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

In the Matter of:)	
)	
Washington Teachers' Union,)	
Local 6, AFL-CIO,)	
)	
Complainant,)	PERB Case No. 92-U-13
)	Opinion No. 396
v.)	
)	
District of Columbia)	
Public Schools,)	
)	
Respondent.)	

DECISION AND ORDER
ON REQUEST FOR PRELIMINARY RELIEF

On May 27, 1994, the Washington Teachers' Union, Local 6, AFL-CIO (WTU), pursuant to Board Rule 520.15, filed a document styled Complainant's Motion for a Temporary Restraining Order and a Preliminary Injunction with the Public Employee Relations Board (Board) requesting preliminary relief in the above-referenced unfair labor practice proceeding. ^{1/} Respondent, District of Columbia Public Schools (DCPS), filed a Response to the Motion on June 10, 1994, asserting that there is no basis for granting the Motion and that the relief requested should be denied.

WTU's Motion stems from an Unfair Labor Practice Complaint and an Amended Complaint, filed on May 29, 1992, which charged that Respondent District of Columbia Public Schools (DCPS) violated D.C. Code Sec. 1-618.4(a)(1) and (5) of the Comprehensive Merit Personnel Act (CMPA). The Complaint alleged

^{1/} Specifically, WTU requests that the Board grant its Motion for a temporary restraining order and preliminary injunction, after a hearing, "ordering the Board [of Education] and Superintendent Smith to rescind any letters of transfer issued to teachers presently at Coolidge and Roosevelt Senior High Schools and immediately cease and desist any and all procedures made in conjunction with such transfers and future transfers." (Mot. at 3.)

that DCPS failed to bargain in good faith with respect to the adoption and formation of several policies affecting bargaining unit employees for whom WTU is the exclusive representative, including the lay-off and transferring of teachers. ^{2/}

In its Motion, WTU requests preliminary relief for alleged acts and conduct by DCPS, which have occurred or will occur since the filing of its Complaint. ^{3/} ~~Specifically,~~ WTU asserts that DCPS' actions are "violations of a collective bargaining Agreement between the [parties], and of [Section] 1-618.8(b) of the D.C. Code." (Mot. at 2.) Specifically, WTU refers to Article IV, Section B.1., of the parties' agreement which provides as follows:

ARTICLE IV. TEACHER TRANSFER POLICY

B. Involuntary Transfers

1. Involuntary transfers for the demonstrated good of the system shall be made only after consultation and discussion with the teacher involved. At the teacher's request, there may be present at such a discussion a representative of the Union. A teacher who is involuntarily transferred shall be given two (2) weeks notice, except in those cases where the transfer must be made in less than two (2) weeks, the notice shall be given as timely as possible. The notice of the transfer shall contain the reason therefor.

We have held that alleged violations of the parties'

^{2/} Presently, the unfair labor practice hearing on the Complaint has been rescheduled for June 27, 1994. There have been numerous delays in the scheduling of this case for hearing based on the parties' attempts to resolve the issues as well as changes in counsel for WTU.

^{3/} WTU alleges that DCPS did not provide it or bargaining unit employees with "an opportunity for consultation or discussion" with respect to a "restructuring plan" imposing procedures for the involuntary transfer of bargaining unit employees and the application process for retention. While parties may negotiate a right of consultation or discussion and incorporate such provisions in their collective bargaining agreement, the CMPA does not provide for consultation as a statutory right.

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collective bargaining agreement violations do not necessarily state an unfair labor practice under the CMPA. See, e.g., Teamsters, Local Unions No. 639 and 730 a/w International Brotherhood of Teamsters; Chauffeurs, Warehousemen and Helpers of America, AFL-CIO v. District of Columbia Public Schools, 39 DCR 9625, Slip Op. No. 318, PERB Case No. 92-U-04 (1992) and the cases cited therein. The subject of WTU's Motion is clearly addressed by this contractual provision and may be subject to the parties' grievance procedure. Therefore, we conclude that WTU's Motion and supporting documents do not state that an unfair labor practice violation under the CMPA and we are without jurisdiction to provide the requested relief.

ORDER

IT IS HEREBY ORDERED THAT:

Complainant's Motion for a Temporary Restraining Order and a Preliminary Injunction is denied.

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

June 17, 1994