

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

American Federation of Government  
Employees, Local 3721,

Petitioner,

PERB Case NO. 82-U-01  
Opinion 46

and

The District of Columbia  
Fire Department,

Agency.

DECISION AND ORDER

The parties are Local 3721, American Federation of Government Employees (the Petitioner; hereafter "the Union") and the District of Columbia Fire Department ("the Department"). A Stipulated Chronology of Events is set out in the Hearing Examiner's Report and Recommendations (filed July 19, 1982) and need not be repeated here.

The Union filed an unfair labor practice charge with the Board on December 23, 1981. This charge was, in effect, that the Department had failed and refused to reply, as required by the terms of the collective bargaining agreement, to a grievance filed by the Union. The issue involved a reduction in grade, rank, and pay of several members of the bargaining unit.

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When this matter first came to the offices of the Board there were a number of questions about whether the contract grievance procedures had in fact been followed by either party. When staff inquiry left these questions unresolved, the Board took formal action (communicated to the parties on April 6, 1982) directing the Union "to formalize its demand to the Department" and directing the Department "to formally respond to such demand." The parties followed these instructions.

At the request of the parties, the pre-hearing conference was cancelled and the Executive Director of the Board designated a Hearing Examiner. The case was heard before him on June 8, 1982, and he issued his Report and Recommendation on July 23. Exceptions were filed by the Department on July 30 and by the Union on August 9.

The Hearing Examiner dealt first with the Department's contention that the Board has lost jurisdiction of this case by virtue of the provision in Section 1-618.14 of the D.C. Code requiring the Board to render its decision within a 120-day period. The Examiner rejected this contention.

Turning to the unfair labor practice charge, the Hearing Examiner concluded, in effect: (i) that the Department had violated the collective bargaining agreement by failing to answer the Union's grievance; but (ii) that the issue involved a classification matter, which is not negotiable and therefore not grievable under the contract. He accordingly found that the Board had no authority to change the personnel classifications, but determined that the Department has committed an unfair labor practice, and that it be directed to post notices to this effect.

What has developed here is out of all proportion to what was originally involved, and the recommendation to the Board by the Hearing Examiner, logical though it may be, threatens to add to the complications without resolving the underlying dispute. Adopting the recommendations would result in no actual relief to the Union and could well lead to further challenge by the Department of the Board's jurisdiction to issue any order at all. The practical and common sense course is to close the proceedings by dismissing the Petition.

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This disposition of this case is not to be taken as a ruling by the Board on the application of Section 1-618.14 of the Code. [There has been general recognition that an overly literal interpretation of that Section could lead to impractical conclusions.] A ruling based on the peculiar facts of the present case would not be helpful. The Board notes, however, a sufficient concern about this potential problem that it will in future cases avoid the time consequences of its attempt last April to get these parties to put their records in more complete order. If a comparable situation develops in the future, the Board will dismiss the proceedings and require that a new complaint be filed when the record is perfected.

IT IS ORDERED THAT:

The Complaint be dismissed.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

September 13, 1982