Government of the District of Columbia

Public Employee Relations Board

In the Matter of:	
Fraternal Order of Police/Metropolitan Police Department Labor Committee,	
Petitioner,	PERB Case No. 08-U-35
v.	Opinion No. 1332
District of Columbia Metropolitan Police Department and Chief Cathy L. Lanier	
Respondents.	

DECISION AND ORDER

I. Statement of the Case

The Department of Human Resources and the Metropolitan Police Department issued a notice of final rulemaking amending title 6, chapter 16 of the District of Columbia Municipal Regulations. Objecting to the amended regulations ("Regulations"), the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Complainant" or "Union") filed an unfair labor practice complaint naming the D.C. Metropolitan Police Department ("Respondent" or "Department") and Chief Cathy L. Lanier as respondents. The complaint alleges that the Union had requested bargaining with regard to the Regulations before they became final and that the Regulations altered material terms of the parties' collective bargaining agreement ("CBA"). (Complaint at paras. 5, 6, & 12). The complaint further alleges, "The Department committed an Unfair Labor Practice by unilaterally altering the terms of the CBA and refusing to bargain in good faith with a representative of the Union, as required by the CBA and D.C. Code § 1-617.04(a)(5)." (*Id.* at para. 13).

The Respondent denied that the Complainant had requested it to bargain over the Regulations on the ground that the Complainant sent its request to the Department of Human Resources rather than the Respondent. (Answer at p. 2). In addition, the Respondent denied the Complainant's conclusions regarding the commission of an unfair labor practice. (*Id.* at p. 3). Further, the Department asserted that the Public Employee Relations Board ("Board") did not have jurisdiction over the complaint or over individuals whose actions fall within their roles as

agents of the government. The Department moved to dismiss the complaint on the grounds that the Board lacked jurisdiction and that there was no evidence of an unfair labor practice. (*Id.* at pp. 3-4).

The Board denied the Respondent's motion and referred the matter to a hearing examiner. *F.O.P./Metropolitan Police Dep't Labor Comm. v. D.C. Metropolitan Police Dep't*, Slip Op. No. 1113, PERB Case No. 08-U-35 (Aug. 12, 2011). At the hearing Kristopher Baumann, chairman of the Union, testified for the Complainant, and Inspector Diedre Porter, former director of the Disciplinary Review Board, testified for the Respondent. The hearing examiner issued a Report of Findings and Recommendations ("Report") in which he recommended that Chief Lanier be dismissed as a respondent and that the complaint be dismissed in its entirety.

Neither party filed exceptions to the Report. The Report is now before the Board for disposition.

II. Discussion

A. Capacity of Chief Lanier

The hearing examiner found that Chief Lanier could only have committed the alleged violations in her official capacity and recommended that she be removed as an individually-named respondent. (Report at p. 8). The hearing examiner recognized that the Board had followed decisions of the D.C. Superior Court and the U.S. District Court for the District of Columbia "holding that public officers cannot be held liable for allegedly tortious acts . . . ." (*Id.* at p. 7). In *Fraternal Order of Police v. District of Columbia*, Slip Op. No. 1118, PERB Case No. 08-U-41 (Aug. 19, 2011), the Board quoted a decision of the Superior Court opining that a suit against an officer or agent of the government in his official capacity is a suit against the government, not against the officer or agent, and that when the government is named as an defendant, the addition of an officer or agent in his official capacity is "redundant and an inefficient use of judicial resources." *Id.* at pp. 4-5 (quoting *AFGE Local 1403 v. District of Columbia*, Case 2008-CA-8472 (July 21, 2009). Therefore, the Board held that "[s]uits against the District officials in their official capacity should be treated as suits against the District." *Id.* at 5.

This rationale becomes particularly clear where, as here, naming the individual respondent is inappropriate and unnecessary. The Union argues that it "has pled allegations against the Chief of Police, Cathy Lanier, and if proven, would constitute a violation of the CMPA. See . . . Complaint at ¶ 1-8." (Complainant's Post-Hearing Brief at p. 14). Yet the paragraphs the Union cites do not allege any act or omission of Chief Lanier, only acts and omissions of the Department. The complaint alleges that the Department entered into a CBA (para. 4), issued a notice of proposed rule-making (para. 5), and did not offer to bargain (para. 7). Paragraph 8 alleges that "the Department's proposed rules" became effective in February 2008. Moreover, paragraph 13 alleges that the Department—but not Chief Lanier—"committed an Unfair Labor Practice."

The Comprehensive Merit Personnel Act empowers the Board to "[d]ecide whether unfair labor practices have been committed and issue an appropriate remedial order." D.C. Code

§ 1-605.02(3). The presence of Chief Lanier as an additional respondent does not assist the Board in deciding whether an unfair labor practice has been committed. In short, it is "redundant and an inefficient use of judicial resources." *Fraternal Order of Police*, Slip Op. No. 1118 at pp. 4-5 (quoting *AFGE Local 1403 v. District of Columbia*, Case 2008-CA-8472 (July 21, 2009).

Therefore, we adopt the hearing examiner's findings and his recommendation that Chief Lanier should be dismissed as a named respondent.

B. Alleged Unfair Labor Practice

The hearing examiner found that the regulations address cause for discipline, procedures for the Department to propose discipline, and procedures for the affected employee to respond. (Report at pp. 10-11). The Union alleges that the Regulations "altered material terms of the parties' CBA." (Complaint at para. 12.) That contractual claim cannot be the basis of an unfair labor practice claim over which this Board has jurisdiction. This Board held that no unfair labor practice claim was stated where the Housing Authority allegedly threatened, without bargaining, to modify unilaterally the terms of a collective bargaining agreement, *AFGE, Local 2725 v. District of Columbia Housing Authority*, 46 D.C. Reg. 6872, Slip Op. No. 488, PERB Case No. 96-U-19 (1999), and where the D.C. Fire Department issued, without bargaining, a memorandum on leave and standby duty policies that allegedly violated the terms of the collective bargaining agreement concerning those subjects. *AFGE, Local 3721 v. D.C. Fire Dep't*, 39 D.C. Reg. 8599, Slip Op. No. 287, PERB Case No. 90-U-11 (1992). As in those cases, the Union's claim that the Department altered the CBA is a matter for the grievance-arbitration process. Although the Board has "exclusive jurisdiction to consider appeals from grievance-arbitration awards," *District of Columbia Department of Public Works and AFSCME, Local 2091*, 35 D.C. Reg. 8186, Slip Op. No. 194 at p. 2, PERB Case No. 87-A-08 (1988), it does not have original jurisdiction in such matters. *See Council of Sch. Officers, Local 4 v. D.C. Pub. Schs.*, Slip Op. No. 1016 at pp. 8-9, PERB Case No. 09-U-08 (July 16, 2010). Therefore, the Board does not have jurisdiction over the Union's contractual claim, which has not gone through the grievance-arbitration process. In the grievance-arbitration process, an arbitrator could, for example, reverse a disciplinary action that was taken in violation of the CBA.

As we recently observed, "the Board's precedent and policy do not prohibit the Board from exercising its jurisdiction over a complaint merely because the alleged statutory violation could also be resolved by an application of the parties' CBA and grievance/arbitration procedure." *F.O.P./Metropolitan Police Dep't Labor Comm. v. D.C. Metropolitan Police Dep't,* Slip Op. No. 1302 at p. 18, PERB Case Nos. 07-U-49, 08-U-13, & 08-U-16 (July 26, 2012). A statutory violation could be alleged in a case such as this, but the Union neither alleged nor proved a statutory violation. The Board has jurisdiction where an agency is charged with refusing to bargain in good faith over changes in terms and conditions of employment that are not specifically covered by a collective bargaining agreement. *See F.O.P./Metropolitan Police Dep't Labor Comm. v. D.C. Metropolitan Police Dep't*, 59 D.C. Reg. 5485, Slip Op. No. 991 at pp. 6 & 10-12, PERB Case No. 08-U-19 (2009). In the present case, however, the Complainant did not plead that any of the Regulations altered any terms or conditions of employment not specifically covered by the CBA, nor did it prove that to be the case at the hearing. The hearing examiner found that "Complainant has presented no evidence that Respondent MPD has

introduced any procedures that are outside the scope of what the parties have already negotiated." (Report at p. 11.)

Therefore, the Respondent has not committed an unfair labor practice, and the Board adopts the hearing examiner's recommendation that the complaint be dismissed in its entirety.

ORDER

IT IS HEREBY ORDERED THAT:

1. Chief Cathy L. Lanier is dismissed as a respondent.

2. The complaint is dismissed.

3. 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.

September 27, 2012

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 08-U-35 is being transmitted via U.S. Mail to the following parties on this the 3d day of October, 2012.

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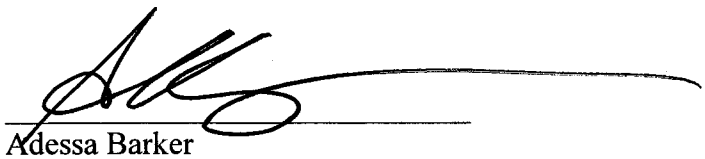

Adessa Barker
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