

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

University of the District of
Columbia Faculty Association/National
Education Association,

Complainant,

and

The University of the District of
Columbia,

Respondent.

PERB Case No. 83-U-04
Opinion No. 58

DECISION AND ORDER

The parties to this proceeding are the University of the District of Columbia Faculty Association/National Education Association (UDCFA/NEA) and, the University of the District of Columbia (UDC). In its Complaint, UDCFA/NEA charges that UDC has failed to bargain in good faith with the exclusive representative in violation of Section 1704(a)(5) of the District of Columbia Comprehensive Merit Personnel Act of 1978 (CMPA) (codified as District of Columbia Code Section 1-618.4(a)(5)).

Specifically, in filing its Complaint with the Board on December 9, 1982, UDCFA/NEA charges that UDC failed to bargain in good faith with the exclusive representative by:

- "(A) ... summarily rejecting the tentative agreement negotiated over the course of a year between its authorized agent and UDCFA/NEA, when such negotiations included the statutory impasse resolution mechanism in which the University participated fully.
- (B) ... asserting as its sole reason for the summary rejection of the tentative agreement the University's own failure to have maintained adequate communication with its duly authorized negotiating agent ...

(C) ... refusing to comply in a reasonable manner with proper requests by UDCFA/NEA for information relevant to and necessary for the conduct of negotiations, and by instead declaring an impasse."

UDCFA/NEA seeks, as relief, that the Board "stay invocation of any impasse resolution procedures pending resolution of this unfair labor practice complaint."

On December 27, 1982, UDC filed its response denying that it had violated CMLPA by failing to bargain in good faith. UDC opposes UDCFA/NEA's request for stay of impasse resolution procedures and contends that this matter is inappropriate as an Unfair Labor Practice complaint. UDC's position is that, under the parties' ground rules, any tentative agreement reached was subject to approval by the UDC Board of Trustees.

The issues before the Board are whether or not UDC violated Section 1704(a)(5) of the CMLPA by its failure to ratify the tentative agreement, and whether or not UDC's response to UDCFA/NEA's request for information constituted a violation of Section 1704(a)(5).

On September 14, 1981, the parties represented by their authorized representatives signed a document entitled "Ground Rules". The relevant section of the document states that:

"The Chief Negotiator for the University shall have the authority and the right to present proposals, make and sign agreements and generally exercise full rights to negotiate and speak on behalf of the University. However, agreements are valid only if ratified by the Board of Trustees."

The Board's investigation discloses no evidence of a summary rejection of the tentative agreement by UDC. On the contrary, a draft Resolution by the UDC Board of Trustees dated October 19, 1982, accepts all provisions of the tentative agreement except Articles 8, 12, and 15 which were returned for renegotiation. On October 28, 1982, representatives of both parties signed an agreement which included the terms of the UDC Board of Trustees' draft Resolution. Under terms of this agreement, Articles 8, 12, and 15 were to be renegotiated or resolved under statutory impasse procedures.

Case law from other jurisdictions appears well reasoned in suggesting that:

"Once a principal party has reserved the right to ratify, any agreement reached by negotiators will not be concluded or binding until it is ratified by the principal. Implicit in the right to ratify is the right to reject, especially the right to reject tentative agreements erroneously agreed to by its negotiators." 4 NPER 20-12020 (Maine, April 22, 1981).

Similarly, the facts do not support UDCFA/NEA's contention that UDC bargained in bad faith. UDCFA/NEA relies primarily on two factors to support this allegation. First, it contends that an October 7, 1982 letter from the Chairman of the UDC Board of Trustees to the President of UDC questions the authority of its Chief Negotiator and, therefore, indicates bad faith bargaining. Secondly, it contends that UDC supplied unusable information it needed to conduct negotiations on Articles 8, 12, and 15.

The October 7, 1982, letter, even when given an interpretation most favorable to UDCFA/NEA, does not indicate that UDC bargained in bad faith. In the letter the Chairman of the Board of Trustees complained that the Board was being asked to vote on a lengthy document which some of the Board Members had never seen before. She further stated that "input from the new President was desirable." Dr. Alexander, the new President, had taken office only two months earlier. Nevertheless, on October 19, 1982, twelve (12) days later, the Board voted to approve twenty-eight (28) of the thirty-one (31) Articles contained in the tentative agreement.

UDC's response to UDCFA/NEA's request for a listing of all faculty members, their workloads as well as the rationale for rejection of Articles 8, 12, and 15 appears reasonable. UDCFA/NEA's primary complaint was that the computer printout sheet containing the requested information listed only the last name of each instructor, in some instances. UDCFA/NEA claims that it could not decipher, with finality, the workload of each faculty member from the list. We note that UDCFA/NEA does not assert that the requested information was not given, but rather claims that the information given was not in the form that it was requested. While UDC's response arguably may not have been letter perfect, it is reasonable to conclude that its compliance was not so negligent as to rise to the level of an Unfair Labor Practice contemplated by Section 1704 of the CMPA.

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Based upon our review and analysis of the record in this matter, the Board finds no evidence sufficient to establish a violation of the the CMPA.

O R D E R

The Unfair Labor Practice Complaint of the NEA is dismissed on the ground that it fails to establish a violation of Section 1704 (a)(5) of the CMPA (D.C. Code Section 1-618.4(a)(5)) as alleged.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
March 22, 1983