

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)

American Federation of State,
County and Municipal Employees,
D.C. Council 20, Local 2776,
AFL-CIO,)

Complainant,)

v.)

Department of Finance and Revenue,)

Respondent.)

PERB Case No. 92-U-25
Opinion No. 332

DECISION AND ORDER
ON REQUEST FOR PRELIMINARY RELIEF

On September 17, 1992, the American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2776, AFL-CIO (AFSCME), pursuant to Board Rule 520.15, filed a request for preliminary relief in conjunction with the filing of a Verified Unfair Labor Practice Complaint with the Public Employee Relations Board (Board).^{1/} The Complaint charges that Respondent D.C. Department of Finance and Revenue (DFR) violated D.C. Code Sec. 1-618.4(a)(1) and (5) of the Comprehensive Merit Personnel Act (CMPA) by dealing directly with employees in the bargaining unit, for whom AFSCME is the exclusive representative, concerning the implementation of 12 furlough days in FY '93 pursuant to the

^{1/} Specifically, AFSCME requested that the Board grant preliminary relief ordering "DFR [to] immediately cease and desist from meeting with and/or surveying bargaining unit employees directly regarding the furloughs and refusing to honor the Charging Party's rights under the law; rescind any action(s) effectuated based on information obtained in the meetings with, and surveys of, employees; order that DFR engage in good faith negotiations with AFSCME regarding any plan to furlough DFR employees," Comp. at 4.)

Omnibus Budget Support Temporary Act of 1992 (Act). Pursuant to an expedited pleadings schedule (requested by Complainant and granted by the Board), the Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of DFR, filed an Answer to the Complaint on September 25, 1992, denying the Complaint allegations. OLRCB further asserts that the Board lacks authority to grant the requested preliminary relief or, in the alternative, that even if the Board possesses such authority ^{2/}, the facts and circumstances of the case do not support such relief. On September 31, 1992, AFSCME filed a Reply to OLRCB's Answer to the Complaint.

For the reasons we articulated in AFSCME D.C. Council 20, et al. v. D.C. Gov't, et al., ___ DCR ___, Slip Op. No. 330, PERB Case No. 92-U-24 (1992), we deny AFSCME's request for preliminary relief as inappropriate under the criteria articulated by the D.C. Court of Appeals in Automobile Workers v. NLRB, 449 F.2d 1046 (CA DC 1971), in view of the competing mandates of the Act. ^{3/} However, we shall investigate this Complaint as expeditiously as is feasible, in accordance Board Rule 501.1 and as set forth in our Order below.

^{2/} The Board's authority to issue orders providing temporary or preliminary relief is set forth in D.C. Code Sec. 1-618.13(b).

^{3/} Granting the requested preliminary relief in this matter would place such an Order in conflict with the Act. We do not believe that the "remedial purposes of [either] law [i.e., the CMPA and the Act,] will be served" by which relief. Automobile Workers v. NLRB, 449 F.2d 1046, 1051, (CA DC 1971).

ORDER

IT IS HEREBY ORDERED THAT:

1. The request for preliminary relief is denied.
2. The Notice of Hearing shall issue seven (7) days prior to the scheduled date of the hearing.
3. Following the hearing, the designated hearing examiner shall submit a report and recommendation to the Board not later than twenty (20) days following the conclusion of closing arguments.
4. Parties may file exceptions and briefs in support of the exceptions not later than seven (7) days after service of the hearing examiner's report and recommendation. A response or opposition to exceptions may be filed not later than five (5) days after service of the exceptions.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

October 19, 1992

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 92-U-25 was hand-delivered and/or mailed (U.S. Mail) to the following parties on the 19th day of October, 1992.

Robert E. Paul, Esq.
Zwerdling, Paul, Leibig, Kahn
Thompson, Driesen, P.C.
1025 Connecticut Avenue, N.W.
Suite 307
Washington, D.C. 20036

Hand-delivered

Agnes M. Alexander, Esq.
Acting Deputy Director
Office of Labor Relations
and Collective Bargaining
415-12th Street, N.W.
Suite 400
Washington, D.C. 20004

Hand-delivered

Courtesy Copies:

Debra A. McDowell
Acting Director
Office of Labor Relations
and Collective Bargaining
415-12th Street, N.W.
Suite 400
Washington, D.C. 20004

Hand-delivered

Ana R. Escobar
President
American Federation of State
County and Municipal Employees
District Council 20, Local 2776
P.O. Box 7355
Washington, D.C. 20044

U.S. Mail

Gizaw Gessesse
Executive Director
American Federation of State
County and Municipal Employees
District Council 20
1108 K Street, N.W., 2nd Fl.
Washington, D.C. 20005

U.S. Mail


LaShawn R. Williams