GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	)	
American Federation of Government Employees, Local 1000,	)	
Complainant,	)	PERB Cases No. 99-U-20
	)	Opinion No. 584
v.	)	
District of Columbia Department of Employment Services,	)	
Respondent.	)	

DECISION AND ORDER ON
REQUEST FOR PRELIMINARY RELIEF

On March 11, 1999, American Federation of Government Employees, Local 1000 (AFGE) filed an Unfair Labor Practice Complaint in the above referenced case. This was followed by a Request for Preliminary Relief which was filed on March 12, 1999. The Complaint contains allegations that the Respondent District of Columbia Department of Employment Services (DES) violated the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. Code § 1-618.4(a)(4), by unilaterally implementing a more restrictive official time policy.[1]/ AFGE alleges that DES instituted this requirement only after DES failed during collective bargaining negotiations to gain concessions on official time from AFGE's president.

AFGE asserts that it and DES had been engaged in collective bargaining since November 1998. AFGE further asserts that the parties were unable to reach agreement over the policy and procedure that would govern the use of official time by AFGE

[1]/ AFGE asserts that, as the local president, James Seawright was afforded 100% official time to conduct labor-management and representation duties for the bargaining unit. The alleged change in the official time policy required, as a condition for engaging in labor-management activities, that AFGE officials provide 48-hour notice to DES officials.

officials for conducting representation duties.[2]/ AFGE alleges that, as a result of DES's failure to gain concessions from AFGE during collective bargaining negotiations on the subject of official time, DES took certain actions against AFGE and its local president, James J. Seawright (Seawright). The Complainant requests that the Board provide preliminary relief to redress the alleged violations.

The Complaint also contains additional allegations that DES: (1) changed the duties and the duty station of its local president in violation of the parties' collective bargaining agreement; and (2) rescinded leave that was previously requested and approved for Seawright, in order to enable him to tend to his representation duties in the wake of DES's change in its policy governing official time. AFGE states that the rescission of Seawright's approved leave occurred shortly after Seawright verbally informed DES of his intention to file the instant Complaint and Request for Preliminary Relief. AFGE adds in its Request for Preliminary Relief a final act of reprisal by DES not previously alleged in the Complaint; namely, the elimination of AFGE's headquarters at DES' central office.

On March 23, 1999, the Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of DES, filed a Response to the Complainant's request for preliminary relief. [3]/ OLRCB asserts that AFGE has not met the standard for according such relief. In its Answer to the Complaint, filed March 26, 1999, DES denies that it has retaliated against AFGE or that its actions constitute unfair labor practices. AFGE filed a Reply to OLRCB's opposition to its preliminary relief request. The request for preliminary relief is now before us for disposition.

The Complainant seeks preliminary relief that will restore the status quo ante. For the reasons discussed below, we find

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[2]/ On February 22, 1999, AFGE filed a Request for Impasse Resolution (PERB Case No. 99-I-03). In its Request, Petitioner AFGE declared that the sole matter at impasse is the issue of official time. Pursuant to Board Rule 527.2, the Executive Director has initiated an informal inquiry to determine if the parties have indeed reached impasse and, if so, the identity and scope of the issues at impasse.

[3]/ DES' Response to the Motion for Preliminary Relief was originally due on March 16, 1999. However, DES requested an extension which was granted by the Executive Director. As a result, DES' Response was due on March 23, 1999.

that the Complainant's request for preliminary relief does not meet the threshold criteria that the Board has adopted for granting such relief, i.e., "that the Complaint establish that there is reasonable cause to believe that the [CMPA] has been violated, and that remedial purposes of the law will be served by pendente lite relief." AFSCME D.C. Council 20, et al. v. D.C. Gov't. et al., 42 DCR 3430, Slip Op. No. 330 at p. 4, PERB Case No. 92-U-24 (1995), citing Automobile Workers v. NLRB, 449 F.2d 1046 at 1051 (CA DC 1971).

Without deciding whether these allegations indicate violations of the CMPA, the Board concludes that inadequate evidence was presented to it that the allegations, even if true, are such that the remedial purposes of the law would be served by pendente lite relief. [4]/ Moreover, the Board's authority to grant preliminary relief is discretionary. Board Rule 520.15. The circumstances presented do not appear appropriate to warrant such relief. Should violations be found, the relief requested can be accorded with no real prejudice to AFGE following a full hearing and development of the evidence.

Moreover, AFGE has provided no affidavits or other evidence supporting either the expressed or implicit statutory violations it alleges as required by Board Rule 520.15. The only evidence accompanying AFGE's preliminary relief request was a copy of Seawright's leave request to his supervisor. There was no evidence establishing that the leave was ever granted or rescinded. No other evidence in support of DES' alleged change in the official time policy or any of DES' other alleged acts of reprisal have been provided. A request for preliminary relief must be accompanied by sufficient pertinent evidence that supports the underlying allegation that a violation has occurred. See Board Rule 520.15. See, IBPO, Local 445 v. D.C. Dept of Administrative Services, Slip Op. No. 376, PERB Case No.

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[4]/ The Complainant claims that these retaliatory actions by DES also violate the parties' collective bargaining agreement. It is well settled that contractual violations fail to state a statutory cause of action under the CMPA. AFGE, Local 3721 v. D.C. Fire Dept., 39 DCR 8599, Slip Op. No. 287, PERB Case No. 90-U-11 (1992). However, the Complaint contains allegations that appear to state independent statutory bases for the alleged overlapping violations. See, AFSCME, D.C. Council 20, Local 2095 v. D.C. Public Schools, 42 DCR 5685, Slip Op. No. 339, PERB Case No. 92-U-08 (1995). See, also, AFGE, Local 2725 v. D.C. Housing Authority, Slip Op. No. 488, PERB Case No. 96-U-19.

94-U-11 (bare complaint unsupported by evidence is insufficient to support request for preliminary relief). Indeed, OLRCB has submitted evidence disputing AFGE's claims.[5]/

In view of the above, for the reasons we articulated in AFSCME, D.C. Council 20, et al. v. D.C. Gov't. et al., 42 DCR 3430, Slip Op. No. 330, PERB Case No. 92-U-24 (1992), we deny AFGE's request for preliminary relief because it fails to satisfy the criteria articulated by PERB. However, we shall investigate this Complaint expeditiously, in accordance with Board Rule 501.1 and as set forth in our Order below.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complainant's request for preliminary relief is denied.

2. The Executive Director shall refer the Complaint to a Hearing Examiner and schedule a hearing under the expedited schedule set forth below.

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

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[5]/ On the other hand, in its Response, OLRCB disputes material elements of all allegations made in the Complaint with affidavits and documents. For instance, OLRCB provided a copy of the approved annual leave request slip, a supporting affidavit from Seawright's supervisor and a memorandum, which reflect that Seawright's leave was never actually rescinded by DES and that Seawright's personnel records would reflect that on the days in question such leave was used by Seawright. (DES Exhs. 8, 9 and 12.) In the letter notifying Seawright to report for duty, there was no threat that Seawright would be charged with AWOL if he did not so report.(DES Exh. 3.)

A memorandum from DES to Seawright was provided to support OLRCB's contention that the alleged elimination of AFGE's office space at DES' central office was part of a planned reorganization of existing office space at DES central office. (DES Exh. 12.) The memo further reflects that the space in question was not AFGE's entire headquarters but rather a room that AFGE used for storage. AFGE has provided no evidence to contradict DES' account of these allegations.

5. Following the hearing, the designated hearing examiner shall submit a report and recommendation to the Board not later than twenty-one (21) days following the conclusion of closing arguments (in lieu of post-hearing briefs).

6. 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 exceptions may be filed not later than five (5) days after service of the exceptions.

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

April 20, 1999