GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of: University of the District of Columbia Faculty Association/NEA, Complainant, v. University of the District of Columbia, Respondent.	PERB Case Nos. 93-U-22 and 93-U-23 Opinion No. 387

DECISION AND ORDER

On June 3, 1993, the University of the District of Columbia Faculty Association/NEA (UDCFA) filed two separate Unfair Labor Practice Complaints, in the above-captioned cases, with the Public Employee Relations Board (Board). UDCFA charged that Respondent University of the District Of Columbia (UDC) had violated the Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 1-618.4(a)(5) by unilaterally implementing certain changes in bargaining unit employees' terms and conditions of employment and "thereby denied [UDCFA's] right to adequate notice of the proposed changes of terms and conditions of employment and adequate opportunity to bargain regarding the changes or their impact on members of the bargaining unit." (Compl. 1 at 3; Compl. 2 at 2.)

UDC, on June 18 and 21, 1993, respectively, filed Answers to the Complaints and Motions to Dismiss, denying that by the acts and conduct alleged, UDC had committed any unfair labor practices. Since the Complaints involve the same parties and allege that the same unfair labor practice was committed based on a similar set of allegations, the Board hereby consolidates these Complaints.

The Board, after reviewing the pleadings and the applicable

authority, in the light most favorable UDCFA, finds that the Complaints do not state unfair labor practices under the CMPA. Therefore, for the reasons discussed below, we grant UDC's motions to dismiss both Complaints.

In PERB Case No. 93-U-22, UDCFA alleges that UDC had "unilaterally changed its practice regarding the employment of bargaining unit members to teach courses for which part time faculty would otherwise have to be hired." (Compl. 1 at Note 2.) In PERB Case No. 93-U-23, an alleged unilateral change in "the criteria for offering summer semester courses" constituted the alleged unfair labor practice violation. UDCFA asserts that it learned of these changes without adequate notice or opportunity to bargain over the changes or the impact and effects on bargaining unit employees' terms and conditions of employment. UDCFA does not indicate in either Complaint, however, that it requested to bargain over any aspect of the alleged changes.

UDCFA states that the employment of faculty in part-time positions is a matter covered under Article XVII, Section A (10) of the parties' collective bargaining agreement. That provision provides, in relevant part, the following:

> Qualified faculty in a department may request to be assigned one (1) course for which a part-time faculty appointment would have to be made. The University has discretion whether to grant any such request, although it may not deny such request for arbitrary and capricious reasons.

A unilateral change in established and otherwise bargainable terms and conditions of employment does not constitute an unfair labor practice under the CMPA, when such terms or conditions are specifically covered, as here, by the provisions of a collective bargaining agreement in effect between the parties. See, American Federation of Government Employees, Local Union No. 3721 v. District of Columbia Fire Department, 39 DCR 8599, Slip Op. 287, PERB Case No. 90-U-11 (1991). As a previously negotiated matter committed to the provisions of an effective collective bargaining agreement, UDC's alleged unilateral change does not constitute a refusal to bargain in good faith as alleged by UDCFA.

Relief from an alleged misapplication of or change in a practice that is specifically covered by an effective collective bargaining agreement lies not within the statutory authority of the Board, but in the available rights and obligations arising from the

collective bargaining agreement. [1]/ See, Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department, 39 DCR 9617, Slip Op. No. 295, PERB Case No. 91-U-18 (1992). Therefore, the Complaint allegations of PERB Case No. 93-U-22 do not state a claim under the CMPA upon which relief can be granted. See, Carlease Madison Forbes v. Teamsters, Local Union 1714 and Teamsters Joint Council 55, 36 DCR 7097, Slip Op. NO. 205, PERB Case No. 87-U-11 (1989).

With respect to UDC's asserted changes in the criteria for offering summer courses, the Board has held that an employer does not violate D.C. Code Sec. 1-618.4(a)(1) and (5) by making a unilateral change with respect to matters over which it is not obligated to bargain under the CMPA. See, Washington Teachers' Union, Local 6, AFL-CIO v. District of Columbia Public Schools, Slip Op. No. 144, PERB Case No. 85-U-28 (1986), aff'd; PERB v. Washington Teachers' Union, 556 A.2d 206 (1989) and Washington Teachers' Union, Local 6, AFL-CIO v. District of Columbia Public Schools, 38 DCR 2650, Slip Op. No. 258, PERB Case No. 90-U-13 (1991).[2]/ We find UDC's policy for offering summer semester courses is clearly within its sole right under D.C. Code Sec. 1-618.8(a)(5) to, inter alia, "determine the mission of the agency, its budget, its organization, the number of employees and the number, type and grades of positions of employees assigned to an organizational unit, work project or tour of duty...."

Notwithstanding the lack of an obligation to bargain over these changes, we have held that "the effects or impact of a non-bargainable management decision upon the terms and conditions of

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[1]/ UDCFA's asserts that the change in the staffing of part-time faculty contravenes the parties' past practice in applying this contractual provision. That practice, according to UDCFA, afforded bargaining unit employees the opportunity to "teach up to two courses for which a part time faculty member would be hired", was changed to reduce the number of courses from two to one. UDC's change in the alleged past practice, however, appears consistent with the above-cited contract provision. Nevertheless, the assertion that UDC's change was a change in a past practice or application of a collective bargaining agreement provision does not remove the issue from the context of a contract matter; the resolution of which is subject to the contractual grievance procedure.

[2]/ The Board, in these cases, was presented with and rejected the same argument UDCFA makes in the instant proceeding, i.e., that unilateral changes in past practices constitute unfair labor practices under the CMPA, despite a finding that the practice concerns a management prerogative.

employment are bargainable upon request." Teamsters, Local Union No. 639 and 730 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, 38 DCR 96, 100, Slip Op. No. 249 at 5, PERB Case No. 89-U-17 (1990). See, also, International Brotherhood of Police Officers, Local 446, AFL-CIO/CLC v. District of Columbia General Hospital, Slip Op. 312, PERB Case No. 91-U-06 (1992) and University of the District of Columbia Faculty Assoc. and Univ. of the District of Columbia, 29 DCR 2975, Slip Op. 43, PERB Case No. 82-N-01 (1982)(for the proposition that such matters are negotiable under the CMPA). However, as we previously noted, the Complaint does not contain an assertion that UDCFA made a request to bargain with respect to any aspect of the changes.

In view of the above, we find that the Complaints fail to state a violation of D.C. Code Sec. 1-618.4(a)(5) by the acts alleged.[3]/ Accordingly, UDC's Motions to Dismiss the Complaints are granted.

ORDER

IT IS HEREBY ORDERED THAT:

1. PERB Cases 93-U-22 and 93-U-23 are consolidated.

2. The Motions to dismiss the Complaints in PERB Cases 93-U-22 and 93-U-23 are granted; the Complaints are dismissed.

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

March 22, 1994

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[3]/ Although a unilateral change in a bargainable term and condition of employment can constitute an unfair labor practice violation without a request to bargain, the unilateral changes in these Complaints were not subjects over which UDC had a duty to bargain. If, as UDCFA concludes, the changes had an impact and effect on bargaining unit employees' bargainable terms and conditions of employment, a request to bargain over impact is required to exact an employer's duty to bargain. Therefore, under the circumstances presented in these Complaints, a violation could lie only if UDC refused to bargain, upon UDCFA's request, over the impact and effects of its changes. As previously stated, the Complaint does not reflect that UDCFA ever made any request to bargain.