GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matters of: The National Association of Government Employees, Local R3-5, Complainant, and The District of Columbia Office of Labor Relations and Collective Bargaining (on behalf of the Metropolitan Police Department), Respondent, and The American Federation of State, County and Municipal Employees, Local 709, Complainant, and The District of Columbia Office of Labor Relations and Collective Bargaining (on behalf of the Metropolitan Police Department), Respondent, and The American Federation of State, County and Municipal Employees, Local 2087, Complainant, and The University of the District of Columbia, Respondent.	PERB Case Nos. 85-U-08 85-U-09 85-U-10 Opinion No. 104

DECISION AND ORDER

These three (3) cases are combined because they present a single issue. This is whether the District of Columbia Office of Labor Relations and Collective Bargaining and the University of the District of Columbia (Employers) violated the Comprehensive Merit Personnel Act (CMPA) by unilaterally threatening and subsequently refusing to pay bonuses negotiated as part of the settlement of a compensation agreement unless and until the unions representing the employees reach agreement on non-compensation working conditions covering some of these same employees.

Case No. 85-U-08, involving maintenance workers employed by the Metropolitan Police Department (MPD), arose when the National Association of Government Employees, Local R3-5 (NAGE) filed an Unfair Labor Practice Complaint (ULP) with the Public Employee Relations Board (Board) on December 14, 1984 alleging that MPD, through its Labor Relations Division, threatened to withold bonus checks unless the union reached agreement on non-compensation bargaining. On December 19, 1985, NAGE amended its ULP to allege that MPD had, in fact, withheld the bonus checks from its members while disbursing bonus checks to the other members of Compensation Units 1 and 2 in violation of the ground rules it had agreed to follow in conducting negotiations.

Case No. 85-U-09, also involving MPD, arose when school crossing guards represented by Local 709 of the American Federation of State, County and Municipal Employees (AFSCME) filed a ULP with the Board on December 21, 1984 alleging that MPD had refused to issue bonus checks to its employees until non-compensation bargaining was completed. AFSCME contends this action violated assurances given to its members by the Mayor and the City's Chief Labor Negotiator prior to their ratification of the Compensation Agreement.

Management's alleged unlawful refusal to issue bonus checks has also come up in Case No. 85-U-10, which involves the University of the District of Columbia (UDC). Maintenance workers represented by AFSCME, Local 2087 filed a ULP with the Board on December 21, 1984 which also alleges that UDC refused to issue bonus checks until non-compensation bargaining was completed. AFSCME contends that the ground rules for non-compensation bargaining specifically stated that the "implementation of compensation and non-compensation agreements shall not be contingent upon the completion of both agreements." On January 17, 1985, AFSCME amended its complaint to include employees of Compensation Units 11 and 15 as well. Compensation Units 11 and 15 include security guards and non-faculty employees of UDC who are also represented by AFSCME.

The unions seeks, as a remedy, a Board Order requiring Employers to promptly pay bonus checks to all eligible employees without regard to whether non-compensation bargaining has been completed.

On January 11, 1985 OLRCB filed its "Answer" to the complaints and requested that the Board combine the three (3) cases into one. OLRCB contends, essentially, that the ground rules provided that both compensation and non-compensation issues be negotiated simultaneously and that the Compensation Agreement be implemented when all non-compensation issues are settled. OLRCB contends further that because the non-compensation bargaining is incomplete, it is not required, under either the ground rules or the CMPA, to implement the Compensation Agreement by paying the bonus checks.

Section 1716 of the CMPA (D.C. Code Section 1-618.16) states that management and the union "shall negotiate agreements regarding non-compensation issues at the same time as compensation issues." While NAGE and AFSCME, Locals 709 and 2087 represent separate collective bargaining units on non-compensation issues, they are all part of Compensation Units 1 and 2 which covers approximately thirteen thousand (13,000) city employees.

On October 10, 1984, Compensation Units 1 and 2 reached an agreement with the District Government which, among other benefits, provided for the payment of a bonus of 3% of the gross pay or $500, whichever is greater. The Council of the District of Columbia approved the Agreement on November 8, 1984 and the bonus checks were to be issued on December 18, 1985, the last payday before Christmas. Employees represented by NAGE or AFSCME, Locals 709 and 2087 did not receive bonus checks. All other employees in Compensation Units 1 and 2 received the bonus checks on December 18, 1984. The Agreement approved by the Council stated, in Article 13 (Duration). "This Agreement shall be implemented as provided herein in accordance with the negotiations ground rules agreed to by the parties on May 22, 1984." In turn, Section 4(f) of the ground rules provides:

> "Compensation and non-compensation issues will be negotiated simultaneously. Compensation changes will be implemented in accordance with the term of the compensation agreement when all working conditions contracts are agreed to."

The terms of Section 4(f) of the ground rules cover the situation. The parties agreed that new compensation arrangements would be put into effect only upon completion of the working conditions contracts. Those contracts have not been completed.

The unions make, however, two additional allegations. They contend first that prior to the completion of the compensation bargaining, the Mayor and Deputy Mayor gave verbal assurances in a negotiating session that the bonus checks would be paid as soon as possible after agreement was reached and then ratified by the union memberships. The unions also rely on the fact that the bonus checks were in fact issued to some employees in Compensation Units 1 and 2 despite the fact that non-compensation bargaining for them had not been completed.

The Board has reviewed the available evidence regarding the statements made by the Mayor and Deputy Mayor at the negotiation session. From what can be told, these statements could have been given, standing alone, conflicting yet honest interpretations. The provision in the ground rules appear not to have been referred to specifically. The Board finds, however, that no written evidence whatsoever is available regarding the statements made by the Mayor and Deputy Mayor in the negotiating session. Fuller investigation by a Hearing Officer could result only in conflicting testimony about who said what. Under these circumstances the explicit written provision in the agreed-upon ground rules must be taken as controlling.

This leaves the question of what effect is to be given to the unquestioned fact that bonus checks were issued to some employees for whom non-compensation bargaining had not been completed. A side-bar agreement was reached during the compensation negotiations to pay the bonus checks, without regard to the Section 4(f) provision and without waiting for completion of the Non-Compensation Agreement, to all employees in the bargaining units covered by AFSCME's Master

Working Conditions Agreement; and this was done. This Master Working Conditions Agreement does not cover the employees in AFSCME, Locals 709 and 2087, and of course does not cover employees represented by NAGE. The Chief Negotiator for AFSCME contends, however, that the oral side-bar agreement was intended and worded to cover the members of Locals 709 and 2087.

Here again the problem is one of trying to evaluate disputed oral representation made during negotiation. The claim made on the one side and denied on the other is that the written agreement in the ground rules was modified by the negotiators. No written evidence is available, however, as to how far this oral agreement reached.

The Board comes reluctantly but firmly to the conclusion that it has no choice in these circumstances except to adhere to the written agreement. The resultant situation, with some employees having their bonus payments postponed while others received them, is unhealthy. But the practical good sense of the law's "parol evidence rule" is clearly applicable here; the terms of a written agreement have to be honored unless they are changed in writing. To take any other position in this case would create an unworkable precedent for this Board's trying to reconstruct and enforce oral understandings reached in negotiation contrary to the parties' written negotiation ground rules.

The claims of Compensation Units 11 and 15 appear to be entitled to the same consideration as NAGE and AFSCME. On July 25, 1984 a Memorandum of Understanding was entered into between AFSCME and UDC agreeing that Compensation Units 11 and 15 employees were to be "covered by city-wide compensation discussions". This appears to be a mechanism to allow the parties to avoid duplicating compensation negotiations. A reasonable interpretation of the plain language of the memorandum is that Compensation Units 11 and 15 agreed to be bound by the city-wide negotiation. There is no evidence or allegations that Compensation Units 11 and 15 were covered by the side-bar negotiations which allowed some employees to receive bonus checks. Accordingly, it appears that UDC did not violate the CMPA by its failure to issue bonus checks to employees of Compensation Units 11 and 15 before completion of non-compensation negotiations.

O R D E R

IT IS ORDERED THAT:

All three (3) Complaints are dismissed on the grounds that they fail to establish a violation of the Comprehensive Merit Personnel Act as alleged.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
March 28, 1985