GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
American Federation of Government Employees, Local 2978	
Complainant,	
and	
M. Jerome Woods, Director District of Columbia Department of Human Services	PERB Case No. 87-U-14 Opinion No. 183
Respondent,	
and	
Debra McDowell, Acting Deputy Director, Office of Labor Relations and Collective Bargaining	
Respondent.	

DECISION AND ORDER

On September 18, 1987, the American Federation of Government Employees, Local 2978, AFL-CIO (AFGE) filed an Unfair Labor Practice Complaint against M. Jerome Woods, Director, Department of Human Services (DHS) and Debra McDowell, Acting Deputy Director, Office of Labor Relations and Collective Bargaining (OLRCB).

In its Complaint AFGE alleged that DHS, represented by OLRCB in negotiations for a successor terms-and-conditions collective bargaining agreement with AFGE, refused to bargain with AFGE during the pendency of a representation petition filed on July 31, 1987 by the International Brotherhood of Teamsters, Local 2000 (IBT), which sought to represent certain units of employees for whom AFGE was the incumbent exclusive representative, thus violating D.C. Code Sections 1-618.4(a)(1),(2),(3) and (5).

In their Answer to the Complaint, OLRCB and DHS admitted that management declined to continue negotiations until the question concerning representation of the affected units was resolved, as had allegedly been the past practice of OLRCB and AFGE, citing AFGE and Department of Corrections, PERB Case No. 85-R-07. Respondents therefore deny the commission of any unfair labor practice by refusing to continue negotiations during the pendency of the representation petition.

The IBT Petition was withdrawn on November 17, 1987. AFGE and DHS resumed bargaining shortly thereafter.

Based solely on DHS' refusal to negotiate while IBT's petition was pending, AFGE alleges violations of the District of Columbia Comprehensive Merit Personnel Act of 1978 (CMPA), Sections 1-618.4(a)(1),(2),(3) and (5).

The issues presented are:

(1) Whether the Respondents violated D.C. Code Section 1-618.4(a)(1),(2),(3) and (5) by withdrawing from negotiations with the incumbent exclusive representative pending the resolution of a representation petition filed by a rival labor organization and;

(2) Whether the Complaint should be dismissed on the basis that a remedy would be inappropriate, since the events of this case preceded the Board's ruling on the same issue in another case.

In International Brotherhood of Teamsters, Local 639 and 730 and D.C. Public Schools and AFSCME, District Council 20, and Local 2093, Slip Op. No. 176, PERB Case Nos. 86-U-14 and 86-U-17 (November 3, 1988), the Board addressed the issue of the employer's obligation to bargain for a successor contract during the pendency of a recognition petition filed by a rival organization. In that case the Board followed the rationale in RCA Del Caribe, Inc. and IBEW, Local 2333, 262 NLRB No. 116, 110 LRRM 1369, 1370 (1982), deciding that:

> [W]hile the filing of a valid petition may raise a doubt as to majority status, the filing, in and of itself, should not overcome the strong presumption in favor of the continuing majority status of the incumbent .... [T]he new policy enunciated by the Board in RCA Del Caribe with respect to the requirements for employer neutrality

> when an incumbent union is challenged by an "outside" union is grounded in the rationale that "preservation of the status quo through an employer's continued bargaining with an incumbent is a better way [than cessation of such bargaining upon filing of a representation petition] to approximate employer neutrality." RCA Del Caribe, Id. at 1371. So here, preservation of the status quo "is a better way" to protect both stability and employee representational choice than shortening DCPS' duty to continue dealing with the incumbent union prior to the union's legal replacement through an election and Board certification. (Slip Opinion, p. 7-8).

Based on the foregoing reasons, DHS' initial refusal to bargain with AFGE would constitute a violation of D.C. Code Section 1-618.4(a)(1) and (5). 1/ We conclude, however, that since the events in this case occurred prior to the adoption by the Board of the rule set forth above in Teamsters, Locals 639 & 730, it would be inappropriate to order a remedy in this matter.

ORDER

IT IS ORDERED THAT:

This Complaint be dismissed.

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

December 2, 1988

1/ The Board dismisses the alleged violations of D.C. Code Section 1-618.4(a)(2) and (3) on the basis that there is no showing that the employer has acted with other than strict neutrality, or by any affirmative acts has favored or encouraged/discouraged membership in either union.