

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)	
)	
American Federation of State,)	
County and Municipal Employees,)	
District Council 20, Locals)	
709, 877, 1033, 1200, 1808, 2087,)	
2091, 2092, 2096, 2097, 2401, 2743,)	
2776,)	PERB Case No. 87-U-07
)	Opinion No. 223
Complainants,)	
)	
v.)	
)	
Government of the)	
District of Columbia,)	
Office of Personnel and)	
Office of Labor Relations)	
and Collective Bargaining,)	
)	
Respondents.)	

DECISION AND ORDER

On June 25, 1987 the American Federation of State, County and Municipal Employees, District Council 20, Locals 709, 877, 1033, 1200, 1808, 2087, 2091, 2092, 2096, 2097, 2401, 2743, 2776 (AFSCME) filed an Unfair Labor Practice Complaint with the D.C. Public Employee Relations Board (Board). The Complaint alleged that the Government of the District of Columbia Office of Personnel and Office of Labor Relations and Collective Bargaining (DCOP and OLRCB respectively) refused to bargain with AFSCME in violation of the Comprehensive Merit Personnel Act of 1978 (CMPA), D.C. Code 1-618.4(a)(5).

Specifically, the Complaint alleged that on May 1, 1987 DCOP published in the District of Columbia Register a Notice of Proposed Rulemaking which proposed changes in the District Personnel Manual (DPM), Chapter 12, "Hours of Work, Legal Holidays and Leave." AFSCME contended that, because the then-prevailing provisions of Chapter 12 were incorporated into the 1986 - 1987 Master Collective Bargaining Agreement between AFSCME and the District of Columbia Government, and the subject matter of the Proposed Rulemaking was within the scope of bargaining required by D.C. Code Sections 1-

618.8(b) and 1-618.17(b), by publishing the proposed rules without prior notice to the Union the District of Columbia failed to bargain collectively in good faith with AFSCME, thereby violating D.C. Code Section 1-618.4 (a)(5).

OLRCB, on behalf of both respondents, filed an Answer on July 10, 1987. OLRCB denied that DCOP's actions constituted an unfair labor practice because, inter alia, "[t]he action taken by Respondent -- publication of proposed regulations -- is presently no more than a proposed action. The publication of such proposal is required by Section 1-604.5 and Section 1-1506 of the D.C. Code. Publication of proposed regulations is for the purpose of affording interested persons the opportunity to submit their views, and in no way constitutes any final or overt action. The Complaint is therefore premature and should be dismissed without further action." Answer, Paragraph 5.a (emphasis in original).

The Board agrees with the Respondents and therefore dismisses the instant Complaint. ^{1/}

An employer's unilateral change in a term or condition of employment during the life of a contract constitutes a per se unfair labor practice. Cf. Local 2901, American Federation of State, County and Municipal Employees, AFL-CIO v. District of Columbia Government Department of Environmental Services, 28 DCR 1960, Opinion No. 7, PERB Case No. 80-U-02 (1981). Here, however, it is not alleged in this matter that there was a unilateral change, only a proposed change.

Under the CMPA, the employer is required to provide the exclusive bargaining representative with adequate notice of a proposed change of a term or condition of employment and an adequate opportunity to bargain. The employer must then, upon request, bargain in good faith over the proposed change.

The District of Columbia met that obligation in this matter and therefore did not violate D.C. Code Section 1-618.4(a)(5). The Notice of Proposed Rulemaking constituted notice to AFSCME as well as others of the District of Columbia's proposal to make changes. Because the Notice provided for a comment period, it therefore also provided the Union an opportunity to request bargaining over these subjects.

^{1/} The Board thus has no occasion to reach the question of the status of the proposed changes as a subject or subjects of bargaining.

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ORDER

IT IS ORDERED THAT:

This Unfair Labor Practice Complaint is dismissed.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.
May 26, 1989