

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In The Matter Of:

Fraternal Order of Police/
Department of Corrections
Labor Committee,

Petitioner,

and

District of Columbia
Department of Corrections,

Agency,

and

Teamsters Local Union 1714
a/w International Brotherhood
of Teamsters, Warehousemen,
Chauffeurs and Helpers of
America, AFL-CIO,

Intervenor.

PERB Case No. 92-R-05
Opinion No. 327

DECISION AND ORDER

On March 16, 1992, Fraternal Order of Police/ Department of Corrections Labor Committee (FOP) filed a Recognition Petition with the Public Employee Relations Board (Board). FOP seeks to represent, for purposes of collective bargaining, D.C. Department of Corrections (DOC) employees who are currently represented by Teamsters Local Union No. 1714 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO, CLC (Teamsters) in a unit described as follows:

"All employees of the D.C. Department of Corrections excluding managerial employees, confidential employees, supervisors, temporary employees, physicians, dentists and podiatrists, institutional residents (inmates) employed by the Department, or any employees employed in personnel work in other than a purely clerical capacity and employees engaged in

administering provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978." ^{1/}

The Petition was accompanied by a showing of interest meeting the requirements of Board Rule 502.2 and a copy of the Petitioner's Constitution and Bylaws and Roster of Officers, as required by Rule 502.1(d).

The Board issued Notices concerning the Petition on April 22, 1992, for conspicuous posting at DOC for 14 consecutive days. The Notices required that requests to intervene and/or comments be filed in the Board's office not later than May 19, 1992. The Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of DOC, filed a Response to Recognition Petition on April 13, 1992, and on May 5, 1992, confirmed in writing that the Notices had been posted accordingly.

Teamsters filed a Request to Intervene on April 3, 1992, in

^{1/} The Teamsters were certified as the exclusive bargaining representative of the above unit of employees in the District of Columbia Department of Corrections and Teamsters Local Union No. 1714 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Teamsters Local Union No. 246 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, PERB Case No. 84-R-09, Certification No. 33 (Amended as of April 15, 1987). The exclusions in the above unit description, however, appear as amended by Doctors' Council of the District of Columbia and the District of Columbia Government (Department of Corrections and Department of Human Services), PERB Case No. 84-R-12, Certification No. 42 (1987).

The FOP asserts that the "petition also qualifies as a decertification petition pursuant to PERB Rule 505, since it is signed by employees of (sic) Agency in their individual capacity as well as in their capacity as interim officers of the FOP Labor Committee, and since the 'showing of interest' cards signed by the Agency's employees include a specific request for decertification of the incumbent labor organization", i.e., the Teamsters. In view of our disposition of this case, the request for decertification is of no practical effect or significance.

asserting, pursuant to Board Rule 502.9(b), that the Petition was "barred by the application of the PERB's contract bar rules...." (Teamsters Mot. at 2.) Teamsters also requested that the Petitioner be ordered to pay costs pursuant to D.C. Code Sec. 1-618.13(d). FOP timely responded to the Teamsters' Motion on May 18, 1992.^{3/}

On May 19, 1992, the D.C. Corrections Employees Union, International Union of Police Associations, Local 1990, AFL-CIO (IUPA) filed a "Recognition Petition" and "Petition to Intervene" (hereinafter IUPA's Petition) seeking to represent the same unit as described above. IUPA's Petition was accompanied by a "Motion to Dismiss" which, in the main, requests dismissal of FOP's Petition as "untimely and barred by the representation proceeding in PERB Case No. 91-R-03" (IUPA Mot. at 2.)^{4/}

^{3/} On June 26, 1992, FOP filed a document styled "Supplemental Pleading of Petitioner" which provided additional arguments against finding that a collective bargaining agreement between DOC and the Teamsters effectively bars its Petition. Since our Rules do not specifically prohibit the submission of supplemental pleadings to documents otherwise timely filed and no objection has been made by the other parties to this proceeding, we have considered the arguments contained in the FOP's "Supplemental Pleading of Petitioner," in our disposition of this case.

^{4/} Pursuant to the investigation of the showing of interest accompanying IUPA's Petition, the Board's Executive Director concluded that while Board Rule 502.2(b) provides that notarized membership lists may be submitted as evidence of a petitioner's showing of interest, any acceptable form or proof listed thereunder must reflect the interest of the employees' "membership in and support of a labor organization." As the Executive Director informed IUPA in her administrative denial of IUPA's request to intervene, IUPA's "evidence of proof consisting merely of a typed list of a membership roll, which is acknowledged only by the Union's employee, does not accomplish what was intended by the Board's rule on showing of interest." IUPA or interested members of the labor-management community are of course, welcomed, in accordance with Board Rule 567.2, to offer proposed amendments to Board Rule 502.2 to make more explicit the intent we find inherent in Board Rule 502.2. In any event, IUPA's status as an intervenor or participant in these proceedings would not have altered our ruling with respect to the existence of a contract bar during the period a valid collective bargaining agreement was in place between DOC and the Teamsters.

We therefore affirm the Executive Director's denial of IUPA's
(continued...)

The Teamsters and DOC raise the same threshold procedural issue which they contend warrants the dismissal of FOP's Petition. The issue concerns their contention that an existing collective bargaining agreement between DOC and the Teamsters bars FOP's Petition. The Teamsters and DOC assert that they are parties to a valid collective bargaining agreement with effective dates of September 30, 1990 to September 30, 1993. They argue that, in accordance with Board Rule 502.9(b), FOP's Petition, filed March 16, 1992, is barred since it was not filed during the open period of that agreement, i.e., "the 120th day and the 60th day prior to the scheduled expiration date...."

As all the parties acknowledge, this same issue was before the Board in the recognition petition filed by IUPA on February 27, 1991 (PERB Case No. 91-R-03) seeking to represent this same unit of employees. Since the filing of the instant Petition, the Board has considered the issues as that proceeding and is simultaneously issuing its Decision and Order dismissing IUPA's petition in D.C. Corrections Employees Union, International Union of Police Associations, Local 1990, AFL-CIO and Teamsters Local Union No. 1714 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, CLC and D.C. Department of Corrections, DCR, Slip Op. No. 326, PERB Case No. 91-R-03. With respect to this common issue, we ruled that the collective bargaining agreement referred to by the Teamsters and DOC herein, "which embodies all of a bargaining unit's noncompensation terms and conditions of employment, is sufficiently substantial to constitute a collective bargaining agreement as prescribed by Board Rule 502.9(b)"[.] *Id.* at. 7. We concluded, therefore, that the agreement created a contract bar to a recognition petition not filed during the open period of the

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in Board Rule 502.2. In any event, IUPA's status as an intervenor or participant in these proceedings would not have altered our ruling with respect to the existence of a contract bar during the period a valid collective bargaining agreement was in place between DOC and the Teamsters.

We therefore affirm the Executive Director's denial of IUPA's request to intervene in this proceeding. In view of this ruling, IUPA has no standing in this proceeding to file its Motion to Dismiss. We therefore treat its Motion as timely filed "comments" in response to the posted Notice.

agreement.^{5/}

Our determination in that case regarding the collective bargaining agreement between DOC and the Teamsters is controlling as to whether or not that same agreement constitutes a contract bar, as DOC and the Teamsters contend, to the instant Petition. Thus, based on our Decision and Order in PERB Case No. 91-R-03, we find that a valid collective bargaining agreement between the Teamsters and DOC was in effect at the time FOP filed its Petition on March 16, 1992.^{6/} Therefore, in accordance with Board Rule 502.9(b), since FOP's Petition was not filed during the open period of that agreement, it is barred by that agreement.^{7/}

^{5/} In so concluding, we adopted the Hearing Examiner's ruling that the agreement's reopener provision, contrary to assertions made by FOP, is of no significance in determining the duration of the agreement for contract bar purposes. Our adoption of the Hearing Examiner's ruling is based on our decision to follow, in the interest of labor management stability, the rationale espoused by the National Labor Relations Board (NLRB) in Deluxe Metal Furniture Co., 121 NLRB 135 (1958). There, the NLRB held that "[a] mid-term modification provision, regardless of its scope will not remove a contract as a bar unless the parties actually terminate the contract." *Id.* at 140. The intent of this policy, as stated by the NLRB, is to eliminate "the practice of scrutinizing and classifying the scope of a modification clause, the breadth of any notice given, and the actions of the parties in order to evaluate the effect of a notice or clause and then basing a contract bar determination upon the resulting evaluation." *Id.* at 140.

^{6/} For the reasons we stated in PERB Case No. 91-R-03, we find no merit to FOP's contention that the noncompensation agreement between DOC and the Teamsters is not sufficient to act as a contract bar, notwithstanding its lack of compensation provisions or a coexisting compensation agreement. Furthermore, contrary to FOP's assertion, the record in PERB Case No. 91-R-03 revealed that the MOU renewing the noncompensation agreement was approved, in accordance with D.C. Code Sec. 1-618.15(a), by "the Mayor or his or her designee", i.e., the Director of the D.C. Office of Labor Relations and Collective Bargaining. (emphasis added.)

^{7/} In view of our dismissal of FOP's Petition on the basis of the existence of a contract bar we have no occasion to reach other arguments made by both DOC and the Teamsters, including contentions that dismissal is warranted on the basis that (1) FOP's Petition is an untimely attempt to intervene in the proceedings of PERB Case No. 91-R-03, which was still pending at

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Accordingly, we grant the Teamsters' Motion to Dismiss the Petition.

ORDER

IT IS HEREBY ORDERED THAT:

The Petition is dismissed.
By Order of the Public Employee Relations Board

Washington, D.C.

September 24, 1992

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 92-R-05 was hand-delivered and/or mailed (U.S. Mail) to the following parties on this the 24th day of September, 1992.

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Certificate of Service
(cont'd)
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