

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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	)	
American Federation of Government Employees,	)	
Local 2725, AFL-CIO,	)	
	)	PERB Case No. 26-U-21
Complainant	)	
	)	Opinion No. 1964
v.	)	
	)	
District of Columbia Department of Energy and	)	
Environment	)	
	)	
Respondent	)	
	)	

DECISION AND ORDER

I. Statement of the Case

On February 3, 2026, the American Federation of Government Employees, Local 2725, AFL-CIO (AFGE) filed an unfair labor practice complaint (Complaint) against the District of Columbia Department of Energy and Environment (DOEE). The Complaint asserts that DOEE violated D.C. Official Code §§ 1-617.04(a)(1) and (a)(5) of the Comprehensive Merit Personnel Act (CMPA) by failing to provide requested information relating to the separation of a union represented employee from their term appointment. The requested information included the basis for the separation decision, funding and budgeting information specific to the position, comparator information regarding other term employees, internal decision-making communications, renewal practices, and identification of decision makers.¹ On February 17, 2026, DOEE filed its answer and affirmative defenses (Answer), asserting that the Complaint should be dismissed for failure to provide any facts evidencing a violation of the CMPA.

On May 8, 2026, PERB issued a letter requesting the parties brief the following issues: (1) whether comparator data, internal communications, and decision-making records, are relevant and necessary to the representational duties of a union when requested to investigate the separation of bargaining unit member; (2) whether the basis for separation provides a defense to the production of otherwise relevant information. AFGE filed its brief on June 3, 2026, and DOEE filed its brief on June 4, 2026.

¹ Complaint at 3.

I. Background

The following facts are undisputed. On January 8, 2025, AFGE submitted a Request for Information (RFI) to DOEE regarding the separation of a union represented employee following the expiration of the employee's term appointment.² In the RFI, AFGE requested information the Union alleges is necessary regarding DOEE's determination the employee's non-extension.³ This information included whether the decision was lawful or otherwise motivated by improper considerations.⁴ DOEE refused to provide the requested information, as it claimed that the expiration of a term employee's appointment was not subject to the grievance process.⁵ Following a response from AFGE, DOEE reaffirmed its refusal, asserting that term appointments automatically expire under District personnel regulations and that DOEE was not required to justify non-extension of an expired term-appointment.⁶ DOEE provided AFGE with publicly available budget documents as well as a generic position description, but refused to provide specific internal information requested by AFGE.⁷

II. Discussion

This dispute arises from AFGE's allegation that DOEE violated D.C. Official Code §§ 1-617.04(a)(1), and (5) by refusing to provide information to AFGE that was relevant and necessary to its performance of statutory representational duties. Section 1-617.04(a)(1) prohibits interference, restraint, or coercion regarding the exercise of rights guaranteed by that subchapter. Section 1-617.04(a)(5) prohibits agencies from refusing to bargain collectively in good faith with the exclusive representative. An agency has an obligation to furnish information a union requests that is both relevant and necessary to the union's role in processing a grievance, in pursuing an arbitration proceeding, or in collective bargaining. Failure to do so is an unfair labor practice.⁸

In the Complaint, AFGE asserts that DOEE had no basis to categorically refuse to comply with AFGE's RFI and did not assert any specific privilege or confidentiality basis for withholding the information.⁹ AFGE argues that the requested information was relevant and necessary to its performance of statutory representational duties, and that by refusing to comply, DOEE committed an unfair labor practice.¹⁰ The requested information included the basis for the separation decision, funding and budgeting information specific to the position, comparator information regarding other term employees, internal decision-making communications, renewal practices, and identification of decision makers.¹¹ AFGE asserts that DOEE's decision not to furnish the requested documents made it so the Union could not determine whether DOEE's decision not to

² Complaint at 2-3.

³ Complaint at 3.

⁴ Complaint at 3.

⁵ Complaint at 3.

⁶ Complaint at 3.

⁷ Complaint at 4.

⁸ *Washington Teachers' Union, Local No. 6 v. D.C. Pub. Sch.*, 61 D.C. Reg. 1537, Slip Op. 1448, PERB Case No. 04-U-25 (2014).

⁹ Complaint at 4.

¹⁰ Complaint at 3.

¹¹ Complaint at 3.

extend the term appointment was lawful, or whether it was motivated by improper considerations.¹² In its Answer, DOEE asserts that the Complaint should be dismissed because AFGE has failed to provide any facts evidencing a violation of the CMLA.¹³ DOEE argues that the only facts listed are that AFGE submitted an RFI and that DOEE refused to provide certain portions of the RFI.¹⁴ Further, DOEE argues that it substantially complied with the RFI by providing budgetary information and that it had no duty to produce the remainder of the requested information.¹⁵

The Board requested the parties brief two specific issues regarding this matter:

- 1) Whether comparator data, internal communications, and decision-making records are relevant and necessary to the representational duties of a union when requested to investigate the separation of a bargaining unit member; and
- 2) Whether the basis for separation provides a defense to the production of otherwise relevant information.

AFGE submitted its brief on June 3, 2026, arguing that comparator data, internal communications, and decision-making records are relevant and necessary to the Union's representational duties because it has a statutory responsibility to investigate issues involving bargaining unit employees.¹⁶ The Union argues that this information is relevant and necessary to its investigation regarding the separation of a bargaining unit employee and to determine whether DOEE violated the CMLA or the parties' collective bargaining unit, and that the information AFGE requested was directly connected to its duty as a representative.¹⁷ AFGE contends that this information is necessary to determine whether similarly situated term employee's contracts were renewed or extended and to determine whether the decision was free from improper considerations or motives.¹⁸ The Union further argues that internal communications are relevant and necessary to understand the reasoning surrounding the separation, whether protected activity was a consideration, and who participated in the decision making.¹⁹ The Union adds that decision-making records are relevant and necessary because they allow AFGE to evaluate whether the separation was automatic as DOEE alleges, or whether it was for a different reason.²⁰ AFGE argues that DOEE's basis for the employee's separation does not provide a defense to the Agency's refusal to provide the requested documents because it conflates the merits of the underlying personnel action with DOEE's separation obligation.²¹ Lastly, AFGE argues that DOEE's partial response to the RFI did not satisfy the Union's request, as the provided documents were generic and unspecific.²²

¹² Complaint at 3.

¹³ Answer at 3.

¹⁴ Answer at 3.

¹⁵ Answer at 3.

¹⁶ AFGE's Brief at 4.

¹⁷ AFGE's Brief at 5.

¹⁸ AFGE's Brief at 5.

¹⁹ AFGE's Brief at 5.

²⁰ AFGE's Brief at 5.

²¹ AFGE's Brief at 6.

²² AFGE's Brief at 7.

DOEE submitted its brief on June 4, 2026 arguing that the requested information is not relevant to AFGE's representation of its bargaining unit member.²³ The Agency argues that the decision not to extend an employee's term appointment is not an adverse action and is therefore not grievable under the collective bargaining agreement or the District of Columbia District Personnel Manual.²⁴ DOEE asserts that therefore the information regarding its decision not to extend is not relevant for AFGE.²⁵ The Agency further argues that the basis for the employee's separation provides a defense to the production of the requested information due to the nature of the term appointment having an expiration date.²⁶ DOEE argues that based on precedent, an agency only has a duty to produce information that is relevant and necessary to a union's role in processing a grievance, in pursuing an arbitration proceeding, or in collective bargaining, and that since this matter simply involved the expiration of a term appointment, the Agency does not have a duty to provide the requested information.²⁷ DOEE did not raise confidentiality as a defense in this matter, therefore the defense is waived.

The instant Complaint argues that DOEE refused to provide relevant and necessary documentation in response to their RFI. An agency has an obligation to furnish requested information that is both relevant and necessary to the union's role in processing a grievance, in pursuing an arbitration proceeding, or in collective bargaining.²⁸ The Board is unpersuaded by DOEE's argument that the Agency is not required to fulfill AFGE's request because a grievance did not exist at the time the RFI was submitted. In this instance, AFGE has demonstrated that their request for information was both relevant and necessary to their duty to investigate a bargaining unit member's separation and in determining whether to process a grievance.

In submitting the RFI, AFGE sought information on internal processes to determine whether the term appointment of its bargaining unit member was terminated due to improper considerations, such as retaliation for protected activity or other unlawful motives. DOEE's position, that the non-extension was simply due to the contract term, does not negate the Union's duty to investigate.

Moreover, AFGE also sought comparator data for the purpose of determining whether the agency applied its stated rationale consistently. The Board has followed the FLRA in holding that "a union must provide management with an explanation of how requested information relates to the union's representational duties."²⁹ AFGE articulated its particularized need for comparator data to confirm equal treatment of bargaining unit members and to determine whether to process a grievance.³⁰

²³ DOEE's Brief at 3.

²⁴ DOEE's Brief at 3.

²⁵ DOEE's Brief at 4.

²⁶ DOEE's Brief at 4.

²⁷ DOEE's Brief at 4 citing *AFCME Local 2743 v. D.C. Department of Buildings*, PERB Case No. 24-U-05, Slip Op. No. 1894 (2024).

²⁸ *Washington Teachers' Union, Local No. 6 v. D.C. Pub. Sch.*, 61 D.C. Reg. 1537, Slip Op. No. 1448 at 4, PERB Case No. 04-U-25 (2014).

²⁹ *AFCME Local 2743 v. D.C. Department of Buildings*, PERB Case No. 24-U-05, Slip Op. No. 1894 at 4 (2024)(citing *NLRB v. FLRA*, 952 F.2d 523, 532 (D.C. Cir. 1992)).

³⁰ *AFCME Local 2743 v. D.C. Department of Buildings*, PERB Case No. 24-U-05, Slip Op. No. 1894 at 4 (2024)

Additionally, the Board finds that decision-making records were relevant and necessary to AFGE's role in processing a potential grievance, as it would provide additional context for the potential preparation of a grievance in this matter.³¹ In an analogous case, the Board found that an unfair labor practice occurred "where the agency failed to provide requested information concerning the agency's decision to implement a RIF involving the union's bargaining unit members."³² The Complaint sufficiently alleged such a claim, and DOEE has not presented any viable defense to production of the requested information.³³

The Board finds that the information requested by AFGE was relevant and necessary to its role in processing a potential grievance, as to a bargaining unit employee's separation—even via non-extension of a term.

III. Conclusion

The Board finds that DOEE violated D.C. Official Code §§ 1-617.04(a)(1), and (a)(5) of the CMPA by failing to provide the information AFGE requested.

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Department of Energy and Environment shall cease and desist from refusing to furnish information relevant and necessary to the representational duties of the American Federation of Government Employees, Local 2725; and
2. The District of Columbia Department of Energy and Environment shall provide all information requested in January 8, 2026 Request for Information submitted by the American Federation of Government Employees, Local 2725; and
3. The District of Columbia Department of Energy and Environment shall conspicuously post the attached Notice where notices to employees are normally posted. The Notice shall be posted within ten (10) days from the issuance of this Decision and Order and shall remain posted for thirty (30) consecutive days.

³¹ *FOP/MPD Labor Committee v. DC MPD*, 60 D.C. Reg. 5337 (2013), Slip Op. No. 1374 at 16, PERB Case No. 06-U-41 (2013) (finding that a request for documentation regarding the evaluation and decision-making process was relevant and necessary to FOP's legitimate collective bargaining functions and in preparing a grievance.)

³² *Washington Teachers' Union, Local No. 6 v. D.C. Pub. Sch.*, 61 D.C. Reg. 1537, Slip Op. No. 1448 at 4, PERB Case No. 04-U-25 (2014).

³³ *Jenkins and McKinnon v. DOC*, 65 Reg. 4046, Slip Op. No. 1652, PERB Case No. 15-U-31 (2018) (citing PERB Rule 520.6 that provides that an answer to an unfair labor practice complaint shall include a statement of any affirmative defenses and finding that Respondent waived its affirmative defenses by failing to raise it in their answer). *See also American Medical Response West and United Emergency Medical Service Workers, AFSCME Local 4911, AFL-CIO*, 366 NLRB No. 146 (2018) (finding that the Respondent did not specifically argue a confidentiality defense in providing requested information, and therefore the Board found that the Respondent had waived that defense.)

4. Within fourteen (14) days from the date of this Decision and Order, the District of Columbia Department of Energy and Environment shall notify the Public Employee Relations Board in writing that the attached Notice has been posted accordingly.
5. 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 Peter Winkler and Members Lee Clark, Mary Anne Gibbons, and Renee Bowser.

September 17, 2026

Washington, D.C.

APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration, requesting the Board reconsider its decision. Additionally, 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 file an appeal.