Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 1975	
Complainant	PERB Case No. 22-U-01
v.	Opinion No. 1810
	Motion for Reconsideration
Office of Labor Relations and Collective Bargaining, Department of Transportation, Department of Motor Vehicles, Department of Public Works, Metropolitan Police Department, and Department of For-Hire Vehicles	
Respondents	

DECISION AND ORDER

On January 5, 2022, the Complainant (Union) filed a motion for reconsideration (Motion) of an administrative dismissal letter (Dismissal) issued by the Executive Director in this case. The Union argues that the Board should reconsider and overturn the Executive Director's Dismissal of the Union's Complaint. The Agencies filed an opposition to the Motion.

After reviewing the record and the filings in the case, the Board dismisses the Complaint for the reasons stated herein.

Where a party brings a motion for reconsideration of an administrative dismissal, the Board will uphold the Executive Director's determination, provided it is reasonable and supported by PERB precedent.[1] In the Dismissal, the Executive Director dismissed the Union's claim that the Respondents (Agencies) "refused to bargain with [the Union], or refused to bargain in good faith,

[1] *See e.g.*, *FOP/MPD Labor Comm. v. MPD*, 63 D.C. Reg. 6490, Slip Op. No. 1568, PERB Case No. 09-U-37 (2016) (upholding the Executive Director's dismissal of a complaint due to untimeliness and failure to state a claim because the dismissal was reasonable and supported by PERB precedent).

over nineteen (19) of the Union's health and safety proposals during impacts and effects bargaining over Mayor's Order 2021-099 and DCHR Issuance No. I-2021-28 ('Vaccine Requirement[s]')."[2] The Dismissal relied on the Board's decision in PERB Case No. 22-N-02, in which the Board adopted the D.C. Superior Court's decision in *OLRCB v. PERB*.[3]

In *OLRCB v. PERB*, the court took a broad view of management's rights during the COVID-19 emergency and found that such management actions were not subject to bargaining, even over impact and effects.[4] The court found that the COVID-19 Response Emergency Amendment Act of 2020 (COVID-19 Emergency Act) broadly includes any management actions that may be necessary without the need to enumerate specific actions.[5] The court reasoned that the COVID-19 Emergency Act did not need to enumerate the specific actions management can take in an emergency because, under D.C. Official Code § 1-617.08(a)(6), management already has "flexible, expansive, open-ended authority to take 'whatever actions may be necessary' to address" the COVID-19 emergency.[6] In PERB Case No. 22-N-02, the Board found that the COVID-19 Emergency Act merely restates management's pre-existing authority under D.C. Official Code § 1-617.08(a)(6) and applies that authority to the specific COVID-19 emergency.[7] Here, the Union argues that the Board incorrectly interpreted the court's decision. However, the Union's argument is mere disagreement with the Board's case law and is unpersuasive. The Executive Director's dismissal of the refusal-to-bargain claim concerning the Vaccination Requirements was reasonable and supported by PERB precedent.[8]

The Union argues that the Dismissal did not specifically address the claim that the Agencies refused to bargain over the COVID-19 Sick Leave Benefit.[9] As previously stated, D.C. Official Code § 1-617.08(a)(6) gives management "flexible, expansive, open-ended authority to take 'whatever actions may be necessary' to address" the COVID-19 emergency. The COVID-19 Sick Leave Benefit falls under the broad umbrella of "whatever actions may be necessary to address" the COVID-19 emergency. Accordingly, the Board finds the Agencies have no duty to bargain over the COVID Sick Leave Benefit and dismisses the claim.

The Union correctly asserts that the Dismissal did not address the claim that the Department of Motor Vehicles (DMV) refused to bargain over changes in its method of monitoring

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[2] Dismissal at 1 (citing Complaint at 2).
[3] Case No. 2020 CA 003086 P(MPA) (D.C. Super. Ct. September 29, 2021) (holding that D.C. Official Code § 7-2304 (COVID-19 Response Emergency Amendment Act of 2020) "gives management the sole right to take any necessary personnel action in emergency situations," "notwithstanding" any contradictory provision of the Comprehensive Merit Personnel Act (CMPA)).
[4] *Id*.
[5] *Id*. at 6-7.
[6] *Id*.
[7] *AFGE, Local 631 and OLRCB, et al.*, Slip Op. No. 1804 at 2, PERB Case No. 22-N-02 (2022).
[8] The Union also argues that the Complaint was improperly dismissed for failing to state a claim upon which relief may be granted, because the Agencies did not raise this defense. As stated, the Vaccination Requirements are non-negotiable, including impact and effects bargaining, and therefore, there is no claim that the Board may grant relief. Furthermore, pursuant to Board Rule 500.6(c), the Executive Director is authorized to dismiss a case for "[f]ailure to allege facts that, if true, would entitle the complainant or petitioner to relief under the CMPA."
[9] Motion at 4-5.

its security surveillance cameras in the Adjudication Services Division.[10] However, that does not prevent the Board from addressing that claim here. In the Complaint, the Union alleged that the DMV unilaterally changed employees' working conditions by changing the manner in which cameras were monitored.[11] The Union does not dispute that the cameras were installed in 2017 and that they had been monitored off-site.[12] The Union's contention is that the change in working conditions resulted from the change in management's method of monitoring the cameras, from off-site to on-site.[13] The Union asserted that the change in working conditions necessitated management to bargain over the change, as well as the impact and effects of the change.[14]

Although PERB does not have precedent defining what constitutes a change in working conditions, the National Labor Relations Board (NLRB) case law can provide insight.[15] The NLRB has established that an "employer's action must effect a material, substantial, and significant change in terms of conditions of employment" to constitute a change in working conditions.[16] For example, the NLRB has held that "a threat of discipline for a breach of a unilaterally implemented policy is sufficient to establish that the policy constitutes a material change in working conditions."[17]

Here, the alleged change in the DMV's method of monitoring the security surveillance cameras did not constitute a change in working conditions. The Union did not allege that the employees were required to complete additional duties, that the employees' income or hours were affected, or that the employees' surroundings were physically altered. Moreover, the Union did not allege that the change in method of monitoring the security camera footage increased the potential for the employees to be disciplined. Accordingly, the Board finds that the DMV did not have a duty to bargain over the change in its method of monitoring its security surveillance cameras.

Finally, the Union correctly states that the Executive Director did not address the Union's contention that the DMV had a duty to bargain over the impact and effects of the DMV's change in the method of monitoring the security surveillance cameras. In the Complaint, the Union also contended that the DMV had a duty to bargain over the impact and effects of this change but

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[10] Motion at 4-5.
[11] Complaint at 15-16.
[12] Complaint at 15.
[13] Complaint at 15.
[14] Complaint at 15.
[15] The Board has held that it will look to precedent set by other labor relations authorities, such as the National Labor Relations Board, when the Board has no set precedent on an issue. *FOP/MPD Labor Comm. v. MPD*, Slip Op. No. 1119 at 5, PERB Case No. 08-U-38 (2011).
[16] *Frankl v. Fairfield Imports, LLC*, 198 L.R.R.M. (BNA) 2222, 2014 WL 130937 (E.D. Cal. 2014) (citing *EAD Motors E. Air Devices, Inc.*, 346 N.L.R.B. 1060, 1065 (2006)); *See e.g., Goya Foods of Florida and UNITE HERE, CLC*, 183 L.R.R.M. (BNA) 1054, 2007 WL 2858938 (N.L.R.B. 2007) (change in working conditions where truck drivers were required to sign papers attesting to contents of trucks at the end of their routes, and new routing software affected their routes, income, and hours); *Flambeau Airmold Corp.*, 334 NLRB 165, 172 (2001) (change in working conditions where elimination of toolroom position resulted in changes in employee's work environment and reduced the variety of her tasks).
[17] *Frankl v. Fairfield Imports, LLC*, 198 L.R.R.M. (BNA) 2222, 2014 WL 130937 (E.D. Cal. 2014) (quoting *Ferguson Enters., Inc.*, 349 N.L.R.B. 617, 618 (2007)).

refused the Union's request to bargain.[18] The Board has routinely held that, "[n]otwithstanding the non-negotiability of a management right, management violates its statutory duty to bargain when it implements a management decision in the face of a timely union request to bargain over impact and effects."[19] The installation of the surveillance cameras occurred in 2017. The Agency argues that the Union's request for impact and effects bargaining regarding the surveillance cameras is untimely. As the Board finds that the change in the method of monitoring the surveillance cameras is not a material change in the workplace, the request to bargain impact and effects related to the surveillance cameras should have been made during the time period of the installation of the cameras and is untimely. Therefore, the Board dismisses the claim.

For the reasons stated, the Complaint is dismissed in its entirety.[20]

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint is dismissed in its entirety.

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.

April 28, 2022
Washington, D.C.

[18] Complaint at 17-18.
[19] *AFSCME, District Council 20 and Local 2091 v. DPW*, 62 D.C. Reg. 5925, Slip Op. No. 1514 at 3, PERB Case No. 14-U-03 (2015).
[20] As a result, the Motion for Reconsideration is denied.

APPEAL RIGHTS

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.

CERTIFICATE OF SERVICE

This is to certify that the attached Opinion No. 1810 for PERB Case No. 22-U-01 was served to the following parties on this the 29th day of April 2022:

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