GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

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| In the Matter of:<br><br>The American Federation of Government Employees, Local 1000,<br><br>Complainant,<br><br>and<br><br>The District of Columbia Office of Labor Relations and Collective Bargaining,<br><br>Respondent. | PERB Case No. 86-U-05<br>Opinion No. 146 |

DECISION AND ORDER

On April 24, 1986 Mr. Donald M. MacIntyre, on behalf of the American Federation of Government Employees, Local 1000 (AFGE), filed an Unfair Labor Practice (ULP) Complaint with the District of Columbia Public Employee Relations Board (Board) against the District of Columbia Office of Labor Relations and Collective Bargaining (OLRCB). The Complaint alleged that OLRCB committed an ULP in violation of Section 1-618.4(a)(1), (2) and (5) of the Comprehensive Merit Personnel Act (CMPA) when on April 4, 1986 it filed a demand for arbitration of a contractual dispute with the Federal Mediation and Conciliation Service (FMCS) without first filing a grievance under the contract. AFGE further contends that OLRCB is unlawfully attempting to coerce it by demanding that it make a $1,000 payment in satisfaction of the disputed provision of the collective bargaining agreement. As a remedy, AFGE requests that the Board order a stay of the selection of the arbitrator and that OLRCB be directed to cease and desist from invoking arbitration without first bargaining over the grievance procedure.

On May 5, 1986 OLRCB filed its "Answer" denying that it violated the CMPA when it filed a demand for arbitration with FMCS. OLRCB contends that Management is not required to file a grievance before invoking arbitration where filing the grievance would be a "useless and idle gesture". OLRCB further contends that its demand for arbitration was a legal and proper attempt to consolidate its case with AFGE's demand for arbitration over the identical disputed contractual provisions. OLRCB's position is that since the issues are in the process of being decided by an arbitrator, the Board should defer to the Arbitrator. OLRCB requests that the Complaint be dismissed.

The issue before the Board is whether OLRCB's failure to file a grievance before requesting arbitration by FMCS is an unfair labor practice under the circumstances.

This case is the third in a series of Complaints filed with the Board over a dispute between OLRCB and several labor organizations, led principally by AFGE, over the size and composition of a Health and Life Benefits Study Committee estabished by Article V of the current collective bargaining agreement. The purpose of the Study Committee is to explore possible alternatives to the Federal government health and life insurance plan which currently covers most unionized District government employees.

On September 15, 1985 AFGE requested arbitration by FMCS, after filing a "class grievance" against OLRCB alleging a continuing violation of Article V based on OLRCB's alleged attempt to expand the size and composition of the Study Committee. On January 30, 1986, OLRCB sought to have its Complaint concerning AFGE adjudicated by the same arbitrator but was rebuffed by FMCS. On March 24, 1986 the FMCS appointed arbitrator issued an Award sustaining the grievance filed against OLRCB and prohibited it from changing the size and composition of the Study Committee. However, in his Award, the Arbitrator noted that OLRCB had filed a grievance against AFGE for boycotting the scheduled meetings of the Study Committee and a demand for consolidation. The Arbitrator specifically stated that his Award did not include a decision on OLRCB's grievance but expressed the opinion that it was inevitable that OLRCB's grievance would be arbitrated. On April 4, 1986 OLRCB filed a demand for arbitration with FMCS which led to the instant Complaint filed by AFGE.

The Board adheres to its policy of deferring action on an unfair labor practice complaint when the challenged conduct has also been asserted to violate a collective bargaining agreement and that question is before an arbitrator. Thus, for example, where facts are alleged that would, if found, constitute an unfair labor practice but might also consititute a breach of contract whose remedy might also cure the statutory violation, it makes sense for the Board to stay its proceedings pending the outcome in terms of the policy of the CMPA. Here, however, we do not find the deferral policy applicable because we conclude that the challenged actions, assuming arguendo that they occurred as alleged in the Complaint, fail to state a violation of the CMPA.

The two violations alleged that OLRCB filed a demand for arbitration of a contractual dispute with FMCS without first filing a grievance under the contract and that OLRCB insisted that AFGE (alone) pay $1,000 to a not-yet-existing committee provided for in the contract. We know of no basis for judging the filing of an arbitration demand without a prior grievance filing to be a breach of OLRCB's duty to bargain under the CMPA. Nor do we believe that, as the Complaint avers, it is a failure

to bargain in good faith to "attempt to take a matter to arbitration which is not arbitrable". Turning to the contention that both the filing for arbitration and the demand for payment of the $1,000 constitute violations of D.C. Code Sections 1-618.4 (a)(1) and (2), we conclude that neither action amounts to interference, restraint or coercion of the employees with respect to their use of the contractual grievance procedure, or interference with the administration of the union by attempting to interfere with its enforcement of its contract. OLRCB's actions obviously did not in fact deter the exercise of statutory or contractual rights, nor do we believe that they had a reasonable tendency to do so.

## O R D E R

IT IS ORDERED THAT:

The Complaint is dismissed.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
October 29, 1986