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Mar 22 2024 07:53PM EDT
DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD
Transaction ID: 72590490

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of: Service Employees International Union Healthcare Workers East, Local 1199 Petitioner and District of Columbia Department of Behavioral Health Respondent	PERB Case No. 24-N-02 Opinion No. 1863

DECISION AND ORDER

I. Statement of the Case

On December 20, 2023, the Service Employees International Union Healthcare Workers East, Local 1199 (SEIU) filed the instant negotiability appeal (Appeal). The Appeal concerns a proposal that sought to require the District of Columbia Department of Behavioral Health (DBH) to engage in impact and effects bargaining upon the enactment of legislation that affects the licensure of social workers. DBH declared SEIU's proposal nonnegotiable.[1] SEIU filed the present Appeal, requesting that the Board find the proposal negotiable.[2] DBH filed an Answer to the Appeal on January 18, 2024, asking the Board to deny SEIU's request.[3] SEIU filed a Response to the Answer on January 30, 2024.

For the reasons stated herein, the Appeal is denied as the proposal is nonnegotiable.

[1] Appeal at 4-5; Answer at 3.
[2] Appeal at 9.
[3] Answer at 12.

II. SEIU Proposal

SEIU's proposed addition to Article 25 of the CBA, "Professional Practice," reads as follows:

> If the D.C. Council enacts any legislation affecting the licensure of social workers, the parties shall meet within 30 days of the passage of such legislation to discuss the impacts and effects of the legislation, if any, and consider any bargaining proposals relating to such impact and effects.[4]

III. Discussion

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.[5] Management rights are permissive subjects of bargaining.[6] A permissive subject of bargaining is nonnegotiable if either party declines to bargain on the subject.[7]

SEIU asserts that its proposal was prompted by the Council of the District of Columbia (Council) enacting legislation which created free social work programs,[8] and by a bill the Council recently introduced to "exempt associate and graduate social workers from examination for licensure."[9] SEIU contends that these developments indicate the Council "is particularly focused on issues concerning social workers and serious about legislating in this area."[10] SEIU argues that the proposal does not infringe on any management rights, but "merely seeks to enshrine in the CBA [SEIU]'s desire to engage in [impact and effects] bargaining in the event that licensure legislation is enacted," and aims to set a deadline for that bargaining to commence.[11]

DBH argues that SEIU's proposal unreasonably interferes with the exercise of a management right.[12] DBH contends that if the bill concerning social worker examination requirements passes, it could potentially "remove a precondition to working as a social worker" thereby implicating management's right "to hire, promote, transfer, assign, retain, and direct employees; determine the efficiency of the agency; and determine the number, types, and grades of positions."[13] DBH argues that management rights are permissive subjects over which DBH

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[4] Appeal at 4.
[5] *DCNA v. DOH*, 59 D.C. Reg. 10,776, Slip Op. No. 1285 at 4, PERB Case No. 12-N-01 (2012) (citing *NLRB v. Wooster Div. of Borg-Warner Corp.*, 356 U.S. 342 (1975)).
[6] *NAGE Local R3-06 v. WASA*, 60 D.C. Reg. 9194, Slip Op. No. 1389 at 4, 13-N-03 (2013); *FEMS and AFGE, Local 3721*, 54 D.C. Reg. 3167, Slip Op. 874 at 9, PERB Case No. 06-N-01 (2007).
[7] *UDCFA v. UDC*, 64 D.C. Reg. 5132, Slip Op. No. 1617 at 2, PERB Case No. 16-N-01 (2017).
[8] Appeal at 4 (citing Colleen Grablick, *New C.D. Bill Will Fund Social Work Degrees for Washingtonians*, DCist (Nov. 8, 2023), https:/Answer at 3./dcist.com/story/23/11/08/dc-council-passes-bill-free-msw-program-udc/).
[9] Appeal at 3 (citing B25-0259 – Social Work License Modernization Amendment Act of 2023).
[10] Appeal at 4.
[11] Appeal at 7.
[12] Answer at 4.
[13] Answer at 4 (citing D.C. Official Code §1-617.08 of the Comprehensive Merit Personnel Act (CMPA)).

need only bargain impact and effects.[14] DBH further argues that "the legislation [concerning licensure examination] has not yet passed, and there have been no managerial decisions regarding the legislation, a prerequisite for impact and effect bargaining under [Board] precedent."[15]

Pursuant to D.C. Official Code §1-617.08 of the CMPA, management retains the sole right to take certain management actions without engaging in substantive bargaining. Under §1-617.08(a)(2), management may freely "hire, promote, transfer, assign, and retain employees in positions within the agency…." Additionally, under §1-617.08(a)(5)(B), management has authority to independently determine "[t]he number, types, and grades of employees assigned to an agency's organizational unit, work project, or tour of duty," and need only bargain over the impact and effects of those determinations at the union's request.[16] The Board has held that "[t]he right to assign work encompasses the right to determine particular duties to be assigned, when work assignments will occur, and to whom or what positions the duties will be assigned."[17]

Relevant to the present case, if legislation passes concerning the licensure requirements of social workers, DBH may exercise the rights granted under D.C. Official Code §1-617.08(a) by making a management decision to change the process it uses for hiring and assigning social workers. SEIU avers that its proposal complies with the CMPA because if the legislation passes, DBH will have an obligation to bargain over the impact and effects of any resulting change.[18] SEIU's argument is unpersuasive. The Board has previously established that an employer does not have a duty to bargain impact and effects until a managerial decision has been made.[19] Legislation alone does not trigger the duty to bargain impact and effects. Thus, SEIU's proposal concerning future legislation and hypothetical management decisions is premature and violates the management rights established under the CMPA.[20]

For the reasons stated, the Board finds SEIU's proposal nonnegotiable and denies the Appeal.

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[14] Answer at 7.
[15] Answer at 3.
[16] *Teamsters, Local 446 v. D.C. Gen. Hosp.*, 41 D.C. Reg. 2321, Slip Op. No. 312 at 3, PERB Case No. 91-U-06 (1994) (establishing 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 those rights).
[17] *AFSCME, Local 1959 v. OSSE*, 68 D.C. Reg. 1349, Slip Op. No. 1766 at 4, PERB Case No. 21-N-01 (2021) (citing *AFGE, Local 1985*, 55 FLRA 1145, 1148 (1999)).
[18] Appeal at 7.
[19] *AFSCME, Local 2091 v. DPW*, 62 D.C. Reg. 5925, Slip Op. No. 1514 at 4, PERB Case No. 14-U-03 (2015); *FOP/DOC Labor Comm. v. DOC*, 49 D.C. Reg. 8937, Slip Op. No, 679 at 15, PERB Case Nos. 00-U-36 and 00-U-40 (2002); FOP/MPD Labor Comm. v. MPD, 47 D.C. Reg. 1449, Slip Op. No. 607 at 4, PERB Case No. 99-U-44 (2000) (finding that it was premature to conclude that management violated the CMPA by failing to bargain over the impact of a proposed, but unimplemented, schedule change)).
[20] SEIU argues that the hypothetical nature of the identified legislation is irrelevant to the proposal's viability because the parties have a past practice of making agreements which are contingent on future events. Appeal at 5-6. This argument is unavailing, as the Board has consistently "rejected past practice as a controlling factor in determining whether or not a duty to bargain exists with respect to a particular matter." *Teamsters, Locals 639 and 730 v. DCPS*, 38 D.C. Reg. 96, Slip Op. No. 249 at 6, fn. 5, PERB Case No. 89-U-17 (1991) (citing *WTU, Local 6 v. DCPS*, 48 D.C. Reg. 6555, Slip Op. No. 144, PERB Case No. 85-U-28 (1986), aff'd *Public Employee Relations Board, et al. v. Washington Teachers' Union, Local 6*, AFT, 556 A.2d 206 (D.C. Ct. App.) (1989)).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Appeal is denied.
2. 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 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.