Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Doctors' Council of the District of Columbia	
Petitioner,	PERB Case No. 11-U-22
and	Opinion No. 1613
Department of Youth and Rehabilitation Services	
Respondent.	

DECISION AND ORDER

I. Introduction and Procedural Background

On February 22, 2011, the Doctors' Council of the District of Columbia ("Union" or "Complainant") filed an Unfair Labor Practice Complaint ("Complaint") against the District of Columbia Department of Youth and Rehabilitation Services ("DYRS" or "Respondent"), alleging that DYRS violated the Comprehensive Merit Personnel Act ("CMPA"), D.C. Official Code §§ 1-617.04(a)(1) and (5), by: (1) failing to engage in good faith impact and effects bargaining related to a reduction-in-force ("RIF") implemented on October 22, 2010; (2) failing to provide relevant and necessary information upon request; (3) eliminating three bargaining unit positions and transferring the work to non-bargaining unit positions; and (4) refusing to select an FMCS arbitrator after a timely request to do so was made by the Complainant.[1]

In an Answer filed on March 10, 2011, DYRS denied that it committed any unfair labor practices and asked the Board to dismiss the Complaint.[2] On October 29, 2011, the Board denied DYRS' request to dismiss the Complaint on the grounds that the pleadings alone were

[1] D.C. Official Code § 1-617.04(a)(1), (5) (2014); Report on Remand at 1.
[2] Report on Remand at 2.

insufficient for the Board to resolve the disputed issues.[3] The Board ordered an unfair labor practice hearing before a Board-appointed Hearing Examiner.[4]

A hearing was held in this matter on August 24 and September 19, 2012 before a Hearing Examiner who issued a Report and Recommendations ("Report") on June 17, 2013.[5] Based on the Report, the Board dismissed two of the four charges with prejudice, concluding that the Union failed to meet its burden of proof that (1) DYRS failed to engage in impact and effects bargaining prior to the implementation of the RIF; and (2) DYRS had eliminated bargaining unit positions and replaced them with non-bargaining positions.[6] As to the two remaining charges (failure to provide requested information and refusal to select an arbitrator), the Hearing Examiner determined that "[the Union] did not meet its burden of proof…that Respondent acted in bad faith."[7] The Board found that the Hearing Examiner's conclusions were not supported by Board precedent, noting "a showing of bad faith is not required" in determining whether an unfair labor practice occurred.[8] The Board remanded the aforementioned remaining charges to the Hearing Examiner and directed her to make factual findings and conclusions regarding: (1) whether DYRS failed to furnish relevant and necessary information requested by the Union; (2) whether DYRS' refusal to arbitrate constituted an unfair labor practice; and (3) whether any of the remaining allegations were untimely.[9]

The Union submitted a timely Motion for Reconsideration requesting the Board to reconsider its decision regarding the timeliness of its exceptions and the adoption of the Hearing Examiner's recommendations to dismiss two of the four unfair labor practice allegations. In Slip Opinion 1460, the Board denied the Union's Motion.[10] The case was then referred to the Hearing Examiner.

The parties jointly submitted stipulated findings of fact, contested findings of fact and other materials to the Hearing Examiner.[11] On May 27, 2015, the Hearing Examiner issued a Report and Recommendations on Remand ("Report on Remand"). No Exceptions to the Hearing Examiner's Report on Remand were submitted.

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[3] *Doctors' Council of D.C. v. D.C. Dep't of Youth and Rehab. Serv*., 59 D.C. Reg. 6865, Slip Op. 1208, PERB Case No. 11-U-22 (2011).
[4] Report on Remand at 2.
[5] *Id*.
[6] *Doctors' Council of D.C. v. D.C. Dep't of Youth and Rehab. Serv*., 60 D.C. Reg. 16255, Slip Op. 1432, PERB Case No. 11-U-22 (2013).
[7] *Id*.
[8] *Id*.
[9] Report on Remand at 2; *Doctors' Council of D.C.*, Slip Op. 1432 at 13.
[10] *Doctors' Council of D.C. v. Dep't of Youth and Rehab. Serv.*, 61 D.C. Reg. 5138, Slip Op. 1460, PERB Case No. 11-U-22 (2014).
[11] Report on Remand at 2-3.

II. Issues on Remand

A. Did Complainant meet its burden of proof that Respondent committed an unfair labor practice in this matter by failing to provide the Union with relevant and necessary information that it requested?

B. Did Complainant meet its burden of proof that the Respondent committed an unfair labor practice in this matter by refusing to select an arbitrator?

C. Are any document requests made by Complainant to Respondent barred from consideration based on timeliness?

III. Discussion

A. Factual Findings

The Hearing Examiner concluded that the relevant facts are not in dispute.[12] The Hearing Examiner previously discussed the findings of fact, which are stated in Slip Opinion 1208 and Slip Opinion 1432, and are restated here only where necessary.

B. Hearing Examiner's Report and Recommendations on Remand

As noted above, no Exceptions to the Report on Remand were filed for the Board's consideration.[13] The Board will affirm a Hearing Examiner's Report and Recommendations if the recommendations therein are reasonable, supported by the record, and consistent with Board precedent.[14] Pursuant to Board Rule 520.11, "[t]he party asserting a violation of the CMPA, shall have the burden of proving the allegations of the complaint by a preponderance of the evidence." The Board has held that "issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner."[15]

1. Did Complainant meet its burden of proof that Respondent committed an unfair labor practice in this matter by failing to provide the Union with relevant and necessary information that it requested?

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[12] *Id*. at 5.
[13] Regardless of whether Exceptions have been filed, the Board will adopt a hearing examiner's recommendations if it finds, upon full review of the record, that the hearing examiner's analysis, reasoning, and conclusions are "rational and persuasive." *Council of Sch. Officers, Local 4, Am. Fed'n of Sch. Adm'r v. D.C. Pub. Sch*., 59 D.C. Reg. 6138, Slip Op. 1016 at 6, PERB Case No. 09-U-08 (2010) (quoting *D.C. Nurses Ass'n and D.C. Dep't of Human Serv.*, 32 D.C. Reg. 3355, Slip Op. 112, PERB Case No. 84-U-08 (1985)).
[14] *See Am. Fed'n of Gov't Emp., Local 1403 v. D.C. Office of the Attorney General*, 59 D.C. Reg. 3511, Slip Op. 873, PERB Case No. 05-U-32 and 05-UC-01 (2012); *See also Council of Sch. Officers, Local 4, Am. Fed'n of Sch. Adm'r*, Slip Op. 1016 at 6 *(quoting D.C. Nurses Ass'n and D.C. Dep't of Human Serv.,supra*, 32 D.C. Reg. 3355, Slip Op. 112).
[15] *Council of Sch. Officers, Local 4, Am. Fed'n of Sch. Adm'r v.* Slip Op. 1016 at 6; *Tracy Hatton v. FOP/DOC Labor Comm*., 47 D.C. Reg. 769, Slip Op. 451 at 4, PERB Case No. 95-U-02 (1995).

It is undisputed that on August 18, 2010, in response to a contemplated RIF, the Complainant submitted an information request to the Respondent.[16] The parties agree that the Respondent did not respond to the following twelve (12) requests which are at issue here[17]: (1) the position description for MSS-Supervisory Medical Officer (SMO) position; (2) any analysis prepared for the SMO position; (3) the Shansky Report; (4) the Shansky contract; (5) the vendor agreements; (6) the analysis of cost/budget implications of the new medical model; (7) the Weisman memorandum; (8) the description of the new medical model; (9) the position descriptions for bargaining unit physicians subject to the RIF; (10) the FY2011 budget materials related to the Health Services Administration ("HSA"); (11) the list of vacancies in the D.C. System for doctors ("Vacancy List"); and (12) the Post-RIF Organization Chart for the entire HSA.

The Board has held that an agency has an obligation to furnish information that a union requests that is both relevant and necessary to the union's role in processing a grievance, preparing for an arbitration proceeding, or in collective bargaining.[18] When an agency has failed and refused, without a viable defense, to produce information that the union has requested, the agency fails to meet its statutory duty to bargain in good faith and has therefore violated D.C. Official Code § 1-617.04(a)(5).[19] In addition, "a violation of the employer's statutory duty to bargain also constitutes a violation of the counterpart duty not to interfere with the employees' statutory rights to organize a labor union free from interference, restraint or coercion; to form, join or assist any labor organization or to refrain from such activity; and to bargain collectively through representatives of their own choosing" found in D.C. Official Code §1-617.04(a)(1).[20]

In this case, the Board initially referred the case the a Hearing Examiner to determine the issue of whether the information requested was relevant and necessary for the Union to represent its members, the criterion which must be met in order to find that the Respondent is required to provide the information.[21] On remand, the Hearing Examiner reviewed each of the twelve (12) documents requested and further summarized the parties' positions as to whether the items were relevant and necessary.[22] Based on an analysis of the evidence presented, the Hearing Examiner

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[16] Joint Submission at 3.
[17] Report on Remand at 7-8.
[18] *FOP/MPD, Labor Comm. v. Metro. Police Dept*., 63 D.C. Reg. 6490, Slip Op. 1568 at 3, PERB Case No. 09-U-37 (Feb. 18, 2016); *Washington Teachers' Union, Local No. 6 v. D.C. Pub. Sch.*, 61 D.C. Reg. 1537, Slip Op. No. 1448 at 4, PERB Case No. 04-U-25 (2014); *F.O.P./Metro. Police Dep't Labor Comm. v. D. C. Metro. Police Dep't*, 59 D.C. Reg. 6781, Slip Op. No. 1131 at p. 4, PERB Case No. 09-U-59 (Sept. 15, 2011); *Am. Fed'n of State, County and Municipal Emp., D.C. Council 20, Local 2921 v. D.C. Pub. Sch*., 42 D.C. Reg. 5685, Slip Op. No. 339, PERB Case No. 92-U08 (1992).
[19] *Am. Fed'n of Gov't Emp., Local 2725 v. D.C. Dep't of Health*, 59 D.C. Reg. 6003, Slip Op. No. 1003 at p. 4, PERB Case 09-U-65 (2009) (*citing Psychologists Union, Local 3758 of the D.C. Dep't of Health, 1199 National Union of Hospital and Health Care Employees, Am. Fed'n of State County and Municipal Emp., AFL-CIO v. D.C. Dep't of Mental Health*, 54 D.C. Reg. 2644, Slip Op. No. 809, PERB Case No. 05-U-41).
[20] *Id.* (quoting *Am. Fed'n of State, County and Municipal Emp., Local 2776 v. D.C. Dep't of Finance and Revenue*, 37 D.C. Reg. 5658, Slip Op. No. 245 at p. 2, PERB Case No. 89-U-02 (1990)).
[21] Slip Op. 1208 at 7.
[22] Report on Remand at 8.

concluded that the Union did not meet its threshold burden of establishing relevancy with regard to six of the twelve items that were not provided by DYRS.[23]

Specifically, the Hearing Examiner relying on what she deemed the "credible" testimony of Dean Aqui, Esq., concluded that the Complainant failed to meet its burden in proving that a ULP was committed when the Respondent failed to provide (a) The Shansky Report; (b) the Shansky Contract; (c) the FY2011 budget materials; (d) the Vacancy List; (e) the Organization chart[24]; and (f) the Weisman Memorandum.[25]

We reject, in part, the Hearing Examiner's findings here. A review of the record shows that Mr. Aqui characterized the Respondent's failure to provide the FY2011 budget materials as an oversight.[26] He also did not provide the Vacancy List, in part because of an oversight, but also because he thought that the Union could get it just as easily on a website.[27] Neither of these responses excuses the failure to provide the information nor constitutes a defense that the information was not relevant and necessary. Because the Respondent failed to provide the information when it clearly stated it would do so, under the facts of this case, the Board finds that the Respondent's failure to provide the FY2011 budget materials and the Vacancy List is an unfair labor practice.

The Hearing Examiner determined that the Complainant "offered a reasonable explanation" regarding the relevancy of each of the remaining documents and therefore met its burden of proof on the six remaining information requests, namely; (a) the position description for the SMO position; (b) any analysis prepared for the SMO position; (c) the Vendor Agreements; (d) the analysis of cost/budget implications of the new medical model; (e) the description of the new medical model; and (f) the position descriptions for bargaining unit physicians subject to the RIF.[28]

The Board finds that the Hearing Examiner's findings that Respondent committed an unfair labor practice by failing to provide the Complainant with these six (6) items are reasonable, supported by the record, and consistent with Board precedent. Accordingly, the Board adopts the Hearing Examiner's findings and conclusions and finds that the Respondent failed to meet its statutory duty to bargain in good faith in violation of D.C. Official Code §1-617.04(a)(1).

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[23] *Id*. at 9.
[24] Mr. Aqui testified at the Hearing that he did provide the Organization chart (Tr. at 268-269). We therefore agree with the Hearing Examiner that there is no ULP for failure to provide it.
[25] *Id*. at 9.
[26] *Id*. at 8.
[27] *Id*.
[28] Report on Remand at 10.

2. Did Complainant meet its burden of proof that the Respondent committed an unfair labor practice in this matter by refusing to select an arbitrator?

On remand, the Board directed the Hearing Examiner to make factual findings and conclusions as to whether the Respondent's refusal to arbitrate was an unfair labor practice.[29]

The Board has held that a party commits an unfair labor practice when it fails or refuses to implement a viable collective bargaining agreement where no dispute exists over its terms.[30] The Board has found that such conduct constitutes a repudiation of the collective bargaining process and a violation of the duty to bargain.[31] However, there is no statutory violation if the complainant does not offer "any specifics indicating a repudiation of the agreement" as opposed to disputes over its terms.[32] In order to determine whether a party's failure to implement the agreement is a statutory violation, the Board must decide whether a party's actions were reasonable under the circumstances of the case.[33] For example, in *Fraternal Order of Police/Dep't of Youth Rehabilitation Services Labor Comm. v. D.C. Dep't of Youth Rehabilitation Services*, the Board found that an agency did not act in bad faith in refusing to reinstate an employee as a part of a negotiated agreement when it learned that reinstating the employee would be in violation of District law.[34] The Board concluded that such a scenario constitutes a genuine dispute over the terms of an agreement, and an agency does not violate the CMPA by failing to implement the terms of the agreement.[35]

The facts of the instant case are similar to those of *Fraternal Order of Police/Dep't of Youth Rehabilitation Services Labor Committee*. In each case, the agency was obligated to comply with a negotiated agreement, and in each case the agency learned that District law prohibited compliance with the agreement. In the current matter, the Hearing Examiner noted that DYRS' refusal to arbitrate was limited to reduction-in-force ("RIF") related issues, and its reasoning was based on the D.C. Superior Court decision, *AFGE Local No. 383, AFL-CIO v. District of Columbia*, ("Leibowitz decision").[36] Furthermore, the Hearing Examiner found that the evidence established that DYRS reasonably relied on the Leibowitz decision to support its

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[29] *Doctors' Council of D.C.*, Slip Op. 1432 at 13.
[30] *E.g., Teamsters Local Union Nos. 639 & 730 v. D.C. Pub. Sch*., 43 D.C. Reg. 6633, Slip Op. 400 at 7, PERB Case No. 93-U-29 (1994); *D.C. Water & Sewer Auth. v. AFGE, Local 872*, 59 D.C. Reg. 4659 Slip Op. No. 949 at 6-7, PERB Case No. 05-U-10 (2009).
[31] *AFGE, Local 872, AFL-CIO v. D.C. Water and Sewer Auth.*, 46 D.C. Reg. 4398, Slip Op. 497, PERB Case No. 96-U-23 (1996); *Teamsters Local Union Nos. 639 & 730 v. D.C. Pub. Sch*., Slip Op. No. 400 at 7; *See also Am. Fed'n of State, County, and Municipal Emp., District Council 20 v. D.C. Gov't*, Slip Op. No. 1387 at 4, PERB Case No. 08-U-36 (2013).
[32] *Id*.; *AFSCME AFL-CIO v. D.C. Gov't*, Slip Op. 1387, PERB Case No. 08-U-36 (2013); *Teamsters Local Union Nos. 639 & 730*, 43 D.C. Reg. 6633, Slip Op. No. 400 at 7, PERB Case No. 93-U-29 (1994). *See also D.C. Water & Sewer Auth. v. AFGE, Local 872*, 59 D.C. Reg. 4659, Slip Op. 949 at 6-7, PERB Case No. 05-U-10 (2009).
[33] *See, Watkins v. D.C. Dep't of Corrections*, Slip Op. 655, PERB Case No. 99-U-28 (2001) (finding that "the question that the Board must answer is whether a two month period was a reasonable time for the DOC to implement the award….").
[34] *Fraternal Order of Police/Dep't of Youth Rehabilitation Services Labor Comm. v. D.C. Dep't of Youth Rehabilitation Services*, 59 D.C. Reg. 6755, Slip Op. No. 1127, PERB Case No. 11-U-31 (2011).
[35] *Id*.
[36] Report on Remand at 12.

position that the Abolishment Act (D.C. Official Code § 1-624.08) invalidated the arbitration clause in the parties' bargaining agreement.[37] The Hearing Examiner found that even though two other judges of the Superior Court reached contrary conclusions on that issue, the Leibowitz decision was the only decision pending at the time of DYRS' refusal to select an arbitrator.[38] As such, the Hearing Examiner found that the evidence did not establish that DYRS' position and reliance on the Leibowitz decision was unreasonable at the time. Therefore, the Hearing Examiner concluded that the Complainant did not meet its burden of proof that Respondent's refusal to arbitrate, based on its reliance on the Leibowitz decision, constituted an unfair labor practice.[39]

The Board notes, however, that after the Hearing Examiner rendered her Report in this case, the D.C. Court of Appeals held that RIFs are governed by the Abolishment Act (D.C. Code § 1-625.08), and not by the parties' CBA, rendering RIFs not arbitrable.[40] Without relying on the Court Of Appeals' recent holding, the Board finds that the Hearing Examiner's recommendation that the Complainant did not meet its burden of proof that Respondent's refusal to arbitrate constituted an unfair labor practice is consistent with the precedent set in *Fraternal Order of Police/Dep't of Youth Rehabilitation Services Labor Committee*. Accordingly, the Board finds that this recommendation is reasonable, supported by the record, and based on Board precedent.[41] Therefore, the Board adopts the Hearing Examiner's recommendations that the Complainant's allegations concerning the Respondent's refusal to arbitrate be dismissed.

3. Are any document requests made by Complainant to Respondent barred from consideration based on timeliness?

The Board raised the issue of whether any of Complainant's information requests were untimely in Slip Opinion 1432 and directed the Hearing Examiner to make factual findings and conclusions regarding the timeliness of the remaining allegations.[42] Even though the parties did not argue that the Board lacked jurisdiction in the pleadings, the Board has the authority to raise jurisdiction before a Decision and Order becomes final.[43]

The Hearing Examiner noted that under Board Rule 520.4, unfair labor practice complaints must be filed no later than 120 days after the date on which the alleged violations occurred.[44] The Court of Appeals has interpreted Board Rule 520.4 to require that a Complainant file a complaint within 120 days after the Complainant knew or should have known of the events

[37] *Id*. at 13; *See AFGE Local No. 383, AFL-CIO v. The District of Columbia, et. al*, N. 2008 CA 006932B (D.C. Super. Ct. 2009).
[38] Report on Remand at 14.
[39] *Id*.
[40] *UDC v. AFSCME*, Dist. Council 20, Local 2087, 130 A.3d 335 (D.C. 2016).
[41] *AFSCME, District Council 20, AFL-CIO v. D.C. Gov't*, 60 D.C. Reg. 7170, Slip Op. 1377, PERB Case No. 08-U-36 (2013).
[42] Report on Remand at 12-13.
[43] *Fraternal Order of Police/Metro. Police Dep't, Labor Comm. v. D.C. Metro. Police Dep't*, 60 D.C. Reg. 5322, Slip Op. 1372, PERB Case No. 11-U-52(a) (2013).
[44] Report on Remand at 14.

giving rise to the allegations. [45] Board Rule 520.4 is mandatory and jurisdictional. Thus, the Board does not have the discretion to make exceptions for extending the deadline for initiating an action.[46]

In calculating the timeliness of the remaining information requests, the Hearing Examiner applied a "reasonableness standard" stating:

> In *Forrester v. AFGE, Local 2725 and D.C. Housing Authority*, the Board established a reasonableness standard that would be applied on a case-by-case basis. Allegations of violations that precede the 120 day period are not automatically dismissed as untimely since the parties may communicate a period of time before the Union can reach the decision that the employer is not going to provide the requested information.[47]

The Hearing Examiner found that between August 11, 2010 and November 15, 2010, the parties discussed the information requests.[48] Noting that in the parties' final communication on November 15, 2010, Mr. Aqui stated that the Respondent determined that some of the information requested would be provided "shortly."[49] The Union filed its complaint on February 11, 2011. Accordingly, the Hearing Examiner found that some of the information requests were initially made outside of the 120 days, but concluded that it was reasonable for the Complainant to delay filing the Complaint "several weeks" after the parties' final communication on November 15 "while communications were ongoing and documents were being provided."[50] Thus, she determined that December 1, 2010 was a reasonable date by which the Complainant knew or should have known that the Respondent was not going to provide the additional documents.[51] This date is well within the 120 day requirement. Therefore, the Hearing Examiner concluded that none of the information requests should be dismissed as untimely.[52]

The Board concludes that the Hearing Examiner's findings that December 1, 2010 is a reasonable date by which the Complainant knew or should have known that the Respondent was not going to provide the additional documents is reasonable, supported by the record, and consistent with Board precedent. Therefore, we adopt the Hearing Examiner's conclusion that none of the Union's information requests should be dismissed as untimely.

4. Remedy

In view of the Hearing Examiner's Report on Remand and the Board's decision in Slip Opinion 1432, the Hearing Examiner reviewed only the issues of costs and *status quo ante* relief. Regarding costs, having determined that the Union did not meet its burden of proof in three of

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[45] *See, Hoggard v. Pub. Emp. Relations Bd., MPA-93-33* (Super. Ct. 1994), *aff'd*, 655 A 2d. 320 (D.C. 1995).
[46] *Id*.
[47] Report on Remand at 14 (internal citations omitted).
[48] *Id.*
[49] *Id*.
[50] *Id*. at 15.
[51] *Id*.
[52] *Id*.

the four issues presented in this matter, the Hearing Examiner recommended that the Board not award costs as the "Complainant was not successful in a significant part of this matter and therefore did not meet the first requirement established by the Board" *in AFSCME, D.C. Council 20, Local 2776 v. D.C. Department of Finance and Revenue*.[53] In that case, the Board held that "any such award of costs necessarily assumes that the party to whom the payment is to be made was successful in at least a significant part of the case, and that the costs in question are attributable to that part."[54] In Slip Opinion 1432, the Board dismissed two of the four claims the Union presented in this matter.[55] In the present case, the Hearing Examiner recommended that the Board dismiss the Union's charge that DYRS committed an unfair labor practice by refusing to select an arbitrator and the Board adopted this recommendation. Accordingly, it cannot be stated that the Complainant was successful in at least a significant part of the case. Therefore, the Board adopts the Hearing Examiner's recommendation that the Board not award costs.

With regard to the Complainant's request for *status quo ante* relief that the Board (a) rescind the RIF; (b) reinstate the RIF'd bargaining unit members; and (c) cancel the relevant vendor agreements,[56] the Hearing Examiner recommended that the Board deny the relief sought here because: "(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's decision." [57] The Board finds that the Hearing Examiner's recommendation is reasonable, supported by the record and consistent with Board precedent. Therefore, the Board adopts the Hearing Examiner's recommendation that the Union's request for *status quo ante* relief be denied.

IV. Conclusion

Pursuant to D.C. Code § 1-605.02(3), the Board has reviewed the Hearing Examiner's findings, conclusions, and recommendations and for the reasons discussed above, the Board adopts the Hearing Examiner's Report and Recommendations on Remand to the extent that they are consistent with this Opinion.

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[53] *Id.*; *AFSCME, D.C. Council 20, Local 2776 v. D.C. Dep't of Finance and Revenue*, 73 D.C. Reg. 5658, Slip Op. 245 at 4-5, PERB Case No. 98-U-02 (2000) .
[54] *Id.*
[55] *Doctors' Council of D.C.*, Slip Op. 1432.
[56] Report on Remand at 16.
[57] *Id*. (*citing Am. Fed'n of Gov't Emp., Local 872 et al. v. D.C. Dep't of Pub. Works*, 49 D.C. Reg. 1145 (2002), Slip Op. 439, PERB Case No. 94-U-02 and 94-U-04 (1995)). In Slip Op. 1432, the Board adopted the Hearing Examiner's recommendation that the Union failed to meet its burden of proof that DYRS committed an unfair labor practice by refusing to engage in good faith impact and effects bargaining before implementing the RIF. (Slip Op. 1432 at 7). Even if the Board had found that DYRS committed an unfair labor practice, the Board has held that *status quo ante* relief is generally inappropriate to remedy a refusal to bargain over impact and effects. (*AFSCME Local 383 v. D.C. Dep't of Mental Health*, 52 D.C. Reg. 2527, Slip Op. 753 at 7, PERB Case No. 02-U-16 (2004) (*citing FOP/MPDLC v. MPD*, 47 D.C. Reg. 1449, Slip Op. 607, PERB Case No. 99-U-44 (2000))).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Department of Youth and Rehabilitation Services ("DYRS"), its agents, and its representatives shall cease and desist from refusing to bargain in good faith by failing to provide the documents and information requested by the Complainant.
2. Within ten (10) days from the issuance of this Decision and Order, DYRS shall furnish the Complainant with:
   a. The FY2011 Budget materials related to the HSA;
   b. The Vacancy List;
   c. The position description for the MSS-SMO position;
   d. The analysis for the MSS-SMO position;
   e. The Vendor Agreements;
   f. The analysis of cost/budget implications for the new medical model;
   g. The description of the new medical model, other than the Shansky Report; and
   h. The position descriptions for bargaining unit physicians subject to the RIF.
3. DYRS shall notify the Board of its compliance with this Order within ten (10) days from the issuance of this Decision and Order.
4. DYRS shall conspicuously post where the notices to employees are normally posted, a notice that the Board will furnish to DYRS. The notice shall be posted within ten (10) days from DYRS' receipt of the notice and shall remain posted for thirty (30) consecutive days.
5. DYRS shall notify the Public Employee Relations Board ("PERB" or "Board"), in writing, within fourteen (14) days from the receipt of the notice that it has been posted accordingly.
6. The Complainant's allegations that the Respondent unlawfully refused to select an arbitrator is dismissed with prejudice.
7. The Complainant's information requests are timely.
8. The Complainant's requests for additional relief are denied.
9. Pursuant to Board Rule 559.1, this Decisions and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By the unanimous vote of Board Chairperson Charles Murphy and Members Ann Hoffman and Douglas Warshof.

February 23, 2016

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 11-U-22, Op. No. 1613 was sent by File and ServeXpress to the following parties on this the 27th day of February, 2017.

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