Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Locals 631, 872, and 2553,	
Complainants,	PERB Case Nos. 15-U-23
v.	Opinion No. 1549
District of Columbia Water and Sewer Authority,	
Respondent,	
and	
American Federation of State, County and Municipal Employees, District Council 20, Local 2091,	
Intervenor,	
and	
National Association of Government Employees, Local R3-06,	
Intervenor.	

DECISION AND ORDER

Complainants, American Federation of Government Employees, Locals 631, 872, and 2553 ("AFGE Locals"), filed an unfair labor practice complaint against the District of Columbia Water and Sewer Authority ("WASA"), alleging that WASA violated D.C. Official Code §§ 1-617.04(a)(1) and (2), and §§ 1-617.17(b) and (f)(1) by refusing their demand to bargain a

successor compensation agreement for Compensation Unit 31.[1] American Federation of State, County and Municipal Employees, District Council 20, Local 2091 ("AFSCME Local 2091") and National Association of Government Employees, Local R3-06 ("NAGE Local R3-06") intervened.

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.[2] For the reasons fully explained below, the Board finds that WASA did not commit an unfair labor practice or otherwise violate the CMPA, and dismisses the AFGE Locals' complaint.

I. History

On March 20, 2015, the Presidents of the three AFGE Locals sent a letter to WASA demanding to begin negotiations for a successor compensation agreement for Compensation Unit 31.[3] The letter asserted 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."[4]

On April 9, 2015, WASA sent a response to the AFGE Locals asserting that AFSCME Local 2091 and NAGE Local R3-06 had each contacted WASA to dispute that Ms. Hutchinson had been authorized to negotiate on behalf of Compensation Unit 31.[5] WASA stated it was "prepared to begin negotiation of a successor agreement on compensation," but only after all five unions in the compensation unit signed a notice identifying who was authorized to negotiate on behalf of the compensation unit.[6]

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[1] Compensation Unit 31 is made up of employees represented by five local unions, namely: AFGE Local 631, AFGE Local 872, AFGE Local 2553, AFSCME, Dist. Council 20, Local 2091, and NAGE Local R3-06. *See 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").

[2] 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 the AFGE Locals' legal allegations, but did not dispute the complaint's material factual allegations, which were that: (1) the AFGE Locals requested to begin compensation bargaining on behalf of Compensation Unit 31; and (2) WASA refused that request until all of the unions in the compensation unit provided clarification about who was authorized to bargain on behalf of the unit. *See* Complaint at 3, Exhibit 1; *see also* Answer at 4, 6. 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).

[3] Complaint at 3.

[4] Complaint, Exhibit 5A.

[5] Complaint at 3, Exhibit 1.

[6] Complaint, Exhibit 1.

On April 14, 2015, Ms. Hutchinson sent another letter to WASA in which she again asserted that she was the compensation unit's chief negotiator, and requested that the parties meet on April 24, 2015, to begin negotiations.[7] Ms. Hutchinson further asserted that there is no legal requirement to identify a chief negotiator before negotiations can begin. The letter stated that "[a]ny internal practices of the Unions in Compensation Unit 31 have no bearing on negotiation of successor agreement [*sic*]." It further asserted that there is no legal requirement "that each Union in a compensation unit serve a joint request to begin bargaining."[8]

On April 21, 2015, WASA sent a response to Ms. Hutchinson asserting that it was "not prepared to meet until the instant issues regarding selection of a chief negotiator are resolved between the AFGE Locals, AFSCME Local 2091 and NAGE Local R3-06."[9] Although WASA concurred that there is no express requirement that a chief negotiator be selected before negotiations can begin, it asserted that there is an express requirement in D.C. Official Code § 1-617.17 that the parties negotiate in good faith. WASA argued that if Ms. Hutchinson was not authorized to bargain on behalf of AFSCME Local 2091 and NAGE Local R3-06, she could not bargain in good faith. WASA reiterated that it was prepared to bargain, but only "after this matter has been resolved amongst the locals."[10]

On April 22, 2015, Ms. Hutchinson sent a letter to WASA asserting that WASA had "no authority to intervene in the appointment of Union representatives" and offered additional dates to begin negotiations.[11] The AFGE Locals allege that WASA did not respond to Ms. Hutchinson's April 22nd letter.[12]

On May 8, 2015, the AFGE Locals filed the instant unfair labor practice complaint alleging that WASA's refusal to bargain constituted violations of D.C. Official Code §§ 1-617.04(a)(1) and (2), and §§ 1-617.17(b) and (f)(1).

In its May 11, 2015 Answer, WASA admitted that it refused to bargain with Ms. Hutchinson, but asserted that it was not required to bargain with her because AFSCME Local 2091 and NAGE Local R3-06 disputed that she was authorized to bargain on behalf of the compensation unit.[13] WASA asserted that D.C. Official Code § 1-617.17(b) only required it to "meet with labor organizations… which have been authorized to negotiate compensation…." WASA contended that since Ms. Hutchinson's status as the chief negotiator for Compensation Unit 31 was in dispute, its request that the parties clarify who was authorized to bargain on behalf of the compensation unit before it proceeded with the negotiations was "fair and reasonable."[14]

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[7] Complaint at 4, Exhibit 8.
[8] *Id.*
[9] Complaint at 4, Exhibit 9.
[10] *Id.*
[11] Complaint at 5, Exhibit 10.
[12] Complaint at 5.
[13] Answer at 4, 6.
[14] *Id*. at 6.

AFSCME Local 2091 and NAGE Local R3-06 both filed Motions for Leave to Intervene in the case, each "vigorously" disputing Ms. Hutchinson's status as the chief negotiator for the compensation unit.[15] NAGE Local R3-06 further asserted that no "chief negotiator for Compensation Unit 31 has been named by the unions which comprise the Compensation Unit."[16]

II. Analysis

It is uncontested that AFSCME Local 2091 and NAGE Local R3-06 disputed Ms. Hutchinson's status as the chief negotiator for Compensation Unit 31. The complaint conceded (and WASA confirmed in its Answer) that shortly after the AFGE Locals' sent their March 20th bargaining request to WASA, both AFSCME Local 2091 and NAGE Local R3-06 contacted WASA independently to dispute that Ms. Hutchinson had been "elected" as chief negotiator for the compensation unit.[17] NAGE Local R3-06, in its correspondence with WASA, further asserted that it "did not participate in any such vote, if one did occur, to select a Chief Negotiator" and that it "has yet to be determined who will be the Chief Negotiator for Compensation Unit 31."[18] Although the AFGE Locals asserted to WASA in their March 20th letter that Ms. Hutchinson had been "elected" to be chief negotiator on February 26, 2015, the complaint alleged that it was the March 20th letter itself that "appoint[ed]" Ms. Hutchinson to be chief negotiator.[19] This is consistent with Ms. Hutchinson's un-notarized "Affidavit" (included with the complaint as an Exhibit), in which Ms. Hutchinson asserted that she was "appointed as Chief Negotiator for Compensation Unit 31, *by letter* of March 20, 2015, sent to [WASA]."[20]

Thus, since there is no definitive evidence that Ms. Hutchinson was ever "elected" by all five locals in Compensation Unit 31 to be the unit's chief negotiator, and since the AFGE Locals' March 20th letter that allegedly "appointed" Ms. Hutchinson as chief negotiator was only signed by the three Presidents of the AFGE Locals,[21] the Board concludes that it is possible that the AFGE Locals' March 20th request to bargain was not a request to bargain on behalf of the entire compensation unit, but was rather merely a request to bargain compensation on behalf of the AFGE Locals alone, independent from Compensation Unit 31.

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

[15] AFSCME Local 2091 Motion for Leave to Intervene at 1; NAGE Local R3-06 Motion for Leave to Intervene at 1.
[16] NAGE Local R3-06 Motion for Leave to Intervene at 1.
[17] *See* Complaint at 3-4; Answer at 4, Exhibit 1; AFSCME Motion for Leave to Intervene at 1; *and* NAGE Motion for Leave to Intervene at 1.
[18] Answer, Exhibit 1.
[19] *See* Complaint at 3.
[20] *See* Complaint, Exhibit 5.
[21] *See AFSCME, Dist. Council 20 v. D.C. PERB*, No. 8-88 at p. 7 (D.C. Super. Ct. Mar. 30, 1990) (holding that for purposes of compensation bargaining, "AFSCME was not a 'party'" by itself in Compensation Units I & II, which consisted of six local unions, but rather "[i]t was 1/6 of a 'party' composed of Compensation Units I and II").

compensation unit regarding compensation matters affecting the employees in the entire compensation unit.[22] 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.[23]

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."[24] 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))].[25]

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.[26]

Although PERB's and the Court's holdings only referenced bargaining with a "single" local within a compensation unit, the underlying principle of the cases is that, under D.C. Official Code § 1-616.17(b), agencies are only obligated to bargain with compensation units as a whole, and not with individual unions or even factions of unions within the units.[27] Here, the AFGE Locals comprised only a part of the overall compensation unit.[28] Further, § 1-617.17(b)

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[22] P. 3-4.
[23] *Id.*
[24] *AFSCME, Dist. Council 20 v. D.C. PERB*, No. 8-88 at 6-7.
[25] *Id.*
[26] *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").
[27] *Id.* at 6-7.
[28] As three-fifths of the unions that comprise Compensation Unit 31, the AFGE Locals' appointment of Ms. Hutchinson may have been valid. *See AFGE v. OLRCB*, 32 D.C. Reg. 3354, Slip Op. No. 111, PERB Case No. 85-

required WASA to only bargain compensation matters with parties that were "authorized" to do so. Here, Ms. Hutchinson's authority to negotiate on behalf of the entire compensation unit was "vigorously" challenged by the other locals in the unit. Therefore, since it is possible that Ms. Hutchinson was only authorized to speak on behalf of the AFGE Locals and not the entire compensation unit, the Board cannot conclude that WASA acted in violation of the CMPA when it refused to commence compensation negotiations until "after this matter has been resolved amongst the Locals."[29]

Additionally, although the AFGE Locals and WASA were correct that there is no legal requirement to name a chief negotiator before compensation bargaining can commence, since the AFGE Locals in this matter claimed that there was a chief negotiator, and since the other unions in the unit disputed that contention, it cannot be concluded that WASA interfered with the compensation unit members' rights or otherwise violated the CMPA when it reasonably expressed confusion about the situation and chose not to bargain until the unions in the compensation unit provided some clarification.

Lastly, the Board finds that it is not necessary to resolve the question of whether or not Ms. Hutchinson had been duly elected or appointed by "a majority of the unions" to be the chief negotiator for Compensation Unit 31 because that question is not material to the outcome of this case.[30] The only question before the Board is whether WASA committed an unfair labor practice or otherwise violated the CMPA when it expressed confusion about the mixed messages it had received from the various unions in Compensation Unit 31 and therefore chose not to begin negotiations until after the unions provided clarification and/or resolved their disputes. Since the Board has found that the confusing nature of the messages WASA received was sufficient by itself to justify WASA's response, it is not necessary to parse through and make factual determinations about the validity or invalidity of the messages themselves.[31]

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). However, such is an internal matter for the compensation unit itself to resolve, not WASA or PERB. Furthermore, Slip Op. Nos. 111 and 185 are easily distinguishable from the facts of this case since they dealt primarily with the ratification of settled agreements after the respective negotiations had completed. Here, the negotiations have yet to begin. Also, in Slip Op. Nos. 111 and 185, it was a majority of all the members in the compensation units who had voted to ratify the agreements, not the presidents of the various locals within the units. Here, it was only the three presidents of the AFGE Locals who allegedly appointed Ms. Hutchinson as chief negotiator. Finally, as noted in this Decision and Order, the question of whether Ms. Hutchinson's alleged appointment as chief negotiator for Compensation Unit 31 was valid or not is not before the Board for resolution. Indeed, the only question before the Board is whether WASA violated the CMPA when it chose not to bargain until the unions in the compensation unit resolved their disputes. Since the validity or invalidity of Ms. Hutchinson's alleged appointment is immaterial to the Board's resolution of that question, the Board will not address it.

[29] Answer at 3.

[30] *See AFGE v. DC PERB*, Case No. 2013 CA 005870 P(MPA) at p. 6 (D.C. Sup. Ct. Jul 30, 2015) (finding that PERB can disregard factual disputes that are moot or that otherwise would not affect the outcome of its decision).

[31] *Id.*

Therefore, while in most cases an agency's refusal to bargain with the exclusive representative will be an unfair labor practice, the Board finds, based on the specific facts of this case, that WASA's refusal of the AFGE's Locals request did not violate the CMPA. Accordingly, the AFGE Locals' complaint is dismissed with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The AFGE Locals' 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.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-U-23, Op. No. 1549 was sent by File and ServeXpress to the following parties on this the 30th day of October, 2015.

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