Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Nurses Association,	
Petitioner,	
v.	PERB Case No. 15-N-03
District of Columbia Department of Health,	Opinion No. 1529
Respondent.	

DECISION AND ORDER

At issue in this negotiability appeal is the negotiability of two proposals giving to clinical nurses who had been separated in a reduction in force a right of first refusal for similar clinical nurse positions. We find that the proposals are nonnegotiable.

I. Statement of the Case

Petitioner District of Columbia Nurses Association ("Union") is the exclusive representative of all nonsupervisory nurses employed by the Respondent District of Columbia Department of Health ("Department"). The Union and the Department met on December 23, 2014, to negotiate on the impact and effects of an impending reduction in force ("RIF"). The RIF occurred three days later when five nonsupervisory clinical nurses were separated due to a decrease in federal funding for the Healthy Start Program, a program that had been created to improve perinatal outcomes for high-risk pregnant women and mothers. The Union made two proposals, which are as follows:

> Proposal 1 – The nurses will be given the Right of First Refusal for any additional Clinical Nurse positions that are added to the Healthy Start 3.0 Programs or any similar positions in the Department of Health.
>
> Proposal 2 – Providers that are granted funding to provide direct services through Healthy Start Program 3.0 are required to give the nurses the Right of First Refusal for clinical nurse openings for perinatal care.

On February 20, 2015, the Union filed a notice of impasse concerning the parties' negotiations over the two proposals. The notice requested that the Board seek the appointment of a mediator from the Federal Mediation and Conciliation Service. The Union attached to the notice exhibits that reflect disagreement between the parties concerning the effect on the proposals of chapter 24 of the District Personnel Manual ("Chapter 24"). The Department moved to dismiss the notice of impasse on the ground that the proposals were nonnegotiable. The Board granted the motion because it found that the case was inappropriate for impasse procedures.[1]

Deeming the Department's motion to dismiss to be a declaration of nonnegotiability, the Union filed the instant negotiability appeal on April 7, 2015. In its appeal, the Union contends that its two proposals do not interfere with the Department's right to conduct a RIF or alter the RIF procedures in Chapter 24. "Additionally," the Union argues, "Chapter 24 does not preclude negotiation over the Union's proposals. The proposals seek merely to provide alternative[] options to ensure that the 5 nurses who were displaced are able to obtain similar positions, should the positions become available."[2]

In its *Response to Union's Negotiability Appeal*, the Department makes the following argument. The Union's claim of negotiability contradicts the Board's longstanding position that, in accordance with the Abolishment Act,[3] a proposal made during impact-and-effects bargaining that would alter RIF procedures is nonnegotiable.[4] The Department maintains that the Union's proposals alter the procedures of Chapter 24. In particular, the Department notes that Chapter 24, in sections 2427-2429, "requires that all employees displaced by a RIF be placed on both the Agency Reemployment Priority Program, and the districtwide Displaced Employee Program lists." Employees on those lists are given priority consideration based upon their tenure group and their standing within their competitive level.[5] "Therefore," the Department concludes, "the Union's two proposals that their displaced members be given the 'Right of First Refusal' for any Clinical Nurse positions are most definitely, an alteration of the procedures established in Chapter 24."[6]

II. Discussion

Conducting a RIF is a management right under D.C. Official Code section 1-617.08.[7] Generally, the exercise of 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

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[1] *D.C. Nurses Ass'n and D.C. Dep't of Health*, Slip Op. No. 1522, PERB Case No. 15-I-06 (May 21, 2015).
[2] Negotiability Appeal ¶ 7.
[3] D.C. Official Code § 1-624.08.
[4] Response pp. 1-2 (citing *Washington Teachers' Union v. D.C. Pub. Schs.*, 61 D.C. Reg. 1537, Slip Op. No. 1448 at pp. 2, 3, PERB Case No. 04-U-25 (2014); *AFGE, Local 631 v. D.C. Water & Sewer Auth.*, 59 D.C. Reg. 5411, Slip Op. No. 982 at p. 6, PERB Case No. 08-N-05 (2009)).
[5] D.C. Mun. Regs. tit. 6-B24 §§ 2428.4, 2430.
[6] Response p. 3.
[7] *Doctors' Council of D.C. v. D.C. Dep't of Youth & Rehab. Servs.*, 60 D.C. Reg. 16255, Slip Op. No. 1432 at p. 8, PERB Case No. 11-U-22 (2013).

rights decisions.[8] However, the Abolishment Act, D.C. Official Code § 1-624.08, narrowed this duty as it relates to RIFs. Congress enacted the Abolishment Act as section 2408 of the D.C. Appropriations Act of 1998.[9] The Abolishment Act was later amended to apply to fiscal year 2000 and subsequent fiscal years.[10] 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.[11] The Abolishment Act provides in Section 1-624.08(j) that "[n]otwithstanding the provisions of § 1-617.08 or § 1-624.02(d), the provisions of this chapter shall not be deemed negotiable."

One of the provisions of the Abolishment Act, Section 1-624.08(d), accords to employees whose positions have been abolished an entitlement to compete for retention in certain circumstances and under specified procedures:

> An employee affected by the abolishment of a position pursuant to this section who, but for this section would be entitled to compete for retention, shall be entitled to one round of lateral competition pursuant to Chapter 24 of the District of Columbia Personnel Manual, which shall be limited to positions in the employee's competitive level.

Section 1-624.08(d) and Chapter 24, which Section 1-624.08(d) incorporates by reference, establish detailed procedures by which RIF'd employees can compete for retention.[12] Section 1-624.08(j) makes those procedures nonnegotiable.[13]

In place of those nonnegotiable procedures, Proposal 1 attempts to give the RIF'd nurses a right of first refusal for any additional clinical nurse positions that are added to Healthy Start or for any similar positions in the Department. This proposal would supersede the competition regulated by Section 1-624.08(d) and Chapter 24 with a right of first refusal. Therefore, Proposal 1 is nonnegotiable.

Under Proposal 2, the Union seeks to impose a requirement on providers that are granted funding for services through Healthy Start. Those providers must give nurses the right of first refusal for clinical nurse openings for perinatal care. This proposal conflicts with Section 2409 of

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[8] *AFGE, Local 1403 v. D.C. Office of the Corp. Counsel*, Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02 (July 25, 2003); *Int'l Bhd. of Police Officers v. D.C. Gen. Hosp.*, 41 D.C. Reg. 2321, Slip Op. No. 312 at p. 3, PERB Case No. 91-U-06 (1992); *Univ. of D.C. Faculty Ass'n/NEA and Univ. of D.C.*, 29 D.C. Reg. 2975, Slip Op. No. 43 at p. 4, PERB Case No. 82-N-01 (1982) (holding that procedures for implementing the decision to conduct a RIF and its impact and effects are negotiable).

[9] 111 Stat. 2160 (1997).

[10] District of Columbia Appropriations Act of 2001, 114 Stat. 2457 (2000).

[11] D.C. Official Code § 1-624.08(a)-(i), (k).

[12] D.C. Mun. Regs. tit. 6-B24 §§ 2427-2430.

[13] *F.O.P./Dep't of Corrs. Labor Comm. v. D.C. Dep't of Corrs.*, 49 D.C. Reg. 11141, Slip Op. No. 692, PERB Case No. 01-N-01 (2002).

Chapter 24, which establishes the competitive areas for RIF'd employees. Each agency constitutes a single competitive area,[14] but an agency's personnel authority may establish lesser competitive areas within the agency.[15] Proposal 2 would create for the RIF'd employees a new competitive area outside the Department (providers granted funding through the Healthy Start Program), and in that new competitive area the employees would be entitled not just to competition but to a right of first refusal. As Proposal 2 augments RIF procedures, it is nonnegotiable.

Contrary to the Union's assertion, Chapter 24, through the operation of Section 1-624.08(j), does preclude negotiation over the Union's proposals. Accordingly, we find both Proposal 1 and Proposal 2 nonnegotiable.

ORDER

IT IS HEREBY ORDERED THAT:

1. The proposals of the District of Columbia Nurses Association, concerning a right of first refusal for clinical nurse positions, are nonnegotiable.

2. 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 Chairman Charles Murphy and Members Keith Washington, Ann Hoffman, and Yvonne Dixon

Washington, D.C.

June 25, 2015

[14] *Id.* at § 2409.1.
[15] *Id.* at § 2409.2.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order was served upon the following parties via File and ServeXpress on this the 30th day of June 2015.

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