

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

The Washington Teachers' Union,
Local 6, AFL-CIO,

Complainant,

and

The District of Columbia Public
Schools,

Respondent.

PERB Case No. 85-U-28
Opinion No. 144

DECISION AND ORDER

On June 11, 1985, Local 6 of the Washington Teachers' Union AFL-CIO (WTU) filed an Unfair Labor Practice Complaint (ULP) with the District of Columbia Public Employee Relations Board (Board) against the District of Columbia Public Schools (DCPS). The Complaint alleges that DCPS violated the Comprehensive Merit Personnel Act (CMPA) (D.C. Code, Section 1-618.4 (a)(1) and (5)) when it unilaterally published the 1985-86 School Calendar and changed an established past practice by requiring members of its bargaining unit to report for duty prior to Labor Day on August 28, 1985. WTU also contends that the School Calendar unilaterally ended the established past practice of celebrating Good Friday as a holiday by beginning Spring Vacation on the Monday following Easter Sunday. As a remedy, WTU seeks a Board Order compelling DCPS to cancel the 1985-86 School Calendar, revert to the established past practices, and to bargain in good faith concerning the proposed changes in the School Calendar.

On August 7, 1985, DCPS filed its Answer denying that its adoption of the 1985-86 School Calendar changes the terms and conditions of employment of the public school teachers whose unit is represented by WTU. DCPS contends that the School Calendar is not and has never been the subject of collective bargaining. DCPS also contends that in seven of the last ten years the public school teachers have been required to report for duty prior to Labor Day and that, in two of the last five years, Good Friday has not been a part of Spring Vacation. DCPS requests that the Board dismiss the Complaint.

On August 21, 1985, WTU filed an amendment to its Complaint stating that, although the teachers had sometimes in the past been required to begin work before Labor Day, they had never been required to begin the school year before September 1.

The issues before the Board are whether the teachers' first day of the school year is a mandatory subject of bargaining and whether DCPS's action changing Good Friday to a duty day was lawful.

On September 10, 1985 the Board referred the matter to a hearing examiner for a report and recommendation. A hearing was conducted on November 13 and 16, 1985 and January 7 and 8, 1986. The Hearing Examiner filed his Report and Recommendation on April 7, 1986. On April 23, 1986 and May 16, DCPS and WTU, respectively, filed exceptions and responses to the Hearing Examiner's Report and Recommendation.

Before the Hearing Examiner, WTU argued that DCPS had established a past practice of consulting with the union before finalizing the School Calendar. WTU contends that in 1985, DCPS made changes in the School Calendar which adversely affected the working conditions of the public school teachers by requiring them to report in August and eliminated Good Friday as a non-duty day. WTU asserts that neither of these changes was discussed with the union. DCPS's position is that it is not required by contract law or to negotiate changes in the School Calendar with the union. DCPS further argued that it is management's right by law and contract to establish school policy which also includes determining when employees are required to report to work. The Hearing Examiner found that DCPS's publication of a School Calendar requiring teachers to report for duty before September 1st and on Good Friday was a violation of a long standing past practice that DCPS would contact WTU whenever a major change was considered for the school calendar. He also found that Good Friday had been a non-duty day for the past 15 years. The Hearing Examiner concluded that DCPS had committed an Unfair Labor Practice and recommended that (1) DCPS be ordered to continue the past practice of treating Good Friday as a non-duty day and (2) that DCPS be ordered to continue the past practice of requiring DCPS to commence duty for teachers on or after September 1 of each year.

On April 23, 1986, DCPS filed Exceptions to the Hearing Examiner's Report and Recommendation. DCPS vigorously denies that there has ever been an understanding between it and WTU that the School year will always begin after September 1 or that Good Friday is a non-duty day. DCPS contends that, as a matter of law

established in D.C. Code, Section 31-102, setting the School Calendar is a management prerogative not subject to the collective bargaining process. Citing numerous cases from various jurisdictions DCPS contends that the Hearing Examiner's conclusion is contrary to law.

On May 16, 1986 WTU filed a response to DCPS's Exceptions to the Hearing Examiner's Report and Recommendation. WTU contends that DCPS' Exceptions should not be considered by the Board because they raise legal issues not brought before the Hearing Examiner. Citing several cases in support of its position, WTU contends that the setting of the School Calendar is a mandatory subject of bargaining. WTU asserts that the Hearing Examiner's findings are consistent with the CMPA and urges the Board to accept his recommendation.

The Board is faced with a classic confrontation between employee interests and management rights. The Board, to date, has resolved scope of bargaining issues on a case by case basis including use where relevant of the traditional private sector guidelines distinguishing between mandatory and non-mandatory subjects of bargaining. The CMPA does not provide a distinct list and definition of the mandatory subjects of bargaining. The issue of whether the establishing of the opening day of school and subsequent duty days are mandatory subjects of bargaining is a matter as to which either party can fairly cite legal authority in support of its position. In reviewing cases cited, we note that the administrative bodies and courts in Alaska, Connecticut, Oregon and New Jersey have ruled that the school calendar is not a mandatory subject of bargaining. On the other hand, California, Michigan and Wisconsin have ruled that the school calendar is a mandatory subject of bargaining. However, persuasive those decisions may be, this Board is confined by the statutory limitations of the District of Columbia Comprehensive Merit Personnel Act (CMPA).

The establishment of the opening day for teachers and the determination of duty days during the school year is one that appears to affect the conditions of employment of the teachers. The Board, however, in its determination must also consider the implications for management's authority to establish educational policy as well as the impact of actions here on teachers' interests. This Board has carefully weighed the DCPS's right to establish educational policy against the effect of that policy on WTU's members' terms and conditions of employment. The Board concludes that the DCPS's right to establish educational policy

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outweighs the incidental impact of the decisions here on the teachers' interests. The Board concludes that the CMPA, which authorizes final and binding arbitration, did not intend for a third party neutral to be in a position to rule on subjects that have such high policy implications as these. The Board finds that DCPS's action of establishing the first day of school and changing Good Friday to a duty day was lawful and its procedure used in publishing the calendar was proper. Accordingly, the Complaint is dismissed based on its failure to establish a violation of the CMPA.

O R D E R

IT IS ORDERED THAT:

The Complaint is dismissed on the ground that it fails to establish a violation of the Comprehensive Merit Personnel Act as alleged.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
July 15, 1986.