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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. 20-U-23
	)	
v.	)	Opinion No. 1805
	)	
District of Columbia Office of Labor Relations and Collective Bargaining, <i>et al.</i>	)	
	)	
Respondents	)	
	)	

**ORDER TO VACATE**

This case is before the Board based upon an order from the D.C. Superior Court in *OLRCB v. PERB*.<sup>1</sup> In its ruling, the court reversed the Board’s decisions in PERB Case No. 20-U-23, Opinion Nos. 1743, 1747, and 1768, based on a determination that the COVID-19 Response Emergency Amendment Act of 2020 (COVID-19 Emergency Act)<sup>2</sup> provides management the sole right to take the personnel actions necessary to ensure an effective response to the COVID-19 emergency.<sup>3</sup> Contrary to the Board’s findings in PERB Case No. 20-U-23, the court found that such management actions are not subject to bargaining, even over impact and effects.<sup>4</sup>

On March 17, 2020, the Council of the District of Columbia enacted the COVID-19 Emergency Act, which amended the District of Columbia Public Emergency Act and provided the Mayor with enumerated personnel powers to address the COVID-19 emergency. The Mayor’s personnel powers under the COVID-19 Emergency Act give management the right to modify tours of duty for employees, extend shifts, and assign additional shifts.<sup>5</sup> The COVID-19

<sup>1</sup> *OLRCB v. PERB*, Case No. 2020 CA 003086 P(MPA) (D.C. Super. Ct. September 29, 2021).

<sup>2</sup> COVID-19 RESPONSE EMERGENCY AMENDMENT ACT OF 2020, 2020 District of Columbia Laws Act 23-247.

<sup>3</sup> *OLRCB*, Case No. 2020 CA 003086 P(MPA) at 7-8.

<sup>4</sup> *Id.*

<sup>5</sup> D.C. Official Code § 7-2304(b)(16)(B) and (E).

Emergency Act granted the Mayor these powers despite “any provision of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139, D.C. Official Code § 1-601.01 et seq.) (“CMPA”) or the rules issued pursuant to the CMPA, . . . or any other personnel law or rules.”<sup>6</sup>

On March 30, 2021, AFGE, Local 631 (Union) filed a Complaint with the Board, asserting that the Respondents (Agencies) refused to negotiate with the Union over changes in working conditions precipitated by the coronavirus pandemic, violated the Union’s right as the exclusive representative, and violated the Mayor’s Administrative Order on preventing the spread of the coronavirus.<sup>7</sup> The Union requested preliminary relief, including a Board order granting eligible employees the ability to telework and requiring the Agencies to bargain with the Union immediately.<sup>8</sup> The Union also requested ultimate remedies, including an order directing the Agencies to bargain with the Union on pandemic-related issues such as changes in work schedules, administrative leave for employees exposed to or infected with COVID-19, and safety measures in the workplace, including personal protective equipment<sup>9</sup>

On April 24, 2020, the Board issued Opinion No. 1743, granting, in part, the request for preliminary relief and ordering the Agencies to bargain over the impact and effects of shift changes and provide the Union with requested information.<sup>10</sup> The Agencies filed a Motion for Reconsideration (Motion). On June 12, 2020, the Board issued Opinion No. 1747, denying the Motion.<sup>11</sup> On February 3, 2021, the Board issued Opinion No. 1768, ordering the Agencies to bargain with the Union over emergency working conditions changes, including the impact and effects of changes in emergency working conditions.<sup>12</sup> The Respondents petitioned the Superior Court for review.

On September 29, 2021, the Superior Court issued a decision stating that the COVID-19 Emergency Act “gives management the sole right to take any necessary personnel action in emergency situations,” “notwithstanding” any contradictory provision of the CMPA.<sup>13</sup> The court held that management has “flexible, expansive, open-ended authority” to take the actions necessary to ensure an effective response to the COVID-19 emergency.<sup>14</sup> The court found that such management actions were not subject to bargaining, even over impact and effects.<sup>15</sup> In accordance with these findings, the court granted the Agencies’ petition and reversed the Board’s decisions in PERB Case No. 20-U-23, to include Opinion No. 1768 as well as previous Opinion Nos. 1747, and 1743, to the extent they are inconsistent with the Superior Court’s decision.<sup>16</sup>

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<sup>6</sup> *AFGE Local 631 v. OLR CB, et al.*, 68 D.C. Reg. 2979, Slip Op. No.1768, PERB Case No. 20-U-23 (2021)(citing D.C. Official Code § 7-2304(b)(16)).

<sup>7</sup> *Id.* (Complaint at 1,4).

<sup>8</sup> *Id.* (Complaint at 4-6).

<sup>9</sup> *Id.* (Complaint at 6-8).

<sup>10</sup> *AFGE Local 631 v. OLR CB, et al.*, 67 D.C. Reg. 8882, Slip Op. No.1743, PERB Case No. 20-U-23 (2020).

<sup>11</sup> *AFGE Local 631 v. OLR CB, et al.*, 67 D.C. Reg. 8901, Slip Op. No.1747, PERB Case No. 20-U-23 (2020).

<sup>12</sup> *OLR CB, et al.*, Slip Op. No.1768 at 6.

<sup>13</sup> *OLR CB*, Case No. 2020 CA 003086 P(MPA) at 1, 8 (internal quotations omitted).

<sup>14</sup> *Id.* at 7-8.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 8.

Therefore, the Board now vacates those opinions to the extent that they are inconsistent with the Superior Court's decision.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Board's decisions in Opinion Nos. 1768, 1747, and 1743 in PERB Case No. 20-U-23 are vacated.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

January 20, 2022

**Washington, D.C.**