

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

International Brotherhood of
Police Officers (IBPO),

Petitioner,

and

District of Columbia General
Hospital Commission,

Agency (Employer),

and

National Union of Security
Officers (NUSO),

Incumbent Representative.

PERB Case No. 82-R-09
Opinion No. 47

DECISION AND ORDER

The parties to this proceeding are the International Brotherhood of Police Officers (IBPO) and the District of Columbia General Hospital Commission (DOGH). The incumbent labor organization, the National Union of Security Officers (NUSO), did not intervene as required by Board Rules 101.6 and 101.7. This proceeding arises from a Petition filed by IBPO in which it seeks to represent an existing unit of security officers at the District of Columbia General Hospital currently represented by NUSO.

NUSO was certified by the D.C. Board of Labor Relations on April 20, 1979 in Case No. 9-R-007 as the exclusive representative for a unit of:

"All guards at the District of Columbia General Hospital excluding management executives, confidential employees, supervisors or any employee engaged in personnel work in other than a purely clerical capacity."

NUSO and DOGH negotiated and executed an Agreement covering the terms and conditions of employment which, by its terms, expired on July 15, 1982. By the Board's Order in Case No. 80-R-08, these employees were placed in Compensation Bargaining Unit 1 which negotiated a compensation agreement on November 13, 1981 and which was accepted by the District of Columbia Council on January 26, 1982. The parties' ground rules provide that compensation agreements are not effective until terms and conditions agreements are reached. Negotiations for a terms and conditions agreement have not resulted in an agreement between NUSO and DOGH.

IBPO filed its Recognition Petition with the Board on May 12, 1982 properly accompanied by a showing of interest not more than one year old and in excess of 30% as required by Board Rule 101.2. Notices of the filing of the Petition were prepared on May 18, 1982 and properly posted at employee worksites in accordance with Board Rule 101.5. A copy of the Notice was forwarded by certified mail to NUSO along with information on the Board's procedures for intervening in representation proceedings on May 21, 1982 and returned unclaimed by the U.S. Postal Service on June 16, 1982.

DOGH filed its Response with the Board on May 27, 1982 contending essentially that a compensation agreement exists between the parties which bars the recognition petition pursuant to Board Rule 101.8 (b)¹.

After completing its investigation, the Board considered this matter at its July 9, 1982 meeting and determined that it should be set for an informal conference with the parties pursuant to Board Rule 101.12. Notices of the informal conference were forwarded to all interested parties including NUSO on July 15, 1982. Briefs were filed by DOGH and by IBPO on August 6, 1982. The informal conference was convened by members of the Board with the parties on August 13, 1982 at 10:00 a.m. NUSO did not enter an appearance.

¹ Board Rule 101.8 (b) provides that a petition for exclusive recognition shall be barred if:

"(b) there is an existing labor-management agreement covering the employees in the proposed unit, provided that a petition may be filed during the period between the 120th day and the 60th day before the expiration of an agreement having a duration of less than three years or after 975 days for an agreement having a duration of three years or more."

The central issue in this case is whether a compensation agreement alone constitutes a bar to a representation election. This issue is presented, however, in an unusual factual setting, and the Board's determination is appropriately confined to these facts.

NUSO, which originally represented the employees involved, no longer purports to do so. The terms-and-conditions-of-employment contract which NUSO entered into with DOGH expired on July 15, 1982. NUSO made no effort to renew this contract, has taken no part in these proceedings, and in effect declines any representational responsibility. The employees are neither covered by any agreement nor represented by any union so far as terms-and-conditions of employment (other than compensation) are concerned.

It is nevertheless maintained on behalf of DOGH that no steps can be taken toward selecting a new bargaining representative because these employees are part of Compensation Bargaining Unit 1, for which a compensation agreement was negotiated on November 13, 1981 and accepted by the D.C. Council on January 26, 1982. The employer's claim is not limited to the technicalities involved. It is argued strongly that to open up the representation issue now would threaten the stability of the compensation agreement if a new representative union were selected.

The practical resolution of this situation was recognized in effect by the representatives of all agencies and unions participating in the August 13 informal conference. These employees are entitled to be represented by a union of their own choosing, and to enter into negotiations looking toward a terms-and-conditions agreement. However, there is no justification for re-opening the compensation agreement prior to its expiration date.

The contract-bar rule established by the Board presents no obstacle to reaching a practical result. The reference in Board Rule 101.8 (b) to "an existing labor-management agreement" should perhaps have been tailored more precisely to take account of the current situation in collective bargaining in the District of Columbia government in which different unions represent particular employees for purposes of term-and-conditions bargaining on the one hand, and compensation bargaining on the other; and in which agreements covering the two sets of relationships are not always coterminous. The statute contemplates the eventual consolidation of the two types of bargaining, at least as far as timing is concerned. During the transitional period, until this objective is accomplished, Rule 101.8 (b) must necessarily be interpreted as incorporating a distinction

between the two types of agreements, at least where the consequences of a failure to make this distinction would be that employees would be left unrepresented as far as terms-and-conditions (other than compensation) are concerned.

The Board has given full consideration to the National Labor Relations Board's (NLRB) development of the contract-bar rule as it is established in the National Labor Relations Act. Appalachian Shale Products Co., 121 NLRB 1160 (1958). But compare Gaylord Broadcasting Co., 250 NLRB 198 (1980); Farrell Rochester Division of USM Co., 256 NLRB 162 (1981). The NLRB 's reasoning in Appalachian Shale Products (finding no contract bar) fits closely the factual situation in the present case, but there is no basis for the exceptions that were carved out in Gaylord Broadcasting and Farrell Rochester. The NLRB decisions are, however, of limited relevance here. The critical context of those decisions is that private-sector collective bargaining which includes compensation and other terms-and-conditions of employment are almost invariably covered by a single agreement and negotiated by a single union.

Other cases may arise in which there is more justification than there is in the present case for giving a compensation agreement a broad contract-bar effect. A different handling of the matter may be called for when the transitional period has been completed. At that time the two types of bargaining will be consolidated. For the present, however, and on facts such as those presented here, it would be unwise and unfair to apply the contract-bar rule in such a manner as to preclude employee representation for purposes of terms-and-conditions bargaining.

As has been indicated above, the parties have recognized that the selection and certification of a new union representative in this situation could not fairly be taken as warranting a re-opening of the compensation agreement which is currently in effect. Whether the Board's authority to dictate bargaining (assuming a new union is certified) is limited only to terms and conditions is not clear. The parties are in a position, however, to assume this result, and also to take the steps that will be required to proceed toward compliance in the next round of bargaining with the statutory mandate requiring that both types of negotiation take place at the same time.

IT IS ORDERED THAT:

1. The Recognition Petition filed by the IBPO is found not to be barred by the compensation agreement of Compensation Bargaining Unit 1.
2. An election is authorized pursuant to Board Rule 102 to determine whether these employees wish to be represented by IBPO or no representative for terms and conditions of employment bargaining.
3. In the interest of labor relations stability in the District of Columbia government, compensation bargaining by and for these employees is appropriate only in conjunction with such negotiations for Compensation Bargaining Unit 1.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

September 13, 1982