

Decision and Order Consolidating Cases
and Request for Preliminary Relief
PERB Cases No. 93-R-01 and 93-U-09
Page 2

was agreed to by the parties and a Notice of Hearing was issued on January 26, 1993.

On January 26, 1993, SEIU filed an Unfair Labor Practice Complaint and a Motion for Injunctive Relief. SEIU claimed in its Motion that employees in the unit that SEIU seeks to represent have suffered irreparable injury and are threatened with further injury as a result of the Agency's efforts to negotiate with private businesses for the purpose of hiring the PCA's. Such actions, argues SEIU, are in contravention of the employees' rights "to form, join or assist [a] labor organization", as accorded by D.C. Code Sec. 1-618.6(a)(2). Therefore, SEIU seeks to have DHS/HCSB enjoined from further negotiations with businesses regarding the employment of or contracting out the services of the PCA's.

In response to the Motion, DHS submits that even prior to the filing of the Petition it had been exploring the possibility of having home care services "provided by contractors who would employ the personal care aides as employees." (Resp. p. 3.)

The Respondent further asserts that there has been no determination by the Board as to 1) the status of the PCA's as "employees" of DHS and 2) whether or not the proposed unit is an appropriate one for collective bargaining. Therefore, Respondent contends that since SEIU has not yet been designated as the exclusive representative of the unit, it has no standing to bring an action on behalf of the Aides.

The Board has carefully considered the parties' pleadings and supporting documents and concludes, for reasons that follow, that there is no basis for granting the requested preliminary relief. Instead, we find that a more efficient procedure to resolve the legal and factual questions presented in this dispute is to consolidate both the Representation Petition in PERB Case No. 93-R-01 and the unfair labor practice complaint in PERB Case No. 93-U-09, and refer these cases to be heard before the designated hearing examiner on March 9, 1993.

The standard utilized by the Board to grant preliminary relief was developed from the standard employed by the National Labor Relations Board (NLRB) under Section 10(J) of the National Labor Relations Act (NLRA). The Board's standard is set forth under Board Rule 520.15 which provides:

The Board may order preliminary relief. A request for such relief shall be accompanied by affidavit or other evidence supporting the request. Such relief shall be granted where the Board finds that

Decision and Order Consolidating Cases
and Request for Preliminary Relief
PERB Cases No. 93-R-01 and 93-U-09
Page 3

the conduct is clear-cut and flagrant, the effect of the alleged unfair labor practice is widespread, the public interest is seriously affected, the Board's processes are being interfered with, or the Board's ultimate remedy will be clearly inadequate.

The Board's authority to provide preliminary relief is found in D.C. Code Sec. 1-618.13(b) which in pertinent part provides:

The Board may request the Superior Court of the District of Columbia to enforce any order issued pursuant to this subchapter, including those for appropriate temporary relief or restraining orders.

Thus, the Board's authority to issue orders providing appropriate temporary relief before judgement is vested in law. However, like Section 10(j) of the NLRA, the Board's authority to grant preliminary relief in accordance with Board Rule 520.15 is discretionary.^{2/} We do not believe under the circumstances of this case that preliminary relief is appropriate. In so ruling, we turn to the lead case on this issue by the U.S. Court of Appeals for the District of Columbia, Automobile Workers v. NLRB, 449 F.2d 1046 (CA DC 1971), wherein the court addressed the standard for granting relief before final judgment under Section 10(j) of the NLRA. Although irreparable injury need not be shown, the Court concluded 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." Id. at 1051.

Although SEIU has submitted an affidavit in support of its Motion, that sets forth the opinions and beliefs of Local 722's president regarding the alleged conduct, such evidence, in and of itself, is insufficient to warrant a determination that there is actual or threatened harm to employees.^{3/} Moreover, in consideration that there are outstanding factual and legal questions regarding the standing of SEIU to file a Complaint on behalf of the personal care aides, as well as the nature of the

^{2/} As set forth in the text, Board Rule 520.15 provides in the first instance that "[t]he Board may order preliminary relief." Nevertheless, in those instances where we determine preliminary relief to be warranted, the bases for such relief are restricted to the factors set forth in the remaining provisions of the Rule.

^{3/} We note that there are no statements or affidavits submitted by individuals in the unit sought, nor has the Complaint been verified by any of the Personal Care Aides.

Decision and Order Consolidating Cases
and Request for Preliminary Relief
PERB Cases No. 93-R-01 and 93-U-09
Page 4

employment relationship between the PCA's and DHS/HCSB, it would be inappropriate for the Board to grant the requested relief.

ORDER

IT IS HEREBY ORDERED THAT:

1. The request for preliminary relief is denied;
2. PERB Case Nos. 93-R-01 and 93-U-09 are consolidated for purposes of a hearing.
3. Both cases shall be heard by the Board's designated hearing examiner on March 9, 1993 and the Notice of Hearing, previously issued, shall be amended accordingly.

By Order Of the Public Employee Relations Board
Washington, D.C.

February 23, 1993