

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

The University of the District of
Columbia Faculty Association/National
Education Association,

Complainant,

Case No. TU001
Opinion No. 78

and

The University of the
District of Columbia,

Respondent.

DECISION AND ORDER

This matter comes before the Board by way of a letter dated May 16, 1983 from the University of the District of Columbia Faculty Association/National Education Association (UDCFA/NEA) requesting that the Board order proceedings before the Special Master appointed by the District of Columbia Board of Labor Relations (BLR), the predecessor of the Public Employee Relations Board (Board), in BLR Opinion No. 15. In Opinion No. 15, the BLR found that the University of the District of Columbia (UDC) (then known as Federal City College) had committed an unfair labor practice against the UDCFA/NEA by failing to consult and confer with it over the impact of and procedures for conducting a reduction-in-force (RIF) in 1977. As a remedy, among other things, the BLR issued a preferential hiring order and appointed a Special Master to oversee UDC's compliance with the order.

On June 9, 1983, the Board solicited the views of UDC and on June 30, 1983, UDC filed comments with the Board contending that proceedings before the Special Master were inappropriate and unnecessary because UDC was in full compliance with BLR Opinion No 15. On July 27, 1983, UDCFA/NEA responded by asserting that the BLR had appointed and authorized the Special Master to make determinations concerning UDC's compliance with the preferential hiring order and that it was up to the Special Master to do so now.

The matter currently before the Board concerns three (3) fulltime faculty position vacancies for which UDCFA/NEA contends qualified preferential hiring list (PHL) candidates are not being properly

considered. Two (2) of the vacancies involve positions in the Biology Department and another involves a vacancy in the Chemistry Department. UDC contends that a hiring freeze is in effect, that the vacancies are not being filled at this time and, therefore, there is no obligation for it to act under the preferential hiring order. UDCFA/NEA disputes these assertions and maintains that, under the series of orders issued by the BLR in this matter, it is entitled to a determination by the Special Master concerning UDC's compliance with the BLR directives.

The BLR's Supplemental Order provides that the preferential hiring list shall operate as follows:

"Respondent [UDC] is required to offer each full-time position which is now, or in the future becomes available, to a qualified individual on the list. A position is 'available' if it is new, or if not new, if it is not to be filled by an incumbent. The Respondent shall make every effort to designate and offer to individuals on the list comparable full-time positions for which they are qualified."

The Board considered the matter at its September 7, 1983 meeting and directed that it be referred to the designated Special Master, "...for further proceedings consistent with the Order of the former District of Columbia Board of Labor Relations (BLR)." After several postponements at the request of the parties, he conducted a hearing on January 23, 1984 and issued his "Report of Special Master" on February 29, 1984. Among other things, the Special Master found that, (1) due to retirements and resignations in the summer of 1982, the three vacancies in question did exist in the fall of 1982; (2) that the three PHL candidates were and are fully qualified to fill the vacancies; and (3) that UDC evaded its obligations under the preferential hiring order by applying a freeze to positions previously announced as vacant and subsequently filling the positions with temporary and part-time employees.

Accordingly, the Special Master found that UDC was in violation of the preferential hiring order and proposed that an order be issued requiring, essentially, that UDC offer Dr. Essica Barnabas, Professor Louis Perkins and Dr. Muriel Prouty appointments to the respective vacancies announced in October and November 1982 in the Biology and Chemistry Departments and that UDC pay to these individuals all the back pay which would have accrued to them commencing with the Spring Semester of 1983.

On March 9, 1984, UDC filed a "Special Master Review Request" and on March 13, 1984, UDC filed "Arguments In Support of Request For Review and Reversal of Special Master's Decision." UDC contends essentially that the Special Master acted "...outside the scope of his authority" granted under the BLR's preferential hiring order when he ordered UDC "...to place PHL candidates in positions not yet available...." On March 26, 1984, UDCFA/NEA filed "Complainant's Response to Respondent's Request for Review" contending that the Special Master properly acted within the scope of the BLR's preferential hiring order and that the proposed order of the Special Master should be adopted by this Board.

It is clear that the BLR authorized its designated Special Master to "make final and binding rulings on any questions which might arise concerning the requirements..." of its preferential hiring order. [Emphasis Added] The Board has reviewed the record and all arguments raised and finds that the Special Master has acted within the scope of the BLR's Opinion No. 15 in finding UDC to be in violation of the preferential hiring order. Accordingly, the Board adopts the findings and proposed order of the Special Master and determines them to be final and binding on the parties.

ORDER

IT IS ORDERED THAT:

The University of the District of Columbia shall take the following actions:

- A. At the earliest feasible date, offer Dr. Essica Barnabas, Professor Louis Perkins and Dr. Muriel Prouty appointments to the respective vacancies announced in October and November 1982 in the Biology and Chemistry Departments.
- B. Pay to the above-named individuals all the back pay which would have accrued to them commencing with the Spring Semester of 1983 until such time as Respondent complies with this Order, less interim earnings during this period and without loss of any other benefits which would have accrued to them had they been employed by Respondent during this period.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

April 23, 1984