Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 872	
Complainant	PERB Case No. 23-U-07
v.	Opinion No. 1846
District of Columbia Water and Sewer Authority	
Respondent	

DECISION AND ORDER

I. Statement of the Case

On May 3, 2023, the American Federation of Government Employees, Local 872 (AFGE) filed an unfair labor practice Complaint against the District of Columbia Water and Sewer Authority (WASA). AFGE alleges that WASA violated D.C. Official Code § 1-617.04(a)(1) and (5) of the Comprehensive Merit Personnel Act (CMPA) and repudiated the parties' collective bargaining agreement (CBA) by unilaterally implementing on-call work assignments for bargaining unit employees.[1] On May 30, 2023, WASA filed an Answer, denying the alleged CMPA violations and asserting that WASA implemented on-call work assignments consistent with the CBA and pursuant to the terms of the parties' compensation agreement, also known as the Master Agreement.[2]

On June 14, 2023, at PERB's request, the parties submitted briefs concerning the following issues: (1) whether the parties' CBA covers a change in on-call work assignments; and (2) whether WASA had a duty to bargain over a change in on-call work assignments, including impact and effects. WASA's brief argues that, pursuant to D.C. Official Code § 1-617.08(a)(4) and (5)(A) &

[1] Complaint at 1.
[2] Answer at 1, 3-4.

(B), on-call work assignments constitute a management right over which WASA is not obligated to bargain.[3]

For the reasons stated herein, the Board defers this matter to the grievance and arbitration procedures set forth in the parties' CBA.

II. Discussion

The parties dispute whether the CBA covers a change in on-call work assignments. AFGE argues that WASA violated D.C. Official Code § 1-617.04(a)(1) and (5) because "the parties' CBA define[s] the work week for employees as 8 hours per day, five days per week, consisting of 40 hours" and does not cover a change in on-call work assignments.[4] In opposition, WASA argues that it did not commit an unfair labor practice because the Master Agreement provides for a change in on-call work assignments.[5] Moreover, WASA argues that pursuant to D.C. Official Code § 1-617.08(a)(4) and (5)(A) & (B),[6] on-call work assignments constitute a management right over which WASA is not obligated to bargain.[7]

D.C. Official Code § 1-617.04 of the CMPA governs unfair labor practices. Section 1-617.04(a)(1) prohibits the District, its agents, and representatives from "[i]nterfering with, restraining, or coercing any employee in the exercise of the rights" established in that subchapter. Section 1-617.04(a)(5) provides that an agency's refusal to "bargain collectively in good faith with the exclusive representative" constitutes an unfair labor practice.

The Board has established that it does not have jurisdiction over disputes which concern the meaning or application of terms of a collective bargaining agreement.[8] The Board has held that such disputes are contractual matters that must be resolved through the parties' negotiated grievance procedure, rather than through an unfair labor practice complaint.[9]

In the matter of *AFGE, Local 3721 v. D.C. Fire Department*,[10] the Board encountered similar facts and identified a jurisdictional issue. In that case, the union filed an unfair labor practice complaint, asserting that the agency violated D.C. Official Code § 1-617.04(a)(1) and (5)

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[3] On July 3, 2023, WASA filed a Motion to Amend its Answer, asserting the affirmative defense that the Complaint was untimely. Additionally, on July 11, 2023, WASA filed a Motion to Dismiss the Complaint, arguing that it was untimely filed. Because this matter is outside the Board's jurisdiction, both of WASA's submissions are moot.
[4] AFGE Brief at 2.
[5] WASA Brief at 2-6.
[6] D.C. Official Code § 1-617.08(a)(4) and (5)(A) & (B) afford District agencies the management right, in accordance with applicable law, rule, and regulation, to maintain the efficiency of District government operations entrusted to them, to determine tours of duty, and to determine the number, types, and grades of positions of employees assigned to a tour of duty.
[7] WASA Brief at 2-3.
[8] *See, e.g., FOP/MPD Labor Comm. v. MPD*, 39 D.C. Reg. 9617, Slip Op. No. 295 at 2, PERB Case No. 91-U-18 (1992).
[9] *Id.* at 4.
[10] *AFGE, Local 3721 v. D.C. Fire Dep't*. 39 D.C. Reg. 8599, Slip Op. No. 287, PERB Case No. 90-U-11 (1992).

by unilaterally implementing changes to on-call[11] work policies, in contravention of the parties' collective bargaining agreement.[12] As in the present matter, the agency did not argue that the parties' collective bargaining agreement covered changes to on-call work. Rather, the agency asserted that the parties' negotiated compensation agreement recognized management's ability to make such changes.[13] Further, as in the case at hand, the agency asserted that on-call assignments were a management right under D.C. Official Code § 1-617.08(a), over which the agency had no duty to bargain.[14] In *AFGE, Local 3721*, the Board found that it lacked jurisdiction because the dispute was contractual.[15] Accordingly, the Board deferred the matter to the grievance and arbitration procedures set forth in the parties' collective bargaining agreement and did not decide the management rights issue.[16]

More recently, in *FOP/MPD Labor Committee v. MPD*,[17] the Board developed a three-pronged test to determine whether an alleged violation is contractual in nature and thus, outside of the Board's jurisdiction. For this test, the Board will consider (1) whether the alleged violations are restricted to facts involving a dispute over whether a party complied with a contractual obligation; (2) whether resolution of the dispute requires an interpretation of those contractual obligations; and (3) whether the dispute is unable to be resolved under the CMPA.[18] If all three prongs of this test are answered in the affirmative, the Board will find that the dispute is contractual and thus, outside its jurisdiction.[19]

Here, all three prongs of the jurisdictional test are met. The alleged violations are restricted to facts involving a dispute over whether WASA has complied with its contractual obligations. Additionally, resolution of the dispute would require interpretation of those contractual obligations. Last, the Board cannot resolve this case based upon its interpretation of D.C. Official Code § 1-617.04(a)(1) and (5). The Board finds that this case, like *AFGE, Local 3721*, is outside its jurisdiction.

For the reasons stated, the Board defers this case to the grievance and arbitration procedures set forth in the parties' CBA. Given its lack of jurisdiction, the Board declines to address the issue of whether WASA has a management right to enact changes to on-call work assignments.

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[11] In its *AFGE, Local 3721 v. D.C. Fire Department* decision, the Board frequently used the term "standby" instead of "on-call." It is apparent from context that the terms held the same meaning. *Id*. at 15.
[12] *Id*. at 1. D.C. Official Code § 1-617.04(a)(1) and (5) were codified under D.C. Official Code § 1-618.4(a)(1) and (5) at the time the Board issued its decision in *AFGE, Local 3721 v. D.C. Fire Department*. Recodification occurred in 2001.
[13] *Id*. at 15-16, 28.
[14] *Id*. at 28. D.C. Official Code § 1-617.08(a) was formerly codified under § 1-618.8(a). *See supra* note 12.
[15] *Id*. at 3.
[16] *AFGE, Local 3721*, Slip Op. No. 287 at 38.
[17] *FOP/MPD Labor Comm. v. MPD*, Slip Op. No. 1585, PERB Case No. 11-U-24 (2016).
[18] *Id*. at 4 (citing *AFGE, Local 3721*, Slip Op. No. 287).
[19] *Id*.

ORDER

IT IS HEREBY ORDERED THAT:

1. This matter is dismissed for lack of jurisdiction and deferred to the grievance and arbitration procedures set forth in the parties' CBA.

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 and Mary Anne Gibbons.

July 20, 2023

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.