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, Council 20 AFL-CIO, | |
| Complainant, | |
| v. | PERB Case No. 88-U-29 Opinion No. 227 |
| District of Columbia General Hospital and the District of Columbia Office of Labor Relations and Collective Bargaining, | |
| Respondents. | |

DECISION AND ORDER

On July 7, 1988, the American Federation of State, County and Municipal Employees, Council 20, AFL-CIO (AFSCME) filed an Unfair Labor Practice Complaint with the Public Employee Relations Board (Board) alleging that Respondents D.C. General Hospital (DCGH) and the D.C. Office of Labor Relations and Collective Bargaining (OLRCB) committed an unfair labor practice in violation of D.C. Code Section 1-618.4(a)(5) by their failure and refusal to supply, as requested by the Union, the names, addresses and job titles of employees terminated during a specified period in 1987 for failure to comply with the residency law requirements.

AFSCME, the exclusive bargaining agent for certain employees of DCGH, contended that the requested information was relevant and necessary to the Union's ability to represent members of the bargaining unit in a pending grievance-arbitration proceeding concerning the application of a District of Columbia law requiring its employees to be residents.

OLRCB, on behalf of both Respondents filed an Answer to the Complaint on July 25, 1988, in which it denied the commission of any unfair labor practice and urged the dismissal of the Complaint.

The Board conducted an investigation of this matter, which included the issuance of interrogatories directed to the Respondents. Based upon the parties' pleadings and the response to the Interrogatories, the background of this case can be summarized as follows.

AFSCME alleges in the Complaint that on or about August 11, 1987 it filed a fourth-step grievance against DCGH and subsequently a demand for arbitration.[1]/ The grievance alleges, inter alia, that DCGH "waited for nearly seven years to enforce the residency requirement... and... has exempted some employees and removed others of the same class."

On January 21 and January 28, 1988, AFSCME requested from OLRCB, in order "to evaluate and investigate" a grievance-arbitration case, the names, job titles and last known addresses of the employees in both the professional and technical bargaining unit and the wage grade bargaining unit who were terminated during March, April and May, 1987, for failure to comply with the residency law requirements. (Complaint, Exhibit B) [2]/

On April 8, 1988, AFSCME was notified by Respondents that DCGH did not have such a listing, and that even if the information were available its release would be precluded in the absence of consent forms signed by employees, because of confidentiality requirements. (Complaint, Exhibit D(6))

In their Answer, Respondents presented three defenses to the Union's claims that the information was relevant and necessary, thus obliging the employer to furnish it upon request: (1) the availability of the information to the Union from sources other than the Respondents; (2) the lack of a request for union intervention by terminated employees; and (3) the non-negotiability/non-arbitrability of the underlying grievance. (Answer, paragraph 4)

The Board, having reviewed this matter, concludes that by the failure and refusal to supply AFSCME, as requested, with information that is relevant and necessary to the representation of members of its bargaining unit, Respondents failed to meet their statutory duty of good faith bargaining, thereby violating D.C. Code Section 1-618.4(a)(5).

D.C. Code Section 1-618.4(a)(5), requires an agency to bargain in good faith with the exclusive representative of its employees.

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[1]/ Although the Complaint alleges that the grievance filing date was August 11, 1987, the grievance that is Exhibit "A" to the Complaint is dated May 27, 1987.

[2]/ AFSCME revised its request on January 28, 1988 to include the period February through April, 1987.

The Board has recently ruled that an agency has an obligation to supply information reasonably necessary and relevant to the union flowing from this duty to bargain in good faith. Teamsters, Locals 639 and 730 v. D.C. Public Schools, Slip Op. No. 226, PERB Case No. 88-U-10 (1989).

The Board finds that the information requested here, the job titles, names and addresses of employees discharged for the same reasons given in the discharges that were the subject of the pending grievance-arbitration, was relevant and necessary to the Union's ability to establish its claim that the Respondent DCGH's application of the residency requirement was defective. It is clear from the following assertions in the fourth step grievance that there were claims that Respondent DCGH had discriminatorily applied the residency law:

> 32. the agency waited for for [sic] nearly seven years to enforce the residency requirement.
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> * * *
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> 34. the agency has administratively exempted some employees and removed others of the same class.

The Board concludes that none of Respondents' asserted defenses has merit. Regarding the first contention, that the requested information was available to the Union from other sources, the Board agrees with the private sector holdings that a union should not be forced to undertake a time-consuming and potentially fruitless effort to look elsewhere each time it seeks information when the information sought is in the employer's possession, and especially when such a search is a poor substitute for employer records in terms of accuracy and completeness. Cf., ACF Industries Inc., 231 NLRB No. 20 (1977), enf'd. ACF Industries, Inc. v. NLRB, 592 F.2d 422 (8th Cir. 1971); C&P Telephone Co. v. NLRB, 687 F.2d 633, 638, n.3 (2nd Cir. 1982).

The second asserted defense, that unless the affected employees have sought Union intervention the Union is not entitled to the information, also fails. Article XXII, Section 3(B) of the Master Collective Bargaining Agreement then in effect between the parties allowed the Union to grieve matters of "a general nature affecting a large group of employees." Article XXII, Section 4 stated "either an employee or the Union may raise a grievance." Thus the plain wording of the contract allowed the Union to file a grievance as the exclusive bargaining representative, without an express request from an individual unit member.

The final employer defense is that the underlying grievance concerned a matter that is not negotiable and therefore is not arbitrable, so that there is no basis for the Union's argument that it is entitled to the information. Respondents point out that the City Council Report on the Comprehensive Merit Personnel Act of 1978 (CMPA), states that continuous residency (i.e. the obligation of an employee of the District of Columbia to become a resident of the District during his or her tenure of employment) is not a negotiable matter. [3]/ According to Respondents, since the residency requirement is non-negotiable, it follows that its application is also not grievable and thus not arbitrable. Furthermore, Respondents contend that since under the provisions of Chapter 3 of the District Personnel Manual (DPM) Section 304, the exclusive jurisdiction to administer the residency law requirements rests with the Director of Personnel and not the individual agencies (in this instance DCGH), the subject matter of the grievance is not arbitrable under Article XXII of the Master Collective Bargaining Agreement between AFSCME and the District of Columbia, which states: "Matters not within the jurisdiction of the department/agency will not be processed as a grievance under this Article." (Answer, Paragraph 5) [4]/

In a letter submitted by AFSCME to the Board during the course of the Board's investigation of this matter, the Union contends that it is not attempting to negotiate the residency requirement but rather is grieving the impact of its application upon the bargaining unit. Both the Complaint and the grievance assert that DCGH improperly utilized procedures required by the residency laws when terminating employees. In support of its right to pursue such a grievance the Union points to the Master Collective Bargaining Agreement, Article II, Section 2, which provides that: "Management rights are not subject to negotiations; however, in the Employer's exercise of such right, the Union may grieve where there has been an adverse impact upon employees regarding terms and conditions of employment or a specific violation of a separate article of this Agreement." (AFSCME letter -October 25, 1988)

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[3]/ House Committee on the District of Columbia, 95th Cong. 1st Sess. Report of the Council of the District of Columbia on the CMPA of 1978 at 197 (Comm. Print 1979).

[4]/ DPM Section 304.17 states that: "[a] final decision by the Director of Personnel of non-compliance with the residency requirements shall result in forfeiture of employment by the employee."

The Board has long recognized an agency's obligation to bargain, upon request, over the impact of the exercise of a management right. See, UDC Faculty Association v. UDC, 29 D.C. Reg. 2975, Opinion No. 43, PERB Case No. 82-N-01 (1982). Thus, we find merit in the Union's claim of a right to information needed to prove its contention that management's application of the residency requirement was discriminatory.

As to the Respondents' contention that under the contractual language in Article II, Section 2, issues related to the enforcement of the residency requirements are not within DCGH's jurisdiction, and are therefore non-arbitrable, the Board finds no merit in these arguments. In our opinion, arbitrability was an initial question for the arbitrator to decide if Respondents challenged jurisdiction on this ground. The Union still needed the information to support its position in the arbitration proceeding in the event that the grievance was found arbitrable. [5]/

For all of the forgoing reasons, we conclude that Respondents, by failing and refusing to furnish AFSCME with the requested information, have not bargained in good faith with the exclusive representative in violation of D.C. Code Sec. 1-618.4(a)(5).

## O R D E R

IT IS ORDERED THAT:

1. DCGH and OLRCB shall cease and desist from refusing to furnish AFSCME with the names, addresses and job titles of the employees terminated during the period February through May, 1987 for failure to comply with the residency requirements.

2. DCGH and OLRCB shall post copies of the attached Notice conspicuously at all of the affected work sites for thirty (30) consecutive days.

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[5]/ Respondents claim that the Director of Personnel has the exclusive authority to administer the residency law. We note, however, that the statute (D.C. Code Sec. 1-608.1 (e)(1)) does not speak to the administration of the residency requirements. We also note that DPM Sections 303.1 through 303.7 provide that individual agencies or personnel authorities have certain responsibilities in the enforcement of the residency law. In this regard the Board acknowledges that, in part, the Union's grievance concerns those responsibilities.

3. DCGH and OLRCB shall notify the Public Employee Relations Board, in writing, within fourteen (14) days of the date of this Order that the information specified in paragraph No. 1 of this Order has been provided to AFSCME and that the Notices have been posted accordingly.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.
August 29, 1989

PERB Public Employee Relations Board

Government of the District of Columbia

415 Twelfth Street, N.W.
Washington, D.C. 20004
(202) 727-1822/23

# NOTICE

**TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA GENERAL HOSPITAL THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 227, PERB CASE NO. 88-U-29.**

**WE HEREBY** notify our employees that the Public Employee Relations Board has found that we violated the law and has ordered us to post this Notice.

**WE WILL NOT** refuse to bargain collectively in good faith with the American Federation of State, County and Municipal Employees, Council 20, AFL-CIO.

**WE WILL** honor requests by AFSCME, for information necessary and relevant to its representational functions.

**WE WILL NOT** in any like or related manner interfere with AFSCME's exercise of rights guaranteed to it by the Comprehensive Merit Personnel Act as the exclusive representative of a unit of employees at D.C. General Hospital.

DISTRICT OF COLUMBIA GENERAL HOSPITAL

DATE: _____ BY: _____
Director

OFFICE OF LABOR RELATIONS
AND COLLECTIVE BARGAINING

DATE: _____ BY: _____
Director