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In July 1995, IBCO, a labor organization representing correctional facility employees at various locations throughout the United States, commenced an organizing campaign to become the collective bargaining representative of employees at DOC. These employees are currently represented by the Fraternal Order of Police/Department of Corrections Labor Committee (FOP). IBCO's organizing efforts in question took place during the open period of the collective bargaining agreement covering this unit of DOC employees that is scheduled to expire on September 30, 1996. Board Rule 502.9(b).

With respect to the acts and conduct of DOC alleged as unfair labor practices by IBCO, the parties stipulated to the following:

6. On or about July 24, 1995, the IBCO sent four individuals to the Washington, DC area to help its Washington, DC Regional Office organize the bargaining unit employees of the Agency for the purpose of gaining a showing of interest.

7. On or about July 24, 1995, Mr. John Henderson, Warden of the Occoquan facility in Lorton, Virginia, advised the IBCO that the Agency prohibited IBCO from distributing literature to bargaining unit employees in the parking lot of the facility. This conversation occurred in the parking lot of the Occoquan facility. Mr. Henderson ordered the IBCO off the property. IBCO left the property immediately thereafter.

8. During the afternoon of July 24, 1995, Mr. Edward J. Smith, Washington Regional Counsel for NAGE/IBCO, and Mr. John M. Foley, National Vice President, NAGE/IBCO, returned to the Occoquan facility to speak with Mr. Henderson about the prohibition discussed in paragraph 7 above. Mr. Henderson restated the Agency's position that the IBCO was prohibited from distributing literature on the grounds of the Occoquan facility.

9. On or about July 26, 1995, the IBCO learned that Ms. Margaret Moore, Director, Department of Corrections, distributed a Memorandum, dated July 20, 1995, stating the following:

a. representatives of labor organizations, other than those named above [FOP/DOC and Doctor's Council], are prohibited from entering the Department of Corrections premises during employee duty hours.

b. employees of the Department, who represent labor organizations other than those named above, are prohibited from engaging in union organizing during duty hours and on Department property. Additionally, employees who wish to speak to representatives from other labor unions must also be in a non-duty status and in non work areas.

In addition, the Memorandum stated that failure to follow this directive may result in disciplinary action. See Attachment 1.

10. In the past, the Agency has consistently permitted vendors and salespersons to conduct business in the parking lots of its facilities.

11. During the last organizing campaign pursued by the FOP/DOC the Agency condoned campaigning by FOP/DOC officials on the premises of the Agency, including its parking lots.

D.C. Code § 1-618.4(a)(2) proscribes as an unfair labor practice, among other things, the "contributing of financial or other support" to "any labor organizations" by "[t]he District, its agents and representatives". (emphasis added.) In determining a violation of this provision by the District with respect to its treatment of competing labor organizations, the Board has adopted the standard applied by the National Labor Relations Board to a parallel provision under the National Labor Relations Act. The Board observed that D.C. Code § 1-618.4(a)(2), as Section 8(a)(2) under the NLRA, serves to protect the right "of guaranteeing complete and unhampered freedom of choice to the employees in the selection of a bargaining unit representative, either for or against the proposition or as between competing unions." (emphasis added.) Teamsters, Local Union No. 1714, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO v. D.C. Department of Corrections, Slip Op. No. 360 at 5, PERB Case No. 92-U-09 (1993), quoting NLRB v. Keller Ladders Southern, Inc., 405 F.2d 663, 667 (5th Cir. 1968). ^{1/}

^{1/} PERB Case No. 92-U-09 presented circumstances that were the inverse of the instant facts. There, Teamsters, Local Union 1714, the then-incumbent representative of DOC employees, filed an unfair labor practice complaint alleging a violation of D.C. Code § 1-618.4(a)(2) by DOC's favorable treatment of FOP, the outside union at that time. The Board also acknowledged in that case that under the CMPA the principle of guaranteeing complete and unhampered freedom of choice to employees applies equally to
(continued...)

IBCO asserts that DOC's promulgation of the July 20, 1995 Memorandum and its enforcement against IBCO representatives on two occasions on July 24, at DOC's Occoquan facility constitutes a violation of Section 1-618.4(a)(1) and (2). (Stip. 6, 7, 8 and 9.) DOC acknowledges that in the last organizing campaign for this unit of employees, in which FOP successfully challenged the then-incumbent Teamsters Local Union No. 1714, DOC permitted FOP, the outside union, to solicit employees on its premises. (Stip. 11.) Moreover, DOC's tolerance of outside solicitation of its employees on DOC premises was not limited to unions. (Stip. 10.)

Even if DOC had adopted its current solicitation policy before IBCO came on the scene, we find that policy and its enforcement has the effect of hampering employees' freedom of choice in the selection of a bargaining representative in accordance with the CMPA and Board Rules. We find that by limiting its no solicitation policy to outside unions, DOC unlawfully contributed support to FOP in violation of D.C. Code § 1-618.4(a)(2). We further find that by maintaining a policy that places restrictions on the exercise of employee rights under D.C. Code § 1-618.6(a)(1) and (2) on behalf of a non-incumbent union, DOC has also violated D.C. Code § 1-618.4(a)(1). (Stip. 9(b).)

ORDER

IT IS HEREBY ORDERED THAT:

1. The Department of Corrections (DOC), its agents and representatives shall cease and desist from interfering, restraining or coercing its employees in the exercise of rights guaranteed by the Labor-Management subchapter of the Comprehensive Merit Personnel Act (CMPA) by hampering employees' access to any labor organization, including the International Brotherhood of Correctional Officers/National Association of Government Employees, SEIU, AFL-CIO, (IBCO), in favor of the incumbent, the Fraternal Order of Police/Department of Corrections Labor Committee (FOP).
2. DOC, its agents and representatives shall cease and desist from interfering, restraining or coercing its employees by maintaining or enforcing a policy that restricts employees' rights guaranteed by the Labor-Management subchapter of the CMPA to organize a labor organization and to form, join, or assist any labor organization.

¹(...continued)

allegations of non-enforcement of lawful restrictions on the exercise of employee rights. Slip Op. No. 360 at 5.

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3. DOC shall issue a written statement to each bargaining unit employee retracting or rendering neutral its union organizing policy reflected in its July 20, 1995 Memorandum.

4. DOC, its agents and representatives shall cease and desist from interfering, restraining or coercing, in any like or related manner, employees represented by FOP in the exercise of rights guaranteed by the Labor-Management subchapter of the CMLA.

5. DOC shall, within ten (10) days from the service of this Decision and Order, post the attached Notice, dated and signed, conspicuously on all bulletin boards where notices to these bargaining-unit employees are customarily posted, for thirty (30) consecutive days.

6. DOC shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from the issuance of this Decision and Order, that the Notice has been posted accordingly.

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

April 11, 1996



Public
Employee
Relations
Board

Government of the
District of Columbia

415 Twelfth Street, N.W.
Washington, D.C. 20004
[202] 727-1822/23
Fax: [202] 727-9116



NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS, THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 470, PERB CASE NO. 95-U-23 (April 15, 1996).

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board had found that we violated the law and has ordered us to post this notice.

WE WILL cease and desist from interfering, restraining or coercing employees in the exercise of rights guaranteed by the Labor-Management subchapter of the Comprehensive Merit Personnel Act (CMPA) by hampering employees' access to any labor organization, including the International Brotherhood of Correctional Officers/National Association of Government Employees, SEIU, AFL-CIO, (IBCO), in favor of the incumbent, the Fraternal Order of Police/Department of Corrections Labor Committee (FOP).

WE WILL cease and desist from interfering, restraining or coercing employees by maintaining or enforcing a policy that restricts employees' rights guaranteed by the Labor-Management subchapter of the CMPA to organize a labor organization and to form, join, or assist any labor organization.

WE WILL NOT, in any like or related manner, interfere, restrain or coerce, employees in their exercise of rights guaranteed by the Labor-Management subchapter of the CMPA.

Department of Corrections

Date: _____ By: _____
Director

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning the Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 415-12th Street, N.W. Room 309, Washington, D.C. 20004.
Phone: 727-1822.