Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of State, County and Municipal Employees, District Council 20, Local 2401, AFL-CIO,	PERB Case No. 10-U-37
Complainant,	Opinion No. 1463
v.	Decision and Order
District of Columbia Child and Family Services Agency,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

American Federation of State, County and Municipal Employees, District Council 20, Local 2401, AFL-CIO ("AFSCME" or "Union"), filed an Unfair Labor Practice Complaint against the District of Columbia Child and Family Services Agency ("CFSA" or "Agency"), alleging CFSA interfered with, restrained and coerced employees in violation of D.C. Official Code § 1-617.04(a)(1) and discriminated against and refused to bargain in good faith with the Union in violation of D.C. Official Code § 1-617.04(a)(1) and (5) (Hearing Examiner's Report, at 1).

Specifically, AFSCME alleged CFSA violated the CMPA when it: 1) failed to respond to several parts of an information request; 2) declared in bad faith that AFSCME's final proposal during impact and effects ("I&E") bargaining was nonnegotiable, which forced the Union to file a negotiability appeal[1] and initiate impasse proceedings[2]; and 3) engaged in direct dealing with members of the bargaining unit.[3] *Id.*, at 15, 19.

[1] PERB Case No. 10-N-03.

CFSA denied the allegations. (Answer). On January 25, 2013, a hearing was held, and on July 17, 2013, the Hearing Examiner issued his Report and Recommendations ("Hearing Examiner's Report"), which recommended that the Complaint be dismissed with prejudice. (Hearing Examiner's Report, at 22).

On August 2, 2013, AFSCME filed Exceptions to the Hearing Examiner's Report. (Exceptions). The Hearing Examiner's Report and AFSCME's Exceptions are before the Board for consideration.

II. Background

On May 6, 2010, CFSA notified AFSCME that it would terminate the employment of more than 100 employees (including 57 Social Service Assistants ("SSAs") that were represented by AFSCME) via a Reduction-in-Force ("RIF") on June 11, 2010, and that it would then create 35 positions with the new job title, Family Support Worker ("FSW"). (Hearing Examiner's Report, at 3). The new FSW positions required a Bachelor's degree whereas the previous SSA positions did not. *Id.* The parties met three (3) times in May 2010 to bargain the impact and effects of the RIF and the creation of the new positions. *Id.*

A. Information Request

After the second I&E bargaining meeting, AFSCME emailed an information request to CFSA seeking:

> 1) Copies of all letters sent to employees, by certified mail or otherwise, on or after May 6, 2010;
>
> 2) A description of the process by which CFSA will contact riffed employees if further vacancies arise over the course of the next two years;
>
> 3) Copies of all supervisors' transitional plans, such as staffing plans regarding covering workload; [and]
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> 4) Citations to the regulations CFSA contends support the need to require employees to hold a Bachelor's degree, or otherwise condition federal funding or reimbursement on employees having a BA/BS degree.

Id., at 3-4 (internal citations omitted).

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[2] PERB Case No. 10-I-06.

[3] The Complaint originally alleged that CFSA also discriminated against bargaining unit employees, but AFSCME withdrew that allegation at the hearing. (Hearing Examiner's Report, at 2).

In the Complaint, AFSCME alleged CFSA committed an unfair labor practice by not providing all of the requested information. *Id.*, at 4. Based on witness testimony and other evidence, the Hearing Examiner found that CFSA provided all of the information related to AFSCME's request for "[c]opies of all letters sent to employees, by certified mail or otherwise, on or after May 6, 2010." *Id.*, at 17.

AFSCME asserted that CFSA failed to provide descriptions of the processes that CFSA would use to contact the RIF'd employees about vacancies as requested. The Hearing Examiner noted that AFSCME's only witness, Stephen White, testified that AFSCME never received this information, but that CFSA's witness, Dexter Starkes, testified the information was provided at one of the I&E bargaining sessions, and that as of the date of the hearing, 17 RIF'd employees had been rehired as a result of the process established and described by the Agency. *Id.*, at 6, 17-18. The Hearing Examiner found that "Starkes testimony was more forthright and his demeanor more credible on this issue" and that, as a result, "the record establishes that CFSA responded to AFSCME's information request for 'a description of the process by which CFSA will contact riffed employees if further vacancies arise....'" *Id.*, at 18.

The Hearing Examiner likewise found that "the unrebutted testimony of Debra Porchia-Usher established that, all the transitional plans that CFSA had, were given to AFSCME." *Id.* For this reason, and others, the Hearing Examiner found "the record establishes that CFSA responded to AFSCME's request for 'all supervisors' transitional plans, such as staffing plans regarding covering workload.'" *Id.*

Addressing AFSCME's request for regulatory authority supporting the Bachelor's degree requirement, the Hearing Examiner noted that Dean Aqui, an attorney with the District of Columbia Office of Labor Relations and Collective Bargaining ("OLRCB"), informed AFSCME that the Agency mistakenly claimed that such a regulation existed, but that the Agency still intended to keep the degree requirement for the new FSWs. *Id.* Based on this evidence, the Hearing Examiner found that "AFSCME's assertion that CFSA [had] not responded to [this part of] AFSCME's information request [was] without merit." *Id.*

AFSCME did not except to any of the Hearing Examiner's findings regarding the information request.

B. Negotiability

During I&E bargaining, AFSCME proposed that the CFSA rehire the displaced SSA workers into the newly created FSW positions on the condition that the rehired workers obtain a Bachelor's degree at a later date. (Hearing Examiner's Report, at 4). CFSA counter-proposed that the displaced SSA employees be hired into FSW positions contingent upon those employees obtaining a Bachelor's degree within six (6) months. *Id.* AFSCME counter-proposed that the employees be given four (4) years to obtain the degree, to which CFSA proposed that the employees be given until the end of the calendar year (approximately seven (7) months). *Id.*, at 4-5. Finally, AFSCME proposed that the employees be given seven (7) semesters (or

approximately three and a half (3.5) years) to obtain the degree. *Id.*, at 5. CFSA rejected AFSCME's final proposal and stated it was unwilling to deviate from its final proposal to give employees until the end of the calendar year to obtain the degree. *Id.* On May 27, 2010, AFCSME filed with the Public Employee Relations Board ("PERB") a Declaration of Impasse and Request for Impasse Resolution. *Id.*; *and* PERB Case No. 10-I-06.

On June 10, 2010, CFSA, through its representative at OLRCB, notified AFSCME that AFSCME's proposal to give the employees three and a half (3.5) years to obtain a Bachelor's degree constituted an "extensive delay of a management right" that was "equal to nullifying [that] right" and was therefore nonnegotiable. *Id.* On June 11, 2010, AFSCME filed with PERB a negotiability appeal challenging CFSA's declaration that AFSCME's final proposal was nonnegotiable. *Id.*; *and* PERB Case No. 10-N-03.

The Hearing Examiner summarized AFSCME's positions in this ULP case as: 1) "CFSA's declaration that the Union's final proposal was nonnegotiable was a baseless tactic which forced AFSCME to file a negotiability appeal after initiating impasse proceedings"; and 2) issuing the declaration constituted "bad faith bargaining under the CMPA." *Id.*, at 19. The Hearing Examiner noted that AFSCME did not present any testimony or evidence at the Hearing to support these allegations. *Id.*

CFSA conceded that it was obligated to engage in I&E bargaining, but argued that AFSCME's specific proposals were nonnegotiable because they would have created an extended delay that would have prevented CFSA from conducting the RIF of the SSAs and/or filling the new FSW positions. *Id.*, at 20.

Based on the parties' arguments and AFSCME's failure to present any testimony or evidence at the Hearing to support its allegation, the Hearing Examiner found that he could not conclude that CFSA's reasoning for the declaration was "baseless", or that the declaration itself was made in bad faith in violation of the CMPA. *Id.*, at 19-20. *Id.*, at 20. The Hearing Examiner noted that "there is no evidence of bad faith on CFSA's part during bargaining." *Id.*, at 20. Furthermore, the Hearing Examiner stated he could not analyze the substance of whether AFSCME's proposal was negotiable because that duty lies exclusively with PERB as per PERB Rule 532.4, and because the question of negotiability was outside of his authority on grounds that he was only assigned to resolved the ULP case. *Id.* The Hearing Examiner noted that the ULP case record nevertheless "establishes that AFSCME has not advanced its negotiability appeal [in PERB Case No. 10-N-03] or sought resolution of the negotiability dispute through a PERB determination regarding AFSCME's proposal." *Id.* For these reasons, the Hearing Examiner recommended that PERB dismiss AFSCME's allegation that CFSA acted in bad faith by declaring AFSCME's proposal nonnegotiable. *Id.*

AFSCME excepts to three (3) of the Hearing Examiner's findings. (Exceptions, at 1).

First, AFSCME excepts to the Hearing Examiner's finding that he was not authorized to determine whether AFSCME's proposal was negotiable. *Id.*, at 2. AFSCME argues PERB precedent empowers hearing examiners in ULP proceedings to resolve questions of negotiability

when necessary. *Id.* (citing *Teamsters, Local 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 D.C. Reg. 96, Slip Op. No. 249 at p. 5 n. 4, PERB Case No.89-U-17 (1990)[4]). AFCSME contends the Hearing Examiner should have resolved the negotiability question in AFSCME's favor because its specific proposal was "similar to proposals addressing wages and bonuses to be paid to employees whose positions are slated to be abolished...[which] PERB has held...are negotiable in the context of impact and effects bargaining." *Id.*, at 5 (citing *Unions in Compensation Unions 20, i.e., AFSCME, NUHHCHE, Local 1033, and SEIU, District 1199E-DC v. District of Columbia Department of Health,* 50 D.C. Reg. 6801, Slip Op. No. 715, PERB Case No. 02-N-01 (2003)[5]; and *Unions in Compensation Unions 21, i.e., AFSCME Local 2097 and IBPO Local 446, v. District of Columbia Department of Health*, 49 D.C. Reg. 7756, Slip Op. No. 674, PERB Case No. 02-N-02 (2002)[6]). AFSCME further argues its proposal was negotiable because it addressed the implementation of the RIF, not the decision to conduct the RIF itself. *Id.*, at 6. By declaring AFSCME's proposal to be nonnegotiable, AFSCME claims CFSA took the position that AFSCME had no right to make the proposal in the first place. *Id.* AFSCME asserts, however, the reasonableness of the proposal's merits was "irrelevant" to the question of "whether [AFSCME] had the right to make the proposal and to bargain over the implementation of the new job requirement." *Id.* AFSCME avers it had every right to engage in I&E bargaining over CFSA's decision, and that any issues about the reasonableness of its proposal would have been resolved during arbitration through PERB Case No. 10-I-06. *Id.* AFSCME further argues that the Hearing Examiner erred when he failed to address whether CFSA waived its right to declare AFSCME's proposal nonnegotiable by making "substantially similar (though quantitatively different)" counterproposals during I&E bargaining; and whether CFSA acted in bad faith by first engaging in negotiations and then declaring the issue to be nonnegotiable. *Id.*

In its Opposition to Exceptions, CFSA argues the Hearing Examiner's lack of authority to determine whether AFSCME's proposal was or was not negotiable "was only one of the reasons he gave for rejecting the Union's arguments." (Opposition to Exceptions, at 3). CFSA notes the Hearing Examiner also reasoned that: 1) based on CFSA's argument that AFSCME's proposal would cause an extended delay and prevent CFSA from being able to conduct the RIF and fill the new FSW positions, he could not conclude that CFSA's declaration was "baseless" or made in bad faith; and 2) AFSCME had not done anything to advance the process in PERB Case No. 10-N-03, in which the question of whether the proposal was negotiable would be resolved. *Id.* Further, CFSA contends it complied with all of PERB's rules and precedents governing

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[4] Footnote 4 in the case states: "We similarly reject [the respondent agency's] contention that the only way to raise issues concerning the negotiability of a subject matter is through a negotiability appeal. Such determinations may also be made in unfair labor practice proceedings as is the case herein."

[5] Holding that proposals concerning wages and bonuses and severance pay for employees affected by a RIF are negotiable.

[6] Holding that "absent language removing a matter from the scope of all matters otherwise negotiable under the CMPA, the [unions' proposals concerning wages and bonuses and severance pay for employees affected by a RIF]...are negotiable." *See* p. 7.

declarations of nonnegotiability and therefore cannot have acted in bad faith by simply availing itself of the right to do so. *Id.*, at 3-4.

Second, AFSCME excepts to the Hearing Examiner's finding that "there is no evidence [on the record] of bad faith on CFSA's part during bargaining." (Exceptions, at 1). AFSCME contends CFSA's admitted implementation of the RIF after AFSCME initiated impasse proceedings while the case was still pending constitutes bad faith in violation of the *status quo* provision in D.C. Official Code § 1-617.17(f)(4)[7] *Id.*, at 7-8 (citing *University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia*, 46 D.C. Reg. 7228, Slip Op. No. 485, PERB Case No. 96-U-14 (1996)[8]). AFSCME then again argues the Hearing Examiner erred by failing to address whether CFSA acted in bad faith when it engaged in I&E bargaining, exchanged proposals, and then reversed its initial position by declaring the matter nonnegotiable. *Id.*, at 8.

CFSA contends AFSCME's reliance on D.C. Official Code § 1-617.17(f)(4) is misplaced because that provision, as well as the applicability of the case AFSCME cited, are limited to compensation negotiations, which D.C. Official Code § 1-617.17(b) defines as bargaining with respect to "...salary, wages, health benefits, within-grade increases, overtime pay, education pay, shift differential, premium pay, hours, and any other compensation matters." (Opposition to Exceptions, at 5). CFSA argues that management's right to determine job qualifications is not a compensation matter and is therefore not subject to the *status quo* provision in D.C. Official Code § 1-617.17(f)(4). *Id.* As a result, CFSA avers it did not act in bad faith by conducting the RIF and creating and filling the new FSW positions. *Id.*, at 5-6.

Third, AFSCME excepts to the Hearing Examiner's statement that "[t]he case record establishes that AFSCME has not advanced its negotiability appeal [PERB Case No. 10-N-03] or sought resolution of the negotiability dispute through a PERB determination regarding AFSCME's proposal." (Exceptions, at 9) (quoting Hearing Examiner's Report, at 20). AFSCME excepts to this statement for the reasons that: 1) "PERB Case 10-N-03 is not and was not before the Hearing Examiner and it was inappropriate for him to go outside the record in the case before him by examining other case files to support his determination in this matter"; and 2) it was prejudicial for the Hearing Examiner to review the record in 10-N-03 without also reviewing the record of 10-I-06; and 3) according to PERB Rule 532 *et seq.*, it is up to PERB to advance the process of 10-N-03, not AFSCME. *Id.*, at 9-10.

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[7] D.C. Official Code § 1-617.17(f)(4): "If the procedures set forth in paragraph (1), (2), (3), or (3A) of this subsection [governing 'collective bargaining concerning compensation'] are implemented, no change in the *status quo* shall be made pending completion of mediation and arbitration, or both."

[8] Holding that, in accordance with D.C. Official Code § 1-617.17(f)(4), it is a violation of the duty to bargain in good faith and therefore an unfair labor practice for an agency to, without legal justification, change the *status quo* in the compensation of bargaining unit employees while engaged in the bargaining of a new compensation agreement, or while compensation negotiations are at an impasse, or until the completion of the mediation or arbitration of the compensation issues that are at an impasse. *See* p. 6.

CFSA contends the Hearing Examiner appropriately considered PERB Case No. 10-N-03 in his analysis of the instant ULP case in light of the fact that AFSCME's reference to PERB Case No. 10-N-03 in paragraph 24 of its ULP Complaint made it part of the instant ULP case's record. (Opposition to Exceptions, at 6). Further, CFSA argues that nothing prevented AFSCME from inquiring why PERB had not yet addressed that case when this matter was scheduled for a hearing. *Id.*

C. Bypass and Direct Dealing

AFSCME alleged that on June 7, 2010, Roque Gerald, CFSA's Director, sent an email to all CFSA staff stating that CFSA had already hired 17 people into the FSW positions and that it would hire approximately 18 more in the next 30 days. (Hearing Examiner's Report, at 20-21). AFSCME contended that by so doing, CFSA violated the CMPA by interfering with, restraining, and coercing employees in the exercise of their rights under D.C. Official Code § 1-617.06(a)(1) and by refusing to bargain in good faith as required by D.C. Official Code §§ 1-617.04(a)(1) and (5). *Id.* The Hearing Examiner noted that while AFSCME quoted some of the email's text in its Complaint, it never introduced the actual email into evidence at the Hearing other than to briefly reference it in its opening statement and in its post-hearing brief. *Id.*, at 21. AFSCME's only witness, Mr. White, did not testify about the email. *Id.*, at 21. Further, the Hearing Examiner noted that AFSCME's Complaint asks that CFSA be ordered to "[c]ease and desist from dealing directly with employees represented by the Union with regard to wages, hours, or other terms and conditions of employment", yet the request was not expressly linked to AFSCME's allegation regarding the email. *Id.* (quoting Complaint, at 6). The Hearing Examiner found that because AFSCME "did not introduce evidence, testimony or supporting arguments supporting the allegation in its Complaint that CFSA sought to bypass the Union or deal directly with bargaining unit employees with the Gerald email", the allegation was deemed "abandoned and waived." *Id.*, at 21-22.

Notwithstanding, the Hearing Examiner reasoned that even if AFSCME's allegation had been supported by evidence at the hearing, "a fair reading" of Gerald's email reveals that it was simply CFSA communicating with its staff about the 17 new FSWs it had hired, the additional FSWs it wanted to hire, CFSA's then upcoming fiscal year budget, and another unrelated matter dealing with Court supervision. *Id.*, at 22. Therefore, the email did not, by itself, constitute a violation of the CMPA. *Id.* Further, the Hearing Examiner found there was nothing in the email that "manifests an effort by CFSA to deal directly with bargaining unit employees, or disparage or undermine AFSCME as the bargaining unit employee's exclusive representative." *Id.* (citing *American Federation of State, County and Municipal Employees, District Council 20, et al, v. Government of the District of Columbia, et al.*, 36 D.C. Reg. 427, Slip Op. No. 200, PERB Case No. 88-U-32 (1988)). Consequently, the Hearing Examiner found that AFSCME's direct dealing and bypass allegation was without merit and recommended it be dismissed with prejudice. *Id.*

AFSCME did not except to any of the Hearing Examiner's findings regarding the email. (Exceptions).

III. Discussion

The Board will affirm a Hearing Examiner's findings if the findings are reasonable, supported by the record, and consistent with Board precedent. *See American Federation of Government Employees, Local 872 v. District of Columbia Water and Sewer Authority*, Slip Op. No. 702, PERB Case No. 00-U-12 (March 14, 2003). Determinations concerning the admissibility, relevance, and weight of evidence are reserved to the Hearing Examiner. *Hoggard v. District of Columbia Public Schools*, 46 D.C. Reg. 4837, Slip Op. No. 496 at 3, PERB Case No. 95-U-20 (1996). Issues concerning the probative value of evidence are reserved to the Hearing Examiner. *American Federation of Government Employees, Local 2725, AFL-CIO v. District of Columbia Housing Authority*, 45 D.C. Reg. 4022, Slip Op. No. 544 at p. 3, PERB Case No. 97-U-07 (1998). Mere disagreements with a Hearing Examiner's findings and/or challenging the Examiner's findings with competing evidence do not constitute proper exceptions if the record contains evidence supporting the Hearing Examiner's conclusions. *Hoggard v. DCPS, supra*, Slip Op. No. 496 at 3, PERB Case No. 95-U-20.

A. Information Request

In the instant matter, the Board holds that the Hearing Examiner's finding that CFSA complied with AFSCME's information request is reasonable, supported by the record, and consistent with Board precedent. *AFGE v. WASA, supra*, Slip Op. No. 702, PERB Case No. 00-U-12. In regard to AFSCME's request for all of the correspondence CFSA sent to its employees on or after May 6, 2010, witness testimony as well as Union Exhibit 2 and Agency Exhibit 3 show that CFSA complied with the request when Mr. Starkes sent the requested information to Mr. White on May 12, 2010. (Hearing Transcript, at 23-24, 36). Concerning AFSCME's request for a description of the process CFSA would use to contact RIF'd employees about vacancies, Mr. Starkes testified that he shared CFSA's plan at the May 19, 2010, bargaining session and further testified that 17 RIF'd SSAs had been rehired as FSWs because of that process. *Id.*, at 35-36. Addressing AFSCME's request for legal authority demonstrating the necessity for FSW's to hold a Bachelor's degree, Union Exhibit 2 shows that Mr. Aqui responded to the request on June 10, 2012, stating that CFSA's former assertion that such authority existed "appears to have been an error." In regard to AFSCME's request for CFSA's transitional plans, Mr. White testified he did not remember receiving the information, but Debra Porchia-Usher, who testified for CFSA, testified that on May 26, 2010, CFSA sent AFSCME the information in two (2) documents: the first dated May 24, 2010, titled Congregate Care Contract Management Division Transition Plan Update; and the second dated May 24, 2010, titled Child and Family Services Agency Programs Transition Plan Summary and Update. (Hearing Transcript, at 23, 30). Ms. Porchia-Usher testified that no other plans had been developed beyond those two (2) reports. *Id.*, at 31.

The Hearing Examiner correctly noted that Mr. White's testimony sometimes conflicted with that of Mr. Starkes. (Hearing Examiner's Report, at 18). The Hearing Examiner credited "Starkes' testimony over that of White because, even on direct examination, when White was asked whether information was provided to him during bargaining, he admitted '[i]t's been a

long time' [and] 'I would have to try to remember that.'" *Id.* (quoting Hearing Transcript, at 23). The Hearing Examiner found Mr. Starkes' testimony to be "more forthright and his demeanor more credible on this issue." *Id.* Since determinations regarding the admissibility, relevance, and weight of evidence are reserved to the Hearing Examiner, the Board finds no error in his crediting of Mr. Starkes' testimony over Mr. White's. *Hoggard v. DCPS, supra*, Slip Op. No. 496 at 3, PERB Case No. 95-U-20. The Board further finds, based on its own review of the record and the evidence presented at the Hearing, that the Hearing Examiner's conclusion that CFSA complied with AFSCME's information request and therefore did not commit an unfair labor practice was reasonable, supported by the record, and consistent with Board precedent. *AFGE v. WASA, supra*, Slip Op. No. 702, PERB Case No. 00-U-12.

B. Negotiability

Under D.C. Official Code § 1-617.08, RIFs are a management right. *Doctors' Council of the District of Columbia v. District of Columbia Department of Youth and Rehabilitation Services*, 60 D.C. Reg. 16255, Slip Op. No. 1432 at p. 8, PERB Case No. 11-U-22 (2013). Generally, a management right does not relieve management of the duty to bargain over the impact and effects of, and procedures concerning, the exercise of management decisions. *American Federation of State, County and Municipal Employees, District Council 20, Local 2921, AFL-CIO, v. District of Columbia Department of General Services*, 59 D.C. Reg. 12682, Slip Op. No. 1320 at ps. 2-3, PERB Case No. 09-U-63 (2012); *Fraternal Order of Police/Department of Corrections Labor Committee v. District of Columbia Department of Corrections.*, 52 D.C. Reg. 2496, Slip Op. No. 722 at ps. 5-6, PERB Case Nos. 01-U-21, 01-U-28 and 01-U-32 (2003); *AFGE v. DCOCC, supra*, Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02; *and International Brotherhood of Police Officers, Local 446, AFL-CIO v. District of Columbia General Hospital*, 41 D.C. Reg. 2321, Slip Op. No. 312 at p. 3, PERB Case No. 91-U-06 (1992). Notwithstanding, D.C. Official Code § 1-624.08 ("Abolishment Act") narrows this duty as it relates to RIFs The Abolishment Act authorizes agency heads to identify positions for abolishment, establishes the rights of existing employees affected by the abolishment of a position, and establishes procedures for implementing and contesting an abolishment. *See* D.C. Official Code § 1-624.08(a)-(i), and (k). The Abolishment Act further provides, "[n]otwithstanding the provisions of § 1-617.08 or § 1-624.02(d), the provisions of this chapter shall not be deemed negotiable." D.C. Official Code § 1-624.08(j). *See also* Omnibus Personnel Reform Amendment Act, 1998, D.C. Law 12-124 (Act 12-326) ("An Act To . . . eliminate the provision allowing RIF policies and procedures to be appropriate matters for collective bargaining . . ."). As a result, a proposal that attempts to affect or alter RIF procedures is not within the scope of impact and effects bargaining and is therefore nonnegotiable. *American Federation of Government Employees, Local 631, and District of Columbia Water & Sewer Authority*, 59 D.C. Reg. 5411, Slip Op. No. 982 at p. 6, PERB Case No. 08-N-05 (2009); *and Fraternal Order of Police/Department of Corrections Labor Committee v. District of Columbia Department of Corrections*, 49 D.C. Reg. 11141, Slip Op. No. 692 at p. 5, PERB Case No. 01-N-01 (2002).