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

In the Matter of:	)	
	)	
American Federation of	)	
Government Employees, Local 383,	)	
	)	PERB Case No. 09-U-56
Complainant,	)	
	)	Opinion No. 1284
v.	)	
	)	
District of Columbia Department of	)	
Disability Services,	)	
	)	
Respondent.	)	

**DECISION AND ORDER**

**I. Statement of the Case**

On August 10, 2009, American Federation of Government Employees Local 383 (“Union” or “Complainant”) filed an unfair labor practice complaint (“Complaint”) against the District of Columbia Department of Disability Services (“Agency” or “Respondent”), alleging violations D.C. Code § 1-617.04(a)(1) and (5). In its Answer (“Answer”), the Agency denies committing the unfair labor practice violations. The Union did not file a response to the Answer.

The issue before the Board is whether the Agency implemented changes to internal policies without engaging in impact and effects bargaining requested by the Union.

**II. Discussion**

The following facts are undisputed by the parties: *via* letter dated June 29, 2009, the Agency informed the Union that employees in the Agency’s service coordinating unit would be permitted to work in alternate work locations during an eight-week period of renovations to the Agency’s offices. (Complaint at 2; Answer at 2). Additionally, the letter stated that the employees would be issued laptops and cell phones. (Complaint at 2; Answer at 2). Attached to the letter were copies of the District cell phone and landline use policy, a proposed laptop use policy, the equipment assignment agreement to be signed by the employees, and an alternate

work location policy. (Complaint at 2; Answer at 2). The alternate work location program was to begin July 10, 2009. (Complaint at 2; Answer at 2).<sup>1</sup>

On July 2, 2009, the Union requested impact and effects bargaining over the Agency's proposed policies pertaining to alternate work locations and equipment usage. (Complaint at 2; Answer at 2). The Union demanded that the Agency delay implementation of the policies if the parties could not complete negotiations before July 10, 2009. (Complaint at 2-3; Answer at 2). On July 6, 2009, the Union submitted a request for bargaining information pertaining to the Agency's alternate work location and equipment use policies. (Complaint at 3; Answer at 2).

The parties met for negotiations on July 9, 2009. (Complaint at 4; Answer at 3). At the time of the meeting, the Agency had not responded to the Union's information request. (Complaint at 4; Answer at 3). The Union requested that the implementation of the policies be delayed pending the Agency's response to the Union's information request. (Complaint at 4; Answer at 3). The Agency states that its representative informed the Union that the Agency was prepared to respond to its questions and information requests at the meeting, answer follow up questions, and could provide a written response following the meeting. (Answer at 4). The Agency further alleges that the Union rejected this offer. (Answer at 4). The Union does not address those facts in its Complaint, but both parties agree that the Agency's representative agreed to reschedule the meeting if the Union wanted more time to review the Agency's response, but that the policies would go forward as scheduled on July 10, 2009. (Complaint at 4; Answer at 4). The Union then terminated the meeting. (Complaint at 4; Answer at 4-5).

Following the meeting, the Agency's representative sent a letter with responses to the Union's request for bargaining information. (Complaint at 4; Answer at 5).<sup>2</sup> On July 10, 2009, the Agency's representative e-mailed his bargaining notes to the Union and reconfirmed his statements that "the policy will go forward as scheduled" and "whether or not we reschedule the meeting, the policy must go forward." (Complaint at 5; Answer at 5). The Union then sent the Agency's representative a letter protesting the deficiency of the Agency's response to the request for information and requesting responsive information. (Complaint at 5; Answer at 5). By letter dated July 15, 2009, the Agency informed the Union that it had "no intention of answering, for a second time, the list of questions presented by the Union." (Complaint at 5; Answer at 5).

The Union alleges that the Agency has implemented an alternate work location policy and equipment usage policies over which the Union has not bargained regarding impact and effects. (Complaint at 5). The Agency contends that it upheld its obligation to provide the Union with the opportunity for impact and effects bargaining, and that the Union insisted the implementation of the policies be postponed without presenting any alternative proposals or

<sup>1</sup> In its Answer, the Agency states that it informed the Union that the policies would not be implemented until July 17, 2009. (Answer at 5).

<sup>2</sup> The Union gives an example of an information request and the answer provided by the Agency:

Request posed by Union: "If employees will be required to work from alternate work locations, please provide a complete list of those employees' names and positions."  
Agency response: "Service Coordinators and Lead Service Coordinators"

reviewing the Agency's responses to the requests for information. (Answer at 5). Additionally, the Agency alleges that when it refused to postpone the implementation of the policies, the Union walked away from negotiations despite the Agency's insistence that it continue to bargain. (Answer at 5).

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). After a timely request is made, an Agency must bargain before implementing its decision. *FOP/MPDLC v. MPD*, 47 D.C. Reg. 1449, Slip Op. No. 607, PERB Case No. 99-U-44 (2000).

The parties do not disagree on the pertinent facts of this case, but they do disagree on the legal issue of whether the July 9, 2009, meeting between the Union and the Agency satisfied the Agency's obligation to engage in impact and effects bargaining before implementing the new policies. (Complaint at 5; Answer at 5).

The Board looks to precedent under the National Labor Relations Act to determine whether a party has violated its duty to bargain in good faith by engaging in "surface bargaining." *FOP/MPDLC v. District of Columbia, et al.*, \_\_ D.C. Reg. \_\_, Slip Op. No. 988 at FN 6, PERB Case No. 08-U-41 (2009). In interpreting the "good faith" standard in the course of collective bargaining, the National Labor Relations Board ("NLRB") examines the totality of a party's conduct during bargaining, both at and away from the table, to determine if the negotiations have been used to frustrate or avoid mutual agreement. See, e.g., *Regency Service Carts, Inc.*, 324 NLRB 671 (2005); *Public Service Co. of Oklahoma*, 334 NLRB 487 (2001); *Overnite Transportation Co.*, 296 NLRB 669, 671 (1989); *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984). Any single factor, standing alone, will generally not demonstrate bad faith. *NLRB v. Fitzgerald Mills Corp.*, 133 NLRB 288 (1963).

The Board has examined the totality of the circumstances in this case and finds fault on both sides in the parties' failure to complete bargaining before implementation of the alternate work plan.

The Board is disturbed by the fact that the Agency advised the Union of its plans regarding the relocation of workers only eleven days before the change was to take place. It seems obvious that the Agency would have known of planned renovations to the work space and must have made the arrangements for alternate work locations long before June 29, when it notified the Union of its plans. In addition, the Agency was not responsive to the Union's request for information. It should have provided the answers either before the bargaining session or at the beginning of the meeting rather than sending the answers after the Union representatives left the meeting. Furthermore, the Agency never explained to the Union why it was unwilling or unable to provide responsive answers to the Union's questions.

**CERTIFICATE OF SERVICE**

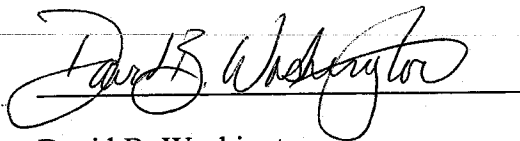
This is to certify that the attached Decision and Order in PERB Case No. 09-U-56 was transmitted via U.S. Mail and e-mail to the following parties on this the 21<sup>st</sup> day of June, 2012.

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The Union, for its part, wasted valuable time arguing about the location for the talks. Once talks began, the Union walked out of the meeting when dissatisfied with the Agency's responses although time remained to complete bargaining. The Agency had delayed the implementation of its plan until July 17, which would have provided the Union with further time to bargain.

Taken as a whole, the Agency's actions do not indicate "an intent not to reach an agreement." *Coastal Electric Cooperative*, 311 NLRB 1126 (1993). Therefore, the Board finds the Agency did not violate its duty to negotiate in good faith and the Complaint is dismissed.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. American Federation of Government Employees, Local 383'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.

June 21, 2012