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**Government of the District of Columbia
Public Employee Relations Board**

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In the Matter of:)	
)	
District of Columbia Public Schools,)	PERB Case Nos. 14-U-20
)	
Complainant,)	Opinion No. 1587
)	
v.)	
)	
Washington Teachers' Union, Local 6,)	
)	
Respondent.)	
)	
)	

DECISION AND ORDER

Complainant District of Columbia Public Schools (“DCPS”) filed an unfair labor practice complaint alleging that Respondent Washington Teachers’ Union, Local 6 (“WTU Local 6”) violated D.C. Official Code §§ 1-617.04(b)(1) and (3) by refusing to honor the bargained-for process in the parties’ Collective Bargaining Agreement (“CBA”) for implementing a non-traditional instructional schedule. WTU denies the allegations. For the reasons explained below, DCPS’s complaint is dismissed.

I. Statement of the Case

In 2014, DCPS desired to extend the school day by one hour at all DCPS middle schools and certain lower performing elementary schools during the 2014-2015 school year.¹

In March, April, and May of 2014, DCPS attempted multiple times to telephone and/or email WTU’s President, Elizabeth Davis, to begin what it interpreted to be the contractually

¹ Complaint at 3.

agreed-upon process to implement its proposal.² DCPS asserted that part of that process was to communicate its proposal to the bargaining unit's members.³

On or about May 5, 2014, Ms. Davis emailed DCPS and demanded that DCPS cease communicating with its members regarding the proposal.⁴ Ms. Davis asserted that DCPS' desire to extend the school day by one hour was a topic that, according to the CBA, DCPS needed to negotiate with WTU directly.⁵

On July 17, 2014, DCPS filed the instant unfair labor practice complaint, alleging that: (1) WTU's refusal to follow the process outlined in the CBA to consider DCPS' extended day initiative violated D.C. Official Code § 1-617.04(b)(1) by interfering with, restraining, and coercing the District in its exercise of the rights exclusively reserved to management in D.C. Official Code § 1-617.08, *et seq.*; (2) WTU's active discouragement of its members from exercising "rights clearly bargained for and agreed between the parties during their last round of bargaining" violated D.C. Official Code § 1-617.04(b)(1) by interfering with, restraining, and coercing those members in the exercise of their statutory rights; (3) WTU's refusal "to honor the bargained-for agreement that exists between DCPS and the WTU" constituted a failure to bargain with DCPS in good faith, in violation of D.C. Official Code § 1-617.04(b)(3); and (4) WTU's refusal "to adhere to the clear and unambiguous contract language detailing the... process... for implementing changes to the work day of bargaining unit members" also constituted bad faith bargaining, in violation of D.C. Official Code § 1-617.04(b)(3).⁶

As a remedy, DCPS asks that PERB: find that WTU violated D.C. Official Code §§ 1-617.04(b)(1) and (3) ; order WTU to refrain from repudiating the parties' CBA; order WTU to "consider the proposals for extended school days at all targeted schools for the 2014-2015 school year"; order WTU to pay DCPS' costs in this matter; and order WTU to post a notice detailing its violations of the stated statutes.⁷

In its Answer, WTU rejected DCPS' interpretation of the CBA regarding the appropriate process to implement its proposal.⁸ WTU further denied that it failed or refused to respond to DCPS' efforts to bargain, or that it violated D.C. Official Code §§ 1-617.04(b)(1) and (3) in any of the manners alleged.⁹ WTU raised affirmative defenses that the complaint should be dismissed because WTU failed to state a claim for which PERB can grant relief; that PERB lacks jurisdiction over the case because the dispute is purely contractual and should therefore be resolved through the parties' negotiated grievance and arbitration process; and that WTU already filed a grievance on April 9, 2014 to resolve the dispute.¹⁰

² *Id.* at 3-4 (referring to CBA Articles 23.8.1-2, and 23.15.1-2).

³ *Id.*

⁴ *Id.*: *see also* Exhibit 6.

⁵ *Id.* (citing CBA Article 1.1)

⁶ *Id.* at 5.

⁷ *Id.* at 5-6.

⁸ Answer at 2-5.

⁹ *Id.* at 2, 4-5.

¹⁰ *Id.* at 7-8.

II. Analysis

When a party files an unfair labor practice complaint, the Board conducts an investigation to determine, among other things, whether the allegations, if proven, could constitute a statutory violation of the Comprehensive Merit Personnel Act (“CMPA”).¹¹ In the process of making this determination, the Board distinguishes between obligations imposed by the CMPA and those that are imposed by the parties’ collective bargaining agreement.¹² The CMPA empowers the Board to resolve statutory violations, but not contractual violations.¹³ If the record demonstrates that an allegation concerns a violation of the CMPA, then even if it also concerns a violation of the parties’ contract, the Board still has jurisdiction over the statutory matter and can grant relief accordingly if the allegation is proven.¹⁴ However, if the Board must interpret the parties’ CBA in order to determine whether there has been a violation of the CMPA, then the Board does not have jurisdiction over the allegations.¹⁵

Here, upon reviewing the record as a whole, the Board finds that it is not possible to determine whether WTU violated D.C. Official Code §§ 1-617.04(b)(1) and (3) without first determining which of the parties’ competing interpretations of the relevant CBA provisions is correct.¹⁶ Since PERB does not have the authority to interpret the parties’ CBA, the Board finds that it lacks jurisdiction over DCPS’ allegations.¹⁷ DCPS’ Complaint is therefore dismissed.¹⁸

¹¹ See PERB Rule 520.8.

¹² *Fraternal Order of Police/Metro. Police Dep’t Labor Comm. v. D.C. Metro. Police Dep’t*, 60 D.C. Reg. 2585, Slip Op. No. 1360 at p. 5-6, PERB Case No. 12-U-31 (2013), aff’d, *Fraternal Order of Police/Metro. Police Dep’t Labor Comm. v. D.C. Pub. Emp. Relations Bd.*, Case No. 2013 CA 001289 P(MPA) (D.C. Super. Ct. Apr. 18, 2014).

¹³ *Id.*; see also *Fraternal Order of Police/Metro. Police Dep’t Labor Comm. v. D.C. Metro. Police Dep’t and Cathy Lanier*, 59 D.C. Reg. 5427, Slip Op. No. 984 at p. 7, PERB Case No. 08-U-09 (2009).

¹⁴ *Fraternal Order of Police/Metro. Police Dep’t Labor Comm. v. D.C. Metro. Police Dep’t*, 60 D.C. Reg. 9212, Slip Op. No. 1391 at p. 22, PERB Case Nos. 09-U-52 and 09-U-53 (2013), aff’d, *D.C. Metro. Police Dep’t v. D.C. Public Emp. Relations Bd. and Fraternal Order of Police/Metro. Police Dep’t Labor Comm.*, Case No. 2013 CA 004572 P(MPA) (D.C. Super. Ct. Jun. 13, 2014).

¹⁵ *Fraternal Order of Police/Metro. Police Dep’t Labor Comm. v. D.C. Metro. Police Dep’t*, 62 D.C. Reg. 13348, Slip Op. No. 1534 at p. 7, PERB Case No. 08-U-22 (2015); see also *FOP v. MPD*, Slip Op. No. 1360 at p. 5-6, PERB Case No. 12-U-31.

¹⁶ When the meaning of a CBA provision is clear on its face and/or undisputed by the parties, the Board can rely on that unambiguous and/or stipulated meaning to determine whether an alleged statutory violation occurred. But that is not the case here. DCPS and WTU have each presented contrasting interpretations of the relevant contractual provisions. Therefore, in order to determine whether DCPS’ statutory allegations have any merit, the Board would have to decide which of the parties’ different interpretations is correct. As has been noted, PERB does not have the authority to do that. Therefore, PERB must dismiss the Complaint. See *FOP v. MPD*, Slip Op. No. 1534 at p 7-8, PERB Case No. 08-U-22; see also *FOP v. MPD*, Slip Op. No. 1360 at p. 5, PERB Case No. 12-U-31.

¹⁷ See *FOP v. MPD*, Slip Op. No. 1534 at p 7-8, PERB Case No. 08-U-22; see also *FOP v. MPD*, Slip Op. No. 1360 at p. 5-6, PERB Case No. 12-U-31.

¹⁸ In accordance with the Board’s finding that it lacks jurisdiction over this matter, the parties’ factual disputes should be resolved by and through WTU’s April 9, 2014, grievance. See Answer at 8 and Exhibit 1.

ORDER

IT IS HEREBY ORDERED THAT:

1. DCPS' Complaint is Dismissed: and
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Ann Hoffman, Barbara Somson, and Douglas Warshof. Member Yvonne Dixon was not present.

July 27, 2016

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 14-U-20, Op. No. 1587 was sent by File and ServeXpress to the following parties on this the 3rd day of August, 2016.

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