

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)	
)	
International Brotherhood of Police Officers, Local No. 445, AFL-CIO,)	
)	
Complainant,)	PERB Case No. 94-U-13
)	Opinion No. 406
v.)	(Motion)
)	
District of Columbia)	
Department of Administrative Services,)	
)	
Respondent.)	
)	

**DECISION AND ORDER ON
MOTION FOR ENFORCEMENT**

This proceeding is before the Public Employee Relations Board (Board) to consider a Motion to Enforce the Board's Order in the above-captioned case. On September 16, 1994, the International Brotherhood of Police Officers, Local 445 (IBPO) filed a Motion seeking enforcement by the Board of its Order in Slip Op. No. 401. There, we held that Respondent Department of Administrative Services (DAS) had committed unfair labor practices in violation of D.C. Code Sec. 1-618.4(a)(1) and (5), by failing and refusing to furnish requested information to IBPO regarding union office space.

IBPO contends that enforcement proceedings are warranted because of DAS' alleged failure to comply with the Board's Order, which required the agency to: 1) cease and desist from refusing to bargain in good faith with IBPO over union office space; 2) furnish IBPO with information it requested regarding union office space and equipment within 14 days of the Board's Order; and 3) post copies of the Notice advising of the Board's Order within 14 days from the date of the Board's Order.

In response to IBPO's request for enforcement, DAS asserts that the agency has met its obligations pursuant to the Board's Order in Slip Op. No. 401, by posting the Notice at the "watch command" location, albeit later than required by the Order, and by offering IBPO access to the requested documents which, DAS contends, are too voluminous to duplicate. DAS further insists that the Board's Opinion does not explicitly require bargaining

Decision and Order on
Motion for Enforcement
PERB Case No. 94-U-13
Page 2

over the specific subject of union office space, which DAS distinguishes as a permissive and not a mandatory topic of negotiation. Therefore, DAS claims there is full compliance on its part with the Board's decision. For the reasons that follow, we disagree with DAS and grant IBPO's Motion for Enforcement, with some qualification.

The Board issued its Decision and Order in Slip Op. No. 401 on August 5, 1994. The Board, however, received no confirmation, as required by its Order, that the Notices had been posted or that the information was provided to IBPO by August 19, 1994, i.e., 14 days after Slip Op. No. 401 was issued. In fact, DAS only confirmed the Notice posting on October 12, 1994, after IBPO's Request for Enforcement was filed.

Moreover, the Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of DAS, acknowledges that the Notices were not transmitted to DAS for posting until September 10, 1994, over a month after we issued our Decision and Order in Slip Op. No. 401. Furthermore, according to OLRCB, the Notice was posted in only a single location, the "watch command", rather than "conspicuously at all of the affected work sites" as required under the Board's Order. (Emphasis added.) ^{1/}

Regarding the remainder of our Order, OLRCB asserts that since the subject of employer-provided union office facilities is a permissive subject of bargaining, DAS is under no obligation to bargain over such subjects and, therefore, provide information concerning it. OLRCB argues that its position is not inconsistent with our discussion on the scope of collective bargaining in Slip Op. 401. We stated that the Board has "never decided whether the duty to bargain under the CMPA is limited to matters that have traditionally been considered 'terms and conditions of employment'... , " and we left that issue for future determination. Slip Op. No. 401 at 2-3. OLRCB asserts that since our opinion, with respect to the scope of bargaining, "is not all encompassing," it "leaves room for various interpretations" with respect to "whether union office space is 'permissive' or not". (Resp. to Mot. at 3-5.) This contention completely ignores our holding that the CMPA does "not exclude from its coverage the subject of employer-provided office space facilities for union use" as a "term and condition of employment"

^{1/} IBPO asserts that there are other affected employee work sites where DAS did not post the Notice, i.e., the Reeves Center, the Wilson Building and the North Capitol Street location. (IBPO's 10/12/94 Resp. at 2.)

Decision and Order on
Motion for Enforcement
PERB Case No. 94-U-13
Page 3

to which a duty to bargain attaches. Slip Op. No. 401 at 3.^{2/} Based on this conclusion, we held that DAS had an obligation to provide necessary and relevant information concerning the subject matter. There can be no doubt that our Decision and Order requires bargaining over the subject matter of union office space.

OLRCB states that Respondent has complied with the Order concerning the requested information by permitting IBPO to view the documents, because of their "voluminous nature ... at the Department." (Resp. to Mot. at 6.) Since, as IBPO notes, DAS has not made any showing that the documents are too voluminous to copy and send to IBPO, we reject DAS's actions as compliance with this provision of our Order. If such a showing by DAS can be made, however, providing IBPO officials reasonable access to the documents will suffice.

In view of the above, we find that DAS has not complied with our Order in Slip Op. No. 401; therefore, IBPO's Request to enforce our Order is granted. We hereby grant DAS 10 days to finally and fully comply with our Decision and Order in Slip Op. No. 401 before seeking judicial enforcement, as provided under D.C. Code § 1-618.13(b). We emphasize, however, that continued disregard of the Board's Orders will be met with prompt action for enforcement and other sanctions as the Board may deem appropriate.^{3/}

^{2/} If OLRCB has misunderstood our holding in Opinion No. 401, we now make clear that we held the entire subject of "employer-provided office space facilities for union" is a term and condition of employment over which there is a duty to bargain. Slip Op. No. 401 at 3. There is no basis in law or logic for the distinction between permanent dedicated office space and temporary office or "meeting place." Of course, an employer need not agree to any particular proposal, but it must bargain about it.

^{3/} At this juncture, we extend to Respondent the benefit of the doubt with respect to its understanding of the full extent of our Order in Slip Opinion No. 401. Consequently, we hereby deny IBPO's request for costs incurred for pursuing this Request as not meeting the criteria for awarding costs set forth in AFSCME, D.C. Council 20, Local 2776 v. D.C. Dept. of Finance and Revenue, 37 DCR 5658, Slip Op. 245, PERB Case No. 89-U-02 (1990). We shall, however, grant IBPO leave to refile its request for costs --should DAS fail to comply with the provisions of this Order-- which we shall, if filed, consider retroactively. With

(continued...)

ORDER

IT IS HEREBY ORDERED THAT:

1. The Request to enforce the Decision and Order of the Public Employee Relations Board in Slip Op. No. 401 is granted.
2. The D.C. Department of Administrative Services (DAS) is granted leave to comply with the provisions of our Order in Slip Op. No. 401, to the extent consistent with this Opinion, within ten (10) days following the issuance of this Decision and Order.
3. DAS shall notify the Public Employee Relations Board in writing, within ten (10) days of the date of this Order, what specific steps it has taken to comply with our Order in Opinion No. 401.
4. The International Brotherhood of Police Officers, Local No. 445, AFL-CIO's request for costs, including attorney fees, is denied.

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

October 26, 1994

³(...continued)

respect to IBPO's request for attorney fees, we have held that the CMPA does not provide such remedial relief. University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia, 38 DCR 2463, Slip Op. No. 272, PERB Case No. 90-U-10 (1991). We therefore deny the request.

CERTIFICATE OF SERVICE

I hereby certify that the attached Decision and Order in PERB Case No. 94-U-13 was hand-delivered, sent via facsimile transmission and/or mailed (U.S. Mail) to the following parties on this 26th day of October 1994:

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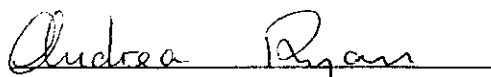
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