Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
American Federation of State, County and Municipal Employees, District Council 20, Local 2091,	)	PERB Case Nos. 15-U-20
Complainant,	)	
v.	)	Opinion No. 1548
District of Columbia Water and Sewer Authority,	)	
Respondent.	)	

DECISION AND ORDER

Complainant American Federation of State, County and Municipal Employees, District Council 20, Local 2091 ("AFSCME Local 2091"), which is part of Compensation Unit 31, filed an unfair labor practice complaint against the District of Columbia Water and Sewer Authority ("WASA") alleging that WASA violated D.C. Official Code §§ 1-617.01(b) and (c), § 1-617.11(a), and §§ 1-617.04(a)(1) and (5) by refusing AFSCME Local 2091's demand to bargain a separate compensation agreement independent of the compensation unit.

The dispositive material facts in this matter are not disputed, leaving only legal issues to be resolved. Therefore, the Board finds that it can properly decide this matter based upon the pleadings in the record.[1] For the reasons fully explained below, the Board finds that WASA did

[1] PERB Rule 520.8 states: "[t]he Board or its designated representative shall investigate each complaint." PERB Rule 520.10 states that "[i]f the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings…." Here, WASA generally denied AFSCME Local 2091's legal allegations, but did not dispute the complaint's material factual allegations, which were that: (1) AFSCME Local 2091 sent WASA a request to bargain a separate compensation agreement independent from the other locals in Compensation Unit 31; and (2) WASA refused that request. Therefore, because these material facts are undisputed by the parties, leaving only legal questions to be resolved, the Board can properly decide this matter based upon the pleadings in the record. *See Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 60 D.C. Reg. 5337, Slip Op. No. 1374 at p. 11, PERB Case No. 06-U-41 (2013); *see also American Federation of Government Employees, AFL-CIO Local 2978 v. District of Columbia Department of Health*, 60 D.C. Reg. 2551, Slip Op. No. 1356 at p. 7-8, PERB Case No. 09-U-23 (2013).

not commit an unfair labor practice or otherwise violate the CMPA, and dismisses AFSCME Local 2091's complaint.

I. History

AFSCME Local 2091 is the certified exclusive representative of a bargaining unit at WASA and, by its own admission, is also part of Compensation Unit 31.[2] Compensation Unit 31 is made up of employees represented by five local unions; namely, AFSCME Local 2091, American Federation of Government Employees, Local 631, 872 and 2553 ("AFGE Locals"), and National Association of Government Employees, Local R3-06 ("NAGE Local R3-06").[3] Compensation Unit 31's compensation agreement expired on September 30, 2015.[4]

On March 20, 2015, the Presidents of the three AFGE Locals sent a letter to WASA demanding to commence negotiations for a successor compensation agreement for Compensation Unit 31.[5] The letter stated that "[o]n February 26, 2015, by majority vote of the five local unions who represent employees at DC Water, Barbara Hutchinson, Esq. was elected to be the Chief Negotiator."[6] Thereafter, AFSCME Local 2091 sent a letter to WASA disputing that any election appointing Ms. Hutchinson as chief negotiator for Compensation 31 ever took place, and asserting that Ms. Hutchinson was not authorized to speak on behalf of the compensation unit.[7] AFSCME Local 2091's letter further stated that it "does not intend to participate in coalition bargaining with other unions at D.C. Water," that it was "putting D.C. Water on notice of its intent to negotiate compensation separately for its members," and that WASA should contact AFSCME Local 2091's president to schedule the negotiations.[8]

On April 9, 2015, WASA responded to AFSCME Local 2091's bargaining demand, asserting that WASA was "ready to begin negotiation of a successor agreement on compensation," but that "AFSCME Local 2091 is not certified to bargain wages exclusively."[9] WASA asked AFSCME Local 2091 to "[p]lease notify the Authority when the Public Employee Relations Board (PERB) certifies AFSCME as a compensation unit."[10]

On April 14, 2015, AFSCME Local 2091 replied that, as the certified representative of its bargaining unit for purposes of negotiating both compensation and non-compensation matters, it

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[2] Complaint at 2-3 (citing *D.C. WASA and AFGE Local 872 & AFSCME Local 2091 and AFGE Locals 631, 1975, 2553 & NAGE*, 46 D.C. Reg. 122, Slip Op. No. 510, PERB Case Nos. 96-UM-07, 97-UM-01, 97-UM-03, and 97-CU-01 (1997) (hereinafter "Op. No. 510")).
[3] *Id.*
[4] Complaint at 3.
[5] *Id.*
[6] *Id.*
[7] *Id.* at 4.
[8] *Id.*
[9] *Id.*
[10] *Id.*

could not be forced to participate in coalition bargaining against its will.[11] AFSCME Local 2091 thus urged WASA to reconsider its refusal to bargain.[12]

On April 16, 2015, WASA sent a response stating that it did not dispute that AFSCME Local 2091 is the exclusive representative of its bargaining unit, but it did dispute that AFSCME Local 2091 could bargain compensation matters separately without the other four locals in Compensation Unit 31.[13] WASA asserted that "Compensation Unit 31 was specifically certified to bargain wages on behalf of its five member locals with DC Water," and that in order for any of those five locals to bargain separately on their own, PERB would have to authorize that individual local as a new compensation unit. WASA stated that it would bargain with AFSCME Local 2091 separately only if it could "provide proof that PERB has certified the Local to do so."[14]

On April 20, 2015, AFSCME Local 2091 sent a reply to WASA asserting that if WASA engaged in negotiations "with any other union or individual who claims authority to speak on AFSCME Local 2091's behalf or to have power to bind AFSCME Local 2091, it [would do so] at its own legal peril."[15] AFSCME Local 2091 further stated that neither it nor its members had "authorized any other person or union to negotiate on behalf of the AFSCME bargaining unit" and that it would "not consider itself bound by any agreement reached by such person or union."[16]

On April 21, 2015, WASA sent a letter to Ms. Hutchinson stating that because her status as the chief negotiator for Compensation Unit 31 was in dispute, WASA would not begin bargaining until "after this matter has been resolved amongst the locals."[17]

On April 27, 2015, AFSCME Local 2091 filed the instant unfair labor practice complaint.

In its April 30, 2015 Answer, WASA admitted that it refused to bargain, but asserted that it had "legitimate" reasons for doing so based on the internal dispute between the five locals in Compensation Unit 31 about Ms. Hutchinson's status as chief negotiator.[18] Further, WASA argued that under D.C. Official Code § 1-617.16(b), once PERB authorized Compensation Unit 31, the individual local unions could no longer negotiate a separate compensation agreement on their own at the exclusion of the other members in the unit.[19]

On May 5, 2015, AFSCME Local 2091 filed a Motion for Decision on the Pleadings.

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[11] *Id.* at 5.
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.* at 6.
[16] *Id.*
[17] *Id.*
[18] Answer at 3.
[19] *Id.*

III. Analysis

In *AFSCME, Dist. Council 20 v. D.C. Gov't, et al.*, 35 D.C. Reg. 5175, Slip Op. No. 185, PERB Case No. 88-U-23 (1988) (hereinafter "Op. No. 185"), aff'd, *AFSCME, Dist. Council 20 v. D.C. PERB*, No. 8-88 (D.C. Super. Ct. Mar. 30, 1990), the Board held that agencies do not have an obligation to bargain separately with a single local union within an authorized compensation unit regarding compensation matters affecting the employees in the entire compensation unit.[20] Rather, the Board held that that obligation extends to all of the labor organizations representing the compensation unit's employees, to which each local is but one of multiple labor organizations authorized to represent employees in compensation negotiations.[21]

In its affirmance of Op. No. 185, the D.C. Superior Court unambiguously held that a single local union within a compensation unit is "not entitled to bargain separately with the District of Columbia."[22] The Court reasoned that:

> (1) Separate bargaining between [a single local union within a compensation unit] and the District of Columbia would have the effect of dissolving the bargaining unit composed of the [compensation unit, and] would violate the statutory policy which favors multi-unit negotiations and would be inconsistent with prior PERB rulings. [D.C. Official Code § 1-617.16(b); *AFGE v. OLRCB*, 32 D.C. Reg. 3354, Slip Op. No. 111, PERB Case No. 85-U-14 (1985)].
>
> (2) Separate bargaining would undermine a "basic tenet of union recognition in the collective bargaining context…. Once an appropriate bargaining unit has been established, the statutory interest in stability and constancy in bargaining obligations requires adherence to that unit." [*Boise Cascade Corp. v. NLRB*, 860 F.2d 471, 475 (1985) (quoting *Shell Oil Co.*, 194 NLRB 988 (1972), *enf'd sub nom., OCAW v. NLRB*, 486 F.2d 1266 (1973))].[23]

Additionally, the Court held that a single local union within a compensation unit is not a "party" for purposes of compensation bargaining, but rather each local union is just one part of the overall "party" comprised of all the locals in the compensation unit.[24]

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[20] P. 3-4.
[21] *Id.*
[22] *AFSCME, Dist. Council 20 v. D.C. PERB*, No. 8-88 at 6-7 (D.C. Super. Ct. Mar. 30, 1990).
[23] *Id.*
[24] *Id*. at 7 (holding that for purposes of compensation bargaining, "AFSCME was not a 'party'" by itself, but rather "[i]t was 1/6 of a 'party' composed of Compensation Units I and II").

In its Motion for Decision on the Pleadings, AFSCME Local 2091 urged the Board to reverse its precedent in Op. No. 185 on grounds that "it does not square with the concept of collective bargaining with an exclusive representative of the employees' choosing; it has led to constant conflict amongst labor and management and amongst labor organizations, and has caused an undemocratic process of compensation negotiations to be imposed upon thousands of District employees."[25]

Specifically, AFSCME Local 2091 argued that Op. No. 185 "did not attempt to reconcile how forced joint bargaining can coexist in the context of a collective bargaining system based on the certification of exclusive representatives."[26] AFSCME Local 2091 suggested that under "the current scheme blessed by [Op. No. 185], a dissenting union can have an agreement foist upon its members against their will—outside of interest arbitration—so long as the other unions agree."[27] Similarly, AFSCME Local 2091 asserted that "if one union is willing to reach a deal with management but lacks sufficient heft or political clout amongst the other unions within the compensation unit who wish to hold out for more, then that agreeable union is held hostage by other labor organizations the employees never voted to associate with."[28] AFSCME Local 2091 contended that in these circumstances, the "employees in the bargaining unit represented by such a dissenting union may as well have no union representation," since the resulting agreement would not be their agreement, but "an agreement reached between management and some other labor organization(s) charged with representing a different group of employees."[29] For these reasons, AFSCME Local 2091 asked the Board to "revisit and reverse" its decision in Op. No. 185, and "put an end to the practice of forcing employees into mutual representation arrangements against their will for the purpose of involuntary coalition bargaining over compensation."[30]

Notwithstanding its request that the Board reverse its holdings in Op. No. 185, AFSCME Local 2091 stated that it is "not seeking to be removed from Compensation Unit 31 or to establish a new unit," since its members are still part of the same "pay system" as the other unions in the unit.[31] AFSCME Local 2091 contended that having the same "pay system" within a compensation unit does not preclude each union within that compensation unit from negotiating its own compensation agreement.[32]

The Board rejects AFSCME Local 2091's arguments. The record shows that it was AFSCME Local 2091—along with the AFGE Locals, NAGE Local R3-06, and WASA—that asked the Board to create Compensation Unit 31. In Op. No 510, the Board granted the five unions' "Stipulation and Joint Request for Approval of Compensation Unit," which asked the Board to authorize the creation of "a separate compensation unit for bargaining unit employees

[25] Motion at 10.
[26] *Id*. at 11.
[27] *Id*.
[28] *Id*. at 12.
[29] *Id*.
[30] *Id*. at 13.
[31] *Id*. at 11.
[32] *Id*.

employed by WASA."[33] In PERB's actual Authorization of Compensation Unit 31, the Board expressly stated that "the unit … which the Board has determined appropriate in Op. No. 510 on March 14, 1997, shall constitute a unit for the purposes of compensation bargaining."[34]

For over 15 years, AFSCME Local 2091 and the other four unions in Compensation Unit 31 have willingly and successfully negotiated compensation matters as a single compensation unit, have entered into compensation agreements as a single unit, and have in all other respects concerning compensation functioned as a single unit.[35] Thus, while AFSCME Local 2091's members did not directly vote to join Compensation Unit 31, they did elect AFSCME Local 2091 as their exclusive representative;[36] and it was in that capacity that AFSCME Local 2091 willingly requested and agreed to join Compensation Unit 31 on their behalf.[37] Accordingly, AFSCME Local 2091 cannot now reasonably claim that it is being "forced" to bargain as a single compensation unit against its will or against the will of its members—nor can it argue that its certification as the exclusive representative of its bargaining unit is being threatened just because it recently unilaterally decided that it no longer wants to negotiate a new compensation agreement with the other unions in the compensation unit.

Additionally, the Board rejects AFSCME Local 2091's contention that § 1-617.16(b) does not prohibit individual locals within a compensation unit from negotiating separate compensation agreements as long as the agreements all rely on the same "pay system." As the Superior Court held in its affirmance of Op. No. 185, separate bargaining with a single local union within a compensation unit would have the effect of dissolving the authorized compensation unit and would violate the express statutory policy in D.C. Official Code § 1-617.16(b) that favors multi-unit negotiations.[38] Further, the Court held that separate bargaining "would undermine a 'basic tenet of union recognition in the collective bargaining context…'" because "[o]nce an appropriate bargaining unit has been established, the statutory interest in stability and constancy in bargaining obligations requires adherence to that unit."[39] AFSCME Local 2091's argument ignores D.C. Official Code § 1-617.16(b)'s express stated purpose of "minimiz[ing] the number of different pay systems *or schemes*."[40] If WASA had to negotiate different compensation agreements (or schemes) with each of the five locals within Compensation Unit 31, it would defeat the very purpose of the statute and the Board's authorization of the compensation unit, which again AFSCME Local 2091 proposed and stipulated to. Moreover, it would run afoul of the Superior Court's holding that each local union within a compensation unit is not a "party" in and of itself for purposes of compensation bargaining, but is rather just one part of the overall "party" comprised of all the locals in the

[33] *See* p. 3, 6, 8 (noting that "[o]n February 7, 1997, a Stipulation and Joint Request for Approval of Compensation Unit was filed…," in which "all parties joined in AFGE's and AFSCME's request for a separate compensation unit for WASA employees").
[34] Authorization, PERB Case Nos. 97-CU-01 and 97-UM-03 (March 14, 1997).
[35] Complaint at 3.
[36] *See id.* at 1-2.
[37] *See* Op. No. 510 at p 3, 6, 8.
[38] *AFSCME, Dist. Council 20 v. D.C. PERB*, No. 8-88 at 6-7.
[39] *Id*. (internal citations omitted).
[40] (Emphasis added).

compensation unit.[41] Accordingly, when the Board granted AFSCME Local 2091's and the other unions' request to authorize the creation of Compensation Unit 31, AFSCME Local 2091 gave up its independence for purposes of compensation bargaining, and became one-fifth of the overall "party" comprised of all the unions in the compensation unit.[42] Although AFSCME Local 2091 is correct that in certain scenarios that means a majority of the members in a compensation unit can ratify and enforce a compensation agreement without the consent or ratification of one of the locals in the unit, the Board has held that such is not improper.[43]

Accordingly, the Board sees no compelling reason to revisit or reverse its holdings in Op. No. 185, or to go against the Superior Court's affirmance of those holdings.

In regard to the merits of this case, since it is undisputed that AFSCME Local 2091 is only one of the five local unions that comprise Compensation Unit 31, WASA was under no obligation to engage in separate compensation negotiations with AFSCME Local 2091 alone, independent from the other locals in the compensation unit. Accordingly, the Board finds that WASA did not commit an unfair labor practice or otherwise violate the CMPA when it refused AFSCME Local 2091's bargaining request. AFSCME Local 2091's complaint is therefore dismissed with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. AFSCME Local 2091's complaint is dismissed with prejudice: and

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Keith Washington, Ann Hoffman, and Yvonne Dixon.

October 29, 2015

Washington, D.C.

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[41] *AFSCME, Dist. Council 20 v. D.C. PERB*, No. 8-88 at 7.
[42] *Id.*
[43] *See AFGE v. OLRCB*, 32 D.C. Reg. 3354, Slip Op. No. 111, PERB Case No. 85-U-14 (holding that since a settlement compensation agreement had been approved and ratified by over 70% of the members within the compensation unit, the agreement was proper and enforceable on the entire compensation unit even though one of the three locals within the compensation unit had voted not to ratify the agreement); *see also* Op. No. 185 at 3-4 (holding that because 4 of the 5 local unions within a compensation unit had approved and ratified a settlement compensation agreement, the one local that did not ratify the agreement cannot unilaterally demand additional bargaining or declare an impasse and thus require bargaining to continue).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-U-20, Op. No. 1548 was sent by File and ServeXpress to the following parties on this the 30th day of October, 2015.

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