

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the matter of:

International Brotherhood of Police
Officers,

Petitioner,

and

District of Columbia
Department of General Services,

Agency,

and

District Council 20, American
Federation of State, County and
Municipal Employees, Local 2784,

Intervenor.

PERB Case No. 82-R-04
Opinion No. 48

DECISION AND ORDER

The parties to this proceeding are the International Brotherhood of Police Officers (IBPO), the District of Columbia Department of General Services (DGS) and the American Federation of State, County and Municipal Employees, District Council 20, Local 2784 (AFSCME). The proceeding arises out of a Recognition Petition filed by the IBPO in which it seeks the exclusive right to represent a unit of security officers currently represented by AFSCME and described as follows:

"All Protective Services Officers excluding management executives, confidential employees, supervisors or any employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of D.C. Law 2-139."

Although settlement has been reached regarding compensation of these employees by virtue of a compensation agreement between the District government and Compensation Bargaining Unit 1 on January 26, 1982, no extension of the agreement between DGS and AFSCME covering terms and conditions of employment for the period from December 19, 1979 to December 19, 1981, has been negotiated. The Petition before the Board requires a determination as to whether or not it was properly and timely filed.

The IBPO's Recognition Petition was filed with the Board on January 12, 1982, pursuant to Board Rule 101.1. On February 1, 1982, AFSCME filed its Request to Intervene/Motion to Dismiss. On February 10, 1982, IBPO filed a Response to the Motion to Dismiss, and on March 12, 1982 AFSCME filed an additional Response. The Board concluded its investigation and notified the parties on March 26, 1982 of a scheduled Pre-Hearing Conference on April 22, 1982 and of a Recognition Hearing to be convened on April 29, 1982 by a Board-designated hearing examiner.

As the April 29 hearing was being convened, AFSCME's representative asked that it be postponed in order to provide opportunity for a fuller consideration of the possible relevance to the present case of a Board decision (Opinion No. 37-Case No. 82-R-05) which had just been received. The Hearing Examiner denied this request and proceeded with the hearing. A subsequent request that the hearing be reconvened to permit further development of the AFSCME's position in the light of Board Opinion 37 was denied by the Examiner on the ground that any relevant matter could be covered adequately in post-hearing briefs.

Following the hearing, IBPO and DGS filed post-hearing briefs (on June 11, 1982). AFSCME did not, but noted instead in a letter (June 10, 1982) to the Board's Executive Director its "...continuing objection on the grounds of being prevented from making an adequate record." The Hearing Examiner issued his report on July 28, 1982, recommending that IBPO's Petition be granted. In its Written Exceptions, filed on August 12, 1982, AFSCME renewed its protest against the procedure which had been followed, stated (without supporting argument) its disagreement with Hearing Examiner's recommendation, and requested that the Board hear oral argument on its exceptions.

This case presents two sets of issues: those relating to the procedure followed by the Hearing Examiner; and those involving the timeliness of the IBPO Petition under the certification-bar and contract-bar rules.

DENIAL OF DUE PROCESS

Having considered fully the procedural issues which arose here, the Board concludes that AFSCME's contention has no substantial basis. There is no point in repeating the Hearing Examiner's full coverage of this issue. Nothing appears, and AFSCME has pointed out nothing about PERB Opinion 37 (Case No. 82-R-05) which could not have been developed by AFSCME with the Hearing Examiner. Its representatives declined to indicate

to the Examiner whatever they may have had in mind. They declined to file a post-hearing brief. Their exceptions give the Board no insight into the reasons for their wanting more time and hearing opportunity. These proceedings have already been unduly protracted. The Board adopts the Hearing Examiner's recommendation that the claim of a denial of due process be dismissed, and denies the request for oral argument on AFSCME's exceptions.

THE CERTIFICATION-BAR AND CONTRACT-BAR ISSUES

The chronology of relevant developments here is as follows:

- (a) A previous terms-and-conditions agreement between DGS and AFSCME (i) expired by its terms on December 19, 1981, but provided (in Article XXXIII) for its automatic renewal unless either party gave written notice not less than 60 days before the expiration date of a desire to amend, modify, or terminate the agreement.
- (b) The specified notice of a desire to change the contract was given in writing between June 18, 1981 and August 31, 1981.
- (c) Prior to the notice, and on February 6, 1981, the Board had determined that the employees involved here were to be included in Compensation Bargaining Unit 1. (Case No. 80-R-08).
- (d) A Compensation Agreement covering these employees, among others, was entered into on November 13, 1981. This agreement was "signed off on" by representatives of DGS and AFSCME on that same date, and was approved by the D.C. Council on January 26, 1982.
- (e) The IBPO Recognition Petition was filed on January 12, 1982.
- (f) On January 20, 1982, AFSCME and DGS agreed to enter into negotiations regarding other terms-and-conditions-of-employment looking toward a master contract with local supplements.

The claim that IBPO's petition was untimely is based first on the provision in Board Rule 101.8 (a) that "A petition for exclusive recognition shall be barred if: (a) a valid majority status determination has been conducted for substantially the same appropriate bargaining unit during the previous twelve (12) months, or a certification of representative has been issued;" It is contended that the Board's Compensation Bargaining Unit Determination of February 6, 1981 (Case No. 80-R-08) had this effect.

Previous Board rulings have proceeded implicitly on the recognition, which has been generally accepted, that the February 1981 Compensation Bargaining Unit Determination was in no way a determination of the representative status of any union. This conclusion is made explicit here. Unit determination for compensation bargaining purposes is an entirely different matter from the determination of what union, if any, is to represent the employees in the identified units. The Hearing Examiner has set out fully the reasons for this necessary distinction.

The contract-bar issue presented here requires closer consideration. 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" AFSCME contends strongly that a combination of the previous DGS/AFSCME terms-and-conditions agreement and the compensation agreement which had been entered into constitutes a bar to the IBPO recognition petition under the terms of this Rule 101.8 (b).

The Hearing Examiner recommends that this contention be denied and that the recognition petition be granted. He finds, first, that the previous DGS/AFSCME terms-and-conditions agreement had expired on December 19, 1981, as a consequence of the re-opening notices given more than 60 days prior to the termination date in that agreement. The conclusion that there is accordingly no bar in that agreement to a recognition petition filed on January 12, 1982 appears correct and indeed inescapable. That previous contract, which had expired, could not be considered "an existing labor-management agreement" under the terms of Rule 101.8 (b).

The remaining question is whether a bar to the recognition petition arises from the fact that a compensation agreement covering these employees had been entered into. The Hearing Examiner finds that it does not. We reach the same conclusion.

This determination is not based on the fact that the IBPO petition was filed (on January 12, 1982) prior to the time the D.C. Council had approved (on January 26, 1982) the compensation agreement. This can conceivably become a critical factor in some future case. It is not here.

The controlling consideration, as the Hearing Examiner properly points out, is that "the Compensation Agreement as a part of a Master/local scheme ... is not a sufficiently comprehensive agreement, under existing law, to constitute a contract bar." We have discussed this point in Board Opinion 47, in Case No. 82-R-09, and what has been said there need not be repeated here. There is additional force in the fact that in the present case AFSCME and DGS formally agreed on January 20, 1982 to undertake new terms-and-conditions bargaining. This was a week after the IBPO recognition petition had been filed.

The purpose of Rule 101.8 (b) is to provide an opportunity at some appropriate point for employees to seek a redetermination of their representational interests. Recognizing the counterpart interest in contract stability, the Rule is designed to permit such redetermination at the end of contract periods. The critical contract here, covering terms-and-conditions of employment, terminated on December 19, 1981. The Recognition Petition was filed on January 12, 1982. This was prior to the time the incumbent union and the agency (DGS) agreed to start negotiations on a new terms-and-conditions agreement. The petition was clearly filed during the "window period" contemplated by the contract-bar rule.

The Board recognizes that the parties to the compensation agreement negotiated that agreement in good faith and that to permit its undoing now would have the most serious consequences for the thousands of other District government employees. It finds, therefore, that in the interest of labor relations stability in the District of Columbia government, compensation bargaining by and for the employees of this terms-and-conditions bargaining unit is appropriate only in conjunction with such negotiations for Compensation Bargaining Unit 1.

ORDER

IT IS ORDERED THAT:

1. The request for further oral argument is denied.
2. The Motion to Dismiss based upon a certification bar is denied.
3. The Motion to Dismiss based upon a contract bar is denied.
4. The Recognition Petition filed herein for a terms-and-conditions-bargaining representative is sustained and an election is authorized pursuant to Board Rule 102 to determine whether these employees wish to be represented by IBPO, AFSCME or no representative for terms-and-conditions of employment bargaining.
5. In the interest of labor relations stability, compensation bargaining by and for the employees of this terms and conditions bargaining unit is determined to be appropriate only in conjunction with such negotiations for Compensation Bargaining Unit 1.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
September 24, 1982.