

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any formal errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)
)
Washington Teachers' Union,)
Local 6, AFT, AFL-CIO,)
)
Complainant,) PERB Case No. 92-U-13
) Opinion No. 409
v.)
)
District of Columbia)
Public Schools,)
)
Respondent.)

DECISION AND ORDER
ON MOTIONS TO INTERVENE

On November 8, 1994, pursuant to Board Rules 553.1 and 501.14, Motions to Intervene in the above-captioned proceeding were filed by four members of the Washington Teachers' Union, Local 6, AFL-CIO (WTU), Complainant. Responses to the Motions were filed by WTU, joining in Movants' request, and the Respondent, District of Columbia Public Schools (DCPS), opposing the Motions. On November 22, 1994, the Executive Director directed the Hearing Examiner to hold in abeyance the issuance of his Report and Recommendation, originally set for December 5, 1994, pending our ruling on the Motions.

This case arises from an Unfair Labor Practice Complaint filed by WTU on May 29, 1992. WTU charged that DCPS violated D.C. Code Sec. 1-618.4(a)(1) and (5) of the Comprehensive Merit Personnel Act (CMPA), by failing to bargain in good faith concerning several terms and conditions of employment affecting bargaining unit employees for whom WTU is the exclusive representative.

After attempts at settlement had failed, the case was heard by the Hearing Examiner in June and July, 1994. The filing date for post-hearing briefs was originally set for September 7, 1994.

Throughout most of this proceeding and at the hearing Complainant WTU was represented by Rogers Legal Services. On

Decision and Order

PERB Case No. 92-U-13

Page 2

September 6, 1994, the Board received a notice of appearance from Mr. Curtis Lewis, Esq. of Curtis Lewis & Associates, advising that following a change in the administration of WTU, his "office ha[d] been retained by the WTU to represent it in connection with matters pending before the Board." Mr. Lewis requested a 30-day extension of the date for filing post-hearing briefs. On September 7, 1994, the Board received a letter from Ms. Regina Rogers Jackson, Esq., of Rogers Legal Services, advising the Board that her firm no longer represented WTU in this proceeding. Jackson also confirmed that WTU's new administration had retained Curtis Lewis & Associates as its counsel, and deferred to Mr. Lewis with respect to the filing of WTU's post-hearing brief. All counsel served each other with copies of this correspondence.

The Executive Director granted Mr. Lewis' request for an extension of time and extended the due date for post-hearing briefs to October 3, 1994. On October 3, 1994, the Board received a joint request for a further extension of time to file post-hearing briefs. Counsel for WTU stated that it had not yet received the case files from former counsel and counsel for DCPS stated that she was experiencing work load conflicts. Based on these representations, the Executive Director granted a second extension of time until October 21, 1994.

On October 21, 1994, DCPS filed its post-hearing brief and served counsel for WTU with a copy. No brief was received on behalf of WTU. On October 25, 1994, Mr. Lewis contacted this office to inquire about Board Rules for filing a request for an extension of time after a due date. At no time did Mr. Lewis request an extension. On October 27, 1994, this office forwarded DCPS' post-hearing brief to the Hearing Examiner.

Movants now wish to file a post-hearing brief in support of Complainant WTU that was prepared by WTU's prior counsel, Rogers Legal Services. That brief was apparently prepared before Roger Legal Services withdrew from the case. The basis of all four Motions is the same --that since WTU's current Counsel failed to file a post-hearing brief, members of WTU, including its former president, should be permitted to intervene to file the brief prepared by WTU's former counsel. Movants argue that their interests would be adversely affected if the case is decided without a post-hearing brief in support of the Complainant.

The threshold issue concerns Movants' right to intervene in this proceeding under the circumstances presented. After reviewing the pleadings, we deny Movants' request to intervene. WTU, which has designated counsel in this proceeding, is the exclusive representative on behalf of its membership and employees in the designated unit. As members of WTU, Movants' interests in this unfair labor practice proceeding have been

Decision and Order

PERB Case No. 92-U-13

Page 3

represented at all times by WTU, their exclusive representative. There is no dispute that since September 6, 1994, counsel for WTU has been Curtis Lewis & Associates. There would be no basis for granting Mr. Lewis leave to file a post-hearing brief on behalf of WTU over DCPS' objection.^{1/} And for the reasons stated above, there is even less basis for granting Movants the right to intervene to accomplish the same result. Our Rules require simultaneous filing of post-hearing briefs to prevent any unfair advantage by either party.^{2/} Moreover, granting the Movants' request would create the anomolous situation of having the Board accept a brief prepared by a lawyer who no longer represents any party to this proceeding -- not even the movants.

Curtis Lewis & Associates is the counsel responsible for representing WTU and filing any post-hearing brief on its behlaf. Movants cannot be permitted to do what counsel for WTU would not be permitted to do simply because WTU's counsel neglected to file a post-hearing brief. The fact that this leaves WTU without a post-hearing brief is a predicament WTU and its counsel have brought on themselves.^{3/} Movants' Motion is tantamount to a request to usurp the role of WTU's designated counsel for the purpose of filing a brief that is otherwise untimely under Board Rules. There is no reason why the Board should grant this Motion over DCPS' objection when our rules governing the filing of post-hearing briefs are clear.

^{1/} Mr. Lewis' joinder in Movants' request to intervene is merely an attempt to redress the situation his neglect has created for WTU, i.e., proceeding without a post-hearing brief.

^{2/} Counsel from Rogers Legal Services came into the Board's office to review the file just prior to the filing of these Motions. Consequently, Rogers Legal Services (whose brief Movants wish to file) has had an opportunity to review DCPS' post-hearing brief. Mr. Lewis states that the reason he was not prepared to file a brief by the due date, October 21, 1994, is because he had not obtained all the files from WTU's former counsel. However, since the original due date, September 7, 1994, Mr. Lewis had available for his review at the Board's office the transcript of this proceeding, for purposes of preparing WTU's post-hearing brief.

^{3/} To date, current counsel for WTU, Mr. Lewis, has not even attempted to submit a brief on behalf of WTU. Rather, counsel has joined in Movants' Motion and faults former counsel for WTU's lack of a brief. In our view, WTU has not been well-served by current counsel.

Decision and Order
PERB Case No. 92-U-13
Page 4

The Motions are denied and the Hearing Examiner is directed to issue his Report and Recommendation forthwith on the record currently before him. ^{4/}

ORDER

IT IS HEREBY ORDERED THAT:

The Movants' Motions to Intervene are denied.

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

January 6, 1995

^{4/} If WTU is dissatisfied with the Hearing Examiner's Report and Recommendation, it will of course be free to file exceptions and a supporting brief pursuant to Board Rule 520.13.