

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:)	
)	
Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO,)	
)	
Complainant,)	PERB Case No. 11-U-28
)	
v.)	Opinion No. 1257
)	
District of Columbia Public Schools,)	
)	
Respondent.)	

DECISION AND ORDER

I. Statement of the Case

The Council of School Officers, Local 4, American Federation of School Administrators (“Complainant” or “Union”) filed an unfair labor practice complaint (“Complaint”) on March 30, 2011, against the District of Columbia Public Schools (“Respondent” or “DCPS”). The Complaint alleges that the Union requested certain position descriptions from the DCPS and never received them. The Union argues: (1) that the DCPS’s failure to maintain current and accurate position descriptions is unlawful and an unfair labor practice and (2) that the failure of the DCPS to provide them to the Union is a violation of the parties’ collective bargaining agreement and an unfair labor practice.

The DCPS filed an answer in which it admitted that it had not provided the Union with the requested information but denied that the Union had stated a claim upon which relief may be granted.

II. Discussion

The Union alleges that it twice requested from the DCPS certified position descriptions for each of the job titles covered by a collective bargaining agreement between the Union and the DCPS. The Union first requested the descriptions via a January 13, 2011 letter to the interim chancellor of the DCPS and again in a second letter to the interim chancellor dated February 2, 2011 (Complaint at p. 2).

The second letter discussed the reasons for the request as well as an e-mail response to the Union's first letter from a DCPS director and the Union's reply to her. The Union explained in the second letter that a number of its members were being asked to perform duties outside their position descriptions (Complaint, exhibit 2). The Union alleges in the Complaint that such an assignment puts an employee in the dilemma of choosing between accepting the assignment and taking time away from the duties for which he will be evaluated, on the one hand, or refusing the assignment and being insubordinate, on the other (Complaint at pp. 2-3, para. 7-9).

According to the Complaint, Municipal Regulations governing public schools require the DCPS to maintain position descriptions, D.C. Mun. Regs. tit. 5, §§ 1100.2 & 1100.5, and make them available to employees. *Id.* at § 1100.4. In addition, the collective bargaining agreement "recognizes the legal right of members to have accurate and current position descriptions." (Complaint at p. 4.) The Union argues that the failure of the DCPS to maintain current and accurate position descriptions violates the foregoing Municipal Regulations and the failure of the DCPS to provide position descriptions to the Union violates the collective bargaining agreement and the Comprehensive Merit Protection Act ("CMPA"). "The above facts," the Union alleges, "support a finding that DCPS has committed an unfair labor practice with respect to its failure to provide the Union with the information it requested. DCPS has also committed an unfair labor practice with respect to its ongoing failure to abide by the legal requirements relating to position descriptions." (Complaint at pp. 4-5, para. 14.)

The Respondent in its answer admitted that it had not provided the Union with the requested information but pointed out that DCPS's director of labor, management and employee relations had sent an e-mail on January 25, 2011 to the Union in response to the Union's first letter. In that e-mail the director says, "I am working on your request and hope to have a substantive response to you in short order; unfortunately, I will not be able to provide you with the requested information by the close of business tomorrow." (Answer at p. 2 & exhibit 4.) The answer avers that the Union's allegations of a violation of law and contract and of an unfair labor practice are legal conclusions to which no response is necessary, but to the extent a response were necessary, the DCPS denies the allegations (Answer at p. 4). The answer further asserts that the Complaint "fails to state a cause of action for which relief may be granted by PERB" (*Id.* at p. 5) but does not explain why.

The Board has said many times that it looks to the CMPA and not to a collective bargaining agreement to determine whether an unfair labor practice has occurred. This is not the venue to redress alleged violations of a collective bargaining agreement. *In the Matter of F.O.P./Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, Slip Op. No. 984 at pp. 6-7, PERB Case No. 08-U-09 (Sept. 30, 2009); *In the Matter of: Am. Fed'n of State, County & Mun. Employees Council 20, Local 2401 v. D.C. Child & Family Servs. Agency*, Slip Op. 885 at p. 5, PERB Case No. 06-U-33 (Mar. 21, 2007).

Similarly, it is not the Board's function to monitor compliance with Municipal Regulations of the public schools, but it is our duty to determine if the DCPS has met its obligations to bargain in good faith and otherwise comply with the CMPA, section 1-617.04 of the District of Columbia Code. *Cf. In the Matter of: F.O.P./Dep't of Corrections Labor Comm. v. D.C. Dep't of Corrections*, 52 D.C. Reg. 2496, Slip Op. No 722 at p. 5, PERB Case Nos. 01-

U-21, 01-U-28, and 01-U-32 (2003); *In the Matter of: Univ. of D.C. Faculty Ass'n v. Univ. of D.C.*, 46 D.C. Reg. 7228, Slip Op. No. 485 at p. 4, PERB Case No. 96-U-14 (1996). We have held "that an agency is obligated to furnish requested information that is both relevant and necessary to a union's role in: (1) processing of a grievance; (2) an arbitration proceeding; or (3) collective bargaining" and that a failure to do so is an unfair labor practice. *In the Matter of: F.O.P./Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, Slip Op. No. 1131 at p. 4, PERB Case No. 09-U-59 (Sept. 15, 2011).

A review of the parties' pleadings makes clear that: (1) DCPS acknowledges that the Union made at least two requests for information and that DCPS failed to comply with those requests; (2) DCPS has not provided the documents and information requested by the Union on January 13, 2011 and February 2, 2011; and (3) DCPS has not articulated any viable defense with respect to its failure to provide the information requested by the Union on January 13, 2011 and February 2, 2011. Because of these undisputed facts, there is no issue of fact warranting a hearing and the matter can appropriately be decided on the pleadings pursuant to Rule 520.10.

The information requested by the Union related to IMPACT evaluations. The Union alleges and DCPS admits that employees who receive poor evaluations under IMPACT may be terminated (Complaint at pp. 2-3; Answer at p. 3). We find that the requested information is both relevant and necessary to a legitimate collective bargaining function to be performed by the Union, i.e., the investigation, preparation and processing of grievances under the parties' negotiated grievance procedure.

Therefore, by failing to provide the Union with the requested information, DCPS has violated D.C. Code Sec. 1-618.8(a)(1) and (5) and thereby committed an unfair labor practice. *See Council of Sch. Officers, Local 4 v. D.C. Pub. Schs.*, Slip Op. No. 977 at p. 8, PERB Case No. 08-U-53 (Aug. 28, 2009); *Int'l Bhd. of Police Officers, Local 445 v. D.C. Dep't of Admin. Servs.*, 43 D.C. Reg. 1484, Slip Op. No. 401 at p. 4, PERB Case No. 94-U-13 (1996).

ORDER

IT IS HEREBY ORDERED THAT:

1. The DCPS shall cease and desist from refusing to bargain in good faith with the Union by failing to provide the information requested by the Union in its January 13, 2011 and February 2, 2011 letters.
2. The requested information shall be provided to the Union no later than fourteen (14) days from service of this Decision and Order.
3. DCPS shall cease and desist from interfering, in any like and related manner, with the rights guaranteed employees by the Comprehensive Merit Personnel Act.
5. DCPS shall post copies of the attached Notice conspicuously at all of the affected work sites for thirty (30) consecutive days.

6. DCPS shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from service of this Decision and Order that the information referred to in this Order has been provided to the Union and that the Notices have been posted accordingly.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

March 27, 2012

CERTIFICATE OF SERVICE

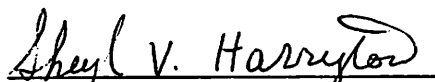
This is to certify that the attached Decision and Order in PERB Case No. 11-U-28 is being transmitted via U.S. Mail to the following parties on this the 20th day of April, 2012.

Mark J. Murphy
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Sheryl V. Harrington
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Public
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NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS, THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1257, PERB CASE NO. 11-U-28 (March 27, 2012)

WE HEREBY NOTIFY our employees that the District of Columbia 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 violating D.C. Code § 1-617.04(a)(1) and (5) by the actions and conduct set forth in Slip Opinion No. 1257.

WE WILL cease and desist from refusing to provide the Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO, with requested information relevant and necessary to its representational duties.

WE WILL NOT, in any like or related manner, interfere, restrain or coerce, employees in their exercise of rights guaranteed by the Labor-Management Subchapter of the District of Columbia Comprehensive Merit Personnel Act.

District of Columbia Public Schools

Date: _____

By: _____

Chancellor

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 1100 4th St. SW., Suite E630, Washington, D.C. 20024. Phone: (202) 727-1822.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.**