

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:)	
)	
University of the)	
District of Columbia,)	
)	
Complainant,)	PERB Case No. 89-U-09
)	Opinion No. 240
v.)	
)	
University of the)	
District of Columbia)	
Faculty Association, NEA)	
)	
Respondent.)	
)	

DECISION AND ORDER

On May 12, 1989, the University of the District of Columbia (UDC) filed an unfair labor practice complaint with the D.C. Public Employee Relations Board (Board) alleging that the University of the District of Columbia Faculty Association/NEA (UDCFA) violated the Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Code Section 1-618.4(b)(3), by failing and refusing to bargain in good faith over certain items concerning the implementation of a collective bargaining agreement.

UDCFA is the exclusive bargaining representative for the faculty at UDC. It is undisputed that in July, 1986 UDC and UDCFA began negotiations for a successor agreement to the Third Master Agreement, which culminated in the execution of the Fourth Master Agreement on December 22, 1988. Although the Agreement was not formally signed on behalf of UDC's Board of Trustees until February 15, 1989, Article XXXII of the Agreement provides that the Agreement would retroactively become effective as of October 1, 1988.

UDC contends that the fact that the Fourth Master Agreement was not signed until February 15, 1989, precluded UDC from implementing the provisions of Article XV pertaining to faculty evaluations because several of the deadline dates fell prior to

the dates that the contract was signed and ratified. Consequently, UDC asserts that consistent with the parties' past practice, it had requested on several occasions beginning in April, 1989, to negotiate with UDCFA modifications to both Article XV (Evaluation Procedure) and Article XVI (Promotion Procedures) to ensure the orderly processing of the faculty evaluations and promotions.

UDCFA responded to UDC's requests to negotiate modifications to the above-referenced articles by refusing to enter into any further negotiations regarding these items and ultimately filed a grievance on May 10, 1989. UDCFA alleged in the grievance that UDC had violated the parties' agreement by its failure to issue individual faculty contracts for the 1989 - 90 academic year by May 1, 1989, as required by the Fourth Master Agreement, with a within-grade step increase for each faculty member since, no faculty member received an evaluation rating of "competent" or "less than satisfactory."

The gravamen of UDC's complaint is that UDCFA had an obligation to negotiate modifications if it wanted its members to be eligible for step increases, and that by filing a grievance it was seeking to obtain through grievance-arbitration that which it had a duty to negotiate through the collective bargaining process.

UDCFA denies that it had any obligation to negotiate these matters, further asserting that UDC was attempting to renegotiate items that had already been agreed upon.

The issue before the Board is whether UDCFA violated D.C. Code Section 1-618.4(b)(3) by its refusal to bargain with UDC proposed modifications to the Fourth Master Agreement pertaining to faculty evaluations, after the agreement had been signed and ratified.

We conclude that UDCFA had no further obligation to negotiate these items and therefore did not commit an unfair labor practice by refusing to do so. In so concluding, we find that there is no provision in the parties' Fourth Master Agreement allowing for the reopener of any of the negotiated provisions. To the contrary, Article XXX of the Agreement expressly acknowledges the parties' understanding that the agreement constitutes the sole and entire agreement between the

parties. ^{1/} The pleadings, reveal that the only matter that remained open for any further discussion was an explanatory cover memorandum pertaining to student evaluation forms. We find no contractual obligation to pursue further negotiations over the detailed and unambiguous faculty evaluation procedure. Similarly, we find no statutory obligation to engage in additional negotiation prior to the implementation of provisions of a negotiated agreement. We note that our conclusion is supported by the well-settled law under the National Labor Relations Act. There is no statutory obligation under the NLRA to bargain over matters which were negotiated and culminated in a written agreement not subject to a reopener. (Cf. NLRB v. Jacobs Mfg. Co., 196 F.2d 680, 30 LRRM 2098, (Enfg. 94 NLRB 1214).

For the foregoing reasons, we reject as specious UDC's contentions that by grieving UDC's failure to timely issue individual contracts to faculty for the academic year 1989 - 1990 or to evaluate faculty members for the academic year 1988 - 1989, UDCFA was avoiding its obligation to bargain over proposed modifications to the Fourth Master Agreement.

Accordingly, we dismiss this Complaint. ^{2/}

^{1/} Article XXX "Entire Agreement" states the following:

The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject matter not removed by law from the applicable area of collective bargaining. The understandings set forth in this Agreement (including any appendices and letters attached hereto) shall constitute the sole and entire agreement between the parties for the duration hereof. Matters not directly covered by this Agreement shall be governed by applicable D.C. regulations and law.

^{2/} In its Answer to the Complaint UDCFA requests that the Board dismiss the Complaint and that the Board award \$10,000 or such sum deemed appropriate for the time utilized to prepare a response to a "frivolous and vexatious" complaint. While we conclude that the Complaint is meritless, we find no special factors or any factual basis for the award of any sum as compensation for the time spent preparing a response. Accordingly, the Respondent's request is denied.

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ORDER

IT IS HEREBY ORDERED THAT:

The Complaint is dismissed.

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

January 8, 1990