GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

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| In The Matter Of: | |
| American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2743 AFL-CIO, | |
| Complainant, | |
| v. | PERB Case No. 92-U-23 Opinion No. 331 |
| Department of Consumer and Regulatory Affairs, | |
| Respondent. | |

DECISION AND ORDER ON
REQUEST FOR PRELIMINARY RELIEF

On September 8, 1992, the American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2743, AFL-CIO (AFSCME) filed a Verified Unfair Labor Practice Complaint with the Public Employee Relations Board (Board). Complainant charges the Respondent D.C. Department of Consumer and Regulatory Affairs (DCRA) with violating D.C. Code Sec. 1-618.4(a)(1), and (5) of the Comprehensive Merit Personnel Act (CMPA). Specifically, AFSCME alleges that DCRA dealt directly with bargaining unit employees concerning the implementation of 12 furlough days in FY' 93 pursuant to the Omnibus Budget Support Temporary Act of 1992 (Act), thereby bypassing AFSCME as the exclusive bargaining representative of these employees. Also on September 8, 1992, AFSCME, in a separate letter, requested preliminary relief pursuant to Board Rule 520.15. [1/] The Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of DCRA, filed an Answer to the Complaint on September 30, 1992, denying the material allegations of the Complaint. With respect to AFSCME's request for preliminary

[1/] Specifically, AFSCME requested that the Board grant preliminary relief ordering "DCRA [to] immediately cease and desist from meeting with and/or surverying bargaining unit employees directly regarding the furloughs and refusing to honor the Charging Party's rights under the law; rescind any action(s) effectuated based on information obtained in the meetings with, and surveys of, employees; order that DCRA engage in good faith negotiations with AFSCME regarding any plan to furlough DCRA employees, ... ." (Comp. at 4.)

relief, OLRCB contends that the Board's authority to provide such relief is not conveyed by law. [2]/ Furthermore, OLRCB asserts, even if the Board possesses such authority, none of the standards set forth under Board rule 520.15 are presented by the Complaint allegations.

Upon review of the parties' pleadings and applicable authority, we deny Complainant's request for preliminary relief. [3]/

The Board addressed the issue of its authority to grant preliminary relief for the first time in a case which the Board considered contemporaneously with the instant case, i.e, American Federation of State County and Municipal Employees, D.C. Council 20, et al. v. District of Columbia Government, University of the District of Columbia and D.C. Public Library, et al., ___ DCR __, Slip Op. No. 330, PERB Case No. 92-U-24 (1992). There, we articulated that pursuant to Board Rule 520.15, the Board's authority to grant preliminary relief is discretionary and relied upon the lead D.C. Court of Appeals' decision, Automobile Workers v. NLRB, 449 F.2d 1046 (CA DC 1971), for guidance in exercising our discretion. [4]/ There, the Court ruled that the supporting evidence must, "establish that there is reasonable cause to believe that the [NLRA] has been violated, and that remedial purposes of the law will be served by pendente lite relief [,i.e, preliminary relief]." (emphasis added) Id. at 105.

Although we found neither of the criteria adequately met in

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[2]/ The Board's authority to issue orders providing for temporary preliminary relief is found in D.C. Code Sec. 1-618.13(b). We therefore reject OLRCB's contention to the contrary.

[3]/ Complainant requested that the Board abbreviate the time period in which Respondent had to file an Answer under Board Rule 520.6. By letter dated September 14, 1992, the Board's Executive Director, following consultation with the Board, denied Complainant's request. In so doing, the Executive Director advised Complainant that "[w]hile the Board is cognizant of the serious nature of the alleged conduct and will consider your request for preliminary relief when the case is ready for the Board's review, there is no reason apparent from the face of the Complaint that the normal response period of fifteen (15) days would serve to frustrate the policies of the CMPA."

[4]/ Our decision to turn to cases involving the National Labor Relations Board (NLRB) is based on the fact that the Board's authority to grant preliminary relief was developed from the standard employed by the NLRB under Section 10(j) of the National Labor Relations Act.

PERB Case No. 92-U-23, only one of the criterion need be found lacking in deciding that preliminary relief is inappropriate. In this regard, we note that the alleged unfair labor practice in the instant case stems from the same source, i.e., the implementation of 12 furlough days in FY' 93 pursuant to the Act and in violation of D.C. Code Sec. 1-618.4(a)(1) and (5), as the complaint allegations in PERB Case No. 92-U-24. With respect to this second criterion, we concluded that in the interest of "balanc[ing] the mandates of the Act against whatever duty under the CMPA Respondents are determined to have, if any," preliminary relief was not appropriate.[5]/ AFSCME Council 20, et al. v. D.C. Gov't. et al., supra, Slip Op. at ____.

We find the same rationale applicable in the instant case and therefore deny Complainant's request for preliminary relief. However, in order to effectuate the purposes of the CMPA, under the circumstances of this case, we shall order the time periods for processing unfair labor practice complaints under Board Rule 520.9 through 520.13 reduced as set forth below.

ORDER

**IT IS HEREBY ORDERED THAT:**

1. The request for preliminary relief is denied.

2. The Notice of Hearing shall issue seven (7) days prior to the scheduled date of the Hearing.

3. Following a hearing, the hearing examiner shall submit a report and recommendation to the Board not later than twenty (20) days following the conclusion of closing arguments.

4. Parties may file exceptions and briefs in support of the exceptions not later than seven (7) days after service of the hearing examiner's report and recommendation. A response or opposition to the exception may be filed by a party not later than five (5) days after service of the exception.

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[5]/ We noted in PERB Case No. 92-U-24 that any relief, preliminary or otherwise, cannot contravene the mandates of the Act.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

Washington, D.C.

October 19, 1992

CERTIFICATE OF SERVICE

This to certify that the attached Decision and Order in PERB Case No. 92-U-23 was hand-delivered and/or mailed (U.S. Mail) to the following parties on the 19th day of October, 1992.

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