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**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)	
)	
American Federation of Government Employees, Local 631,)	
)	
Complainant,)	PERB Case No. 05-N -02
)	
and)	
)	Opinion No. 811
District of Columbia Water and Sewer Authority,)	
)	CORRECTED COPY
Respondent.)	
)	
)	

DECISION AND ORDER

On July 23, 2005, the American Federation of Government Employees, Local 631 (“Complainant” or “Union”) filed a Negotiability Appeal (“Appeal”) in the above-captioned matter.¹ The Complainant and the District of Columbia Water and Sewer Authority (“WASA”) have been engaged in negotiations for a successor agreement. The Complainant claims that it submitted a

¹PERB Rule 532.1, 532.2 and 532.3 provide in relevant part:

532.1 If in connection with collective bargaining, an issue arises as to whether a proposal is within the scope of bargaining, the party presenting the proposal may file a negotiability appeal with the Board. . . .”

532.2 A negotiability appeal shall . . . include . . . the following: . . .
(b) A statement of the negotiability issues(s), including a copy of the proposal(s) at issue . . . [and]
(c) Any written communication from the other party to the negotiation asserting that a proposal is nonnegotiable.

532.3 A negotiability appeal shall be filed within thirty days.

proposal concerning job descriptions, a non-compensation matter, to the Respondent. Subsequently, the Respondent informed the Union that the proposal concerning the job descriptions was non-negotiable. As a result, the Union filed this negotiability appeal. The Union seeks that the Board declare Article 23 in its entirety, to be negotiable.

In their submission, the Union indicated that WASA has declared the proposal as non-negotiable. The Union did not state why it believes the proposal is negotiable.

In its "Answer to the Negotiability Appeal" (Answer), WASA asserts that certain sections of the Union's proposal pertain to management rights and are, therefore, non-negotiable.² Specifically,

²WASA claims that the following portions of the Union's proposal are non-negotiable:

Section A Job Descriptions

1. Each employee covered by this Agreement shall be supplied with a copy of his/her job description. Employees are entitled to accurate job descriptions. The Local Unions shall be supplied with a copy of each job description upon request. The Local Unions shall be given the opportunity to review A and bargain over changes in job descriptions prior to implementation.
2. The phrase "other duties as assigned" shall not be used to regularly assign work to an Employee that is not reasonably related to his/her position description. Work assignments shall normally reflect the grade level, classification, and performance required of an Employee. Higher level duties and responsibilities, as documented in an established position description, may not be assigned to an Employee on a continuing basis if not assigned in accordance with merit principles.

Section D Involuntary Job Audit And/or Evaluation

1. If a classification of a position action results in a reduction in grade or pay to the employee, the employee shall be allowed to contest the action by filing a Step 3 general grievance.
2. An employee will be notified whenever his/her position is to be audited or evaluated. As part of the audit or evaluation process, the employee may submit additional written material in addition to the questionnaire, to the classifier concerning the duties and responsibilities of his/her position.

Section E Notice to the Union

1. The Human Resources Department shall provide the affected Local Union with advanced written notice of five (5) workdays of the Authority's decision to change, evaluate, reclassify, or create a new job description. The notice shall be given to the Union within five (5) workdays of the Authority's decision to change, evaluate, reclassify, or

WASA claims that management has the right to: (1) determine the types and grades of positions within the agency, (2) assign its employees to positions; and (3) direct its employees and maintain the efficiency of government operations. WASA argues that these rights would be improperly limited to the extent that:

(1) Section A of the proposal would impermissibly require WASA to bargain over any *changes in job descriptions or job duties* for a specific position; (2) Section A.2 would impermissibly limit WASA's ability to *assign duties and responsibilities to its employees*; (3) Section D would impermissibly allow an employee to *submit to the grievance procedure* and ultimately to an arbitrator, any *decision by WASA* to exercise its management rights to *alter the duties, grades or classifications of job positions*; (4) Section E.1 would impermissibly require WASA to surrender its management rights and bargain over any *changes to job descriptions or job classifications*; (5) Section E.2 would impermissibly require WASA to surrender its management rights and bargain over the *grade of any newly created position or "reclassified" job description that includes any new requirements, duties or responsibilities*; and (6) Section F would impermissibly require WASA to surrender its management rights and *allow arbitrators to ultimately review and decide the appropriate grade and/or classification of any job position at any time*. (Emphasis added) (Answer at pgs. 2-3)

Section E (con't)

create a new a (sic) job description. The notice shall identify the proposed changes with a copy of the existing job description and proposed new job descriptions. The affected Union shall have the opportunity to bargain over the changes to the job description, job classification or evaluation process, prior to implementation.

2. The Union shall be allowed to bargain over grade and pay of newly created position (job descriptions) or reclassified job descriptions that add additional requirements, duties and responsibilities.

Section F Appeals

Employees are free to grievance (sic) the grade and/or classification of their positions at any time without fear of reprisal or prejudice.

Pursuant to Board Rule 532.1 and 532.4, the Board has the authority to consider this negotiability appeal.³ The specific issue presented in the Negotiability Appeal concerns whether the Union's proposals regarding job descriptions are negotiable.

In the present case, the Union has failed to present any argument and/or authority in support of its claim that Article 23 is negotiable. As a result, we believe that there is insufficient information upon which to make a ruling as a matter of law. Therefore, pursuant to Board Rule 532.4(b), we are requesting that the parties submit briefs in support of their respective positions on the narrowly tailored issues that follow:

1. Whether the Unions' proposal regarding Article 23 is negotiable.
Why or why not?

a) In your brief, you should identify those parts of the proposal that are negotiable and those that are not negotiable and state why.

b) In your brief cite any law, rule, regulation or cases that support your position.

2. The Management Rights provision of the Comprehensive Merit Personnel Act can be found at D.C. Code § 1-617.08. That section of the Code has recently been amended by adding a new subsection (a-1). Subsection (a-1) provides as follows: "*An act, exercise, or agreement of the respective personnel authorities (management) shall not be interpreted in any manner as a waiver of the sole management rights contained in subsection (a) of this section.*" In your brief, state whether the recent amendment to D.C. Code § 1-617.08(a-1) impacts on the issue of negotiability in this case. Why or why not?

The briefs will provide both parties with an equal opportunity to present their views on the issue. Moreover, it will provide the Board with sufficient information upon which to make a determination.

³Board Rule 532.4 outlines the Board's options for resolving a Negotiability Appeal once it is filed. This rule provides, in pertinent part, that the Board may: (1) issue a decision on the Appeal; (2) order the submission of written briefs and/or oral arguments; (3) order a hearing, which may include briefs and arguments; or (4) direct the parties to an informal mediation or conference concerning the issue.

ORDER

IT IS HEREBY ORDERED THAT:

1. The parties shall submit briefs concerning this matter. The briefs shall be filed fifteen (15) days from the service of this Decision and Order.
2. Pursuant to Board rule 559.1, this Decision and Order is final upon issuance.

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

December 1, 2005

CERTIFICATE OF SERVICE

This is to certify that the attached Corrected Decision and Order in PERB Case No. 05-N-02 was transmitted via Fax and U.S. Mail to the following parties on this 1st day of December 2005.

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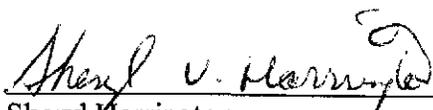
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