

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:)	
)	
American Federation of Government Employees, Local 631)	
)	
Petitioner)	PERB Case No. 22-N-02
)	
and)	Opinion No. 1804
)	
D.C. Office of Labor Relations and Collective Bargaining, D.C. Department of Public Works, D.C. Department of General Services, D.C. Office of Planning, D.C. Office of Contracting and Procurement, D.C. Office of Zoning, and D.C. Department of Environment and Energy)	
)	
Respondents)	
)	

DECISION AND ORDER

I. Statement of the Case

On October 19, 2021, the American Federation of Government Employees, Local 631 (Union) filed the instant Negotiability Appeal (Appeal). The Appeal concerns twelve proposals made by the Union and declared non-negotiable by the D.C. Office of Labor Relations and Collective Bargaining on behalf of the D.C. Department of Public Works, the D.C. Department of General Services, the D.C. Office of Planning, the D.C. Office of Contracting and Procurement, the D.C. Office of Zoning, and the D.C. Department of Environment and Energy (collectively “Agencies”).

The Union and the Agencies are engaged in negotiations over a Memorandum of Agreement (MOA) concerning the Agencies’ coronavirus (COVID-19) vaccine requirement for District employees (herein “Vaccine Requirements”), which affect members in the Union’s bargaining unit. On October 8, 2021, the Agencies submitted their last best offer, asserting that twelve of the Union’s proposals are non-negotiable in whole or in part. The Union timely filed

its Appeal, asserting that the proposals are negotiable. On November 2, 2021, the Agencies filed their Response to the Appeal. On November 6, 2021, the Union filed a Reply to the Response.

II. Discussion

The Agencies assert that the Union's appeal should be dismissed in its entirety,¹ arguing that the Board should not "interfere with the implementation of the District's Vaccine Requirements."² The Agencies contend that the Union's proposals infringe on management's right to determine the Agencies' internal security protocols, maintain the efficiency of government operations, and carry out the District's mission during a public emergency.³ The Union disagrees with these assertions, arguing that the Vaccination Requirements are fully negotiable as a health and safety issue and do not impact any security practice.⁴

The D.C. Superior Court recently interpreted the COVID-19 Response Emergency Amendment Act of 2020,⁵ finding that the legislation "gives management the sole right to take any necessary personnel action in emergency situations," "notwithstanding" any contradictory provision of the CMPA.⁶ The court held that management has "flexible, expansive, open-ended authority" to take the actions necessary to ensure an effective response to the COVID-19 emergency.⁷ The court found that such management actions were not subject to bargaining, even over impact and effects.⁸

Under the CMPA, D.C. Official Code § 1-617.08(a)(6) authorizes management to "take whatever actions may be necessary to carry out the mission of the District government in emergency situations."⁹ The Agencies assert that the Vaccination Requirements are in furtherance of this management right. Relying on the Superior Court's ruling in *OLRCB v. PERB*, the Board finds that the Agencies have the management right to unilaterally effectuate the Vaccination Requirements and any proposal by the Union in their current context of bargaining is non-negotiable.

For the reasons stated, the Board finds the Union's twelve proposals non-negotiable.

¹ Response at 6.

² Response at 8.

³ Response at 9.

⁴ Appeal at 4. The Union contends that the Mayor ended the public health emergency on July 25, 2021, and that management's rights in an emergency are no longer applicable. Reply at 4. The Board disagrees. In this case, the Mayor has issued orders continually extending the public emergency. Although Mayor Order 2021-096 terminated the public health emergency on July 25, 2021, the order extended the public emergency to October 9, 2021. Further, on October 7, 2021, Mayor Order 2021-119 extended the public emergency to January 7, 2022.

⁵ D.C. Official Code § 7-2304.

⁶ *OLRCB v. PERB*, at 1,8, Case No. CA 003086 P(MPA) (D.C. Super. Ct. September 29, 2021) (internal quotations omitted).

⁷ *OLRCB v. PERB*, at 7-8, Case No. CA 003086 P(MPA) (D.C. Super. Ct. September 29, 2021).

⁸ *OLRCB v. PERB*, at 7-8, Case No. CA 003086 P(MPA) (D.C. Super. Ct. September 29, 2021).

⁹ Response at 21 (quoting D.C. Official Code § 1-617.08(a)(6)).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Union's twelve proposals are non-negotiable during the public health emergency.
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.

December 16, 2021

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 22-N-02, Opinion No. 1804 was sent by File & ServeXpress to the following parties on this the 22nd day of December 2021.

Barbara Hutchinson, Esq.
American Federation of Government Employees, Local 631
1325 G Street NW, Suite 500
Washington, D.C. 20005

Kimberly Turner, Esq.
Kyle Bradley, Esq.
D.C. Office of Labor Relations and Collective Bargaining
441 Fourth Street NW, Suite 820N
Washington, D.C. 20001

/s/ Elizabeth Slover
Public Employee Relations Board

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.