Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
	)	
District of Columbia Water and Sewer Authority,	)	PERB Case No. 05-U-42
	)	
Complainant,	)	Opinion No. 818
	)	
v.	)	Motion for Preliminary Relief
	)	
American Federation of Government Employees, Locals 631, 872 and 2553, American Federation of State, County and Municipal Employees, Local 2091, and National Association of Government Employees, Local R3-06,	)	
	)	
Respondents.	)	

I. Statement of the Case:

On June 28, 2005, the District of Columbia Water and Sewer Authority ("Complainant" or "WASA"), filed an unfair labor practice complaint and a motion for preliminary relief against the American Federation of Government Employees, Locals 631, 872 and 2553, the American Federation of State, County and Municipal Employees, Local 2091 and the National Association of Government Employees, Local R3-06 ("Respondents" or "Unions"). WASA asserts that "the Unions have engaged in unlawful, bad-faith bargaining in violation of the Comprehensive Merit Personnel Act ("CMPA" or "the Act") by: (a) refusing to negotiate jointly on behalf of Compensation Unit 31 with [WASA] for purposes of compensation collective bargaining; (b) attempting to force [WASA] to negotiate for compensation purposes with two separate groups despite the fact that the Public Employee Relations Board ("PERB") has authorized a single compensation unit covering all of WASA's union represented employees; (c) attempting to force [WASA] to negotiate with individuals who have not been authorized to represent all members of Compensation Unit 31; and (d) attempting to change chief negotiators in the middle of negotiations and in violation of the parties' established Ground Rules. [WASA claims that] [t]hese clear-cut, flagrant and ongoing violations of the Comprehensive Merit Personnel Act. . . D.C. Code Section 1-617.04(b)3), impact both [WASA] and its employees in a widespread and significantly harmful manner, and therefore preliminary relief is

appropriate." (Motion at pgs 1-2)

The Respondents filed an opposition to the "Motion for Preliminary Relief" ("Motion") and an answer to the "Unfair Labor Practice Complaint" denying that they have violated the CMPA. As a result, the Respondents have requested that the Board dismiss the Motion. In addition, the Respondents filed a counterclaim against WASA. The Complainant's Motion and the Respondents' opposition and counterclaim are before the Board for disposition.

II. Discussion

WASA notes that for the purpose of compensation negotiations, the five bargaining units at WASA have been placed in Compensation Unit 31.[1] WASA claims that in February 2005, the five Unions jointly representing Compensation Unit 31 entered into a Memorandum of Understanding on Ground Rules ("Ground Rules") with WASA. (See, Compl. at p. 4). WASA contends that the negotiated-for and agreed-upon articles of the Ground Rules provide, among other things, that:

> The Unions and [WASA] shall each designate one Chief Negotiator, who shall be the only person authorized to speak at meetings and who shall be the only person authorized to execute tentative agreements on behalf of each party. Each party may rely on the fact that the Chief Negotiator for the other party has been fully authorized *for the duration of the negotiations* to agreement or completion of impasse procedures to be the official spokesperson for the party and to bind each party (including all five (5) unions represented by the Union's Chief Negotiator) to tentative agreements on terms and/or a cumulative agreement on compensation. (Emphasis added) (Compl. at pgs 4-5)

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[1]The unit description for Compensation Unit 31 is as follows:

> All full-time and regular part-time employees employed by the District of Columbia Water and Sewer Authority; but excluding all management officials, confidential employees, supervisors, employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

(See, Slip Op. No. 510)

WASA asserts that in the parties' Ground Rules the five Unions authorized George T. Johnson to act as Chief Negotiator for the Unions for the duration of the negotiations. Also, WASA contends that the Ground Rules were signed by Mr. Johnson and the Presidents of all five Unions.

WASA claims that in a " letter dated May 16, 2005, George T. Johnson attempted to resign as Chief Negotiator for Compensation Unit 31[2] and announced that 'AFSCME [would] exercise its right to independently bargain on behalf of [its] own exclusive unit within the District of Columbia Water and Sewer Authority . . . in all matters, including compensation'." (Compl. at p. 5) WASA asserts that "[i]n response to this and other communications indicating that the Unions intended to violate both the PERB Authorization for Compensation Unit 31 and the Ground Rules, by letter dated June 1, 2005, [WASA] informed the Unions that they were required to negotiate jointly with WASA for purposes of compensation bargaining and cautioned that any demands by the individual Unions either to negotiate Compensation separately or to change Chief Negotiators in violation of the Ground Rules would be considered a refusal to bargain collectively in good faith." (Compl. at pgs. 5-6). WASA contends that despite these warnings, on June 13, 2005, James Ivey (President, AFCSME, Local 2091) informed WASA that: "No one [would] represent, speak, or negotiate on behalf of AFSCME, Local 2091 but AFSCME exclusively." (Compl. at p. 6)

In a letter dated June 14, 2005, AFGE's National Vice president informed WASA that: (1) a majority of the five affected unions in Compensation 31 voted to appoint Sarah Starrett as the new Chief Negotiator and (2) all five locals would be jointly represented by Ms. Starrett. WASA indicates that attached to the June 14th letter was a document authorizing Sarah Starrett as the Chief Negotiator. However, WASA claims that this document was not signed by any representative from AFSCME, Local 2091. Therefore, WASA contends that the statement contained in the June 14th letter directly contradicted both the May 16th letter from George Johnson and the June 13th letter from James Ivey.

WASA asserts that the Unions' refusal to meet and negotiate in good faith with WASA through their single, previously designated Chief Negotiator has brought the parties' collective bargaining process to a halt. WASA contends that this refusal by the Unions to bargaining in good faith is a violation of D.C. Code §1-6717.04(b)(3). Moreover, WASA claims that the Unions' conduct is unnecessarily delaying compensation negotiations and is thereby causing significant harm to all of WASA's employees who are covered by Compensation Unit 31. In addition, WASA notes that it "is unable to make any changes to the compensation of its union-represented employees and is being forced to expend significant time and resources in an attempt to bring the Unions back to the table for compensation negotiations under their lawfully designated Chief Negotiator." (Compl. at p. 7)

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[2] WASA claims that in accordance with its duty to bargain in good faith, WASA has not altered its designation of Kenneth S. Slaughter and Stephen Cook as its Co-Chief Negotiators.

WASA claims that the Unions' ongoing violations of the CMPA are clear-cut, flagrant and impact both WASA and its employees in a widespread and significantly harmful manner. Therefore, WASA asserts that preliminary relief is appropriate in this case.

The criteria the Board employs for granting preliminary relief in unfair labor practice cases is 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 will 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, 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 (CA DC 1971). There, the Court of Appeals-addressing the standard for granting relief before judgement 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 [PERB] has determined that the standard for exercising its discretion has been met, the basis for such relief [has been 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).

In its response to the Motion, the Respondents dispute the material elements of some of the allegations asserted in the Motion. Specifically, the "Respondents admit that the parties entered into a Memorandum of Understanding on Ground Rules [on] February 22, 2005; but deny [WASA's] characterization of its contents. . . [Also, the] Respondents deny the allegation that 'in the Ground Rules the five unions authorize George T. Johnson to act as the Chief Negotiator for the Unions for the duration of the negotiations'." (Respondents' Answer at p. 3)

In addition, the Respondents contend that the Motion should be denied because WASA has failed to satisfy the statutory requirements for preliminary relief. In support of this claim, the Respondents assert that WASA has "not shown, by affidavits or other evidence, that a flagrant and clear cut unfair labor practice has occurred, or, that the effect of the alleged unfair labor practice is

widespread; or, that the public interest is seriously affected; or that the Board's processes are being interfered with; and, that the Board's ultimate remedy may be clearly inadequate." (Respondents' Answer at pgs. 5-6)

The Respondents also contend that preliminary relief has been rendered moot by events which have taken place after the filing of the Complaint. Specifically, the Respondents assert that while this matter was pending, the Unions filed a "Petition for Enforcement" in a related case involving the same compensation negotiations which are at issue here. (See Compensation Unit 31 et al. v. District of Columbia Water and Sewer Authority, PERB Case No. 04-U-28).[3] In their "Petition for Enforcement," the Respondents claim that WASA has failed to comply with Slip Op. No. 767 by refusing to meet and negotiate with the Respondents regarding a successor agreement. (Pet. at pgs. 4-5). As a result, the Respondents have requested that the Board initiate an enforcement proceeding in the Superior Court of the District of Columbia in order to compel WASA to comply with the terms of Slip Op. No. 767.[4] The Respondents note that on July 8, 2005, WASA opposed the Respondents' "Petition for Enforcement", arguing that the matter was moot "because the parties [had] agreed to return to the bargaining table." (See Opposition to Complainants' Petition for Enforcement of Preliminary Relief). Finally, the Respondents assert that the parties have continued to pursue compensation negotiations and have met on the following dates: July 15, 2005, July 26, 2005, August 12 and 31, 2005. For the reasons discussed above, the Respondents assert that the need for preliminary relief is moot.

In light of the above, it is clear that the parties disagree on the facts in this case. In cases such as this, the Board has found that preliminary relief is not appropriate where material facts are in dispute. See, DCNA v. D.C. Health and Hospitals Public Benefit Corporations, 45 DCR 6067, Slip Op. No. 559, PERB Case Nos. 98-U-06 and 98-U-11 (1998).

In the present case, WASA's claim that the Respondents actions meet the criteria of Board Rule 520.15, are a repetition of the allegations contained in the Complaint. Even if the allegations are ultimately found to be valid, it does not appear that any of the Respondents' actions constitute clear-cut or flagrant violations, or have any of the deleterious effects the power of preliminary relief is intended to counterbalance. The Respondents' actions presumably affect WASA and its employees. However, the Respondents' actions 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.

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[3]The Unions' Petition for Enforcement was filed with the Board on July 1, 2005.

[4]In Slip Op. No. 767 the Board determined that WASA violated D.C. Code § 1-617.04(a)(1) and (5) by failing to bargain over compensation and non-compensation matters regarding a successor agreement. As a result, the Board granted the Unions' request for preliminary relief and ordered the parties to begin negotiations regarding a successor agreement.

While the CMPA asserts that labor organizations are prohibited from engaging in unfair labor practices, the alleged violations, even if determined to be valid do not rise to the level of seriousness that would undermine public confidence in the Respondents' ability to comply with the CMPA. Finally, while some delay inevitably attends the carrying out of the Board's dispute resolution process, WASA 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.

Furthermore, a review of the pleadings in this case and the pleadings in PERB Case No. 04-U-28, indicate that the present Complaint was filed on June 28, 2005 and that the parties returned to the bargaining table on July 15, 2005. Moreover, the parties have continued to bargain. This is evident because the parties have acknowledged that they are engaged in compensation negotiations and have filed for impasse resolution concerning the compensation negotiations which are the subject of this case (See PERB Case No. 06-I-01).[5] Also, on October 14, 2005 the Board's Executive Director determined that the parties had reached an automatic impasse pursuant to D.C. Code § 1-617.17(f)(2) and Commissioner Kurt Saunders, Federal Mediation and Conciliation Service, has agreed to serve as the mediator.[6] In view of the above, we believe that the Respondents' actions do not appear to be clear-cut and flagrant as required by Board Rule 520.15. Nonetheless, the question of whether the Respondents' actions occurred as WASA claims or whether such actions constitute violations of the CMPA, are matters best determined after the establishment of a factual record through an unfair labor practice hearing.

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 WASA 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 WASA following a full hearing. Therefore, we find that the facts presented do not appear appropriate for the granting of preliminary relief. In view of the above, we deny WASA's Motion for Preliminary Relief.

For the reasons discussed above, the Board: (1) denies WASA's request for preliminary relief; (2) directs the development of a factual record through an unfair labor practice hearing and (3) refers the Respondents' counterclaim to the Hearing Examiner for disposition.

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[5]PERB Case No. 06-I-01 was filed by WASA on October 4, 2005.

[6]Commissioner Lynn Sylvester of the Federal Mediation and Conciliation Service had originally agreed to serve as the mediator in PERB Case No. 06-I-01. However, Commissioner Sylvester did not any available dates to meet with the parties until December 2005; therefore, Commissioner Kurt Saunders agreed to serve as the mediator.

ORDER

IT IS HEREBY ORDERED THAT:

(1) The District of Columbia Water and Sewer Authority's (WASA) Motion for Preliminary and Injunctive Relief, is denied.

(2) The Board's Executive Director shall: (a) schedule a hearing. and (b) refer WASA's unfair labor practice complaint and the Respondents' counterclaim to a Hearing Examiner for disposition.

(3) The Notice of Hearing shall be issued seven (7) days prior to the date of the hearing.

(4) Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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

December 19, 2005

CERTIFICATE OF SERVICE
CORRECTED

This is to certify that the attached corrected Decision and Order in PERB Case No.05-U-42 was transmitted via Fax to the following parties on this the 19th day on December 2005.

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