

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

The American Federation of State,
County and Municipal Employees,
Council 20, Local 2093, AFL-CIO,

Complainant,

and

The District of Columbia Board of
Education,

Respondent,

and

The International Brotherhood of
Teamsters, Local Union Nos. 639
and 730,

Respondent.

PERB Case No. 86-U-01
Opinion No. 133

DECISION AND ORDER

On December 24, 1985, the American Federation of State, County and Municipal Employees, Council 20, Local 2093, AFL-CIO (AFSCME), filed an Unfair Labor Practice Complaint (ULP) against the District of Columbia Board of Education (DCBE) and the Teamsters, Local Union Nos. 639 and 730 (Teamsters).

In its Complaint, AFSCME alleged that DCBE member Mr. Calvin Lockridge, and the Teamsters' caused to be published in the Teamsters' newsletter, the "Local Vocal" both gross misrepresentations by Mr. Lockridge concerning AFSCME's role as bargaining agent for 2,400 blue collar workers employed by DCBE and Mr. Lockridge's endorsement of the Teamsters bid to unseat AFSCME as bargaining agent for the same 2,400 workers. Based on these facts, the Complaint charges that DCBE through its agent Mr. Lockridge, violated Section 1704 of the Comprehensive Merit Personnel Act (CMPA), D.C. Code Section 1-618.4(a)(1), (2) and (3), by unlawfully endorsing, assisting and promoting the election campaign of the Teamsters promising increased benefits and improved working conditions if the Teamsters were elected and threatening to decrease benefits and working conditions if AFSCME remains the exclusive bargaining agent.

The Complaint also alleges that the Teamsters violated Section 1704(b) of the CMPA D.C. Code Section 1-618.4(b)(1) and (2), by "assisting, encouraging, publishing and distributing the remarks of the Employer that violated the sections of the CMPA discussed above" and "by discriminating, interfering [sic] with, restraining and coercing employees in the exercise of their organizational and representational rights."

On February 4, 1986, AFSCME filed an Amended Complaint alleging that "the Unfair Labor Practice activity charged in the original complaint has continued since the date of the original filing."

As a remedy, AFSCME requests that the Public Employee Relations Board (Board) dismiss the Recognition Petition filed by the Teamsters (PERB Case No. 85-R-09). In that case the Teamsters are seeking an election in which the 2,400 employees of DCBE will have the opportunity to choose which, if any, union it wants as their exclusive representative.

On January 14, 1986, the Teamsters filed its "Response in Opposition to the Complaint." In its Response, the Teamsters deny any violation of the CMPA. The Teamsters do not deny publishing Mr. Lockridge's statements in the "Local Vocal". However, it contends that the statements by Mr. Lockridge were not the official policy of DCBE but were merely the opinion of an individual member. The Teamsters cited the DCBE By-Laws, Sections 100.3-100.5, as the procedure for the establishment and dissemination of the DCBE official policy. In addition, the Teamsters argue that, even if a violation of the CMPA were proven, the appropriate remedy would be a cease-and-desist order rather than the dismissal of its Recognition Petition. The Teamsters request that the Board dismiss the Complaint.

On January 15, 1986, DCBE filed its "Answer" to the Complaint denying that Mr. Lockridge's statements can be imputed to DCBE. DCBE contends that it neither authorized nor ratified Mr. Lockridge's statements. DCBE further argues that, even if Mr. Lockridge's statements violated the CMPA, the remedy sought by AFSCME is inappropriate and beyond the authority of the Board. Finally, DCBE requests that the Board defer to Case No. 85-R-09 in which AFSCME has filed a Motion to Dismiss based on the same conduct. In its brief the DCBE referred to its Rules, Title 5 of the Municipal Regulations Sections 100.3-100.5, 501.6 and 501.7, in support of its position that Mr. Lockridge's statements were not those of the DCBE. DCBE also argued that the Superintendent of Schools, not the DCBE, has personnel authority over the employees in the units in question.

The issue before the Board is whether the described actions constitute a violation of the CMPA by the DCBE on the Teamsters.

There is no dispute among the parties as to the facts. Consequently the Board did not refer this matter to a hearing examiner. This dispute is the result of statements made by Mr. Lockridge during and after his campaign to be reelected to the DCBE. The campaign coincided with a concentrated challenge by the Teamsters to AFSCME's representation of DCBE's blue collar workers. DCBE made no effort either to disavow or to ratify the statements by Mr. Lockridge.

The Board has reviewed this matter. It finds that the DCBE can be held responsible for the actions of an individual member and that DCBE Rules, such as those on which it seeks to rely here, can not protect DCBE from responsibility for the actions of its members when those actions violate the CMPA. ^{1/} The intent of Section 1704 of the CMPA is to allow workers the freedom to exercise their collective bargaining rights. Whether the actions of an individual member can be imputed to DCBE in any particular case depends on the circumstances.

In this case there is a combination of peculiar facts. First, the statements by Mr. Lockridge began during an election campaign in which the candidate for election ran by himself and clearly did not have the sole power to bring about official action by the DCBE regarding the statements at issue. Second, given the extreme nature of some of the statements it is unlikely that the workers perceived them as an action or the certainty of ultimate action by the DCBE. We note, in this connection, that the workers did the very act that Mr. Lockridge was attempting to prevent them from doing by ratifying the AFSCME contract on February 1, 1986. In the circumstance as presented here and after careful consideration the Board finds that Mr. Lockridge's actions cannot be imputed to the DCBE.

It follows that if Mr. Lockridge's statements did not violate the CMPA, then the Teamster's publication and distribution of them would not violate the CMPA.

In reaching this conclusion the Board does not reach the question of whether, if responsibility by the employer were found, the actions by the DCBE or the Teamsters would constitute a violation of the CMPA. Accordingly, the Complaint fails to establish a violation of the CMPA by either DCBE or the Teamsters.

^{1/} The DCBE Rules, Title 5 of the Municipal Regulations, predates the Comprehensive Merit Personnel Act.

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ORDER

IT IS ORDERED THAT:

The Complaint be dismissed for failure to establish a violation of Section 1704 of the CMPA, D.C. Code Section 1-618.4.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

March 27, 1986