

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)	
)	
University of the District)	
of Columbia Faculty)	
Association/NEA,)	
)	
Complainant,)	
)	
v.)	
)	
University of the District)	
of Columbia,)	PERB Case No. 96-U-14
)	Opinion No. 485
)	
Respondent.)	
)	

DECISION AND ORDER

On March 8, 1996, an Unfair Labor Practice Complaint was filed with the Public Employee Relations Board (Board) by the University of the District of Columbia Faculty Association/NEA (UDCFA). UDCFA asserts that the University of the District of Columbia (UDC) committed an unfair labor practice by violating D.C. Code § 1-618.17(f) under the Comprehensive Merit Personnel Act (CMPA). Specifically, UDCFA alleges that UDC "alter[ed] the status quo regarding the compensation of faculty bargaining unit members" after impasse procedures for negotiations over compensation matters had been implemented. UDCFA contends that once the impasse procedures of Section 1-618.17(f)(1), (2) and (3) have been implemented, Section 1-618.17(f)(4) requires that there be no change in the status quo in the matters at impasse.^{1/}

By letter dated March 19, 1996, the Executive Director

^{1/} D.C. Code § 1-618.17(f)(4) provides in pertinent part that once the impasse procedures of Section 1-618.17(f)(1), (2) and (3) "are implemented, no change in the status quo shall be made pending the completion of mediation and arbitration, or both". UDC does not deny that the impasse procedures had been implemented and that an award issued. Furthermore, the parties do not dispute that the furloughs and the reductions in compensation occurred. The parties, however, disagree over the Board's jurisdiction over this matter as well as whether UDC had a legal basis for taking such unilateral action.

dismissed the Complaint based on timeliness and UDCFA's failure to state a cognizable cause of action within the Board's jurisdiction. In pertinent part the Executive Director's letter to Complainant stated the following:

You state in your complaint that your claim against the University of the District of Columbia (UDC) stems from the reduction of faculty salaries and the furlough of faculty members.

Specifically, you allege that UDC violated the CMPA by reducing the compensation of UDC faculty members by 5% and 12% for the period October 1, 1995 through December 31, 1995 and April 2, 1995 through September 30, 1995, respectively. In addition, you allege that UDC furloughed faculty members for six days during the period January 18, 1995 through April 28, 1995. You claim this action reduced faculty salary without a corresponding reduction in the work load of faculty members.

Board Rule 520.4 provides as follows:

520.4 Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred[.]
(Emphasis added)

As noted above, the alleged violations occurred in 1995. However, your complaint was not filed until March 8, 1996. Thus, your claim against UDC clearly exceeds the 120 day requirement in Board Rule 520.4. Therefore your complaint is not timely.

Also, you allege that UDC violated the CMPA by reducing faculty salaries by 5% during January and February 1996. You assert that "[p]ursuant to the CMPA, D.C. Code 1981, § 1-618.17 (f) (4), the UDC is required to maintain the status quo regarding compensation until the District of Columbia accepts or rejects said arbitration award."

D.C. Code § 1-618.17(f) (4) provides as follows:

If the procedures set forth in paragraph (1), (2) or (3) of this subsection are

implemented, no change in the status quo shall be made pending the completion of mediation and arbitration, or both.
(Emphasis added)

In your complaint you acknowledge that "[o]n October 31, 1994, an impartial Board of Arbitration adopted the compensation agreement previously approved by the parties' negotiators." Thus, consistent with the CMPA, arbitration was completed in this case. Therefore, your allegation fails to state a claim under the CMPA for which the Board can grant relief.

If you disagree, you may formally request that the Board review my determination. I note, however, that "Board Rules governing the initiation of actions before the Board are jurisdictional and mandatory. As such, they provide the Board with no discretion or exception for extending the deadline for initiating an action." Public Employee Relations Board v. D.C. Metropolitan Police Department, 593 A.2d 641 (1991).

On April 2, 1996, Complainant filed a document styled "Appeal from Dismissal of Complaint" requesting that the Board review the Executive Director's administrative dismissal of its Complaint. UDCFA contends that UDC's alleged unilateral changes are continuing violations and, as such, are not time-barred by Board Rule 520.4. Moreover, UDCFA asserts, the Executive Director never made a determination concerning the threshold issue of the Board's jurisdiction over claims arising from an alleged violation of D.C. Code § 1-618.17(f)(4).

Because of the unique nature of the claims contained in the Complaint, we directed the parties to submit briefs on the issues presented. Briefs were filed by both parties on May 22 and June 3, 1996, respectively.

The facts precipitating the filing of this Complaint are as follows. The claims presented in the Complaint were initially part of a civil action that was filed by UDCFA in the D.C. Superior Court. The Superior Court granted UDC's Motion to Dismiss for lack of jurisdiction, holding that the matter was within the jurisdiction of the PERB. In its Order granting UDC's Motion to Dismiss, the Court stated, "[i]n the unlikely event the administrative agency disavows jurisdiction ... the matter may return." University of the District of Columbia Faculty

Association/NEA v. Board of Trustees of the University of the District of Columbia, et al., Civil Action No. 8396-95 (January 18, 1996). We are mindful of UDCFA's interest in a specific determination concerning the Board's jurisdiction over the Complaint allegations and shall fully address the issue below.

Before addressing the subject matter jurisdiction of the Board, we shall first address the timeliness of UDCFA's charges with respect to the furloughs implemented by UDC between January 18 and April 28, 1995. These furloughs are not continuing in nature. A furlough, once incurred by the employee, is complete. We therefore affirm the Executive Director's findings that alleged unfair labor practices resulting from the furloughs are time barred pursuant to Rule 520.4 since they all occurred more than the 120 days prior to March 8, 1996, i.e., the date the Complaint was filed.

With respect to the charges concerning compensation, the situation is different. As long as the alleged violative reductions in compensation continue to be reflected in employees' paychecks, each reduced paycheck would constitute a separate cause of action. To that extent the violation is continuing in nature. Teamsters Local 639 and 730 v. DCPS and AFSCME, D.C. Council 20, Local 2093, 35 DCR 8155, Slip Op. 176, PERB Case No. 86-U-14 and 86-U-17 (1988). Any exercise of our jurisdiction over these allegations, however, would limit any relief for compensation lost to 120 days prior to the filing of the Complaint.

Turning to claims contained in the Complaint, while the Board has no independent jurisdiction over D.C. Code § 1-618.17, a party's compliance with its statutory impasse obligations under the compensation provisions of Section 1-618.17 may constitute a component of the party's duty to bargain in good faith. See, Teamsters Local Unions No. 639 and 730 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Teamsters) v. District of Columbia Public Schools, Slip Op. No. 400, PERB Case 93-U-29 (1994). In PERB Case No. 93-U-29, we limited our consideration of the CMPA's compensation provisions to those that are relevant to a determination of whether a party has committed a statutory unfair labor practice as prescribed under D.C. Code § 1-618.4. As certain provisions under Section 1-618.17 prescribes actions that must be taken by District agencies to effectuate a negotiated compensation agreement or award, the Board has recognized that the consideration of such obligations is within its jurisdictional authority to determine an alleged failure to bargain in good faith, a statutory unfair labor practice under D.C. Code § 1-618.4(a)(5).

Complainant's Appeal reiterates the contentions made in its Complaint that UDC failed to maintain the status quo following arbitration and thereby committed an unfair labor practice in violation of D.C. Code § 1-618.17(f). Although neither the Complaint nor the Appeal specifically indicates what statutory unfair labor practice provision under D.C. Code § 1-618.4 has been violated, we have held that complainants "are not required to prove [their] Complaint upon the pleadings as long as the complaint states a cause of action under the CMPA with respect to the alleged unfair labor practice." (emphasis added.) American Federation of Government Employees, Local Union Nos. 631, et al. v. D.C. Department of Public Works, Slip Op. No. 306, PERB Case No. 92-U-02 and 94-U-08 (1994).

In this regard, Board Rule 520.3(d) requires unfair labor practice complaints to contain a clear and complete statement of the "the manner in which D.C. Code § 1-618.4 of the CMPA is alleged to have been violated."^{2/} UDCFA does allege that UDC has committed an unfair labor practice under the CMPA. All unfair labor practices under the CMPA are found under D.C. Code § 1-618.4. The basis of the unfair labor practice --that UDC failed to maintain the status quo following negotiations, statutory impasse proceedings and the issuance of an arbitration award-- is also clearly stated.

A failure to bargain in good faith constitutes an unfair labor practice under the CMPA as codified under D.C. Code § 1-618.4(a)(5). The Board has recognized that a District agency's duty to bargain in good faith extends beyond the bilateral negotiations or the rendering of an interest arbitration award. We have held that the "duty to bargain in good faith ... includes the obligation to take reasonable efforts to insure the effectiveness of agreements actually reached." See, Teamsters Local Unions No. 639 and 730 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Teamsters) v. District of Columbia Public Schools, Slip Op. No. 400 at 6, PERB Case 93-U-29 (1994). We found this obligation breached when an agency negotiates and signs a separate memorandum of understanding on compensation --to which the union was not a party-- during the period the parties' compensation arbitration award is pending approval by the District Council. Id. We observed that the "intent and effect" of such action "was to unilaterally undermine the arbitration awards that the

^{2/} Although we ordinarily expect complainants represented by counsel to identify the specific statutory violation in the body of the complaint, we shall refrain from doing so in this case given the unique nature of the allegations supporting the unfair labor practice.

[agency] was obligated to support." Id.

While Section 1-618.17(f)(4) forbids any change in the status quo pending the completion of mediation and arbitration, the parties do not dispute that UDC made the reductions in compensation after the impasse procedures had been completed and an award issued. (See n. 1.) Nevertheless, under the rationale in PERB Case 93-U-29, UDC's actions tend to undermine the collective bargaining process prior to its consummation. Therefore, barring legal justification, UDC's actions would violate the general duty to bargain in good faith, an unfair labor practice over which we have jurisdiction under the CMPA pursuant to D.C. Code §§ 1-605.2(3) and D.C. Code § 1-618.4(a)(5).

However, UDC contends that its actions were mandated by the budgetary legislation that the parties acknowledge precipitated UDC's action. Cf, Teamsters, Local Union No. 639 a/w IBTCWHA, AFL-CIO v. D.C. Public Schools, 38 DCR 6698, Slip Op. No. 267, PERB Case No. 90-U-05 (1991). If this contention is correct, UDC could not be guilty of failing to bargain in good faith. UDCFA acknowledges that "this case will turn entirely on whether UDC is or is not correct in contending that the budget legislation in question requires the compensation reduction at issue," but argues that "the interpretation of budget legislation is a matter for the Court and not the PERB." (App. at 9.) We start with the latter issue.

In a cause of action that is properly within our jurisdiction, the Board will interpret laws, rules and regulations other than the CMPA to the extent they affect duties and obligations required of parties under the CMPA. See, e.g., D.C. Council 20, American Federation of State County and Municipal Employees, AFL-CIO, et al. v. Government of the District of Columbia, et al., Slip Op. No. 343, PERB Case No. 92-U-24 (1993). Since we hold this cause of action to be within our jurisdiction, we find nothing that impedes our authority to determine if the legislation in question affects UDC's bargaining obligation under the CMPA. ^{3/}

^{3/} In the case cited by UDCFA in opposition to our finding, Gina Douglas, et al. v. the Government of the District of Columbia and AFSCME, D.C. Council 20, et. al., 39 DCR 9621, Slip Op. 315, PERB Case No. 92-U-03 (1992), the Board declined to interpret statutory provisions outside the provisions we administer under the CMPA after the Board had concluded that the Complaint not only failed to state an unfair labor practice under D.C. Code § 1-618.4(a) but alleged violative conduct pursuant to an Act which
(continued...)

The legislation at issue in this case is D.C. Act 11-34 (Budget Implementation Temporary Act of 1995) (Act) and related Acts.^{4/} The parties agree that the Act calls for the Mayor to renegotiate compensation agreements to realize \$30 million in savings as mandated by the Fiscal Year 1995 Supplemental Budget and Rescissions of Authority Request Act of 1994. However, the parties disagree on one critical threshold factor: whether or not the Act applies to UDC.^{5/}

Compensation units subject to the realization of the \$30 million in savings under the Act are set forth in the preamble and Section 2 (a). Sections 2 (a) provides, in pertinent part, as follows:

"The Mayor shall renegotiate the collective bargaining agreements with all compensation units to reduce employee compensation in order to realize the \$30 million in savings required by the Pay Renegotiation provision of the Fiscal Year 1995 Supplemental Budget and Rescission of Authority Request Act of 1994, enacted January 19, 1995 (D.C. Act 10-400; 42 DCR 529). All collective bargaining units must participate in the negotiations and contribute to the realization of the \$30 million in savings." (emphasis added.)

The employees subject to the required reductions in their compensation if the savings are not realized are set forth under Section 2(b)(1) of the Act. Section 2(b)(1) provides as follows:

"[i]f the Mayor does not meet the requirement contained in subsection (a) of this section by March 7, 1995,

³(...continued)
expressly vested jurisdiction over the claim in another agency.

^{4/} Other related predecessor and successor Acts include the D.C. Act 11-94 (the Omnibus Budget Support Act of 1995), D.C. Act 11-29 (the Budget Implementation Emergency Act of 1995), and D.C. Act 10-104 (the Multi-year Budget Spending Reduction and Support Temporary Act of 1995).

^{5/} UDCFA further asserts that notwithstanding whether the Act applies, the Mayor achieved the \$30 million in savings; therefore, the reductions in compensation imposed by UDC were not required. The parties have presented conflicting evidence on this assertion. Our determination with respect to the scope of coverage of the budget legislation, however, obviates the resolution of this issue.

notwithstanding any other law, the compensation schedule for employees covered by collective bargaining agreements, except such employees in the Board of education, shall be reduced by 12% (to yield 6% annualized) ... for the period beginning April 2, 1995 through September 30, 1995" and "by 6% for fiscal year 1996". (emphasis added.)

Notwithstanding UDCFA's arguments to the contrary, the clear scope of the Act's coverage is all employees covered by collective bargaining agreements, with the one expressed exception for bargaining unit employees of the Board of Education.^{6/} Thus, UDCFA's contention appears to be without merit.

Our interpretation is further borne out by D.C. Act 11-94, the Omnibus Budget Support Act of 1995 (July 13, 1995), where, as UDCFA acknowledges, relevant provisions of D.C. Act 11-34 were eventually placed. (UDCFA Supp. Br. at n. 4.) In Act 11-94, Compensation Units 1, 2, 3, 12, 13, 15, 19, 20, 21, 22, 23 and 29 were excepted from the statutory reductions in compensation because they successfully renegotiated their contracts to achieve a similar amount of savings.^{7/} UDCFA's compensation unit is not among those listed in the Act.^{8/} Also, an exception was made for the employees of the D.C. Metropolitan Police Department.^{9/} D.C. Act 11-94 confirms that while the above compensation units were able to avoid the statutorily mandated reductions in their

^{6/} The relevant provisions of D.C. Act 11-34 were eventually placed in D.C. Act 11-94, Section 1401(a) and (b) of the Omnibus Budget Support Act of 1995 (July 13, 1995). In that Act another exception was made for employees of the D.C. Metropolitan Police Department.

^{7/} A Committee of the Whole Report on Act 11-94 is not clear with respect to Compensation Unit 3. Unlike the other noted Compensation Units, the Report does not expressly acknowledge approval of compensation changes contained in a negotiated memorandum of understanding as a basis of exempting these employees from the statutory reductions.

^{8/} The employees represented by UDCFA are in Compensation Unit 10.

^{9/} The exception made for the D.C. Metropolitan Department did not result from a successful renegotiation of their collective bargaining agreement. Rather the exception allowed the Council to approve the Mayor's last best offer to the bargaining representative of MPD employees.

compensation, those compensation units not expressly provided were not exempt from the reduction.

Our reading of D.C. Acts 11-34 and 11-94 resolves the second point of contention, i.e., whether the Mayor achieved the \$30 million in savings and; therefore, the reductions in compensation were not required. (See n. 6.) In our view, D.C. Act 11-34 provided for \$30 million in savings to be achieved by all compensation units by renegotiating their respective existing collective bargaining agreements. Any compensation unit that did not successfully renegotiate its agreement to realize its share of the savings became subject to the fixed statutory reductions. UDCFA acknowledges that renegotiation of its collective bargaining agreement did not occur.^{10/} This accounts for why D.C. Act 11-94 did not exempt UDCFA's Compensation Unit 10 from contributing its share of the \$30 million in savings through the mandated reductions.^{11/}

^{10/} UDCFA states that "in early March 1995, UDCFA, while advising O[ffice of] L[abor] R[elations and] C[ollective] B[argaining] of its position that provisions contained in 2(a) and (b) of the above legislation did not apply to UDC faculty, and without waiving that position, requested an opportunity to be included among the unions that were participating in the bargaining process." UDCFA states further that "OLRCB denied that request on the ground that the aforesaid statutory provisions did not apply to UDC faculty. (Supp. Br. at 7.) UDCFA has not alleged any failure by OLRCB to honor its request to bargain at that time as an unfair labor practice. Such a charge, however would be time barred pursuant to Board Rule 520.4. We further note that an argument could be made that the reductions in compensation called for by the Act should have been made to the compensation levels in the UDC/UDCFA arbitration award languishing between the Mayor's office and the City Council. The award could be considered the established compensation levels of UDCFA employees at the time of the compensation reductions by UDC. However, it is not necessary that we determine UDCFA employees' prevailing compensation level to decide the existence of an unfair labor practice.

^{11/} UDCFA's contention that UDC was not intended to be targeted under the D.C. Act 11-34 for realization of the \$30 million in savings, stems from its contention that UDC was not included in a massive Appropriation Act passed in 1995, i.e., Public Law 103-334, which provided over \$106 million to cover pay increases and related costs from fiscal year 1993 through 1995. Since UDC employees represented by UDCFA never received these pay increases and their arbitrated compensation agreement was never implemented, UDCFA argues that it was not the Council's intent to
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We conclude that the plain meaning of the Acts required all compensation units to share, in one expressed way or the other, in the realization of the \$30 million in savings. Therefore, in making the reductions set forth in UDCFA's Complaint, we find that UDC acted in accordance with law and had no duty to bargain over its [unilateral] implementation of statutorily mandated reductions in compensation.^{12/}

¹¹(...continued)
recoup the needed \$30 million in savings from such employees. While UDCFA's contention concerning the Council's intent may indeed be plausible, we cannot second guess the intent of the Council when that intent is not reflected in the plain reading of the Acts in dispute, as discussed in the text.

Moreover, if, as UDCFA argues, the Council did not intend to include under D.C. Act 11-34, compensation units that did not receive pay increases in the Appropriation Act, then this argument would apply to all compensation units that did not receive pay increases under the Appropriation Act. As UDCFA states, the Appropriation Act covered employees in Compensation Unit 1, Compensation Unit 2, the D.C. Fire Department, the Metropolitan Police Department and nonunion employees. (UDCFA Supp. Br. at 5.) While these compensation units make up a large majority of all D.C. government employees, there are a number of other compensation units that also did not receive pay increases under this Act. Several of these compensation units, nevertheless, were expressly exempt from the statutory reductions in D.C. Act 11-94 because they had renegotiated their contracts. Under UDCFA's rationale, the \$30 million savings required under D.C. Acts 11-34 would not apply to these compensation units as well. Our review of the Appropriation Act of 1995 and D.C. Acts 11-34 and 11-94 does not tend to support the scope of coverage of the D.C. Acts that UDCFA would have us find.

^{12/} Notwithstanding the lack of an obligation to bargain over these statutory reductions in compensation, we have held that the effects or impact of a non-bargainable management decision upon the terms and conditions of employment are bargainable but only upon request. See, University of the District of Columbia Faculty Assoc. and Univ. of the District of Columbia, Slip Op. 387, PERB Cases No. 93-U-22/93-U-23 (1994) and Teamsters, Local Union No. 639 and 730 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, 38 DCR 96, 100, Slip Op. No. 249 at 5, PERB Case No. 89-U-17 (1990). See, also, International Brotherhood of Police Officers, Local 446, AFL-CIO/CLC v. District of Columbia General Hospital, Slip Op. 312, PERB Case No. 91-U-06 (1992) and University of the District of

(continued...)

In view of the above, we find that the Complaint fails to state a violation of D.C. Code § 1-618.4(a)(5) by the acts alleged. For the reasons discussed in this Decision, we grant, in part, and deny, in part, UDCFA's Appeal of the Executive Director's administrative dismissal of the Complaint.

ORDER

IT IS HEREBY ORDERED THAT:

The Petitioner's Appeal of the Executive Director's administrative dismissal of its Complaint for lack of jurisdiction is granted; however, the Complaint is dismissed for the reasons discussed in the Decision.

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

September 5, 1996

¹²(...continued)

Columbia Faculty Assoc. and Univ. of the District of Columbia, 29 DCR 2975, Slip Op. 43, PERB Case No. 82-N-01 (1982) (for the proposition that such matters are negotiable under the CMPA). However, the Complaint does not contain an assertion that UDCFA made a request to bargain over such aspects of the reductions. Unlike charges of unilateral changes in bargainable terms and conditions of employment, a request to bargain over the impact and effect of such changes is not imputed.

MEMBER JERRY ANKER, CONCURRING IN PART AND DISSENTING IN PART:

I am in full agreement with the portions of the Decision and Order that address the issues of jurisdiction and timeliness. I cannot agree, however, with the portion of the Decision and Order which concludes that the unilateral pay cuts that are challenged in this case were mandated by the budgetary legislation that UDC relies upon.

The budgetary legislation at issue here can only be properly understood in the context in which it was enacted. In 1995 the City Council, having previously appropriated \$106,095,000 to finance certain wage increases that had recently been negotiated with certain bargaining units or proposed for certain nonunion groups, decided to reduce that appropriation by \$30 million, and directed that the savings be achieved "through renegotiation of existing collective bargaining contracts." (Fiscal Year 1995 Supplemental Budget and Recessions of Authority Request of 1994, D.C. Act 10-400). It seems clear that this proposed "renegotiation" was aimed at the same employee groups that were the subject of the original \$106 million appropriation. When the Mayor failed to achieve the desired savings through voluntary renegotiation, the Council brought additional economic pressure to bear by mandating certain pay cuts if the \$30 million savings was not achieved through voluntary negotiation. (Budget Implementation Temporary Act of 1995, D.C. Act 11-34). It is this legislation that UDC claims mandated the unilateral pay reductions that are at issue here.

It appears to be undisputed that neither the original \$106 million appropriation nor the mandated "renegotiation" was directed at UDC. Indeed, we are told that UDCFA actually requested to participate in the renegotiation process and was refused on the ground that the statute mandating the renegotiation did not apply to UDC.

Since neither the original \$106 million dollar appropriation nor the \$30 million reduction in that appropriation applied to UDC, it seems unreasonable to construe the mandatory pay cuts as applicable to UDC, even though, admittedly, UDC is not explicitly excluded from the mandatory pay reduction provisions of the statute. Furthermore, it seems unlikely that the City Council would impose a mandatory pay cut on the UDC faculty when that faculty had not received any pay increase since 1989. Rather, the mandated pay cuts were aimed at reducing recently negotiated pay increases. The recent UDC and UDCFA compensation negotiations had ended in an impasse arbitration, and the award that resulted from that arbitration had never been implemented because it had never been approved by the City Council. Thus, in a sense, UDCFA was subjected to a form of involuntary

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"renegotiation" of its pay increase by means of the Council's refusal to approve the increases provided by the arbitration award. I cannot believe that the Council intended to add insult to injury by mandating a reduction of the preexisting salary schedule, which had not been changed since 1989. Accordingly, I would find that the unilateral wage reductions in this case were not authorized by any budgetary legislation, and were therefore an unfair labor practice.