective bargaining unit. Under the CMPA, a valid noncompensation collective bargaining agreement is clearly a sufficient agreement to stabilize a specific "labor-management relationship." In view of the above, no real basis exists for a policy that excludes as a bar agreements covering noncompensation issues. To the contrary, we conclude that Board Rule 502.9 does not exclude an otherwise valid noncompensation agreement as a bar to a recognition petition.

alone, should not be accorded a contract bar effect. ^{10/}

^{10/} IUPA fails to substantiate its proposition in referring to three Board Decisions and Orders, wherein the contracts in question comprised both compensation and noncompensation terms-and-conditions of employment. In International Brotherhood of Police Officers and District of Columbia General Hospital Commission and National Union of Security Officers, 29 DCR 4376, Slip Op. No. 47, PERB Case No. 82-R-09 (1982), the Board ruled that Interim Board Rule 101.8(b) (now Board Rule 502.9(b)) "...must necessarily be interpreted as incorporating a distinction between compensation and noncompensation terms-and-conditions agreements where the consequences of a failure to make this distinction would be that employees would be left unrepresented as far as terms-and-conditions (other than compensation) are concerned." *Id.* at 3-4. This is not inconsistent with our ruling herein which makes clear that pursuant to Rule 502.9 noncompensation agreements are more significant in promoting stability in determining the representation of a unit of employees found appropriate for collective bargaining. See n.8, *supra*. Although the Board expressly limited its ruling to the facts of that case, no contract bar was found in PERB Case No. 82-R-09 even in the face of an existing compensation agreement. In International Brotherhood of Police Officers and District of Columbia Department of General Services and District Council 20, American Federation of State, County and Municipal Employees, Local 2784, 29 DCR 4605, Slip Op. No. 48, PERB Case No. 82-R-04 (1982), the Board ruled that Interim Board Rule 101.8 was designed to permit redetermination of employees' representational interest at the end of the contract period. The "critical contract" for purposes of determining the existence of a contract bar, the Board ruled, is the one "covering terms-and-conditions of employment", i.e., noncompensation provisions. *Id.* at 5. As noted in the text, the Hearing Examiner found, and we affirm, that a valid binding noncompensation terms-and-conditions agreement existed between DOC and the incumbent Teamsters union. A contract bar was not found, however, under the facts of PERB Case No. 82-R-04 because the petitioning union had otherwise filed a proper recognition petition --unlike the instant Petition-- during the open period provided under Interim Board Rule 101.8(b). Finally, IUPA cites our Decision and Order in Fraternal Order of Police, Department of Corrections Labor Committee and District of Columbia Department of Corrections and American Federation of Government Employees, Local 1550, 29 DCR 4611, Slip Op. No. 49, PERB Case No. 82-R-06 (1982), where the Board found a contract bar. IUPA asserts a contract bar was found because a valid noncompensation agreement and compensation terms existed at the same time. The

(continued...)

With respect to IUPA's final exception, we conclude that the June 27, 1990 MOU, which renewed the noncompensation agreement between DOC and the Teamsters, does not disturb the Board's policy of maintaining a balance between contract stability and the interest of employees in redetermining their exclusive representative. The prior 3-year collective bargaining agreement between DOC and the Teamsters had a "scheduled expiration date" of September 30, 1990. The June 27, 1990 MOU did not have the effect of extending or changing the "scheduled expiration date" of that agreement which it renewed.^{11/} As prescribed by Rule 502.9(b)(i), a recognition petition could have been properly filed "between the 120th day and the 60th day prior to the scheduled expiration date", a period commonly referred to as the "window period", i.e., between June 2 and August 1, 1990.

IUPA's Petition, however, was filed on February 29, 1991, significantly later than the window period, and while a valid collective bargaining agreement was in effect. While we conclude that the June 27, 1990 MOU could not have had the effect of barring a petition filed during the window period of the prior contract, once the window period expired, the MOU created a contract bar to IUPA's Petition. International Brotherhood of Police Officers and District of Columbia Department of General Services and District Council 20, American Federation of State, County and Municipal Employees, Local 2784, supra. Cf., H.L. Klion, Inc., 148 NLRB 656 (1964) and Deluxe Metal Furniture Co., 121 NLRB 135 (1958). We believe that this outcome properly preserves the integrity of contract stability, as well as the opportunity for employees to select their exclusive

¹⁰(...continued)

Decision reveals, upon review, that IUPA's assertion is premised not upon our ruling in that case but rather on the Board's restatement of an argument made by the agency and incumbent union. Id. at 5. Our ruling that a contract bar existed was based on the Hearing Examiner's finding that a valid "working conditions [,i.e., noncompensation,] agreement was both 'signed' and a 'contract' " before the recognition petition was filed. Id. at 5. That is precisely what the Hearing Examiner found with respect to the instant Petition.

^{11/} In effect the June 27, 1990 MOU created a new noncompensation collective bargaining agreement between DOC and the Teamsters with the same noncompensation terms-and-conditions of employment as the then existing agreement, for a period which began immediately after the "scheduled expiration date" of the existing agreement until its scheduled expiration on September 30, 1993.

representatives. ^{12/}

Accordingly, we adopt the Hearing Examiner's Recommendation and hereby grant the Teamsters' Motion to Dismiss the Petition.

ORDER

IT IS HEREBY ORDERED THAT:

The Teamsters Motion to Dismiss is granted.

The Petition is dismissed.

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

September 24, 1992

^{12/} With respect to the Teamsters' request for costs, our criteria for awarding costs pursuant to D.C. Code Sec. 1-618.13 were announced in AFSCME District Council 20, Local 2776, AFL-CIO v. Department of Finance and Revenue, 37 DCR 5658, Slip Op. No. 245 at pp. 4-5, PERB Case No. 89-U-02 (1990). Applying those criteria here, we find an award of costs would not be in the "interest of justice" and therefore deny the Teamsters' request.