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GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

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In the Matter of:)
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International Brotherhood of)
Police Officers, Local 445,)
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Complainant,)
)
v.)
)
District of Columbia Department)
of Administrative Services,)
Bureau of Protective Services,)
)
Respondent.)
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	PERB Case No. 94-U-07)
	Opinion No. 376)

DECISION AND ORDER ON
REQUEST FOR PRELIMINARY RELIEF

On December 17, 1993, the International Brotherhood of Police Officers, Local 445 (IBPO), pursuant to Board Rule 520.15, filed a request for preliminary relief in conjunction with the filing of an Unfair Labor Practice Complaint with the Public Employee Relations Board (Board). The Complaint charges that Respondent D.C. Department of Administrative Services, Bureau of Protective Services (DAS) violated D.C. Code Sec. 1-618.4(a)(1) and (5) of the Comprehensive Merit Personnel Act (CMPA) by "unilaterally drug testing bargaining unit employees without first bargaining with the IBPO over the impact and implementation of a policy concerning drug testing". (Compl. at 4.) On January 3, 1994, the Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of DAS, filed an Answer to the Complaint and Complaint's Motion for Preliminary Relief. OLRCB contends that the facts and circumstances of the case do not support such relief.^{1/} IBPO filed a Motion for Hearing Date and Reply to OLRCB's Answer on January 7, 1994.

^{1/} The Board's authority to issue orders providing temporary or preliminary relief is set forth in D.C. Code Sec. 1-618.13(b).

IBPO requests that the Board grant preliminary relief ordering DAS "to cease and desist implementation of drug testing bargaining unit employees of the Union until such time as negotiations over the impact and implementation of drug testing are completed." (Compl. at 1.) IBPO further requests that the Board "enjoin the Respondent from further testing of bargaining unit employees pending completion of bargaining." Id. We have stated that "[i]n deciding whether or not to grant a request for preliminary relief, we are limited to the evidence presented in support of such a request." AFSCME D.C. Council 20, et al. v. D.C. Gov't, et al., DCR, Slip Op. No. 330 at 4, PERB Case No. 92-U-24 (1992). Under Board Rule 520.15, a request for preliminary relief must "be accompanied by affidavits or other evidence supporting the request.

The allegations supporting IBPO's request are not verified by any affidavits or other evidence supporting the basis of the request. The Complainant's request turns on its assertions that representatives of IBPO made a demand to bargain on December 1, 1993, prior to the initial drug testing by DAS of any bargaining-unit employee. The only evidence, however, accompanying IBPO's request were three letters between the parties dated December 14, 15 and 16, 1993. None of the correspondence represents probative evidence that verifies or documents that this request was made at that time.^{2/}

^{2/} According to the Complaint, "[o]n or about December 1, 1993, [DAS] first notified IBPO of its intention to require bargaining unit employees to undergo drug testing as a condition to renewing their Commissions..." (Compl. at 1.) The Complainant further alleges that "[o]n or about December 1, 1993, the IBPO, Local 445 Union President, Officer Dante Cross informed management that the Union desired to exercise its right to negotiate over the impact and implementation of any decision to test bargaining unit employees for drugs as a condition of renewing the[ir] Commission." (Compl. at 2.) No verification, affidavits or other evidence was submitted to support these critical elements of the alleged violation.

The December 14, 1993 letter was from OLRCB, on behalf of DAS, to IBPO counsel, confirming DAS invitation that day to negotiate drug-testing procedures. IBPO's counsel responds in the December 15, 1993 letter. The December 16, 1993 letter is from a DAS management official responding to an IBPO representative's December 10, 1993 request for a list of officers that had been tested for drugs pursuant to the implementation of the disputed drug-testing policy. No affidavits or other documents accompanied IBPO's request or other pleadings.

These documents, however, do tend to support Complainant's assertion that DAS has been willing to bargain since December 14, 1993. (Compl. at 3.) Complainant's request for preliminary relief, as we previously noted, was filed December 21, 1993.^{3/} Therefore, in view of the above, we find IBPO's request for preliminary relief neither warranted at this time nor supported by the evidence presented.^{4/} Our ruling, however, is made without prejudice to IBPO to refile a request meeting the requirements of Board Rule 520.15, if a change in the current circumstances should warrant the Board's reconsideration of such relief.

ORDER

IT IS HEREBY ORDERED THAT:

The request for preliminary relief and motion for a hearing date prior to January 16, 1994, is denied. Complainant may have leave to refile a request for preliminary relief, meeting the requirements of Board Rule 520.15, should a change in the circumstances addressed in this Opinion warranting such relief arise.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

January 12, 1994

^{3/} In its Answer to IBPO's request, OLRCEB states that DAS has "agreed to suspend [drug] testing until January 16, 1994 to allow the parties time to negotiate the Drug Testing Procedures." (Ans. at 4.) We state, however, that should DAS resume testing affected bargaining-unit employees pursuant to the disputed drug-testing policy prior to discharging whatever statutory obligation under the CMPA the Board may determine it has, it does so at its own risk.

^{4/} We further conclude, for the reasons we articulated in AFSCME D.C. Council 20, et al. v. D.C. Gov't. et al., DCR, Slip Op. No. 330, PERB Case No. 92-U-24 (1992), that IBPO's request for preliminary relief is inappropriate under the criteria articulated by the D.C. Court of Appeals in Automobile Workers v. NLRB, 449 F.2d 1046 (CA DC 1971). Finally IBPO argues in its Reply, as a basis of granting its request for preliminary relief, that employees' constitutional rights would be irreparably harmed by DAS' disputed drug-testing initiative. The Board, however, lacks jurisdiction over claims alleging the violation of such rights.