

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)	
)	
District of Columbia Government)	
Metropolitan Police Department,)	
)	
Complainant,)	PERB Case No. 83-U-05
)	Opinion No. 56
and)	
)	
Fraternal Order of Police)	
Metropolitan Police Department)	
Labor Committee,)	
)	
Respondent.)	
)	

DECISION AND ORDER

On November 20, 1982, the District of Columbia Metropolitan Police Department (hereafter MPD) filed an Unfair Labor Practice Complaint against the Fraternal Order of Police, MPD Labor Committee (FOP) charging FOP with failure to bargain in good faith in violation of Section 1704(b)(3) of the Comprehensive Merit Personnel Act of 1978 (CMPA) (codified as D.C. Code Section 1-618.4(b)(3)). Specifically, MPD charges that the violation is based upon FOP's alleged withdrawal of a proposal after it had been accepted by MPD during the course of contract negotiations.

FOP filed its response on January 17, 1983, denying the charge and contending that the context in which the remarks constituting the alleged proposal were made did not conform to the parties' established practice of exchanging written proposals. Since the oral comments by FOP's negotiator were not intended to be a formal proposal, there could not be any acceptance by MPD.

The issue before the Board is whether or not a proposal must have been reduced to writing and initialed by the party submitting it in order to be considered a formal offer which could be accepted by the other party.

Six (6) times between September 10 and November 18, 1982, negotiations sessions were held between MPD and FOP to reach a successor agreement to the old contract between MPD and IBPO, FOP's predecessor. The parties agreed that the old contract, which was to expire on September 20, 1984, would be used as a framework for negotiations. The parties reached agreement on all outstanding issues except Article 27, which is entitled "Scheduling." Although the parties had met five (5) times previously, they never reached formal agreement on ground rules. However, in reaching agreement on all other issues, all proposals and counter-proposals were presented in writing. Generally, the practice was for the parties to receive written proposals, caucus to discuss the written proposals and then to return to the table either to discuss the proposals, or to submit written counter-proposals.

At a November 18, 1982, negotiating session, Article 27, "Scheduling" for Special Operations Division (SOD) personnel, was a major obstacle. FOP submitted its latest written proposal to MPD representatives. MPD representatives caucused and submitted a new written proposal regarding scheduling. None of the proposals made any reference to technician's pay or other monetary compensation for SOD Personnel, the only unit for which agreement had not been reached.

A discussion of the most recent union and management proposals followed. During these discussions, the Chairman of the FOP pointed out that SOD was the only unit which was discriminated against because it performed a special function and that the union couldn't be expected to allow MPD to treat SOD personnel differently from the rest of the Department with regard to scheduling without compensating them in some way. The MPD representatives did not respond to the reference to compensation at this time, but the MPD representatives caucused. The co-chief negotiator for MPD then addressed the FOP representatives and stated, "subject to approval by our principals, we would accept the proposal on technician's pay for SOD and give management the day-to-day scheduling prerogative." FOP's negotiator responded that his reference to technician's pay was merely an alternative approach and not a bargaining proposal. The co-chief negotiator for MPD then stated the offer was "out on the table, you put it out there." The FOP representatives heatedly denied that there was any offer regarding technicians' pay on the table. MPD's negotiator declared that he would file charges against FOP for negotiating in bad faith by withdrawing the proposal. After a brief verbal confrontation over the matter, everyone left the room.

In reviewing this matter the Board finds that, although the parties had not agreed to formal ground rules, there was a well established practice of exchanging written proposals as a basis for discussion. There is no evidence to suggest that either party had ever previously made an oral formal proposal.

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Accordingly, the Board finds that there is insufficient evidence to conclude that a violation, within the meaning of Section 1704 (b)(3) of the CMPA, exists.

ORDER

It is ordered that:

The Complaint is hereby dismissed based on its failure to establish a violation of Section 1704(b)(3) of the CMPA (D.C. Code Section 1-618.4(b)(3) as alleged.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
March 22, 1983