

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

In the Matter of:	)	
	)	
American Federation of Government Employees, AFL-CIO Local 2978,	)	
	)	
Complainant,	)	PERB Case No. 11-U-33
	)	
v.	)	Opinion No. 1267
	)	
District of Columbia	)	
Department of Health,	)	
	)	
Respondent.	)	
	)	

**DECISION AND ORDER**

**I. Statement of the Case**

The American Federation of Government Employees, AFL-CIO Local 2978 (“Complainant” or “Local 2978”) filed an Unfair Labor Practice Complaint (“Complaint”) against the District of Columbia Department of Health (“Respondent” or “DOH”). By refusing to convert three employees of the HIV, AIDS, Hepatitis, STD, and Tuberculosis Administration (“HAHSTA”) from term employee status to career employee status, and by failing to inform Local 2978 that DOH did not intend to convert any term employees to career employees after October 29, 2010. As a result, the Complaint alleges that the Respondent violated D.C. Code § 1-617.04(a)(1), (2), and (5). (Complaint at ¶¶ 5-12).

In its Answer to the Complaint, DOH denied engaging in conduct that constituted an unfair labor practice. In addition, DOH denied that the Public Employee Relations Board (“Board”) has jurisdiction to resolve this matter and requested that the Complaint be dismissed. (Answer at 4-5).

## II. Discussion

Local 2978 and DOH are parties to a collective bargaining agreement (“CBA”). In Article 20 of the CBA, DOH agreed to make reasonable efforts to convert temporary and term employees into career employees, as long as the employees met the following conditions: (1) are identified by joint labor-management committees; (2) perform permanent services; (3) are in a pay status as of September 30, 2006; (4) are in full-time permanent positions; and (5) are paid through intra-district funding or federal grant funding. (CBA Article 20, Section D).

On or about March 8, 2011, and in accordance with Article 20 of the CBA, Local 2978 officials met with representatives of DOH to discuss conversion of term employees. (Complaint at ¶ 5; Answer at ¶ 5). Local 2978 alleges that it followed up on the meeting with an e-mail demanding DOH’s compliance with Article 20 within five days. (Complaint at ¶ 5).

Complainant’s Exhibit D is a memorandum from Earl Murphy, DOH Employee and Labor Relations Advisor, to Kimberly Jeffries Leonard, DOH Chief Operating Officer, dated October 29, 2010. The memorandum states that due to funding limitations, term employees will no longer be converted to permanent status. (Complainant’s Exhibit D). According to the Complaint, however, Local 2978 did not learn of this policy until it submitted a Freedom of Information Act request. (Complaint at ¶ 12). DOH denies this allegation and submitted evidence to show that Local 2978 was notified of the proposed change on December 2, 2010. (Answer at ¶ 5; Dec. 2, 2010 Notes). The document states that Mr. Murphy read the October 29, 2010, memo at the December meeting and that Robert Mayfield, Local 2978 president, was present at that meeting. *Id.* As of December 2, 2010, Local 2978 knew that DOH planned to alter its policy of converting term employees to permanent status.

Under the CMPA, agencies have a management right to determine the “number, types, and grades of positions of employees assigned to an agency’s organizational unit, work project, or tour of duty.” D.C. Code § 1-617.08(a)(5)(B). DOH exercised its managerial right to determine the types of positions of employees assigned to it when it decided to cease converting term employees to permanent status.

The Board has held that “an exercise of management rights does not relieve the employer of its obligation to bargain over impact and effect of, and procedures concerning, the implementation of [that right].” *International Brotherhood of Police Officers, Local 446 v. District of Columbia General Hospital*, 41 D.C. Reg. 2321, Slip Op. No. 312, PERB Case No. 91-U-06 (1994). Unions enjoy the right to impact and effects bargaining concerning a management rights decision only if they make a timely request to bargain. *University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia*, 29 D.C. Reg. 2975, Slip Op. No. 43, PERB Case No. 82-N-01 (1982).

In *AFGE Local 383 v. DC Department of Human Services*, the agency altered its employee conversion practices without providing the union prior notice and an opportunity to bargain. 49 D.C. Reg. 770, Slip Op. No. 418 at p. 6, PERB Case No. 94-U-09 (2002). Nonetheless, the Board held that the Agency had not violated the CMPA because the union never requested to bargain over the change. *Id.* The policy change was an exercise of the management

right to determine the number, types, and grades of positions assigned to the organizational unit, and “any obligation to bargain extended only to any impact and effects of exercising that right, and only upon request.” *Id.* at 6-7.

In the instant case, Local 2978 was notified of the DOH’s change in its conversion policy at the meeting on December 2, 2010. (December 2, 2010 notes). As the conversion policy change was a management right, DOH was required to engage in impact and effects bargaining, but only if bargaining was requested by Local 2978. The pleadings contain neither an allegation that Local 2978 requested impact and effects bargaining over this issue, nor an allegation that DOH refused such a request.

Therefore, DOH has not committed an unfair labor practice. The Complaint is dismissed.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. American Federation of Government Employees, Local 2978’s Unfair Labor Practice Complaint is dismissed.
2. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

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

May 15, 2012

**CERTIFICATE OF SERVICE**

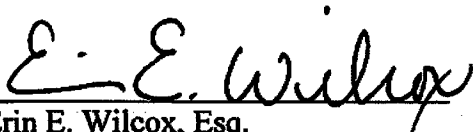
This is to certify that the attached Decision and Order in PERB Case No. 11-U-33 was transmitted via U.S. Mail and e-mail to the following parties on this the 15th day of May, 2012.

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