

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matters of:)	
)	
The Fraternal Order of Police,)	
Department of Corrections)	PERB Case Nos. 84-R-09
Labor Committee,)	84-R-10
)	
)	Opinion No. 93
)	
Petitioner,)	
)	
and)	
)	
The District of Columbia Government)	
Department of Corrections,)	
)	
Employer,)	
)	
and)	
)	
The American Federation of)	
Government Employees,)	
)	
Petitioner,)	
)	
and)	
)	
The District of Columbia Government)	
Metropolitan Police Department,)	
)	
Employer.)	
)	

DECISION AND ORDER

These two cases present a single issue. It is whether the guards in the District of Columbia Department of Corrections and the officers of the D.C. Metropolitan Police Department may, under the D.C. Comprehensive Merit Personnel Act of 1978 (CMPA), be represented for collective bargaining purposes by the same union.

Case No. 84-R-09, involving the Department of Corrections, arose when the Fraternal Order of Police, Department of Corrections Labor Committee (FOP) petitioned the Board on June 8, 1984 for the holding of an election to determine what, if any, union should represent the Department of Corrections guards. The incumbent representative is the American Federation of Government Employees, Local 1550 (AFGE). A third union, Teamsters Local 246 of the International Brotherhood of Teamsters Chauffeurs, Warehousemen and Helpers of America also seeks bargaining rights for the Department of Corrections unit.

After determining that the petitioning and intervening unions have established the requisite showing of interest among employees in the unit, the Board issued an Order on August 9, 1984, directing that an election be held and that all three unions be included on the ballot. The Board recognized the protest by the District of Columbia Office of Labor Relations and Collective Bargaining (OLRCB) that if the FOP or AFGE should win this election it could result in the same union representing employees in both the Department of Corrections and the Metropolitan Police Department (MPD), and that this would create a conflict-of-interest situation. In Opinion No. 88, covering the August 9, 1984 order in Case No. 84-R-09, the Board rejected the OLRCB protest, relying on its handling of this same issue in Opinion No. 49, issued on September 24, 1982, in Case No. 82-R-06.

The OLRCB then petitioned the Board for reconsideration of its ruling in Case No. 84-R-09, contending that the Board's conclusion about the conflict-of-interest point in Opinion No. 88 had been only dictum. The OLRCB also protested the Board's deciding Case No. 84-R-09 without providing an opportunity for the OLRCB to be heard on the merits of this issue.

The representation issue had also come up in Case No. 84-R-10, in the Metropolitan Police Department. The FOP is the incumbent representative of the police officers. The Alliance of Metropolitan Police, Local 727 of AFGE petitioned for the holding of a new election, and the International Brotherhood of Police Officers (IBPO) intervened. The requisite showings of interest have been established. Here again, the OLRCB objects to the holding of an election that might result in representation of the police officers and the Department of Corrections guards by the same union.

Recognizing the importance of this issue, the Board, on its own motion, set a hearing before it on both of these cases. The petition for reconsideration in Case No. 84-R-09 was in effect granted, without prejudice to the Board's general position regarding such petitions. The hearing was held on September 26, 1984. The OLRCB and all of the unions involved in the two cases were represented by counsel. Witnesses were heard and presentations were made by all parties.

The Board concludes, after full consideration of the conflict-of-interest contention, that nothing in the Comprehensive Merit Personnel Act either warrants or permits the Board's prohibition of representation of MPD officers and Department of Corrections guards by the same union. Section 1-618.6 of the CMPA provides that public employees in the District "shall have the right...to form, join or assist any labor organization" and "to bargain collectively through representatives of their own choosing." Whatever policy arguments can be made for placing restrictions on this right, requiring separate representation for police officers and correction guards are more appropriately addressed to the District's legislative process than to its administrative agency.

Careful consideration of the authorities and precedents submitted by OLR CB counsel at and following the September 26, 1984 hearing warrants these observations:

Several other states and municipalities have by specific legislative action prohibited the representation of police officers by unions including other types of employees in their membership. Other legislative enactments have placed comparable restrictions on the representation of guards in private establishments.

The validity, constitutional and otherwise, of such legislative restrictions has repeatedly been upheld. Some of these holdings include approval of the policy considerations underlying these restrictions.

In none of the cited cases, however, is there any suggestion of administrative authority to establish such a restriction in the face of legislative instruction such as that contained in Section 1-618.1 of the CMPA. In Cases 3-R-004 and 3-R-005, decided by the D.C. Board of Labor Relations in 1973, the issue involved was very different from that raised in the present cases.

Counsel for the OLR CB argues for prohibition on common representation of police and correction officers primarily from the contention that if guards in the Department of Corrections should default, either individually or collectively, in performance of their duties, management would rely on the police officers in meeting the situation. Yet insofar as this argument assumes a strike or other job action by the guards, the assumption is that they would act illegally. The contention that a police officer might refuse, because of union ties, to perform his duty in a case involving an individual guard's malfeasance is similarly speculative. Although such illegal activities are not beyond the realm of possibility, this Board could not appropriately accept their sufficient likelihood to read into the law a limitation it does not specify.

In short and in summary, the Board concludes that the terms of the CMPA do not contain the prohibition that is sought here; nor does the statute provide any basis for the Board to exercise discretion to construct this prohibition. The conclusion reached by the Hearing Officer in Case No. 82-R-06 and affirmed by the Board in its dictum in Opinion No. 49 is upheld. The conclusion previously reached by the Board in Case No. 84-R-09 and stated in Opinion No. 88 is, on reconsideration and after hearing, reaffirmed. The objections to the election requested in Case No. 84-R-10 are dismissed.

O R D E R

It is ordered that:

1. In Case No. 84-R-09, an election is ordered and directed pursuant to Section 102 of the Interim Rules of the Board to determine an exclusive bargaining representative for eligible employees in the Department of Corrections bargaining unit. The choices on the ballot shall include: AFGE, Local 1550; the FOP, Department of Corrections Labor Committee; the Teamsters Local 246, International Brotherhood of Teamsters Chauffeurs, Warehousemen and Helpers of America; and no union.
2. In Case No. 84-R-10, an election is ordered and directed pursuant to Section 102 of the Interim Rules of the Board to determine an exclusive bargaining representative for eligible employees of the Metropolitan Police Department bargaining unit. The choices on the ballot shall include: Fraternal Order of Police, Metropolitan Police Department Labor Committee; Alliance of Metropolitan Police, American Federation of Government Employees Local 727 (AFL-CIO); International Brotherhood of Police Officers; and no union.

BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD
November 7, 1984