GOVERNMENT OF THE DISTRICT OF COLUMBIA

PUBLIC EMPLOYEE RELATIONS BOARD

In the matter of:	
American Federation of Government Employees, AFL-CIO, Local 631, American Federation of Government Employees, AFL-CIO, Local 872, American Federation of Government Employees, AFL-CIO, Local 2553,	PERB Case No. 11-U-37
Complainants,	Opinion No. 1126
and	**Motion for Preliminary Relief**
District of Columbia Water and Sewer Authority,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

The American Federation of Government Employees, AFL-CIO, Local 631, Local 872 and Local 2553 ("Complaints", "Unions" or "AFGE"), filed an Unfair Labor Practice Complaint ("Complaint") against the District of Columbia Water and Sewer Authority ("WASA"), alleging that WASA refused to bargain in violation of D.C. Code § 1-617.04(a)(5) and (1), and § 1-617.17(b) and (f)(l)-(2) (2001 ed.), of the Comprehensive Merit Personnel Act (CMPA) by the District of Columbia Water and Sewer Authority(Respondent). AFGE and WASA are parties to a Master Agreement on Compensation ("Agreement") which expires on September 30, 2011.

WASA filed an Answer to the Complaint ("Answer"), denying that it has refused to bargain or that it has committed any unfair labor practice. WASA also filed an Opposition to the Request ("Opposition"), and an "Amended Opposition... The Motion for Preliminary Relief is before the Board for disposition.

II. Motion for Preliminary Relief

The parties are in negotiations for a successor agreement.[1] The Union alleges as follows in its Complaint/Motion:

> 4. The Compensation Agreement, for Compensation Unit 31, between Complainants and Respondent is scheduled to expire on September 30, 2011, Master Agreement on Compensation between AFGE Locals 631, 872, and 2553, NAGE Local R3-06 and AFSCME Local 2091, Article 19.... [References to exhibits omitted].
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> 5. On March 21, 2011, the Unions of Compensation Unit 31 notified the Respondent of the Unions request to bargain a successor compensation agreement....
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> 6. On March 22, 2011, the Complainants appointed Darlene DesJardins, Chief Negotiator, and notified Respondent of the appointment....
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> 7. On May 3, 2011, the Respondent notified the Unions in Compensation Unit 31, that it refused to begin negotiations, until "the unions have agreed upon and have provided the Authority with the name of a spokesperson that will represent all of the unions at the bargaining table.... "
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> 8. On May 9, 2011, Complainants notified the Respondent that its May 3, 2011 refusal to begin negotiations was a violation of D.C. Code §1-617.17 and requested the Respondent begin negotiations within 30 calendar days of the receipt of the May 9, 2011 email....
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> 9. On May 11, 2011, the Respondent notified the Unions, in Compensation Unit 31, the Respondent would not begin negotiations because it alleged it did not have the name of a spokesperson for all the Unions in Compensation Unit 31....
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> 10. The refusal of the Respondent to begin negotiations is a violation of D.C. Code § 1-617.17(f) (1) which requires compensation agreements be completed prior to the submission of the budget for

[1] The AFGE Locals are part of five (5) union locals that comprise Compensation Unit 31 at WASA.

the fiscal year. The refusal is also a violation of Complainants' rights guaranteed by D.C. Code § 1-617.04(a) (1) and (5) of the CMPA.

11. The refusal of the Respondent to begin negotiations will delay the implementation of a successor compensation agreement and result in no wage increase being in place on October 1, 2011, for employees of Compensation Unit 31....

12. The Complainants request the Board grant preliminary relief to remedy the irreparable harm done by the Respondent's intentional refusal to begin negotiations for the successor compensation agreement....

13. The actions of the Respondent are clear and flagrant violations of the law, since the Complainants made a written request to bargain and appointed a named Chief Negotiator, in writing.

14. The actions of the Respondent are in direct violation of the law which requires the parties to begin negotiations, so that negotiations can be completed, in accordance with D.C. Code § 1-617.17(b) and (f)(1-2) of the CMPA.

15. The Complainants request the Board grant preliminary relief and enter an order requiring Respondent to begin immediate negotiations with the Unions in Compensation Unit 31 and to bargain until a successor compensation agreement is reached or the parties reach impasse; and require Respondent to post a notice for six (6) months stating it violated the law by refusing to begin negotiations for a successor compensation agreement with the Unions in Compensation Unit 31.

Thus, the Unions assert that although they have designated a chief negotiator to represent them in compensation bargaining, WASA refuses to commence negotiations. (Complaint at pgs. 2-4). Pursuant to Board Rule 520.15, the Unions ask that the Board: (1) grant preliminary relief; ("Request"); (2) order the Respondent to negotiate, and (3) WASA post a notice admitting that a violation of the Comprehensive Merit Personnel Act ("CMPA"). (See Complaint at pgs. 2 and 4).

In its Opposition, the Respondent denies that its actions result in an unfair labor practice. WASA notes that "[f]ive separate unions comprise Compensation Unit 31. These unions include the Complainants as well as the National Association of Government Employees, Local R3-06 ("NAGE") and the American Federation of State, County and Municipal Employees, Local 2091." (Opposition at pgs. 1-2). The Respondent counters the request for preliminary relief stating as follows:

> [WASA] received a letter from the Complainants dated March 22, 2011 which indicated that they had named "Darlene DesJardins as the Chief Negotiator for the successor compensation agreement" (Union Exhibit 5) between the Authority and Compensation Unit 31. This letter also notified [WASA] that neither AFSCME nor NAGE had the authority to negotiate a compensation agreement on behalf of the Complainants locals. On May 11, 2011, [WASA] received a letter from AFSCME signed by Geo. T. Johnson who also purports to be the Chief Negotiator for the bargaining of a successor compensation agreement. [references omitted]. To date, [WASA] has not received any notification from NAGE as to who they have chosen to be their Chief Spokesperson for these negotiations. [WASA] provided a copy of the AFSCME letter to Barbara Milton, President of AFGE 631 and again requested that the Unions resolve their internal disputes over who was their Chief Negotiator. [WASA] also indicated that it was not refusing to bargain and would do so once it had been informed by all of the unions who would serve as their Chief Negotiator....The Unions have also been informed of [WASA's] position.... Essentially the Complainants are trying to force [WASA] to violate 1-617.04 of the D.C. Code by involving it in issues that are clearly internal union matters. Thus, there are clearly material facts in dispute regarding this dispute.

(Opposition at pgs. 2-3).

Regarding the requirements for granting preliminary relief, WASA asserts as follows:

> In this case, the Complainants' own exhibits clearly demonstrate that contrary to their assertion, [WASA] is ready and willing to begin to negotiate for a successor compensation agreement once the Unions that comprise Compensation Unit 31 provides a clear

statement of who is serving to represent them as Chief Negotiator. Thus, the Unions cannot establish that the record provides probable cause that the CMPA has in fact been violated. Therefore, preliminary relief in this matter is inappropriate.

Furthermore, preliminary relief is inappropriate: "where the allegedly unlawful actions will not seriously affect the public interest". *AFGE, Local 8721* (citing *Clarence Mack, et al. v. FOP/DOC Labor Committee, et. al.*, PERB Case Nos. 97-S-01, 97-S-02 and 95-S-03, Opinion No. 516 (1997). The Unions have failed to show that the Board's granting of preliminary relief will ensure that the public interest will be served by such relief. Specifically, the Unions' request for preliminary relief, if granted, would require that [WASA] committing an unfair labor practice by involving itself in internal union business. Clearly, the Board's granting of preliminary relief in this action will not be in the public interest. Thus, preliminary relief is not appropriate. See *George Parker, et. al. v. WTU, Local 6, et. al.*, PERB Case Nos. 99-U-25 and 99-S-05, Opinion No. 594 (1999) (citing *AFSME D.C. Council 20. et. al. v. D.C. Gov't, et. al.,* PERB Case No. 92-U-24, Opinion No. 330 (1992)).

Finally, the Unions have failed to show how or where post-hearing relief will fail to adequately compensate for any harm to the Complainants. The sections of the [CMPA that WASA allegedly violated] are prospective in nature. For example, there is no evidence that [WASA's] failure to begin negotiations absent the Chief Negotiator issue being resolved will result in either a delay of the implementation of a successor compensation agreement. Additionally, nothing in either the Unions' Unfair Labor Practice [Complaint] or its request for preliminary relief provides any evidence of the assertion that any resulting wage increase beyond the expiration of the current agreement on September 30, 2011 could not adequately compensate the Unions for any harm. Thus, the Unions have failed to show that post hearing relief will not adequately compensate the Unions in this matter.

(Opposition at pgs. 3-4).

WASA maintains that its efforts to determine the representative of these five unions cannot be considered conduct that rises to the level of "clear-cut and flagrant." Therefore, WASSA requests that the Board deny the Union's request for preliminary relief.

II. Discussion

The criteria the Board employs for granting preliminary relief in unfair labor practice cases are prescribed under Board Rule 520.15, which provides in pertinent part:

> The Board may order preliminary relief... where the Board finds that the conduct is clear-cut and flagrant; or the effect of the alleged unfair labor practice is widespread; or the public interest is seriously affected; or the Board's processes are being interfered with, and the Board's ultimate remedy will be clearly inadequate.

The Board has held that its authority to grant preliminary relief is discretionary. See, *AFSCME, D.C. Council 20, et al. v. D.C. Government, et al*, 42 DCR 3430, Slip Op. No. 330, PERB Case No. 92-U-24 (1992). In determining whether to exercise its discretion under Board Rule 520.15, this Board has adopted the standard stated in *Automobile Workers v. NLRB*, 449 F.2d 1046 (CA DC 1971) ("*Automobile Workers*"). In *Automobile Workers*, the Court of Appeals addressed the standard for granting relief before judgment under Section 10(j) of the National Labor Relations Act and held that irreparable harm need not be shown. 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 those instances where [the Board] has determined that the standard for exercising its discretion has been met, the basis for such relief [has been restricted to the existence of the prescribed circumstances in the provisions of Board Rule [520.15] set forth above." *Clarence Mack, et al. v. FOP/DOC Labor Committee, et al,* 45 DCR 4762, Slip Op. No. 516 at p. 3, PERB Case Nos. 97-S-01, 97-S-02 and 95-S-03 (1997). Moreover, the Board has held that preliminary relief is not appropriate where material facts are in dispute. See *DCNA v. D.C. Public Health and Hospitals Public Benefit Corporations*, 45 DCR 6067, Slip Op. No. 559, PERB Case Nos. 98-U-06 and 98-U-ll (1988).

In the present case, the Respondents have not met the criteria of Board Rule 520.15. Even if the allegations are ultimately found to be valid, they do not establish that any of WASA's actions constitute clear-cut flagrant violations, or have any of the deleterious effects the power of preliminary relief is intended to counterbalance. While the CMPA prohibits the District, its agents, and representative from engaging in unfair labor practices, the alleged violations, even if determined to have occurred, do not rise to the level of seriousness that would undermine public

confidence in the Board's ability to enforce compliance with the CMPA. Finally, while some delay inevitably attends the carrying out of the Board's dispute resolution process, the Respondents have failed to present evidence which establishes that these processes would be compromised, or that eventual remedies would be inadequate, if preliminary relief is not granted.

We conclude that the Respondents have failed to provide evidence which demonstrates that the allegations, if true, are such that the remedial purposes of the law would be served by *pendente lite* relief. Moreover, should violations be found in the present case, the relief requested can be accorded with no real prejudice to the complainants following a full hearing.

In view of the above, we deny the Respondent's Motion for Preliminary Relief. In addition, the limited record before us does not provide a basis for finding that the criteria for granting preliminary relief have been met. In cases such as the instant case, the Board has found that preliminary relief is not appropriate. See *DCNA v. D.C. Health and Hospital Public Benefit Corporations*, 45 DCR 6067, Slip Op. No. 559, PERB Case Nos. 98-U-06 and 98-U-l 1 (1998).

Therefore, the Complainants' motion for preliminary relief is denied. This matter shall be referred to a Hearing Examiner in order to develop a full record.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Motion for Preliminary Relief filed by the American Federation of Government Employees, AFL-CIO, Locals 631, Local 872 and Local 2553, is **DENIED**.

2. The Unfair Labor Practice Complaint in this matter shall be scheduled for hearing under an expedited procedure.

3. Pursuant to Board Rule 559.1, this order is final upon issuance.

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

September 1, 2011

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No.11-U-37 was transmitted via U.S. Mail to the following parties on this 1st day of September 2011.

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