Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 383, AFL-CIO,	PERB Case No. 07-U-03
Complainant,	Opinion No. 859
v.	MOTION FOR PRELIMINARY RELIEF
District of Columbia Mental Retardation and Developmental Disabilities Administration,	
Respondent.	

DECISION AND ORDER[1]

I. Statement of the Case

The American Federation of Government Employees ("Complainant" or "Union"), filed an Unfair Labor Practice Complaint ("Complaint") and Motion for Preliminary Relief ("Motion") on October 6, 2006. The Complainant alleges that the District of Columbia Mental Retardation and Developmental Disabilities Administration ("Respondent" or "MRDDA"), violated D.C. Code § 1-617.04(a)(1) and (5) by implementing a new parking policy without negotiating with the Union. (Motion at pgs. 1-2). The Complainant requests that the Board grant preliminary relief by ordering the MRDDA to: (1) maintain the status quo and halt its move to the new office location at 1125 15th Street, N.W.; or, (2) immediately provide free parking spaces to approximately 80 individuals; and (3) fulfill its bargaining obligation with the Union while the Board determines whether additional relief is warranted. (Motion at p. 12).

[1]On December 20, 2006, the Board issued an Order denying the Complainant's Motion. The December 20th Order indicated that a decision would be issued at a later date. That Order is attached to this decision.

The Respondent filed an Answer to the Unfair Labor Practice Complaint ("Answer") denying the unfair labor practice allegations. In addition, the Respondent filed a document styled "Response to Complainant's Motion for Preliminary Relief" ("Opposition") claiming that this matter is moot because: (1) the Respondent has already provided 70 parking spaces; (2) the Board can fashion a monetary remedy if the MRDDA has incurred any liability; and (3) there is a dispute regarding a material fact. (Opposition at pgs. 2-3). Therefore, the MRDDA is requesting that the Motion be denied.

The Complaint's Motion and the Respondent's Opposition are before the Board for disposition.

II. Discussion

The MRDDA was scheduled to relocate to 1125 - 15th Street, NW on October 10, 2006. The Union claims that on October 4, 2006, the MRDDA informed Union representatives that the new building had a parking garage with 101 available spots and the MRDDA intended to offer 60 parking spaces to be shared by the MRDDA union and non-union staff. The 60 spaces would be shared by employees who would take turns using the same space on alternate days. Twenty-five spaces would be reserved for management. (Motion at p. 6) The Union asserts that the parking garages near the new location are cost prohibitive for the bargaining unit members and do not allow patrons to exit and enter without paying again for parking. Also, the affected employees must use their vehicles on a daily basis to visit clients who are mentally retarded or developmentally disabled and "these employees may not be able to fully serve MRDDA's vulnerable public clientele." (Motion at p. 2).

Article 12, Section E of the parties' collective bargaining agreement provides that "[e]mployees required as a condition of employment to use their personal vehicle in the performance of their official duties may be provided a parking space or shall be reimbursed for non-commuter parking expenses, which are incurred in the performance of their official duties." The Union claims that for the past 20 years, the MRDDA has provided parking spaces for employees who are required to use their vehicles as a condition of employment. The Union argued that management must bargain over the new parking plan and requested bargaining.

The Union asserts that in response to this request, the MRDDA stated that the plan to share spaces was to be implemented, but later stated that this was merely a bargaining offer concerning the parking issue. On October 5th, 2006, as a temporary solution, the Union suggested in a counterproposal that the MRDDA provide 80 of the 101 total parking spaces to those members of the bargaining unit who are required to use their personal vehicle to perform their duties. The Union claims that on October 5, 2006, management sent an e-mail offering 60 shared spaces for non-management employees, but never responded to the specific proposal made by the Union.

In light of the above, on October 6, 2006, the Union filed an unfair labor practice complaint and a motion for preliminary relief in this matter. (Opposition at pgs. 6-8). Specifically, the Union states that by relocating and failing to provide free parking at the new location for all of its employees who are required to use their vehicles to perform their official duties - the MRDDA is violating D.C. Code § 1-617.04(a)(1) and (5). As a basis for its Motion, the Union asserts that: (1) many employees had not received parking passes prior to reporting to work on October 10, at the time of the filing of the Motion; (2) bargaining unit employees must make home visits and respond to emergencies; (3) the Union "fears that it will be physically impossible for the bargaining unit members to get a week's worth of visits crammed into two or three days' a week, (Motion at p. 9); and (4) public parking garages in the area are cost prohibitive for the bargaining unit members and do not allow patrons to exit and enter without paying again for parking. (Motion at pgs. 8-9).

The criteria the Board employs for granting preliminary relief in unfair labor practice cases are prescribed under Board Rule 520.15.

Board Rule 520.15 provides in pertinent part as follows:

> 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 may 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 at p. 4, f. 1, PERB Case No. 92-U-24 (1992). In determining whether or not 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 at 1051 (CA DC 1971). There, the Court of Appeals - addressing the standard for granting relief before judgment under Section 10(j) of the National Labor Relations Act - held that irreparable harm need not be shown. However, 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 bases for such relief were 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).

The Respondent contends that the Motion should be denied because the Union has failed to meet the requirements for preliminary relief. In support of this claim, the Respondent asserts that: (1) the Board's processes have not been frustrated because "the Board can calculate the amount of past harm as money damages . . . after the [unfair labor practice] proceedings have

been concluded"; (2) the alleged violation is not widespread or flagrant; and (3) there are material facts in dispute. (Opposition at p. 3)

The Respondent also contends that preliminary relief has been rendered moot by events which have taken place after the filing of the Complaint. Specifically, the Respondent asserts that it made available 70 non-shared parking spaces to bargaining unit members, thus substantially complying with the Union's request for 80 spaces. The Respondent asserts that the parties merely disagree as to the number of spaces needed.

The Complainant's claim that the Respondent's actions meet the criteria of Board Rule 520.15, is a repetition of the allegations contained in the Complaint. (See Compl. pgs. 5-6) Even if the Complaint is ultimately found to be valid, it does not appear that any of the Respondent's actions constitute clear-cut or flagrant violations, or have any of the deleterious effects the power of preliminary relief is intended to counterbalance. The Respondent's alleged actions presumably stem from a single action (or at least a single series of related actions), and do not appear to be part of a pattern of repeated and potentially illegal acts. While the Comprehensive Merit Personnel Act (CMPA) asserts that "the District, its agents, and representatives are prohibited from interfering, restraining or coercing any employee in the exercise of the rights guaranteed by [the CMPA]",[2] the alleged violations, even if determined to be valid do not rise to the level of seriousness that would undermine public confidence in the Board's ability to enforce the CMPA. Finally, while some delay inevitably attends the carrying out of the Board's dispute resolution process, the Complainant has 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.

Under the facts of this case, the alleged violations and their impact do not satisfy any of the criteria prescribed by Board Rule 520.15. Specifically, we conclude that the Union has failed to provide evidence which demonstrates that the allegations, even if true, are such that 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 Union following a full hearing. Therefore, we find that the facts presented do not appear appropriate for the granting of preliminary relief. Furthermore, the parties dispute whether: (1) the MRDDA bargained with the Union; (2) the MRDDA provided parking spaces to the bargaining unit; and (3) how many employees are entitled to a parking space. Therefore, a hearing is warranted in order to resolve these facts. In view of the above, we deny the Union's Motion for Preliminary Relief.

For the reasons stated above, the Board denies the Complainant's request for preliminary relief and directs the development of a factual record through an unfair labor practice hearing.

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[2]D.C. Code § 1-617.04(a)(1) (2001).

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

January 11, 2007

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 383, AFL-CIO,	
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v.	
	Opinion No. 859
District of Columbia Mental Retardation and Developmental Disabilities Administration,	
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ORDER

The Board has decided to issue its Order now. A decision will follow. The Board having considered the American Federation of Government Employees, Local 383's, Motion for Preliminary Relief, hereby denies the motion. In addition, this case is referred to a Hearing Examiner for the purpose of developing a full and factual record upon which the Board may make a decision.

IT IS HEREBY ORDERED THAT:

1. The American Federation of Government Employees, Local 383's Motion for Preliminary Relief, is denied.

2. This case is referred to a Hearing Examiner.

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

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

December 20, 2006

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and the Board's December 20th Order in PERB Case No. 07-U-03 are being transmitted via Fax and U.S. Mail to the following parties on this the 11th day of January 2007.

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Sheryl V. Harrington
Secretary

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