

Decision and Order

PERB Case No. 98-U-06

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DCNA states that the PBC took the following adverse actions against various bargaining employees (registered nurses): (1) terminated employees for "Engaging in a Strike (sic)"; (2) issued a letter of warning to another employee for alleged "Inexcusable Neglect of Duty"; and (3) placed a fourth employee on AWOL status "for attempting to utilize her accrued sick leave." (Comp. at 2-3 and Mot. at 2-3.) DCNA maintains that the PBC's true motivation for these adverse actions was to discriminate against these employees for their activities "in their official capacities as officers and/or representatives of [DCNA], filing grievances, and appearing at and/or testifying before the Council of the District of Columbia, and/or its Standing Committees, on issues pertaining to DCGH and in opposition to positions taken by DCGH." (Mot. at 3.) Finally, DCNA charges that PBC officials bypassed it as the employees' exclusive bargaining representative by dealing directly with bargaining unit employees during the process of appealing the disputed adverse actions.

The Complainant has requested that the Board: (1) grant its request for preliminary relief ordering the PBC to cease and desist from engaging in unlawful conduct; (2) rescind the adverse personnel actions; and (3) make whole and reinstate affected employees to their former positions. (Mot. at 4.) The PBC filed an Answer to the Complaint denying that by the acts alleged in the Complaint, it has violated the CMPA. On March 30, 1998, the PBC filed a Response opposing DCNA's amended Motion for preliminary relief.

The PBC does not dispute that the various adverse actions described in the amended Complaint were taken. However, the PBC states that the actions were taken "for cause pursuant to [D.C. Code] Sec. 1-617-1(d)(17) for engaging in a strike (failing or refusing to report for work), if such failure or refusal is engaged in or part of a labor dispute with the District Government." (Ans. at 1.) The PBC further states that the employees terminated violated certain hospital regulations against engaging in an "illegal job action that placed patients (sic) health in jeopardy and interfered with the hospitals (sic) ability to provide patient care". (Ans. at 2.) In addition, the PBC asserts that those placed on AWOL status violated contractual provisions and related regulations governing eligibility to take sick leave. (Ans. at 1-2; Resp. at 2.)

The PBC generally denies that it has engaged in any unlawful dealings with respect to DCNA and avers that in proposing discipline against affected bargaining unit employees no consideration was given to the employees' union or non-union status. Moreover, the PBC contends that DCNA has not made a showing of irreparable harm. Furthermore, the PBC contends that

preliminary relief is inappropriate in a case where, as here, the documents submitted also support legitimate reasons for the adverse actions.

While irreparable harm need not be established, DCNA's request for preliminary relief fails to meet the threshold criteria we adopted for granting such relief, i.e., "that the Complaint establish that there is reasonable cause to believe that the [CMPA] has been violated, and that remedial purposes of the law will be served by pendente lite relief." AFSCME D.C. Council 20, et al. v. D.C. Gov't. et al., Slip Op. No. 330 at 4, PERB Case No. 92-U-24, citing Automobile Workers v. NLRB, 449 F.2d 1046 at 1051 (CA DC 1971).

On the record before us, establishing the existence of the alleged unfair labor practice turns essentially on making credibility determinations on the basis of conflicting allegations. We decline to do so on these pleadings alone. Therefore, the limited record before us does not provide a basis for finding that the criteria for granting preliminary relief has been met. We further note that the PBC has filed an Unfair Labor Practice Complaint, PERB Case No. 98-U-11, charging the DCNA and the bargaining unit employees that are the subject of the instant amended Complaint with committing unfair labor practices by their alleged role in an unlawful job action. This allegation by the PBC in PERB Case No. 98-U-11, also serves as its defense for the alleged violative adverse actions that are the subject of the instant Complaint. In PERB Case No. 98-U-11, DCNA has denied any unlawful job action by bargaining unit employees or any role in such an action.

We are, however, concerned about the circumstances presented by these Complaints. Therefore, we shall refer both Complaints to a hearing examiner under an expedited schedule, in accordance with Board Rule 501.1 and as set forth in our Order below.

ORDER

IT IS HEREBY ORDERED THAT:

1. The request for preliminary relief is denied.
2. PERB Case Nos. 98-U-06 and 98-U-11 are consolidated and referred for hearing in accordance with the expedited schedule set forth below.

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

4. Following the hearing, the designated hearing examiner shall submit a report and recommendation to the Board not later than twenty (21) days following the conclusion of closing arguments (in lieu of post-hearing briefs).

5. Parties may file exceptions and briefs in support of the exceptions not later than seven (7) days after service of the hearing examiner's report and recommendation. A response or opposition to exceptions may be filed not later than five (5) days after service of the exceptions.

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

April 23, 1998