

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the matter of:

The Fraternal Order of Police/
Metropolitan Police Department
Labor Committee,

Complainant,

and

Mayor Marion Barry and
The Metropolitan Police Department,

Respondents.

PERB Case No. 85-U-31
Opinion No. 143

DECISION AND ORDER

On September 26, 1985, the Fraternal Order of Police, Metropolitan Police Department Labor Committee (FOP) filed an Unfair Labor Practice Complaint (ULP) against Marion Barry, Mayor of the District of Columbia (Mayor) and the Metropolitan Police Department (MPD). The FOP alleged that the Mayor and the MPD violated the Comprehensive Merit Personnel Act (CMPA), D.C. Code, Section 1-618.4(a) 1, 2 and (5) by refusing to implement the previously arbitrated and agreed upon provisions of the working conditions contract until the FOP agreed to the deletion of a agreed contract provision found to be legally insufficient by the District of Columbia Corporation Counsel.

The FOP contends that the Corporation Counsel's determination that the agreed upon contract provision is legally insufficient has no basis in law and is actually an untimely negotiability appeal that should have been raised during negotiations. FOP also contends that the MPD is required to implement the contract absent the disputed provision and does not need an agreement with the FOP regarding its deletion. The FOP claims that the MPD seeks to deny the FOP its right to appeal the Corporation Counsel's ruling either to the Public Employee Relations Board (Board) or to the courts by requiring the FOP to agree to the deletion.

Upon review of this matter the Board concludes that the CMPA does distinguish between negotiability appeals and reviews for

legal sufficiency. Negotiability appeals may be raised by either party during the course of negotiations and are reviewable by this Board in accordance with D.C. Code, Section 1-605.2(5). The CMPA (D.C. Code, Section 1-618.15a) also provides for a review by the Corporation Counsel of negotiated contracts for legal sufficiency. It is therefore, possible that a provision that is not raised as a negotiability appeal may later be rejected for lack of legal sufficiency. The Board, therefore, rejects the FOP's claim that this review for legal sufficiency should be overturned on the grounds that it is an untimely negotiability appeal.

The Board finds no authority in the CMPA for it to review the findings of the Corporation Counsel regarding the legal sufficiency of negotiated contracts.

After reviewing the relevant provisions of the CMPA, the Board finds no support for an unfair labor practice complaint against the MPD. The Board concludes that when a provision is found to be legally insufficient and is subsequently returned to the parties for renegotiation it is incumbent upon the parties to attempt to negotiate a settlement. If such attempt fails, either party is free to file for impasse to resolve the matter.

For the above reasons the Board dismisses the Complaint.

O R D E R

IT IS ORDERED THAT:

The Complaint be dismissed due to its failure to establish a violation of the CMPA.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
July 14, 1986