GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: The Fraternal Order of Police, Metropolitan Police Department Labor Committee Petitioner, and The D.C. Office of Labor Relations and Collective Bargaining (On behalf of the D.C. Metropolitan Police Department), Respondent.	PERB Case No. 85-I-06 Opinion No. 103

DECISION AND ORDER

For over three months now, the Board has had before it in one form or another the controversy that has developed between the Metropolitan Police Department (MPD) and the Fraternal Order of Police, Metropolitan Police Department Labor Committee (FOP) in connection with the renewal of their contract, which expired on September 30, 1984. The FOP is requesting that the bargaining impasse procedures in the Comprehensive Merit Personnel Act be put into effect. The MPD is protesting that the FOP's refusal to bargain is an unfair labor practice under the statute.

At its regularly scheduled meeting on February 20, 1985, the Board had officially before it only the union's impasse request dated February 6, along with the employer's response of February 13. The special measures taken by the Board to re-activate the parties bargaining, in response to the union's previous December 3, 1984 request, had proved futile. The MPD's refusal-to-bargain unfair labor practice charge dated February 7 was not on the Board's February 20 agenda because there had

not been time to process the union's response which had been filed the day before.

The Board decided unanimously at the February 20 meeting that impasse procedures should be implemented, conditioned, however, on the outcome of the representation election, involving this unit, which was scheduled for February 22. This election resulted in a re-affirmation of the FOP's representational authority.

The Board also took notice of the pendency of the unfair labor practice charge. It was decided that postponement, at this time, of action on the impasse request would be inappropriate, and would create dangerous precedent. The Board will consider the unfair labor practice charge at its scheduled March 13, meeting, making then such, if any, adjustments in the impasse ruling as may appear warranted.

The Board's decision with respect to the institution of impasse proceedings is based on its application of the provisions of Sections 1-618.2 and 1-618.17 of the Comprehensive Merit Personnel Act taken as a whole. The Board has noted carefully the refinements of distinctions made in the statute and by the parties between the "impasse" and "automatic impasse" provisions in these sections. Close consideration has also been given the various claims as to what should be considered the "automatic impasse" date provided for in Section 1-618.17, whether the parties in fact settled this date by negotiation, and whether they had authority to change the statutory schedule by their agreement.

What is controlling in this situation is that the public interest reflected in the statutory provisions clearly warrants and requires that these negotiations be brought promptly to a head. The parties' dealings have been characterized for over eight months by exchanges, occasionally across the table, frequently in writing, of acrimonious charges and counter-chargers. Whatever actual bargaining has taken place has moved them further away from final settlement rather than toward it.

The Board has considered and followed this record sufficiently to conclude as a practical matter that on the record before it as of the time of the Board's February 20 meeting any attempt to assess or allocate responsibility for what has happened would be pointless. It is more important that this record offers no promise whatsoever of constructive improvement in this situation by the parties themselves.

This is clearly a situation in which the statute mandates the institution of procedures bringing a third party into this bargaining. Continued argument as to whether this accords with one party's interest or the other's necessarily gives way at this point to the statutory emphasis on the public's interest being served. Argument as to whether this is called for now or thirty days from now finds its necessary answer in the fact that time is now working, as matters stand, against any settlement by the parties themselves.

Additional question arises as to whether this controversy should be referred to mediation, final and binding arbitration, or some other form of third-party proceeding. Section 1-618.17 of the CMPA, governing compensation bargaining, precribes specific proceedings: a 30-day mediation period must precede the referral of a dispute to arbitration; and the arbitration must follow specific rules. Section 1-618.2, governing terms-and-conditions of employment disputes provides that "the choice of the form(s) of impasse resolution machinery to be utilized in a particular instance should be the prerogative of the Board, after appropriate consultation with the interested parties." The current controversy includes both types of disputes. In the Board's judgement, no useful purpose will be served in this particular instance by referring the controversy to mediation, the parties have drawn lines between them so strongly that any attempt at mediatory persuasion is bound to prove ineffective.

The Board accordingly concludes that this dispute must be referred to final and binding arbitration. There is no reason for waiting to institute this procedure.

The parties are accordingly directed to proceed immediately to arbitration of their contract differences. This should, in the Board's judgement, be tripartite arbitration by an arbitration board composed of a neutral chairperson and one member designated by each party.

The arrangement for this final and binding arbitration, including the selection of a neutral chairperson, should be worked out as fully as possible by the parties themselves, this should be done expeditiously. If the parties have not concluded arrangements for the arbitration within ten (10) days of the date of this Order, the Executive Director or the Chairman of the Public Employee Relations Board will meet with them at that time to resolve, with the authority of the PERB, any remaining procedural issues, including the designation of a neutral chairperson of the arbitration board if this is necessary.

If at its meeting on March 13 the Board makes a decision in the pending unfair labor practice case that affects this arbitration procedure, a supplementary Order will be issued.

The Board retains jurisdiction over this matter.

O R D E R

IT IS ORDERED THAT:

The parties proceed to final and binding arbitration in accordance with this Opinion.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
March 12, 1985

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: The Fraternal Order of Police, Metropolitan Police Department Labor Committee, Petitioner, and The D.C. Office of Labor Relations and Collective Bargaining (On Behalf of the D.C. Metropolitan Police Department), Respondent.	PERB Case No. 85-I-06 PERB Opinion No. 103 (Supplemental Order)

SUPPLEMENTAL ORDER

The Public Employee Relations Board directs:

1. That this case proceed to final and binding arbitration before an Arbitration Board to be composed of Donald P. Rothschild, Chairman, Robert E. Deso, and Robert W. Klotz;

2. That the parties exchange their last best offers on both compensation and non-compensation issues on April 17, 1985;

3. That a preliminary meeting of the members of the Arbitration Board be convened by the Chairman on April 22, 1985 to dispose of any procedural details;

4. That the arbitration hearing start on April 25, 1985, and that subsequent hearings be held as directed by the Arbitration Board;

5. That the Arbitration Board's award on all compensation issues be rendered on or before May 22, 1985; and

6. That the Arbitration Board's award on all non-compensation issues be rendered on or before June 5, 1985, unless both parties agree to an extension of this date.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

April 2, 1985