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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, Local 2743)	
)	PERB Case No. 24-U-18
Complainant)	
)	Opinion No. 1913
v.)	
)	CORRECTED
District of Columbia Department of)	
Licensing and Consumer Protection)	
)	
Respondent)	
)	

DECISION AND ORDER

I. Statement of the Case

On March 6, 2024, the American Federation of State, County and Municipal Employees, Local 2743 (AFSCME) filed an unfair labor practice complaint (Complaint) against the District of Columbia Department of Licensing and Consumer Protection (DLCP) asserting that DLCP violated §§ 1-617.04(a)(1), (2) and (5) of the Comprehensive Merit Personnel Act (CMPA) by refusing to bargain the impact and effects of additions to bargaining unit employees' job duties.¹ On March 20, 2024, DLCP filed its answer and affirmative defenses (Answer).

On August 22, October 28 and October 29, 2024, PERB held hearings on this matter. On January 17, 2025, the Hearing Examiner issued a report and recommendations (Report). Neither party filed exceptions to the Report.

Upon consideration of the Hearing Examiner's Report and Recommendations, applicable law, and the record presented by the parties, the Board finds that DLCP committed an unfair labor practice in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5).

¹ Complaint at 1-2 (citing D.C. Official Code §§ 1-617.04(a)(1), (2) and (5)).

II. Hearing Examiner's Report and Recommendations

A. Hearing Examiner's Factual Findings

The Hearing Examiner made the following factual findings. On October 1, 2022, the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) transitioned into two separate agencies, including DLCP.² DLCP operates under multiple statutes³ to investigate and regulate the activities for which the Agency issues a license, which include vending and short-term rentals (STRs).⁴ DLCP—and before the split into two agencies, DCRA—has a Consumer Protection Unit (CPU) that is responsible for enforcement of such licenses and eliminating unlicensed activity.⁵ Prior to the creation of DLCP, DCRA had a team of employees specializing in vending enforcement.⁶ Evidence indicated that CPU investigators were assigned the duties of STR investigations and vending licenses in 2021.⁷ On June 4, 2021, a DCRA program officer sent two (2) emails to roughly twenty-four (24) DLCP employees and members of management regarding implementation of STR regulations and enforcement mechanisms and referencing the combining of all investigators into the CPU.⁸ The Hearing Examiner emphasized that “there is no evidence that the Union was presented a copy of these emails, or informed of their content.”⁹

The Hearing Examiner reviewed witness testimony regarding investigators' tours of duty and off-hours work requirements.¹⁰ Witnesses indicated that investigators had an official tour of duty of 8:15 a.m. to 4:45 p.m. but were required to work outside of those hours to varying degrees because vendor activity and special events under the CPU's purview occurred seven (7) days a week, including evenings.¹¹

² Report at 2.

³ Including the Short-Term Rental Regulation Act of 2018 (STRRA), which became effective on April 25, 2019. Report at 3. Prior to the enactment of the STRRA, DCRA did not regulate STRs. Report at 25. Even after the STRRA became effective, the Agency did not enforce the STRRA for a period of time to allow for an “educational period” and updates to the Agency's systems to ensure proper processing of STR licenses. Report at 25.

⁴ Report at 3-5.

⁵ Report at 2-3, 24-27.

⁶ Report at 24.

⁷ Report at 25.

⁸ Report at 25. The first email stated that STR regulations and mechanisms for issuing licensing and tracking rental activity neared completion. Report at 25 (citing DLCP Ex. 9, *June 4, 2021 STR Regulations and Licensing Email*). The email further stated that the entire system would hopefully go live in July 2021, with a ninety (90) day grace period for enforcement, noting that “there will be a sharp increase in requests for licenses, but there will likely be a decline in the amount of time we spend on a [sic] STR investigations.” Report at 25 (citing June 4, 2021 STR Regulations and Licensing Email). The email encouraged all recipients to participate in an introduction, training, and input session, stating “Since you all will be conducting the investigations (which you currently are) you know best what would be the most useful information for us.” Report at 25 (citing June 4, 2021 STR Regulations and Licensing Email). The Program Officer's second email stated that DLCP had, several months prior, combined all investigators into the CPU—thus moving the two (2) OPLA dedicated investigators and three vending investigators into the “investigation assignment rotation.” Report at 25 (citing DLCP Ex. 8, *June 4, 2021 Team CPU Email* at 1). That email outlined that all Grade 12 investigators receive all types of investigations, including CPPA and OPLA investigations, and that Grade 9-11 investigators handle “Vending, Pre-licensing and Trash Noise complaints.” Report at 25 (citing June 4, 2021 Team CPU Email at 1).

⁹ Report at 25.

¹⁰ Report at 25-26, 28.

¹¹ Report at 25-26. One witness noted that investigators work hundreds of special events in a year. Report at 26.

On August 9, 2022, the AFSCME, Local 2743 President (AFSCME President) sent an email to the Agency's former director (Former Director), with the subject line: "Help is Needed."¹² The AFSCME President requested additional manpower, pay and equipment "for the CPU and Vending Unit."¹³ She asserted that, upon information and belief, DLCP had added short term rental enforcement, leaf blowing enforcement and "hotel matters," such as determining hotel sanitation, to the "CPU and Vending Unit."¹⁴ The AFSCME President stated that DLCP "continues to add...more responsibilities and have an unwillingness to move swiftly to replace the staff that have left,"¹⁵ and asked to discuss pay increases for bargaining unit members.¹⁶ One investigator testified that the timeline to get investigative reports completed had been reduced from thirty (30) to twenty-five (25) days.¹⁷ The AFSCME President asserted that in September 2022, the Former Director agreed during a telephone call not to add vending and STR enforcement to CPU investigators' duties.¹⁸

On November 30, 2023, DLCP provided the AFSCME President with position descriptions for its Grades 9, 11, 12 and 13 investigators.¹⁹ These position descriptions were listed as "Re-Descriptions" replacing the prior position descriptions.²⁰ The Hearing Examiner reviewed differences in the Grade 11 position descriptions; significantly, these differences included the addition of possible weekend, holiday or after-hours work.²¹

On January 3, 2024, AFSCME requested impact and effects (I & E) bargaining regarding the addition of vending enforcement and STR enforcement to CPU investigators' duties.²² On February 7, 2024, DLCP's attorney denied the AFSCME President's request, stating "DLCP has determined that these duties are not new to the bargaining unit, and do not constitute any change to working conditions. Therefore, no I & E Bargaining [sic] is required."²³ The AFSCME President responded the same day, including the DLCP director (Director) and asserting that DLCP had had separate vending, STR, and consumer protection units with distinctive disciplines.²⁴ The AFSCME President argued that adding vending and STR enforcement to CPU investigators' duties constituted "a material change in their working conditions."²⁵ After a follow-up email, the Director replied on February 14, 2024, stating: "Since the creation of DLCP, the Enforcement Unit has housed all of the investigators. Because of this, and the clarity of the [position description], we are not going to do I & E for anything related to investigations based upon the type of

¹² Report at 28. AFSCME bargaining unit members received a copy of the email. Report at 27.

¹³ Report at 28 (citing DLCP Ex. 6, August 9, 2022 Email at 1).

¹⁴ Report at 28-29 (citing August 9, 2022 Email at 1).

¹⁵ August 9, 2022 Email at 1.

¹⁶ Report at 29 (citing August 9, 2022 Email at 1).

¹⁷ Report at 28.

¹⁸ Report at 15.

¹⁹ Report at 29.

²⁰ Report at 29.

²¹ Report at 29.

²² Report at 29-30.

²³ Report at 30.

²⁴ Report at 30.

²⁵ Report at 30.

investigation.”²⁶ The Director testified that she denied I & E bargaining, stating the “matter was settled, you did not file a timely objection to that [position description]. So, for me...that’s established operations.”²⁷ The Director further testified that she denied I & E bargaining on STRs and the vending unit “because there is no short-term or vending unit...the investigator [position description] includes all of those things so there wouldn’t be a reason to do I & E over that because it hasn’t changed, we didn’t change it.”²⁸ The Director asserted that AFSCME’s request for I & E bargaining was too general given the public interest in continuing current operations and that AFSCME had not demonstrated an adverse impact to its bargaining unit members.”²⁹

B. Hearing Examiner’s Recommendations

The Hearing Examiner considered the following issues:

1. Whether DLCP failed to bargain in good faith in response to the Union’s request for I & E bargaining concerning the assignment of vending license and short-term rental enforcement to investigators in the CPU?
2. Whether the Union’s request to engage in I & E bargaining, over the items named in item 1 above, was timely made?
3. Whether, if a violation of the Act is found, the remedies requested by the Union are appropriate?
4. Whether the DLCP has timely raised and substantiated its defenses listed in its brief that PERB does not have jurisdiction over this matter because it requires interpretation of the parties’ CBA and/or the Union does not have the authority to file this complaint as it is a matter for the compensation unit of which the Union is a member?
5. Whether the hearing examiner erred in refusing to quash a subpoena served on [the DLCP Director], and if so, whether such error materially affects the outcome of this case?³⁰

The Hearing Examiner noted the disparity between DLCP witnesses who testified that all investigators were assigned all types of cases permitted at their Grade level, and other witnesses who testified to a division in responsibilities regarding types of investigations.³¹ The Hearing Examiner further noted that CPU investigators received training in STR codes and software, as well as vending regulations and, thus, had to handle a more diverse work load.³² The Hearing Examiner emphasized witness testimony regarding the reduction from thirty (30) to twenty-five (25) days for investigators to complete investigative cases.³³ The Hearing Examiner further emphasized that multiple witnesses testified regarding vendors’ hostile response to enforcement actions by DLCP investigators, as well as that CPU investigators did not receive pay increases for

²⁶ Report at 30.

²⁷ Report at 30.

²⁸ Report at 30.

²⁹ Report at 31.

³⁰ Report at 2.

³¹ Report at 31-32.

³² Report at 32.

³³ Report at 32.

these additional responsibilities.³⁴ The Hearing Examiner determined that combining CPU investigators' new responsibilities constituted a material change to their terms and conditions of employment and adversely impacted their working conditions.³⁵

The Hearing Examiner found that the language of the parties' CBA was "clear and consonant" with the CMPA's standards regarding I & E bargaining and, therefore, did not require interpretation of the CBA in order to find a statutory violation.³⁶ Further, the Hearing Examiner rejected DLCP's jurisdictional argument because it was only raised in the Agency's post-hearing brief.³⁷ The Hearing Examiner also addressed DLCP's affirmative defenses and other arguments. The Hearing Examiner rejected DLCP's argument that AFSCME was aware of changes in investigators' duties as of August 9, 2022 and, therefore, the I & E bargaining request was untimely.³⁸ The Hearing Examiner found that the evidence did not show AFSCME was aware that the vending unit functions were being integrated into the work of CPU investigators.³⁹ The Hearing Examiner concluded that notifying employees of workplace changes does not relieve an employer of its obligation to engage in I & E bargaining where a union subsequently makes a timely request.⁴⁰ The Hearing Examiner emphasized that the language regarding work hours was changed in the "Re-Descriptions."⁴¹

The Hearing Examiner rejected the arguments presented in DLPS's motion to quash the Director's *subpoena ad testificandum*, noting that DLCP's insistence on receiving a subpoena caused the postponement of the initial hearing and observing that the Director had multiple months' notice regarding the requirement to appear.⁴² Based on District of Columbia Circuit Court precedent, the Hearing Examiner determined that the AFSCME President was both a party to the proceeding and AFSCME's representative.⁴³ Therefore, the Hearing Examiner found that the Director's testimony was necessary to develop a full evidentiary record.⁴⁴

The Hearing Examiner found that AFSCME had met its burden to show that DLCP violated the CMPA by denying AFSCME's request for I & E bargaining regarding the addition of vending investigations to CPU investigators' job duties.⁴⁵ However, the Hearing Examiner dismissed the rest of AFSCME's claims.⁴⁶ The Hearing Examiner determined that the Union President professed

³⁴ Report at 32.

³⁵ Report at 32.

³⁶ Report at 33. The Hearing Examiner noted that DLCP did not raise a jurisdictional issue in its post-hearing brief. Report at 33.

³⁷ Report at 36.

³⁸ Report at 33.

³⁹ Report at 33.

⁴⁰ Report at 33.

⁴¹ Report at 35.

⁴² Report at 36. The Hearing Examiner also rejected DLCP's argument that the AFSCME President's service of the subpoena at the Director's home served to intimidate the Director, noting that the Director "was a forceful witness and I do [not] find that the method of service impacted upon her testimony. Moreover, not only was she called as a witness by the Union, she was also called as a rebuttal witness...Plainly, her testimony was foreseeably relevant, and in fact was relevant." Report at 38.

⁴³ Report at 38.

⁴⁴ Report at 38.

⁴⁵ Report at 33.

⁴⁶ Report at 39.

knowledge of the Agency adding STR enforcement to CPU duties in her August 9, 2022, email and that there was no record evidence regarding her conversation with the former Director, which would have been subject to cross-examination; the Hearing Examiner therefore found that AFSCME's I & E bargaining request regarding STR investigations was untimely.⁴⁷ The Hearing Examiner further dismissed AFSCME's allegation of a D.C. Official Code § 1-617.04(a)(2) violation, citing a lack of evidence.⁴⁸ Finally, the Hearing Examiner concluded that a *status quo ante* remedy was inappropriate in the instant case, considering how long the CPU investigators' duties have been in place.⁴⁹

III. Discussion

This dispute arises from DLCP's alleged refusal to bargain in good faith with AFSCME over the impact and effects of alterations to bargaining unit members' terms and conditions of employment which resulted from changes in employees' job duties. AFSCME argues that DLCP categorically refused to fulfil its obligation to engage in I & E bargaining and unilaterally expanded the duties of CPU investigators.⁵⁰ DLCP argues that: (1) bargaining unit employees' working conditions did not change and, therefore, the Agency was not obligated to engage in I & E bargaining; (2) the Board lacks jurisdiction over the purely contractual issues presented in this case;⁵¹ and (3) that the Hearing Examiner erred in denying DLCP's Motion to Quash the Director's subpoena.⁵²

The Board will adopt a hearing examiner's report and recommendations if they are reasonable, supported by the record, and consistent with PERB precedent.⁵³ The Board has held that "issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner."⁵⁴ When a violation is found, the Board's order is intended to have a remedial effect. The overriding purpose and policy of relief afforded under the CMPA for unfair labor practices is the protection of rights and obligations.⁵⁵ Generally, *status quo ante*

⁴⁷ Report at 35.

⁴⁸ Report at 39.

⁴⁹ Report at 39. The Hearing Examiner also rejected AFSCME's requested remedies of DLCP identifying all CPU investigators who enforced vending regulations from 2021 through the date of the filing of the Complaint and pay those individuals for the work performed and immediately ceasing from having CPU investigators perform vending enforcement work until compensation for such work is agreed upon by the parties. Report at 39. The Hearing Examiner noted that AFSCME only made this request for information in the remedy section of the Complaint and that such proposals and that AFSCME can appropriately make such information requests and proposals once the parties begin the ordered I & E bargaining, *infra*. Report at 39.

⁵⁰ Report at 15.

⁵¹ Report at 18.

⁵² Report at 20.

⁵³ *AFGE, Local 2978 v. OCME*, 61 D.C. Reg. 4267, Slip Op. No. 1457 at 6-7, PERB Case No. 09-U-62 (2014).

⁵⁴ *Bernard Bryan, et al. v. FOP/DOC Labor Committee, et al.*, 67 D.C. Reg. 8546, Slip Op. No. 1750 at 5, PERB Case No. 19-S-02 (2020).

⁵⁵ *AFGE, Local 383 v. D.C. Dep't. of Mental Health*, 52 D.C. Reg. 2527, Slip Op. No. 753 at 7, PERB Case No. 02-U-16 (2005).

relief⁵⁶ is an inappropriate redress for a refusal to bargain over impact and effects.⁵⁷ The Board has held that *status quo ante* relief is not appropriate when: (1) the rescission of the management decision would disrupt or impair the agency's operations, and (2) there is no evidence that the results of such bargaining would negate a management rights decision.⁵⁸

Board Rule 554.3(a) allows for personal service of subpoenas by "any person who is not a party to the proceeding"⁵⁹ The Board has held that, to the extent individual union officers are named as respondents in a standards of conduct complaint, any statutory claims that accrue to them or their actions are not in their personal capacity but rather in their representative capacity as officers and/or agents of the union.⁶⁰

The Board has held that it will sometimes look to National Labor Relations Board (NLRB) or Federal Labor Relations Authority (FLRA) precedent for guidance when relevant, primarily when the Board's own case law is silent on a particular issue.⁶¹ The Hearing Examiner cited to NLRB precedent establishing that "an individual may be a principal's agent for one purpose, but not for another. Status as a union steward, standing alone, does not establish agency for the purpose of receiving notices on a union's behalf about proposed changes in mandatory subjects of bargaining."⁶² While this principle applies regarding AFSCME's actual notice of changes in working conditions compared to employees' conversations in the workplace, it does not apply to the AFSCME President's role in the instant proceedings. The Hearing Examiner inaccurately states that the AFSCME President is both a party *and* a representative in this matter. To the contrary, the AFSCME President is not an individually named party, but rather the representative of AFSCME in this case. Therefore, her alleged service of a subpoena to the DLCP Director does not violate Board Rule 554.3.

DLCP unilaterally changed the working conditions of bargaining unit employees and refused to engage in I & E bargaining with AFSCME as statutorily required. DLCP's assertion that it was against the public interest to withdraw the operational changes and, therefore, it was not obligated to conduct I & E bargaining constitutes a misstatement of the law. Even where the changes themselves are protected as management rights and/or *status quo ante* relief is inappropriate, an agency is still obligated to bargain with the union over the impact and effects of such changes on bargaining unit employees, which DLCP categorically refused to do in the instant case.

⁵⁶ *Status quo ante* relief returns parties to "[t]he situation that existed before [the contested change] occurred." *Status Quo Ante*, Black's Law Dictionary (12th ed. 2024).

⁵⁷ *AFGE, Local 383 v. DC. Dep't of Mental Health*, Slip Op. No. 753 at 7.

⁵⁸ *AFGE, Local 383 v. DC. Dep't of Mental Health*, Slip Op. No. 753 at 7 (citing *FOP/MPDLC v. MPD*, 47 D.C. Reg. 1449, Slip Op. No. 607 at 5, PERB Case No. 99-U-44 (2000)).

⁵⁹ Board Rule 554.3(a).

⁶⁰ *Accord Clarence E. Mack, et al., and Ellowese Barganier, et al. v. FOP/DOC Labor Comm., et al.*, 46 D.C. Reg. 110, Slip Op. No. 507 at 2-3, PERB Case No. 95-S-03 (1999) (citing *FOP/MPD Labor Comm. And MPD*, 37 D.C. Reg. 2704, Slip Op. No. 242 at 3-4, PERB Case No. 89-U-07 (1990)).

⁶¹ *Samantha Brown v. DCPS*, Slip Op. No. 1889 at 5, PERB Case No. 22-U-16(MFR) (2024) (citing *FOP/MPD Labor Comm. V. MPD*, 63 D.C. Reg. 6457, Slip Op. No. 1526 at 8, PERB Case Nos. 06-U-23, et al. (2015)).

⁶² *Coreslab Structures (Tulsa) Inc.*, 372 NLRB No. 31 (2022).

IV. Conclusion

The Board finds that the Hearing Examiner's determination that DLCP violated D.C. Official Code §§ 1-617.04(a)(1) and (5) by refusing to engage in I & E bargaining with AFSCME, upon request, regarding vending enforcement is reasonable, supported by the record, and consistent with PERB precedent. Therefore, the Board finds that DLCP violated D.C. Official Code §§ 1-617.04(a)(1) and (5). The Board further finds that the Hearing Examiner's dismissal of AFSCME's claims of violations regarding I & E bargaining for STR enforcement, as well as D.C. Official Code § 1-617.04(a)(2) were reasonable, supported by the record, and consistent with PERB precedent.⁶³

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Department of Licensing and Consumer Protection shall cease and desist from refusing to bargain with the American Federation of State, County and Municipal Employees, Local 2743 over the impact and effects of assigning vending license to investigators for the Consumer Protection Unit;
2. The District of Columbia Department of Licensing and Consumer Protection shall, within ten (10) days of the issuance of this Decision and Order, post at its facilities copies of the Attached Notice, Marked "Appendix A," both electronically and on all bulletin boards where notices to bargaining unit employees are posted for thirty (30) days;
3. The District of Columbia Department of Licensing and Consumer Protection shall notify the Board of the posting of the Notices within fourteen (14) days of the issuance of this Decision and Order; and
4. 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.

⁶³ As neither party filed exceptions to the Report, the parties have waived the right to challenge the Hearing Examiner's findings or recommendations.

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 file an appeal.