GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
American Federation of Government Employees, Local 2725, AFL-CIO,	
Complainant,	
v.	**PERB Case No. 96-U-26** **Opinion No. 486**
District of Columbia Housing Authority,	
Respondent.	

DECISION AND ORDER ON REQUEST FOR PRELIMINARY RELIEF

On September 6, 1996, the American Federation of Government Employees, Local 2725, AFL-CIO (AFGE) filed an Unfair Labor Practice Complaint and Application for Preliminary Relief, in the above-captioned case. AFGE charges that Respondent D.C. Housing Authority (DCHA) has committed unfair labor practices under the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. Code § 1-618.4(a)(1) and (5).[1]/ (Compl. at 6.) Specifically, the Complainant alleges that Respondent is refusing to bargain in good faith over a reduction in force (RIF) by (1) failing to provide, or provide in a timely manner, requested necessary information; (2) failing to respond to its proposals; and (3) engaging in other conduct designed to delay bargaining or reaching an agreement before the implementation of the RIF on September 30, 1996. (Compl. at 5.). Complainant has requested that the Board grant preliminary relief enjoining DCHA from implementing the RIF until DCHA has engaged in and completed good faith bargaining on the impact and implementation of the RIF. (Compl. at 4.)

DCHA filed a Response in opposition to the request for preliminary relief on September 17, 1996. DCHA denies that it has failed to bargain in good faith over the impact and implementation of the RIF or that it failed to provide AFGE with

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[1]/ AFGE represents a unit of all employees, except for security personnel, employed by DCHA (formerly the Department of Public and Assisted Housing (DPAH)). DCHA does not dispute that it is the successor agency to DPAH with respect to any right or obligation maintained by DPAH.

requested information when it became available. DCHA denies that it has committed any unfair labor practice and counters, to the contrary, that any unreasonable delay in the parties' impact and effect bargaining over the RIFs was the product of AFGE's bargaining practices.

AFGE bases it Complaint on a series of alleged dilatory tactics by DCHA. Of particular note was DCHA's alleged failure to come to the bargaining table until July 31, 1996, nearly 3 months after AFGE's initial April 4, 1996 request to bargain over the impact and effects of the RIF. This action, AFGE asserts, left "insufficient time for meaningful bargaining." (Compl. at para. 12.) The resultant abbreviated time remaining to bargain before the scheduled implementation of the RIFs, i.e., between July 31 and September 30, 1996, appears to have engendered or aggravated the other charges that DCHA unreasonably delayed bargaining. Notwithstanding this "unreasonable delay" by DCHA, however, AFGE did not pursue this cause of action until September 6, 1996, 5 months after its initial request to bargain and less than a month before the scheduled implementation of the RIFs. In any event, our review of the parties' pleadings reveal that there are greatly conflicting accounts over the circumstances which precipitated the acts and conduct underlying the alleged violations. Without an opportunity to develop a full record on these issues, a reasonable determination that the alleged acts and conduct constituted the asserted unfair labor practices cannot be made on the record before us.

We have held that "[a]lthough irreparable injury need not be shown, ... the supporting evidence must '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). While the Complainant has provided an affidavit and documentation of the parties' actions during negotiations, the pleadings and evidence provided by DCHA leave a genuine issue of fact as to whether there is reasonable cause to believe that DCHA's actions and conduct rose to the level of failing to bargain in good faith. Therefore, the conflicting and limited record before us precludes us from granting preliminary relief.[2]/

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[2]/ AFGE argues that "[t]he need for preliminary relief is exemplified by an arbitrators award has directed DCHA to re-do the retention register from a RIF conducted in 1933 and DCHA has yet to comply." (Compl. at 6.) DCHA's compliance with an

(continued...)

For the reasons we articulated in AFSCME D.C. Council 20, et al. v. D.C. Gov't. et al., 42 DCR 3430, Slip Op. No. 330, PERB Case No. 92-U-24 (1992), we deny AFGE'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 (D.C. Cir. 1971). However, we shall investigate this Complaint as expeditiously as is feasible, in accordance with Board Rule 501.1 and as set forth in our Order below. If determined to be warranted, we can extend any relief afforded retroactively.

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 (21) days following the conclusion of closing arguments (in lieu of post-hearing briefs).

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.

September 27, 1996

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[2](...continued)
arbitrators award, however, is of no significance with respect to determining whether or not it has engaged in an unfair labor practice under the CMPA, the predicate for granting preliminary relief. Fraternal Order of Police/Metropolitan Police Department Labor Committee v. Metropolitan Police Department, 39 DCR 9617, Slip Op. 295, PERB Case No. 91-U-18 (1992).