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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

	)	
In the Matter of:	)	
	)	
D.C. Police Union Lodge #2	)	
	)	
Petitioner	)	PERB Case No. 25-U-20
	)	
and	)	Opinion No. 1966
	)	
District of Columbia	)	
Metropolitan Police Department	)	
	)	
Respondent	)	
	)	

DECISION AND ORDER

I. Statement of the Case

On April 30, 2025, the D.C. Police Union Lodge #2 (Union) filed an unfair labor practice complaint (Complaint) alleging that the District of Columbia Metropolitan Police Department (MPD) unilaterally eliminated bargaining unit positions and discriminated against bargaining unit members in violation of the Comprehensive Merit Personnel Act (CMPA), D.C. Official Code §§ 1-617.04(a)(1), (3), and (5). On May 21, 2025, MPD filed an Answer and Brief in opposition to the Complaint (Answer) denying the allegations and asserting affirmative defenses seeking dismissal.

PERB held a hearing on this matter. The Hearing Examiner issued a Report and Recommendation (Report) finding the Complaint timely and holding that MPD violated the CMPA as alleged. MPD has filed Exceptions to the Report. Likewise, the Union has filed an Opposition to the Exceptions.

For the reasons stated herein, the Board dismisses allegations related to the non-bargaining unit civilian pilot position and the cellblock technician position as untimely filed. Further, the Board finds that MPD violated the CMPA through its actions related to the firearms instructor

position and otherwise finds the Report reasonable, consistent with precedent, and supported by the record, and holds that MPD violated the CMPA.

II. Hearing Examiner's Report

The Hearing Examiner made the following factual findings. The Union is the exclusive bargaining representative for law enforcement personnel at MPD. The bargaining unit is defined as

All police privates, including investigators and desk sergeants, detectives, detective sergeants and police sergeants employed in the uniformed and plainclothes forces of the Metropolitan Police Department, unless assigned to the Internal Affairs Division, excluding management executives, confidential employees, supervisors, employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of D.C. Law 2-139.¹

MPD announced job openings for three positions. MPD announced the position of helicopter pilot on January 6, 2025. Thereafter, MPD announced openings in the positions of firearms instructor on February 3, 2025, and cellblock processing technician on February 5, 2025.² These three positions are specialized law enforcement positions that are highly coveted by bargaining unit members.³

Nevertheless, MPD categorized all three positions as civilian positions meaning that the positions were (1) open to the general public, (2) not subject to recruitment procedures under the collective bargaining agreement, and (3) categorized in the civilian bargaining unit represented by the National Association of Government Employees.⁴ The civilian job descriptions have similar functions, requirements, responsibilities, and work environment as sworn job descriptions.⁵ "Civilians are assigned to the same unit as sworn members and are required to have the same knowledge, experience, and training as sworn members."⁶

The Union alleged that MPD implemented a new practice to shift multiple bargaining unit positions out of the unit and "civilianize" the police force.⁷ The Union alleged that MPD is no longer selecting qualified sworn members for the positions, thereby diminishing the bargaining unit.⁸ The Union alleged that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) by creating civilian positions and transferring bargaining unit positions out of the unit, without pre-

¹ *D.C. Police Lodge #2 and MPD*, Certification No. 10 Amended, 72 D.C. Reg. 8341, Slip Op. No. 1918, PERB Case No. 25-AC-01 (2025).

² Report at 2.

³ Report at 6.

⁴ Report at 2.

⁵ Report at 6.

⁶ Report at 6.

⁷ Report at 3.

⁸ Report at 3.

implementation notice or the opportunity to bargain.⁹ The Union alleged that MPD violated D.C. Official Code § 1-617.04(a)(3) by discriminating against bargaining unit members in favor of non-bargaining unit civilians.¹⁰

MPD filed a motion to dismiss the Complaint as untimely during the hearing. MPD argued that the Union had prior notice of the civilian job postings and filed grievances over the alleged conduct more the 120 days before the filing of the Complaint.¹¹ The Union argued that the 2025 job postings marked the date when it had notice that MPD would continue to recruit civilians for bargaining unit positions.¹²

The Hearing Examiner determined that four issues were ripe for resolution:

1. Did the Department establish that the Union's ULP was untimely filed;
2. Did the Union establish that the Department interfered with, restrained, or coerced any employee in the exercise of their statutory rights;
3. Did the Union establish that the Department failed to bargain collectively with the Union in good faith; and
4. Did the Union establish that the Department discriminated in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.¹³

A. Timeliness

Citing Board Rule 520.4 the Hearing Examiner established that an unfair labor practice complaint must be filed no later than 120 days after the date on which the alleged violation occurred or the date the complainant knew or should have known of the alleged violation, if later.¹⁴ The Hearing Examiner held that the time limits for filing an unfair labor practice complaint are jurisdictional and mandatory and cannot be waived.¹⁵ Since the Union filed its Complaint of April 30, 2025, any allegations occurring before December 31, 2024, would be untimely.¹⁶

The Hearing Examiner found that prior to filing the instant Complaint the Union filed grievances to challenge civilian hiring practices.¹⁷ The Hearing Examiner credited testimony of the Union president in describing bargaining between the Union and MPD regarding the establishment of a "Civilian Safety Ambassador" position.¹⁸ Moreover, the Hearing Examiner

⁹ Report at 12.

¹⁰ Report at 12.

¹¹ Report at 3.

¹² Report at 3.

¹³ Report at 3-4.

¹⁴ Report at 13.

¹⁵ Report at 13.

¹⁶ Report at 13.

¹⁷ Report at 9. The Hearing Examiner also reviewed grievances challenging the February job postings, including the Firearms Instructor position, however the February grievances were filed within the 120-day period to establish an unfair labor practice violation and are less relevant to the analysis of timeliness.

¹⁸ Report at 9.

established a history of grievances filed to challenge civilian job postings for the helicopter pilot position and the cellblock technician position.¹⁹ The Union filed a grievance to challenge a civilian posting for the helicopter pilot position on September 24, 2024.²⁰ Likewise, the Union filed a grievance to challenge a civilian posting for the cellblock technician position on October 3, 2024.²¹ The Hearing Examiner found that “The Union’s grievances alleged violations of Contract terms incorporating any applicable law external to the Contract. The allegations were essentially the same as those alleged in the Union’s ULP, alleging statutory violations independent of the Contract.”²²

Notwithstanding the prior grievances, the Hearing Examiner found the Complaint timely. The Hearing Examiner held that Complaint filed in April challenged MPD’s civilian job postings from January 6, 2025, February 3, 2025, and February 5, 2025, well within the 120-day limitations period.²³ The Hearing Examiner found that “the Union did not allege violations occurring outside the 120-day filing window and is not seeking relief for any violations occurring on or before December 31, 2024.”²⁴

MPD separately raised a defense that the Union failed to allege a change in working conditions and therefore failed to state a claim.²⁵ The Hearing Examiner determined that the Complaint sufficiently alleged facts that if proven would establish a violation of the CMPA.²⁶ On these bases the Hearing Examiner denied MPD’s motion to dismiss.²⁷

B. Interference with Statutory Rights

The Union argued that MPD violated D.C. Official Code § 1-617.04(a)(1), when it failed to notify the Union of the transfer of work outside of the bargaining unit.²⁸ Moreover, the Union argued that MPD implemented a policy “to phase out bargaining unit positions and fill those positions with civilian, non-bargaining unit employees.”²⁹ The Union demonstrated that MPD has not advertised vacancies to bargaining unit members or selected them from previously developed hiring lists for the specialized positions.³⁰

MPD asserted that there was no change in policy or working conditions.³¹ MPD argued that “civilian positions posted in 2025 were the same as previous job postings for the same

¹⁹ Report at 9-11.

²⁰ Report at 9.

²¹ Report at 9.

²² Report at 10.

²³ Report at 13.

²⁴ Report at 13.

²⁵ Report at 13.

²⁶ Report at 13-14.

²⁷ Report at 13-14.

²⁸ Report at 14.

²⁹ Report at 14.

³⁰ Report at 14.

³¹ Report at 15.

positions.”³² MPD argued that it had a management right to hire and no duty to bargain hiring decisions.³³ Additionally, MPD argued that the Union failed to prove that MPD “transferred bargaining unit work out of the bargaining unit, caused a diminution of the bargaining unit, or changed working conditions.”³⁴

The Hearing Examiner established that “when management unilaterally and without notice implements a change in established and bargainable terms and conditions of employment, a request to bargain is not required to establish a failure to bargain in good faith.”³⁵

The Hearing Examiner found that the helicopter pilot, firearms instructor, and cellblock technician positions were previously performed exclusively by bargaining unit members.³⁶ Over the past 10 to 25 years, depending on the position, MPD hired civilians for the specialized positions.³⁷ The Hearing Examiner found that MPD changed its policy and ceased backfilling sworn helicopter pilots, firearms instructor, and cellblock technicians to the detriment of the bargaining unit.³⁸ The Hearing Examiner held that MPD violated D.C. Official Code § 1-617.04(a)(1), in that it failed to provide notice of the change in policy that has progressively decreased the number of bargaining unit members in the specialized positions.³⁹

C. Failure to Bargain

The Hearing Examiner held that MPD violated D.C. Official Code § 1-617.04(a)(1) and (5) by failing “to give the Union pre implementation notice of its intended civilian hiring practice with respect to the helicopter pilot, firearms instructor, and cellblock tech positions and by failing to bargain with the Union.” The Hearing Examiner found that the Union was not required to make a demand to bargain as MPD failed to provide notice of the change.⁴⁰

D. Discrimination Against Employees to Discourage Union Membership

The Union argued that the Department violated D.C. Official Code § 1-617.04(a)(3) by discriminating against bargaining unit members in hiring decisions.⁴¹ The Union asserted that MPD civilian hiring preferences were inherently anti-union and pointed to examples of (1) MPD refusal to hire a bargaining unit member for the bargaining unit pilot position but then hiring the same person for a civilian pilot position, and (2) posting exclusively civilian vacancies for firearms instructor and cellblock technician positions without making positions available for bargaining unit members.⁴²

³² Report at 15.

³³ Report at 15.

³⁴ Report at 15.

³⁵ Report at 15.

³⁶ Report at 14.

³⁷ Report at 14.

³⁸ Report at 17.

³⁹ Report at 17.

⁴⁰ Report at 17.

⁴¹ Report at 18.

⁴² Report at 18.

MPD did not present a closing argument to challenge the allegation under D.C. Official Code § 1-617.04(a)(3). Nevertheless, the Hearing Examiner evaluated whether the Union sustained its burden to prove a violation.⁴³ The Hearing Examiner looked to Board precedent and its reliance on a two-step test articulated in *NLRB v. Great Dane Trailers* to establish a claim of discrimination where:

...in the absence of specific evidence of employer anti-union animus.... first test applies if the employer's conduct is inherently destructive of employee rights, the second test is applicable if the effect of the employer's conduct is "relatively slight." "[I]n either situation, once it has been proved that the employer engaged in discriminatory conduct which could have adversely affected employee rights to some extent, the burden is upon the employer to establish that it was motivated by legitimate objectives."⁴⁴

The Hearing Examiner found MPD's conduct inherently destructive to the rights of the Union. MPD failed to provide notice of its escalation of civilian hiring after successfully bargaining an agreement related to the "Community Safety Ambassador" position.⁴⁵ The Hearing Examiner found that the failure to provide notice provided compelling evidence of inherently destructive conduct, for which MPD provided no legitimate objective.⁴⁶ Further, MPD excluded bargaining unit members from qualifying for specialized positions and in the case of the helicopter pilot position, MPD enticed sworn members to leave the bargaining unit by offering higher salaries at the entry level for the civilian position.⁴⁷ The Hearing Examiner found that MPD engaged in an intentional effort to create civilian positions and eliminate bargaining unit members from specialized positions.⁴⁸ Therefore, the Hearing Examiner held that MPD's conduct tended to discourage participation from bargaining unit members in the Union.⁴⁹

The Hearing Examiner held that MPD violated D.C. Official Code § 1-617.04(a)(1), (3) and (5) and recommended an order of remedial relief.⁵⁰

III. Exceptions to Hearing Examiners Report and Recommendation

On March 13, 2026, MPD filed Exceptions to the Report. MPD argues that the Hearing Examiner failed to conduct a meaningful analysis of the record to determine whether the Complaint was timely.⁵¹ MPD argues that report fails to identify the acts that give rise to the complaint or establish a date when the Union knew or should have known of the alleged

⁴³ Report at 18 (finding the Union had the burden to prove the violation by the preponderance of the evidence).

⁴⁴ Report at 19. (*FOP/DOC Labor Comm. v. DOC*, 49 D.C. Reg. 8937, Slip Op. No. 679, PERB Case Nos. 00-U-36 & 00-U-40 (2002) (citing *N.L.R.B. v. Great Dane Trailers, Inc.*, 388 U.S. 26, 34 (1967)).

⁴⁵ Report at 19.

⁴⁶ Report at 19.

⁴⁷ Report at 19.

⁴⁸ Report at 19.

⁴⁹ Report at 19.

⁵⁰ Report at 20.

⁵¹ Exceptions at 7.

violations.⁵² MPD argues that the record demonstrates that MPD did not create new positions in the January/February 2025 job postings and the Union had actual knowledge of civilian hiring prior to December 31, 2024.⁵³

Additionally, MPD contends that the Hearing Examiner erred in establishing a failure to bargain over the escalation of civilian hiring when the Complaint only alleges a refusal to bargain over the creation of new positions. MPD excepts to the Report and argues the failure to include the allegation in the Complaint is grounds for reversal of related findings.⁵⁴

Finally, MPD argues that the Hearing Examiner erred in the analysis of the duty to bargain, the related absence of a demand to bargain, and the finding of a refusal to bargain. MPD argues the record does not support a finding that MPD had a duty to bargain over management rights.⁵⁵ Further, MPD excepts to the finding that the Union was not required to request bargaining over a management right.⁵⁶ MPD asserts that the record fails to support the Hearing Examiners finding that MPD refused to bargain.⁵⁷

On March 27, 2026, the Union filed its Opposition to the Respondent's Exceptions. The Union's Opposition exceeded the page limit⁵⁸ by 12 pages and failed to seek leave of the Board to file the oversized pleading.⁵⁹ MPD moved to strike the document or alternatively strike all the pages beyond the page 20-page limit.⁶⁰ The Union opposed the Motion to Strike and asserted that the page limit is ambiguous and does not clearly apply to Exceptions or Oppositions to Exceptions.⁶¹ The Board admonishes counsel for failing to seek leave to exceed the page limitation and immoderately pressing forward an argument undermined by his years of practice before the Board.⁶² Even so, the motion to strike is denied, after consideration of the complexities and circumstances of this case.

IV. Discussion

The Board will affirm a hearing examiner's findings and recommendations if they are reasonable, supported by the record, and consistent with Board precedent.⁶³ For the reasons stated below, the Board rejects in-part, and adopts in-part the Hearing Examiner's Report.

⁵² Exceptions at 7.

⁵³ Exceptions 8-10.

⁵⁴ Exceptions at 13-14.

⁵⁵ Exceptions at 16.

⁵⁶ Exceptions at 17.

⁵⁷ Exceptions at 18.

⁵⁸ Board Rule 502.3. All pleadings submitted to the Board must be typed or legibly hand-written and limited to twenty (20) double-spaced pages. Requests to increase the page limitation must be submitted to the Executive Director at least three (3) business days before the pleading is due. The page limitation of this rule does not apply to pleadings filed with the trier of fact when the trier of fact is not the Board itself.

⁵⁹ Opposition at 32.

⁶⁰ Motion to Strike at 2.

⁶¹ Opposition to Motion to Strike at 1-2.

⁶² Counsel has practiced before the Board for more than 10 years.

⁶³ *AFGE, Local 872 v. WASA*, 52 D.C. Reg. 2474, Slip Op. No. 702, PERB Case No. 00-U-12 (2003).

A. Timeliness of Helicopter Pilot and Cellblock Processing Technician Complaint

Board Rule 520.4 states “[a]n unfair labor practice complaint must be filed no later than one hundred twenty (120) days after the date on which the alleged violation occurred or the date the complainant knew or should have known of the alleged violation, if later.” The Board has stated that the 120-day filing deadline for a complaint begins to run when the complainant first knew or should have known of the acts giving rise to the alleged violation.⁶⁴ The Board’s one hundred twenty (120)-day time period for filing complaints is a claim processing rule.⁶⁵ Where a mandatory claim-processing rule is properly invoked by a party it must be enforced.⁶⁶

The Board disagrees with the Hearing Examiners’ finding that the Complaint was timely filed. The Hearing Examiners’ holding that “the Union did not allege violations occurring outside the 120-day filing window. . . .”⁶⁷ is inconsistent with the record concerning the helicopter pilot position and the cellblock technician position. The Hearing Examiner measured timeliness from the date of the job posting. However, the timeliness of the complaint in this case is properly measured from the point when the Union understood MPD’s decision to hire civilians into certain bargaining unit positions violated the statute. The individual job postings do not create a separate violation as they merely continue a previous breach. The time period runs when the character of the violation is clear.⁶⁸

The Board considers the record to determine when the Union knew or should have known that MPD sought to fill bargaining unit vacancies in the helicopter pilot and cellblock technician position with non-bargaining unit civilian candidates.⁶⁹ The record is clear that the Union had notice of the alleged violation and sought to challenge the conduct through the grievance process prior to December 31, 2024.

As noted above, the Union filed a grievance to challenge a civilian posting for the helicopter pilot position on September 24, 2024.⁷⁰ Likewise, the Union filed a grievance to challenge a civilian posting for the cellblock technician position on October 3, 2024.⁷¹ The Hearing Examiner found that “the Union’s grievances alleged violations of Contract terms incorporating any applicable law external to the Contract. The allegations were essentially the same as those

⁶⁴ *AFSCME, District Council 20, Local 2087 v. UDC*, 67 D.C. Reg. 8903, Slip Op. No. 1751 at 6, PERB Case No. 18-U-03 (2020) (citing *Pitt v. DOC*, 59 D.C. Reg. 5554, Slip Op. No. 998 at 5, PERB Case No. 09-U-06 (2009)).

⁶⁵ See *Vice Chairman Tyrone Jenkins and Stephanie McKinnon v. DOC*, 65 D.C. Reg. 4046, Slip Op. No. 1652 at 11, PERB Case No. 15-U-31 (2018) (incorporating the D.C. Court of Appeals’ ruling that PERB’s one hundred twenty (120)-day deadlines are claim-processing rules and that “[u]nless a party points out to the court that another litigant has missed such a deadline, the party forfeits the deadline’s protection.”).

⁶⁶ See *FOP/MPD Labor Comm. v. MPD*, 67 D.C. Reg. 11472, Slip Op. No. 1756 at 3, PERB Case No. 20-A-07 (2020) (citing *Neill v. D.C. Pub. Employee Relations Bd.*, 93 A.3d 229, n. 5 (D.C. 2014) (holding that “where a [] claim-processing rule is ‘properly invoked [by a party] ... [it] must be enforced[.]’”).

⁶⁷ Report at 13.

⁶⁸ See, *Neill v. Dist. of Columbia Pub. Employee Relations Bd.*, 234 A.3d 177, 185 (D.C. 2020).

⁶⁹ *AFSCME, District Council 20, Local 2087*, Slip Op. No. 1751 at 6.

⁷⁰ Report at 9.

⁷¹ Report at 9.

alleged in the Union's ULP, alleging statutory violations independent of the Contract."⁷² More specifically, the September 24, 2024, grievance alleges that "the Department has violated the CBA and D.C. law by creating a new employment position that transfers the explicit duties of sworn members to non-sworn employees who will be represented by a separate bargaining unit."⁷³ Further:

Through the planned hiring of civilian Helicopter Pilot, who will perform the duties of sworn members and who will explicitly be represented by a bargaining unit separate from the D.C. Police Union, the Department has engaged in improper diminution of the D.C. Police Union, in direct violation of D.C. Code § 1-617.04(a)...⁷⁴

Similarly, the Union's October 3, 2024, grievance states:

The Department has violated the CBA and D.C. law by creating a new employment position that transfers the explicit duties of sworn members to non-sworn employees who will be represented by a separate bargaining unit. Indeed, the civilian Cellblock Processing Techs would be responsible for numerous duties that sworn members are currently responsible for and that were listed in the job posting set forth in Teletype TT-11-096-23 for the sworn Cellblock Technician position. Thus, rather than fill the position set forth in Teletype TT-11-096-23 with a sworn member, the Department has unilaterally created a civilian Cellblock Processing Tech position that is designed to fulfill the current job responsibilities of D.C. Police Union members and has stated that these new employees will be represented by a separate bargaining unit. The Department's explicit diminution of the D.C. Police Union's bargaining unit completely undermines and precludes the possibility of an effective labor management relationship.⁷⁵

The record makes clear that the Union knew of a cause of action prior to December 31, 2024, and failed to pursue its claims. The 2024 grievances raise the same issue, provide the same theory, factual predicates, and basis for relief as the 2025 Complaint. MPD properly invoked PERB's one hundred twenty (120)-day claim-processing rule by seeking dismissal based on untimely filing of the Complaint. Accordingly, the allegations related to the helicopter pilot position and the cell block technician are dismissed.

B. Analysis of Exceptions as related to the Firearms Instructor Position

The record demonstrates that allegations related to the firearm instructor position were timely filed. Therefore, the remaining issues are (1) whether the hearing examiners finding were consistent grounded in Complaint and (2) whether the Hearing Examiner erred in finding a duty to bargain a management right.

⁷² Report at 10.

⁷³ MPD Exhibit 4 at 3.

⁷⁴ MPD Exhibit 4 at 3.

⁷⁵ MPD Exhibit 13 at 4.

1. Consistency of Findings with Underlying Complaint

MPD argues that the Hearing Examiner erred in finding that MPD had a duty to inform the Union in advance of the escalation in civilian hiring to perform bargaining unit work.⁷⁶ MPD asserts that the Complaint focused on the creation of new positions rather than the escalation of civilian hiring.⁷⁷ Therefore, MPD contends the Hearing Examiner's findings are extrajudicial and inconsistent with Board Rule 550.1⁷⁸

MPD's argument that the Hearing Examiner improperly found a violation based on an escalation of civilian hiring rather than the creation of new roles is unpersuasive. Regarding the Firearms Instructor position, the Hearing Examiner specifically found that MPD failed to provide notice of its decision to make the firearms instructor position a civilian position.⁷⁹ The Hearing Examiner reviewed the evidence and found strong support that the bargaining unit position was reclassified into a non-bargaining unit position.⁸⁰ The Hearing Examiner concluded that MPD's elimination of a bargaining unit position for a new non-bargaining unit position without notice and the opportunity to bargain violated D.C. Official Code § 1-617.04(a)(1) and (5). The Hearing Examiner's use of the word escalation was descriptive of MPD's actions—violating the CMPA by creating non-bargaining unit civilian positions from vacancies that were exclusively incumbered by bargaining unit members without notice or an opportunity to bargain. The Hearing Examiner's findings are reasonable, supported by the record, and consistent with the precedent.

2. Bargaining Over Management Rights

MPD argues that the Hearing Examiner erred in finding a duty to bargain over a mandatory subject, as the issues concerned management rights.⁸¹ Further, MPD avers that there was no change in working conditions to implicate impact and effects bargaining.⁸² Moreover, MPD asserts that the Hearing Examiner failed to require the Union to request bargaining over management rights prior to finding that MPD refused to bargain.⁸³ MPD contends that the Hearing Examiner's findings are inconsistent with Board precedent.⁸⁴

MPD is correct. The duty to bargain management rights arises upon request. The Hearing Examiner reasonably found that the implementation of a non-bargaining unit civilian Firearms Instructor position created a change in working conditions and diminished the bargaining unit. Moreover, the Hearing Examiner found that MPD violated the CMPA by failing to provide pre-implementation notice of the change in working conditions. However, the Hearing Examiner erred

⁷⁶ Exceptions at 12.

⁷⁷ Exceptions at 12.

⁷⁸ The purpose of a hearing is to develop a full and factual record upon which the Board may make a decision. A party with the burden of proof must carry that burden by a preponderance of the evidence.

⁷⁹ Report at 16.

⁸⁰ Report at 16.

⁸¹ Exceptions at 14.

⁸² Exceptions at 15-16.

⁸³ Exceptions at 17.

⁸⁴ Exceptions at 19.

in finding that MPD had a duty to bargain without demand for impact and effects bargaining from the Union.⁸⁵ MPD's decision to implement a change in hiring is covered under management rights subject to impact and effects bargaining upon request.⁸⁶

Nevertheless, the record is sufficient to find a violation of D.C. Official Code §§ 1-617.04(a)(1) and (5). The Board has held that an exercise of management rights does not relieve the employer of its obligation to bargain over the impact and effects of implementation of management rights.⁸⁷ Any general request to bargain over a matter implicitly encompasses all aspects of that matter, including the impact and effects of a management decision.⁸⁸ The Board has a broad interpretation of what constitutes a request to bargain.⁸⁹ "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.'⁹⁰

Here, the record is clear. The Union made a timely demand to bargain in its presentation of the grievance on February 28, 2025.⁹¹ In its grievance, the Union asserts that "The Department [] improperly advertised the civilian Firearms Training Instructor job posting without first bargaining with the D.C. Police Union over the impacts and effects of the civilian Firearms Training Instructor position."⁹² The Union sought an adjustment/ or relief from MPD and requested that MPD "cease and desist from implementing any changes to working conditions without first negotiating with and reaching agreement with the D.C. Police Union."⁹³

On March 31, 2025, MPD responded to the grievance. MPD acknowledged that the Union requested that MPD cease and desist from implementing any changes to working conditions without first negotiating and reaching agreement.⁹⁴ MPD provided a blanket denial of the grievance. MPD rejected the submission of the grievance as a class grievance and denied the grievance as untimely.⁹⁵

The violation of the duty to bargain arises from the employer's failure to provide an opportunity to bargain over the impact and effects once a request to bargain is made.⁹⁶ Here, the

⁸⁵ Report at 18.

⁸⁶ D.C. Official Code §1-617.08(a)(2) and (a)(5)(B).

⁸⁷ *WTU, Local 6 v. DCPS*, 65 D.C. Reg. 7474, Slip Op. No. 1668 at 8, PERB Case No. 15-U-28 (2018).

⁸⁸ *Id.*

⁸⁹ *AFGE, Local 631 v. DGS*, 60 D.C. Reg. 12068, Slip Op. No. 1401 at 5, PERB Case No. 13-U-23 (2013) (citing *International Brotherhood of Police Officers, Local 446 v. D.C. General Hospital*, 39 D.C. Reg. 9633, Slip Op. No. 322 at 3, PERB Case No. 91-U-14 (1992) where presentation of proposal constituted request to bargain). *See also*, *AFSCME, Local 2091, v. DPW*, 62 D.C. Reg. 5925, Slip Op. No. 1514, PERB Case No. 14-U-03(a) (2015) (rejecting hearing examiner's finding that a request for impact and effects bargaining must be "clear").

⁹⁰ *WTU, Local 6 v. DCPS*, 65 D.C. Reg. 7474, Slip Op. No. 1668 at 8 (citing *Teamsters Locals 639 and 730 v. DCPS*, 38 D.C. Reg. 96, Slip Op. No. 249, PERB Case No. 89-U-17 (1991)).

⁹¹ MPD Exhibit 10 at 6.

⁹² MPD Exhibit 10 at 6.

⁹³ MPD Exhibit 10 at 6.

⁹⁴ MPD Exhibit 11 at 1.

⁹⁵ MPD Exhibit 11.

⁹⁶ *FOP/MPD Labor Comm. v. MPD*, 59 D.C. Reg. 9742, Slip Op. No. 1026 at 12, PERB Case No. 07-U-24(2010) (citing *FOP/MPD Labor Comm. v. MPD*, 47 D.C. Reg. 1449, Slip Op. No. 607 at 3, PERB Case No. 99-U-44 (2000)).

Union presented a general request for negotiation over the implementation of a management right through a grievance and MPD rejected the grievance without leaving room to negotiate impact and effects. Thus, MPD has violated D.C. Official Code § 1-617.04(a)(1) and (5).

C. Discrimination Against Bargaining Unit

MPD did not make Exceptions to the finding of a violation under D.C. Official Code § 1-617.04(a)(3). However, even in the absence of exception the Board will confirm that the Hearing Examiner's findings are reasonable, supported by the record, and consistent with precedent. Here the Hearing Examiner credited the specific arguments of the Union in relation to the Firearms Instructor position. The Hearing Examiner found that MPD engaged in conduct that was inherently destructive of the bargaining unit and intentionally created civilian non-bargaining unit positions to eliminate bargaining unit members from specialized positions.⁹⁷ The findings are reasonable, supported by the record and consistent with precedent.

V. Conclusion

The Board has reviewed and rejected in-part, and adopted in-part, the findings, conclusions, and recommendations of the Hearing Examiner. The Board finds that MPD violated D.C. Official Code § 1-617.04(a)(1), (3) and (5).

VI. Post- Hearing Request for Preliminary Relief

On April 3, 2026, the Union moved for preliminary relief to address a MPD job posting for a non-bargaining unit civilian helicopter pilot position based on the Hearing Examiner's Report. Consistent with the above decision, the Board finds that the standards for preliminary relief are unmet for claims related to the helicopter position.⁹⁸ Therefore, the Union's Motion for Preliminary Relief is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Metropolitan Police Department shall bargain in good faith with D.C. Police Union, Lodge #2, concerning the impact and effects of implementing the Firearms Instructor Position;
2. The Metropolitan Police Department shall cease and desist from discriminating against the bargaining unit by intentionally creating civilian positions to eliminate bargaining unit positions without notice and the opportunity to bargain upon request;

⁹⁷ Report at 19.

⁹⁸ Board Rule 520.9. The Board may order preliminary relief. A request for preliminary relief must be accompanied by affidavits or other evidence supporting the request. Preliminary relief may be granted where the Board's ultimate remedy may be inadequate and the Board finds that the conduct is clear-cut and flagrant, the effect of the alleged unfair labor practice is widespread, the public interest is seriously affected, or the Board's processes are being interfered with.

4. Within fourteen (14) days from the service of this Decision and Order, the Metropolitan Police Department shall post the attached Notice conspicuously where notices to employees in this bargaining unit are customarily posted for thirty (30) consecutive days and electronically in a manner in which notices are customarily distributed; and
5. The Metropolitan Police Department shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from the issuance of this Decision and Order, that Notices have been posted as ordered.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By vote of the Board Chairperson Peter Winkler, Members Mary Anne Gibbons, Renee Bowser, and Lee Clark.

September 17, 2026
Washington, D.C.

APPEAL RIGHTS

A final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1-605.2(12) and 1-617.13(c), which provides 30 days after a decision file an appeal.