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

In the Matter of:

Local 2091, American Federation of
State, County and Municipal Employees,
AFL-CIO,

Complainant

Case No. 80-U-02
PERB Opinion No. 7

and

District of Columbia Government
Department of Environmental Services,

Respondent

DECISION AND ORDER

This case involves a charge by Complainant Labor Organization that Respondent Agency violated Sections 1704 (a) (1) and (5) of the District of Columbia Comprehensive Merit Personnel Act ("CMPA"), D.C. Law 2-139, by failing to negotiate changes in the terms and conditions of employment as a result of implementing a test program of refuse collection known as the "Supercan" test program. Additionally, Complainant charges Respondent with violating Sections 1704 (a) (1) and (5) of the CMPA because of Respondent's receiving of bids to, allegedly, contract out work currently being performed by employees represented by Complainant.

Respondent's position is that it has the right to test new methodology in order to maintain and promote efficiency, and that Respondent consulted and conferred with Complainant prior to and during implementation of the "Supercan" test program. Respondent contends further that it has made no decision to contract out work currently being performed by members of the bargaining unit.

The alleged unilateral changes in terms and conditions of employment issue was heard by PERB designated Hearing Examiner, Mallett-Prevost, on October 31, 1980. The Hearing Examiner issued his Report and Recommendation to the Board on February 1, 1981.

Written exceptions to the Hearing Officer's Report and Recommendation pursuant to PERB Rule 109.22 were not filed by the parties.

The Hearing Examiner concluded that "... the implementation of the Supercan test by the Department is not a subject of collective bargaining under D.C. Law 2-139", but rather is within the scope of management's rights.

The Hearing Examiner concluded, further, that Respondent did not refuse "... either to bargain or consult with the Union concerning the implementation and impact of the Supercan test". We concur in both conclusions and, accordingly, confirm them.

A review of the record before us indicates that the cause of action herein is based upon the implementation of the "Supercan" test program. It is not clear whether or not there is an allegation of statutory violation based upon an implementation of the program on a permanent basis, but a review of the record appears to indicate no such allegation. Accordingly, that issue is determined not to be before the Board in this action.

A further review of the record indicates that Respondent has taken no affirmative steps toward contracting out work currently being performed by members of the bargaining unit. Respondent's actions in requesting and accepting bids must be more appropriately described, at this juncture, as exploratory in nature. It is determined, therefore, that the issue of Respondent's right to contract out work is premature and not before the Board at this time.

ORDER

- 1. That portion of the Complaint alleging an unlawful refusal to bargain over changes in terms and conditions of employment as a result of implementing the "Supercan" test program is dismissed.
- 2. That portion of the Complaint alleging an unlawful refusal to bargain over changes in terms and conditions of employment as a result of implementing the "Supercan" program is determined not to be before the Board in this action, and is dismissed.
- 3. That portion of the Complaint alleging the unlawful contracting out of work is not determined to be before the Board at this time and is dismissed without prejudice to the Complainant's right to raise the issue with the Board under appropriate circumstances.

Y ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD April 17, 1981