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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:)	
)	
UNIONS IN COMPENSATION UNIONS 20, i.e., AFSCME, NUHHCHE, LOCAL 1033)	PERB Case No. 02-N-01
)	
and)	Opinion No. 715
)	
SEIU, DISTRICT 1199E-DC,)	
)	
Petitioners,)	
)	
)	
)	
)	
)	
v.)	
)	
DISTRICT OF COLUMBIA)	
DEPARTMENT OF HEALTH (formerly the)	
HEALTH AND HOSPITALS PUBLIC)	
BENEFIT CORPORATION),)	
)	
Agency.)	
)	
)	

DECISION AND ORDER

This matter involves a Negotiability Appeal filed by the Unions in Compensation Unit 20¹

¹Compensation Unit 20 includes:

All allied health professional employees (excluding medical officers and registered nurses) and non-professional and technical allied employees represented by the National Union of Hospital and Health Care Employees and Service Employees International Union 1199E-DC. Compensation Unit 20 consists of approximately 650 to 700 District employees. A description of the employees in Compensation Unit 20 is contained in
(continued...)

("Unions" or "Compensation Unit 20") in the above captioned proceeding. The Appeal concerns the negotiability of two compensation proposals submitted by the Unions. The proposals were declared non-negotiable² by the D.C. Department of Health³ during impact and effects bargaining over the elimination of the Health and Hospitals Public Benefit Corporation (PBC) and the resulting Reductions-in-Force(RIFs). (Appeal at p.3). The Petitioners are requesting that the Board order DOH to bargain over two proposals which concern wages and bonuses. These wages and bonuses are to be paid to its members who are currently or will be separated as a result of the dissolution of the PBC.

Those two proposals are described below.

Pursuant to the Petitioners' two proposals, DOH would be required to do the following:

1. Pay DCGH employees, retroactively for one year, the same (higher rate of pay) as received by Compensation Bargaining Unit 20 members employed at the neighborhood ambulatory health clinics.⁴

¹(...continued)

Health and Hospitals Public Benefit Corporation and All Unions Representing Bargaining Units 12, 20, 21, 22, 23 and 24, 45 DCR 6743, Slip Op. No. 559, PERB Case Nos. 97-UM-05 and 97-CU-02 (1998).

²Petitioners assert that the proposals were declared non-negotiable in the Agency's Response to a Notice of Impasse in PERB Case No. 01-I-07, a separate, but related matter which the Petitioners filed with the Board. In that matter, the Petitioners alleged that the parties had reached an impasse in their impact and effects bargaining concerning the abolishment of the PBC and the subsequent termination of the majority of former PBC employees. (Exhibit A, Response to Notice of Impasse). The Agency filed a response to the Impasse Notice. The Executive Director determined that the parties were at impasse. As a result, the parties were assigned to mediation before mediator Hugh Jascourt.

³In April 2001, the PBC was abolished. As a result, the Department of Health is the successor to the D.C. Health and Hospitals Public Benefit Corporation (PBC). Pursuant to §4 of the Health Care Privatization Amendment Act of 2001 ("HCPAA" or "Act"), approximately 1600 former PBC employees were transferred to the Department of Health ("DOH") on April 30, 2001, and assigned to a division called the Health Care Safety Net Administration. See also, Compensation Unit 21 v. D.C. Health and Hospitals Public Benefit Corporation, 48 DCR 8547, Slip Op. No. 659 at footnote 6, p.3, PERB Case No. 99-U-37 (2001).

⁴This proposal seeks to adjust the basic rate of pay for individuals in Compensation Unit
(continued...)

(Proposal 1, Appeal at p.4).

2. Pay bargaining unit members a \$1, 700 lump sum bonus, as received by members of Compensation Units 1 and 2.⁵ (Proposal 2, Appeal at p. 4).

The Petitioners claim that the two proposals noted above are proper subjects for bargaining. Specifically, the Petitioners claim that Proposal 1 would increase an employee's base pay and relates to the impact and effects of a RIF. Therefore, the proposal is negotiable. (Appeal at p. 6). The Petitioners support this contention by asserting that the "level of base pay at the time of separation affects the amount of one's severance and retirement annuity."⁶ (Appeal at p. 6). In addition, the Petitioners claim that Proposal 2 is a proper subject for bargaining because the bonus funds could be used to help unemployed workers meet expenses such as health care insurance, job search costs, or other expenses resulting from the RIF. (Appeal at p. 6). In view of the above, the Petitioners contend that the Board should find that both proposals are appropriate subjects for impact and effects bargaining. (Appeal at p. 7).

In its response to the Negotiability Appeal, DOH claims that Proposals 1 and 2 are contrary to law and concern matters that are not within the limited scope of impact and effects bargaining. (Response at pgs. 4 and 5). Specifically, DOH argues that the proposals are contrary to law because they inappropriately attempt to negotiate basic compensation for union members in the context of impact and effects bargaining. (Response at p.5). In addition, DOH asserts that the attempt to bargain over compensation in this manner is inconsistent with the guidelines set forth for

⁴(...continued)

20 who were employed at D.C. General Hospital in order to bring it in line with the higher rate of pay which was applicable to employees in Compensation Unit 20 who are based at the PBC neighborhood ambulatory health clinics, namely, the PBC ANACOSTIA Clinic, PBC CONGRESS HEIGHTS clinic, PBC WALKER JONES Clinic, PBC HUNT PLACE Clinic and PBC WOODRIDGE clinic. The proposed pay adjustments would be retroactive for one year.

⁵This proposal concerns a request for a bonus to be paid to Compensation Unit 20 employees in the same manner it was paid to employees in Compensation Units 1 and 2. The purpose of the bonus is to compensate workers for losses due to furloughs and years without pay increases.

⁶The Petitioners claim that severance pay is calculated based on the base pay at the time of an employee's termination. (Appeal at p.6).

compensation bargaining in D.C. Code⁷ §§1-617.16 and 1-617.17 (2001 ed.).⁸ Furthermore, DOH claims that by submitting these proposals, the Unions are now attempting to initiate compensation bargaining pursuant to D.C. Code §1-617.17, that they failed to initiate prior to the dissolution of the PBC. (Response at p. 5). Finally, DOH contends that the subject matter is preempted by the Health Care Privatization Amendment Act of 2001 (“HCPAA” or “Act”). Specifically, DOH claims that the HCPAA has addressed compensation by mandating that former PBC employees be placed permanently in a non-pay and non-duty status. DOH bases its contention on language in the HCPAA which requires that the PBC health care delivery system be dissolved and restructured, in accordance with the recommendations made in the Financial Responsibility Management Assistance Authority’s (Control Board) Resolution, Recommendations and Orders Concerning the Public Benefit Corporation (Resolution) and its Restructuring Plan.⁹ (Response at p. 6). In view of the above, DOH asserts that the pay raise which is based on the ambulatory clinics’ pay schedules and a bonus payment are inconsistent with the Control Board’s mandate to close the PBC and reduce costs. (Response at p.6).

The Board has the authority to consider the negotiability of the proposals pursuant to Board Rules 532.1 and 532.4.

The Board has held that management is required to bargain, upon request of the exclusive representative, over the “effects or impact of a non-bargainable management decision upon terms and conditions of employment.” Teamsters Unions No. 639 and 730- a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO v. District of Columbia Public Schools, 38 DCR 96, Slip Op. No. 249, PERB Case No. 89-U-17 (1991). (Teamsters v. DCPS). “Included within this limited scope of bargaining is the obligation to bargain over procedures for implementing that decision when it is made.” Id.

The specific issue presented in this Negotiability Appeal is whether the Petitioners’ wage

⁷Throughout this Opinion, all references to the D.C. Code shall refer to the 2001 edition.

⁸D.C. Code §§1-617.16 and 1-617.17 outline the statutory procedures for collective bargaining concerning compensation. These two sections do not address compensation bargaining in the context of bargaining over the impact and effects of a management decision.

⁹As recommended by the Control Board in its Resolution of December 4, 2000 and in accordance with its Restructuring Plan of December 15, 2000, the HCPAA authorized the implementation of an alternative publicly-financed health care delivery system to provide the health care services formerly provided by the PBC. (Response at p. 6 and §2(5) of the HCPAA). The Control Board Resolution and Restructuring Plan require the privatization of certain PBC services, the closure of D.C. General Hospital and the reduction of personnel. (Response at p. 6; Control Board Resolution at pgs. 2 and 4; Restructuring Plan at p. 1).

and bonus payment proposals are proper subjects for impact and effects bargaining concerning the closure of the PBC, transfer of PBC employees to DOH, and the eventual separation of PBC employees through a RIF.

The Board has held that compensation, whether in the form of regular or overtime pay, is generally a negotiable matter under the Comprehensive Merit Personnel Act (CMPA). See, International Association of Fire Fighters, Local 36 and D.C. Fire and Emergency Management Service, 45 DCR 8080, Slip Op. No. 505, PERB Case No. 97-N-01 (1998). In addition, the Board has previously considered the precise issue¹⁰ that is presently before us. In Unions in Compensation Unit 21 and DOH, the Board determined that wages and bonuses are proper subjects for impact and effects bargaining pursuant to D.C. Code §1-617.08 (2001 ed.) (Matters Subject to Collective Bargaining) and D.C. Code §1-617.16 (2001 ed.) (“Collective Bargaining Concerning Compensation). See, 49 DCR 7756, Slip Op. No. 674, PERB Case No. 02-N-02 (2002). Specifically, the Board found that compensation, including wages and bonuses¹¹, is presumptively bargainable pursuant to the language of the CMPA and the Board’s previous decisions. See, Unions in Compensation Unit 21 and DOH, 49 DCR 7756, Slip Op. No. 674, PERB Case No. 02-N-02 (2002) and International Association of Fire Fighters, Local 36 and D.C. Fire and Emergency Management Service, 45 DCR 8080, Slip Op. No. 505, PERB Case No. 97-N-01 (1998).¹² Furthermore, the Board determined that the HCPAA does not pre-empt bargaining over compensation. In making the determination in Unions in Compensation Unit 21 and DOH, we found that the language of the HCPAA did not expressly address the subject of compensation. Unions in Compensation Unit 21 and DOH, 49 DCR 7756, Slip Op. No. 674, PERB Case No. 02-N-02 (2002). In addition, we found that the Act did not evidence a clear and unambiguous intent to exclude compensation from either regular bargaining or impact and effects bargaining. *Id.* Furthermore, the Board considered the fact that the HCPAA does not use the word “compensation”, nor does the CMPA expressly exclude bargaining over wages and bonuses in the context of impact and effects bargaining. *Id.* Consistent with the Board’s determination in the Unions in Compensation Unit 21 v. DOH case, we do not find any language in the HCPAA or CMPA that expressly prohibits negotiation over the wage increase or bonus provisions proposed by the Unions in the present case. *Id.* Because we believe that the case presently before us is analogous to the Unions in Compensation Unit 21 and DOH case, the Board concludes that it decided the same

¹⁰In Unions in Compensation Unit 21 and DOH, the Board considered whether compensation proposals concerning wages and bonuses were proper subjects for impact and effects bargaining. *Id.*

¹¹In Unions in Compensation Unit 21 v. DOH, the Board found that wages and bonuses are compensation.

¹² In IAFF v. DCFEMS, the Board held that compensation, whether in the form of regular or overtime pay, is generally a negotiable matter under the Comprehensive Merit Personnel Act, 45 DCR 8080, Slip Op. No. 505, PERB Case No. 97-N-01 (1998).

way. Id. As a result, we find that Compensation Unit 20's proposals concerning wages and bonuses are negotiable.

On the issue of severance pay, the Board has indicated that severance pay is negotiable in the context of impact and effects bargaining over a RIF. See, Unions in Compensation Unit 21 and DOH, 49 DCR 7756, Slip Op. No. 674, PERB Case No. 02-N-02 (2002) and National Association of Government Employees, Local R3-06 v. D.C. Water and Sewer Authority, 47 DCR 7222, Slip Op. No. 635 at p. 7, PERB Case No. 99-U-04 (2000). In view of the above, the Board finds that Compensation Unit 20's proposals are negotiable.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Unions' proposals, concerning wages and bonuses, are within the scope of impact and effects bargaining and are; therefore, negotiable.
2. Pursuant to Board Rule 559.1, this decision is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

May 19, 2003