

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

The Council of School Officers
Local 4, American Federation of
of Teachers, AFL-CIO,

Labor Organization,

and

The District of Columbia Public
Schools,

Employer.

PERB Case Nos. 85-U-15
and 85-U-27
Opinion No. 135

DECISION AND ORDER

These two cases are combined because they both raised the issue of whether the threatened use of a recording device in collective bargaining negotiations sessions is a violation of the law and whether the insistence by one party that another party give up a substantive right as a pre-condition to resuming bargaining is a violation of the duty to bargain in good faith.

In Case No. 85-U-15, the D.C. Public Schools (Management) filed an Unfair Labor Practice Complaint (ULP) against the Council of School Officers, Local 4 (Union) on March 18, 1985 alleging that the Union violated the Comprehensive Merit Personnel Act (CMPA) by insisting on using a tape recorder during negotiations for a new collective bargaining agreement. The Union denied the allegation, asserting that the issue is whether the Union can be compelled to sign negotiation ground rules which force it to give up its right to use a tape recorder in the future, if it elects to do so after giving Management notice of its intent.

On June 5, 1985 the Union filed an Amended Answer to Unfair Labor Practice Complaint and Counter-Complaint. The Amended Answer and Counter-Complaint was not accepted by the Board because of its procedural deficiencies. On July 2, 1985, the Union filed the Amended Answer and Counter-Complaint as a new ULP which is the subject of Case No. 85-U-27. The Union alleged

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that Management unlawfully refused to negotiate on substantive issues and unlawfully insisted that the Union sign ground rules forbidding use of a tape recorder. The Union also states that Management's position, "of refusing to bargaining until the tape recorder issue is resolved by the Board", constitutes bad faith bargaining.

On June 27, 1985, the Board referred Case No. 85-U-15 to a Hearing Examiner for a report and recommendation and delegated authority to the Executive Director to refer to the same Hearing Examiner any issues arising out of the Amended Answer and Counter-Complaint. A hearing on the combined cases was scheduled for August 19, 1985 but was held in abeyance pending the outcome of mediation efforts by the Hearing Examiner.

On October 16, 1985, a ULP hearing was conducted by the Hearing Examiner. Neither party filed post-hearing briefs or exceptions to the Hearing Examiner's report and recommendation. The Hearing Examiner recommended that the Board dismiss both ULP's.

In Case No. 85-U-15 the Hearing Examiner found that the Union did not insist on the use of a tape recorder to the point of impasse, but only refused to sign ground rules prohibiting its use of a tape recorder in the future if it desired to do so. Accordingly, the Hearing Examiner recommended that the ULP against the Union be dismissed.

In Case No. 85-U-27, the Hearing Examiner found that, although Management's insistence that the Union sign a written agreement prohibiting the use of a tape recorder as a pre-condition for resuming negotiations on substantive issues was a technical violation of the law, this violation was provoked by the Union and is a de minimus violation. Accordingly, the Hearing Examiner recommended that the ULP against Management be dismissed.

The Board has reviewed this matter and finds that the Union's refusal to sign the ground rules does not constitute a ULP. It is noted, however, that in reaching this conclusion, the Board is not sanctioning the use of a tape recorder in contract negotiations. Rather, in this instance, the Union's action falls short of a ULP. Accordingly, the Complaint in Case No. 85-U-15 is dismissed.

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In Case No. 85-U-27, the Board finds that Management committed an Unfair Labor Practice based on the Hearing Examiner's findings of fact and the absence of any exceptions thereto. Despite the Hearing Examiner's characterization of management's conduct as a "technical violation", no inadvertence or other unconscious error by management has been demonstrated which is sufficient for the Board to overlook this conduct. It is well settled that an employer's duty to bargain in good faith is not suspended during the pendency of collateral litigation such as the prosecution of an Unfair Labor Practice Complaint. Maywood Do-Nut Co., Inc., and Local 37, Bakery, Confectionery, and Tobacco Workers, AFL-CIO, 256 NLRB 507 (1981). Accordingly, Management's insistence that the Union sign an agreement prohibiting its use of a tape recorder as a condition for resuming negotiations is an Unfair Labor Practice.

O R D E R

IT IS ORDERED THAT:

In Case No. 85-U-15, the Complaint is dismissed because it fails to establish a violation of the CMPA.

In Case No. 85-U-27, Management shall post Notices at employee work sites stating that, in the future, it will refrain from insisting that the Council School Officers, Local 4 sign any agreement giving up a substantive right as a condition for engaging in collective bargaining on behalf of its membership.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
April 7, 1986