

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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In the Matter of:	)	
	)	
	)	
Washington Teachers' Union, Local #6, American	)	
Federation of Teachers, AFL-CIO,	)	
Complainant	)	PERB Case No. 20-U-26
	)	
v.	)	Opinion No. 1755
	)	
District of Columbia Public Schools	)	
	)	
Respondent	)	

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**DECISION AND ORDER**

**I. Statement of the Case**

On May 19, 2020, the Washington Teachers' Union, Local #6 (Union) filed an Unfair Labor Practice Complaint<sup>1</sup> (Complaint) alleging that the District of Columbia Public Schools (Agency) violated the Comprehensive Merit Personnel Act of 1978 (CMPA) by refusing to bargain. On June 2, 2020, the Agency filed an Answer (Answer) to the Complaint.

The facts of this case are undisputed; therefore, it is appropriate for the Board to decide the case upon the pleadings. Board Rule 520.06 provides that "if a review of the complaint and any response thereto reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings. . . ." For the reasons stated herein, the Board finds that the Agency committed an unfair labor practice in violation of D.C. Official Code § 1-617.04(a)(1) and (5).

**II. Undisputed Facts**

Based on a review of the Complaint and Answer, the Board finds the following facts undisputed. In May 2019, the Union and the Agency started negotiating a new collective bargaining agreement to replace their expiring agreement. The parties met in person and negotiated on a regular basis until March 12, 2020.<sup>2</sup> On or around March 13, 2020, Mayor Muriel Bowser

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<sup>1</sup> The Union also filed a Motion for Preliminary Relief, which is now moot.

<sup>2</sup> Compl. at 3, ¶ 7; Answer at 3, ¶ 7.

announced that the D.C. government would adjust its operating status, beginning March 16, 2020, to mitigate the spread of the coronavirus (COVID-19).<sup>3</sup>

On or around March 16, 2020, the Agency sought to postpone in-person negotiations until April 9, 2020, in light of the COVID-19 pandemic, the state of emergency, and the Agency's telework status.<sup>4</sup> The Union agreed to postpone.<sup>5</sup>

On or around April 2, 2020, the Agency proposed to postpone negotiations until May 7, 2020.<sup>6</sup> The Union had no objection to extending the date of the parties' next negotiating session to May 7, 2020, and proposed to continue negotiations remotely at that time.<sup>7</sup> On or around April 10, 2020, the Agency agreed through an email to the Union's proposal to resume negotiations virtually on May 7, 2020.<sup>8</sup>

On or around March 24, 2020, separate and apart from the parties' collective bargaining negotiations, the Agency proposed that the parties hold virtual Step 1, Stage 3 grievance meetings regarding alleged violations of the IMPACT evaluation process.<sup>9</sup> The Union agreed to consider a memorandum of understanding (MOU) as a temporary modification of the parties' practices, outside of the collective bargaining agreement, in response to the COVID-19 pandemic.<sup>10</sup>

During discussions on the terms of the MOU, the Agency changed its proposal to request that the parties conduct all steps of the grievance meetings as well as arbitrations virtually, not only Step 1, Stage 3 meetings as originally proposed. On or around April 13, 2020, the Union stated that it could not agree to the proposal.<sup>11</sup> In response, on April 15, 2020, the Agency suspended contract negotiations asserting, "Until the parties reach an agreement on conducting all DCPS-WTU meetings and hearings virtually, DCPS will not agree to conduct only negotiations or IMPACT grievance meetings virtually."<sup>12</sup>

On or around May 6, 2020, the Union President contacted the Agency Chancellor by telephone to discuss the continuation of contract negotiations between the parties.<sup>13</sup> On or around Friday, May 8, 2020, the Union's negotiating team met virtually with the Agency's negotiating team and the Chancellor to discuss ideas and recommendations regarding DCPS's plans to reopen schools and the educational challenges faced by students and teachers during the COVID-19 pandemic.<sup>14</sup> On or around May 11, 2020, in following up on this meeting by email, the Chancellor declared that the May 8 meeting was not a contract negotiating session, and confirmed that

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<sup>3</sup> Compl. at 3, ¶ 8; Answer at 3, ¶ 8

<sup>4</sup> Compl. at 3, ¶ 9; Answer at 3, ¶ 9.

<sup>5</sup> Compl. at 4, ¶ 10; Answer at 4, ¶ 10.

<sup>6</sup> Compl. at 4, ¶ 11; Answer at 4, ¶ 11.

<sup>7</sup> Compl. at 4, ¶ 12; Answer at 4, ¶ 12.

<sup>8</sup> Compl. at 4, ¶ 13; Answer at 4, ¶ 13.

<sup>9</sup> Compl. at 4, ¶ 14; Answer at 5, ¶ 14.

<sup>10</sup> Compl. at 5, ¶ 15; Answer at 5, ¶ 15.

<sup>11</sup> Compl. at 5, ¶ 16; Answer at 5, ¶ 16.

<sup>12</sup> Compl. at 5, ¶ 17; Answer at 6, ¶ 17.

<sup>13</sup> Compl. at 6, ¶ 21; Answer at 7, ¶ 21.

<sup>14</sup> Compl. at 6, ¶ 22; Answer at 7, ¶ 22.

“discussions related to entering into a new collective bargaining agreement are currently on hold while we work through the issue of conducting all WTU-DCPS business (negotiations, grievance meetings and hearings, etc.) virtually.”<sup>15</sup>

On or around May 13, 2020, the Union communicated to the Chancellor its expectation that the Agency “adhere to its prior written agreement to conduct negotiations virtually” and resume contract negotiations virtually.<sup>16</sup> In response that day, the Chancellor reiterated the Agency’s preconditions for negotiations, stating that the Agency “will be glad to resume collective bargaining negotiations virtually at such time when [the Union] agrees that all of our business can be done virtually.”<sup>17</sup>

### III. Discussion

Based on the undisputed facts, the Board finds that the Agency agreed to conduct collective bargaining negotiations virtually.<sup>18</sup> Subsequently, the Agency unilaterally suspended negotiations until the Union agreed that all negotiations, grievance meetings, and hearings would also be held virtually.<sup>19</sup> The Agency does not deny the essential conduct alleged by the Union. On April 10, 2020, the Agency unambiguously agreed to “resume negotiations virtually, using Microsoft Teams, on May 7, 2020.”<sup>20</sup> However, the Agency contends that its actions, nevertheless, did not constitute a refusal to bargain in good faith.<sup>21</sup>

D.C. Official Code § 1-617.04(a)(5) makes it an unfair labor practice for the District “refusing to bargain collectively in good faith with the exclusive representative.”<sup>22</sup>

The Board has adopted the NLRB holding that “an employer violates its obligation to bargain in good faith by refusing to make any proposals on or engage in discussions over one category of mandatorily negotiable matters until negotiations occurred and agreement was reached over another category of mandatorily negotiable matters.”<sup>23</sup> In *UDCFA v. UDC*, the University refused to meet for substantive bargaining over compensation issues until the parties reached an

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<sup>15</sup> Compl. at 6, ¶ 23; Answer at 8, ¶ 23.

<sup>16</sup> Compl. at 7, ¶ 24; Answer at 8, ¶ 24.

<sup>17</sup> Compl. at 7, ¶ 25; Answer at 8, ¶ 25.

<sup>18</sup> Compl. at 4, ¶ 13; Answer at 4, ¶ 13.

<sup>19</sup> Compl. at 7, ¶ 25; Answer at 8, ¶ 25.

<sup>20</sup> The Agency points to an April 15, 2020, email and argues that its agreement to resume negotiations was tentative. The Board finds this post-hoc excuse for refusing to bargain insufficient. The agreement to negotiate virtually was unambiguous and the Agency did not assert any condition on the negotiations until the Union did not agree to the demand to conduct all grievance meetings and arbitrations virtually.

<sup>21</sup> Answer at 12.

<sup>22</sup> D.C. Official Code § 1-617.04(a)(5).

<sup>23</sup> *UDCFA v. UDC*, 41 D.C. Reg. 1585, Slip Op. No. 297 at 3, PERB Case No. 90-U-23 (1994) (citing *Federal Magul Corp.* 212 NLRB No. 141 (1974); see also *Gen. Drivers & Helpers Union, Local 662 v. NLRB*, 302 F.2d 908, 910 (D.C. Cir. 1962) (holding that the NLRB correctly found that the refusal of Employer to meet with the Union unless and until it ended a strike was a clear refusal to bargain in violation of Section 8(a)(5) of the Act. There the Employer and the Union held several negotiating sessions but did not reach an agreement. The Employer refused to negotiate further, and the Union called a strike. The Employer told the Union that it would talk further with the Union if the strikers returned to work.).

agreement on procedural ground rules.<sup>24</sup> The Board found that the University's refusal to meet violated D.C. Official Code § 1-617.04(a)(1) and (5) because the refusal frustrated the bargaining obligations of the parties.<sup>25</sup>

In the instant case, the Agency refused to meet for the negotiation of a collective bargaining agreement until the Union agreed to conduct all negotiations, grievance meetings, and hearings virtually. The Board finds that the Agency's conditioning of its obligation to bargain on first negotiating and reaching agreement on conducting all negotiations, grievance meetings, and hearings virtually had the effect of frustrating the parties' bargaining obligation.<sup>26</sup>

Therefore, the Agency's refusal to meet until the Union agreed to conduct all negotiations, grievance meetings, and hearings virtually constituted a refusal to bargain in good faith in violation of D.C. Official Code § 1-617.04(a)(1) and (5).<sup>27</sup>

#### **IV. Conclusion**

The Board concludes that the District of Columbia Public Schools violated D.C. Official Code § 1-617.04(a)(1) and (5) of the Comprehensive Merit Personnel Act.

### **ORDER**

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Public Schools shall bargain forthwith in good faith with Washington Teachers' Union, Local #6;
2. The District of Columbia Public Schools shall cease and desist from conditioning bargaining, upon request, over the collective bargaining agreement with Washington Teachers' Union, Local # 6 on negotiating and/or reaching agreement over the MOU;
3. The District of Columbia Public Schools shall cease and desist from interfering with, restraining, or coercing, in any like or related manner, employees represented by Washington Teachers' Union, Local # 6 in the exercise of rights guaranteed by the Comprehensive Merit Personnel Act;
4. Within fourteen (14) days from the service of this Decision and Order, the District of Columbia Public Schools shall post the attached Notice conspicuously where notices to employees in this bargaining unit are customarily posted for thirty (30) consecutive days and electronically in a manner in which notices are customarily distributed; and

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<sup>24</sup> *UDCFA v. UDC*, 41 D.C. Reg. 1585, Slip Op. No. 297 at 2, PERB Case No. 90-U-23 (1994).

<sup>25</sup> *Id.* at 3.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

5. The District of Columbia Public Schools shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from the issuance of this Decision and Order, that Notices have been posted as ordered.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By unanimous vote of the Board Chairperson Douglas Warshof, Members Ann Hoffman, Barbara Somson, Mary Anne Gibbons, and Peter Winkler.

June 18, 2020

Washington, D.C.



## NOTICE

**TO ALL EMPLOYEES REPRESENTED BY THE WASHINGTON TEACHERS' UNION, LOCAL # 6, AMERICAN FEDERATION OF TEACHERS, AFL-CIO, (WTU) AT THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS, THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. , PERB CASE NO. 20-U-26.**

**WE HEREBY NOTIFY** our employees that the District of Columbia 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 insisting on negotiation and/or reaching agreement on an unrelated Memorandum of Understanding as a condition for bargaining the new collective bargaining agreement.

**WE WILL NOT**, in any like or related manner, interfere with, restrain, or coerce our employees represented by WTU in the exercise of their rights under the Comprehensive Merit Personnel Act.

**WE WILL** negotiate in good faith with WTU, upon request.

### **District of Columbia Public Schools**

Date: \_\_\_\_\_

By: \_\_\_\_\_

(Chancellor)

**This Notice must remain posted electronically for thirty (30) consecutive days from the date of posting and must not be altered.**

If employees have any questions concerning the Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, by email at [perb@dc.gov](mailto:perb@dc.gov), by mail at 1100 4<sup>th</sup> Street SW, Suite 630E, Washington, D.C. 20024. Phone: 202-727-1822.

CERTIFICATE OF SERVICE

I hereby certify that the attached Decision and Order, Slip Op.1755, in PERB Case No. 20-U-26 served electronically via File & ServeXpress to the following parties on this the day of July 2, 2020:

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/s/ Royale Simms  
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