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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Teamsters Local Union No. 639, a/w International Brotherhood of Teamsters,	PERB Case No. 12-U-29
Complainant,	Opinion No. 1407
and	
District of Columbia Public Schools,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

On June 13, 2012, Teamsters Local Union 639, a/w International Brotherhood of Teamsters ("Teamsters" or "Union") filed an Unfair Labor Practice Complaint against District of Columbia Public Schools ("DCPS" or "Agency"), alleging violations of D.C. Code § 1-617.04 (1) and (5) of the Comprehensive Merit Personnel Act ("CMPA"). On July 3, 2012, DCPS filed an Answer to Unfair Labor Practice Complaint ("Answer"), asserting that the Complaint failed to state a cause of action for which relief may be granted by the Board. (Answer at 4).

II. II. Background

Through PERB Certifications Nos. 35-39, the Board jointly certified Teamsters Local 639 and Teamsters Local 730 as the exclusive bargaining agents for DCPS employees in the bargaining units: Operating Engineer Unit, Custodian Unit, Transportation and Warehouse Service Unit, Cafeteria Manager Unit, and Cafeteria Worker Unit.

The Union and the Agency both agree on the following:

> The Teamster Locals and DCPS have been parties in a continuous collective bargaining relationship, embodied in various collective bargaining agreements, covering a variety of classifications and units, including those referenced above [in PERB Certifications Nos. 35-39]. After their certification, the Teamsters Locals initially adopted a collective bargaining agreement negotiated between DCPS and a predecessor union. Subsequently, the Teamster Locals entered into a collective bargaining agreement for the period of 1987-1990. Successor agreements have been entered into up to the present time. Until recently the labor contracts negotiated between DCPS and the Union included all of the classifications set forth above.

(Complaint at 2, Answer at 2). The Parties agree that there is a current labor contract concerning the "maintenance unit," titled "Agreement Between the District of Columbia Public Schools and Teamsters Locals 639 and 730 Covering Wage Grade Employees." (Complaint at 2, Complaint Exhibit 2, Answer at 2).

The Parties further agree that:

> On or about May 30, 2012, DCPS notified a maintenance unit employee that it [the Agency] was changing his scheduled and established shift and requiring him to work a split shift from 6 a.m. to 10 a.m. and then again from 4 p.m. to 9 p.m. ....DCPS indicated that it was relying on Article XXX of the parties' collective bargaining agreement, despite the fact that DCPS had only applied this provision to transportation unit employees and never to maintenance unit employees.

(Complaint at 3, Answer at 3).

The Union alleges:

> At the time DCPS and the Union negotiated the present collective bargaining agreement, the parties did not create an entirely new labor contract, but left in place many of the provisions from their prior contract, despite the fact that many of the classifications covered by the previous labor contract were not covered by the current contract. One of the provisions in the previous labor contract covered split shifts for transportation unit employee workers (bus drivers and bus attendants)....The parties had agreed that such split shifts could be used for these employees because of the nature of their work – driving students to schools in the early morning and picking these students up in the late afternoon. When the parties negotiated a labor contract to cover the maintenance unit employees, they mistakenly and inadvertently included the split shift provision despite the fact that this provision had only been

> intended to apply to the transportation unit employees, who were no longer covered by the contact (sic)....Indeed, the parties did not even renumber the inapplicable contract provision, nor did either side raise this specific provision during the collective bargaining negotiations.

(Complaint at 2-3).

The Union alleges that the "unilateral change by DCPS to the work schedule of a maintenance unit employee is an unfair labor practice," in violation of D.C. Code § 1-617.04(a)(1) and (5). (Complaint at 3). The Union argues that "by altering the work schedule of a bargaining unit employee without bargaining with the Union, DCPS is interfering with and restraining the rights of the employee and the Union to engage in collective bargaining over the terms and conditions of the individual's employment." (Complaint at 3-4). The Union alleges the Agency violated D.C. Code § 1-617.04(a)(1) and (5) "by seeking to invoke a provision of the parties' labor contract that was not intended by the parties to be applied to maintenance unit employees" and "applying it to a classification of employees without discussing this with the Union or obtaining the Union's consent." (Complaint at 4). The Union argues that the Agency's actions were intended to undermine the Union's status as the exclusive collective bargaining agent. *Id.*

The Agency disputes the Union's allegations. (Answer at 2). The Agency asserts that "at the time that DCPS and the Union negotiated the present collective bargaining agreement, the Parties had a meeting of the minds and did, in fact, create a new labor contract despite the fact that many of the provisions were similar to the prior contract." *Id.* The Agency admits that Article XXX in the previous contract covered split shifts, however, the Agency denies that the provision only applied to transportation unit employees. *Id.* The Agency denies that the split shift provision in the Parties' current contract was inadvertent or a mistake, and asserts that the inclusion of the provision in the Parties' current contact was the result of an agreement by both Parties. (Answer at 3). The Agency asserts that the Agency complied with the Parties' current collective bargaining agreement, and denies the Union's allegations that it unilaterally changed the employee's work schedule and failed to bargain in good faith with the Union. *Id.* The Agency asserts that the contract has been in place for two years, and that the Union cannot argue that the contract provision is a mistake. *Id.*

III. Discussion

The Union argues that the Agency's change to the work schedule of the maintenance worker was a unilateral change in the terms and conditions of the employee's employment, which required the Agency to engage in good-faith, collective bargaining. (Complaint at 3-4). The Union alleges that the Agency relied on a contractual provision that the Agency knew was inapplicable and applied it the employee. (Complaint at 4). The Union argues that the Agency's action interfered with and restrained the rights of bargaining unit employees and the rights of the Union, in violation of D.C. Code § 1-617.04(a)(1) and (5). *Id.* The Union contends that the Agency was obligated to engage in good-faith, collective bargaining over the employee's terms and conditions of the employment, before instituting the change in work schedule. *Id.* In addition, the Union argues that the Agency's actions through its unilateral change in an

employee's terms and conditions of employment without engaging in good-faith, collective bargaining undermined the Union's role as the collective bargaining representative, in violation of D.C. Code § 1-617.04(a)(1) and (5). *Id.*

The Agency denies the Union's allegations that altering the employee's work schedule was a unilateral change to the employee's terms and conditions of employment. (Answer at 3). The Agency asserts that the change to the employee's schedule was made pursuant to the Parties' collective bargaining agreement, which "was negotiated in good faith and executed by" the Parties. *Id.*

Under the CMPA, agencies have a management right to determine the "number, types, and grades of positions of employees assigned to an agency's organizational unit, work project, or tour of duty." D.C. Code § 1-617.08(a)(5)(B). The Board has held that "an exercise of management rights does not relieve the employer of its obligation to bargain over impact and effect of, and procedures concerning, the implementation of [that right]." *American Federation of Government Employees, Local 2978 v. D.C. Department of Health*, 59 D.C. Reg. 9783, Slip Op. No. 1267 at p. 2, PERB Case No. 11-U-33 (2012); *International Brotherhood of Police Officers, Local 446 v. District of Columbia General Hospital*, 41 D.C. Reg. 2321, Slip Op. No. 312, PERB Case No. 91-U-06 (1994). The Board has upheld a hearing examiner's determination that an unfair labor practice occurred, when an agency failed to bargain with a union "upon request, over the impact and effects of changes to employees' working conditions, including hours of work, shift schedules, and policies concerning use of personal vehicles to perform work related duties." *American Federation of Government Employees, Local 383 v. D.C. Department of Mental Health*, 52 D.C. Reg. 2527, Slip Op. No. 753 at p. 1, PERB Case No. 02-U-16 (2004).

In the present case, the Parties dispute whether or not bargaining had occurred over the split shift schedule for the affected maintenance worker. As material facts are in dispute affecting the issue as whether the Agency's actions rise to the level of violations of the CMPA is a matter best determined after the establishment of a factual record, through an unfair labor practice hearing.

IV. Conclusion

In accordance with the Board's finding that the Parties' pleadings present material disputes of fact, and pursuant to PERB Rule 520.9, the Board refers this matter to an unfair labor practice hearing to develop a factual record and make appropriate recommendations. Prior to hearing, the Union and the Agency are ordered to attend mandatory mediation, pursuant to Board Rule 558.4.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint will be referred to a hearing examiner for an unfair labor practice hearing. The dispute will be first submitted to the Board's mediation program to allow the Parties the opportunity to reach a settlement by negotiating with one another with the assistance of a Board appointed mediator.
2. The Parties will be contacted to schedule the mandatory mediation within seven (7) days of the issuance of this Decision and Order.
3. 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 29, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order for PERB Case No. 12-U-29 was transmitted to the following Parties on this the 30th day of July, 2013.

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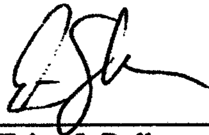

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