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DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD
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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 2725	
Petitioner	PERB Case No. 24-U-41
v.	Opinion No. 1898
District of Columbia Department of Health	Motion for Reconsideration
Respondent	

DECISION AND ORDER

I. Statement of the Case

On September 3, 2024, the American Federation of Government Employees, Local 2725 (AFGE) filed an unfair labor practice complaint (Complaint) in the above-captioned case. The Complaint asserted that the District of Columbia Department of Health (DOH)[1] violated D.C. Official Code § 1-617.04(a)(1), (2), and (5) of the Comprehensive Merit Personnel Act (CMPA) by interfering with and restraining AFGE from exercising its right to exclusively represent the members, and by failing to bargain in good faith.[2] Specifically, the Complaint asserted that DOH refused to arbitrate grievances concerning assignment of work outside position descriptions.[3] The Complaint contended that DOH's refusal to arbitrate was based on a misinterpretation of the parties' collective bargaining agreement (CBA).[4] AFGE alleged DOH incorrectly determined that

[1] The Complaint also names the Director of DOH as a respondent. However, the Board has established that suits against District officials in their official capacities should be treated as suits against the District. *See FOP/MPD Labor Comm. v. MPD*, 59 D.C. Reg. 6579, Slip Op. No. 1118 at 4-5, PERB Case No. 08-U-19 (2011). Therefore, the Director is not a respondent in this case.
[2] Complaint at 2-5
[3] Complaint at 1-4.
[4] Complaint at 4.

the grievance concerned a classification issue and therefore, under the CBA, was exclusively appealable through the procedures outlined in the District Personnel Manual (DPM).[5]

In its Complaint, AFGE requested that the Board permanently enjoin DOH from committing the violations alleged; order a modification of DOH's policies to prevent retaliation; require DOH to post a notice, alerting employees of its unfair labor practices; and pay AFGE's costs related to this proceeding. Additionally, AFGE requested that the Board order DOH to bargain in good faith; cease and desist from assigning work to employees outside their position descriptions; and make the employees whole by granting the relief requested in the underlying grievance.[6]

On September 17, 2024, DOH filed an Answer to the Complaint, denying the alleged CMPA violations. DOH contended that pursuant to the CBA, AFGE's grievances were classification-related and must therefore be appealed pursuant to the procedures in the DPM.[7] DOH argued that this matter was outside the Board's jurisdiction, as it would require interpretation of the CBA.[8] DOH requested that the Board dismiss the Complaint.[9]

On December 3, 2024, the Executive Director issued an administrative dismissal letter (Dismissal) in this case. The Dismissal explained that the Board has established it does not have authority to interpret collective bargaining agreements.[10] The Dismissal stated that the Board's jurisdiction over unfair labor practice disputes solely covers complaints containing allegations which, if proven, would demonstrate a statutory violation of the CMPA.[11] The Dismissal found that the question of whether the CBA required DOH to bargain over work assignments was purely contractual. Therefore, the Dismissal concluded that the instant case was outside of the Board's jurisdiction.

On December 6, 2024, AFGE submitted a Motion for Reconsideration (Motion), arguing that the Executive Director erred in dismissing the Complaint.[12] The Motion asserts that the Board has jurisdiction over this matter,[13] and requests that the Board reverse the dismissal; find that DOH violated D.C. Official Code § 1-617.04(a); and order DOH to bargain in good faith, among other relief.[14] On December 20, 2024, DOH submitted an Opposition to the Motion.

For the reasons discussed herein, the Motion for Reconsideration is Granted.

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[5] Complaint at 4-6.
[6] Complaint at 7.
[7] Answer at 1-4.
[8] Answer at 5.
[9] Answer at 5.
[10] Dismissal at 2 (citing *FOP/MPD Labor Comm. v. MPD*, 60 D.C. Reg. 2585, Slip Op. No. 1360 at 4, PERB Case No. 12-U-13 (2013)).
[11] Dismissal at 2 (citing *FOP/MPD Labor Comm.*, Slip Op. No. 1360 at 4).
[12] Motion at 1.
[13] Motion at 2-5.
[14] Motion at 5.

II. Discussion

In its Motion, AFGE asserts that DOH refused to engage in arbitration over a subject covered by the CBA, thereby violating the duty to bargain in good faith, as established under D.C. Official Code § 1-617.04(a) of the CMPA.[15] The Motion also argues that while the Board lacks jurisdiction over substantive arbitrability, it has jurisdiction over statutory violations.[16] AFGE asserts that the Complaint concerns DOH's statutory bargaining obligations, in addition to its contractual obligations.[17] Thus, AFGE contends, the Board has authority to resolve the instant dispute.[18] The Motion further asserts that DOH bears the burden of demonstrating the veracity of its CBA interpretation, and argues that evidence and witness testimony show AFGE's interpretation is correct.[19]

The Board has established that it will uphold an administrative dismissal issued by the Executive Director if the decision was reasonable and supported by Board precedent.[20] The Motion argues that the Dismissal was inconsistent with Board precedent.[21] In support of this argument, the Motion includes several incomplete citations to decisions from the Board, as well as from the D.C. Court of Appeals.[22] Without complete citations, the Board is unable to identify these cases or assess their relevancy. Nonetheless, the Board finds that the Dismissal is inconsistent with Board precedent.

The Board has established that it does not have authority to interpret collective bargaining agreements.[23] Thus, where the parties have differing contractual interpretations, resulting in a dispute regarding the arbitrability of a grievance, the Board has consistently found that it does not have jurisdiction.[24] Under the CMPA, there is no pre-arbitration remedy available to a party claiming that arbitration was invoked over a contractually-inarbitrable grievance.[25] Thus, the Board has established that questions of arbitrability shall initially be resolved by the arbitrator.[26] If a party disagrees with the arbitrator's conclusion concerning arbitrability, the party may file an arbitration review request with the Board, appealing the award.[27] Where a party seeks pre-

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[15] Motion at 2.
[16] Motion at 2, 4-5.
[17] Motion at 2-5.
[18] Motion at 3-5.
[19] Motion at 3-4.
[20] *See e.g.*, *FOP/MPD Labor Comm. v. MPD*, 63 D.C. Reg. 6490, Slip Op. No. 1568, PERB Case No. 09-U-37 (2016) (upholding the Executive Director's dismissal of a complaint due to untimeliness and failure to state a claim because the dismissal was reasonable and supported by PERB precedent).
[21] Dismissal at 1-4.
[22] Dismissal at 2-4.
[23] Dismissal at 2 (citing *FOP/MPD Labor Comm. v. MPD*, 60 D.C. Reg. 2585, Slip Op. No. 1360 at 4, PERB Case No. 12-U-13 (2013)).
[24] *E.g.*, *AFGE, Local 2725 v. DCRA*, 59 D.C. Reg. 5041, Slip Op. No. 969, PERB Case No. 06-U-43 (2012).
[25] *Washington Teachers' Union, Loc. No. 6, Am. Fed'n of Tchrs., AFL-CIO v. D.C. Pub. Sch.*, 77 A.3d 441, 451 (D.C. 2013).
[26] *E.g.*, *AFSCME, Council 20 v. D.C. Gen. Hosp. & OLRCB*, 36 D.C. Reg. 7101, Slip Op. No. 227, PERB Case No. 88-U-29 (1989).
[27] *Washington Teachers' Union, Loc. No. 6, Am. Fed'n of Tchrs., AFL-CIO*, 77 A.3d at 447.

arbitration relief, it may submit a motion to stay arbitration to the D.C. Superior Court, in accordance with the Arbitration Act.[28]

In the present case, DOH has not availed itself of the option to seek pre-arbitration relief through the D.C. Superior Court, nor has it engaged in arbitration and exercised its right to appeal the award to the Board. Rather, DOH has summarily refused to arbitrate AFGE's grievances, thereby precluding an arbitrability determination concerning the assignment of work outside position descriptions. The Board "has primary jurisdiction to determine whether a particular act or omission constitutes an unfair labor practice under the CMPA."[29] Here, the Board finds DOH has failed to bargain in good faith with AFGE, thereby committing an unfair labor practice in violation of D.C. Official Code § 1-617.04(a)(1) and (5) of the CMPA.

III. Conclusion

Accordingly, the Motion for Reconsideration is Granted.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Motion for Reconsideration is Granted;
2. The District of Columbia Department of Health shall cease and desist from violating D.C. Official Code § 1-617.04(a)(1) and (5) of the CMPA;
3. The District of Columbia Department of Health shall arbitrate the grievances which the American Federation of Government Employees, Local 2725 filed concerning assignment of work outside position descriptions;
4. The District of Columbia Department of Health shall post the attached notice to employees;
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 Douglas Warshof and Members Renee Bowser, Mary Anne Gibbons, and Peter Winkler.

January 16, 2025
Washington, D.C.

[28] D.C. Official Code § 16-4407.
[29] *Hawkins v. Hall*, 537 A.2d 571, 574 (D.C.1988).

APPEAL RIGHTS

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 is issued to file an appeal.