

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:)	
)	
Fraternal Order of Police/ Metropolitan Police Department Labor Committee,)	
)	
Complainant,)	
)	PERB Case No. 99-U-44
)	Opinion No. 607
v.)	
)	
District of Columbia Metropolitan Police Department,)	
)	
Respondent.)	
)	
)	

DECISION AND ORDER

On September 29, 1999, the Fraternal Order of Police/ Metropolitan Police Department Labor Committee (FOP) filed an Unfair Labor Practice Complaint against the District of Columbia Metropolitan Police Department (MPD). In addition, on October 6, 1999, FOP filed a document styled "Addendum to Unfair Labor Practice Complaint-Motion for Preliminary Relief".^{1/} FOP alleges that MPD refused to bargain in good faith, upon request, over the

^{1/} FOP requested preliminary relief in the relief section of its original Complaint. However, FOP's request for preliminary relief did not conform with Board Rules. As a result, a deficiency notice was issued to FOP notifying it of the deficiencies and providing FOP until October 18, 1999, to cure the deficiencies. On October 6, 1999, FOP cured the filing deficiencies by submitting the supplemental filing referenced in the text, i.e., "Addendum to Unfair Labor Practice Complaint- Motion for Preliminary Relief".

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impact of a proposed change to police officers' "watch" and "days off" schedules. (Comp. at 1.) FOP asserts that by refusing to bargain in good faith over the impact of the proposed schedule changes, MPD has violated D.C. Code § 1-618.4(a)(3)^{2/} and Article 48, Section 5 of the collective bargaining agreement (CBA). FOP concedes MPD's management rights permit it to adopt the policy. FOP requests that the Board: (1) grant preliminary relief which would prohibit MPD from implementing the proposed schedule changes until it engages in impact bargaining with FOP over the proposed changes; (2) award attorney fees; and (3) grant any other relief it deems appropriate.^{3/}

On October 14, 1999, MPD filed its "Response to Complainant's Unfair Labor Practice Complaint (Incorporating Complainant's Addendum for Preliminary Emergency Relief)". In its submission, MPD denies: (1) the underlying allegations contained in the Complaint and (2) that it has otherwise violated D.C. Code § 1-618.4(a)(5). MPD asserts that it has notified FOP both orally and in writing of its proposed shift changes. (Ans. at 1.) MPD insists that it has complied with the Comprehensive Merit Personnel Act (CMPA) as codified under D.C. Code § 1-618.8(a)(1) and (2) and Article 4 of the parties' collective bargaining agreement (CBA). As a result, disposition of this case presents only a question of law. Therefore, pursuant to Board Rule 520.10, this case can be appropriately decided on the pleadings.

^{2/} A failure to bargain in good faith is proscribed as an unfair labor practice under D.C. Code § 1-618.4(a)(5). However, the unfair labor practice provision referenced by FOP is D.C. Code § 1-618.4(a)(3). Section 1-618.4(a)(3) prohibits agencies from "[d]iscriminating against employees in regards to their terms and condition of employment to encourage or discourage membership in any labor organization." We find this to be an inadvertent error by FOP and treat the allegation as an asserted violation of D.C. Code § 1-618.4(a)(5).

^{3/} FOP also requested that the Board hold a special meeting in order to consider its request. FOP asserts that its request for a special meeting is based on MPD's intent to implement the proposed schedule changes by October 10, 1999. Therefore, FOP wanted the Board to rule on its preliminary relief request prior to October 10, 1999. However, MPD's response was not due until October 14th. As a result, we could not consider FOP's request until after October 14th.

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D.C. Code § 1-618.8(a) prescribes those rights which are reserved solely to management under the CMPA in accordance with applicable laws rules and regulations.^{4/} FOP's asserted violation does not challenge MPD's authority to change employees' "watch" and "days off" schedule; rather, FOP alleges that MPD has violated the CMPA by refusing to bargain over the impact of its proposed change. Therefore, MPD's right to change bargaining unit employees' work schedules is not at issue.

We have held that an employer does not violate its duty to bargain when it merely unilaterally implements a management right decision. American Federation of Government Employees, Local 383 v. D.C. Dept of Human Services, Slip Op. No. 418, PERB Case No. 94-U-09 (1992).^{5/} The violation of the duty to bargain arises from the employer's failure to provide an opportunity to bargain over the impact and effects once a request to bargain is made, not from the unilateral exercise of its sole management right.Id.

In the instant case, FOP has made a request to bargain over the impact of MPD's proposed schedule change. We have held that an employer's prior notice to and meeting with the union to receive its "input", is not sufficient to fulfill the duty to bargain over the impact of its management right. See, International Brotherhood of Police Officers v. D.C. General Hospital, 39 DCR 9633, Slip Op.

^{4/} MPD specifically cites management rights under D.C. Code § 1-618.8(a)(1) and (2). Section 1-618.8(a)(1) and (2) provide as follows:

- (a) The respective personnel authorities (management) shall retain the sole right, in accordance with applicable laws and rules and regulations:
- (1) To direct employees of the agencies;
 - (2) To hire, promote, transfer, assign, and retain employees in positions within the agency and to suspend, demote, discharge, or take other disciplinary action against employees for cause;

^{5/} Note, that a request to bargain need not be made and a violation of the duty to bargain will lie when an employer unilaterally implements a change in mandatorily negotiable terms and conditions of employment subject to mandatory duty to bargain. (not contained in an effective collective bargaining agreement) without first providing notice and an opportunity to bargain.
Id.

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No. 322, PERB Case No. 91-U-14 (1992) and American Federation of Government Employees, Local 872, et al. v. D.C. Department of Public, Slip Op. No. 439, PERB Case No. 94-U-02 and 94-U-04 (1995). Therefore, MPD's assertion that the "Complainant was notified on several different occasions both orally and in writing regarding the proposed shift change", does not satisfy its duty to bargain over the impact of the proposed change.

However, we have been apprised by the parties that the proposed schedule changes were not implemented as intended on October 10, 1999, and have since been rescinded.^{6/}

In American Federation of Government Employees, Local 383 v. D.C. Dept of Human Services, supra, we held that if an employer decides not to implement or suspends implementation of the management right decision, no duty to bargain over its impact and effects exists. Under the facts of this case, we find it is premature to conclude that MPD has violated the CMPA by failing to bargain over the impact of a proposed, but unimplemented, schedule change.

We have previously observed that "in the interest of advancing the collective bargaining process, the better approach, upon being faced with [such] an effective refusal to bargain over any aspect of management's decision, is [for the union] to then make a second request to bargain with respect to the specific effects and impact of the management decision." International Brotherhood of Police Officers v. D.C. General Hospital, 39 DCR 9633, Slip Op. No. 322 at p.4, PERB Case No. 91-U-14. Although a second request to bargain is not required to establish a violation of the CMPA, here FOP made no attempt to identify the issues of concern to it or present to MPD any specific impact and effect proposals. Id.

Since MPD's proposed change to police offices' "watch" and "days off" schedule has been suspended, we find this case is not

^{6/} On November 9, 1999, the Respondent informed the Board that "MPD ... has rescinded and deferred the previous mandatory shift change order and initiated a voluntary shift change for all officers." MPD further states that "[u]nder the voluntary shift change order, Commanders are tasked with soliciting volunteers for the new shift change."

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currently ripe for determination. Therefore, we dismiss the Complaint without prejudice. Should MPD reinstitute the proposed schedule changes, FOP has a right to bargain over the impact and effects of the new policy. If MPD then refuses to bargain, FOP may re-file its Complaint.

In view of our dismissal of the Complaint, the Request for Preliminary Relief is moot. However, we note that FOP's request for *status quo ante* relief is generally inappropriate to redress an alleged violation of the duty to bargain over the impact and effects of implementing a management right decision. We have determined that where the duty to bargain applied only to the impact and effects of a management decision, status quo ante relief is not appropriate when: (1) rescission of the management decision would disrupt or impair the agency's operation and (2) there is no evidence that the results of such bargaining would negate the management rights decision. American Federation of Government Employees, Local 872, et al. v. D.C. Department of Public Works, Slip Op. No. 439, PERB Case No. 94-U-02 and 94-U-04 (1995).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint is dismissed without prejudice.
2. The Fraternal Order of Police/Metropolitan Police Department Labor Committee's Request for Preliminary Relief is denied.
3. Pursuant to Board Rule 559.2, this Decision and Order is final upon issuance.

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

November 19, 1999

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CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 99-U-44 was transmitted via facsimile and first-class mail to the following parties on this the 19th day of November, 1999.

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