

Notice: This decision may be fully revised before it is published in the District of Columbia Register. Parties should promptly notify the office of any formal errors to 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:)	
)	
International Brotherhood)	
of Police Officers,)	
Local No. 445, AFL-CIO)	PERB Case No. 94-U-13
)	Opinion No. 401
Complainant,)	
)	
v.)	
)	
District of Columbia)	
Department of Administrative)	
Services,)	
)	
Respondent.)	

DECISION AND ORDER

On March 22, 1994, the International Brotherhood of Police Officers, Local 445 (IBPO), filed an Unfair Labor Practice Complaint alleging that D.C. Department of Administrative Services (DAS) violated the Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 1-618.4(a)(1) and (5) by failing to provide IBPO, upon request, with "information relating to the union office space proposal to prepare for potential impasse arbitration and for continuing negotiations over the proposal." (Compl. at 3.) The Answer filed by the Office of Labor Relations and Collective Bargaining (OLRCB) does not dispute the material facts alleged in support of the Complaint, but denies that DAS has committed an unfair labor practice.

IBPO is the exclusive representative of a collective bargaining unit consisting of protective services officers employed by DAS. DAS and IBPO have been engaged in negotiations for a non-compensation collective bargaining agreement since early July 1991. The first proposal on employer-provided union office accommodations was transmitted to DAS by IBPO on July 19, 1991.

By letter dated October 15, 1993, IBPO made a request for information concerning DAS facilities and their use with respect to union office space. OLRCB first responded to IBPO's request by letter dated March 8, 1994. OLRCB advised IBPO that it considered the issue of union office space to be a permissive subject of

negotiation and therefore not subject to impasse proceedings.^{1/} OLRCB contends that IBPO's proposal concerning union office space does not concern wages, hours, or other conditions of employment or concern bargaining unit employees. (Ans. at 10.)

The obligation to provide information, upon request, is part of the duty to bargain. American Federation of State, County and Municipal Employees, Council 20, AFL-CIO v. D.C. General Hospital and the D.C. Office of Labor Relations and Collective Bargaining, 36 DCR 7101, Slip Op. No. 227 at 2-3, PERB Case No. 88-U-29 (1989). A determination must be made, therefore, whether or not there is a duty to bargain under the CMPA regarding office space provided to a union by an agency.^{2/}

The general right to bargain collectively under the CMPA is set forth in D.C. Code Sec. 1-618.2(b)(4). That provision appears to limit the right to bargain to "terms and conditions of employment as may be appropriate under [the CMPA]". On the other hand, D.C. Code Sec. 1-618.8(b) deems "negotiable" under the CMPA "[a]ll matters... except those that are proscribed by this subchapter[, i.e., Subchapter XVIII. Labor-Management Relations]". Based on this provision, arguably there is no limit on the subjects of collective bargaining, other than the express proscriptions of Subchapter XVIII. Labor-Management Relations.

The Board has never decided whether the duty to bargain under the CMPA is limited to matters that have traditionally been considered "terms and conditions of employment," or whether the duty covers every subject that a party may raise, so long as,

^{1/} Prior to receiving OLRCB's response, IBPO had filed with the Board on March 1, 1994, a request for impasse assistance concerning these negotiations. OLRCB's March 8th response, as noted in its letter, was triggered by IBPO's request for assistance. This Complaint followed shortly thereafter on March 22, 1994.

OLRCB's March 8th response also served as the basis of a negotiability appeal filed by IBPO on April 6, 1994, concerning its proposal on employer-provided union office facilities. Contrary to OLRCB's argument, we do not consider that negotiability appeal to be any kind of bar to the present unfair labor practice complaint.

^{2/} In the related negotiability case involving these parties, PERB Case No. 94-N-05, we dismissed IBPO's Negotiability Appeal. The Board concluded that the question presented by IBPO's Negotiability Appeal should be considered in connection with IBPO's Unfair Labor Practice Complaint.

pursuant to Section 1-618.(b), it is not proscribed by Subchapter XVIII of the CMPA. The Board intends to solicit briefs on this issue from interested parties in the near future. We have concluded, however, that we need not decide the issue in order to decide this case. Even if we assume that the duty to bargain is limited to "terms and conditions of employment," we would be inclined to construe that phrase liberally, and would not exclude from its coverage the subject of employer-provided office space facilities for union use. Such office space, in our view, is a convenience for all employees in the same way that union bulletin boards or mailboxes are a convenience. We consider such conveniences within the definition of "terms and conditions of employment." ^{3/}

Turning to the specific violation alleged, with respect to IBPO's proposal concerning employer-provided office facilities for its use, IBPO requested from DAS the following:

^{3/} A review of the parties' current and previous agreements reveal that the employer facilitates union access to bargaining unit employees through set-aside bulletin boards and procedures for authorizing use of office space for hearing grievances and handling other labor relations matters. (Ans. at 4.) We have previously held when there is a close question of whether or not a particular matter is a proper subject of bargaining, "it becomes relevant that the parties have on previous occasion either accepted or rejected negotiation overtures." University of the District of Columbia Faculty Association\NEA and University of the District of Columbia, 29 DCR 2975, 2977, Slip Op. No. 43 at 3, PERB Case No. 82-N-01 (1982). See, also, International Association of Firefighters, Local 6 and D.C. Fire Department, 35 DCR 118, Slip Op. 167, PERB Case No 87-N-01 (1988).

OLRCB cites a case arising under the Federal Service Labor-Management Relations Act (FSLMRA) where "the U.S. Court of Appeals for the District of Columbia denied enforcement of a Federal Labor Relations Authority order with regard to bargaining over union-requested permanent office space." (Ans. at 10.) Federal Labor Relations Authority v. U.S. Department of Justice, Immigration and Naturalization Service, et al., 994 F 2d. 868 (D.C. Cir. 1993). This case has no application to the issue presented here. The Court found the issue of union office space not relevant to impact-and-effects bargaining relating to a management decision to relocate its offices. The obligation to bargain during the negotiation of a successor non-compensation collective bargaining agreement is much broader than it is in the limited context of impact-and-effects bargaining attendant to the exercise of a management right.

- a. blueprints or structural layout of all buildings operated by the Department of Administrative Services (DAS), identifying designated union office space; and
- b. all contractual provisions between DAS and each labor organization regarding the use of union office space, identifying whether and how much DAS pays for maintaining the office's use.

We find this information is relevant and necessary to IBPO's preparation for a full discussion of the subject during the parties' negotiations for a successor non-compensation collective bargaining agreement. Therefore, by refusing to provide IBPO the requested information, OLRCB has violated D.C. Code Sec. 1-618.8(a)(1) and (5).

ORDER

IT IS HEREBY ORDERED THAT:

1. The D.C. Department of Administrative Services (DAS) shall cease and desist from refusing to bargain in good faith with the International Brotherhood of Police Officers, Local No. 445 (IBPO) with respect to union office facilities.
2. The DAS shall furnish the IBPO with the requested information, as set forth in this Opinion, concerning DAS office space and equipment.
3. DAS shall provide the information requested not later than fourteen (14) days following the issuance of this Opinion.
4. DAS shall cease and desist from interfering, in any like and related manner, with the rights guaranteed employees by the Comprehensive Merit Personnel Act.
5. DAS shall post copies of the attached Notice conspicuously at all of the affected work sites for thirty (30) consecutive days.
6. DAS shall notify the Public Employee Relations Board, in writing, within fourteen (14) days of the date of this Order that the information referred to in this Order has been provided to IBPO and that the Notices have been posted accordingly.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.
August 5, 1994



Public
Employee
Relations
Board

Government of the
District of Columbia



415 Twelfth Street, N.W.
Washington, D.C. 20004
[202] 727-1822/23
Fax: [202] 727-9116

TELECOPIER COVER SHEET

DATE: AUGUST 5, 1994
TO: EDWARD J. SMITH, ESQ.
COMPANY: IBPO
RE: 94-U-13

message:

DPO

FROM: SARANI A. LASALLE

Total Number of pages including cover page: 7



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NOTICE

TO ALL EMPLOYEES REPRESENTED BY THE INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS, LOCAL NO. 445, AFL-CIO AT THE DISTRICT OF COLUMBIA DEPARTMENT OF ADMINISTRATIVE SERVICES: THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE GOVERNMENT OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 401, PERB CASE NO. 94-U-13.

WE HEREBY notify our employees that the Public Employee Relations Board has found that we violated the law and has ordered us to post this notice.

WE WILL cease and desist from refusing to provide the International Brotherhood of Police Officers, Local No. 445, (IBPO), AFL-CIO, with requested information relevant and necessary to its representational duties.

WE WILL provide IBPO with the specific information it requested concerning union office facilities.

WE WILL NOT in any like or related manner interfere with employees' or IBPO's rights guaranteed by the Comprehensive Merit Personnel Act.

D.C. Department of
Administrative Services

CERTIFICATE OF SERVICE

I hereby certify that the attached Decision and Order in PERB Case No. 94-U-13 was hand-delivered, sent via facsimile transmission and/or mailed (U.S. Mail) to the following parties on this 5th day of August 1994:

Edward J. Smith, Esq.
Counsel

FAX & U.S. MAIL

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Labor Relations Officer
D.C. Office of Labor Relations
and Collective Bargaining
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FAX & U.S. MAIL

Courtesy Copies:

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Director
Office of Labor Relations
and Collective Bargaining
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Washington, D.C. 20001

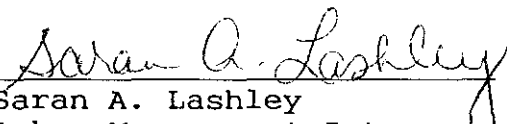
U.S. MAIL

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Labor-Management Intern