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

In the Matter of:)	
)	
FRATERNAL ORDER OF POLICE/ METROPOLITAN POLICE DEPARTMENT LABOR COMMITTEE,)	PERB Case No. 01-I-01
)	
)	
)	
)	Opinion No. 668
Petitioner,)	
)	
and)	
)	
DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT,)	
)	
Agency.)	
)	
)	

DECISION AND ORDER

This case involves a Request for Impasse Resolution ("Request") filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Petitioner" or "FOP"). FOP contends that pursuant to D.C. Code §1-618.17(f)(2)¹, it has reached an automatic impasse in its compensation negotiations with the District of Columbia Metropolitan Police Department ("Agency" or MPD). Specifically, FOP contends that 180 days have elapsed since the commencement of compensation negotiations with MPD; therefore, it seeks to invoke automatic

¹D.C. Code §1-618.17(f)(2) provides that an automatic impasse may be declared by any party, if the parties have been negotiating and failed to reach settlement within 180 days after commencing negotiations. D.C. Code §1-618.17 (f)(2) refers to the 1981 edition of the District of Columbia Code. In the 2001 edition of the District of Columbia Code, this section is cited at D.C. Code §1-618.17(f)(2). All cites noted in this opinion refer to the 1981 edition.

impasse procedures pursuant to D.C. Code §1-618.17(f)(3).² (Request at p.2)

MPD claims that the parties have not reached an impasse. Specifically, MPD contends that the parties had not been negotiating for 180 days³ when FOP filed for impasse. In addition, MPD asserts that no “real bargaining” has occurred between the parties.⁴ In view of the above, FOP’s declaration of an automatic impasse is premature.

Pursuant to Board Rule 526.2, the Board’s Executive Director attempted to verify whether the parties were at impasse. However, there were issues of fact concerning the date when negotiations began. As a result, a hearing was held. The Hearing Examiner issued a Report and Recommendation (R & R) in which he determined that an automatic impasse had *not* occurred by the December 6, 2000 filing date. The Hearing Examiner made this finding after defining the term “negotiation”⁵ and determining when the parties commenced negotiations. Applying his definition

²FOP is also requesting that the Board to make a finding concerning MPD’s alleged delay in submitting its proposals in accordance with the parties’ ground rules. The facts concerning the alleged late submission of proposals by MPD, is the subject of an Unfair Labor Practice Complaint (PERB Case No. 01-U-08) which is currently pending before the Board. As a result, all issues concerning the submissions of proposals should be addressed in the unfair labor practice proceeding.

³FOP claims that negotiations began on March 13, 2000, when the Union gave notice that it wished to modify the contract. In the alternative, FOP claims that negotiations began on June 1st, when it presented its ground rules proposals to MPD. MPD contends that negotiations began on December 19, 2000, the date of the parties’ first face to face meeting.

⁴ In support of its position, MPD relies on the Board’s decision in Public Employees Union Coalition v. Mayor of D.C., et. al. 28 DCR 727, Slip Op. No. 3, 80-I-03 (1981) Specifically, MPD argues that Public Employees Union Coalition v. Mayor of D.C., et. al. stands for the proposition that “real bargaining” must occur before impasse procedures can be invoked. (R & R at 5) 28 DCR 727, Slip Op. No. 3, 80-I-03 (1981). However, the Hearing Examiner found that the Public Coalition case was distinguishable on the facts from the present case. In addition, he noted that D.C. Code §1-618.17 (f)(2) does not concern itself with the quality of bargaining that occurs between parties. Therefore, the Hearing Examiner concluded that the Public Coalition case was not applicable to the case that is presently before the Board. After reviewing the Public Coalition case, we find that the Hearing Examiner’s conclusion was reasonable.

⁵ The Hearing Examiner defined negotiations as “a process in which there is give and take between the parties over proposals and counter proposals, the end result of which is an agreement (continued...) ”

of negotiations to the facts in the present case, the Hearing Examiner concluded that negotiations began on October 2, 2000, when FOP presented its substantive contract proposals to MPD. Since only sixty five (65) days elapsed between October 2nd (the beginning of negotiations) and December 6th (the date FOP filed its Impasse Request), the Hearing Examiner found that the 180-day automatic impasse requirement had *not* been met pursuant to D.C. Code §1-618.17 (f)(2).

FOP filed Exceptions to the Hearing Examiner's Report and Recommendation. MPD also filed an Opposition to FOP's Exceptions.⁶ The Hearing Examiner's Report and Recommendation and the parties' Exceptions and Opposition are before the Board for disposition.

As noted by the Hearing Examiner, the Comprehensive Merit Personnel Act (CMPA) does not define "negotiations". Additionally, the Board has not previously defined "negotiations" nor considered the question of when negotiations begin. However, in the present case, we believe that determining when negotiations began is the key issue in deciding whether an automatic impasse has occurred within the meaning of D.C. Code §1-618.17 (f)(2).

Where the Board has not considered an issue, it relies on relevant National Labor Relations Board (NLRB) precedent for guidance. See, Doctors' Council of the District of Columbia v. D.C. Department of Human Services, 46 DCR 2430, Slip Op. No. 462, PERB Case No. 96-U-06 (1996). As a result, the Board looked to NLRB precedent for guidance on the definition of "negotiation" and the issue of when negotiations commence. In Northern Petroleum Equipment Corp. v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, the NLRB defined negotiations.²⁴⁴ NLRB 685 (1979). In Northern, the NLRB had to examine the question of when negotiations began in order to determine whether Northern Petroleum Equipment Corporation timely withdrew from a multi-employer association, so as to not be bound by a labor agreement negotiated by the association. Id. In deciding Northern, the NLRB's administrative law judge used an approach similar to the one used by the Hearing Examiner in the present case. Id. Namely, the administrative law judge consulted several dictionaries in order to determine the meaning of "negotiations" before determining when negotiations commenced. Id. at 687. In Northern, the NLRB's administrative law judge relied on the 7,000 page Century dictionary's definition of "negotiate." Id. That dictionary defined "negotiate" as follows: "To arrange or procure by negotiation; to bring about by mutual arrangement, discussion, or bargaining..." Id. The NLRB further stated that negotiations and bargaining are synonymous. Id. Applying the approach used by the NLRB to the facts of this case, we find that the Hearing

⁵(...continued)

or an impasse." (R & R at p. 7) He reached this decision after reviewing the dictionary definition.

⁶ MPD's Opposition to FOP's Exceptions essentially agreed with the Hearing Examiner's findings.

Examiner's definition of the term "negotiation" is reasonable.

On the issue of when negotiations commence, the NLRB has ruled that negotiations begin when proposals are exchanged. Carvel Company and C and D Plumbing and Heating Co. v. Plumbers, Steamfitters and Metal Trades Local 321, 226 NLRB 1111 (1976).⁷ Applying the Carvel standard to the facts of the present case, we concur with the Hearing Examiner's finding that negotiations began on the date when FOP presented its proposals to MPD.

A review of the record reveals that the Hearing Examiner's findings and conclusions are reasonable and supported by evidence. In their Exceptions, FOP disagrees with the Hearing Examiner's definition of "negotiation" and his findings concerning when negotiations began. The Board has held that a mere disagreement with a Hearing Examiner's finding of fact based on competing evidence is not a valid exception where evidence supports the Hearing Examiner's findings. Hoggard v. D.C. Public Schools, 46 DCR 4837, Slip Op. No. 496, PERB Case No. 95-U-20 (1996). Therefore, the Board finds the FOP's Exceptions to be unpersuasive.

Accordingly, the Board finds that the parties were not at impasse on December 6, 2000. In addition, the Board finds that the 180 day clock began to run when MPD was served with FOP's proposals. Moreover, the 180 day clock stopped on December 6, 2000, the date when FOP filed its Request for Impasse Resolution. As a result, only 65 days elapsed between October 2nd and December 6th. Therefore, we are directing the parties to reopen negotiations within five (5) days of the date of this Decision and Order. Furthermore, the Board orders the parties to continue negotiating until an agreement is reached or until 115 more days have elapsed. If 115 days pass without the parties' reaching an agreement, then either party may declare an automatic impasse and seek appropriate relief pursuant to the CMPA and the Board's Rules.

Pursuant to D.C. Code §1-605.2(4), the Board has reviewed the findings, conclusions, and recommendations of the Hearing Examiner and for the reasons discussed above, we adopt the Hearing Examiner's findings.

ORDER

IT IS HEREBY ORDERED THAT:

1. That an automatic impasse did not exist on December 6, 2000. As a result, the Request for Impasse Resolution is denied.

⁷In Carvel Company and C and D Plumbing and Heating Co. v. Plumbers, Steam fitters and Metal Trades Local 321, 226 NLRB 1111 (1976), the NLRB also considered the issue of whether or not Carvel Company timely withdrew its association from a multi-employer association engaged in bargaining prior to becoming bound by the labor agreement negotiated by the multi-employer association. In deciding this matter, the NLRB had to determine when negotiations commenced.

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2. Metropolitan Police Department and Fraternal Order of Police are directed to resume negotiations within 5 days of the issuance date of this Decision and Order. MPD and FOP are also directed to negotiate until a settlement is reached or for the remaining 115 days of the 180-day automatic impasse requirement, whichever is earlier.
3. Pursuant to Board Rule 559.1, this Order shall be final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.
October 1, 2001

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 01-I-01 was transmitted via Fax and/or U.S. Mail to the following parties on this 1st day of October 2001.

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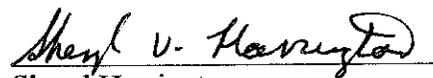
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