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**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD**

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In the Matter of:	)	
	)	
AMERICAN FEDERATION OF GOVERNMENT	)	
EMPLOYEES, LOCAL 872,	)	PERB Case No. 00-U-24
	)	
Complainant,	)	
	)	
	)	
	)	Opinion No. 660
	)	
	)	
v.	)	
	)	
DISTRICT OF COLUMBIA	)	
WATER AND SEWER AUTHORITY,	)	
	)	
Respondent.	)	

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**DECISION AND ORDER**

This matter involves an Unfair Labor Practice Complaint filed by the American Federation of Government Employees (AFGE), Local 872 ("Complainant" or "Union") against the District of Columbia Water and Sewer Authority ("Respondent" or "WASA"). The Complainant contends that WASA violated D.C. Code § 1-618.4 (a)(1) (3) and (5) by: (1) unilaterally creating a new Large Accounts Unit as part of WASA's Account Billing and Investigation Branch<sup>1</sup> (AB &I); (2) refusing to bargain over the impact and effect of the creation of the new unit; (3) failing to honor an agreement to rotate all AB & I Branch employees into the Large Accounts Unit; and (4) retaliating against employees [who complained about not being transferred into the large accounts unit] by increasing their workload.

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<sup>1</sup>WASA's Department of Water Measurement and Billing has a Credit and Collection Division, of which the Account Billing and Investigation (A B & I) Branch is a part.

The Respondent denies the allegations. WASA asserts that the Management Rights provisions of the parties' collective bargaining agreement and the Comprehensive Merit Personnel Act (CMPA) authorize it to create the Large Accounts Unit. Furthermore, WASA contends that it is not required to bargain with AFGE, Local 872 over the impact of such a change.<sup>2</sup>

A hearing was held. The Hearing Examiner found that the Respondent did not violate D.C. Code §1-618.4 (a)(1), (3) and (5).<sup>3</sup> Specifically, the Hearing Examiner determined that WASA did not have a duty to bargain over the impact and effect of creating the Large Accounts Unit.<sup>4</sup> ( R & R at 9) The Hearing Examiner based this decision on her determination that there was no change in the terms and conditions of employment which would necessitate impact bargaining.<sup>5</sup> Further, the Hearing Examiner noted that the evidence supports the conclusion that management created the Large Accounts Unit to increase efficiency. <sup>6</sup> ( R & R at 9) As a result, the Hearing Examiner

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<sup>2</sup>Article 4 of the parties' collective bargaining agreement states in pertinent part that: "the Authority shall retain the sole right to direct employees of the Authority...to maintain the efficiency of the Authority...to determine the mission of the Authority...its operations...the number of employees assigned to an organizational unit."

Also, D.C. Code §1-618.8, titled "Management Rights; matters subject to collective bargaining", outlines the management rights that are not subject to the collective bargaining process.

<sup>3</sup>No exceptions were filed by the parties.

<sup>4</sup>Relying on the Management Rights provisions (D.C. Code §1-618.8 ) of the Comprehensive Merit Personnel Act, as cited in the parties' collective bargaining agreement, the Hearing Examiner noted that "management can unilaterally implement a management right".

<sup>5</sup>The Board has held that Management is required to bargain with the Union on the impact of a change at the request of the Union, if the change affects the negotiable terms and conditions of bargaining unit members. Washington Teachers' Union v. D.C. Public Schools, \_\_DCR\_\_, Slip Op. No. 417, PERB Case No. 92-U-13, (1995).

In this case, the Hearing Examiner determined that "there was insufficient evidence presented that there was any change in the terms and conditions of the employees in the branch caused by the creation of the unit." ( R & R at 9)

<sup>6</sup>In response to other allegations made in the Union's Complaint, the Hearing Examiner determined that there was insufficient evidence to establish that a promise was made to rotate employees into the Large Accounts Unit. Further, the Hearing Examiner found that there was *no*

(continued...)

determined that the Complainant did not meet its burden of proving that WASA committed an unfair labor practice and recommended that the Complaint be dismissed.

A review of the record reveals that the Hearing Examiner's findings and conclusions are supported by evidence, are reasonable and consistent with Board precedent. Accordingly, we dismiss the Union's Unfair Labor Practice Complaint.

Pursuant to D.C. Code §1-605.2(3) and Board Rule 520.14, the Board has reviewed the findings, conclusions and recommendations of the Hearing Examiner and for the reasons discussed above, we adopt the Hearing Examiner's findings.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Unfair Labor Practice Complaint is dismissed.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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

July 20, 2001

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<sup>6</sup>(...continued)

evidence presented which established that management retaliated against any bargaining unit member for expressing concerns to management about not being rotated into the Large Accounts Unit. Finally, the Hearing Examiner found that WASA did not commit an unfair labor practice when a manager met with employees of the A B & I Branch, without the Union being present.

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Oder in PERB Case No.00-U-24 was transmitted via Facsimile and/or U.S. Mail to the following parties on this 20<sup>th</sup> day on July 2001.

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