

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

_____)	
In the Matter of:)	
)	
International Association of)	
Firefighters, Local 36,)	
)	
) Union,)	
)	
and)	
)	PERB Case No. 88-I-06
District of Columbia)	Opinion No. 190
Fire Department,)	
)	
) Agency.)	
_____)	

DECISION AND ORDER

The parties, Local 36, International Association of Firefighters (IAFF) and the District of Columbia Fire Department (DCFD), are signatories to a collective bargaining agreement, which by its terms expired on September 30, 1987. The parties commenced negotiations for a successor contract prior to the expiration date but were unable to reach agreement. Mediation also proved unsuccessful and pursuant to the request of IAFF, the parties are proceeding to interest arbitration concerning compensation and terms-and-conditions issues in accordance with the Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Code Section 1-618.17(f)(2).

On June 10, 1988, DCFD filed with the Public Employee Relations Board (Board) a "Motion To Establish Factors To Be Considered For Arbitration" (hereinafter "Motion"). Local 36 filed its "Response of Local 36, IAFF To Motion To Establish Factors To Be Considered For Arbitration" (hereinafter "Response") with the Board on June 20, 1988.

DCFD's Motion seeks the Board's establishment of eleven criteria "consistent with D.C. Code 1-618.2" to be considered by the tripartite arbitration panel in rendering its award on the compensation issues. DCFD asserts that it "proposes this Motion as a result of the increasing number of interest arbitrations and lack of consistency in the criteria used to determine the awards. This Motion serves to set consistent criteria to guide the Arbitration Panel." (Motion at p. 2).

The IAFF claims that DCFD's Motion is entirely inappropriate and hence should be denied. According to Local 36, the applicable statutory provisions, D.C. Code Sections 1-605.2(4), 1-618.17(f)(1), (2) and (3), and Board Interim Rules 104.16-21 and 105, narrowly restrict the Board's authority over interest arbitration to that of appointing the arbitrator. In this regard, IAFF notes that in Council of School Officers, Local 4, AFSA, AFL-CIO and D.C. Public Schools, 33 D.C. Register 2922, Opinion No. 138, PERB Case No. 86-A-01 (1986), the Board stated that it is accorded by statute [only] "the ministerial role of appointing an Arbitration Panel." 1/ Local 36 contends that if the Board involved itself in this matter, there is nothing to prevent the Board from becoming embroiled in other issues typical to interest arbitration, such as procedural matters and placement of burdens of proof. Thus the Union maintains that the granting of the Motion would inevitably cause chaos and delay.

The threshold issue of the Board to decide is whether as a policy matter, we should grant a Motion requiring that certain criteria be considered in an interest arbitration.

For the reasons stated herein, the Board concludes that it should not grant the Motion. The criteria set forth in D.C. Code Section 1-618.2(d)(1)-(4), by its terms, applies to terms-and-conditions bargaining. We find, however, that while these provisions may not be controlling in an interest dispute concerning compensation, there is nothing to prevent an arbitration panel from considering these criteria and applying them in an arbitration proceeding involving compensation issues. See The Fraternal Order of Police, Metropolitan Police Department Labor Committee and The District of Columbia Metropolitan Police Department, 32 D.C. Register 4419, Opinion No. 114, PERB Case No. 85-A-04 (1985); on remand 32 D.C. Register 7523,

1/ This decision was appealed to the District of Columbia Superior Court, which affirmed the Board's Order. (See Council of School Officers v. M. David Vaughn and Dr. William Rumsey, Chairman of the Public Employee Relations Board, Civil Action No. Misc. 67-86.) The lower court's decision was appealed to the District of Columbia Court of Appeals (Appeal No. 87-291) where it is currently pending.

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Opinion No. 125 (1985). 2/

Absent compelling circumstances, none of which have been presented here, the Board finds no reason to impose criteria upon the parties and the arbitration panel. It is our view that both the Statute and the Board's Interim Rules contemplate the expeditious resolution of impassed negotiations over compensation. By involving itself in the substantive and procedural aspects of an interest arbitration, particularly once the panel has been constituted, 3/ could create unnecessary delay.

The parties are of course free to persuade the arbitration panel to consider or not consider, criteria which may arguably be related to this dispute. Accordingly, the Motion is denied. 4/

ORDER

IT IS HEREBY ORDERED THAT:

The Motion To Establish Factors To Be Considered For Arbitration is denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.
July 15, 1988

2/ Council of School Officers, supra, reversed the Board's conclusion in The Fraternal Order of Police that the Board had jurisdiction to entertain Arbitration Review Requests arising from interest arbitration awards. However, the reversal by Council of School Officers does not affect the Board's finding regarding the use of the aforementioned criteria in compensation interest awards.

3/ The Board notes that during the pendency of this Motion, no arbitration panel had been formally appointed. Although the parties were requested to respond by June 7, 1988 and provide the names of their panel members to the Executive Director, they did not do so until July 14, 1988. The Board further acknowledges that the panel will now be formally appointed, as required by Board Rule 104.5, concurrent with the issuance of the opinion.

4/ Member Kohn states that, because she will not have had an opportunity to review this opinion prior to its issuance, she concurs only in the result.