

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**Government of the District of Columbia
Public Employee Relations Board**

)	
In the Matter of:)	
)	
Washington Teachers’ Union, Local #6,)	
American Federation of Teachers, AFL-CIO)	
Petitioner)	PERB Case No. 19-U-09
)	
v.)	Motion for Preliminary Relief
)	
District of Columbia Public Schools)	Opinion No. 1718
)	
Respondent)	
)	

DECISION AND ORDER

I. Introduction

On May 22, 2019, the Washington Teachers’ Union, Local # 6 (WTU) filed an Unfair Labor Practice Complaint (Complaint) against the District of Columbia Public Schools (DCPS), alleging violations of the Comprehensive Merit Personnel Act (CMPA)¹ by DCPS’ decision to discontinue the extended school year program. The Complaint sought preliminary relief as a remedy to the allegations.

On May 29, 2019, WTU filed a motion for preliminary relief (Motion) pursuant to PERB Rule 520.15. On June 24, 2019, DCPS filed a response to the Complaint and Motion.² Pursuant to PERB Rule 520.15, the Board denies the Motion for the reasons stated herein.

II. Statement of Case

On February 21, 2019, DCPS decided to discontinue the extended school year program.³ This decision affected thirteen public schools.⁴ WTU alleges that, in implementing the decision

¹ D.C. Official Code § 1-617.04(a)(1), (3), and (5).

² DCPS was granted an extension of time to file its response to the Complaint and Motion.

³ Complaint at 3.

⁴ Complaint at 3. The thirteen schools impacted are Garfield Elementary School, H.D. Cooke Elementary School, Hart Middle School, Hendley Elementary School, Johnson Middle School, Kelly Miller Middle School, King

to discontinue the extended school year program, DCPS unilaterally imposed new wages, hours, and working conditions on WTU bargaining unit members.⁵

On March 8, 2019, the parties met to discuss the discontinuation of the extended school year program. During this meeting, WTU requested impact and effects (I&E) bargaining.⁶ On March 29, 2019, DCPS agreed to meet for I&E bargaining related to the extended school year program.⁷

On April 23, 2019, WTU alleges that DCPS bargained directly with WTU bargaining unit members by extending transition offers to change employment from a 12-month position to a 10-month position.⁸ Bargaining unit members were given until April 30, 2019, to accept the offer or DCPS would consider the failure to accept the offer as a rejection and the position would be excessed.⁹

On April 24, 2019, the parties met for I&E bargaining.¹⁰ WTU made four proposals.¹¹ DCPS responded to WTU's I&E proposals on May 1, 2019.¹²

III. Position of Parties

A. WTU's Position

WTU requests that the Board order DCPS to retract: (1) DCPS' decision to discontinue the extended year program and reverse any actions it has taken to implement the decision, and (2) DCPS' decision that any affected WTU bargaining unit member who declines to accept DCPS' offer of employment in a 10-month position will be excessed from their job.¹³ In support of the Motion, WTU states that DCPS unilaterally ended the extended year school program; that bargaining unit members that declined an offer of employment may be excessed from their positions; that if bargaining unit members are excessed they may be terminated before a hearing on the unfair labor practice; and that the possible discharge affects schools, teachers, students, and families.¹⁴

Elementary School, Luke C. Moore High School, Randle Highlands Elementary School, Raymond Education Campus, Roosevelt Stay High School, Thomas Elementary School, and Turner Elementary School.

⁵ Complaint at 3.

⁶ Response at 3.

⁷ Complaint at 4.

⁸ Complaint at 4.

⁹ Complaint at 4. "Excess" is defined under the collective bargaining agreement. An excess is an elimination of a Teacher's position at a particular school due to a decline in student enrollment, a reduction in the local school budget, a closing or consolidation, a restructuring, or a change in the local school program, when such an elimination is not a 'reduction in force' (RIF) or 'abolishment.' *Washington Teachers' Union and District of Columbia Public School Collective Bargaining Agreement*, October 1, 2016- September 9, 2019 at 5.

¹⁰ Complaint at 5.

¹¹ Complaint Ex. 9.

¹² Complaint Ex. 9.

¹³ Motion at 1.

¹⁴ Motion at 1-2.

B. DCPS' Position

DCPS argues that the Motion fails to satisfy the standards of Board Rule 520.15.¹⁵ DCPS argues that the alleged wrongdoing: (1) is neither clear-cut nor flagrant; (2) only affects a small group of teachers; (3) does not affect the public interest; and (4) fails to identify any interference with PERB processes.¹⁶

IV. Discussion

Motions for preliminary relief in unfair labor practice cases are governed by PERB Rule 520.15, which provides:

The Board may order preliminary relief. A request for such relief shall be accompanied by affidavits or other evidence supporting the request. Such relief may be granted 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 may be inadequate.¹⁷

In determining whether to exercise its discretion to order preliminary relief, the Board need not find irreparable harm.¹⁸ Notwithstanding, the Board looks to the supporting evidence, which must "establish that there is reasonable cause to believe that the [CMPA] has been violated and that the remedial purpose of the law will be served by *pendente lite* relief."¹⁹ Where the Board has determined that the standards for exercising its discretion have been met, the basis for relief is restricted to the existence of the prescribed circumstances in the provision of Board Rule 520.15.²⁰

The Board finds that WTU has failed to meet its burden to show that DCPS' conduct was clear-cut and flagrant. Here, DCPS' implementation of the decision to end the extended-year school program cannot be described as a clear-cut or flagrant violation of the CMPA. For instance, the parties disagree about whether DCPS provided enough notice before implementing the change in the extended year program; whether the decision to eliminate the extended year program was a management right protected by D.C. Code §§ 1-617.08(a)(2) and (a)(5)(B); and whether DCPS' job transition proposal was unlawful direct dealing. Based on these contested issues, the Board finds there is not enough evidence without further development of the record to determine that DCPS' conduct was clear-cut and flagrant in violation of the statute as required under PERB Rule 520.15, and DCPS has failed to meet its burden.

¹⁵ Response at 5.

¹⁶ Response at 6.

¹⁷ NAGE, Local R3-07 v. OUC, 60 D.C. Reg. 9251, Slip Op. No. 1393 at 6, PERB Case No. 13-U-20 (2013).

¹⁸ Id.

¹⁹ Id.

²⁰ Id. Citing *Clarence Mack, Shirley Simmons, Hazel Lee and Joseph Ott v. FOP/DOC Labor Committee*, et al, 45 D.C. Reg. 4762, Slip Op. No. 516 at p. 3, PERB Case Nos. 97-S-01, 97-S-02 and 95-S-03 (1997).

Further, the Board finds that WTU has failed to meet its burden to show that the effects of the alleged unfair labor practice are widespread. The number of employees that may potentially be affected is small. WTU's submitted evidence shows that, of a total of 550 employees work at the thirteen extended year schools, only seven (7) of the employees declined the transition offer and forty-four (44) employees did not respond to the transition offer by the April 30, 2019 deadline.²¹

Likewise, WTU has failed to meet its burden to show that the public interest is seriously affected. WTU's argument is unpersuasive because the potential discharge of teachers and its effect on schools, students, and families is too ambiguous. WTU presented no arguments on the adequacy of a future remedy or DCPS' interference with the Board's processes.

WTU's Motion presented allegations repetitious of those in the Complaint without the support of affidavits or other evidence. Therefore, WTU failed to meet its burden to demonstrate that the remedial purposes of the law would be served by *pendente lite* relief.²²

Based on the foregoing, the Board, in its discretion, denies WTU request for preliminary relief.

ORDER

IT IS HEREBY ORDERED THAT:

The Washington Teachers' Union Request for Preliminary Relief is hereby denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Members Douglas Warshof, and Mary Anne Gibbons.

Washington, D.C.
July 18, 2019

²¹ Complaint Ex. 9.

²² *Durant v. DOC*, 59 D.C. Reg. 3900, Slip Op. No. 914 at 3, PERB Case No. 07-U-43 (2012) (finding that the complainant's request for preliminary relief, which made allegations repetitious of those in the unfair labor practice complaint that were unsupported by affidavits and other documentation, did not satisfy any of the criteria prescribed by Board Rule 520.15).

Certificate of Service

This is to certify that the attached Decision and Order in PERB Case No. 19-U-09, Slip Op.1718, was sent by File and ServeXpress to the following parties on this the 25th day of July 2019.

Lee W. Jackson
Alice Hwang
James & Hoffman, P.C.
1130 Connecticut Avenue, NW, Suite 950
Washington, D.C. 20036

Stephanie T. Maltz
Michael D. Levy
D.C. Office of Labor Relations &
Collective Bargaining
441 4th Street, NW, Suite 820N
Washington, D.C. 20001

_____/s/Royale Simms_____
Public Employee Relations Board
1100 4th Street, SW, Suite E630
Washington, D.C. 200024
Telephone: 202-727-1822