

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

The Fraternal Order of Police
Department of Corrections
Labor Committee,

Petitioner,

PERB Case No. 82-R-06
Opinion No. 49

and

District of Columbia
Department of Corrections,

Agency,

and

American Federation of
Government Employees, Local 1550,

Intervenor.

DECISION AND ORDER

This proceeding involves a representation matter initiated by the Petition of the Fraternal Order of Police Department of Corrections Labor Committee (FOP) to represent District of Columbia Department of Corrections (DOC) employees who are currently represented by Local 1550 of the American Federation of Government Employees (AFGE). Several issues which have arisen in connection with the Petition, including the timeliness of the Petition and the qualifications of the Petitioner to represent the unit in question, require Board resolution.

The FOP Recognition Petition was filed with the Board on March 11, 1982 and met the requirements of Board Rule 101.2. The appropriate Board Notices were issued on March 17, 1982. DOC's Response was properly filed on March 25, 1982 and on March 30, 1982, AFGE's Request to Intervene was properly filed. Upon completing its investigation, on April 7, 1982, the Board issued notices of a pre-hearing conference to be convened on April 20, 1982 and of a hearing to be convened on April 27, 1982.

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At the request and with the concurrence of the parties, the hearing was postponed and rescheduled for May 6, 1982. A Board designated hearing examiner conducted the hearing and post-hearing briefs were filed by AFGE, FOP and DOC on June 16, 17 and 18, 1982 respectively. The Hearing Examiner filed his Report and Recommendation with the Board on July 26, 1982. Exceptions were filed by FOP on August 9, 1982.

AFGE and DOC negotiated a two-year Agreement covering terms-and-conditions-of-employment which was effective on September 14, 1978 and was to be automatically renewed thereafter on an annual basis unless certain notification requirements for termination or modification of the agreement were met by either party. DOC notified AFGE of its desire to renegotiate the agreement on July 4, 1980 and the parties subsequently signed a memorandum agreeing to continue the existing terms and conditions agreement until it could be renegotiated.

In February 1981, the Board issued its compensation bargaining unit determination in Case No. 80-R-08¹ which placed DOC employees in Compensation Bargaining Unit 1. In November 1981, terms of a compensation agreement between the District government and Compensation Unit 1 were reached and subsequently approved by the Council of the District of Columbia on January 26, 1982. Among other things, the compensation bargaining ground rules provided that "...changes will not be implemented until each working condition contract is agreed to, but shall be implemented in accordance with its terms on a working condition unit by unit basis as such agreements are effective." On March 4, 1982, DOC and AFGE representatives reached agreement and initialed the last of the terms and conditions items. At the direction of the Mayor of the District of Columbia, the pay adjustments negotiated in the compensation agreement for Compensation Unit 1 for these DOC employees were implemented and received by the employees on March 16 and March 19, 1982. AFGE's unit membership ratified the terms and conditions agreement on March 19, 1982 and the parties' representatives formally executed the agreement on March 24, 1982. FOP's Recognition Petition was filed with the Board on March 11, 1982, after the initialing of the DOC/AFGE terms-and-conditions-agreement, but before the formal approval and ratification procedures had been completed.

¹ PERB Opinion No. 5.

The Hearing Examiner considered the following issues arising from the objections to the FOP Petition by AFGE and DOC:

1. Does FOP meet the standards of conduct for labor organizations (D.C. Code §1-618.3)², and is it otherwise a labor organization for the purpose of representing employees of the Department of Corrections?
2. Will representation of the Department of Corrections employees by the FOP promote effective labor relations?
3. At the time of the FOP Petition, was there an agreement in effect which acted as a bar to the Petition?

He concluded that FOP does meet the standards of conduct requirements, that FOP representation of DOC employees would not deter effective labor relations, but that the existing agreement between AFGE and DOC bars the FOP Petition. The Board, on its own analysis, agrees with and adopts the conclusions of the Hearing Examiner for reasons outlined below.

Standards of Conduct

AFGE and DOC objections were based on the relationship between the FOP's Lodge and its Labor Committee, and on certain provisions of the Lodge's Constitution.

² D.C. Code §1-618.3 provides that:

"(a) Recognition shall be accorded only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. A labor organization must certify to the Board that its operations mandate the following:

- (1) The maintenance of democratic provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings;
- (2) The exclusion from office in the organization of any person identified with corrupt influences;
- (3) The prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members;
- (4) Fair elections; and
- (5) The maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members."

Upon reviewing the record and the Hearing Examiner's Report and Recommendation, the Board finds the Examiner's analysis thorough and the following conclusion persuasive:

"The control of the Labor Committee by the Lodge is thus limited and peripheral. The fact that civilian employees of the Department of Corrections are not eligible for full membership in the Lodge (a social and fraternal body), has not been shown to have any significant impact on their membership rights with respect to the Labor Committee, which is the labor organization seeking to recognize them. Because there is no dispute that all bargaining unit members are eligible, on equal terms, for full membership in the Labor Committee, the record will not support the allegation that Petitioner does not meet the standards of conduct for a labor organization."

The Effect of FOP Representation On Effective Labor Relations

The AFGE and DOC objections in this regard are based upon an alleged conflict of interest in having the same labor organization representing police officers and sergeants of the Metropolitan Police Department³ and DOC employees. Also, it is argued that it would be difficult, if not impossible, for FOP's Labor Committee to properly maintain the existing community of interest within the unit because of its law enforcement orientation.

Again, the Board's analysis and review of the Hearing Examiner's Report and Recommendation lead it to conclude that the following findings are well reasoned and should be adopted:

"A strike of Corrections Department employees would obviously pose serious problems for the city. But there is nothing in the record above the level of assumption and speculation to indicate that FOP representation would pose additional difficulties or interfere with efforts to maintain public safety. Possible internal divisions within FOP as a result of such a strike are properly the concern of Petitioner.

The objection that FOP, an organization dedicated to the advancement of law enforcement officers, will serve to divide the various occupations within the bargaining unit, and fragment the existing community of interest, must also be rejected. The record establishes [that] the Labor Committee seeks to represent the entire bargaining unit, and all employees of the unit are equally eligible for full membership in the Labor Committee. If certified, FOP will be required to represent the interests of all bargaining unit members without discrimination, [D.C. Code] §1-618.11(a), and there is no basis at this time for assuming improper representation or erosion of the integrity of the bargaining unit."

³ The FOP was certified by the Board as the exclusive bargaining representative for police officers and sergeants of the Metropolitan Police Department in PERB Case No. 81-R-05, PERB Certification No. 10. See also PERB Opinions 17, 18 and 33.

Contract Bar

This is the more complicated issue facing the Board in this matter because of the existing unique circumstances. 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, Provided That a petition may be filed during the period between the 120th day and the 60th day before the expiration of an agreement having a duration of less than three years or after 975 days for an agreement having a duration of three years or more;"

AFGE and DOC argue that their initialling of the terms and conditions agreement on March 4, 1982, coupled with the Mayor's actions implementing the salary increases on or about that same date, constituted an agreement covering substantial terms and conditions of employment sufficient to meet the requirements of Board Rule 101.8(b) and bar the March 11, 1982 Recognition Petition.

FOP contends, on the other hand, that while the parties' negotiators reached a meeting of the minds on March 4, 1982, certain formal actions of the parties were necessary before the agreement became legally binding on March 26, 1982, the date of formal execution.

The Examiner analyzes the experience of the National Labor Relations Board (NLRB)⁴ and concludes that "[i]n light of these [NLRB] cases, it seems clear that the March 4, 1982, working conditions agreement was both 'signed' and a 'contract' with respect to the NLRB's criteria".

⁴ The specific references here are to the NLRB rulings in Appalachian Shale Products Co., 121 NLRB 1160 (1958); Gaylord Broadcasting Co., 250 NLRB 198, (1980); and Farrell Rochester Division of USM Corp., 265 NLRB 162 (1981).

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We reach the same conclusion. It could be argued, superficially, that the facts in this case are substantially like those in Case No. 82-R-04, where we have found no contract bar to the recognition petition. See Opinion No. 48. In practical terms, however, there are substantial differences.

In Case 82-R-04, the recognition petition was filed shortly after the previous terms-and-conditions agreement had expired and before the incumbent union and the employing agency had even undertaken to negotiate on new contract terms. In the present case, such negotiations had not only been undertaken but had as a practical matter been completed before the outside union filed its recognition petition. Steps necessary to make the new agreement effective had already been taken on the employer side. Union ratification was in this particular situation (as it conceivably might not be in others) only a formality. To give the DOC/AFGE agreement less than full contract-bar effect would be to place technicality above substance.

ORDER

The Recognition Petition of the Fraternal Order of Police Department of Corrections Labor Committee is dismissed on the ground that it was untimely under Board Rule 101.8 (b).

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

September 24 , 1982.