Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 631, AFL-CIO,	PERB Case No. 09-U-57
Complainant,	Opinion No. 1530
v.	Decision and Order
The Government of the District of Columbia, *et al.*,	
Respondents.	

DECISION AND ORDER

I. Statement of the Case

On February 18, 2015, the D.C. Court of Appeals affirmed a D.C. Superior Court decision that reversed and remanded PERB's Decision and Order in *American Federation of Government Employees, Local 631, AFL-CIO v. District of Columbia, et al.*, 59 D.C. Reg. 7334, Slip Op. No. 1264, PERB Case No. 09-U-57 (2012) ("Slip Op. No. 1264). In that case, the Board found that the Respondents, the District of Columbia Office of Property Management ("OPM") and the District of Columbia Office of Labor Relations and Collective Bargaining ("OLRCB"), violated D.C. Official Code §§ 1-617.04(a)(1) and (5) by refusing to arbitrate a group grievance filed by the Complainant, American Federation of Government Employees, Local 631, AFL-CIO ("AFGE"), over a reduction-in-force ("RIF") that OPM had conducted in its Facilities and Construction Divisions. Consistent with the D.C. Court of Appeals' and the D.C. Superior Court's decisions, the Board vacates Slip Op. No. 1264, and dismisses AFGE's Complaint.

II. Background

In Slip Op. No. 1264, the Board adopted a hearing examiner's finding that Respondents committed unfair labor practices in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5) when they refused to arbitrate a group grievance filed by AFGE over a 2009 reduction-in-force ("RIF"). Respondents argued that PERB did not have jurisdiction to adjudicate RIFs, and that

even if it did, D.C. Official Code § 1-624.08(j)[1] in the Abolishment Act[2] excludes RIF issues from arbitration. The Board adopted AFGE's arguments that although D.C. Official Code § 1-624.08(j) makes the process of identifying positions to be abolished non-negotiable, the statute did not expressly render other RIF issues covered by the parties' collective bargaining agreement to be non-arbitrable once that identification process was complete. Thus, the Board found that PERB had jurisdiction over the matter, and that Respondents repudiated the collective bargaining agreement in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5) when they refused to arbitrate AFGE's grievance.[3]

Respondents appealed Slip Op. No. 1264 to the D.C. Superior Court. In its August 1, 2013 Order, the Superior Court noted that:

> PERB "did not conduct any analysis of the language, structure, or purpose of the statutory provision." *D.C. Office of Human Rights*, 40 A.3d at 925. Rather, the PERB Decision simply stated that it rejected DGS's exceptions to the Hearing Examiner's Report "[f]or the reasons articulated by [AFGE]." (Record, 624 (PERB Decision).) When considering an agency decision devoid of such analysis, the Court—which, in comparison to PERB, is an "authority on issues of statutory interpretation," *D.C. Office of Human Rights*, 40 A.3d at 923—is directed by our Court of Appeals that "it would be incongruous to accord substantial weight to [the] agency's interpretation," *id.* at 925.[4]

The Superior Court then reasoned that the Abolishment Act explicitly removes agencies' RIF decisions from the purview of collective bargaining. For example, the Court noted that D.C. Official Code § 1-624.08(a) of the Act states that "each agency head is authorized, within the agency head's discretion, to identify positions for abolishment" and that such authority is not limited by "any other provision of law, regulation, or *collective bargaining agreement.*"[5] Further, the Court noted that § 1-624.08(c) requires that "[a]ny District government employee ... who encumbers a position identified for abolishment shall be separated...." Finally, the Court

---

[1] D.C. Official Code § 1-624.08(j): "Notwithstanding the provisions of § 1-617.08 or § 1-624.02(d), the provisions of this chapter [governing reductions-in-force] shall not be deemed negotiable."

[2] Congress enacted the Abolishment Act as Section 2408 of the District of Columbia Appropriations Act of 1998, 111 Stat. 2160 (1998). The District of Columbia Council amended the Act to cover fiscal year 2000 and subsequent fiscal years. *See* D.C. Official Code § 1-624.08, *et seq.*; *see also Washington Teachers' Union, Local 6, v. District of Columbia Public Schools*, 960 A.2d 1123, 1126 n.6 (D.C. 2009).

[3] *See AFGE, Local 631 v. District of Columbia, et al., supra*, Slip Op. No. 1264, PERB Case No. 09-U-57.

[4] *See Government of the District of Columbia v. District of Columbia Public Employee Relations Board*, Case No. 2012 CA 004861 P(MPA) (D.C. Super. Ct. Aug. 1, 2013). The Board notes that while the Complaint named the "District of Columbia" as the respondent and made specific allegations against OPM and OLRCB, the Superior Court stated in footnote 1 of its Order that: "[w]hile Petitioner here is the District of Columbia, the agency at issue in this case is the District of Columbia Department of General Services, known as DGS. This agency was previously known as the 'Department of Real Estate Services,' ('DRES'); the name change reflects a difference 'in name only: the scope of work for the employees remained the same.'" (Citation omitted).

[5] *Id.* (emphasis added by the Court).

pointed to § 1-624.08(j), which states that "the provisions of this chapter shall not be deemed negotiable."[6]

Based on these provisions, the Superior Court found that PERB's holding in Slip Op. No. 1264 was contrary to the "plain language" of the Act, and was therefore "unreasonable." The Court stated:

> The Abolishment Act unequivocally states that an agency head's authority to identify positions for reductions-in-force is not limited by "any other provision of ... [a] collective bargaining agreement." D.C. Code § 1-624.08(a). The distinction PERB draws between a provision of a "collective bargaining agreement" as described by the statute and "arbitration of reduction-in- force issues covered by a party's collective bargaining agreement" is non-existent; an arbitration clause found within a collective bargaining agreement (and that provides the entire basis of a claim that a dispute is subject to arbitration) is part of the collective bargaining agreement, and is therefore included within the express terms of § 1-624.08(a). Indeed, in this very case AFGE expressly premised its complaint not upon a statutory or other right to arbitration of the RIF, but on a provision of a collectively-bargained agreement, Article 29 of the CBA between itself and DGS. *See* Record, 551-52 (Step 4 Grievance). Contrary to PERB's interpretation of the Abolishment Act, given the other language in the statute permitting agency heads to identify positions for abolishment "[n]otwithstanding *any* other provision of ... [a] collective bargaining agreement," § 1-624.08(a) (emphasis added), the absence of any specific reference to arbitration in § 1-624.08 is immaterial. Therefore, to the extent the PERB Decision is deserving of any deference from this Court despite its utter lack of analysis, § 1-624.08(a)"s "plain statutory language" requires that the Court "reject [the] agency's interpretation." *D.C. Office of Human Rights*, 40 A.3d at 923.[7]

Thus, the Superior Court reversed Slip Op. No. 1264, and remanded the case to PERB for consideration consistent with the terms of its Order.[8]

PERB appealed the Superior Court's Order to the D.C. Court of Appeals. In its February 18, 2015 Memorandum Opinion and Judgment, the Court of Appeals agreed with the Superior Court's conclusion that the "plain statutory language" of D.C. Official Code § 1-624.08(a) "simply permits no limitation derived from a collective bargaining agreement on an agency

[6] *Id.*
[7] *Id.*
[8] *Id.*

head's ability to implement a RIF."[9] The Court reasoned that based on the statute's specific uses of the language in § 1-624.08(a) that "[n]otwithstanding any ... collective bargaining agreement in effect or to be negotiated," and in § 1-624.08(j) that "[n]otwithstanding the provision of § 1-617.08..., the provisions of this chapter shall not be deemed negotiable," it is clear that the arbitration clause in the parties' collective bargaining agreement did not apply to the agency's RIF. Accordingly, the Court of Appeals affirmed the Superior Court's reversal and remand of Slip Op. No. 1264.[10]

III. Analysis

Consistent with the D.C. Court of Appeals' and the D.C. Superior Court's opinions, the Board vacates its Decision and Order in Slip Op. No. 1264.

Additionally, in accordance with the Court of Appeals' unambiguous holding that, under D.C. Official Code §§ 1-624.08(a) and (j), the arbitration clause in the parties' collective bargaining agreement did not apply to OPM's 2009 RIF, the Board finds that Respondents did not violate D.C. Official Code §§ 1-617.04(a)(1) and (5) when they refused to participate in the arbitration of AFGE's group grievance.[11] Accordingly, AFGE's Complaint is dismissed with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Board's Decision and Order in Slip Op. No. 1264 is vacated.

2. AFGE's Unfair Labor Practice Complaint is dismissed with prejudice.

3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Keith Washington and Yvonne Dixon. Member Ann Hoffman was not present.

July 24, 2015

Washington, D.C.

---

[9] *American Federation of Government Employees, Local 631 v. District of Columbia*, 13-CV-1000 (D.C. February 18, 2015).
[10] *Id.*
[11] *See Id.*

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 09-U-57, Opinion No. 1530, was served by U.S. Mail on the following parties on this the 24th day of July, 2015.

Dean Aqui, Esq.
Michael Levy, Esq.
D.C. Office of Labor Relations and
Collective Bargaining
441 4th Street, N.W.,
Suite 820 North
Washington, DC 20001

Barbara Hutchinson, Esq.
7907 Powhatan Street
Twelfth Floor
New Carrollton, MD 20784

/s/ Sheryl Harrington
PERB