

transport mental observation patients (MO's) from the Hospital Emergency Room to the Emergency Psychiatric Receiving Department (EPRD).

4. On or about January 7, 1991, Susan E. Scheider, Assistant General Counsel for the IBPO, sent the Hospital a demand to bargain over this proposed change in policy.

5. On or about February 27, 1991, the Hospital and the IBPO met to discuss the proposed change. ...the IBPO introduced proposed groundrules for bargaining over special police officer transports of MO's. The Hospital did not recognize its obligation to bargain over this issue and termed the IBPO's presence as for the purpose of input only.

6. On or about March 11, 1991, the Hospital notified the IBPO of its decision to require special police officers to transport MO's to the EPRD. The implementation of this policy change was effective March 18, 1991.

* * *

(Compl. at 2.)

The issue ultimately presented to the Board by the allegations contained in IBPO's Complaint is two-fold: (1) whether DCGH's refusal to bargain upon request over its decision to require special police officers to transport mental observation patients constitutes a violation of D.C. Code Sec. 1-618.4(a)(5); and (2) whether DCGH's refusal to recognize any duty to bargain, upon request, over its "proposed change" in bargaining unit employee' terms and conditions of employment constitutes a violation of D.C. Code Sec. 1-618.4(a)(5). ^{1/} For the reasons that follow, we find, to the extent that DCGH's acts and conduct precluded bargaining with IBPO over the impact and effects of its

^{1/} We have previously ruled in a recent case involving these same parties and remarkably similar issues that the implicit "right and attending duty to bargain over the impact or effects of a management-right decision arises from the [expressed] general right to bargain over employee terms and conditions of employment [as provided] under [D.C. Code Sec. 1-618.2(b)(4) of] the CMPA." International Brotherhood of Police Officers, Local 446, AFL-CIO v. District of Columbia General Hospital, DCR, Slip Op. No. 312 at n.7, PERB Case No. 91-U-06 (1992).

decision on affected employees' terms and conditions of employment, that DCGH has refused to bargain in good faith in violation of D.C. Code Sec. 1-618.4(a)(5).

We rule from the outset that the transporting of mental observation patients by special police from one department of the hospital to another clearly addresses issues concerning DCGH's internal security practices. In this regard, DCGH's decision to assign this specific duty to these bargaining-unit employees represented a legitimate exercise of its management right to "assign" employees and "determine...its internal security practices..." as provided under D.C. Code Sec. 1-618.8(a)(2) and (5), respectively. We have held that D.C. Code Sec. 1-618.8(a) exempts from the duty to bargain the decision to implement rights solely retained by management. See, 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, 38 DCR 96, Slip Op. No. 249, PERB Case No. 89-U-17 (1990). Having made such a determination with respect to DCGH's decision to assign the above-described duties to its security officers, we conclude that DCGH had no duty to bargain over said decision.

Notwithstanding D.C. Code Sec. 1-618.8(a)'s expressly provided exception to the otherwise affirmative duty to bargain under the CMPA, we have further held that "the effects or impact of a non-bargainable management decision upon the terms and conditions of employment are bargainable upon request." Id., Slip Op. at 5. See also, American Fed. of State, County and Municipal Employees, Council 20, AFL-CIO, and District of Columbia General Hospital and Office of Labor Relations and Collective Bargaining, 36 DCR 7101, Slip Op. No. 227, PERB Case No. 88-U-29 (1989). We find DCGH's decision to assign the aforementioned duties to bargaining-unit employees is plainly a decision affecting employees' terms and conditions of employment.

Any general request to bargain over a matter implicitly encompasses all aspects of that matter, including the impact and effects of a management decision that is otherwise not bargainable. Notwithstanding our finding that no duty to bargain exists with respect to DCGH's decision, DCGH's blanket refusal, in response to IBPO's request to bargain, foreclosed the opportunity for bargaining of any nature to occur, including the limited duty to bargain over that aspect of DCGH's non-bargainable management decision concerning its effects and impact. DCGH's insistence that its obligation to IBPO consisted of providing IBPO with an opportunity to have only "input" concerning its decision constituted a refusal to bargain over the effects of its reserved

management decision.^{2/} We note, however, that in the interest of advancing the collective bargaining process, the better approach, upon being faced with an effective refusal to bargain over any aspect of a management decision, is to then make a second request to bargain with respect to the specific effects and impact of that management decision on bargaining-unit employees' terms and conditions of employment. The empty gestures displayed by these parties in their bargaining stances over this issue do little to foster a mature working relationship as contemplated by the CMPA.

DCGH raises an affirmative defense that "[a]ssuming, arguendo, that charges alleged in the Complaint support contentions about which this is a substantive dispute of whether working conditions provisions of the Agreement were violated, the [Complainant] should have pursued [the dispute] under the grievance procedure outlined in Article 9 of the Agreement, rather than filing an unfair labor practice charge with the Board." (Ans. at 3.) On that basis, DCGH asserts that the Complaint should be dismissed.

This assertion by DCGH presumes that the scope of the Complaint allegations encompasses only "working conditions provisions of the [parties'] Agreement." To the extent that DCGH's reserved right to have bargaining-unit employees transport mental observation patients has been superseded by negotiated provisions in the parties' agreement, relief from alleged breaches of such contractual provisions must be obtained by the means the parties have contractually-provided for resolving such claims, e.g., grievance-arbitration procedure. See, American Federation of Government Employees Local Union No. 3721 v. District of Columbia Fire Department, ___ DCR ___, Slip Op. No. 287, PERB Case No. 90-U-11 (1991). However, the violation found here concerns DCGH's refusal to bargain over the impact and effects of its decision. DCGH neither cites nor does our review of the parties' collective bargaining agreement reveal any provision governing or addressing the impact or effect of the exercise of a management prerogative on otherwise bargainable

^{2/} We have held that where there exists "a duty to bargain over the impact and effects of... decisions involving the exercise of managerial prerogative, ...categorically refus[ing] to bargain over those aspects..., prior to implementation" is done so at the "risk" of the party having the duty. Teamsters Local 639 and 730 v. D.C. Public Schools, supra, Slip Op. No. 249 at 8.

terms and conditions of employment. ^{3/} We therefore find no basis for DCGH's contention that the Complaint merely concerns a violation of the parties' collective bargaining agreement and therefore should be dismissed as outside the jurisdiction of the Board. ^{4/}

We therefore conclude that by affording IBPO with the opportunity to provide input only with respect to the aforementioned managerial decision before implementing that decision, DCGH has refused to bargain in good faith, upon request, with IBPO over the impact and/or effects of its decision on bargaining-unit employees' terms and conditions of employment. ^{5/} By its acts and conduct, DCGH has violated D.C. Code Sec. 1-618.4(a)(5). We further hold that by these same acts and conduct, DCGH's failure and refusal to honor its statutory duty to bargain also derivatively constitutes interference with employee rights in violation of D.C. Code Sec. 1-618.4(a)(1). See, American Federation of State, County and Municipal Employees, District Council 20, Local 2776, AFL-CIO v. District of Columbia Department of Finance and Revenue, 37 DCR 5658, Slip

^{3/} DCGH recently raised a similar argument in another unfair labor practice case that certain provisions contained in this same collective bargaining agreement between the parties constituted a waiver of IBPO's right to bargain over a DCGH decision establishing a new security post. In rejecting DCGH's contention in that case, we ruled that "notwithstanding contractual and statutory reservations in management with respect to DCGH's decision to establish a new security post," the contractual provision "d[id] not act as a waiver of IBPO's statutory right to bargain over the effects or impact of DCGH's decision on bargaining-unit employees[.]" International Brotherhood of Police Officers, Local 446, AFL-CIO v. District of Columbia General Hospital, _____ DCR _____, Slip Op. No. 312 at 3, PERB Case No. 91-U-06 (1992).

^{4/} In its second of two affirmative defenses, DCGH contended that the Complaint allegations "fail to allege the unfair labor practice charge" set forth in the Complaint. (Ans. at 3.) Based on our discussion above, we find no merit to this contention.

^{5/} We have ruled that finding such a violation "does not require [a] Complainant to establish that a duty to bargain existed with respect to specific impact and effect proposals either contemplated or speculated" where, as here, Respondent's violative conduct precluded the opportunity for proposals on specific subject matters to be presented or any negotiations from ever taking place. International Brotherhood of Police Officers, Local 446, AFL-CIO v. DCGH, supra at 5.

Op. No. 245, PERB Case No. 89-U-02 (1990). ^{6/}

ORDER

1. The District of Columbia General Hospital (DCGH) shall cease and desist from refusing to bargain, upon request, with the International Brotherhood of Police Officers, Local 446, AFL-CIO (IBPO) about the impact and effects of assigning special police officers the duty to transport mental observation patients from the Hospital Emergency Room (HER) to the Emergency Psychiatric Receiving Department (EPRD).
2. DCGH shall cease and desist from interfering with, restraining or coercing in any like or related manner, employees represented by IBPO in the exercise of rights guaranteed by the Comprehensive Merit Personnel Act.
3. DCGH shall negotiate in good faith with IBPO, upon request, about the impact and effect of its decision to have bargaining unit employees transport mental observation patients from the HER to the EPRD on bargaining-unit employees' terms and conditions of employment.
4. DCGH shall cease and desist from assigning such duties to bargaining-unit employees before fulfilling its obligation to bargain with IBPO, upon request, the impact and effects on bargaining-unit employees' terms and conditions of employment.
5. Representatives of DCGH and IBPO shall meet within seven (7) calendar days of the date of IBPO's request for bargaining as provided under paragraph 3 of this Order. The representatives

^{6/} With respect to IBPO's request for costs and attorney fees, our criteria for awarding costs pursuant to D.C. Code Section 1-618.13 were announced in AFSCME District Council 20, Local 2776, AFL-CIO v. Department of Finance and Revenue, 37 DCR 5658, Slip Op. No. 245 at pp. 4 - 5, PERB Case No. 89-U-02 (1990). Applying those criteria here, we find an award of costs would not be in the "interest of justice" and therefore deny IBPO's request. Moreover, we note that "Section 1-618.13 does not refer to attorney fees, nor are we elsewhere given authority to award attorney fees." University of the District of Columbia Faculty Association, NEA v. University of the District of Columbia, 38 DCR 3463, Slip Op. No. 272 at 5, PERB Case No. 90-U-10 (1991). With respect to all other remedial requests contained in the Complaint that were not so ordered, we find the Order adequately provides for remedies of the violations found under the circumstances of this case.

shall meet on a daily basis (unless otherwise agreed-upon) until agreement is reached or their efforts result in impasse. Any resulting agreement between the parties or ultimate award imposed by interest arbitration concerning the bargaining as provided under paragraph 3 shall, at the election of IBPO, take effect retroactively to March 18, 1991, the date DCGH implemented its decision to have special police officers transport mental observation patients from HER to EPRD.

6. DCGH shall, within ten (10) days from the service of this Decision and Order, post the attached Notice conspicuously on all bulletin boards where notices to these bargaining unit employees are customarily posted, for thirty (30) consecutive days.

7. DCGH shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from the issuance of this Decision and Order, that the Notice has been posted accordingly.

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

July 15, 1992



Public
Employee
Relations
Board

Government of the
District of Columbia



415 Twelfth Street, N.W.
Washington, D.C. 20004
[202] 727-1822/23
Fax: [202] 727-9116

NOTICE

TO ALL EMPLOYEES REPRESENTED BY THE INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS, LOCAL 446, AFL-CIO AT THE DISTRICT OF COLUMBIA GENERAL HOSPITAL: THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 322, PERB CASE NO. 91-U-14.

WE HEREBY NOTIFY our employees that the Public Employee Relations Board has found that we violated the law and has ordered us to post this notice.

WE WILL cease and desist from refusing to bargain, upon request, with the International Brotherhood of Police Officers, Local 446, AFL-CIO (IBPO) about the impact and effects of assigning special police officers the duty to transport mental observation patients from the Hospital Emergency Room (HER) to the Emergency Psychiatric Receiving Department (EPRD).

WE WILL bargain collectively in good faith with IBPO upon request over the impact and effects of our decision to have bargaining-unit employees transport mental observation patients from the HER to the EPRD on bargaining-unit employees' terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with the rights guaranteed to employees by the Comprehensive Merit Personnel Act to the bargaining unit employees at the D.C. General Hospital.

District of Columbia
General Hospital

Date: _____ By: _____
Executive Director

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning the Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 415-12th Street, N.W. Room 309, Washington, D.C. 20006. Phone 727-1822.