

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 formal 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**

In the Matter of:)	
)	
American Federation)	
of Government Employees)	
Local Union No. 2725, AFL-CIO,)	
)	
Complainant,)	PERB Case No. 92-U-21
)	Opinion No. 404
v.)	
)	
District of Columbia)	
Department of Public)	
and Assisted Housing,)	
)	
Respondent.)	

DECISION AND ORDER

On August 5, 1992, the American Federation of Government Employees, Local Union No. 2725, AFL-CIO (AFGE) filed an Unfair Labor Practice Complaint with the Public Employee Relations Board (Board) charging that the Respondent Department of Public and Assisted Housing (DPAH) had violated the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. Code § 1-618.4(a)(5). AFGE alleges that DPAH refused to bargain in good faith over the impact of DPAH's organizational realignment on the terms and conditions of bargaining unit employees. AFGE Local 2725 is the exclusive agent for a designated unit of all employees at DPAH with the exception of security personnel, management officials, confidential employees and other employees excluded by the CMPA.

The Office of Labor Relations and Collective Bargaining (OLRCB), by Answer filed on behalf of DPAH on August 28, 1992, asserts that: (1) the realignment of DPAH is a matter covered by the parties' collective bargaining agreement (CBA); (2) the Complaint was untimely filed; (3) DPAH has met all its obligations to AFGE under the CBA; and (4) consequently, AFGE fails to present a claim in violation of D.C. Code Sec. 1-618.4(a)(5).

The Board referred this matter to a hearing examiner who met with the parties on February 17, 1993, in a pre-hearing conference and subsequently heard the case on April 7, 1993, March 30 and May 4, 1994.^{1/} Following the submission of post-hearing briefs, a

^{1/} Due to the parties' scheduling conflicts, the case could not be scheduled for hearing prior to February, 1993. Moreover,
(continued...)

Report and Recommendation was submitted to the Board on August 30, 1994, in which the Hearing Examiner made the following findings of fact and conclusions of law. ^{2/}

The Hearing Examiner found that while the decision to realign DPAH is a management right, DPAH had a duty to negotiate, as requested by AFGE, the impact and effects of the realignment on employees' terms and conditions of employment. The Hearing Examiner concluded that by merely consulting with AFGE over the impact and effects of the realignment, DPAH did not satisfy its statutory obligation under the CMPA and thereby violated D.C. Code Sec. 1-618.4(a)(1) and (5).

No exceptions were filed by either party to the findings, conclusions and recommendations made by the Hearing Examiner in his Report.

Pursuant to D.C. Code Sec. 1-605.2(3) and Board Rule 520.14, the Board has reviewed the findings, conclusions and recommendations of the Hearing Examiner and the entire record. The Board hereby adopts the Hearing Examiner's finding and conclusion that the allegations contained in the Complaint are timely for the reasons contained in his Report.^{3/} We also adopt the Examiner's conclusion that the evidence supports a finding that DPAH violated D.C. Code Sec. 1-618.4(a)(1) and (5), by its failure to negotiate upon request with AFGE over the impact and effects of DPAH's realignment on bargaining unit employees' terms and conditions of employment.^{4/} See, D.C. Council 20, American Federation of State,

^{1/}(...continued)
the scheduled continuance date of May 3, 1993, was postponed when the parties' jointly requested to hold the case in abeyance pending settlement efforts.

^{2/} The Hearing Examiner's Report and Recommendation is attached as an appendix to this Opinion.

^{3/} OLRCB had contended that the Complaint was untimely since all of AFGE's alleged requests to bargain did not occur within 90 days prior to the filing of the Complaint as required by Board Rule 520.4(a). The Hearing Examiner found, however, that DPAH's response to AFGE's request, i.e., its alleged refusal to bargain, occurred within the prescribed time required under Board Rules with respect to the filing of the Complaint. We affirm the Hearing Examiner's finding that the Complaint was timely filed.

^{4/} The Examiner also reached conclusions as to claims made by both parties that DPAH's conduct either conformed with or
(continued...)

County and Municipal Employees, AFL-CIO, Locals 709, 877, 1200, 1808, 2087, 2091, 2092, 2095, 2096, 2401, 2743, 2776, 3738, et al. v. Government of the District of Columbia, Board of Trustees, University of the District of Columbia, Board of Trustees of the D.C. Public Library and Agencies under the Administrative Control of the Mayor, _____ DCR _____, Slip Op. No. 330, PERB Case No. 92-U-24 (1992).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Department of Public and Assisted Housing (DPAH) shall cease and desist from implementing its organizational realignment without first providing the American Federation of Government Employees, Local 2725, AFL-CIO (AFGE) notice and an opportunity to bargain, upon request, the impact and effect of the realignment upon the terms and conditions of employment of affected bargaining unit employees.
2. DPAH shall negotiate in good faith with AFGE Local 2725, upon request, about the impact and effect of the implemented and the future implementation of the realignment on bargaining-unit employees' terms and conditions of employment.
3. DPAH shall not, in any like or related manner, interfere with

⁴(...continued)

breached provisions contained in the parties' collective bargaining agreement. Suffice it to say that the Hearing Examiner did not find that the contractual provisions in question constituted a "clear and unmistakable" waiver of DPAH's statutory obligation to negotiate with AFGE over the impact and effect of its decision to realign the agency. See, International Brotherhood of Police Officers, Local 446, AFL-CIO v. District of Columbia General Hospital, _____ DCR _____, Slip Op. No. 312, PERB Case No. 91-U-06 (1992). On the contrary, the Hearing Examiner found the contractual provisions espoused collective bargaining rights and obligations that parallel the parties' rights and obligations under the CMPA. However, beyond a determination that provisions of the parties' collective bargaining agreement do not supersede or waive the parties' statutory rights under the CMPA, the Board lacks jurisdiction to resolve contractual disputes. We therefore do not adopt the Hearing Examiner's findings and conclusions in this regard as a basis of determining the parties' statutory obligations under the CMPA. See, Georgia Mae Green v. D.C. Department of Corrections, 37 DCR 8086, Slip Op. No. 257, PERB Case No. 89-U-10 (1990).

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AFGE's rights under the Comprehensive Merit Personnel Act.

4. DPAH shall, within ten (10) days from the service of this Decision and Order, post the attached Notice conspicuously on all bulletin boards where notices to bargaining-unit employees are customarily posted, for thirty (30) consecutive days.

5. DPAH shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from the issuance of this Decision and Order, that the Notice has been posted accordingly.

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

October 12, 1994



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 REPRESENTED BY THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2725, AFL-CIO AT THE DISTRICT OF COLUMBIA DEPARTMENT OF PUBLIC AND ASSISTED HOUSING: THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 404, PERB CASE NO. 92-U-21.

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 cease and desist from refusing to bargain, upon request, with the American Federation of Government Employees, Local 2725, AFL-CIO (AFGE) about the impact and effects of the organizational realignment of the Department of Public and Assisted Housing (DPAH) on bargaining unit employees' terms and conditions of employment.

WE WILL bargain collectively in good faith with AFGE upon request over the impact and effects of our decision to realign DPAH on bargaining-unit employees' terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with the rights guaranteed to employees by the Comprehensive Merit personnel Act to the bargaining unit employees at the DPAH.

District of Columbia
Department of Public
and Assisted Housing

Date: _____ By: _____
(Director)

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.