

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

_____)	
In the Matter of:)	
University of the)	
District of Columbia)	
Faculty Association/NEA,)	
Complainant,)	PERB Case No. 86-U-16
v.)	Opinion No. 239
University of the)	(Motions, Exception)
District of Columbia,)	
Respondent.)	
_____)	

DECISION AND ORDER

This matter is again before the Public Employee Relations Board (Board) on motions filed by the University of the District of Columbia Faculty Association/National Education Association (UDCFA/NEA).

In a Decision and Order issued by the Board on March 27, 1989, we granted an exception filed by the UDCFA/NEA to the Hearing Examiner's Report and Recommendations. ¹/ We ruled that in light of the Union's 1-618.4(a)(3) allegation, UDCFA/NEA's request for certain information from the University of the District of Columbia (UDC) should be remanded to the Hearing Examiner, to direct that UDC provide the information to UDCFA/NEA.

On April 5, 1989, the Hearing Examiner so ordered, and on May 30, 1989 UDC furnished to UDCFA/NEA the requested performance evaluation scores for the academic years 1982 through 1986, of those bargaining unit members who received ratings of satisfactory or better and who were eligible for but did not receive within-grade step increases.

¹/ UDCFA/NEA v. UDC, 36 D.C. Register 2470, Opinion No. 215, PERB Case No. 86-U-16 (1989). We note that Opinion No. 215 contains a typographical error: in the eighth line of the second paragraph there appear the words "in material" where the single word "immaterial" was intended.

Nothing further occurred until June 19, 1989, when UDCFA/NEA filed two documents with the Board styled respectively, "Petitioner's Response To Hearing Examiner's Order of April 5, 1989" and "Petitioner's Motion To Reopen the Record to Consider a New Exception to Hearing Examiner's Report and Recommendations in Light of Previously Undisclosed Information." UDC responded on August 18, 1989 to each of these.

In the cited documents, UDCFA/NEA requests that the Hearing Examiner "reopen the record to receive the information supplied by UDC" as well as other annexed material, and argues that the information supports its allegation that UDC violated Sections 1-618.4(a)(1) and (3) by its challenged handling of faculty pay increases. UDC, similarly making a factual argument, denies that proposition. Secondly, UDCFA/NEA moves the Board to reopen the record in this proceeding "to consider a new exception to the Hearing Examiner's Report and Recommendation," namely, that in light of newly disclosed information the Hearing Examiner's recommended remedy for the violation of Sec. 1-618.4(a)(1) and (5) that he found was erroneously inadequate. To this, UDC responds that the evidence in question "is not newly discovered" and "therefore the motion is untimely" and furthermore, that the evidence does not support the position for which it is offered.

We deal below separately with the Sec. 1-618.4(a)(3) and (5) issues.

(1) The 618.4(a)(3) issues

Our Opinion No. 215, upholding UDCFA/NEA's request for certain information and remanding the proceeding to the Hearing Examiner for direction that the information be provided, implicitly authorized the parties to offer whatever evidence and/or argument they thought appropriate in response to provision of the requested information, and the Hearing Examiner to convene any necessary hearing and to rule upon the parties' contentions, with respect to the Sec. 1-618.4(a)(3) allegation. We now make explicit those authorizations, and we remand this matter to the Hearing Examiner for appropriate proceedings.

(2) The 1-618.4(a)(5) issues

Preliminarily, we note that the Board has not acted on the Hearing Examiner's Report and Recommendations and the parties' exceptions thereto except in one respect, and that is the information request dealt with in our Opinion No. 215. However, the Board's Rules provide that exceptions to a Hearing Examiner's Report and Recommendations be filed within fifteen (15) days of service of the report. Thus, unless UDCFA/NEA can establish that it is entitled to a tolling of that time limit with respect to

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the additional exception that it now seeks to file, the record on the 1-618.4(a)(5) allegation is closed.

Since the arguments for and against the tolling of the prescribed time period to present the 1-618.4(a)(5) claim are factual, we remand this question also to the Hearing Examiner for a recommended resolution. If the Hearing Examiner concludes in the affirmative on that question, he is authorized and hereby directed to reconsider the remedy he originally recommended.

ORDER

IT IS HEREBY ORDERED THAT:

The Board remands these proceedings to the Hearing Examiner for a Report and Recommendation on the issues outlined above.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

February 2, 1990