Notice: This decision may formally revised before it is publishe[d i]n the District of Columbia Register. Parties should p[rom]ptly notify this office of any formal [err]ors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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.

District of Columbia Housing Authority,

Respondent.

PERB Case No. 96-U-19
Opinion No. 488

DECISION AND ORDER

On July 17, 1996, the American Federation of Government Employees, Local 2725, AFL-CIO (AFGE) filed an Unfair Labor Practice Complaint and request for preliminary relief, in the above-captioned case. AFGE charges that Respondent D.C. Housing Authority (DCHA) has committed an unfair labor practice under the Comprehensive Merit Personnel Act (CMPA) by threatening to (1) terminate the parties' collective bargaining agreement (CBA) and (2) unilaterally modify the terms of the CBA. By this action AFGE asserts that DCHA has failed to bargain in good faith in violation of D.C. Code § 1-618.4(a)(1) and (5). (Compl. at 3.)[1/] DCHA filed an Answer to the Complaint, wherein it admits the underlying acts and conduct alleged in support of the asserted unfair labor practice. However, DCHA denies that by such acts the Complainant has stated a claim properly within the jurisdiction of the Board.

While DCHA denies that it has committed any unfair labor practices, DCHA does not dispute the material facts upon which the alleged violation is based. We therefore find this case is appropriate for a decision on the pleadings pursuant to Board Rule 520.10. After reviewing the pleadings and the applicable authority in the light most favorable to the Complainant, the Board finds that the Complaint does not state an unfair labor practice under the CMPA. Therefore, for the reasons discussed below we dismiss the Complaint.

[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.

The parties agree that they are currently operating under the terms and provisions of a 1988 working conditions agreement which was last extended by a memorandum of understanding (MOU) dated October 5, 1993. However, the parties' respective interpretation of the MOU differ as to when the current extended CBA expires. AFGE claims that the DCHA's failure to provide notice that it wished to reopen the previous agreement between 180 and 150 days before the September 30, 1995 expiration date, automatically renewed it for 3 years until September 30, 1998. DCHA has interpreted this same MOU as extending the agreement until September 30, 1996. Based on its interpretation, DCHA has since April 24, 1996, expressed to AFGE its intent to terminate the CBA and/or modify the terms on or after September 30, 1996. Based on its interpretation, AFGE views DCHA's intent as a threat to terminate the CBA while it is still effective and make unilateral changes to employees' working conditions.

Resolution of the Complainant's claim turns on an initial determination of the disputed expiration date of the current CBA. Such a determination would require that the Board interpret the provisions of the October 5, 1993 MOU. The Board lacks the authority to interpret the terms of contractual agreements to determine the merits of a cause of action that may properly be within our jurisdiction. American Federation of Government Employees, Local 3721 v. D.C. Fire Department, 39 DCR 8599, Slip Op. No. 287, PERB Case No. 90-U-11 (1991). Moreover, we lack the authority to retain jurisdiction pending the resolution of threshold contractual issues through the parties' grievance arbitration procedures when the remainder of the Complaint fails to allege, as does the instant Complaint, any statutory cause of action within our jurisdiction. Id.

Even if the Complainant has interpreted the MOU correctly, claims of allege violations by threatened unilateral changes, fail to state a cause of action within the jurisdiction of the Board. We have held that "under the CMPA an alleged unilateral change in established and bargainable terms and conditions of employment does not constitute a violation of D.C. Code § 1-618.4(a)(5) (and, derivatively, § 1-618.4(a)(1)) when the alleged unilateral change is in terms and conditions of employment 'covered under an effective agreement of the parties...'." Washington Teachers' Union, Local 6, AFT, AFL-CIO v. D.C. Public Schools, 42 DCR 5488, Slip Op. 337 at 2, PERB Case 92-U-18 (1992).[2]/

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[2]/ The Board has always made a distinction between obligations that are statutorily imposed under the CMPA and obligations that are contractually agreed-upon between the parties. While the CMPA provides for the resolution of the (continued...)

Since the Complainant's claim is based on threatened unilateral changes in terms and conditions of employment contained in an effective CBA, the claim does not give rise to a statutory violation that DCHA failed to bargain in good faith. Therefore, the Complaint allegations fail to present a violation of Complainant's statutory rights under the CMPA proscribed as an unfair labor practice. See, Teamsters, Local Union No. 639 and 730 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO v. D.C. Public Schools, 39 DCR 9625, Slip Op. No. 318, PERB Case 92-U-04 (1992). The Complaint allegations do not constitute violations of rights protected under the CMPA, but rather contractual rights enforcable through the parties' grievance arbitration procedure in the CBA.

In view of the above, we find that the Complainant has failed to state a violation of D.C. Code § 1-618.4(a)(1) and (5). In view of our disposition of the Complaint, Complainant's request for preliminary relief is dismissed as moot.

ORDER

IT IS HEREBY ORDERED THAT:

The Complaint and Motion for Preliminary Relief are dismissed.

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

September 27, 1996

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[2](...continued)
former, the parties have or must provide for the resolution of the latter. The Board has reached this conclusion notwithstanding the fact that, absent coverage under provisions of an effective collective bargaining agreement, an unfair labor practice may otherwise lie under the CMPA. See, American Federation of Government Employees, Local 3721 v. D.C. Fire Department, 39 DCR 8599, Slip Op. No. 287, PERB Case No. 90-U-11 (1991) and American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2921, AFL-CIO, 42 DCR 5685, Slip Op. No. 339, PERB Case No. 92-U-08 (1992). AFGE expressly alleges that DCHA threatened to change or modify employees' working conditions contained in a CBA not due to expire until September 30, 1998.