

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**

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In the Matter of:	)	
	)	
American Federation of Government	)	
Employees, Local 2741	)	
	)	PERB Case No. 16-U-19
Complainant	)	
	)	
and	)	Opinion No. 1646
	)	
Department of General Services	)	
	)	
Respondent	)	

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**DECISION AND ORDER**

**I. Statement of the Case**

On May 18, 2016, American Federation of Government Employees, Local 2741 (“Union”), filed an unfair labor practice complaint against the Department of General Services (“DGS”). The Union alleged that DGS violated D.C. Official Code §§ 1-617.04(a)(1) and (5), by failing to provide responses to a request for information.<sup>1</sup> The Union requests that the Board order DGS to desist from violations of the CMPA in the manner alleged, provide the Union with all requested bargaining information, post a notice to all employees, award costs, and award additional relief that the Board deems appropriate.<sup>2</sup>

For reasons stated herein, the Board finds that DGS’ delay in submitting the requested information was not unreasonable. Therefore, the Board finds that DGS has not violated D.C. Official Code §§ 1-617.04(a)(1) and (5) and dismisses the Complaint.

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<sup>1</sup> Complaint at 2.

<sup>2</sup> Complaint at 3.

## II. Background

On April 25, 2016, pursuant to the parties' collective bargaining agreement, the Union submitted an information request seeking the following information: (1) a list of all bargaining unit employees placed on absent without leave ("AWOL") starting January 1st, 2016 until April 25th, 2016, including each employee's name, grade, series, position, service computation date, and annual salary; and (2) any forms used to execute AWOL.<sup>3</sup> DGS did not respond to the Union's request for information. The Union filed the instant Complaint on May 18, 2016.

In an Answer filed on June 6, 2016, DGS admitted that it had not supplied the information requested by the Union.<sup>4</sup> Nonetheless, DGS claimed that it had not violated D.C. Official Code §§ 1-617.04(a)(1) and (5).<sup>5</sup> As an affirmative defense, DGS stated it had not been given ample time to respond to the request.<sup>6</sup> DGS noted that the request for information was made on April 25, 2016, only 18 working days before the Union filed the instant Complaint.<sup>7</sup> Further, DGS stated that it had substantially complied with the Union's request by attaching Exhibit A to the Answer and would supply any remaining information as soon as it was made available.<sup>8</sup> In a Supplemental Answer filed on July 14, 2016, DGS contended that it had fully complied with the Union's request for information by attaching Exhibits A, B, and C to the Supplemental Answer and therefore, the Complaint was now moot.<sup>9</sup> DGS requested that the Board dismiss the Complaint with prejudice.<sup>10</sup>

The parties proceeded to mediation on September 27, 2016. No settlement was reached.

## III. Discussion

The Board has repeatedly held that an agency is obligated to furnish requested information that is both relevant and necessary to a union's role in collective bargaining.<sup>11</sup> When an agency has failed and refused to produce the information without a viable defense, the agency has failed to meet its statutory duty to bargain in good faith in violation of D.C. Official Code § 1-617.04(a)(5), and derivatively, interfered with the employees' statutory rights to organize and

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<sup>3</sup> Complaint at 2.

<sup>4</sup> Answer at 2.

<sup>5</sup> Answer at 2.

<sup>6</sup> Answer at 2.

<sup>7</sup> Answer at 3.

<sup>8</sup> Answer at 3. Answer, Exhibit A includes D.C. Standard Form—1199 as well as a list of AWOL employees including their names, grade, series, salary, and service dates.

<sup>9</sup> Supplemental Answer at 3. Supplemental Answer, Exhibit A includes seven AWOL notices; Exhibit B is four forms titled "Sign In/Out Sheet" signed by employees; and Exhibit C is a list of AWOL employees including their names, grade, series, salary, and service dates.

<sup>10</sup> Supplemental Answer at 4.

<sup>11</sup> *Fraternal Order of Police/Metro. Police Dep't Labor Comm. v. Metro. Police Dep't*, 59 D.C. Reg. 6781, Slip Op. No. 1131, PERB No. 09-U-59 at p.4 (2011).

to bargain collectively, a violation of D.C. Official Code § 1-617.04(a)(1).<sup>12</sup> Further, an agency's failure to timely furnish the requested information constitutes a violation of D.C. Official Code §§ 1-617.04(a)(1) and (5).<sup>13</sup>

In this case, the material facts are undisputed by the parties. Specifically, DGS acknowledged that the Union submitted a request for information on April 25, 2016, and that it has not supplied the information requested.<sup>14</sup> As a result, the Board finds that the alleged violations do not turn on disputed material issues of fact, but rather on a question of law, and can be appropriately decided on the pleadings pursuant to Board Rule 520.10.

After reviewing the evidence, the Board finds that DGS provided most of the information requested by the Union on June 6, 2016, and supplied the remaining information and documents on July 14, 2016. The Board finds persuasive DGS' response that it had not been given enough time to respond to the Union's April 25, 2016, request and did so as soon as the information was available. The Board also finds that DGS responded with all requested documents in approximately two and one half months; a delay that is not unreasonable under the circumstances of this case. Therefore, DGS has met its statutory duty of good faith bargaining and has not violated D.C. Official Code §§ 1-617.04(a)(1) and (5). Accordingly the Complaint is dismissed.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The Union's complaint in PERB Case No. 16-U-19 is dismissed with prejudice;
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

#### **BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By the unanimous vote of Board Chairperson Charles Murphy, Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

December 21, 2017

Washington, D.C.

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<sup>12</sup> *Am. Fed'n of State, Cty. and Mun. Emp., Local 2776 v. Dep't of Fin. and Revenue*, 37 D.C. Reg. 5658, Slip Op. No. 245 at 2, PERB Case No.89-U-02 (1990).

<sup>13</sup> *Doctor's Council of D.C. v. Dep't of Youth Rehab. Servs.*, 64 D.C. Reg. 3705, Slip Op. No. 1613 at 3, PERB Case No. 11-U-22 (2016).

<sup>14</sup> Answer at 3; Supplemental Answer at 4.

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 16-U-19, Op. No. 1646 was sent by File and ServeXpress to the following parties on this the 27<sup>th</sup> day of December, 2017.

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