

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)
)

The Council of School Officers,
Local 4,)
)

Complainant,)
)

and)
)

The District of Columbia Public Schools,)
)

Respondent.)
)

PERB Case No. 83-U-07
Opinion No. 76

DECISION AND ORDER

On May 5, 1983, the Council of School Officers, Local 4, (CSO) filed an "Unfair Labor Practice Complaint" (ULP) with the Public Employee Relations Board (Board) against the District of Columbia Public Schools (DCPS). The Complaint alleges that DCPS violated Section 1704 of the Comprehensive Merit Personnel Act (CMPA) (D.C. Code Sections 1-618.4(a)(1) and (a)(5)) by refusing to bargain in good faith. On May 23, 1983, DCPS filed its "Response" denying the allegations and asking the Board to dismiss the Complaint.

On August 3, 1983, the Board referred the matter to a Hearing Examiner for a report and recommendation. A hearing was convened on September 28, 1983 and was continued on September 30, October 14, and 21, 1983. Post-hearing briefs were filed by the parties on November 28, 1983. The Hearing Examiner's "Report and Recommendation" was filed with the Board on December 28, 1983. On January 12, 1984, DCPS filed a "Motion to Correct the Record." On January 20, 1984, CSO filed written "Exceptions to the Hearing Examiner's Report and Recommendation."

The critical fact relied on by the CSO is that the Superintendent of D.C. Public Schools rejected, on January 17, 1983, the recommendation of a "Joint Task Force" that the working hours and school year of clinical psychologists be adjusted to coincide with those of other members of the pupil personnel staff. The Joint Task Force had been set up, under the terms of the three-year collective bargaining agreement executed on April 7, 1982, to explore areas of concern to the CSO. The Task Force met on three occasions and the recommendation resulted from the discussion at those meetings. The CSO maintains that the Task Force consideration of the issue constituted collective bargaining, and that the Superintendent's subsequent rejection of the recommendation amounted to a refusal to bargain.

The Hearing Examiner made the following findings of fact:

1. Consultative monthly meetings of the ad hoc joint task forces between the parties was not contract bargaining activity.
2. The activities of the joint task force cannot be recognized as collective bargaining in the normal sense.
3. The appointment of a "Chairperson" to lead the dialogue does not suggest the give-and-take normally associated with bargaining.
4. No proposals were exchanged as is commonly done in labor negotiations.
5. No member of the DCPS Labor Relations Division was present despite the fact that its Director negotiated the Agreement.
6. Recommendations of other joint task forces established under Article XX of the Agreement had also been rejected the DCPS Superintendent.
7. There is no evidence that CSO made a clear request to bargain under the terms of Article XXVIII of the Agreement.

Accordingly, the Hearing Examiner concluded that, since there was no formal duty to bargain, bargaining did not occur and DCPS did not bargain in bad faith as alleged.

Having reviewed the record, the Board affirms the Hearing Examiner's conclusion. The CSO asked here by letter, only that the Task Force be convened to "discuss and clarify problems" relating to the clinical psychologists. There was no demand for bargaining. The DCPS responded by appointing Task Force representatives rather than members of its negotiating team. The Hearing Examiner correctly describes the procedures followed by the Task Force and characterizes them as being very different from collective bargaining. The DCPS was not asked to engage here in collective bargaining and it did not do so. The Superintendent's rejection of the Task Force recommendation did not, therefore, constitute a violation of any duty to bargain.

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O R D E R

IT IS ORDERED THAT:

The Complaint is dismissed as failing to establish a violation of Section 1704 of the CMPA (D.C. Code Section 1.618.4).

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
April 23, 1984