Notice: This decision may . formally revised before it is publishea a the District of Columbia Register. Parties should promptly notify this office of any formal errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
American Federation of Government Employees, AFL-CIO; American Federation of State, County and Municipal Employees, D.C. Council 20, AFL-CIO; National Association of Government Employees, SEIU, AFL-CIO; International Brotherhood of Police Officers, AFL-CIO; Communication Workers of America; Laborers International Union; Service Employees International Union, District 1199E-DC, AFL-CIO; the Fraternal Order of Police; and the respective locals of the aforesaid labor organizations representing collective bargaining units in Compensation Units 1 and 2,	PERB Case No. 97-U-01 Opinion No. 501
Complainants,	
v.	
Government of District of Columbia, et al.,	
Respondent.	

OPINION [1]/

On October 1 and 10, 1996, the above-captioned labor organizations, representing collective bargaining units in Compensation Units 1 and 2 (Complainants), filed an Unfair Labor Practice Complaint against the Government of the District of Columbia (Respondent) and Motion for Preliminary Injunction and Temporary Restraining Order. The Complainants charge that during attempts to negotiate a successor compensation agreement, the Respondent did not bargain in good faith under the Comprehensive Merit Personnel Act (CMPA). Complainants further assert that the

[1]/ In view of the time sensitive nature of this case, the Board issued its Order granting preliminary relief on November 5, 1996, and advised the parties that this Opinion would follow.

Respondent has failed to maintain the status quo with respect to certain compensation matters, including dental and optical benefits, after the Complainants notified the Board of an automatic impasse pursuant to D.C. Code § 1-618.17(f)(1) and (4). Complainants assert that by these acts and conduct, the Respondent committed unfair labor practices proscribed by CMPA, as codified under D.C. Code § 1-618.4(a)(1), (3) and (5). [2]/

In its Answer to the Complaint and Response to the Motions, the Respondent denied that it did not bargain in good faith and contended that the Complaint and Motion did not meet the criteria under Board Rule 520.15 for granting the requested preliminary relief. The Respondent further contended that it was under no obligation to maintain the status quo following the expiration of the parties' compensation agreement since the Complainants' declaration of an automatic impasse, filed on the day the agreement expired, i.e., September 30, 1990, was not "at a reasonable time in advance of the District budget-making process" as required under D.C. Code § 1-618.17(b).[3]/

Pursuant to Board Rule 520.10, briefs were filed by the parties and oral argument was held before the Board on the Motion for Preliminary Relief. Upon review of the parties' pleadings, oral argument and the record as a whole, the Board, for the reasons discussed below, rejected the Respondent's interpretation of D.C. Code §1-618.17(b) and (f) and granted the Complainants'

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[2]/ D.C. Code § 1-618.17(f)(1) and (4), in pertinent part, provide as follows:

> (f) (1) Negotiations among the parties to existing contracts shall commence no later than 90 days before the expiration of the existing contracts. The failure of any party to begin negotiations by 90 days before the expiration of existing contracts, without the express written consent of all parties, shall constitute an automatic impasse. Any party may notify the Executive Director of the Public Employee Relations Board in writing of this automatic impasse. ....
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> (4) If procedures set forth in paragraph 1, 2, or 3 of this subsection are implemented, no change in the status quo shall be made pending the completion of mediation and arbitration, or both. (Emphasis added.)

[3]/ The parties' allegations and contentions set forth in the text were made in their original pleadings and several amendments and supplements filed between October 10 and 31, 1996.

Motion pending a final disposition in this proceeding.[4]/ Both parties were directed to proceed with the resolution of the automatic impasse in accordance with D.C. Code § 1-618.17(f).

There was no dispute that the parties failed to commence bargaining over compensation by the 90th day prior to the expiration of their compensation agreement and that the Complainants notified the Board of this fact on September 30, 1996, the expiration date of that agreement. Once the procedures set forth in D.C. Code § 1-618.17(f)(1), (2) or (3) have been implemented, D.C. Code § 1-618.17(f)(4) expressly and unambiguously requires that no change in the status quo be made pending the completion of those procedures, i.e., mediation and, if necessary, arbitration. Respondent argues, however, that this provision must be read in conjunction with the requirement under D.C. Code § 1-618.17(b), that compensation negotiations commence "at reasonable times in advance of the District's budget-making process". The Respondent contends that the Complainants' failure to commence compensation bargaining or invoke the automatic impasse provision at a reasonable time in advance of the budget-making process in effect extinguished or relieved the Respondent of any obligation to maintain the status quo under Section 1-618.17(f)(4).

In support of its position, the Respondent cites our Decision and Order in Teamsters, Local Union No. 639, a/w IBTCWHA, AFL-CIO v. D.C. Public Schools, 38 DCR 6698, Slip Op. No. 267, PERB Case No. 90-U-05 (1991). However, the facts of that case is clearly distinguishable. That case involved an issue of the timeliness of a bargaining demand where no previous bargaining relationship had existed. There was no existing compensation agreement and therefore no issue concerning any automatic impasse under D.C. Code § 1-618.17(f)(1). The automatic impasse circumstances and requirements of Section 1-618.17(f)(1) and (4) simply did not apply to that case.

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[4]/ We find it unnecessary to reach contentions concerning the impact of the alleged lack of good faith by both parties during efforts to commence negotiation on the granting of this relief. That issue, if necessary, will be resolved by a hearing examiner after the development of a complete record. Even in the absence of bad faith an agency can commit an unfair labor practice under D.C. Code § 1-618.4(a) by refusing to comply with the requirements of the compensation impasse procedures of D.C. Code § 1-618.17. See, University of the District of Columbia Faculty Assoc. and Univ. of the District of Columbia, Slip Op. 485, PERB Case No. 96-U-14 (1996) and Teamsters Local Unions No. 639 and 730 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Teamsters) v. District of Columbia Public Schools, Slip Op. No. 400, PERB Case 93-U-29 (1994).

Nowhere under the compensation impasse procedures does it expressly provide that timely bargaining under Section 1-618.17(b) is a precondition to automatic impasse under Section 1-618.17(f)(1). Moreover, in our view, the Complainants attempt, as late as September 30, 1996, to engage in negotiations over compensation cannot be deemed untimely in the context of an automatic impasse in light of the provisions of Section 1-618.17(f)(2). Section 1-618.17(f)(2) provides that, once started, "[n]egotiations shall continue among the parties until a settlement is reached or 180 days after negotiations have commenced." (emphasis added.) Under the facts of this case negotiations could have commenced as late as July 2, 1996, without triggering the automatic impasse provisions of Section 1-618.17(f)(1). Under this scenario, on September 30, 1996, Section 1-618.17(f)(2) would have allowed 90 additional days of negotiations before an automatic impasse could exist.

While we recognize that negotiations did not commence 90 days before the expiration of the existing compensation agreement, it is clear that Section 1-618.17(f)(2) authorizes and accommodates compensation negotiations for a successor to a compensation agreement that expires on September 30, for up to 90 additional days. Therefore, within the statutory circumstances and context of Sections 1-618.17(f)(1) and (2), we cannot find that the requirements of Section 1-618.17(b) can serve to extinguish the Complainants' right or the Respondent's obligation to bargain over fiscal year 1997 despite the Complainants' efforts to bargain over a successor to their compensation agreement as late as September 30, 1996. In view of the above, we find no basis for lifting the mandate of Section 1-618.17(f)(4) that no change be made to the status quo once the Complainants implemented the provisions of Section 1-618.17(f) on September 30, 1996.

Based on the parties' pleadings and supporting affidavits, there is a basis for finding that the CMPA, as codified under D.C. Code Sec. 1-618.17(f), has been violated by the Respondent. In view of Respondent's "insistence on going forward with its unilateral changes [to the status quo of the parties compensation agreement] --conduct that we find to be in violation of their obligation under the CMPA-- before the Board could render a Decision and Order upon the full exercise of its processes, the [Respondent] has interfered with the Board's processes and rendered inadequate, under the circumstances, the Board's ultimate remedial authority." International Brotherhood of Police Officers, Local 445 v. D.C. Department of Administrative Services, 43 DCR 3553, Slip Op. No. 382, PERB Case No. 94-U-07 (1994). Under the facts of this case, we conclude that the Respondent's actions constituting this violation gives rise to

the required prescribed impact under Board Rule 520.15 for which preliminary relief is appropriate. [5]/

THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

November 8, 1996

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[5]/ The parties' pleadings and supporting documented correspondence between the parties establish that negotiations did not commence 90 days before the September 30, 1996 expiration of the parties' agreement. No written agreement exists that would, otherwise, suspend application of the automatic impasse provision of Section 1-618.17(f)(1). Therefore, we find the violative conduct meets the criteria for granting preliminary relief that the violation be "clear cut and fragrant". The impact of this violation on over 15,000 bargaining unit employees in Compensation Units 1 and 2, meets another criteria that the "effect of the alleged unfair labor practice is widespread". Granting preliminary relief will permit the collective bargaining process to proceed in accordance with the statutory time frame and requirements prescribed under D.C. Code § 1-618.17(f). Given the time sensitive nature governing statutory impasse procedural requirements, the Board's ultimate remedy would be clearly inadequate.