

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of)

All Labor Organizations)

American Federation of State, County and Municipal Employees,)
D.C. Council 20, AFL-CIO, Locals 877, 1808, 2091, 2092, 2093,)
2096, 2097, 2401, 2784 and 2921, and on behalf of employees)
in the D.C. Department of Finance and Revenue that it has been)
certified to represent,)
1025 Vermont Avenue, N.W.)
Suite 1240)
Washington, D.C. 20005)

American Federation of Government Employees, AFL-CIO,)
Locals 383, 631, 872, 1015, 1550, 1975, 2553, 2725, 2737, 2741,)
2978, 3406, 3444, and 3721,)
8020 New Hampshire Avenue)
Hyattsville, Maryland 20783)
and)
1325 Massachusetts Avenue, N.W.)
Washington, D.C. 20005)

Washington Teachers Union)
Local 6, AFT, AFL-CIO)
4101 L Street, N.W.)
Suite 905)
Washington, D.C. 20037)

International Brotherhood of Police Officers)
Local 442,)
2139 Wisconsin Avenue, N.W.)
Washington, D.C. 20007)

International Association of Firefighters, AFL-CIO)
Local 36)
2120 Bladensburg Road, N.E.)
Washington, D.C. 20018)

University of the District of Columbia Faculty Association/)
National Education Association,)
1100 Harvard Street, N.W.)
Washington, D.C. 20009)

Council of School Officers)
1411 K Street, N.W.)
Washington, D.C. 20005)

Case No. 80-C-01

District of Columbia Nurses Association
3000 Connecticut Avenue, N.W.
Suite 101
Washington, D.C. 20008

Physicians National Housestaff Association
1411 K Street, N.W.
Washington, D.C. 20005

National Association of Government Employees
2139 Wisconsin Avenue, N.W.
Washington, D.C. 20007

National Union of Security Officers
1215 Eye Street, N.W.
Washington, D.C. 20005

Communications Workers of America, AFL-CIO
Local 2336
1015 - 20th Street, N.W.
Suite 312
Washington, D.C. 20036

Federal Employees and Transportation Workers, AFL-CIO
Local 960, LIUNA
10 - 15th Street, N.W.
Washington, D.C. 20005

Licensed Practical Nurses Association of the District of Columbia
226 Rhode Island Avenue, N.W.
Washington, D.C. 20001

Case No. 80-C-01

and

All Personnel Authorities

The Honorable Marion S. Barry, Jr.
Mayor of the District of Columbia
District Building, Room 520
1350 E Street, N.W.
Washington, D.C. 20004

District of Columbia Board of Education
Presidential Building
415 - 12th Street, N.W.
Washington, D.C. 20004

Board of Trustees
University of the District of Columbia
4200 Connecticut Avenue, N.W.
Building 39, A Level
Washington, D.C. 20008

District of Columbia General Hospital Commission
19th and Massachusetts Avenue, S.E.
Washington, D.C. 20003

Board of Library Trustees
Martin Luther King Memorial Library,
901 G Street, N.W.
Washington, D.C. 20001

Armory Board
2001 East Capitol Street
Washington, D.C. 20002

Case No. 80-C-01

AMENDED OPINION AND RULING

Although this case involves a maze of technicalities, the underlying issue is clear and plain. It is whether, almost two years after collective bargaining was adopted by law to cover labor relations in the District of Columbia, a wage increase for employees of the District agencies can be made unilaterally or must be bargained. Our ruling is that collective bargaining is required.

A petition in preliminary form was filed with the Public Employee Relations Board (PERB) on September 30, 1980 by a group of unions representing approximately 90% of the employees of the District of Columbia government, the District of Columbia Board of Education, the Board of Trustees of the University of District of Columbia, the District of Columbia General Hospital Commission, the Board of Library Trustees, and the Armory Board. A more formal amended petition was filed on October 3, 1980.

On the same day the original petition was filed, Mayor Marion S. Barry, Jr. transmitted to the District Council a recommendation that "all employees in the Career and Exceptional Services"--which means most but not all public employees in the District--be given "an across the board 5 percent increase," to be effective as of October 1, 1980.

It was made plain that no bargaining about the proposed increase was contemplated. This was explained on the basis that, "As of this time, compensation bargaining units with which we would negotiate have not been established by the PERB, nor have the representatives or method for selecting the representatives of these compensation units been identified."

The course of action followed by the Mayor was entirely consistent, at least technically, with the letter of the applicable laws. The September 18, 1980 Emergency Amendment (3-152) to the Comprehensive Merit Personnel Act of 1978 required the Mayor to make his compensation recommendations to the Council on or before September 30, 1980, and he had made his intentions publicly known in advance. The District of Columbia Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Law 2-139, Section 1716 (b), makes the establishment of compensation bargaining units by the PERB a condition of collective bargaining, and no such units had been established.

The question here is whether the union petition for unit determination, filed literally minutes before the Mayor's message was transmitted to the Council, saved the right to bargain collectively and created an obligation on the part of the Mayor and the Board of Education and the Trustees of the University of the District of Columbia to submit the compensation proposal to such bargaining.

Our ruling that the petition did have this saving effect is not based on the technicality that the unions won a split-second race against time, although this technicality has obvious importance. We place larger emphasis on two broader considerations.

One of these considerations involves other important and relevant time factors in this situation. Although the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139, was passed in late 1978, the PERB did not become operative for another 18 to 20 months, until April or June of this year. Its hurriedly issued regulations mirror in a number of critical respects, relevant here, the complexities, confusion, and inconsistencies that characterize the 1978 legislation itself. The pervasive truth, recognized by everyone involved in this situation, is that this statute was originally, and remains, in such form that to try to steer by its technicalities alone is to get hopelessly entangled and lost.

At least reasonably diligent effort has been made on all sides, during the relatively brief period since the PERB became operative and the labor relations sections of the CMPA therefore effective as a practical matter, to proceed toward necessary disposition of the broad unit determination matter.

On June 10, 1980, the Director of the Mayor's Office of Labor Relations and Collective Bargaining (OLRCB) sent a letter to the PERB submitting "the City's recommendation concerning appropriate compensation bargaining units for these (Fiscal Year 1981) initial negotiations only." (Underscoring in the original.)

On June 23, 1980, the Board sent out on its own motion notices for a hearing of both personnel authorities and labor organizations to ascertain appropriate compensation bargaining units for the large number of employees "connected with the performance of work in the function of public safety." A hearing was held on this matter on July 23, 1980.

Two days before that hearing, representatives of the OLRCB and of the International Brotherhood of Police Officers, Local 442, and the International Association of Firefighters, Local 36, filed a joint petition with the Board asking that, with specified exceptions, "all sworn uniformed and plain clothes police officers...and all sworn uniformed firefighters" be certified as a unit "to allow bargaining for fiscal year 1981 only." This petition was transmitted by the PERB Executive Director to the Hearing Officer in the public safety proceeding. So was the June 10 letter from OLRCB Director Donald H. Weinberg. There was obvious overlap among these three contemplated courses of unit determination action. It

illustrates the time problem that has been inherent in this situation that the Hearing Officer's recommendations in this case have been received by the Board on October 9th, 1980.

Still another compensation bargaining unit petition prepared covering approximately 1300 employees in the Department of Environmental Services was filed with the Board on September 17, 1980 by the OLRCB and District Council 20, Local 2091, of the American Federation of State, County and Municipal Employees.

The central and controlling characteristic of this record is not procrastination or delay on the part of anybody. It is rather that the time interval between (i) the establishment of the machinery and procedures for unit determination under the CMPA and (ii) the initiation of the Fiscal Year 1981 pay adjustment was so short that any adequately considered final determination was impossible as a practical matter.

The related but still broader consideration has already been referred to. It was formally decided by action of the District of Columbia Council two years ago that labor relations in the District are to be governed through the collective bargaining process. This decision was a key step toward making self-government work in what had been, until very recently, America's last colony. The decision brought the labor law of the District into line with the labor laws of most states in the country. The collective bargaining principle has continued to be widely espoused during these two years and was re-endorsed by the Mayor in his September 30, 1980 message to the Council.

Under these circumstances, a decision that collective bargaining is not to become effective as a practical matter for still another year and that this year's pay adjustment is to be unilaterally determined would be a disillusioning mockery. If the technicalities of the law required such a decision, there would be no choice. But they don't. These technicalities permit and the principles of reason require that the unit determination which is the prerequisite of collective bargaining be made and that it be made immediately.

This leaves the question of what collective bargaining unit should be established. The 1978 legislation includes a number of provisions bearing on this issue. There is not time to complete the extensive analysis and to hold the extended hearings that will be required to make an ultimate unit determination. We therefore make an interim determination, to control for this pay bargaining round alone, without prejudice to future unit determinations for compensation or other purposes.

The union coalition's September 30 request, as amended on October 3, asks the PERB to establish a "multi-employer multi-union unit" which would include "every represented employee in the District of Columbia Government, the Public School System, the University of the District of Columbia, the Library, D. C. General Hospital and the Armory"--some 30,000 to 36,000 employees. This is approximately 90% of all employees of the named agencies of government, all represented by one or another of the petitioning unions. The other three-to-four thousand employees are not represented by any unions. By asking for a multi-employer as well as multi-union unit, the union coalition is apparently contemplating joint bargaining by the employer agencies as well as by the unions.

The Board has considered a number of possible interim unit determinations which would take account of such factors as occupational groupings, the other petitions previously filed covering certain classifications of employees, the separation (to a limited extent) of the employer agencies, and the previously established pattern of union organization. All of these elements are relevant. They will all be considered, along with other factors, in the Board's ultimate unit determinations.

For purposes of this interim unit determination, however, two practical factors have obvious controlling significance. One is that the Mayor's September 30 recommendation to the Council is for an "across-the-board" increase (of 5%) to a very substantial majority of all employees in the District; it extends to employees of all agencies (although there are some technical and unresolved questions involved here) and makes no distinctions between occupational groupings. The other practical consideration is that all of the unions representing employees in the District have responded to the Mayor's across-the-board action, which had been clearly indicated prior to his message to the Council, by forming a complete coalition for purposes of bargaining on this proposed wage increase.

These two sets of coinciding actions by the parties have a practical effect for outweighing whatever significance might be attached to the Board's identification of possibly conflicting statutory provisions.

They create a practicable form for going ahead with bargaining. Our determination is that all union-represented employees in the various District agencies shall constitute a unit for the purposes of Fiscal Year 1981 bargaining on wages.

There remains the question of whatever may be the intended implications of the coalition unions' request for a "multi-employers" unit. If this is intended, as appears the case, to be a request for PERB action requiring joint bargaining by representatives of the Mayor and of the other District agencies which have separate boards, the request is denied.

There is developing indication that the other agencies are considering or may have already decided upon 1981 adjustments in the same pattern Mayor Barry has proposed. There is also the additional fact that some Board of Education and University of the District of Columbia employees, though not others, came within the terms of the Mayor's September 30, 1980 recommendation.

Despite these considerations, however, the PERB is not disposed, even if it has the authority (which appears dubious), to order joint bargaining by the various District employing agencies. Previous litigation (Evans, et al. v Washington, et al., C.A. No. 9393-76, D.C. Sup. Ct., September 7, 1978) has indicated what may or may not be a relevant stricture on the authority of the Office of the Mayor of the District with respect to wage adjustments for Board of Education employees. Certain employees of these other agencies are clearly not covered by Mayor Barry's September 30 recommendation. Representatives of the Board of Education have indicated, at the October 7, 1980 hearing, a different position from the Mayor's regarding the duty to bargain under the present circumstances.

Here again, good sense suggests and virtually dictates an answer which too much emphasis on technicalities might obscure. This good sense is that the union coalition bargain separately, if the employer agencies decide to maintain independent stances, with representatives of each of these agencies. It would appear to make equally good sense for these agencies to coordinate and even combine their representatives if they find a unity of positions.

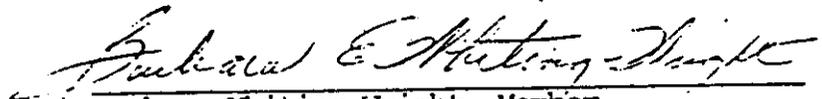
Finally it must be made clear that this determination by the Board represents only a clearing of the decks so that collective bargaining may proceed regarding the wage increase issue for Fiscal Year 1981 in accordance with the District of Columbia Comprehensive Merit Personnel Act of 1978. The Board's action cannot properly be construed as reflecting in any way on the propriety of Mayor Barry's September 30 recommendation. The decision is rather that the unions' response to this action, though taken at the last minute, preserved the right to bargain regarding the matter covered by that recommendation.

There will still be serious questions about how this bargaining is to proceed with respect to various issues that may arise under the 1978 legislation. The unions have asked formally, in connection with the October 7 hearing, that the Board take additional steps at this time regarding these issues. This would be improper. We simply note our recognition that these issues exist and that some give and take on both sides is going to be necessary to achieve the purpose of this ruling, which is to make collective bargaining work in the District of Columbia, starting now.

Determination

1. It is determined that all union-represented employees among those described in Sections 203 and 406 of the Comprehensive Merit Personnel Act of 1978 constitute a unit for the purpose of wage increase bargaining for Fiscal Year 1981. This is an interim determination and is without prejudice to future unit determinations for compensation or other purposes.
2. Bargaining for the above-stated purpose by the coalition of unions filing a petition for unit determination with Board on September 30, 1980, amended October 3, 1980, is appropriate. This bargaining shall be conducted separately, however, with representatives of the personnel authorities above identified in Section 203 and 406 of the Comprehensive Merit Personnel Act of 1978, except as those authorities may choose to coordinate or combine their representations.


Karl Carter, Member


Barbara Whiting-Wright, Member


Nicholas Zumas, Member


Willard Wirtz, Chairman