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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:)	
)	
FRATERNAL ORDER OF POLICE/ DEPARTMENT OF CORRECTIONS LABOR COMMITTEE,)	PERB Case No. 01-U-07
)	Opinion No. 705
)	
Complainant,)	
)	
)	
v.)	
)	
DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS,)	
)	
and)	
)	
OFFICE OF LABOR RELATIONS AND COLLECTIVE BARGAINING,)	
)	
)	
Respondents.)	
)	

DECISION AND ORDER

This case involves an unfair labor practice complaint filed by the Fraternal Order of Police/Department of Corrections Labor Committee¹ ("Complainant" or "FOP") against the D.C. Department of Corrections ("Respondent", "DOC", or "Agency") and the D.C. Office of Labor Relations and Collective Bargaining² ("Respondent" or "OLRCB"). Specifically, FOP alleges that

¹The Fraternal Order of Police/Department of Corrections Labor Committee is the exclusive certified bargaining representative for all non-managerial employees of the Department of Corrections. (R & R at pg.3).

²OLRCB serves as DOC's representative for negotiations.

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the Respondents committed unfair labor practices by: (1) ceasing to commence negotiations with the Union³; (2) recognizing and allowing rival labor organizations to represent FOP/DOC employees; (3) refusing to submit ground rules in a timely manner and otherwise delaying negotiations; (4) and implementing new policies prior to negotiating with the Union concerning these new policies⁴. As a result of these acts, FOP contends that DOC and OLR CB violated D.C. Code §1-617.04 (a)(1), (2) and (5) (2001 ed.)⁵.

The Respondents deny the allegations. DOC and OLR CB argue that negotiations were delayed for several reasons. First, the parties did not begin negotiations until they had agreed on groundrules. Also, the Respondents argue that they did not begin bargaining until it was clear who was representing the bargaining unit employees FOP claimed to represent.⁶ DOC, through its representative OLR CB, asserts that once it became clear who was representing FOP and once the parties signed off on ground rules in December of 2001, negotiations began. As a result, the Respondents contend that since the parties did in fact begin negotiating, that issue is *moot*. With respect to the final allegation raised by FOP, the Respondents contend that the Complainants did not point to any specific policies that were implemented prior to the parties negotiating concerning them.⁷ This was the case even after FOP was given several opportunities to identify those particular

³The parties were in the process of negotiating a new collective bargaining agreement covering FOP's bargaining unit members who worked at DOC.

⁴FOP argues that the Respondents promised that former policies would stay in effect until such time as the parties negotiated concerning the implementation of any new policies. (See, R & R at p. 1). The record did not contain any evidence concerning which policies FOP alleged were implemented without proper negotiations. However, FOP's Complaint alleges that DOC had established thirty-nine (39) new Department Orders/Program Statements which unilaterally changed terms and conditions of employment on an expedited basis. (Complaint at ¶16).

⁵Throughout this Opinion, any references to the D.C. Code will refer to the 2001 edition.

⁶The record contains some evidence that there were claims from Suzanne Pooler-Johnson, FOP's National Representative and George Johnson of the American Federation of State, County and Municipal Employees that they represented the employees which FOP claims that they were certified to represent. (R & R at p. 7). There was also some confusion concerning who was representing the employees. This was the case because on or about the same time, there was a citywide "Metropolitan Labor Coalition" representing other Unions in the District of Columbia in their negotiations for a new collective bargaining agreement. OLR CB stated that it was informed that FOP was being represented by the Metropolitan Labor Coalition. (R & R at p. 7).

⁷An Agency representative testified that she provided FOP's Chairman, Mr. Dupree, with the opportunity to review any new policies, and that "Mr. Dupree advised her that he had no intention of reviewing the policies, but rather that he was going to file an unfair labor practice complaint. " (R & R at p. 8 and Tr. at p. 119). Also, the Agency asserts that "the proposed

policies. On this basis, the Respondents assert that the Complaint should be dismissed.

A hearing was held and the Hearing Examiner issued a Report and Recommendation. (R & R). The Hearing Examiner found that FOP did not meet its burden of proof with respect to each allegation raised. In making this finding, the Hearing Examiner noted that the Respondents did not commit an unfair labor practice because negotiations eventually commenced between the parties, despite delays. The Hearing Examiner also found that the Respondents did not intentionally cause delays⁸. Additionally, the record contains no evidence that the Respondents recognized or negotiated with other Unions.⁹ Instead, the Hearing Examiner found that the record reveals that the Respondents merely sought clarification on who was, at that time, representing the workers which FOP claimed to represent.¹⁰ Furthermore, on the policy issue, the Hearing Examiner observed that FOP was given many opportunities during and between hearings to point to the policies which they desired to negotiate over, but were not permitted to. However, FOP never pointed to any specific ones. As a result, the Hearing Examiner had no basis on which to find an unfair labor practice violation concerning the Respondents' handling of policies. Therefore, the Hearing Examiner recommended that the Board dismiss FOP's complaint.

Neither party filed exceptions to the Hearing Examiner's Report and Recommendation.

Pursuant to D.C. Code §1-605.02 (3) (2001ed.) and Board Rule 520.14, the Board has reviewed the findings, conclusions and recommendations of the Hearing Examiner and find them

policies contain language that if no comments or objections are received during the comment period, an assumption is made that there is concurrence." (R & R at p. 8).

⁸Relying on the standard found in AFGE, Local 1741 v. D.C. Department of Parks and Recreation, the Hearing Examiner concluded that the evidence did not establish that the Respondents refused or failed to negotiate with the Union or that there was a deliberate delay. See, 46 DCR 6502, Slip Op. No. 588, PERB Case No. 98-U-16 (1999). AFGE, Local 1741 v. D.C. Department of Parks and Recreation held, *inter alia*, that the totality of a party's actions must be examined to determine if the party's conduct establishes an intent to avoid negotiating an agreement. 46 DCR 6502, Slip Op. No. 588, PERB Case No. 98-U-16 (1999). No such intent was found by the Hearing Examiner in this case.

⁹ The Hearing Examiner noted that OLRCB admitted that "there was some confusion in the staff at OLRCB...[because all those involved were] new to the office during that period " and it was unclear to them if FOP was participating in the Metropolitan Labor Coalition. (R & R at pgs. 7-8 and Tr. at pp. 23-24).

¹⁰ By letter dated December 15, 2000, OLRCB representative, Michael Jacobs, apologized for his "confusion" over who was authorized to bargain on behalf FOP's bargaining employees. (R & R at p. 7-8). Shortly thereafter, ground rules were completed and the parties began bargaining.

to be reasonable, persuasive, supported by the record, and consistent with Board precedent. As a result, we adopt the Hearing Examiner's findings and conclusion that DOC and OLRCB did *not* commit any of the alleged unfair labor practices described in the complaint and dismiss FOP's unfair labor practice complaint.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Unfair Labor Practice Complaint is dismissed.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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

April 11, 2003