

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

Fraternal Order of Police,
Metropolitan Police Department Labor
Committee,

Complainant,

and

Marion S. Barry, Jr.,
Mayor of the District of Columbia,

Respondent.

PERB Case No. 83-U-14
Opinion No. 68

DECISION AND ORDER

On September 21, 1983, the Fraternal Order of Police, Metropolitan Police Department Labor Committee (hereafter FOP) filed an Unfair Labor Practice Complaint against Marion S. Barry, Jr., Mayor of the District of Columbia (hereafter the Mayor). The FOP alleged that the Mayor violated Section 1704 of the Comprehensive Merit Personnel Act of 1978 (hereafter CMPA) by overruling the Chief of Police's refusal to act on the recommendation of the Civilian Complaint Review Board (hereafter CCRB). The CCRB recommended that official letters of reprimand be issued to two police officers who are members of the bargaining unit represented by FOP. FOP contends that the Mayor's action violated the collective bargaining agreement between the FOP and the District of Columbia government because it

"effectively precludes [the two officers] from filing an appeal of the corrective action to the Chief of Police, and thus denies [their] procedural rights under the collective bargaining agreement. [Moreover, the Mayor's action interferes with and harms the Union by denying all Union members the procedural safeguards obtained for them by the Union through the collective bargaining agreement."

On October 7, 1983, the Office of Labor Relations and Collective Bargaining (hereafter OLRCB) filed an Answer on behalf of the Mayor. OLRCB admits that the Mayor overruled the Chief of Police but denies that the disciplinary procedure negotiated under the collective bargaining agreement is circumvented in cases where, as here, the Chief of Police disagrees with a CCRB recommendation and is overruled by the Mayor. In support of its position, OLRCB cites an Opinion of the Corporation Counsel dated August 24, 1983 which holds that "...the Civilian Complaint Review Board Act of 1980 (District of Columbia Code Section 4-903(c)) supercedes conflicting provisions of the collective bargaining agreement."

The letters of reprimand in question stem from citizen complaints filed with the CCRB in June and July 1982 alleging the use of excessive force in mediating domestic relations disputes by the two officers in separate cases. In both instances, the CCRB determined that the allegations were meritorious and, pursuant to District of Columbia Code Section 4-903(c), recommended that the Chief issue letters of reprimand. On May 23, 1983, the Chief of Police recommended to the Mayor that the CCRB's findings not be upheld and that no further action be taken against the officers. On July 1 and 13, 1983, the Mayor issued decisions in the respective cases sustaining the findings of the CCRB and ordering the Chief of Police to place official letters of reprimand in the personnel files of the two officers.

The Board has reviewed this matter and finds that it lacks jurisdiction to adjudicate the issues raised herein under the authority granted to it by the CMPA (D.C. Code Sections 1-605.2(3) and 1-618.4(a)). The CCRB is granted statutory authority to provide the exclusive administrative procedures for resolving certain types of controversies arising under the Civilian Complaint Review Board Act of 1981 (D.C. Code Section 4-903). Adjudication of the controversy raised in this Complaint requires statutory interpretations outside the scope of authority granted this Board by the CMPA.

The Board's determination in this regard is not based on the Opinion of the Corporation Counsel nor does the Board assert any position concerning the Opinion.

O R D E R

IT IS ORDERED THAT:

The Complaint is hereby dismissed based on the Board's lack of jurisdiction to adjudicate the issues raised.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
December 8, 1983.