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

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| In the Matter of: | |
| American Federation of State, County and Municipal Employees, Local 2743, | |
| Complainant | PERB Case No. 24-U-45 |
| v. | Opinion No. 1926 |
| District of Columbia Department of Insurance, Securities, and Banking, | |
| Respondent | |

## DECISION AND ORDER

### I. Statement of the Case

On September 17, 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 Insurance, Securities and Banking (DISB) asserting that DISB violated Sections 1-617.04(a)(1), (3), (4) and (5)[1] of the Comprehensive Merit Personnel Act (CMPA) by revising the structural guide (revised job aid) for a previously implemented 30-day summary note requirement (30-Day Note) without engaging in impact & effects (I & E) bargaining.[2] On October 3, 2024, DISB filed its answer and affirmative defenses (Answer). On October 17, 2024, AFSCME filed an opposition to DISB's Answer (Opposition).

On June 25, 2025, PERB held a hearing on this matter. On August 25, 2025, the Hearing Examiner issued a report and recommendations (Report) finding that DISB had not committed any unfair labor practices under the CMPA.[3] Neither party filed exceptions to the Report.

[1] As noted, *infra*, AFSCME later stipulated to the withdrawal of its retaliation claim under D.C. Official Code § 1-617.04(a)(4).
[2] Complaint at 4. AFSCME also asserted that DISB's failure to engage in I & E bargaining constituted "further retaliate[ion] against the AFSCME, Local 2743 Vice President." Complaint at 4.
[3] Report at 18.

Upon consideration of the Hearing Examiner's Report, applicable law, and the record presented by the parties, the Board adopts the Report and dismisses the Complaint.

## II. Hearing Examiner's Report and Recommendations

### A. Hearing Examiner's Factual Findings

The Hearing Examiner made the following factual findings. On December 5, 2023, the parties initiated I & E bargaining regarding revisions to consumer complaints standard operating procedures (SOPs) for DISB's Compliance and Analysis Division (CAD unit).[4] Following a series of correspondence, DISB issued a memorandum on January 4, 2024. This memorandum announced that DISB would publish revised SOPs on January 8, 2024. Further, DISB affirmed that the SOPs would not implement "changes to work duties outside of the position descriptions." DISB asserted that the changes to the SOPs were management "simply refining the structure regarding how work will be completed."[5] The revised SOPs created the 30-Day Note requirement,[6] outlined the CAD unit's procedures for "review[ing], evaluat[ing], resolv[ing], and clos[ing] consumer complaints," and further delineated requirements for CAD unit investigators' processing of cases efficiently.[7]

On January 5, 2024, the parties concluded I & E bargaining. The CAD unit supervisor (Supervisor) distributed the revised SOPs and original job aid for the new requirements.[8] The Supervisor also scheduled a meeting for January 8, 2024, to go over the changes to the SOPs.[9] The AFSCME, Local 2743 vice president (AFSCME Vice President)—a CAD unit employee—attended the January 8 meeting.[10]

[4] Report at 4. On December 7, 2023, the AFSCME, Local 2743 president (AFSCME President) followed up on the meeting with a series of questions and a request for information regarding SOPs. Report at 4. On December 11, 2023, CAD unit management issued a memorandum stating, in pertinent part, that: (1) DISB would publish the revised SOPs on January 2, 2024; (2) the SOPs had been revised once in the five (5) years prior; and (3) management was implementing new requirements including a 30-day summary note, weekly reporting, tracking of inquiries, and a 30-day calendar diary. Report at 4-5. On December 13, 2024, DISB's Office of Labor Relations and Collective Bargaining representative reiterated that DISB would implement the SOPs on January 2, 2024. Report at 5. On December 28, 2023, the AFSCME President followed up with further questions and concerns. Report at 5. On January 4, 2024, DISB notified AFSCME that the Agency would implement the SOPs on January 5, 2024. Report at 5.
[5] Report at 5.
[6] The new 30-Day Note procedure required CAD unit employees to set up a follow-up reminder within the State-Based Systems database for thirty (30) calendar days after assignment of a case and include status updates within that database for the purpose of "document[ing] and defin[ing] the issues raised by [a] complaint…outlin[ing] the plan for resolving them…and ensur[ing] timely resolution within the 45-day completion period required by applicable regulations." Report at 5.
[7] Report at 5.
[8] Report at 6, 11.
[9] Report at 6.
[10] Report at 6.

On September 5, 2024, the AFSCME Vice President requested an example 30-Day Note from the Supervisor.[11] Between September 5 and 6, 2024, they exchanged emails regarding this request for an example, and the Supervisor stated that she was providing him with an "updated 30-Day [N]ote summary that provides more information to use as guide [sic]."[12] The documents provided by the Supervisor essentially updated the job aid by adding guiding questions that expanded on the job aid in the revised SOPs.[13] The AFSCME Vice President asserted that the updated 30-Day Note and job-aid were subject I & E bargaining.[14]

On September 6, 2024, the Supervisor notified the full CAD unit that she had "updated the 30 Day [sic] Note Structure" and provided that document to the full team.[15] The revised job aid "contained the same…format and requirements for complaint analysis and next steps" as the original job aid.[16]

On September 11, 2024, AFSCME requested I & E bargaining regarding the revised 30-Day Note.[17] An attorney advisor for DISB's Office of the General Counsel advised AFSCME that the parties had conducted I & E bargaining between December 5, 2023, and January 4, 2024, the revised SOPs were implemented on January 5, 2024, and the September document was a template for the 30-Day Note.[18] The AFSCME President asserted that the revised job aid had not been provided, as updated, during the parties' I & E bargaining.[19] The attorney advisor indicated that DISB provided the job aid to the CAD unit on January 8 and February 5, 2024, and then created and provided the revised job aid to the CAD unit in response to the AFSCME Vice President's questions in September 2024.[20]

On April 1, 2024, AFSCME filed an unfair labor practice complaint regarding the revised SOPs, asserting that DISB had only engaged in surface-level I & E bargaining and violated the parties' collective bargaining agreement (CBA).[21] The hearing examiner in that case found that DISB delayed implementation of the revised SOPs and made changes to them in response to the parties' I & E bargaining.[22] The Board found that DISB had not violated its duty to bargain in good faith with AFSCME and dismissed the complaint.[23]

In the instant case, AFSCME further provided Article 10 (General Provisions – Work Rules) of the parties' CBA, which states, in pertinent part, that "[e]mployees will be advised of

[11] Report at 6.
[12] Report at 6.
[13] Report at 6-7.
[14] Report at 7.
[15] Report at 7.
[16] Report at 7.
[17] Report at 7.
[18] Report at 7.
[19] Report at 7.
[20] Report at 8.
[21] Report at 8 (citing *AFSCME, Local 2743, District Council 20 v. DISB*, 72 D.C. Reg. 7263, Slip Op. No. 1915, PERB Case No. 24-U-20 (2025).
[22] Report at 8 (citing *AFSCME, Local 2743, District Council 20*, Slip Op. No. 1915).
[23] Report at 8 (citing *AFSCME, Local 2743, District Council 20*, Slip Op. No. 1915).

verbal and written work rules, which they are required to follow. The Employer agrees that proposed new written work rules and the revision of existing written work rules shall be subject to notice and consultation with the Union."[24] The parties agreed to three joint stipulations at the hearing: (1) that AFSCME withdrew allegations of retaliation in the instant case; (2) that the facts of the instant case are "separate and apart from the facts presented" in PERB Case No. 24-U-20; and (3) that AFSCME would not "relitigate the facts of PERB Case No. 24-U-20."[25]

**B. Hearing Examiner's Recommendations**

The Hearing Examiner considered the following issues:

(1) Did the Respondent commit an unfair labor practice by refusing to bargain in good faith with the Union over the impact and effects of the September 6, 2024, job aid clarification?
(2) Whether the Agency changed a term or condition of employment without impact and effects bargaining when it issued the September 6, 2024, revised job aid document?
(3) If so, what relief should be ordered?[26]

The Hearing Examiner addressed several preliminary issues. First, the Hearing Examiner noted that AFSCME did not present any testimony, documentary exhibits or arguments to support its claims of interference and discrimination under D.C. Code §§ 1-617.04(a)(1) and (3), nor did it address these claims in its opening argument or Post-Hearing Brief.[27] The Hearing Examiner determined that AFSCME abandoned these claims and recommended dismissing them with prejudice.[28] The Hearing Examiner next addressed AFSCME's argument that it was not afforded rights outlined in Article 10, Section 1 of the parties' CBA.[29] The Hearing Examiner found that AFSCME's claim regarding its rights under the CBA constituted a strictly contractual claim, and therefore the Board lacked jurisdiction to address that argument.[30] Finally, the Hearing Examiner rejected DISB's argument that the Complaint was untimely, noting that AFSCME's claims stemmed from the Union's September 2024, bargaining request rather than the original revision and distribution of the CAD unit SOPs in January 2024.[31]

The Hearing Examiner then addressed the remaining substantive issue—whether DISB had an obligation to bargain the impact and effects of the Agency's revised job aid.[32] The Hearing Examiner stated that the revised job aid did not constitute a material change to the terms and

[24] Report at 8.
[25] Report at 4 (citing Joint Stipulation of Facts at 1-2).
[26] Report at 4.
[27] Report at 13.
[28] Report at 13.
[29] Report at 13.
[30] Report at 13-14.
[31] Report at 15.
[32] Report at 15.

conditions of employment which would trigger a duty to bargain.[33] The Hearing Examiner further stated that, at most, the revised job aid gave rise to a *de minimis* change in bargaining unit employees' terms and conditions of employment.[34] The Hearing Examiner noted that "[i]t is axiomatic that an agency has a duty to bargain with its exclusive representative over the impacts [sic] and effects of agency-proposed changes in conditions of employment" under D.C. Official Code § 1-617.04(a)(5).[35] The Hearing Examiner explained that AFSCME had the burden of proof to demonstrate that DISB implemented a change to the terms and conditions of employment for bargaining unit members and that DISB refused to bargain after a timely request by AFSCME.[36]

The Hearing Examiner concluded that AFSCME had not met its burden of proof under the applicable standard.[37] The Hearing Examiner found that the revised job aid did not alter bargaining unit employees' terms and conditions of employment, as the requirement addressed by that job aid originated in the revised SOPs, on which the parties had engaged in I & E bargaining in January 2024.[38] The Hearing Examiner noted that the revised job aid "simply added even further clarification to what employees in the CAD unit should consider including within the 30-day note."[39] The Hearing Examiner found that, as the revised job aid was merely further clarification of a previously bargained-over change, it had not instituted any actual change in conditions of employment.[40]

The Hearing Examiner reviewed National Labor Relations Board (NLRB) and Federal Labor Relations Authority (FLRA) precedent regarding what constitutes a change in working conditions, including the latter agency's case law holding that "a bargaining obligation arises only when a change in conditions of employment is more than *de minimis*."[41] The Hearing Examiner applied the FLRA precedent, finding that the revised job aid effectuated no more than *de minimis* changes to the original job aid, if it constituted any change in terms and conditions of employment at all.[42]

As such, the Hearing Examiner concluded that DISB did not commit an unfair labor practice violation in the instant case.[43]

## III. Discussion

This dispute arises from DISB's alleged failure to bargain the impact and effects of the revised job aid as requested by AFSCME. AFSCME argues that: (1) the parties' CBA affords the

[33] Report at 15.
[34] Report at 15.
[35] Report at 15.
[36] Report at 16.
[37] Report at 16-18.
[38] Report at 16.
[39] Report at 16.
[40] Report at 16.
[41] Report at 17.
[42] Report at 17-18.
[43] Report at 18.

Union the right to notice and consultation regarding the revision of existing written work rules;[44] (2) DISB did not provide an example of the 30-Day Note during I & E bargaining, but rather for the first time on September 6, 2024;[45] and (3) that an agency does not have *carte blanche* to refuse to bargain impact and effects upon request or make unilateral changes to bargaining unit employees' working conditions.[46] AFSCME requests that the Board order DISB to engage in good faith bargaining "regarding the content and structure of the 30-Day Note."[47] DISB argues that: (1) neither the original nor the revised job aids constituted material changes to terms and conditions of employment;[48] (2) AFSCME's September 2024 demand to bargain was untimely, and the clarification itself was *de minimis*;[49] (3) AFSCME conflated the "notice and consultation" provision of the parties' CBA and the duty to bargain impact and effects;[50] (4) AFSCME abandoned its claims of interference and discrimination under D.C. Official Code §§ 1-617.04(a)(1) and (3);[51] and (5) the Board lacks jurisdiction to interpret and enforce provisions of the parties' CBA.[52]

Under Board Rule 520.11, "[t]he party asserting a violation of the CMPA shall have the burden of proving the allegations of the complaint by a preponderance of the evidence." 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] The Board will sometimes look to NLRB or FLRA precedent for guidance when relevant, primarily when the Board's own case law is silent on a particular issue.[55]

### A. Procedural Questions

The Hearing Examiner's analysis of the procedural issues in the instant case is reasonable, supported by the record, and consistent with PERB precedent. AFSCME stipulated to its withdrawal of the retaliation claim, and it presented neither arguments nor any record evidence regarding the interference and discrimination claims at the hearing or in its Post-Hearing Brief.[56] Pursuant to Board Rule 550.18, the Hearing Examiner properly recommended the dismissal of those claims for failure to prosecute. The Hearing Examiner's analysis of the timeliness of the

[44] AFSCME's Post-Hearing Brief at 2.
[45] AFSCME's Post-Hearing Brief at 4.
[46] AFSCME's Post-Hearing Brief at 8.
[47] AFSCME's Post-Hearing Brief at 8.
[48] DISB's Post-Hearing Brief at 9-12. The Board notes that the Hearing Examiner did not address whether the January 2024 job aid document constituted a material change to terms and conditions of employment because he found that the instant Complaint did not stem from the issuance of that document. Report at 15, fn 9. The Board similarly need not address that argument further.
[49] DISB's Post-Hearing Brief at 12-15.
[50] DISB's Post-Hearing Brief at 15-16.
[51] DISB's Post-Hearing Brief at 17.
[52] DISB's Post-Hearing Brief at 18-19.
[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 Comm., et al.*, 67 D.C. Reg. 8546, Slip Op. No. 1750 at 5, PERB Case No. 19-S-02 (2020).
[55] *FOP/MPD Labor Comm. v. MPD*, Slip Op. No. 1526 at 8, PERB Case Nos. 06-U-23, et al. (2015).
[56] Report at 4, 13.

Complaint addressed AFSCME's allegations centered around the revised job aid and subsequent request by AFSCME to bargain the impact and effects of the "change" and was supported by the arguments and evidence presented by the Union.[57]

Finally, the Hearing Examiner properly dismissed AFSCME's argument conflating the CBA's "notice and consultation" clauses with the duty to bargain impact and effects of a management decision as a contractual dispute that would require the Board to interpret whether the job aid clarification constituted a revision of a work rule under Article 10, Section 1 of the CBA.[58] In determining jurisdiction in a case involving contractual claims, the Board looks to:

> Whether the record supports a finding that the alleged violation: (1) is restricted to facts involving a dispute over whether a party complied with a contractual obligation; (2) resolution of the dispute requires an interpretation of those contractual obligations; and (3) no dispute can be resolved under the CMPA.[59]

AFSCME's claim regarding alleged CBA violations is based solely on the asserted contractual violations.[60] Where interpretation of a contractual obligation is necessary and appropriate to a determination of whether or not a non-contractual, statutory violation has been committed, the Board has deferred the contractual issue to parties' grievance arbitration procedures.[61] The Board lacks jurisdiction to interpret contractual issues and, therefore, that claim is not properly before the Board and must be dismissed.[62]

### B. Duty to Bargain Impact & Effects

The Board has held that even where an agency is not obligated to bargain substantively over the decision to implement a policy protected by management rights under D.C. Official Code § 1-617.08(a), the agency still has a duty, upon a timely request from a union, to bargain over the impact and effects of the decision.[63] That duty does not require the parties to bargain in perpetuity or to reach an ultimate agreement, but the agency must engage in the negotiations in good faith.[64] In the instant case, the policy change was implemented in January of 2024.[65] The Hearing Examiner—after determining that AFSCME's request to bargain centered around the September

[57] Report at 15.
[58] Report at 13-14.
[59] *FOP/MPD Labor Comm. v. MPD*, 60 D.C. Reg. 12058, Slip Op. No. 1400 at 7, PERB Case No. 11-U-01 (2013) (citing *AFGE, Local 3721 v. D.C. Fire Dep't*, 39 D.C. Reg. 8599, Slip Op. No. 287 at fn. 5, PERB Case No. 90-U-11 (1991)).
[60] *FOP/MPD Labor Comm. v. MPD*, 59 D.C. Reg. 6039, Slip Op. No. 1007 at 8, PERB Case No. 08-U-41 (2012).
[61] *Id.* (citing *AFSCME, District Council 20, Local 2921 v. DCPS*, 42 D.C. Reg. 5685, Slip Op. No. 339 at fn. 6, PERB Case No. 92-U-08 (1995).
[62] *FOP/MPD Labor Comm. v. MPD*, Slip Op. No. 1007 at 8.
[63] *AFGE, Local 1000 v. DOES*, Slip Op. No. 1578 at 11, PERB Case No. 13-U-07 (2016) (citing *AFGE, Local 631, et al. v. DCG, et al.*, 62 D.C. Reg. 14666, Slip Op. No. 1541 at 5, PERB Case No. 09-U-31 (2015)).
[64] *Id.* (citing *AFSCME, Dist. Council 20, Local 2401, AFL-CIO v. D.C. CFSA*, 61 D.C. Reg. 12586, Slip Op. No. 1497 at 3, PERB Case No. 10-I-06 (2014)).
[65] Report at 18.

2024 clarification of a management decision already bargained-for and implemented nearly a year prior—properly concluded that the revised job aid had not effectuated any change in policy.[66]

## IV. Conclusion

The Board finds that the Hearing Examiner's determinations regarding AFSCME's failure to meet its burden of proof are reasonable, supported by the record, and consistent with PERB precedent. Therefore, the Board denies AFSCME's requests for relief and dismisses the Complaint against DISB.[67]

## ORDER

**IT IS HEREBY ORDERED THAT:**

1. The unfair labor practice 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.

October 16, 2025
**Washington, D.C.**

[66] Report at 16. DISB and the Hearing Examiner both invoked the FLRA's *de minimis* standard for determining whether a change in conditions of employment gives rise to an agency's obligation to bargain the impact and effects of that change. Report at 17; DISB's Post-Hearing Brief at 12-15. However, the Board has expressly rejected the use of a *de minimis* standard in analyzing an agency's duty to bargain the impact and effects of a management rights decision. *AFGE, Locals 631 and 872, and NAGE, Local R3-06 v. WASA*, 70 D.C. Reg. 6972, Slip Op. No. 1837 at 6, PERB Case No. 22-U-18 (2023). Therefore, while the Hearing Examiner's Report is otherwise reasonable and consistent with PERB precedent, the Board only adopts, *infra*, the Hearing Examiner's finding that the September 2024 job aid clarification did not constitute *any* change in terms and conditions of employment. The Board rejects the Hearing Examiner's finding that DISB did not have an obligation to bargain the impact and effects of the September 2024 job aid clarification as merely a *de minimis* change in policy.

[67] 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 is issued to file an appeal.