

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

In the Matter of:

American Federation of State,
County and Municipal Employees,
District Council 20, AFL-CIO,

Complainant,

v.

D.C. Department of Human
Services, Commission on Mental
Health Services,

Respondent.

PERB Case No. 93-U-28
Opinion No. 372

DECISION AND ORDER

On August 9, 1993, American Federation of State, County and Municipal Employees, District of Columbia Council 20, AFL-CIO (AFSCME) filed an Unfair Labor Practice Complaint with the Public Employee Relations Board (Board). The Complaint alleges that the D.C. Department of Human Services, Commission on Mental Health Services (DHS) "engaged in a widespread pattern and practice of failing and refusing to honor its obligation to bargain in good faith by repudiating Step 4 of the grievance procedure." (Compl. at 2.) AFSCME contends that such conduct constitutes a violation of D.C. code Sec. 1-618.4(a)(1) and (5).

On September 7, 1993, the Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of DHS, filed "Employer's Response to Unfair Labor Practice Complaint" (Answer). OLRCB contends that none of the alleged acts or conduct "constitute an U[nfair] L[abor] P[ractice] as defined under the District of Columbia Comprehensive Merit Personnel Act of 1978 (CMPA) at D.C. Code Sec. 1-618.4(a)(1) and (5)." (Ans. at 10.) ^{1/} OLRCB avers that "the lack of a Step 4 response to the ... grievances is not a refusal to bargain collectively in 'good faith' with the exclusive representative", nor does this conduct constitute interference with, restraint or coercion of employees' rights under the CMPA.

^{1/} OLRCB asserts that of the six grievances cited by AFSCME in support of the alleged violations, DHS responded to one at the step 4 level, one was withdrawn by AFSCME and two were advanced to arbitration by AFSCME. (Ans. at 10.)

(Ans. at 10-11.) OLR CB requests that the matter be dismissed since it does not fall within the scope of the Board's jurisdiction.

Upon a review of the parties' pleadings, taking all of Complainant's allegations as true, the Complaint does not give rise to the alleged unfair labor practices or any cause of action over which the Board has jurisdiction. We find the relief for the alleged violation to be strictly contractual in nature notwithstanding allegedly "widespread pattern and practice" by DHS. See, e.g., American Federation of State, County and Municipal employees, D.C. Council 20, Local 2921, AFL-CIO v. District of Columbia Public Schools, DCR , Slip Op. No. 339 at n. 2, PERB Case No. 92-U-08 (1992). We have previously held that relief from such conduct generally lies not within the statutory authority of the Board but in the available remedies under the negotiated agreement between the parties. See American Federation of Government Employees, Local 1550, AFL-CIO v. District of Columbia Department of Corrections, DCR , Slip Op. No. 59, PERB Case No. 83-U-03 (1983) and Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department, 39 DCR 9617, Slip Op. No. 295, PERB Case No. 91-U-18 (1992).

The alleged violation consists of DHS's refusal to respond to grievances which have been advanced to the fourth step. Article 19, Section 2 of the parties' collective bargaining agreement provides under Step 5 of the grievance-arbitration procedure the following:

If the grievance is still unresolved, the union may, by written notice, request arbitration within twenty (20) days after the reply at step 4 is due or received, whichever is sooner. (Emphasis added.)

Since this contractual provision allows the union to invoke the arbitration clause under the agreement, DHS' failure to respond to a Step 4 grievance does not prevent AFSCME from pursuing its contractual remedies.

Accordingly, the Complaint is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

The Complaint is dismissed.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.
December 17, 1993