

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: )

Washington Teachers' Union, )  
Local 6, AFL-CIO, )

Complainant, )

v. )

District of Columbia )  
Public Schools, )

Respondent. )

PERB Case No. 90-U-13  
Opinion No. 258

DECISION AND ORDER

On March 15, 1990, the Complainant Washington Teachers' Union, Local 6, AFL-CIO (WTU) filed this Unfair Labor Practice Complaint with the Public Employee Relations Board (Board) charging that in December 1989, the Respondent District of Columbia Public Schools (DCPS) had engaged in conduct violative of the Comprehensive Merit Personnel Act (CMPA), D.C. Code Section 1-618.4(a)(1) and (5) by unilaterally publishing the 1990-1991 school-year calendar, thereby changing terms and conditions of teacher employment, and thereafter refusing to bargain with WTU. On April 3, 1990, Respondent filed a Motion To Dismiss and also an Answer. WTU filed a timely Opposition To Motion To Dismiss. <sup>1/</sup>

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<sup>1/</sup> WTU filed a "First Amended Charge" to its Complaint on September 12, 1990, which alleged violations of D.C. Code Sec. 1-618.4(a)(1) and (5) in DCPS's refusal to bargain over changes in terms and conditions of employment promulgated in an August 21, 1990 Memorandum dealing with effects of its change in the 1990-1991 school calendar. Notwithstanding WTU'S styling of this document as an amended charge, it alleges violations of the CMPA through separate and distinct conduct by DCPS which occurred 8 months after the violations alleged in WTU's March 14, 1990 Complaint. We have therefore decided to treat this "First Amended Charge" as an independent Complaint which will be considered at our next regular meeting.

For the reasons below we dismiss the Complaint. <sup>2/</sup>

The Complaint alleges that in December 1989, DCPS unilaterally published a school calendar for the school year 1990-1991 (to begin for teachers August 27, 1990) without bargaining with WTU. WTU avers that "[s]uch school calendar sets certain terms and conditions of employment for the bargaining unit of employees whom the Union represents, including but not limited to the beginning and end date of the employees' school year, employees' holidays and vacations, and the total number of days to be worked by the employees." (Complaint, paragraph 4.) Despite the broader allegations of the Complaint, WTU has acknowledged that its concern was "the opening of school for teachers on 8/27/90" (WTU 12-15-89 letter to D.C. Board of Education, Exh. to the Complaint, as elaborated in Opp. to Motion to Dismiss at 3-4). <sup>3/</sup> Specifically, WTU objects to DCPS's decision "to commence the school year [for teachers] before Labor Day, in mid-contract term, unilaterally, [] without offering to bargain", (Opp. to Motion to Dismiss, p.1). That decision, WTU adds, was also contrary to the "customary practice [DCPS] had uniformly followed" between 1986 through 1989 (id.).

DCPS denies that its action constitutes an unfair labor practice because, "the contents of the 1990-1991 school calendar establishes that there has been no change in the terms and conditions of employment, as set forth in the parties['] collective bargaining agreement, in comparison to the [] 1989-1990 school calendar, to create a bargaining obligation." (Ans. paragraph 2). While the opening day for teachers has certainly been changed, DCPS argues that the establishment of the opening date in the school calendar is not a mandatory subject of bargaining because it concerns DCPS's exclusive right to establish educational policy. Moreover, says DCPS, this very issue was decided between these parties in Washington Teachers' Union, Local 6, AFL-CIO and The District of Columbia Public Schools, Slip Op. No. 144, PERB Case No. 85-U-28 (1986) which was affirmed by the D.C. Court of Appeals in PERB v. Washington Teachers' Union, Local 6, AFT, 556 A.2d 206 (1989). DCPS urges that, accordingly, this Complaint be dismissed "[s]ince to do

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<sup>2/</sup> In view of the fact that DCPS's Motion to Dismiss raised material issues of fact, we hereby deny it. Our action on the Complaint is predicated upon the entire record before us.

<sup>3/</sup> A comparison of the 1989-1990 school calendar with the 1990-1991 school calendar reveals that, with the exception of the earlier starting and ending dates for teachers, there are no changes in the 1990-1991 school calendar from the 1989-1990 school calendar (Exh. A and B. to Ans. to Complt).

otherwise would give no precedential value to prior decisions of [the Board]." (Answer, paragraph 11.)

DCPS correctly notes that this Complaint presents the identical legal issue between these same parties that was decided by the Board in The Washington Teachers' Union, Local 6, AFL-CIO and The District of Columbia Public Schools, supra. The relevant issue there was, "whether the teachers' first day of the school year is a mandatory subject of bargaining[.]" The Board concluded in dismissing that Complaint "that the CMPA, which authorizes final and binding arbitration, did not intend for a third-party neutral to be in a position to rule on subjects that have such high policy implications as these." The Board held "that DCPS's action of establishing the first day of school... was lawful and its procedure used in publishing the calendar was proper."<sup>4/</sup>

The legal issue presented by this Complaint is whether DCPS's establishment of the opening day of school for teachers in the school calendar without bargaining with WTU constituted a violation of D.C. Code Section 1-618.4(a)(1) and (5). This is the same issue determined by the Board between these parties in Washington Teachers' Union, Local 6, AFL-CIO and the District of Columbia Public Schools, supra. The determination of the issue was essential to our decision there that the challenged DCPS action did not constitute a violation of the CMPA. WTU is therefore collaterally estopped from relitigating the issue against DCPS here. The doctrine of collateral estoppel "normally will bar the relitigation of an issue of law or fact that was raised, litigated, and actually decided by a judgment in a prior proceeding between the parties, if the determination of that issue was essential to the judgment" (NLRB v. United Technologies Corp., 706 F.2d 1254, 1260 (C.A. 2, 1983)). Thus, we dismiss the Complaint.<sup>5/</sup>

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<sup>4/</sup> In that case the Board was also presented with, and rejected as irrelevant, the argument WTU now raises that DCPS's changing the school calendar without prior discussion or consultation with the Union was a violation of established past practice.

<sup>5/</sup> There has been no intervening decision by the PERB or the D.C. Courts on the legal issue that could render estoppel inapplicable here, nor has any fact been alleged that should lead us to a reconsideration of the question. WTU has argued that the D.C. Court of appeals, in affirming our ruling in the Washington Teachers' Union case, declined to hold a contrary ruling by the Board impermissible, and we agree with this reading of what the appellate court did and did not do there. However, we do not feel

ORDER

IT IS HEREBY ORDERED THAT:

Complaint is dismissed.

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

March 26, 1991

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(footnote 5 Cont'd)

free to change our ruling without a showing of change in the situation presented, and that is lacking here. WTU urges that "facts change", but the only fact that WTU has asserted "it is prepared to establish" at a hearing herein concerns a lack of intent by WTU "to waive its bargaining rights on the school calendar" (Opp. to Motion to Dismiss, n.5). Since our decision in the earlier case was that WTU had no such right with respect to the date of the opening day for teachers, that "proof" could avail it nothing. See also note 4, supra.

DCPS has argued that the complaint here should be dismissed as barred by res judicata. However, that doctrine bars a subsequent action upon a factual claim or demand that has been finally determined on the merits between the same parties or those in defined relationships with them. Here, the factual claim is different from that in the earlier case -- that is, the calendar in question and the DCPS action with respect to it are for a year different from that in the prior case. Thus res judicata does not apply. See the United Technologies case cited supra, 706 F.2d at 1259-60, and cases there discussed.