

Notice: This decision may be formally revised within thirty days of issuance 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:	)	
	)	
American Federation of Government	)	
Employees, Local 631	)	
	)	PERB Case No. 24-U-09
Complainants	)	
	)	Opinion No. 1866
v.	)	
	)	
District of Columbia Water and Sewer Authority	)	
	)	
Respondent	)	
_____	)	

**DECISION AND ORDER**

**I. Statement of the Case**

On January 3, 2024, the American Federation of Government Employees, Local 631 (Union) filed an unfair labor practice complaint (Complaint) against the District of Columbia Water and Sewer Authority (WASA). The Complaint alleges that WASA (i) illegally withdrew from bargaining with the Union after the declaration of impasse, (ii) denied the Union its right, as exclusive representative, to bargain for employees, and (iii) illegally refused to provide paid parental leave (PPL) benefits to employees represented by the Union, in violation of D.C. Official Code § 1-617.04(a)(1), (3), and (5). On January 22, 2024, WASA filed an Answer denying violation of the CMPA, and further asserting affirmative defenses to the Complaint.

For the reasons stated herein, the Board finds that WASA committed an unfair labor practice in violation of D.C. Official Code § 1-617.04(a)(1) and (5) by failing to bargain in good faith with the Unions over the PPL benefit.

**II. Background**

The following facts are undisputed by the parties. On July 7, 2022, WASA’s Board of Directors amended the Agency’s Personnel Regulations to add PPL as a category of unaccrued

leave for employees.<sup>1</sup> On October 3, 2022, WASA informed the Union about the PPL policy and notified the Union that the parties must negotiate the newly added benefit before bargaining unit employees avail themselves of PPL.<sup>2</sup> The Union requested to bargain over the PPL policy shortly thereafter.<sup>3</sup> The parties held their first bargaining session on October 31, 2022.<sup>4</sup>

On November 10, 2022, the Union filed a step 3 class grievance styled, “Failure to Provide Paid Parental Leave to Union Employees.”<sup>5</sup> On November 23, 2022, the Union provided WASA with a proposal and requested to resume bargaining in December 2022.<sup>6</sup> On December 12, 2022, WASA informed the Union that it would not resume negotiations until the Grievance was processed through completion or withdrawn.<sup>7</sup> On December 14, 2022, WASA rejected the Union’s proposal on PPL.<sup>8</sup>

On December 20, 2022, the Union filed an unfair labor practice complaint against WASA with the Board.<sup>9</sup> On January 9, 2023 WASA filed a response to the complaint, denying violation of the CMPA.<sup>10</sup> Both parties asserted before the Board that it was undisputed that PPL was a mandatory subject of bargaining.<sup>11</sup> On April 27, 2023, the Board issued a decision in Opinion No. 1838, finding that WASA committed an unfair labor practice under the CMPA by refusing to bargain with the Union.<sup>12</sup> The Board ordered WASA to cease and desist from refusing to bargain with the Union over the PPL benefit.<sup>13</sup>

Following the Board’s decision in Opinion No. 1838, the parties resumed negotiations on the PPL benefit.<sup>14</sup> The parties exchanged Last Best Offers in September 2023, but were unable to reach agreement.<sup>15</sup> On November 7, 2023, the Union filed a Request for Impasse Resolution with the Board.<sup>16</sup> Pursuant to Board Rule 527, PERB’s Executive Director scheduled an informal inquiry with the parties regarding the Request for November 21, 2023.<sup>17</sup>

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<sup>1</sup> *AFGE, Locals 631 and 872, and NAGE, Local R3-06 v. WASA*, 70 D.C. Reg. 6985, Slip Op. No. 1838 at 2, PERB Case No. 23-U-04 (2023).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 3. The Union filed the step 3 class grievance along with two other unions, AFGE, Local 872, and NAGE, Local R3-06. *See id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 4.

<sup>12</sup> *Id.* at 6.

<sup>13</sup> *Id.*

<sup>14</sup> Complaint at 3; Answer at 3.

<sup>15</sup> Complaint at 3; Answer at 3.

<sup>16</sup> Complaint at 3; Answer at 3; *see also* Union’s Request for Impasse Resolution (Request), *AFGE, Local 631 et al. and WASA*, PERB Case No. 24-I-02 (2023).

<sup>17</sup> Answer at 3.

On November 20, 2023, WASA notified the Union that it is “no longer offering paid parental leave to the Unions,” and that the Agency is further not obligated to provide the PPL benefit.<sup>18</sup> WASA filed a response to the Request the same day, notifying PERB’s Executive Director that WASA has rescinded its PPL offer, and requesting that PERB cancel the informal inquiry.<sup>19</sup> WASA argued in its letter that, “DC Water is not obligated to provide paid parental leave to the Unions because DC Water is exempt from the underlying law implementing paid parental leave in the District and paid parental leave is not a mandatory subject of bargaining. As such, DC Water may unilaterally rescind its proposal at any time before it is accepted by the Unions.”<sup>20</sup>

On December 15, 2023, PERB administratively dismissed the Union’s Impasse Resolution Request, finding that impasse resolution proceedings were not the appropriate means of resolving the issue.<sup>21</sup>

### III. Discussion

The Union alleges that WASA (i) illegally withdrew from bargaining with the Union after the declaration of impasse; (ii) denied the Union its right, as exclusive representative, to bargain for employees; and (iii) illegally refused to provide paid parental leave (PPL) benefits to employees represented by the Union.<sup>22</sup> The Union argues that WASA’s conduct is a failure to bargain in good faith, an interference with the Union’s right to represent employees, and a coercion of the Union’s rights as exclusive representative, in violation of D.C. Official Code § 1-617.04(a)(1), (3), and (5).

WASA denies that it refused to provide PPL because the Union requested impasse.<sup>23</sup> WASA asserts that, as an independent agency, it is under no obligation to offer PPL to the Union or to bargain with the Union regarding the PPL benefit.<sup>24</sup>

There are three categories of collective bargaining subjects: (1) mandatory subjects, over which the parties must bargain; (2) permissive subjects, over which the parties may bargain; and (3) illegal subjects, over which the parties may not legally bargain.<sup>25</sup> Failure to bargain before implementing a unilateral change in a mandatory subject of bargaining is an unfair labor practice.<sup>26</sup>

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<sup>18</sup> Complaint Exhibit 4 at 1; see also Complaint at 3-4; Answer at 4.

<sup>19</sup> Complaint at 4; Answer at 4; Complaint Exhibit 5 at 1; Answer Exhibit 8 at 1.

<sup>20</sup> Complaint Exhibit 5 at 2; Answer Exhibit 8 at 2.

<sup>21</sup> Complaint at 4; Answer at 4.

<sup>22</sup> Complaint at 1.

<sup>23</sup> Answer at 9.

<sup>24</sup> Answer at 4; Complaint, Exhibit 5.

<sup>25</sup> *AFGE Locals 383, 1000, 1975, 2725, 2741, and 2978 v. RHC et. al.*, 68 D.C. Reg. 40, Slip Op. No. 1798 at 2, PERB Case No. 21-N-03 (2021) (citing *NLRB v. Borg-Warner Corp.*, 356 U.S. 342 (1975)).

<sup>26</sup> *FOP/PSD Labor Committee v. DGS*, 67 D.C. Reg. 7031, Slip Op. No. 1739 at 8, PERB Case No. 18-U-01 (2018); *AFGE, Local 631 v. DPW*, 59 D.C. Reg. 5981, Slip Op. No. 1001 at 4, PERB case No. 05-U-43 (2012).

WASA adopted Resolution # 22-37 to amend 21 DCMR § 5204 to extend PPL benefits to employees.<sup>27</sup> WASA's previous position was that the PPL benefit is a mandatory subject of bargaining.<sup>28</sup> WASA now argues that the PPL benefit is not a mandatory subject of bargaining.<sup>29</sup>

The Board decided that the PPL benefit was a mandatory subject of bargaining in Opinion No. 1838, based on the parties' assertions that it was uncontested.<sup>30</sup> The Board's decision on this issue was essential to its holdings in Opinion No. 1838, that WASA had a duty to bargain with the Union over the PPL benefit, and that WASA's refusal to do so was an unfair labor practice under the CMPA.

The Board has held that, when applicable, collateral estoppel renders conclusive the determination of issues of fact or law previously decided in another proceeding.<sup>31</sup> Therefore, the Board finds in this case that the PPL benefit is a mandatory subject over which the parties must bargain.

D.C. Official Code § 1-617.04(a)(5) makes it an unfair labor practice for the District to refuse to bargain collectively in good faith with the exclusive representative. A violation of the employer's statutory duty to bargain under D.C. Code 1-617.04(a)(5) also derivatively constitutes a violation of the counterpart duty not to interfere with, restrain or coerce employees' statutory rights under D.C. Official Code § 1-617.04(a)(1).<sup>32</sup>

WASA's rescission of its PPL offer to the Union, and its position that the Agency is not obligated to provide the PPL benefit to the Union, constitute a refusal to bargain in good faith over a mandatory subject of collective bargaining. As such, the Board finds that WASA committed an unfair labor practice.

#### **IV. Conclusion**

The Board finds that WASA committed an unfair labor practice in violation of D.C. Official Code § 1-617.04(a)(1) and (5).

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

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<sup>27</sup> See 21 DCMR § 5204.4.

<sup>28</sup> *AFGE, Locals 631 and 872, and NAGE, Local R3-06*, Slip Op. No. 1838 at 4.

<sup>29</sup> Answer at 4; Answer Exhibit 8 at 2.

<sup>30</sup> *AFGE, Locals 631 and 872, and NAGE, Local R3-06*, Slip Op. No. 1838 at 4, 5.

<sup>31</sup> *FOP/PSPD Labor Committee and DGS*, 62 D.C. Reg. 16505, Slip Op. No. 1551 at 3, PERB Case No. 15-N-04 (2015) (quoting *Modiri v. 1342 Rest. Group, Inc.*, 904 A.2d 391, 394 (D.C.2006)).

<sup>32</sup> See *UDCEA*, Slip Op. No. 297 at 2.

1. The District of Columbia Water and Sewer Authority shall cease and desist from interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by D.C. Official Code § 1-617.04(a)(1).
2. The District of Columbia Water and Sewer Authority shall cease and desist in its refusal to bargain in good faith with the American Federation of Government Employees, Local 631 in accordance with by D.C. Official Code § 1-617.04(a)(5).
3. The District of Columbia Water and Sewer Authority 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;
4. The District of Columbia Water and Sewer Authority shall notify the Board of the posting within fourteen (14) days after issuance of the Decision and Order requiring posting;
5. 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.

March 21, 2024

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.