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**Government of the District of Columbia
Public Employee Relations Board**

)	
In the Matter of:)	
)	
American Federation of State, County and)	
Municipal Employees, Council 20,)	
Local 2743)	
)	
Complainants)	
)	PERB Case No. 24-U-20
v.)	
)	Opinion No. 1915
District of Columbia Department of Insurance,)	
Securities and Banking)	
)	
Respondent)	
)	

DECISION AND ORDER

I. Statement of the Case

On April 1, 2024, the American Federation of State, County and Municipal Employees, Council 20, Local 2743 (AFSCME) filed an unfair labor practice complaint (Complaint) against the District of Columbia Department of Insurance, Securities and Banking (DISB). The Complaint alleges that DISB violated D.C. Code § 1-617.04(a)(5) of the Comprehensive Merit Personnel Act (CMPA) by refusing to bargain collectively in good faith with AFSCME over the impact and effects of a revised Standard Operating Procedures (SOP) policy,¹ and by denying a grievance filed by AFSCME over the implementation of the SOP policy.² On April 22, 2024, DISB filed its Answer, denying the alleged CMPA violations, and asserting affirmative defenses to the Complaint.

¹ Complaint at 4; AFSCME’s Post Hearing Brief at 10.

² Complaint at 4; AFSCME’s Post Hearing Brief at 12.

A hearing was held on the matter. Both parties submitted post hearing briefs. On October 15, 2024, the Hearing Examiner issued a Report and Recommendations (Report), recommending that the Board dismiss this matter. The Complainant filed Exceptions to the Report.

For the reasons stated herein, the Board adopts the Hearing Examiner's Report and dismisses this matter in its entirety, with prejudice.

II. Hearing Examiner's Report and Recommendations

A. Factual Findings

The Hearing Examiner made the following factual findings. In July 2023, DISB began revising its Standard Operating Procedures (SOP) for the Compliance and Analysis Division.³ The revisions changed the process for assigning cases. Prior to the implementation of the revisions, DISB employees assigned each other cases from the Agency's internal case management system.⁴ Under the revised SOPs, the manager of the unit would assign cases from the internal case management system.⁵

On December 5, 2023, DISB and AFSCME met to bargain over the impact and effects (I&E) of the revised SOPs.⁶ On December 7, 2023, AFSCME emailed I&E questions regarding the revised SOPs to DISB.⁷ On December 11, 2023, DISB emailed AFSCME its responses to the I&E questions.⁸ On December 28, 2023, AFSCME emailed a second set of questions and responses to DISB.⁹ On January 4, 2024, DISB responded to AFSCME's second set of questions.¹⁰

DISB changed the revised SOPs during I&E bargaining.¹¹ Moreover, DISB delayed implementation of the revised SOPs following DISB's I&E bargaining with AFSCME.¹²

On March 21, 2024, AFSCME filed a grievance, asserting that DISB violated Articles 13, Section 8, Pay for Work Performed in Higher Graded Position, and Article 18, Section 1, Wages, of the parties collective bargaining agreement (CBA).¹³ AFSCME alleged that its bargaining unit

³ Report at 2.

⁴ Report at 3.

⁵ Report at 3.

⁶ Report at 3.

⁷ Report at 3.

⁸ Report at 3.

⁹ Report at 3.

¹⁰ Report at 3.

¹¹ Report at 3-4. The revised SOP proposed to change the timeline to send out an initial letter on a complaint from five days to three days. Following I&E bargaining and AFSCME's follow up questions, DISB conceded and allowed the timeline to stay the same. Report at 3-4.

¹² Report at 4.

¹³ Report at 4. On February 16, 2024, AFSCME filed a step 1 group grievance on behalf of six bargaining unit members. Complainant Exhibit 3. DISB denied the grievance. AFSCME Hearing Exhibit 8. On March 21, 2024,

members were performing a management function without the benefit of management pay by assigning cases to one another.¹⁴ As a remedy, AFSCME requested promotion to Grade 12 with back pay for an affected employee.¹⁵ On April 11, 2024, DISB denied the grievance.¹⁶

B. Issues and Recommendations

Before the Hearing Examiner, AFSCME argued that its I&E exchanges with DISB regarding the revised SOP policy were not truly collective bargaining, but rather “surface bargaining.”¹⁷ Further, AFSCME argued that unilateral implementation of changes to working conditions requires substantive bargaining.¹⁸

AFSCME also argued that it filed a grievance because the revised SOP changed the assignments of complaint files.¹⁹ AFSCME argued that from March 2016 through December 2023, this management function was higher graded work performed by AFSCME employees.²⁰ AFSCME asserted that, pursuant to the revised SOPs, these assignments are now made by DISB managers.²¹

DISB asserted that it satisfied its duty to conduct I&E bargaining.²² DISB argued that it has no duty to bargain over the substance of the changes to the SOP.²³ DISB argued its duty is only to bargain over the impact and effects of, and procedures concerning, the implementation of the decision it made in the revised SOP.²⁴ DISB further asserted that AFSCME’s alleged violation of CBA is not subject to the Board’s jurisdiction and must instead be resolved through the parties’ negotiated grievance and arbitration procedure.²⁵

The Hearing Examiner first addressed AFSCME’s argument that DISB violated D.C. Code § 1-617.04(5) by engaging in surface bargaining and not substantive bargaining when the parties met in I&E bargaining regarding the revised SOPs.²⁶ The Hearing Examiner noted that, under PERB precedent, an agency does not fulfill its duty to bargain in good faith by “simply discussing”

AFSCME filed a step 4 group grievance. Agency Hearing Exhibit 2. The grievance’s requested relief was to promote a single employee to Grade 12 until the matter is mutually agreed. Report at 5, fn. 4; Agency Hearing Exhibit 2. DISB denied the grievance. AFSCME Hearing Exhibit 8.

¹⁴ Agency Exhibit 2; Complaint Exhibit 3.

¹⁵ Report at 4; Agency Exhibit 2.

¹⁶ Report at 4.

¹⁷ Report at 5; AFSCME’s Post Hearing Brief at 10.

¹⁸ Report at 5.

¹⁹ Report at 5. AFSCME argued that its filed grievance against DISB is a “bargaining impasse” that the Board may resolve, pursuant to D.C. Code § 1-617.02. AFSCME’s Post Hearing Brief at 12.

²⁰ Report at 5.

²¹ Report at 5.

²² Report at 6.

²³ Report at 6.

²⁴ Report at 6.

²⁵ Report at 6.

²⁶ Report at 6.

its proposal with the union, and by merely requesting the union's input.²⁷ An agency cannot engage in mere "surface bargaining," nor can it engage in conduct at or away from the table that intentionally frustrates or avoids mutual agreement.²⁸

The Hearing Examiner found that DISB engaged in substantive discussions with AFSCME that resulted in changes to the revised SOP.²⁹ Based on the totality of the circumstances and relevant facts, the Hearing Examiner found that the undisputed facts show that there was a give-and-take such that the negotiations entailed full and unabridged opportunities by both parties to advance, to exchange and to reject specific proposals.³⁰ Therefore, the Hearing Examiner held that DISB fulfilled its duty to bargain.³¹

The Hearing Examiner further noted that PERB precedent establishes that PERB must defer alleged collective bargaining agreement violations to the parties' grievance and arbitration procedure.³² For these reasons, the Hearing Examiner recommended that AFSCME's Complaint be dismissed with prejudice.³³

III. Discussion

Pursuant to Board Rule 550.1, the Complainant has the burden of proving by a preponderance of evidence that the Respondent committed an unfair labor practice in violation of the CMPA.³⁴ The Board will affirm a hearing examiner's findings and recommendations if they are reasonable, supported by the record, and consistent with Board precedent.³⁵ The Board has long held that issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the hearing examiner.³⁶ Mere disagreements with a Hearing Examiner's findings

²⁷ Report at 7 (citing *AFSCME, District Council 20, Local 2401, AFL-CIO and CFSA*, 61 D.C. Reg. 12856, Slip Op. No. 1497 at 3, PERB Case No. 10-I-06 (2014)).

²⁸ Report at 7 (citing *AFSCME, District Council 20, Local 2401, AFL-CIO and CFSA*, Slip Op. No. 1497 at 3).

²⁹ Report at 7.

³⁰ Report at 8.

³¹ Report at 7-8.

³² Report at 8 (citing *Rodriguez v. MPD*, Slip Op. No. 906, PERB Case No. 06-U-38 (2008); *AFSCME, Local 2921 v. DCPS*, 42 D.C. Reg. 5685, Slip Op. No. 339, PERB Case No. 92-U-08 (1995)).

³³ Report at 8.

³⁴ See Board Rule 550.1; see also *DCPS v. WTU Local 6*, 68 D.C. Reg. 6745, Slip Op. No. 1792, PERB Case No. 20-U-29 (2021); *NAGE v. D.C. Dep't of Forensic Sciences*, 68 D.C. Reg. 5067, Slip Op. No. 1782, PERB Case No. 20-U-08 (2021).

³⁵ *WTU, Local 6 v. DCPS*, 65 D.C. Reg. 7474, Slip Op. No. 1668 at 6, PERB Case No. 15-U-28 (2018); see also *AFGE, Local 1403 v. D.C. OAG*, 59 D.C. Reg. 3511, Slip Op. No. 873, PERB Case No. 05-U-32 and 05-UC-01 (2012).

³⁶ *AFGE, Local 631 v. OLRCB*, 68 D.C. Reg. 2979, Slip Op. No. 1767 at 4, PERB Case No. 20-U-23 (2021); *AFSCME, Local 2087 v. UDC*, 67 D.C. Reg. 8903, Slip Op. No. 1751 at 4, PERB Case No. 18-U-03 (2020); *Council of Sch. Officers, Local 4 v. DCPS*, 59 D.C. Reg. 6138, Slip Op. No. 1016 at 6, PERB Case No. 09-U-08 (2010); *Hatton v. FOP/DOC Labor Comm.*, 47 D.C. Reg. 769, Slip Op. No. 451 at 4, PERB Case No. 95-U-02 (1995).

or challenging the Examiner's findings with competing evidence do not constitute proper exceptions if the record contains evidence supporting the Hearing Examiner's conclusions.³⁷

In its Exceptions, AFSCME argues that DISB implemented changes to the SOP after meeting in person only once and providing "patented responses" to AFSCME's written inquiries.³⁸ AFSCME also alleges that the Hearing Examiner excluded relevant exhibit submissions by AFSCME.³⁹

Upon review of the record and the Hearing Examiner's findings and recommendations, the Board finds that AFSCME failed to carry its burden of showing that DISB violated its duty to bargain collectively in good faith with AFSCME. As the Hearing Examiner stated, the Board has held that an agency does not fulfill its duty to bargain impact and effects in good faith by "simply discussing" its proposal with the union upon request, and by merely requesting the union's input.⁴⁰ Rather, there must be give and take, and meaningful opportunities by both parties to advance, exchange and reject specific proposals.⁴¹

AFSCME has not shown that DISB engaged in mere surface bargaining. DISB participated in I&E negotiations over the revised SOPs.⁴² DISB also made changes to the revised SOPs as a result of I&E bargaining with AFSCME.⁴³

AFSCME's allegation that the Hearing Examiner excluded relevant exhibit submissions is a mere disagreement with the Hearing Examiner's findings. The record here contains evidence supporting the Hearing Examiner's conclusions.⁴⁴

Finally, PERB does not have jurisdiction over alleged violations that are strictly contractual in nature.⁴⁵ For these reasons, the Board finds the Hearing Examiner's conclusion that the DISB did not engage in an unfair labor practice to be reasonable, supported by the record, and consistent with Board precedent.

³⁷ *Hoggard v. DCPS*, 46 D.C. Reg. 4837, Slip Op. No. 496 at 3, PERB Case No. 95-U-20 (1999).

³⁸ AFSCME's Exceptions at 3.

³⁹ AFSCME's Exceptions at 3.

⁴⁰ *AFSCME, District Council 20, Local 2401, AFL-CIO and CFSA*, Slip Op. No. 1497 at 3.

⁴¹ *Id.*

⁴² Report at 3-4. DISB does not have an obligation to meet in person a second time with AFSCME. *AFSCME, District Council 20, Local 2401, AFL-CIO and CFSA*, Slip Op. No. 1497 at 3.

⁴³ Report at 4.

⁴⁴ See *Hoggard*, Slip Op. No. 496 at p. 3.

⁴⁵ *Rodriguez*, Slip Op. No. 906 at 3; *AFSCME, Local 2921*, Slip Op. No. 339 at 3.

IV. Conclusion

The Board adopts the Hearing Examiner's findings, conclusions, and recommendations, and finds that the Respondent did not commit an unfair labor practice in violation of D.C. Official Code § 1-617.04(a)(5). Therefore, the Complaint is dismissed in its entirety with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint is dismissed; and,
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By vote of Board Chairperson Douglas Warshof and Members Renee Bowser, Mary Anne Gibbons, and Peter Winkler.

May 22, 2025

Washington, D.C.

APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration, requesting the Board reconsider its decision. Additionally, a final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1-605.2(12) and 1-617.13(c), which provides 30 days after a decision is issued to file an appeal.