

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)
)
All Unions Representing Employees)
In Compensation Bargaining Unit 1,)
)
and)
)
All Unions Representing Employees)
In Compensation Bargaining Unit 2,)
)
Complainants,)
)
and)
)
Government of the)
District of Columbia,)
Marion Barry, Jr. Mayor,)
)
and)
)
Board of Trustees of the)
University of the)
District of Columbia,)
Dr. N. Joyce Payne, Chairman,)
)
and)
)
District of Columbia)
General Hospital Commission,)
Ms. Mary Lou King, Acting Chairman,)
)
and)
)
District of Columbia)
Board of Library Trustees,)
Mr. John C. Hazel, President,)
)
Respondents.)

PERB Case No. 88-U-03
Opinion No. 198

DECISION AND ORDER

The instant Unfair Labor Practice Complaint was filed with the District of Columbia Public Employee Relations Board (Board) on October 22, 1987. The specific Unions/co-complainants are the International Brotherhood of Teamsters, Local 1714 (Teamsters, Local 1714); American Federation of Government Employees

(AFGE); American Federation of State, County, and Municipal Employees, AFL-CIO, Council 20 (AFSCME); Laborers' International Union of North America, Local 960 (LIUNA); NAGE/IBPO, Service Employees International Union; and Communication Workers of America, Local 2336 (CWA). The Answer to the Complaint was timely filed by the District of Columbia Office of Labor Relations (OLRCB), which represents the Respondents in this matter.

The gravamen of the Unions' Complaint is that the Respondents unilaterally terminated premium payments to the optical/dental benefit plans provided to employees in Compensation Units I and II following the expiration of the collective bargaining agreement, thereby violating the Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Code Sections 1-618.4(a)(1) and (5). The Complainants further aver that since this unilateral termination of benefit contributions took place only after the Unions had declared an impasse in negotiations for a new compensation agreement, the Respondents' act constituted retaliation against the Complainants for the exercise of their legal rights, which violates D.C. Code Sections 1-618.4(a)(1), (3) and (5).

In its Answer, the Respondents cite language contained in the expired Compensation Agreement in the dental and optical plan documents between the insurance carrier and the Complainants and in the "Implementing Guidelines" signed by the parties, all of which the Respondents allege served to release them from any obligation to make premium payments to the plans after the agreement's expiration date. 1/ The Respondents also deny that their conduct was retaliatory, pointing out that they informed the providers and the Complainants on August 26, 1987 of their intention to terminate premium payments effective October 10, 1987, prior to the declaration of an impasse by the Complainants on October 16, 1987. 2/

The issue is whether the Respondents had an obligation to bargain with the Unions prior to terminating benefits, notwithstanding the provisions of the parties' agreement and the implementing plan.

1/ The pertinent provisions of the collective bargaining agreement and of the other relevant documents are set forth in the Appendix.

2/ See, All Unions Representing Employees In Compensation Unit I, et al. and Government of the District of Columbia, et al. PERB Case No. 88-U-01.

We conclude that the Respondents did not engage in conduct violative of D.C. Code Section 1-618.4(a)(1) and (5). The Complainants knowingly and voluntarily negotiated a contract which provided for the payment by the Respondent of optical and dental benefits until the termination of the collective bargaining agreement.

The Board was faced with a similar issue in The Fraternal Order of Police, Metropolitan Police Department Labor Committee and The International Association of Firefighters, Local 36 and The District of Columbia Office of Labor Relations and Collective Bargaining. 31 DCR 6208 PERB Case Nos. 84-U-15 and 84-U-01, Opinion No. 94 (1984). In that case the Board, relying upon the holdings in NLRB v. Katz, 369 U.S. 736 (1962) and subsequent agency and lower court decisions, concluded that in the absence of a waiver of the statutory obligation to bargain with the Union, the employer's unilateral change in conditions of employment (specifically the cancellation of health benefits) violates the duty to bargain, which constitutes a violation of D.C. Code Section 1-618.4(a)(5). The Board also found that the employer's claim of a waiver was not supported by the evidence and therefore the Respondent had breached D.C. Code Section 1-618.4(a)(1) and (5).

Here, we have not questions of union waiver or employer unilateral action, but rather bilateral agreements that the employer's obligation to pay the premiums would expire with the collective bargaining agreements. The Board reaches this decision on the basis of the explicit provisions in the 1985 - 1987 collective bargaining agreement, the dental and optical agreements between the carrier and the Complainants and the implementing instructions for these plans. In each one these documents, it states, "Under no circumstances shall the Employer [or District] be responsible for premium payments beyond September 30, 1987." (Emphasis added.) This language is unambiguous.

It is the plain wording of these various documents that distinguishes this matter from Fraternal Order of Police. Unlike that case, the collective bargaining agreement here expressly provides the termination date of the employer's payment obligations. Thus, while the legal analysis of Fraternal Order of Police is applicable to this matter, the wording of the collective bargaining agreement and other related documents shows that the Complainants expressly and knowingly negotiated and contracted for a specified date for the cessation of premium payments.

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The facts also demonstrate that the Respondents did not engage in retaliation in violation of D.C. Code Section 1-618.4-(a)(1) and (3). The Respondents informed the insurance carriers by letter dated August 26, 1987, with copies to the Complainants, of its intent to exercise its contractual right to terminate premium payments. Thus the Employer put all parties on notice well in advance of the impasse declaration and did no more than act in accordance with the contract and other pertinent agreements.

Therefore, the Respondents have committed no unfair labor practice by their actions.

ORDER

It is ordered that this Complaint be dismissed.

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

December 1, 1988

APPENDIX

Compensation Agreement

Article III, Optical and Dental Benefits:

8. The provisions of this Article shall become effective no earlier than the date of Council approval of this agreement (or passage of sixty (60) days after submission to the Council without action being taken therein), and the plans shall expire on September 30, 1987. Under no circumstances shall the District be obligated for premium payments beyond September 30, 1987.

Dental Agreement for District of Columbia Government Employees, Bargaining Units I and II

Article IX, Term:

The Dental Services Plan shall be in effect from the date of initial payment to September 30, 1987. Under no circumstances shall the Employer be obligated for premium payments beyond September 30, 1987.

Optical Agreement for D.C. Government Employees, Bargaining Units I and II

Article VIII, Termination:

Section 8:01 EFFECTIVE DATE: This Agreement shall become effective upon the effective date of the initial payment by the Employer and last until September 30, 1987. Under no circumstances shall the Employer be responsible for premium payments beyond September 30, 1987.

Compensation Units One and Two - Implementing Instructions For the Optical Benefit Program

- 1.2 Duration. The optical benefit plan shall be in effect from the effective date of initial payment to September 30, 1987. Under no circumstances shall the Employer be responsible for premium payments beyond September 30, 1987.

Compensation Units I and II (AFSCME) - Implementing Instructions For the Dental Service Program

1.2 Duration. The dental services plan shall be in effect from the effective date of initial payment to September 30, 1987. Under no circumstances shall the Employer be responsible for premium payments beyond September 30, 1987.

Compensation Units I And II (AFGE, NAGE/IBPO, CWA and LIUNA) Implementing Instructions For The Dental Service Program

1.2 Duration. The dental services plan shall be in effect from the effective date of initial payment to September 30, 1987. Under no circumstances shall the District be obligated for premium payments beyond September 30, 1987.