

DISTRICT OF COLUMBIA GOVERNMENT
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

Fraternal Order of Police
Metropolitan Police Department
Labor Committee,

Petitioner

and

The District of Columbia
Metropolitan Police Department,

Agency

and

International Brotherhood of Police
Officers, Local 442,

Intervenor

PERB Case No. 81-R-05
Opinion No. 17

DECISION AND ORDER

The Fraternal Order of Police (hereafter "Petitioner") filed a Recognition Petition on June 4, 1981 with the District of Columbia Public Employee Relations Board (hereafter "the Board") seeking exclusive representation rights for all police officers and sergeants, excluding statutory exceptions, of the Metropolitan Police Department (hereafter "Agency").

The Petition was properly accompanied by a showing of interest exceeding the minimum percentage required by Board Rule 101.7. The incumbent representative, Local 442 of the International Brotherhood of Police Officers (hereafter "Intervenor") filed its Request to Intervene with the Board on June 16, 1981.

After concluding its investigation and reviewing the record, the Board ordered the matter referred to a Hearing Examiner for a report and recommendation. The Board designated Hearing Examiner conducted the Hearing on July 31, 1981, and all parties filed Post-Hearing Briefs on or before August 31, 1981. The Hearing Examiner issued his Report and Recommendation on September 15, 1981 and the Intervenor filed written Exceptions to the Hearing Examiner's Report and Recommendation on

October 1, 1981. In addition, the Intervenor has filed a Motion for Oral Argument with the Board relative to its written Exceptions to the Hearing Examiner's Report and Recommendation.

After carefully reviewing the Hearing Examiner's Report and Recommendation and the entire record in this matter, the Board determines that the record is complete and additional oral argument would not be productive.

Pursuant to its review of the entire record in this matter, the Board hereby adopts the conclusions and recommendations of the Hearing Examiner in considering the application of Board Interim Rules 101.8(a) and (b) which provide that:

A petition for exclusive recognition shall be barred if:

- (a) a valid majority status determination has been conducted for substantially the same appropriate bargaining unit during the previous twelve (12) months, or a certification of representative has been issued;
- (b) there is an existing labor-management agreement covering the employees in the proposed unit, Provided That a petition may be filed during the period between the 120th day and the 60th day before the expiration of an agreement having a duration of less than three years or after 975 days for an agreement having a duration of three years or more;

The Hearing Examiner's key conclusions were that:

1. "Nothing in the Comprehensive Merit Personnel Act of 1978 (CMPA) or the PERB Interim Rules indicate an intent to extend the certification year periods during this transition period. Therefore the argument that the certification year did not begin until February 6, 1981 is without merit.
2. The fact that the IBPO [Intervenor] and the MPD [Agency] entered into a new three-year contract one day prior to the FOP's [Petitioner's] Petition does not alter FOP's [Petitioner's] right to file a Petition during the open period [June 2, 1981 to July 31, 1981]. The proviso of 101.8(b) stands on its own and is not affected by the signing of a new contract between the MPD [Agency] and IBPO [Intervenor] during the open period.
3. Since the FOP's [Petitioner's] Petition was filed during the open period, it is not necessary to determine the validity of the various agreements between IBPO [Intervenor] and MPD [Agency] during June and July, 1981. Assuming arguendo that all of these agreements are valid, the FOP's [Petitioner's] Petition is still timely because the open period for filing

a petition is determined by the former agreement which expired on September 30, 1981 and this open period is unaffected by any agreement reached between the 120th day and the 60th day before September 30, 1981."

ORDER

It is:

ORDERED, that the Motion for Oral Argument be denied; and

ORDERED, that an election be held, pursuant to Board Rules 102.4 - .15, to determine the exclusive representative of sworn police officers and sergeants of the Metropolitan Police Department.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

October 9, 1981