GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In The Matter Of:	
D.C. Council 20, American Federation of State, County and Municipal Employees, AFL-CIO Locals 709, 877, 1200, 1808, 2087, 2091, 2092, 2095 2096, 2401, 2743, 2776, 3758;	
American Federation of Government Government Employees, AFL-CIO, Locals 383, 631, 727, 872, 1000, 1975, 2553 2725, 2737, 2741, 2978, 3406, 3444, 3721, 3871;	
National Association of Government Employees, AFL-CIO, Local Re-05;	
International Brotherhood of Police Officers, AFL-CIO, Local 445;	
Communications Workers of America, AFL-CIO, Local 2336;	
International Brotherhood of Teamsters, AFL-CIO, Local 1714	
Washington Area Metal Trades Council;	
Service Employees International Union, Local 1199 E-DC; and	
Laborers International Union, N.A., Local 960.	
Complainants,	
v.	PERB Case No. 92-U-24
	Opinion No. 330

Government of the District of Columbia, Board of Trustees, University of the District of Columbia, Board of Trustees of the D.C. Public Library and Agencies under the Administrative control of the Mayor,	)
Respondents.	)

DECISION AND ORDER ON REQUEST FOR PRELIMINARY RELIEF

On September 10, 1992, the above-captioned Complainants filed a Verified Unfair Labor Practice Complaint (Complaint) and Memorandum of Law with the Public Employee Relations Board (Board) charging that the above-referenced Respondents violated D.C. Code Sec. 1-618.4(a)(1) and (5) and D.C. Code Sec. 1-625.2(d) of the Comprehensive Merit Personnel Act (CMPA). Specifically, Complainants allege that Respondents are "refusing to bargain about the impact and implementation of any aspect of the furloughs" promulgated pursuant to the Omnibus Budget Support Temporary Act of 1992 (ACT) enacted by the District of Columbia Council. Complainants have requested that the Board grant preliminary relief and order the Respondents to immediately cease-and-desist from refusing to bargain, rescind the planned furlough dates and make affected employees whole for any unilateral action by Respondents.

Pursuant to an expedited pleadings schedule (requested by Complainants and granted by the Board), the Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of Respondent agencies under the personnel authority of the Mayor and the Board of Trustees of the D.C. Library, filed an Answer to the Complaint on September 22, 1992, denying that by the alleged acts and conduct Respondents committed any unfair labor practices. Respondent UDC responded separately by Answer filed September 22, 1992, stating, inter alia, that the Complaint fails to allege any unfair labor practices with respect to UDC. All Respondents further assert that the Board lacks the authority to provide preliminary relief. On September 29, 1992, Complainant filed a Reply to Respondents' Answer.

Upon review of the parties' pleadings and applicable

authority, we deny Complainants' request for preliminary relief for the reasons we address below.

Complainants request, by way of preliminary relief, the preservation of the status quo, as it existed prior to the District's alleged unilateral announcement of furlough dates, pending the Board's final resolution of the alleged unfair labor practice. Specifically, Complainants request that the Board, by October 1, 1992, order Respondents to (1) immediately rescind City Administrator Mallet's August 31, 1992 announcement of furlough days, (2) rescind individual notices of furloughs that may have been issued; and (3) bargain with Complainants regarding any proposed policies governing any furlough procedures to be implemented as well as the impact and effects of the furlough.

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 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.

Contrary to Respondents' assertion that "Board Rule 520.15 provides for a remedy not conveyed by law", 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, <u>including those for appropriate temporary relief or restraining orders.</u>

Thus, the Board's authority to issue orders providing appropriate temporary relief before judgment 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. [1]/ 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.

In deciding whether or not to grant a request for preliminary relief, we are limited to the evidence presented in support of such a request. Under Board Rule 520.15, a request for preliminary relief must "be accompanied by affidavits or other evidence supporting the request." Notwithstanding verification of the Complaint allegations by Complainants' chief spokesperson, there is documented evidence presented by Respondents which undermines a preliminary finding that there is reasonable cause to believe that a violation of D.C. Code Sec. 1-618.4(a)(1) and (5) has occurred. [2]/

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[1]/ As set forth in the text, Board Rule 520.15 provides in the first instance that "[t]he Board may order preliminary relief." It is this provision of the rule that we turn to the D.C. Court of Appeals for guidance in exercising of our discretion. However, 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.

[2]/ We note in particular, in OLRCB's Answer to the Complaint, that as early as July 7, 1992, it attempted to bargain with Complainants when it presented Complainants with a proposed memorandum of understanding concerning the furloughs. Supporting this assertion was a letter from Complainant AFGE wherein it advised OLRCB that all of its affected locals "met and has voted unanimously to reject [OLRCB's] proposal, and any other proposed actions, as it relates to the furloughs." We further note that, notwithstanding Complainants' assertion that they desire to bargain over the impact and effects of the furloughs, the only proposal it has presented to Respondent, i.e., that there be no furloughs, clearly does not address the impact and effects but rather the very substance of the furloughs.

With respect to Respondent UDC, UDC denies that OLRCB represents it for purposes of noncompensation collective bargaining with Complainants. UDC further denies being a party to the alleged acts and conduct constituting the alleged unfair labor practices.

With respect to the second criterion articulated by the D.C. Court of Appeals, we note that any relief, preliminary or otherwise, cannot conflict with the mandates of the Act. In this regard we note that the Act mandates furloughs at a rate of one day a month in FY' 93 (which starts October 1, 1992) and that affected employees be provided a minimum of 15 days notice. Title II, Sec. 202(a) and (h) of the Act. The Complainants' request for preliminary relief at this time, i.e., rescission of the announced furloughs and individual employee furlough notices, would frustrate this legislative mandate before final judgment could be rendered by

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Footnote 2 (cont'd)

UDC claims that its denial is supported by the fact that it is an independent personnel authority not under the authority of the Mayor. There is also no indication that the series of correspondence, submitted by Complainant in support of its claims against Respondent agencies under the personnel authority of the Mayor, involved UDC.

UDC's position is further supported by the ACT itself. The ACT defines "[t]he effect of a furlough [as] plac[ing] an employee temporarily and involuntarily in a non-pay and non-duty status." (Emphasis added.) Title II, Sec. 202(f) of the Act. Since the ACT expressly addresses the issue of compensation, collective bargaining is preempted with respect to compensation issues. Complainants have failed to acknowledge this factor in the Complaint allegations and supporting Memorandum. See, e.g., Teamsters Local Unions No. 636 and 730 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO and D.C. Public Schools, 38 DCR 1986, Slip Op. No. 263 at 7 PERB Case No. 90-N-02, 90-N-03 and 90-N-04 (1990) (liability standard for District employees preempted by statutorily-established standard, thereby rendering the matter nonnegotiable). Thus, these matters concerning the impact and effect of implementing the furloughs under the Act that remain subject to collective bargaining under the CMPA would not include issues concerning any form of compensation or other matters mandated by the Act. We further add, however, that while the Respondents correctly argue that as legislation and not "rules and regulations issued by the Mayor", the Act is not subject to the provisions of D.C. Code Sec. 1-625.2, the Act is not insulated from collective bargaining rights under the CMPA. See, e.g. Fraternal Order of Police, Metropolitan Police Department Labor Committee and D.C. Metropolitan Police Department, 38 DCR 847, Slip Op. No. 266, PERB Case No. 90-N-05 (1990). D.C. Code Sec. 1-618.8(a) of the CMPA expressly acknowledges management rights exercised "in accordance with applicable laws and rules and regulations[.]" (Emphasis added.)

the Board.

We further note that Respondents' alleged violation does not stem from its refusal to recognize Complainants as the exclusive bargaining representatives of the employees in their respective bargaining units. Rather, the issue presented by the Complaint concerns whether or not there exists or continues to exist a duty to bargain with respect to a particular subject matter, i.e., furloughs, under the circumstances of this case. [3]/ Given the nature of this alleged violation, we find the extraordinary relief requested by Complainants of ordering Respondents to bargain before final judgment is inappropriate, as it neither restores nor preserves conditions which existed prior to the alleged violation. This Order serves to balance the numerous mandates of the Act against whatever duty, if any, under the CMPA that the Board determines the Respondents have to bargain over the impact and effects of the furloughs.

For the foregoing reasons, we deny Complainants' request for preliminary relief. We shall, however, pursuant to (Board) Rule 501.1, order the time periods for processing unfair labor practice Complaints, as set forth under Board Rule 520.9 through 520.13, reduced as set forth below to effectuate the purposes of the CMPA. [4]/

ORDER

IT IS HEREBY ORDERED THAT:

1. The request for preliminary relief pursuant to Board Rule 520.15 is denied.

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

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[3]/ See, e.g., Teamsters, Local Union No. 639 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO and District of Columbia Public Schools, 38 DCR (6698, Slip Op. No. 267, PERB Case No. 90-U-05 (1991).

[4]/ In view of Respondents apparent intention to go forward with the implementation of the furloughs, the Board shall proceed to address those issues within its jurisdiction, i.e, obligations, duties and rights under the CMPA, notwithstanding Complainants' civil action challenging the legality of the furlough legislation.

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 exceptions may be filed by a party not later than five (5) days after service of the exception.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

October 19, 1992

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 92-U-24 was hand-delivered and/or mailed (U.S. Mail) to the following parties on the 19th day of October, 1992.

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