

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:	)	
	)	
Gina H. Douglas, Miriam R. Holman,	)	
Sandra A. Hurd, Mfon S. Ibangha,	)	
Shomari A.H. Jahi, Jean M. Johnson,	)	
and Michael A. Stipling,	)	
	)	
Complainants,	)	PERB Case No. 92-U-03
	)	Opinion No. 315
v.	)	
	)	
Sharon Pratt Dixon, Mayor	)	
of the District of Columbia,	)	
	)	
and	)	
	)	
The American Federation of State,	)	
County and Municipal Employees,	)	
District Council 20, Local Unions	)	
No. 1033, 1200, 2091, 2092, 2096,	)	
2097, 2401 and 2776,	)	
	)	
Respondents.	)	

DECISION AND ORDER

On November 25, 1991, an Unfair Labor Practice Complaint was filed with the Public Employee Relations Board (Board), by Counsel on behalf of Complainants Gina H. Douglas, Miriam R. Holman, Sandra A. Hurd, Mfon S. Ibangha, Shomari A.H. Jahi, Jean M. Johnson, and Michael A. Stipling. Complainants allege that they are non-bargaining-unit Career Service employees of the Government of the District of Columbia. The Complaint makes related claims against the District government as well as the above-captioned Local Unions of the American Federation of State, County and Municipal Employees, District Council 20, AFL-CIO (AFSCME), the labor organization that Complainants assert represents collective bargaining unit employees in District government agencies where Complainants were employed, prior to their terminations. The Complaint claims that by terminating the appointments of Complainants, "effective November 8, 1991, in accord[ance] with the provisions of the District of Columbia Comprehensive Merit Personnel Act of 1978 [(CMPA)] Emergency Amendment Act of 1991 (D.C. Act 9-65)" (approved July 24, 1991) (hereinafter the Emergency Amendment Act), the District has violated D.C. Code Sec. 1-618.4(a)(1) and (3) of the CMPA.

(Compl. at 3.) With respect to AFSCME, the Complaint alleges a violation of D.C. Code Sec. 1-618.4(b)(2), but fails to state what acts or conduct engaged in by AFSCME constituted the alleged violation.

On December 20, 1991, the Office of Labor Relations and Collective Bargaining (OLRCB) filed, on behalf of the Mayor, an Answer to the Complaint asserting that the Board lacks jurisdiction over the Complaint allegations because the terminations of the Complainants, in accordance with the Emergency Amendment Act, do not constitute unfair labor practices under D.C. Code Sec. 1-618.4(a)(1) and (3). OLRCB further contends that "Complainants were employed as management and personnel officials." (Dist. Ans. at 2.) Therefore, OLRCB argues, Complainants "are not a proper party to bring this Complaint...since Complainants are not protected by the provisions in [D.C. Code Sec.] 1-618.1 and are excluded from representation under [D.C. Code Sec.] 1-618.9." (Dist. Ans. at 4.) The District, therefore, requests that the Complaint be dismissed.

On December 23, 1991, AFSCME filed an Answer admitting the material allegations of the Complaint, but denying that these allegations constitute an unfair labor practice under the CMPA. AFSCME further states that Complainants have failed to state a claim against AFSCME upon which relief can be granted and also requests that the Complaint be dismissed.

We have reviewed the parties' pleadings and considered the Complaint allegations in the light most favorable to the Complainants. Nevertheless, the Complaint does not give rise to any unfair labor practices or other claims which the Board is authorized to address under the CMPA and therefore must be dismissed.

Unfair labor practices over which the Board has jurisdictional authority are set forth under D.C. Code Sec. 1-618.4 of the CMPA. D.C. Code Sec. 1-618.4(a)(1) prohibits "[t]he District ...from [i]nterfering, restraining or coercing any employee in the exercise of rights guaranteed by this subchapter [,i.e., the Labor-Management Relations provisions of the CMPA.]" Referenced employees' rights are provided under D.C. Code Sec. 1-618.6. The Complainants assert that by terminating their appointments in accordance with the provisions of the Emergency Amendment Act, the District has violated D.C. Code Sec. 1-618.4 (a)(1). Specifically, Complainants contend that "the limitation and restrictions imposed and applied by the [Emergency Amendment] Act cause[d] the District government and Council 20 to be in violation of the aforesaid statutory proscriptions." (Compl. at 4.)

The Board finds that the Complaint allegations not only fail to state an unfair labor practice under D.C. Code Sec. 1-618.4(a) of the CMPA but, as the Complainants concede, the alleged violative conduct by the District was pursuant to the Emergency Amendment Act. The Emergency Amendment Act is, as its title reflects, an amendment to the CMPA. Under the Emergency Amendment Act, the authority to consider claims arising from challenged actions taken pursuant to its provisions is vested expressly and exclusively within the jurisdiction of the Temporary Panel of the Office of Employee Appeals. (Emergency Amendment Act Sec. 2(f) (2).)

The Complaint advances the same allegation in support of its asserted violation of D.C. Code Sec. 1-618.4 (a)(3). As such, the above reasoning equally applies to this alleged violation. Moreover, under D.C. Code Sec. 1-618.8 (a)(3) of the CMPA, "[t]he respective personnel authorities (management) shall retain the sole right, in accordance with applicable laws and rules and regulations: [t]o relieve employees of duties because of lack of work or other legitimate reasons." Thus, the CMPA specifically provides the various District government personnel authorities employing the Complainants with the sole right to relieve their employees of their duties "in accordance with applicable laws and rules and regulations, e.g., the Emergency Amendment Act.

Therefore, notwithstanding whether or not the Complainants' employee status under the CMPA would entitle them to the prescribed employee rights under the CMPA, clearly as an amendment to the CMPA, the Emergency Amendment Act is "an applicable law[]" within the meaning of D.C. Code Sec. 1-618.8(a)(3). Accordingly, any recourse or relief the Complainants may be entitled to must be sought within the parameters of the Emergency Amendment Act. To the extent Complainants challenge the legality or equitableness of the Emergency Amendment Act, the Board clearly lacks the authority to make such determinations. The Board, therefore finds that the Complaint fails to allege a cause of action against the District within the statutory jurisdiction of the Board under the CMPA.

Turning to the claims against AFSCME, the Complainants allege a violation of D.C. Code Sec. 1-618.4(b)(2), which prohibits any conduct or acts by a labor organization that "caus[es] or attempt[s] to cause the District to discriminate against an employee in violation of [D.C. Code Sec.] 1-618.6." However, the Complaint, as earlier noted, fails to allege what acts or conduct AFSCME engaged in that constitutes the alleged violation. The Complainants merely make the same assertion that the "[Emergency Amendment] Act cause[d] the District government and Council 20 to be in violation of the aforementioned statutory

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proscriptions." (Compl. at 4). Notwithstanding this deficiency in the Complaint, we find, based on our discussion of the alleged violations against the District, that the Complaint allegations with respect to AFSCME fail to allege a cause of action under the CMPA over which the Board possesses jurisdictional authority. With nothing more, we dismiss the Complaint.

ORDER

IT IS HEREBY ORDERED THAT:

The Complaint is dismissed.

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

June 10, 1992