GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
George Parker and Emily Washington,	
Complainants,	
v.	**PERB Case Nos. 99-U-25 and 99-S-05**
Washington Teachers Union, Local 6, AFT, AFL-CIO,	**Opinion No. 594**
and	
District of Columbia Public Schools,	
Respondents,	

DECISION AND ORDER ON REQUEST FOR PRELIMINARY RELIEF

Complainants George Parker and Emily Washington (Complainants) are employed by D.C. Public Schools (DCPS). They are members of a bargaining unit represented by the Washington Teachers Union, Local 6, AFT, AFL-CIO (WTU). DCPS and WTU recently negotiated a successor collective bargaining agreement (CBA) which was presented to the WTU membership for ratification. Complainants assert that on April 14, 1999, the membership voted to bifurcate the CBA and vote on the compensation and non-compensation portions separately. The compensation portion was ratified; however, the non-compensation portion was voted down. The Complainants were among those WTU members who voted against the non-compensation CBA. The Complainants allege that WTU's executive board ignored its constitution and by-laws when it voted on April 18, 1999 to resubmit the entire CBA for another ratification vote. The entire CBA was subsequently ratified by

the membership on May 5, 1999.

On May 12, 1999, the Complainants filed an Unfair Labor Practice and Standards of Conduct Complaint against WTU and DCPS. The Complainants claim that WTU violated the Comprehensive Merit Personnel Acts' (CMPA) standards of conduct for labor organizations, as codified under D.C. Sec. 1-618.3(a)(1) as well as unfair labor practices (i.e., duty to fairly represent the Complainants) under D.C. Code Sec. 1-618.4(b)(1) and (2). In addition, the Complainants alleged that WTU failed to bargain in good faith with DCPS in violation of Section 1-618.4(b)(3).

With respect to DCPS, the Complaint contained asserted that DCPS committed unfair labor practices in violation of D.C. Code Sec. 1-618.4(a)(1), (2) and (5) by being a party to WTU's alleged violations. The Complaint included a Motion for Preliminary Relief (Motion). The Complainants request that the Board enjoin the enforcement of the non-compensation portion of the CBA and enforce the compensation portion.

By letter dated May 13, 1999, the Complaint allegations against DCPS were administratively dismissed for failing to state a claim. The allegation that WTU failed to bargain in good faith with DCPS was also dismissed for the same reason.[1]/ The

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[1]/ The Complainants asserted "that WTU breached its duty of fair representation and DCPS was a party to such breach thereby constituting an unfair labor practice in violation of D.C. Code §§ 1-618.4(a)(1), (2), (5), and (b)(1), (2) and (3)... ." The Complainants alleged no acts or conduct by DCPS that supported these asserted violations. D.C. Code Sec. 1-618.4(a)(5), provides that "[t]he District, its agents and representatives are prohibited from ...[r]efusing to bargain collectively in good faith with the exclusive representative." D.C. Code Sec. 1-618.4(b)(3) prohibits this same conduct, i.e., refusing to bargain in good faith, by the exclusive representative of employees. The Board has held that "the right to require the District to bargain in good faith pursuant to D.C. Code Sec. 1-618.4(a)(5) belongs exclusively to the recognized bargaining representative, and not to the employees represented by their designated bargaining agent." Willard Taylor, et al. v. UDC Faculty Association/NEA, 41 DCR 6687, Slip Op. No. 324 at n. 2, PERB Case No. 90-U-24 (1994). See, also, Georgia Mae Green v. D.C. Dept of Corrections, 37 DCR 8086, Slip Op. No. 257, PERB Case No. 89-U-10 (1990). The Board further held that the right to require an exclusive representative of a bargaining unit to bargain collectively in good faith, pursuant to D.C. Code Sec. 1-618.4(b)(3) belongs exclusively to the District employer. Consequently, the Board found held that a bargaining unit employee lacks standing to bring such claims under the CMPA.

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remaining Complaint allegations against WTU continued to be processed. On May 19, 1999, WTU filed an Opposition to the Complainants' Motion for Preliminary Relief. The Answer to the Complaint was filed on May 27, 1999. The case is now before the Board for consideration and disposition of Complainants' request for preliminary relief.

For the reasons discussed below, we find that the Complaint fails to state a claim under the CMPA and consequently presents no relevant issue of fact warranting a hearing. Therefore, Complainants' request for preliminary relief is denied.[2]/

The relevant facts are essentially undisputed. However, Complainants' claim turns on whether WTU's action, i.e., following a second ratification and ignoring a prior vote by its membership can form the basis of an the alleged unfair labor practice or violate the standards of conduct. The Complainants contend that the memberships separate ratification votes on the non-compensation and compensation portions of the CBA was done in accordance with WTU constitution and by-laws. The Complainants object that WTU violated its by-laws by superceding this action when it ordered a second ratification vote. WTU counters that its by-laws and ground rules required the entire CBA to be presented for ratification by its membership.[3]/ The conflicting

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[1](...continued)
D.C. Code Sec. 1-618.4(a)(2) provides that "[t]he District, its agents and representatives are prohibited from ... [d]ominating, interfering, or assisting in the formation, existence or administration of any labor organization, or contributing financial or other support to ... ." Complainants simply did not allege any acts or conduct by DCPS that constitute a violation of this provision.

[2]/ The threshold criteria the Board has adopted for granting preliminary relief requires "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., Slip Op. No. 330 at 4, PERB Case No. 92-U-24, citing Automobile Workers v. NLRB, 449 F.2d 1046 at 1051 (CA DC 1971).

[3]/ Section 15 of the Pre-negotiations Agreement provides: "Agreement on any provision or article shall be tentative pending ratification of the entire Agreement by both parties. In order for the Agreement to be binding DCPS and the Financial Responsibility and

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arguments presented by the parties turn on their respective interpretation of WTU's constitution and by-laws, and a disputed provision of the negotiated ground rules between WTU and DCPS. [4]/

The Board has held that a standards of conduct claim is not established by allegation that the union has merely breached its by-laws or constitution. The Complainant must establish that the union's breach of its by-laws also violated the prescribed conduct set forth in the standard. Akuchie, Portis and Jackson v. FOP/DOC Labor Committee, 45 DCR 1475, Slip Op. 524, PERB Case No. 96-S-04 (1998). Even if the evidence submitted establish that WTU violated its constitution and/or by-laws, it does not establish that WTU's actions violated the standards of conduct provided under D.C. Code Sec. 1-618.3(a)(1).[5]/

The Complainants have also alleged that WTU's ordering a the second vote breached its duty to fairly represent members who voted against the bifurcated non-compensation provisions of the CBA in the first vote and violated D.C. Code Sec. 1-618.4(b)(1) and (2). This is the same conduct the Complainants assert as a violation of the standards of conduct. The Board has held that a

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[3](...continued)
Management Assistance Authority in accordance with D.C. Code Sec. 1-618.15 and 1-618.17 and the Union in accordance with its policies, practices and constitution must ratify the entire agreement." (WTU Exh. 2.) Ratification of collective bargaining agreements is not statutorily required under the CMPA; nor is it expressly provided or required under WTU's constitution or by-laws. (WTU Exh. 1.) Ratification of the instant CBA is a negotiated contractual right provided under the pre-negotiation ground-rule agreement between WTU and DCPS.

[4]/ The March 22, 1999, membership meeting minutes reflect that no ratification vote would occur until a determination is made "whether members must vote on a total package or can split the vote into two areas, compensation and work provisions." (WTU Exh. 4.) WTU then obtained the legal opinions of three law firms that advised WTU that the disputed ground rule provision required a vote on the whole agreement. (WTU Exh. 5.)

[5]/ **D.C. Code Sec. 1-618.3(a)(1)**

The maintenance of democratic provision for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in the disciplinary proceedings.

failure to comply with the standards of conduct for labor organizations does not concomitantly constitute a breach of the duty to fairly represent employees, and vice versa. Bagenstose v. WTU, Local 6, AFT, AFL-CIO, 43 DCR 1397, Slip Op. No. 355, PERB Case No. 90-S-01/90-U-02 (1996).

Furthermore, to the extent the violation turns on an initial interpretation of the disputed contractual ground rule, the Board has held that it lacks jurisdiction to rule on provisions in a negotiated agreement, including negotiated ground rules. Teamsters, Local Union No. 639 a/w IBTCWHA, AFL-CIO v. D.C. Public Schools, 41 DCR 1928, Slip Op. No. 310, PERB Case No. 91-U-12 (1994). The Board has found that such threshold contractual determinations must be determined by the appropriate forum, i.e., grievance/arbitration, before any remaining statutory cause of action within its jurisdiction, if any, can be resolved by the Board. American Federation of Government Employees, Local 2725, AFL-CIO v. D.C. Housing Authority, Slip Op. No. 488, PERB Case No. 96-U-19 (1996) and American Federation of Government Employees, Local 3721, AFL-CIO v. D.C. Fire Department, Slip Op. No. 287, PERB Case No. 90-U-11 (1991).[6/]

[6/] We find other alleged violations of D.C. Code Sec. 1-618.4(b)(1) and (2) lack merit. Section 1-618.4(b)(1) makes an unfair labor practice a union's interference, restraint, or coercion of employees in the exercise of rights guaranteed by the Labor-management subchapter of the CMPA. The Complainants assert that WTU's actions will subject them to the provisions of the non-compensation agreement notwithstanding the membership's April 14 vote against it. The Complainants assert that being so subject by WTU's actions constitutes the asserted statutory violation. However, neither ratification of a CBA by the union membership nor the provisions under a CBA are rights accorded under the CMPA. These rights were created by the negotiated ground rules and CBA in issue.

With respect to D.C. Code Sec. 1-618.4(b)(2), the pleadings present no basis for finding that WTU caused or attempted to cause DCPS to discriminate against employees in contravention of employee bargaining rights under D.C. Code Sec. 1-618.6. DCPS' only alleged involvement is as a party to the negotiated CBA and ground rule agreement in dispute.

ORDER

IT IS HEREBY ORDERED THAT

The Complainants' Motion for Preliminary Relief is denied.

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

June 17, 1999

CERTIFICATE OF SERVICE

This is to certified that the attached Decision and Order in PERB Case Nos. 99-U-25 and 99-S-05, Slip Op. No. 594, was mailed (U.S. mail) to the following parties on the 17th day of June, 1999.

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