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**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)	
)	
Washington Teachers' Union, Local #6,)	
American Federation of Teachers, AFL-CIO)	
)	PERB Case No. 20-U-06
Petitioner)	
)	Opinion No. 1734
v.)	
)	
District of Columbia Public Schools)	
)	
Respondent)	

**DECISION AND ORDER
ON MOTION FOR PRELIMINARY RELIEF**

I. Statement of Case

On December 12, 2019, the Washington Teachers' Union, Local # 6, American Federation of Teachers (WTU) filed an Unfair Labor Practice Complaint (Complaint) against the District of Columbia Public Schools (DCPS), alleging violations of the Comprehensive Merit Personnel Act (CMPA)¹ by DCPS' implementation of the Missed Related Services Sessions, Truancy, and Due Diligence Summary (Missed Related Services Sessions Policy) for school year (SY) 2019-2020.

Contemporaneously with the Complaint, WTU filed a Request for Preliminary Relief (Motion) pursuant to PERB Rule 520.15.² On January 14, 2020, DCPS filed an answer to the Complaint and an opposition to the Motion.³ Pursuant to PERB Rule 520.15, the Board denies the Motion for the reasons stated herein.

¹ D.C. Official Code § 1-617.04(a)(1), (3), and (5).

² WTU requests that the Board temporarily stop DCPS from implementing the Missed Related Services Sessions policy during litigation of the Complaint.

³ DCPS was granted an extension of time to file its response to the Complaint and Motion.

II. Background

WTU alleges that on August 20, 2019, DCPS implemented a new Missed Related Services Sessions policy for SY 2019-2020.⁴ The newly implemented policy replaced the Missed Related Services Sessions Policy for SY 2018-2019.⁵ WTU alleges that the new policy (1) requires bargaining unit employees to work extended hours without additional compensation, (2) creates new standards for performance evaluations, and (3) subjects bargaining unit employees to discipline, including termination, for failure to meet the new performance standards.⁶

III. Position of Parties

In its Motion, WTU requests an order from the Board directing DCPS to retract its decision to implement the Missed Related Services Sessions Policy for SY 2019-2020. WTU argues that the bargaining unit employees may be disciplined or terminated before a hearing on the Complaint.⁷ WTU argues that the potential discharge of bargaining unit employees affects schools, students, and families.⁸

DCPS opposes WTU's Motion, arguing that WTU is not entitled to preliminary relief because the request does not comply with PERB Rule 520.15.⁹ DCPS argues that the alleged wrongdoing is neither clear-cut nor flagrant and only affects a relatively small number of bargaining unit employees.¹⁰ DCPS also argues that the public interest is not seriously affected by the alleged wrongdoing and the Motion should be denied.¹¹

IV. Discussion

Motions for preliminary relief in unfair labor practice cases are governed by PERB Rule 520.15, which provides:

The Board may order preliminary relief. A request for such relief shall be accompanied by affidavits or other evidence supporting the request. Such relief may be granted where the Board finds that the conduct is clear-cut and flagrant; or the effect of the alleged unfair labor practice is widespread; or the public interest is seriously affected; or the Board's processes are being interfered with, and the Board's ultimate remedy may be inadequate.¹²

In determining whether to exercise its discretion to order preliminary relief, the Board need not find irreparable harm.¹³ Notwithstanding, the Board looks to the supporting evidence,

⁴ Req. for Prelim. Relief at 1.

⁵ Req. for Prelim. Relief at 1.

⁶ Req. for Prelim. Relief at 2.

⁷ Req. for Prelim. Relief at 2.

⁸ Req. for Prelim. Relief at 2.

⁹ Resp't Answer at 5.

¹⁰ Resp't Answer at 5.

¹¹ Resp't Answer at 6.

¹² *NAGE, Local R3-07 v. OUC*, 60 D.C. Reg. 9251, Slip Op. No. 1393 at 6, PERB Case No. 13-U-20 (2013).

¹³ *Id.*

which must “establish that there is reasonable cause to believe that the [CMPA] has been violated and that the remedial purpose of the law will be served by *pendente lite* relief.”¹⁴ Where the Board has determined that the standards for exercising its discretion have been met, the basis for relief is restricted to the existence of the prescribed circumstances in Board Rule 520.15.¹⁵

WTU’s did not submit any affidavits or other evidence to support its Motion. Therefore, WTU fails to meet its burden to demonstrate that the remedial purposes of the law would be served by *pendente lite* relief.¹⁶

The Board finds that WTU has failed to meet its burden to show that DCPS’ conduct was clear-cut and flagrant. Here, DCPS’ implementation of the Missed Related Services Sessions Policy for SY 2019-2020 cannot be described as a clear-cut or flagrant violation of the CMPA. DCPS argues that the implementation of the Missed Related Services Sessions Policy for SY 2019-2020 was an exercise of management’s rights under D.C. Official Code § 1-617.08 and WTU failed to request bargaining.¹⁷ Based on these contested issues, the Board finds there is not enough evidence without further development of the record to determine that DCPS’ conduct was clear-cut and flagrant in violation of the statute as required by PERB Rule 520.15.

Further, the Board finds that WTU has failed to meet its burden to show that the effects of the alleged unfair labor practice are widespread. WTU fails to present any affidavits or evidence that demonstrates concrete harm. Instead, WTU speculates about bargaining unit employees that “may” face discipline and the “potential” effects of discharge.¹⁸

Likewise, WTU has failed to meet its burden to show that the public interest is seriously affected. WTU’s argument is unpersuasive because the potential discharge of teachers and its effect on schools, students, and families is too ambiguous. WTU presents no arguments on the adequacy of a future remedy or DCPS’ interference with the Board’s processes.

Based on the foregoing, the Board denies WTU’s Request for Preliminary Relief.

¹⁴ *Id.*

¹⁵ *Id.* (citing *Clarence Mack, Shirley Simmons, Hazel Lee, and Joseph Ott v. FOP/DOC Labor Committee, et al*, 45 D.C. Reg. 4762, Slip Op. No. 516 at p. 3, PERB Case Nos. 97-S-01, 97-S-02 and 95-S-03 (1997)).

¹⁶ *Durant v. DOC*, 59 D.C. Reg. 3900, Slip Op. No. 914 at 3, PERB Case No. 07-U-43 (2012) (finding that the complainant’s request for preliminary relief, which made allegations repetitious of those in the unfair labor practice complaint that were unsupported by affidavits or other documentation, did not satisfy any of the criteria prescribed by Board Rule 520.15).

¹⁷ Resp’t Answer at 6-7.

¹⁸ Req. for Prelim. Relief at 2.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Washington Teachers' Union Request for Preliminary Relief is denied.
2. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By a unanimous vote of Board Chairperson Douglas Washof, Ann Hoffman, Barbara Somson, Mary Anne Gibbons, and Peter Winkler

February 20, 2020

Washington, D.C.

Certificate of Service

This is to certify that the attached Decision and Order in PERB Case No. 20-U-06, Slip Op.1734, was sent by File and ServeXpress to the following parties on this the 25th day of February 2020.

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