GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In The Matter Of: Willard G. Taylor, et al., Complainants, v. University of the District of Columbia Faculty Association/ NEA, Respondent.	PERB Case No. 90-U-24 Opinion No. 324

DECISION AND ORDER

On July 12, 1990, an Unfair Labor Practice Complaint was filed with the Public Employee Relations Board (Board) by Complainants Willard G. Taylor, Gemma Parks, Bruce Cheeks, Barbara Quinnam and Maria Willis. Complainants are employed by the University of the District of Columbia (UDC) as Librarians and Media Specialists in the Learning Resource Division (LRD). [1]/ Respondent, the University of the District of Columbia Faculty Association/NEA (UDCFA), is the exclusive bargaining representative of the collective bargaining unit which includes Complainants. The Complaint allegations consist of a series of claims spanning a period of 9 years (1981-1990), that, in the main, assert that UDCFA (1) "failed to bargain collectively in good faith with the University of the District of Columbia" and (2) "failed to adequately represent [Complainants]... in [their] dispute with the University of the District of Columbia regarding academic ranking, compensation, and promotion." (Compl. at 1.) [2]/

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[1]/ According to the Hearing Examiner's Report, since the filing of the Complaint, Complainant Quinnam has retired from UDC.

[2]/ The former allegation implicates D.C. Code Sec. 1-618.4(b)(3) of the Comprehensive Merit Personnel Act (CMPA). In Georgia Mae Green v. District of Columbia Department of Corrections, 37 DCR 8086, Slip Op. No. 257, PERB Case No. 89-U-10 (1990), we ruled that the right to require the District to bargain in good faith pursuant to D.C. Code Sec. 1-618.4(a)(5) belongs exclusively to the recognized bargaining representative, and not to the employees represented by their designated bargaining agent. Id. (R&R at 37.) We now rule that this is, concomitantly, a symmetrical right-meaning that the right to require a bargaining representative of a unit of District

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On July 27, 1990, UDCFA filed an Answer denying the allegations as set forth in the Complaint. UDCFA further asserted that the Complainants have failed to (1) comply with Interim Rule 103.2(c)'s requirement that Complaints include "a citation to the provisions of D.C. Law 2-139 alleged to have been violated" and (2) allege violations of the CMPA that occurred within 120 days of the filing of the Complaint as required under Interim Rule 103.1. UDCFA, therefore, requested that the Complaint be dismissed. [3]/

The Board referred the Complaint to a Hearing Examiner who heard the matter on October 17 and 21; November 18 and 19; December 18 and 19, 1991; and January 24, 1992. The Hearing Examiner's Report and Recommendation was received by the Board on May 12, 1992, (a copy of which is attached hereto). The Hearing Examiner concluded that the evidence presented did not support

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[2](... continued)
employees to bargain collectively in good faith belongs exclusively to the District employer. We therefore dismiss those allegations in the Complaint asserting failure by UDCFA to bargain collectively in good faith with UDC, on the basis that Complainants lack standing to bring such claims under the CMPA.

[3]/ Complainants filed their Complaint and initially proceeded in this action pro se. Complainants have since retained Counsel, who has represented Complainants from the hearing through the remainder of these proceedings before the Board. In view of the Complainants pro se status at the time of the filing of their Complaint, the Board decided not to impose strict compliance with Interim Board Rule 103.2(c) (now Board Rule 520.3(d)) and thereby permitted Counsel, on behalf of Complainants, to make explicit at the hearing in this matter which statutory proscription under the CMPA the Complaint allegations invoked. At the hearing, it became clear that the only alleged violation which Complainants have standing to bring (see n. 2 supra) concerns Respondent's asserted breach of its duty of fair representation-conduct which we have held is proscribed by D.C. Code Sec. 1-618.4(b)(1) and (2). See, Carlease Madison Forbes v. International Brotherhood of Teamsters, Local Union 1714, 36 DCR 7170, slip Op. No. 229, PERB Case No. 88-U-20 (1989) and William A. Holloman v. Washington Teachers' Union Local 6, AFT, AFL-CIO, 28 DCR 5508, Slip Op. No. 26, PERB Case No. 81-U-10 (1981). Under our current Board Rules, parties are provided an opportunity to cure deficiencies prior to accepting the Complaint for filing. (See, Board Rule 501.13.) Board Rule 501.13 is intended to eliminate such deficiencies in complaints accepted for filing.

findings that UDCFA had violated its duty to fairly represent collective bargaining unit employees in the LRD including Complainants. [4]/ The Hearing Examiner based his conclusions largely on findings of fact resulting from credibility determinations with respect to conflicting and/or unrebutted testimony, as well as his assessments of the probative value of evidence relevant and material to the Complaint allegations.

On June 5, 1992, Counsel on behalf of Complainants filed timely Exceptions to the Hearing Examiner's Report and Recommendation. No Exceptions were filed by Respondent; however, UDCFA filed an Opposition to Complainant's Exceptions on June 22, 1992. Complainants excepted to the Hearing Examiner's factual finding in support of his conclusion that the evidence did not support the allegation that UDCFA had breached its duty to Complainants of fair representation (codified under D.C. Code Sec. 1-618.4(b)(1) and (2). We have considered the Complainants' Exceptions, none of which are well-taken, and have found no basis for rejecting the conclusions of the Hearing Examiner which are fully supported by the record. Complainants' Exceptions raise no more than disputes over evidence in support of factual findings and credibility determinations. We have previously held that the weight and the veracity of the evidence is for the Hearing Examiner to decide. See, e.g., Charles Bagenstose and Dr. Joseph Borowski v. District of Columbia Public Schools, 38 DCR 415, Slip Op. No. 270, PERB Case No. 88-U-33 and 88-U-34 (1991). Complainants' Exceptions present no significant issue warranting our further attention here with respect to the Hearing Examiner's Report and Recommendation on Complainants' only remaining tenable allegation. [5]/

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[4]/ In reaching this conclusion, the Hearing Examiner also relied on the following U.S. Supreme Court cases defining the duty of fair representation: Hines v. Anchor Motor Freight, 424 U.S. 554 (1976); Vaca v. Sipes, 386 U.S. 171 (1967); Ford Motor Co. v. Huffman, 345 U.S. 330 (1953) and Steele v. Louisville & Nashville R.R., 323 U.S. 192 (1944).

[5]/ In its Answer to the Complaint, UDCFA requested that the Complaint be dismissed based on Complainant's failure to allege any violative acts or conduct which occurred within 120 days of the filing of the Complaint in accordance with Interim Rule 103.1. With the arguable exception of Complainant's allegation concerning UDCFA's April 5, 1990 response to Complainants' purported grievance, we agree. As noted in the text, the Complaint was filed on July 12, 1990. The alleged violations, however, occurred during a period spanning 1981 to April 5, 1990. The dates of the acts and

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The Board, after reviewing the record, finds the Hearing Examiner's analyses and conclusions to be thorough and persuasive. We therefore adopt the Hearing Examiner's findings and conclusions that the Complainants did not meet their burden of establishing that UDCFA breached its duty of fair representation, in violation of D.C. Code Sec. 1-618.4(b)(1) and (2). See, Carlease M. Forbes v. D.C. Department of Corrections and International Brotherhood of Teamsters, Local Union 1714, 37 DCR 2588, Slip Op. No. 255, PERB Case No. 87-U-05 and 87-U-06 (1990) and Officer James A. Hairston v. Fraternal Order of Police, MPD Labor Committee and the Metropolitan Police Department, 31 DCR 2293, Slip Op. No. 75, PERB Case Nos. 83-U-11, 83-U-12 and 83-S-01 (1984).

ORDER

IT IS HEREBY ORDERED THAT:

The Complaint is dismissed.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

October 21, 1992

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[5](...continued)
conduct constituting the alleged violations are further substantiated by the record developed during the hearing. While we have ruled that evidence of alleged acts and conduct occurring prior to the filing of a Complaint may be considered for purposes of proving alleged violations occurring within 120 days of filing, such acts and conduct are foreclosed from consideration by the Board as unfair labor practice violations by Interim Rule 103.1 (now Board Rule 520.4(b)). Georgia Mae Green v. District of Columbia Department of Corrections, ___ DCR ___, Slip Op. No. 323, PERB Case No. 91-U-13 (1992). Therefore, violations that allegedly occurred prior to March 15, 1990 are dismissed as untimely filed.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 90-U-24 was hand-delivered and/or mailed (U.S. Mail) to the following parties on this 21st day of October, 1992:

Lucy R. Edwards, Esq. — U.S. Mail
1413 K Street, N.W.
Suite 500
Washington, D.C. 20005

Lauckland A. Nicholas, Esq. — U.S. Mail
University of the District
of Columbia
Faculty Association/National
Education Association
4200 Connecticut Ave., N.W.
Bldg. 48, Room 517
Washington, D.C. 20008

Willard G. Taylor — U.S. Mail
1701 East West Highway
Silver Spring, MD 20910

Courtesy Copies:

Samuel F. Carcione, President — U.S. Mail
University of the District of
Columbia Faculty Association/
National Education Association
4200 Connecticut Avenue, N.W.
Bldg. 48, Room 3014A
Washington, D.C. 20008

Patrick J. Halter — U.S. Mail
Hearing Examiner
Third Party Services
26 East Walnut Street
Alexandria, VA 22301-2240

LaShawn R. Williams
LaShawn R. Williams