GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	)	
University of the District of Columbia Faculty Association/NEA,	)	
Complainant,	)	PERB Case No. 90-U-23
	)	Opinion No. 297
v.	)	
University of the District of Columbia,	)	
Respondent.	)	

DECISION AND ORDER [1]/

On June 2, 1990, the University of the District of Columbia Faculty Association/NEA (UDCFA) filed an Unfair Labor Practice Complaint (Complaint) with the Public Employee Relations Board (Board) charging that the Respondent, University of the District of Columbia (UDC), had engaged in conduct violative of the Comprehensive Merit Personnel Act (CMPA) D.C. Code Sec. 1-618.4 (a)(1),(3) and (5) by refusing to negotiate, upon request, a successor compensation agreement for faculty members pursuant to a reopener in the parties' collective bargaining agreement. On July 10, 1990, UDC filed a Response to the Complaint and a Motion To Dismiss. UDCFA did not oppose the Motion To Dismiss; however, on September 20, 1990, UDCFA filed an Amendment to the Unfair Labor Practice Complaint alleging that UDC had engaged in further conduct in violation of D.C. Code Sec. 1-618.4(a)(1),(2),(3) and (5) by insisting that UDCFA negotiate on groundrules --which UDCFA asserts is not a mandatory subject of collective bargaining --as a precondition to engaging in substantive negotiations over compensation. UDC filed an Answer to UDCFA's Amended Complaint on October 4, 1990, categorically denying that by its conduct it had committed any unfair labor practices. Finally, by letter dated December 5, 1991, UDCFA withdrew the allegations contained in the initial Complaint. UDCFA also withdrew the allegations in the Amended Complaint that by the conduct set forth therein, UDC

[1]/ Acting Chairperson Squire did not participate in the deliberation or decision of this case.

had violated D.C. Code Sec. 1-618.4(a)(2) and (3). [2]/

All that remains of the Complaint before the Board is UDCFA's allegation that UDC's insistence on negotiating ground rules before it would negotiate over substantive matters of the agreement constitutes a violation of D.C. Code Sec. 1-618.4(a)(1) and (5). A review of the parties' pleadings reveals that UDC does not deny any of the material allegations concerning its actions. UDC denies, however, that its actions violated Sec. 1-618.4(a)(5). Furthermore, UDC provides affirmative arguments in defense of its position. Based upon undisputed allegations of the amended Complaint as discussed below, we find UDC's actions violated D.C. Code Sec. 1-618.4(a) (5) and (1).

UDCFA states that on June 29, 1990, it received a letter dated June 28, 1990, from the Office of Labor Relations and Collective Bargaining which related that the undersigned labor relations officer was the appointed representative of UDC to negotiate the successor compensation agreement. Based on this letter, the parties scheduled a meeting on July 11, 1990, to begin negotiations. (Amend. Comp. at 2 and Exh. 5; Ans. to Amend. Comp. at 1.) The parties met on July 11, 1990, whereupon UDC raised a demand that UDCFA agree to negotiate groundrules to govern negotiations before engaging in substantive negotiations on compensation. However, the demand remained unresolved and the meeting adjourned until such time as UDC provided documentation that its representative had authority to negotiate on UDC's behalf. (Amend. Comp. at 2; Ans. to Amend. Comp. at 2-3.)

Following correspondence between the parties verifying the names of their respective bargaining representatives, a series of letters were exchanged where, in short, UDC agreed to meet to discuss and reach agreement on groundrules first and UDCFA declined to meet under such conditions. (Amend. Comp. at 3; Exh. 5. 8-11; and Ans. to Amend Comp. at 2.) Further attempts by the parties to establish a meeting date to begin negotiations culminated in a September 13, 1990 telephone call by UDC followed by a September 14, 1990 confirmation letter where UDC stated in pertinent part: "it is ready and willing to negotiate changes to the existing collective bargaining agreement." The letter

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[2]/ UDCFA's December 5, 1991 letter was in response to a letter issued by the Board's Executive Director to Complainant requesting (1) the status of the allegations in the initial Complaint in view of a representation in UDC's Answer that negotiations had begun and (2) clarification of certain allegations in the amendments to the Complaint. As a result of UDCFA's withdrawal of these allegations, UDC's Motion To Dismiss the initial Complaint is moot.

further advised UDCFA, however, that it "continue[d] to be [UDC's] position that before substantive talks can take place, certain procedural issues (i.e., 'Groundrules') must be addressed and agreements made." (Amend. to Comp., Exh. 12.) Returned with the letter were UDCFA's compensation proposals. (Amend. Comp. at 5 and Ans. to Amend. Comp. at 3.) No further communication is indicated by the pleadings until September 20, 1990, when UDCFA amended its Complaint.

UDCFA asserts that "by insisting that UDCFA negotiate on a matter which is not a mandatory subject of collective bargaining as a precondition to engaging in good faith negotiations and by refusing to meet to commence negotiations" on a substantive matter, i.e., compensation, UDC violated D.C. Code Sec. 1-618.4 (a)(5) which prohibits the District from "[r]efusing to bargain collectively in good faith with the exclusive representative." (Amend. Comp. at 5.)

UDC does not deny the essential conduct alleged by UDCFA (reflected by its September 14, 1990, letter to UDCFA noted above); however, UDC contends that its actions, nevertheless, did not constitute a refusal to bargain in good faith with UDCFA since, argues UDC, "[g]roundrules establishing bargaining procedures are a mandatory subject of bargaining." (Ans. to Amend. Comp. at 3-4.)

For the reasons that follow we find UDC's actions constituted a refusal to bargain in good faith and, based on the parties' pleadings, conclude that UDC violated D.C. Code Sec. 1-618.4(a)(5).

UDC avers that "under the National Labor Relations Act, groundrules have been held to be a mandatory subject of bargaining." (Ans. to Amend. Comp. at 4.) In support of its contention, UDC cites the National Labor Relations Board Decision (NLRB) in General Electric Co., 173 NLRB 253 (1968). In that case, UDC asserts that the NLRB "found illegal a refusal to bargain over the composition of a bargaining team", i.e., a groundrule issue. (Ans. to Amend. Comp. at 4.) A review of that decision, however, reveals that the NLRB held to be unlawful an employer's refusal to bargain "with [not over] the union's selected negotiating committee[.]" Id. at _____. UDC's extension of the holding in General Electric Co. as establishing that groundrules generally are a mandatory subject of bargaining

is totally unfounded. [3]/ However, whether or not groundrules are a mandatory subject of bargaining has no import under these circumstances on whether UDC's actions constituted a failure to bargain in good faith.

The issue presented by this case is one of first impression for the Board. Returning to the case law of the private sector, the NLRB has held that an employer violates its obligation to bargain in good faith by refusing to make any proposals on or

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[3]/ The NLRB acknowledged (as we do now) that while "preliminary discussions [to negotiate groundrules] have proven particularly valuable" and even "desirable", its holding was a narrow one, i.e., that if parties should agree to engage in such preliminary discussions over the framework under which more formal negotiations would be conducted, "they must conform to the same standards of good-faith bargaining required of parties after the formal contract reopening date." Id. at fn. 30.

We further note, that in both the private and public sector (federal), matters that can be arguably considered bargaining arrangements or groundrules have not been categorically found to be mandatory or nonmandatory subjects of bargaining. However, what appears to be controlling in making all such determinations is whether the groundrule or arrangement is designed to impede or further good faith bargaining for which they were proposed. See, e.g., Bartlett-Collins Co., 237 NLRB No. 106 (1978) (groundrule proposals which "stifle negotiations in their inception" found inconsistent with NLRB's "statutory responsibility to foster and encourage meaningful collective bargaining...."); Department of Defense, Dependent Schools and Overseas Education Association, 14 FLRA No. 40 (1984) ("negotiation of groundrules... is part of the good faith negotiating process leading to agreement"); and Department of the Air Force Headquarters, Air Force Logistics Command Wright-Patterson AFB and American Federation of Government Employees, 36 FLRA No. 62 (1990) ("[I]t is clear that a party may not insist on bargaining over groundrules which do not enable the parties to fulfill their mutual obligation."). Cf., Plumbers, Local 387, 266 NLRB No. 39 (1983). (Matters arguably considered arrangements for bargaining but concerning an internal matter of the respective parties, e.g., contract ratification, bargaining representative designation, found not a subject of mandatory bargaining.)

However, as discussed in the text, infra, the mandatory or non-mandatory nature of UDC's proposed groundrules is immaterial to a determination of whether UDC has violated its statutory obligation to bargain in good faith under these circumstances.

engage in discussions over one category of mandatorily negotiable matters until negotiations occurred and agreement was reached over another category of mandatorily negotiable matters. See, Federal Magul Corp. 212 NLRB No. 141 (1974) (the employer insisted on reaching agreement on noneconomic matters such as management rights, grievance procedure and union security before negotiating over economic proposals). The NLRB stated that such insistence "exhibited a cast mind against reaching an agreement" and "was antithetical to good-faith bargaining[.]" We find this was precisely the effect of UDC's actions when it informed UDCFA in its September 14, 1990 letter that it "continue[d] to be [UDC's] position that before substantive talks can take place, certain procedural issues (i.e.,) 'Groundrules' must be addressed and agreements made."

The NLRB took this issue one step further in South Shore Hospital, 245 NLRB No. 110 (1978); enforced, South Shore Hospital v. NLRB, ____F.2d.____(1st Cir. 1980). There, the NLRB found that an employer had unlawfully refused to bargain with the union over major economic items by conditioning bargaining on reaching an agreement on other proposals, despite the employer's contention that the union had agreed to that format. This conclusion was based on record evidence that although the union assented to discuss non-economic matters before the economic matters, the union did not unequivocally agree to reach resolution on the non-economic issues as a precondition to discussion of the union's economic proposals. [4]/ In enforcing the NLRB decision, the First Circuit observed:

> The Board maintains that one party's requirement that specified items be resolved before proposals on major economic items are discussed has the potential of completely frustrating the bargaining obligation: negotiations may be effectively stalled before much substantive discussion ever takes place. Flexibility and hence an important avenue toward reaching agreement are said to be removed if adherence to a specified order precludes consideration of package proposals combining wage and other items. (emphasis added.)

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[4]/ This holding by the NLRB is consistent with the Supreme Court's ruling in Metropolitan Edison Co. v. National Labor Relations Board, 460 U.S. 693 (1983), where the Court held that any waiver of a statutory right to bargain must be "clear and unmistakable."

We find, similarly, that UDC's conditioning of its obligation to bargain compensation [5]/ on first negotiating and reaching agreement on the "groundrules" it proposed herein had the effect of "completely frustrating the bargaining obligation." [6]/

While inherent in the duty to bargain in good faith is the predicate to reasonably discuss and agree upon those matters, i.e., bargaining arrangements integral to fulfilling the mutual obligation to bargain, all matters that may be characterized as "groundrules" do not fall into this category. [7]/ UDC's insistence on preliminary negotiations and reaching an agreement concerned "groundrules" which included proposals on such matters as handling issues of negotiability, impasse resolution, and news releases. These "groundrules" do not necessarily serve to enable the parties to meet their mutual obligation to bargain over the subject matter, i.e., compensation, that gave rise to that obligation. Consequently, UDC's contention that "groundrules", as a general proposition, are mandatorily negotiable is to no avail, since included among its proposed groundrules are matters

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[5]/ UDC does not dispute its duty to negotiate compensation under the CMPA. See, Teamsters Local Union No. 639 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO and District of Columbia Public Schools, 38 DCR 1586, Slip Op. No. 263 PERB Case Nos. 90-N-02, 03 and 04 (1991) and D.C. Code Sections 1-602.6, 1-618.16 and 1-618.17.

[6]/ In Council of School Officers, Local 4, AFT, AFL-CIO v. District of Columbia Public Schools, 33 DCR 2389, Slip Op. No. 135, PERB Case Nos. 85-U-15 and 85-U-27 (1986), the Board concluded that an unfair labor practice existed notwithstanding the Hearing Examiner's finding that management's conduct was "provoked" by the Union, i.e., the Union's refusal to agree to DCPS' proposed refusal to meet to negotiate (as opposed to agree upon) groundrules placed a different gloss on UDC's obligation to bargain compensation. We conclude that it does not. The unfair labor practice finding in PERB Case Nos. 85-U-15 and -27 was based upon a concurrent and continuing obligation to bargain with respect to all matters over which a duty exists notwithstanding any dispute with respect to any particular matter.

[7]/ We note that many of UDC's proposed groundrules, e.g., establishing when and where negotiations shall take place, fall into this category. We cannot sever these proposals, however, in determining whether or not UDC violated its duty to bargain in good faith since UDC's alleged violative action, i.e., preconditioning its duty to bargain, was undiscerning with respect to its proposed groundrules.

which we cannot find to be an essential predicate to UDC's obligation to bargain in good faith over compensation. We are constrained to conclude, therefore, that UDC's refusal to meet its statutory duty to bargain over compensation, pursuant to the reopener in the parties' collective bargaining agreement, until the parties had negotiated and reached agreement over "groundrules," constituted a refusal to bargain in good faith in violation of D.C. Code Sec. 1-618.4(a)(5). [8]/

UDCFA alleges the same conduct which it asserted as a violation of Sec. 1-618.4(a)(5) to be a violation of Sec. 1-618.4(a)(1). Having found a violation of D.C. Code Sec. 1-618.4(a)(5) as discussed above, a finding is also warranted upon these pleadings that by this same conduct UDC violated D.C. Code Sec. 1-618.4(a)(1). Cf., AFSCME, Local 2776 v. Department of Finance and Revenue, 37 DCR 5658, Slip Op. No. 245, PERB Case No. 89-U-02 (1990).

ORDER

IT IS HEREBY ORDERED THAT:

1. The University of the District of Columbia (UDC) shall negotiate in good faith with University of the District of

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[8]/ UDC had also argued that Article XXXII, Sec. 2 of the parties' collective bargaining agreement, which provides that the reopener on the Compensation Article "shall be conducted pursuant to '...such procedural groundrules as may be agreed to by the parties'", conditions substantive negotiations on reaching a groundrules agreement. (Ans. to Amend Comp. at p. 4-5). However, read in context,) Article XXXII, Sec. 2 provides that: "Said negotiations shall be conducted pursuant to the law of the District of Columbia, and such procedural groundrules as may be agreed to by the parties." Under "the law of the District of Columbia", UDC must bargain upon request over mandatory subjects of bargaining, e.g., compensation, where a duty exists as it does here. See, Teamsters, Local Union No. 639 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO v. District of Columbia Public Schools, 38 DCR 6698, Slip Op. No. 267, PERB Case No. 90-U-05 (1991). Furthermore, Article XXXII, Sec. 2, does not provide that negotiations shall take place pursuant to groundrules that must first be agreed upon by the parties but rather "groundrules as may be agreed to by the parties." (Emphasis added.) Plainly, Article XXXII cannot be considered a "clear and unmistakable" waiver by UDCFA of UDC's statutory obligation to bargain upon request (and without further qualification) over a mandatory subject of bargaining, i.e., compensation. See n. 3, supra.

Columbia Faculty Association/National Education Association (UDCFA) upon request about compensation issues.

2. UDC shall cease and desist from conditioning bargaining, upon request, over compensation issues with UDCFA on negotiating and/or reaching agreement over groundrules.

3. UDC shall cease and desist from interfering with, restraining, or coercing, in any like or related manner, employees represented by UDCFA in the exercise of rights guaranteed by the Comprehensive Merit Personnel Act.

4 Within ten (10) days from the service of this Decision and Order, UDC shall post the attached Notice conspicuously on all bulletin boards, where notices to employees in this bargaining unit are customarily posted, for thirty (30) consecutive days.

5. UDC shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from the issuance of this Decision and Order, that Notices have been posted as ordered.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

March 17, 1992

PERB Public Employee Relations Board

Government of the District of Columbia

415 Twelfth Street, N.W.
Washington, D.C. 20004
(202) 727-1822/23

NOTICE

TO ALL EMPLOYEES REPRESENTED BY THE UNIVERSITY OF THE DISTRICT OF COLUMBIA FACULTY ASSOCIATION/NEA (UDCFA) AT THE UNIVERSITY OF THE DISTRICT OF COLUMBIA, THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 297, PERB CASE NO. 90-U-23.

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered us to post this notice.

WE WILL cease and desist from insisting on bargaining and/or reaching agreement on groundrules as a condition for bargaining over compensation issues.

WE WILL NOT, in any like or related manner, interfere with, restrain or coerce our employees represented by UDCFA in the exercise of their rights under the Comprehensive Merit Personnel Act.

WE WILL negotiate in good faith with UDCFA, upon request, about compensation issues.

University of the
District of Columbia

Date:_____ By:_____
(President)

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning the Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 415-12th Street, N.W. Room 309, Washington, D.C. 20004. Phone 727-1822

CERTIFICATE OF SERVICE

I hereby certify that the attached Decision and Order in PERB Case No. 90-U-23 was hand-delivered, sent via facsimile transmission and/or mailed (U.S. Mail) to the following parties on this 17th day of March, 1992:

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