

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:)	
)	
)	
Fraternal Order of Police/Department of Corrections Labor Committee)	
)	
Complainant)	PERB Case No. 23-U-03
)	
v.)	Opinion No. 1829
)	
District of Columbia Department of Corrections)	
)	
Respondent)	
)	

DECISION AND ORDER

I. Statement of the Case

On November 28, 2022, the Fraternal Order of Police/Department of Corrections Labor Committee (FOP) filed an “Amended Unfair Labor Practice Complaint & Motion for Preliminary Relief” (Complaint) against the District of Columbia Department of Corrections (DOC). The Complaint alleges that DOC violated D.C. Official Code § 1-617.04(a)(1) of the Comprehensive Merit Personnel Act (CMPA) by unilaterally diverging from the seniority-based shift bidding system established in DOC policy and the parties’ collective bargaining agreement (CBA) to adopt a new system of annually rotating shifts.¹ FOP requested preliminary relief in the form of a Board order directing DOC to rescind its memorandum implementing the new system and reinstate the old system.²

On January 18, 2023, DOC filed a “Motion to Dismiss the Complaint in Lieu of an Answer and Opposition to Complainant’s request for Preliminary Relief” (Motion). DOC argues that the Board should dismiss the Complaint for lack of jurisdiction.³ DOC also argues that FOP is not entitled to preliminary relief because FOP failed to meet the standard for preliminary relief set forth in Board Rule 520.9.⁴ That argument is now moot. On January 25, 2023, PERB issued a

¹ Complaint at 1-2, 6.

² Complaint at 7.

³ Motion at 2-3.

⁴ Motion at 4.

letter denying FOP's Motion for Preliminary Relief because FOP failed to show that the Board's ultimate remedy would be inadequate, as required under Board Rule 520.9.

For the reasons discussed herein, the Board finds that DOC repudiated the parties' CBA, thereby committing an unfair labor practice under D.C. Official Code § 1-617.04(a)(1) and (5) of the CMPA.

II. Background

FOP presented the following factual record.⁵ On July 1, 2022, the Acting Records Administrator in the Inmates Records Office (IRO) at DOC disseminated a memorandum to all IRO staff.⁶ The memorandum stated that, effective July 5, 2022, IRO employees would no longer bid for their shifts based on seniority, as had been the practice for over 20 years.⁷ Under the new system, "IRO staff would swap shifts on an annual basis, regardless of seniority."⁸

Article 18, Section D of the CBA establishes the shift bidding process for "all non-uniformed [DOC] employees who are required to perform rotating shift work," including IRO staff.⁹ That provision states that "[a]nnual shift changes will be distributed and rotated equally among qualified employees in accordance with internal policies and procedures."¹⁰ Internal DOC policy 5010.8H(12)(a)(1) provides that "Correctional Officers with the longest time in rank and DOC service...have priority consideration for bids."¹¹ This provision covers uniformed employees as well as non-uniformed employees, to include IRO Correction Officers.¹²

On July 5, 2022, FOP submitted a group grievance on behalf of the IRO staff alleging violations of the CBA and 5010.8H.¹³ On August 15, 2022, DOC denied the group grievance.¹⁴ In the denial, DOC "disputed that the CBA had been violated citing Article 2 of the CBA and stat[ed] that management had the 'sole right to take necessary actions to maintain the efficiency of the agency's operations.'"¹⁵

⁵ Pursuant to Board Rule 502.13, "A respondent who fails to file a timely answer may be deemed to have admitted the material facts alleged in the initial pleading and to have waived a hearing." DOC did not file an answer. There are no factual disputes on the record. Thus, no hearing was held in this case, and the background provided is based on the facts presented in the Complaint.

⁶ Complaint at 2.

⁷ Complaint at 2.

⁸ Complaint at 2 (emphasis omitted).

⁹ Complaint at 2-3 (quoting Fraternal Order of Police/Department of Corrections Labor Committee and District of Columbia Department of Corrections (2016), *Working Conditions Collective Bargaining Agreement: 2016 - 2019*, https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/4994_001.pdf).

¹⁰ Complaint at 2 (quoting CBA).

¹¹ Complaint at 3 (quoting District of Columbia Department of Corrections, October 15, 2019, *Staffing and Manpower Utilization* (5010.8H)).

¹² Complaint at 4 (citing 50108H).

¹³ Complaint at 4.

¹⁴ Complaint at 4.

¹⁵ Complaint at 4-5 (quoting CBA).

Effective September 16, 2022, DOC amended 5010.8H to a new policy – 5010.8I.¹⁶ DOC did not bargain with FOP over the policy amendment.¹⁷ The language of 5010.8I suggests that IRO employees are now exempt from the policy provision concerning bidding for shifts.¹⁸ Article 5, Section G of the CBA requires DOC to “notify and provide the Union with the opportunity to bargain regarding new policies or procedures that are subject to the duty of bargaining before implementation.”¹⁹

III. Discussion

FOP argues that DOC failed to bargain over a change that contravened the CBA and DOC policy provisions concerning the seniority bidding system for IRO employees, thereby committing an unfair labor practice (ULP) under D.C. Official Code § 1-617.04(a)(1).²⁰ FOP disputes the reasoning DOC provided for denying FOP’s grievance – namely, that management has the “sole right to take necessary actions to maintain the efficiency of the agency’s operations.”²¹ FOP asserts that, under that logic, “management could abrogate the entire CBA.”²² Further, FOP argues that the new employee shift assignment system has created an imbalanced distribution of IRO employees across shifts, thereby reducing the efficiency of IRO operations.²³

DOC requests that the Board dismiss the Complaint.²⁴ DOC argues that this matter “is improperly before the [Board] because it is a contractual dispute....”²⁵ DOC asserts that Board precedent “has made a distinction between statutorily imposed obligations and those contractually agreed-upon by the parties.”²⁶ DOC argues that pursuant to Board precedent, “allegations of breach of contract or policy violations fall outside PERB’s jurisdiction and must be addressed through the parties’ grievance and arbitration provision.”²⁷ DOC asserts that, after it denied FOP’s grievance, FOP abandoned that process and pivoted to filing its ULP Complaint with the Board.²⁸ DOC contends that FOP’s “[d]issatisfaction with the outcome of its grievance does not transform a contractual dispute into a statutory violation,” and thus does not form the basis of a ULP.²⁹

D.C. Official Code § 1-617.04(a)(1) prohibits the District, its agents, and representatives from “[i]nterfering with, restraining, or coercing any employee in the exercise of the rights

¹⁶ Complaint at 5 (citing District of Columbia Department of Corrections, October 15, 2019, *Staffing and Manpower Utilization* (5010.8I)).

¹⁷ Complaint at 6.

¹⁸ Complaint at 5-6.

¹⁹ Complaint at 6 (quoting CBA).

²⁰ See generally, Complaint.

²¹ Complaint at 4-5.

²² Complaint at 5.

²³ Complaint at 5.

²⁴ Motion at 4.

²⁵ Motion at 3.

²⁶ Motion at 2 (citing *Greer & Farrar-Otuonye v. Board of Trustees of UDC*, 59 D.C. Reg. 5400, Slip Op. No. 981 at 4, PERB Case No. 07-U-35 (2012)).

²⁷ Motion at 2 (citing *FOP/MPD Labor Comm. v. MPD*, 46 D.C. Reg. 7605, Slip Op. No. 384, PERB Case No. 94-U-23 (1999)).

²⁸ Motion at 1-2.

²⁹ Motion at 3.

guaranteed” under D.C. Official Code § 1-617.04. An agency is obligated to bargain collectively in good faith with the exclusive representative” of its employees, pursuant to D.C. Official Code § 1-617.04(5). Failure to do so constitutes an unfair labor practice.

The Board distinguishes between those obligations that are statutorily imposed under the CMPA and those that are contractually agreed upon between the parties.³⁰ It is well established that the Board’s authority only extends to resolving statutorily-based obligations under the CMPA.³¹ Where the Board would be required to interpret the parties’ CBA to decide between competing interpretations, the Board lacks jurisdiction.³² However, a contractual violation will be deemed a ULP if the complainant can establish that it also violates the CMPA or constitutes a repudiation of the parties’ CBA.³³ A party’s refusal to implement a viable CBA is a repudiation of the CBA and, thus, a ULP.³⁴

In this case, the dispute is contractual, centering around DOC’s alleged repudiation of the CBA, as well as the subsequent amendment to DOC policy. However, MPD does not contest FOP’s interpretation of the CBA. Here, the Board is not required to decide between two conflicting interpretations of the CBA, and thus, can rule on the matter without contractual interpretation. Therefore, the Boards finds that it has jurisdiction over the Complaint.

The Board finds that DOC repudiated the parties’ CBA when it issued the July 1, 2022 memorandum and when it unilaterally enacted amended policy 5010.8I. Article 18, Section D of the CBA establishes that “[a]nnual shift changes will be distributed and rotated equally among qualified employees in accordance with [DOC policy 5010.8H(12)(a)(1)].” After DOC issued the memorandum and FOP grieved the matter, DOC enacted amended policy 5010.8I without engaging in the collective bargaining that was required under Article 5, Section G of the CBA. DOC’s memorandum violated the existing terms of the CBA at the time it was issued. Through the improper, unilateral enactment of 5010.8I, DOC effectively changed the meaning of the CBA to match the memorandum. However, the new policy did not mitigate DOC’s repudiation of the contract. Instead, it constituted a second instance of repudiation. DOC twice refused to implement a viable CBA, in violation of D.C. Official Code § 1-617.04(a)(1) and (5).

IV. Conclusion

The Board finds that DOC committed an unfair labor practice under D.C. Official Code § 1-617.04(a)(1) and (5) of the CMPA when it 1) repudiated Article 18, Section D of the CBA by issuing a memorandum that contradicted DOC policy 5010.8H; and 2) repudiated Article 5, Section G of the CBA by failing to bargain with FOP over the 5010.8I amendment to DOC policy 5010.8H.

³⁰ *AFGE, Local 2741 v. DPR*, 50 D.C. Reg. 5049, Slip Op. No. 697, PERB Case No. 00-U-22 (2002).

³¹ *Id.*

³² *See DCPS v. WTU, Local 6*, 63 D.C. Reg. 11720, Slip Op. No. 1587, PERB Case No. 14-U-20 (2016).

³³ *UDC Faculty Ass’n v. UDC*, 60 D.C. Reg. 2536, Slip Op. No. 1350 at 2, PERB Case No. 07-U-52 (2013).

³⁴ *Teamsters Local Union Nos. 639 and 730 v. DCPS*, 43 D.C. Reg. 6633, Slip Op. No. 400, PERB Case No. 93-U-29 (1994).

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Department of Corrections shall rescind the July 1, 2022, memorandum concerning the assignment of shifts for IRO employees.
2. The District of Columbia Department of Corrections shall reinstate the prior shift bidding system for Inmates Records Office employees, established under Department of Corrections policy 5010.8H.
3. The District of Columbia Department of Corrections shall make whole any Inmates Records Office employees who were adversely impacted by the new shift assignment system.
4. The District of Columbia Department of Corrections shall bargain with the Fraternal Order of Police/Department of Corrections Labor Committee over the 5010.8I amendment to DOC policy 5010.8H, without abrogating any provisions of the governing collective bargaining agreement.
5. The District of Columbia Department of Corrections shall within ten (10) days of issuance of this Decision and Order post a Notice electronically and on all bulletin boards where notices to bargaining unit employees are normally posted for thirty (30) days.
6. The District of Columbia Department of Corrections shall notify the Board of the posting within fourteen (14) days after issuance of the decision and order requiring posting.
7. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By vote of Board Chairperson Douglas Warshof and Members Renee Bowser, Mary Anne Gibbons, and Peter Winkler.

February 21, 2023

Washington, D.C.

APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration, requesting the Board reconsider its decision. Additionally, 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 is issued to file an appeal.