

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

The Washinton Teachers' Union,
Local 6, AFT,

Complainant,

and

The District of Columbia Public
Schools,

Respondent.

PERB Case No. 85-U-18
Opinion No. 151

DECISION AND ORDER

On May 15, 1985, Local 6 of the Washington Teachers' Union, AFT (WTU) filed an Unfair Labor Practice Complaint (ULP) with the District of Columbia Public Schools (DCPS) alleging that DCPS violated Sections 1704(a)(1) and (5) of the Comprehensive Merit Personnel Act of 1978 (CMPA) by refusing to bargain in good faith with WTU concerning wages for teachers working in adult education and summer school programs. As a remedy, WTU requests that the Board compel DCPS to bargain in good faith over the wages for teachers working in adult education and summer school programs.

On June 6, 1985, DCPS filed its response denying that it had violated the CMPA by failing to bargain in good faith. DCPS' position is that it lawfully refused to discuss WTU's proposals because adult education and summer school teachers are not in the same bargaining unit as the regular full-time and part-time teachers. DCPS contends that the Unit Certification demonstrates that adult education and summer school teachers are not, and have never been, a part of the unit. DCPS further contends that it has no duty to bargain concerning employees who are not members of the bargaining unit and requests that the Board dismiss the Complaint.

On July 9, 1985, WTU filed further comments characterizing DCPS' position as "nonsense" and a distortion of the facts. WTU contends that it has represented adult education and summer school teachers since 1971 and that every collective bargaining contract concerning regular full-time teachers, including the recently expired contract, makes reference to adult education and summer school teachers. WTU contends that these contracts are definitive evidence that adult education and summer school employees are in the unit. As further evidence, WTU provides the Board with a list of what purports to be thirty-one (31) adult education teachers from whom DCPS deducts union dues/service fees which it forwards to WTU.

WTU is the exclusive bargaining representative for approximately 3,500 full and part-time regular public school teachers employed by DCPS. Many of these regular teachers are also employed as adult education and summer school teachers. A clause in the collective bargaining agreement grants regular teachers a hiring preference in the filling of adult education and summer school jobs.

During 1984, adult education and summer school teachers received an 6% pay increase as compared to an 8% pay increase for regular teachers who are members of the collective bargaining unit represented by WTU.

This case arose when the WTU President met with DCPS representatives on April 12, 1985 and attempted to negotiate wages for teachers working in adult education and summer school. At the meeting, DCPS representatives refused to negotiate on the basis that WTU was not the exclusive representative for adult education and summer school teachers, because these positions are not included in the Recognition Clause of the collective bargaining agreement between the parties. In response, WTU alleged that DCPS' position constituted an unlawful refusal to bargain and filed the instant complaint with the Board.

The issue before the Board is whether the summer and adult education teachers are within the unit for which WTU is the exclusive representative by virtue of accretion or by being a sub-unit of the formal unit.

On August 7, 1985 the Board referred the matter to a Hearing Examiner for a Report and Recommendation. Following several delays resulting from the sudden hospitalization and subsequent recuperation of one of the attorneys, a hearing was held on March 20 and March 21, 1986. Post-hearing briefs were filed by both parties. The Hearing Examiner filed his Report and Recommendations with the Board on July 17, 1986. Both parties were given the opportunity to file written Exceptions to the Hearing Examiner's Report and Recommendations. Neither party chose to do so.

The Hearing Examiner concluded that adult education and summer school teachers are not members of the bargaining unit represented by WTU, that DCPS has never recognized WTU as the bargaining agent for adult and summer school teachers and has no legal obligation to do so, and that DCPS' refusal to bargaining over wages for these employees with WTU is not an unfair labor practice. Accordingly, the Hearing Examiner recommended that the Complaint filed by WTU be dismissed.

In the absence of exceptions by the parties, but because the Board must itself determine whether to accept the Hearing Examiner's conclusions, we have examined those conclusions in the light of the parties' contentions at an earlier stage in the processing of this complaint.

WTU argued that DCPS had recognized it as the bargaining agent for adult education and summer school teachers by its established past practice of granting members of the unit, who are the regular full and part-time teachers, preferential treatment in the hiring for these positions. In this regard, WTU argues that the acquiescence on the part of DCPS led the union to assume that it was also the bargaining agent for the adult education and summer school teachers and that DCPS is now bound by this past recognition.

DCPS argues that, contrary to the union's assertions, the preferential hiring practice for bargaining unit members was merely an accommodation and did not constitute a recognition of them as bargaining unit members while holding adult education and summer school jobs, nor did it constitute a recognition of WTU as bargaining agent for all persons occupying these positions. Moreover, DCPS contends that adult education and summer school teachers are not included in the unit description of its contract with WTU. Furthermore, according to DCPS, there is not a sufficient community of interest between the two groups to justify recognition under the theory of accretion or any other legal doctrine.

The Hearing Examiner found that while DCPS granted WTU members preferential access to adult education and summer school employment as teachers, such accommodation did not constitute recognition of them as bargaining unit members while holding these positions, nor did it constitute a recognition of WTU as the exclusive bargaining representative for all persons holding adult education and summer school jobs.

WTU's strongest argument, according to the Hearing Examiner, is the fact that the parity in percentage pay increase for both the unit employees and the adult education and summer school teachers was perpetuated for such a long period of time. In this regard, the Hearing Examiner found the following:

[D]CPS only permitted this parity to be maintained for two years (1982 and 1983). This pattern is not conclusive proof of DCPS' intent in and of itself, in light of all the other evidence suggesting that DCPS did not recognize WTU as the S/A representative. ^{1/}

In examining the question of the parity in pay increases, the Hearing Examiner found that both the regular and S/A teachers received the same pay increases between 1967 and 1982, although the regular teachers were salaried and the S/A teachers were paid on an hourly rate. Nevertheless, he notes that DCPS and WTU did not have the authority to negotiate

^{1/} The acronym "S/A" refers to the adult education and summer school teachers program.

wages until 1982, when authority over personnel matters (including rates of pay) was granted to the District government by Congress. More specifically, the Hearing Examiner found:

[A]fter the 1982 negotiations... [T]he members of WTU were placed under the jurisdiction of the Mayor and paid according to the levels negotiated in collective bargaining. S/A teachers, however, were under the jurisdiction of the Board... [T]herefore, the identity of percentage pay increases for bargaining unit and S/A employees in 1982, 1983 and 1985 was an exercise of discretion by the Board, as was the difference in percentage increases ordered in 1984. The correlation was not intended to signify any recognition by DCPS that the Agreement governed rates of pay for S/A teachers.

The Hearing Examiner also found that WTU failed to present any evidence that teachers who worked exclusively in the adult education and summer school program were on the dues check-off system.

Another significant finding by the Hearing Examiner is the fact that no adult education and summer school teachers voted during a representation election conducted during June, 1985. Similarly, the Hearing Examiner found that WTU never attempted to negotiate on behalf of the adult education and summer school teachers, prior to 1985, over hours of work, wages, fringe benefits or a grievance procedure nor did WTU allege that these employees have ever asserted rights under any of the agreement's provisions.

The Board has carefully reviewed the entire record and finds the Hearing Examiner's analysis and conclusion to be rational and persuasive. Accordingly, the Hearing Examiner's findings and conclusions are adopted by the Board.

O R D E R

IT IS ORDERED THAT:

The Complaint is dismissed on the ground that the District of Columbia Public Schools does not have a legal obligation to bargain with the Washington Teachers' Union over wages for adult education and summer school teachers.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
May 8, 1987