**Government of the District of Columbia**
**Public Employee Relations Board**

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| In the Matter of: | |
| Washington Teachers' Union, Local #6 AFT, AFL-CIO, | |
| Complainant, | PERB Case No. 04-U-25 |
| v. | Opinion No. 1448 |
| District of Columbia Public Schools, | |
| Respondent. | |

## DECISION AND ORDER

### I. Statement of the Case

This case involves an unfair labor practice complaint alleging a failure to bargain and to provide information in connection with abolishment of positions by the District of Columbia Public Schools ("DCPS" or "Respondent"). The complaint was filed June 3, 2004, by the Washington Teachers' Union Local #6 AFT, AFL-CIO ("WTU" or "Complainant") against DCPS.

The complaint alleges that on December 12, 2003, and May 17, 2004, WTU requested that DCPS bargain with WTU concerning any decision to abolish bargaining unit positions as well as the impact and effects of such decision and requested information concerning the abolishment. DCPS announced and implemented abolishments by sending memoranda to principals and assistant superintendants on April 22, 2004, and May 13, 2004. (Complaint ¶¶ 6, 7, 9, 10). The complaint alleges that in violation of D.C. Code section 1-617.04 (a) (1) and (5) DCPS failed and refused to bargain with WTU as requested. (Complaint ¶ 15). The complaint alleges that DCPS provided only a partial response to WTU's information request and alleges that significant information is still outstanding. (Complaint ¶ 13). WTU moved for preliminary relief, specifically, an order that DCPS maintain the status quo, halt its abolishment process, and fulfill its bargaining obligation. WTU did not seek preliminary relief regarding its request for information.

The Respondent's answer admitted that WTU requested bargaining on the decision and its impact and effects and that the Respondent "has not bargained with WTU over the abolishment of certain WTU bargaining unit positions." (Answer ¶¶ 5, 12). The Respondent asserts that it provided information to the Complainant and "denies that 'significant' information is still outstanding." (Answer ¶ 13). The answer asserts that the complaint fails to state a claim upon which relief may be granted. The Respondent filed an opposition to the motion for preliminary relief ("Opposition") in which the Respondent elaborated on its position that the complaint failed to state a claim.

## II. Discussion

### A. Duty to Bargain

The Complainant alleges, and DCPS admits, that DCPS did not comply with the Complainant's request to bargain over the decision to abolish bargaining unit positions as well as the impact and effects of the decision. (Complaint ¶¶ 4, 5, 8, 11, 12, 14; Answer ¶¶ 4, 5, 8, 11, 12, 14). DCPS argues that "DCPS had no duty to bargain over either [the] decision to conduct the position abolishments or the impact and effects of that decision. Because DCPS had no legal obligation to bargain over the decision or impact and effects of the position abolishment, it likewise had no obligation to provide information with respect to the abolishment." (Opposition 12).

The material facts of the claim of refusal to bargain are not disputed by the parties. Disposition of this claim presents only a question of law. Therefore, pursuant to Board Rule 520.10, the claim can appropriately be decided on the pleadings. In view of our disposition at this stage of the proceedings, the motion for preliminary relief is moot.

RIFs are a management right under D.C. Code section 1-617.08. *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). 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 rights decisions. *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). However, the Abolishment Act, D.C. 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, 111 Stat. 2160 (1998). The D.C. Council amended the applicable date to cover the 2000 fiscal year and subsequent fiscal years. *Teachers' Union Local No. 6 v. D.C. Pub. Schs.*, 960 A.2d 1123, 1126 n.6 (D.C. 2009). 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. D.C. Code § 1-624.08(a)-(i), (k). The Abolishment Act further provides, "Notwithstanding the provisions of § 1-617.08 or § 1-

624.02(d), the provisions of this chapter shall not be deemed negotiable." D.C. Code § 1-624.08(j). *See also* Omnibus Personnel Reform Amendment Act, 1998 D.C. Laws 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 would alter RIF procedures is nonnegotiable. *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); *FOP/Dep't of Corrs. Labor Comm. v. D.C. Dep't of Corrs.*, 49 D.C. Reg. 11141, Slip Op. No. 692 at p. 5, PERB Case No. 01-N-01 (2002) ("*FOP/Department of Corrections Labor Committee*").

Respondent's position is that not only are RIF decisions and RIF procedures nonnegotiable but the impact and effects of RIFs are nonnegotiable as well. Respondent argues this position by misconstruing statements in *FOP/Department of Corrections Labor Committee*. Respondent asserts without citation that the "Board has squarely held, that job abolishments conducted under Section 1-624.08 are 'non-negotiable' and are 'not an appropriate subject for impact and effects bargaining.'" (Opposition 2). That statement was not a holding of the Board. In two opinions in *FOP/Department of Corrections Labor Committee*, the Board related that the Department of Corrections had said that the FOP's proposal on RIF procedures "is not an appropriate subject for impact and effects bargaining." *FOP/Department of Corrections Labor Committee*, 49 D.C. Reg. 800, Slip Op. No. 666 at p. 3, PERB Case No. 01-N-01 (2000) (order requesting submission of briefs); *FOP/Department of Corrections Labor Committee*, 49 D.C. Reg. 11141, Slip Op. No. 692 at p. 3, PERB Case No. 01-N-01 (2002) (order holding proposal nonnegotiable). Neither the Department of Corrections nor the Board took the position that job abolishments under section 1-624.08 are not an appropriate subject for impact and effects bargaining. Respondent seeks to associate that position with the Board's holding in the case by stating that "the Board ruled that the Union's proposal was 'not within the scope of impact and effects bargaining and [was;] therefore, non-negotiable.'" (Opposition 11-12) (quoting *FOP/Department of Corrections Labor Committee*, Slip Op. No. 692 at p. 5).

The ruling quoted by the Respondent does not support Respondent's position. The proposal the Board ruled upon was made during impact and effects bargaining, *FOP/Department of Corrections Labor Committee*, Slip Op. No. 692 at p. 1, but the proposal dealt with RIF procedures rather than the impact or effects of a RIF. *Id.* at 4. As a result, the Board's order said the proposal "is not within the scope of impact and effects bargaining and is; therefore, non-negotiable." *Id.* at 5. If the proposal had been within the scope of impact and effects bargaining, then it would have been negotiable. After the passage of the Abolishment Act and the Omnibus Personnel Reform Amendment Act, the Board has continued to hold that an employer violates its duty to bargain in good faith by refusing a request to bargain over the impact and effects of a RIF. *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); *AFSCME Council 20, Local 2921 v. D.C. Dep't of Gen. Servs.*, 59 D.C. Reg. 12682, Slip Op. 1320 at p. 2, PERB Case No. 09-U-63 (2012); *F.O.P./Dep't of Corrs. Labor Comm. v. D.C. Dep't of Corrs.*, 52 D.C. Reg. 2496, Slip Op. 722 at p. 5, PERB Case Nos. 01-U-21, 01-U-28, 01-U-32 (2003).

Based on the precedent discussed above, DCPS was not required to bargain over the decision to abolish bargaining unit positions but was required to engage in impact and effects

bargaining over the abolishment. Should WTU have made a proposal during impact and effects bargaining that DCPS regarded as altering RIF procedures, DCPS could have provided WTU with a written communication asserting that the proposal was nonnegotiable as provided in section 532 of the Board's rules. DCPS admitted that it did not engage in impact and effects bargaining over the abolishment. (Answer ¶¶ 4, 5, 11, 12). Therefore, the Board finds that DCPS failed to bargain with WTU over the impact and effects of the abolishment in violation of the Comprehensive Merit Personnel Act.

**B. Request for Information**

An agency has an obligation to furnish information a union requests that is both relevant and necessary to the union's role in processing of a grievance, an arbitration proceeding, or collective bargaining. Failure to do so is an unfair labor practice. *D.C. Nurses Ass'n v. D.C. Dep't of Mental Health*, 59 D.C. Reg. 15187, Slip Op. No. 1336 at p. 3, PERB Case No. 09-U-07 (2012). This Board sustained an unfair labor practice claim where the agency failed to provide requested information concerning the agency's decision to implement a RIF involving the union's bargaining unit members. *D.C. Nurses Ass'n v. D.C. Dep't of Mental Health*, Slip Op. No. 1314, PERB Case No. 12-U-09 (Apr. 24, 2012). WTU's complaint has sufficiently alleged such a claim.

In contrast to the facts concerning WTU's claim of refusal to bargain, the facts concerning WTU's claim of refusal to provide information are in dispute. (Complaint ¶¶ 13, 16; Answer ¶¶ 13, 16). Accordingly, we direct the development of a factual record through an unfair labor practice hearing at which the Complainant will have the burden of proving its allegations by a preponderance of the evidence as provided by Rule 520.11. Prior to the hearing, the parties will participate in mandatory mediation, pursuant to Board Rule 558.4.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Complainant's unfair labor practice complaint is sustained in part.

2. The Respondent, its agents, and representatives shall bargain with the Complainant, its agents, and representatives over the impact and effects of the abolishments referred to in the complaint.

3. The Respondent shall conspicuously post within ten (10) days from the issuance of this Decision and Order the attached Notice where notices to employees are normally posted. The Notice shall remain posted for thirty (30) consecutive days.

4. The unfair labor practice claim of refusal to provide information and the request for costs will be referred to a hearing examiner for an unfair labor practice hearing. That dispute will be first submitted to the Board's mediation program to

allow the parties the opportunity to reach a settlement by negotiating with one another with the assistance of a Board-appointed mediator.

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

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

Washington, D.C.

January 23, 2014

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 04-U-25 is being transmitted via U.S. Mail to the following parties on this the 24th day of January, 2014.

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**VIA U.S. MAIL**

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# NOTICE

**TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS: THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1448, PERB CASE NO. 04-U-25 (JAN. 23, 2014).**

**WE HEREBY NOTIFY** our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered the District of Columbia Public Schools to post this notice.

**WE WILL** cease and desist from violating D.C. Code § 1-617.04(a)(1) and (5) by the actions and conduct set forth in Slip Opinion No. 1448.

**WE WILL** cease and desist from interfering, restraining, or coercing employees in the exercise of rights guaranteed by the Labor-Management subchapter of the Comprehensive Merit Personnel Act ("CMPA").

**WE WILL** cease and desist from refusing to bargain in good faith with the Washington Teachers' Union Local #6 AFT, AFL-CIO, over the impact and effects of the abolishments implemented in April and May 2004.

District of Columbia Public Schools

Date:_____ By:_____

**This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.**

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 1100 4th Street, SW, Suite E630; Washington, D.C. 20024. Phone: (202) 727-1822.

**BY NOTICE OF THE PUBLIC EMPLOYEE RELATIONS BOARD**
Washington, D.C.

January 23, 2014