

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so 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:	)	
	)	
Washington Teachers' Union,	)	
Local 6	)	
Complainant	)	PERB Case No. 15-U-28
	)	Opinion No. 1668
v.	)	
	)	
District of Columbia Public Schools	)	
	)	
Respondent	)	
	)	
	)	

---

**DECISION AND ORDER**

**I. Introduction**

On June 17, 2015, Complainant Washington Teachers' Union ("Union") filed this unfair labor practice complaint and a request for preliminary relief alleging that the District of Columbia Public Schools ("DCPS") violated section 1-617.04(a)(1), (3), and (5) of the D.C. Official Code. The complaint alleged that DCPS failed to: (1) bargain in good faith with the Union by unilaterally changing the licensure requirements for social workers and discharging all school social workers who did not obtain the new license by a certain time;<sup>1</sup> (2) bargain in good faith by refusing to honor its decision not to require school social workers to obtain the new license;<sup>2</sup> (3) bargain in good faith with the Union over the effects of the licensure change;<sup>3</sup> (4) bargain in good faith with the Union by communicating directly to the school social workers regarding the new license requirements.<sup>4</sup>

---

<sup>1</sup> Report at 1.  
<sup>2</sup> Report at 2.  
<sup>3</sup> Report at 2.  
<sup>4</sup> Report at 2.

In an Answer filed on July 17, 2015, DCPS denied committing any unfair labor practices.<sup>5</sup> DCPS also opposed the Union's motion for preliminary relief and asked the Board to dismiss the complaint for untimeliness and failure to state a cause of action.<sup>6</sup> The Board referred the matter to a Hearing Examiner, who issued a Hearing Examiner's Report and Recommendation ("Report") on October 13, 2017.

The issues presented before the Hearing Examiner were as follows:

1. Whether the Union established that DCPS unilaterally and without bargaining with the Union unlawfully changed the licensing requirements for the school social workers represented by the Union;
2. Whether DCPS unlawfully bypassed the Union and directly dealt with the school social workers over the proposed change in the licensure requirement for school social workers; and
3. Whether the Union made a timely and proper request to bargain over the impact and effects of the proposed change in licensure requirements for the school social workers.<sup>7</sup>

For the reasons stated more fully herein, the Board affirms the Hearing Examiner's findings and recommendations that DCPS did not violate section 1-617.04(a)(1), (3), and (5) of the D.C. Official Code as alleged. The Hearing Examiner's recommendations are reasonable, supported by the record, and consistent with Board precedent.

## II. Hearing Examiner's Report and Recommendation

### A. Facts

This matter involves social workers formerly employed by DCPS as licensed graduate social workers (graduate social workers").<sup>8</sup> At the time of the events set forth in the complaint, the D.C. Municipal Regulations required the clinical supervision of graduate social workers by licensed independent clinical social workers ("clinical social workers").<sup>9</sup> To be licensed as a clinical social worker, a graduate social worker was required, *inter alia*, to complete 100 hours of clinical supervision and then pass a licensing exam.<sup>10</sup>

---

<sup>5</sup> Report at 2.

<sup>6</sup> Report at 2.

<sup>7</sup> Report at 31.

<sup>8</sup> Report at 3.

<sup>9</sup> Report at 3.

<sup>10</sup> Report at 4.

In July 2010, DCPS established a new requirement that all DCPS clinicians providing social services be licensed as clinical social workers.<sup>11</sup> At the time, DCPS employed 140 social workers, 62 of whom were clinical social workers, and the remainder graduate social workers.<sup>12</sup>

In August 2010, DCPS informed the Union that it would change the position of school social workers, in pertinent part, to require a minimum qualification of clinical social worker for new social workers and to allow current graduate social workers up to three years to obtain the clinical social worker license.<sup>13</sup> DCPS stated that it would “provide clinical supervision of social workers licensed . . . as [graduate social workers] by social workers licensed as [a clinical social worker].”<sup>14</sup>

On September 24, 2014, DCPS, through its Director of Psychological Services, provided a draft memorandum to Union President Elizabeth Davis for her review.<sup>15</sup> The memorandum reiterated the change in the licensure requirement and outlined the clinical supervision program offered to graduate social workers.<sup>16</sup> This memorandum was not issued by DCPS.<sup>17</sup> On October 21, 2014, DCPS issued a different memorandum to all graduate social workers and copied Davis.<sup>18</sup> The memorandum stated that it was to serve as an update to the clinical supervision program offered to graduate social workers.<sup>19</sup> The letter also informed the affected employees that a failure to have the clinical social worker license would result in their termination.<sup>20</sup> Between October 21 and 29, 2015, DCPS informed all graduate social workers that those who had not obtained their clinical social worker license by June 30, 2015 would be discharged.<sup>21</sup>

On May 4, 2015, Union President Davis met with DCPS Chancellor Kaya Henderson and raised the issue of the graduate social workers who failed to obtain the clinical social worker license and faced termination.<sup>22</sup> Davis stated her belief that DCPS had not provided the affected social workers the 100 hours of required clinical supervision as DCPS had promised.<sup>23</sup> Accordingly, Davis believed that it was not the social workers’ fault that they did not obtain the new license.<sup>24</sup> Davis proposed that Henderson intervene and extend the time for the affected social workers to obtain the new license, and thus avoid being terminated.<sup>25</sup> Davis made no other proposals to Henderson.<sup>26</sup>

---

<sup>11</sup> Report at 3.

<sup>12</sup> Report at 3.

<sup>13</sup> Report at 4.

<sup>14</sup> Report at 4.

<sup>15</sup> Report at 5.

<sup>16</sup> Report at 5-6.

<sup>17</sup> Report at 6.

<sup>18</sup> Report at 6.

<sup>19</sup> Report at 6.

<sup>20</sup> Report at 6.

<sup>21</sup> Report at 7.

<sup>22</sup> Report at 34, 35.

<sup>23</sup> Report at 35.

<sup>24</sup> Report at 35.

<sup>25</sup> Report at 35.

<sup>26</sup> Report at 35.

Henderson investigated Davis' claims regarding the issue of clinical supervision hours and presented the results to Davis by email of May 28, 2015.<sup>27</sup> Henderson determined that only three out of the affected 40 social workers did not complete the 100 hours of clinical supervision required to sit for the licensing exam.<sup>28</sup> Thereafter, Henderson proceeded to implement the change to the licensure requirement.<sup>29</sup>

By letter of July 2, 2015, DCPS notified graduate social workers who had not obtained their clinical social worker licenses that they would be terminated effective August 8, 2015.<sup>30</sup>

## **B. Recommendations**

Based on a review of the evidence, the Hearing Examiner concluded that DCPS did not violate section 1-617.04(a)(1), (3), and (5) by failing to bargain in good faith over the Union's request to allow the social workers time to obtain a new license and unilaterally discharging social workers who did not obtain the new license by a certain time.<sup>31</sup>

The Hearing Examiner recommended that the Board dismiss the Union's allegations that DCPS failed to bargain in good faith over its decision to change the licensure requirement of the school social workers.<sup>32</sup> The Hearing Examiner agreed with the Union's concession that DCPS was permitted to change the licensure requirements for social workers as an exercise of its management rights and that the terminations of the affected graduate social workers were an effect of the change.<sup>33</sup> The Hearing Examiner also determined that the record did not support the Union's allegations that DCPS engaged in direct dealing with the Union members regarding the licensure change; therefore, no violation of the CMPA occurred.<sup>34</sup> Instead, the Hearing Examiner noted that the record shows DCPS "harbored no intent to bypass [the Union]."<sup>35</sup>

The Hearing Examiner recommended that the Board find that the Union made a timely and proper request to DCPS to bargain over the impact and effects of the licensure change.<sup>36</sup> The Hearing Examiner concluded that on May 4, 2015, Davis made a timely and proper request of DCPS to bargain when Davis proposed that Henderson intervene and extend the time for the affected social workers to obtain the new license.<sup>37</sup> Next, the Hearing Examiner determined that DCPS adequately responded to the Union's proposal before rejecting it.<sup>38</sup> Therefore, the Hearing

---

<sup>27</sup> Report at 14, 22, 35.

<sup>28</sup> Report at 35.

<sup>29</sup> Report at 35.

<sup>30</sup> Report at 7.

<sup>31</sup> Report at 33-35.

<sup>32</sup> Report at 33.

<sup>33</sup> Report at 26, 33, 34.

<sup>34</sup> Report at 34.

<sup>35</sup> Report at 34.

<sup>36</sup> Report at 34.

<sup>37</sup> Report at 34, 35.

<sup>38</sup> Report at 35.

Examiner found that DCPS did not violate the CMPA and recommended that PERB dismiss the Union's allegations on this issue.<sup>39</sup>

Lastly, the Hearing Examiner recommended that the Board dismiss the Union's alleged violations of section 1-617.04(a)(3) of the D.C. Official Code.<sup>40</sup> This provision prohibits the District from discriminating in regards to hiring or tenure of employment or conditions of employment to encourage or discourage membership in any labor organization.<sup>41</sup> The Hearing Examiner concluded that the record does not support this allegation and that the Union did not produce any proof of this charge.<sup>42</sup>

### III. Exceptions and Opposition to Exceptions

On November 3, 2017, the Union filed Complainant's Exceptions to the Hearing Examiner's Report and Recommendation and Brief in Support ("Exceptions")<sup>43</sup> in which it objects only to the Hearing Examiner's conclusion that DCPS bargained in good faith with regard to the Union's request to bargain over the impact and effects of the affected social workers' failure to obtain a license.<sup>44</sup>

The Union contends that the Hearing Examiner erred in finding that DCPS engaged in good faith bargaining with the Union. The Union first argues that it was undisputed before the Hearing Examiner that DCPS did not bargain with the Union over the termination of the social workers.

The Union objects to the Hearing Examiner's reliance on *American Federation of Government Employees, Local 631 v. Department of General Services* ("Slip Opinion 1401") in determining that DCPS engaged in good faith bargaining.<sup>45</sup> The Union contends that the cited case conflicts with more recent precedent. The Union cites to the Board's standard for good faith bargaining articulated in *American Federation of Government Employees, Local 383 v. D.C. Department of Youth Rehabilitation Services*.<sup>46</sup> The Union contends that bargaining requires more than a response or discussion; it requires "an honest effort to reach agreement, involving a 'give and take' with 'full and unabridged opportunities by both parties to advance, exchange, and reject specific proposals.'"<sup>47</sup>

The Union argues that rather than bargain, DCPS responded that it had no obligation to do so.<sup>48</sup> Further, the Union asserts, DCPS' response was "not in the nature of an open-minded

---

<sup>39</sup> Report at 35.

<sup>40</sup> Report at 35.

<sup>41</sup> Report at 35.

<sup>42</sup> Report at 36.

<sup>43</sup> Exceptions at 1.

<sup>44</sup> Exceptions at 5-10.

<sup>45</sup> Exceptions at 8.

<sup>46</sup> 63 D.C. Reg. 9778, Slip Op. No. 1577, PERB Case No. 13-U-06 (2016).

<sup>47</sup> Exceptions at 7.

<sup>48</sup> Exceptions at 8.

effort to reach an agreement,” but instead was “merely an explanation of the unilateral action from which DCPS would not consider deviating,”<sup>49</sup> The Union notes that in a decision by the National Labor Relations Board Division of Judges, *Mi Pueblo Foods v. International Brotherhood of Teamsters, Local 853*,<sup>50</sup> the administrative law judge held that good faith bargaining did not take place even though the employer agreed to meet with the union, because the employer repeatedly asserted that it had no duty to bargain.<sup>51</sup>

The Union contends that it is irrelevant that Davis did not make another proposal to Henderson after Henderson refused to offer the social workers more time to obtain clinical social worker license.<sup>52</sup> The Union argues that it was DCPS’ obligations to engage in a genuine effort to reach an agreement. The Union believes that given DCPS’ position that it had no obligation to bargain, any further efforts to engage DCPS were futile.<sup>53</sup>

The Union also objects to the Hearing Examiner’s reliance on Slip Opinion 1401 on the grounds that the cases are factually distinct.<sup>54</sup> In the present matter, the Union argues, Davis did not merely request that DCPS respond to the proposal, but additionally requested the parties discuss the issue in general.<sup>55</sup> The Union also asserts that unlike in Slip Opinion 1401, where the agency responded “point by point,” Henderson only addressed the clinical supervision issue and did not address whether the deadline should be extended.<sup>56</sup> The Union finally notes that in Slip Opinion 1401, the agency did not contend that it had no obligation to bargain with the union.<sup>57</sup>

On December 1, 2017, DCPS filed an opposition to the Union’s exceptions (“Opposition”). DCPS contends that the Hearing Examiner’s report is supported by the record and PERB precedent and therefore, the Union has not grounds for reversal.<sup>58</sup> Specifically, DCPS contends that the Union provides no basis for challenging the facts found by the Hearing Examiner in the Union’s Background section of the Exceptions.<sup>59</sup> DCPS also disputes the Union’s suggestion that DCPS did not respond to the Union’s inquiry about clinical hours.<sup>60</sup>

#### IV. Discussion

The Board will affirm a Hearing Examiner’s Report and Recommendations if the recommendations are reasonable, supported by the record, and consistent with Board

---

<sup>49</sup> Exceptions at 7.

<sup>50</sup> Case No. 32-CA-25677, 2012 WL 423515 at 1 (NLRB. Div. of Judges Feb. 9, 2012), *aff’d in part*, 360 NLRB 1097 (N.L.R.B. 2014)

<sup>51</sup> Exceptions at 8.

<sup>52</sup> Exceptions at 8.

<sup>53</sup> Exceptions at 8.

<sup>54</sup> Exceptions at 8.

<sup>55</sup> Exceptions at 9.

<sup>56</sup> Exceptions at 9.

<sup>57</sup> Exceptions at 9.

<sup>58</sup> Opposition at 2.

<sup>59</sup> Opposition at 3.

<sup>60</sup> Opposition at 3-4.

precedent.<sup>61</sup> 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.”<sup>62</sup>

### **A. Unilateral Change to Licensure Requirement**

The Board adopts the Hearing Examiner’s Recommendation that PERB dismiss the Union’s allegation that DCPS unilaterally and without bargaining changed the licensure requirements for social workers. The Hearing Examiner based his conclusion on the Board’s holding in *Teamsters, Local Unions No. 639 and 730 v. District of Columbia Public Schools*.<sup>63</sup> In that case, the Board held that section 1-617.08(a) of the D.C. Official Code exempts from the duty to bargain an employer’s decision to implement rights retained solely by its management.<sup>64</sup> In the instant matter, the Union conceded that DCPS permissibly changed the licensure requirements in an exercise of its management rights.<sup>65</sup> The Hearing Examiner agreed with DCPS that the decision to implement the requirement change was a “non-bargainable, management right.”<sup>66</sup> Having made such determination with respect to DCPS’ decision to implement changes to the licensure requirements, the Hearing Examiner recommended the dismissal of this aspect of the complaint.<sup>67</sup>

In the context of changes to job qualifications, the Board has held that the establishment of qualifications for an existing position is nonnegotiable as a management right.<sup>68</sup> Thus, the Board concludes that DCPS had no duty to bargain with the Union over changes to the licensure requirements for social workers. The Board finds that the Hearing Examiners’ conclusion is reasonable, supported by the record, and consistent with Board precedent.

### **B. Direct Dealing**

The Board adopts the Hearing Examiner’s recommendation that DCPS did not engage in direct dealing with the Union with regard to the licensure requirement change. The Hearing Examiner exclusively relied on cases from the National Labor Relations Board (“NLRB”), suggesting that the Board did not have extensive case law on the issue of impermissible direct dealing. The Board upholds the Hearing Examiner’s analysis based on the Board’s precedent on this issue, which is consistent with the cited NLRB cases.

---

<sup>61</sup> 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).

<sup>62</sup> *Council of Sch. Officers, Local 4, Am. Fed’n of Sch. Adm’r v. D.C. Pub. Schs.*, 59 D.C. Reg. 6138, Slip Op. 1016 at 6, PERB Case No. 09-U-08 (2010).

<sup>63</sup> 38 D.C. Reg. 96, Slip Op. No. 249, PERB Case No. 89-U-17 (1990).

<sup>64</sup> *Id.*

<sup>65</sup> Report at 33.

<sup>66</sup> Report at 34.

<sup>67</sup> Report at 34.

<sup>68</sup> *AFGE, Local 631 v. D.C. Water and Sewer Authority*, 54 D.C. Reg. 3210, Slip Op. No. 877 at p. 10, PERB Case No. 05-N-02 (2007).

In *American Federation of State, County and Municipal Employees, District Council 20 v. District of Columbia*,<sup>69</sup> the Board held that communication from an agency to its employees regarding its collective bargaining position was not an unfair labor practice because in the communication, the employer “neither dealt directly with employees, disparaged the Union to its members, undermined it, nor coerced or interfered with employees in their right to bargaining collectively.” Furthermore, the Board has held that mere communication with union members does not violate the CMPA.<sup>70</sup>

In the present matter, the Hearing Examiner concluded that the evidence did not support the claim of direct dealing.<sup>71</sup> Instead, the Hearing Examiner noted that the record evinced DCPS’ many communications with the Union over the proposed license change. The Board finds that based on the Hearing Examiner’s factual findings, there is no evidence of direct dealing.

In the unfair labor practice complaint, the Union asserts that it considers a letter dated October 21, 2014, from DCPS’ Deputy Chief of Inclusive Programming to graduate social workers and copied to President Davis, to be an unfair labor practice.<sup>72</sup> In the letter, DCPS’ Deputy Chief updated the graduate social workers on the clinical supervision provided by DCPS.<sup>73</sup> The letter, however, does not contain any negotiations or proposals. Based on the Board’s precedent on direct dealing, the Board finds that the Union has not met its burden of proof that DCPS committed a violation of the CMPA.

### **C. The Union’s Request to Bargain**

#### **a. Timeliness and Sufficiency of the Union’s Request to Bargain**

The Board adopts the Hearing Examiner’s recommendation that the Union made a timely and proper request to bargain over the impact and effects of the proposed change in licensure requirement. The Board has consistently held that an exercise of management rights does not relieve the employer of its obligation to bargain over the impact and effects of, and procedures concerning, the implementation of management rights.<sup>74</sup> The Board has held that “[a]ny general request to bargain over a matter implicitly encompasses all aspects of that matter, including the impact and effects of a management decision that is otherwise not bargainable.”<sup>75</sup>

---

<sup>69</sup> 36 D.C. Reg. 427, Slip Op. No. 200, PERB Case No. 88-U-32 (1988).

<sup>70</sup> *AFGE, Local 383 v. D.C. Dep’t of Youth Rehab. Servs.*, 61 D.C. Reg. 1544, Slip Op. No. 1449 at 5, PERB Case No. 13-U-06 (2014).

<sup>71</sup> Report at 34.

<sup>72</sup> Unfair Labor Practice Complaint, Exhibit 6.

<sup>73</sup> Unfair Labor Practice Complaint, Exhibit 6.

<sup>74</sup> *Int’l Bhd. of Police Officers, Local 446 v. D.C. Gen. Hosp.*, 41 D.C. Reg. 2321, Slip Op. No. 312, PERB Case No. 91-U-06 (1994).

<sup>75</sup> *Int’l Bhd. of Police Officers, Local 446 v. D.C. Gen. Hosp.*, 39 D.C. Reg. 9633, Slip Op. No. 322 at p. 3, PERB Case No. 91-U-14 (1992).



The Board has held that the question of whether there has been a timely request for impact and effects bargaining is an issue of fact.<sup>76</sup> In determining whether the Union's request to bargain was timely and proper, the Hearing Examiner relied on Slip Opinion 1401.<sup>77</sup> In that case, PERB determined that the submission of a union proposal to management that dealt with the impacts and effects of a management right was a proper request to bargain.<sup>78</sup> Although the Hearing Examiner did not explain how he reached the conclusion that the Union made a timely request to bargain, he concluded that on May 4, 2015, Davis made a timely and proper request of DCPS to bargain when Davis proposed that Henderson intervene and extend the time for the affected social workers to obtain the new license.<sup>79</sup> The Hearing Examiner stated his belief that Davis testified "credibly, sincerely and honestly" regarding her encounters with Henderson.<sup>80</sup> In that respect, Davis testified that in early May 2015, she was aware that DCPS planned to discharge 40 school social workers who did not obtain the clinical social worker license by June 2015.<sup>81</sup> Acting on this information, Davis met with Henderson on May 4, 2014 to discuss extending the time for the social workers to obtain the clinical social worker license.<sup>82</sup> The Board finds that the Hearing Examiner's recommendation is reasonable, consistent with Board precedent, and supported by the record.

#### **b. DCPS' Response to the Union's Request to Bargain**

The Board adopts the Hearing Examiner's finding that DCPS adequately responded to the Union's request to bargain. The Board has reiterated that in the context of impact and effects bargaining, an unfair labor practice has been committed when there has been a general request to bargain and a "blanket" refusal.<sup>83</sup> Where there "exists a duty to bargain over the impact and effects of a decision involving the exercise of a managerial prerogative . . . categorically refusing to bargain over this aspect is done so at the risk of management."<sup>84</sup>

Citing again to Slip Opinion 1401, the Hearing Examiner explained that PERB employs a broad interpretation of the employer's response to the union's request to bargain.<sup>85</sup> The Hearing Examiner noted that PERB stated that in such cases where the broad request is made, there is no violation where the employer responds to the proposal before rejecting it.<sup>86</sup> In the instant case, the Hearing Examiner found that Henderson "undertook careful investigation of Davis' claims"

---

<sup>76</sup> *Nat'l Ass'n of Gov't Emps., Local R3-06 v. D.C. Water and Sewer Authority*, 47 D.C. Reg. 7551, Slip. Op. No. 635 at 6, PERB Case No. 99-U-04 (2000).

<sup>77</sup> 60 D.C. Reg. 12068, Slip Op. 1401, PERB Case No. 13-U-23 (2013).

<sup>78</sup> *Id.*

<sup>79</sup> Report at 35.

<sup>80</sup> Report at 34.

<sup>81</sup> Report at 12.

<sup>82</sup> Report at 12-13.

<sup>83</sup> *AFSCME, Dist. Council 20 and Local 2091 v. Dep't of Pub. Works*, Slip Op. No. 1514 at 3, PERB Case No. 14-U-03 (2015) (citing *FOP v. Dep't of Corr.*, 49 D.C. Reg. 8937, Slip Op. No. 679, PERB Case Nos. 00-U-36 and 00-U-40 (2002); *Int'l Bhd. of Police Officers v. D.C. Gen. Hosp.*, 39 D.C. Reg. 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992)).

<sup>84</sup> *Teamsters Locals 639 and 730 v. D.C. Pub. Sch.*, 38 D.C. Reg. 96, Slip Op. No. 249, PERB Case No. 89-U-17 (1991).

<sup>85</sup> Report at 35.

<sup>86</sup> Report at 35.

regarding the clinical hours and presented the results to Davis.<sup>87</sup> Finding that only 3 out of the affected 40 social workers did not receive the 100 hours, Henderson rejected Davis' proposal and proceeded to implement the licensure change requirement.<sup>88</sup> Therefore, the Hearing Examiner found that DCPS did not violate the CMPA, and recommended that PERB dismiss the Union's allegations on this issue.<sup>89</sup> The Board finds that the Hearing Examiner's recommendation is reasonable, consistent with Board precedent, and supported by the record.

The Board rejects the Union's exceptions to the Hearing Examiner's recommendation that DCPS bargained in good faith over the impact and effects of DCPS' decision to change the licensure requirements of social workers. The Board rejects the Union's repeated assertions that DCPS did not bargain with the Union and that the Union presented more than one proposal to DCPS.<sup>90</sup> As previously stated, the Hearing Examiner determined that the only proposal presented to DCPS was a request to extend the time for affected social workers to obtain the new license.<sup>91</sup> The Hearing Examiner found that DCPS responded to the Union's request by presenting the Union with the findings of a "careful investigation" that revealed that only three of the 40 social worker did not receive the 100 hours of clinical supervision.<sup>92</sup>

The Board also disagrees with the Union's exception that the Hearing Examiner incorrectly relied on Slip Opinion 1401 in determining that DCPS bargained in good faith. The Decision and Order was upheld by the District of Columbia Superior Court and the Board has not reversed its position on this issue.<sup>93</sup> Finally, the Board rejects the Union's reliance on *Mi Pueblo Foods v. International Brotherhood of Teamsters, Local 853*.<sup>94</sup> The Board finds that the cited case and the present case are factually and legally distinct. The cited case involved an employer that refused to recognize the Union as the affected employees' bargaining representative and therefore did not engage in collective bargaining over the terms and conditions of employment.<sup>95</sup> However, in the present matter, the Union did not allege that DCPS failed to recognize the unit and the Hearing Examiner determined that the parties engaged in collective bargaining over the impact and effects of a management right. Therefore, the Board dismisses the Union's exceptions.

## V. Conclusion

The Board finds that the Hearing Examiner's dismissal of the Union's unfair labor practice complaint is reasonable, consistent with Board precedent, and supported by the record. The Board adopts the Hearing Examiner's findings that the Union's allegations do not constitute

---

<sup>87</sup> Report at 35.

<sup>88</sup> Report at 35.

<sup>89</sup> Report at 35.

<sup>90</sup> Exceptions at 8, 9.

<sup>91</sup> Report at 35.

<sup>92</sup> Report at 35.

<sup>93</sup> *Civil Case No. 2013 CA 005870*(July 30, 2015); See *FOP/MPD Labor Committee v. MPD*, Slip Op. No. 1552, PERB Case No. 09-U-34 (2015).

<sup>94</sup> Case No.32-CA-25677, 2012 WL 423515 at 1 (N.L.R.B. Div. of Judges 2012).

<sup>95</sup> *Id.*

violations of section 1-617.04(a)(1), (3), and (5) of the D.C. Official Code and dismisses the complaint.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. Washington Teachers' Union's 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**

By unanimous vote of Board Chairperson Charles Murphy and Board Members Ann Hoffman, Mary Anne Gibbons, Barbara Somson, and Douglas Warshof.

May 17, 2018

Washington, D.C.

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 15-U-28, Op. No. 1668 was sent by File and ServeXpress to the following parties on this the 17th day of May, 2018:

Daniel M. Rosenthal  
James & Hoffman, P.C.  
1130 Connecticut Avenue, NW, Suite 950  
Washington, D.C. 20036

Stephanie T. Maltz, Esq.  
Office of Labor Relations and  
Collective Bargaining  
441 4th Street, N.W., Suite 820 North  
Washington, D.C. 20001

/s/ Alexis Anderson  
\_\_\_\_\_  
PERB Staff Attorney