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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:)	
)	
FRATERNAL ORDER OF POLICE/ DEPARTMENT OF CORRECTIONS LABOR COMMITTEE,)	PERB Case No. 01-N-01
)	Opinion No. 692
)	
)	
)	
)	
Petitioner,)	
)	
)	
v.)	
)	
DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS,)	
)	
)	
Agency.)	
)	
)	

DECISION AND ORDER

This case involves a Negotiability Appeal filed by the Fraternal Order of Police/ Department of Corrections Labor Committee ("FOP"). The Appeal concerns the negotiability of a proposal which would alter Reduction in Force (RIF) procedures for bargaining unit members. FOP submitted the proposal when it was engaged in impact and effects bargaining with the Department of Corrections ("DOC" or "Agency") over the closure of the Lorton Correctional facilities and the RIFs that followed. In a written response to FOP's proposal, DOC declared the proposal non-negotiable¹. As a result, FOP filed the present Negotiability Appeal. The Petitioner is requesting that the Board order DOC to bargain over certain procedures involved in implementing a reduction-in-force.

¹DOC, through its representative, the Office of Labor Relations and Collective Bargaining, responded to the Union's Proposal by letter dated June 22, 2001. In that letter, it explained why it believed the Union's proposal was non-negotiable. DOC, argued, *inter alia*, that the intent of the D.C. Council when enacting the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124, was to "eliminate the provision allowing RIF policies and procedures to be appropriate matters for collective bargaining". (Attachment 1, p. 2; Appeal).

Under FOP's proposal, "senior employees who voluntarily agree to be released from their competitive level position would not have their retention standing affected or changed and would retain all rights as an employee adversely affected by the RIF." (Appeal at p. 3).

After the Board's initial review of this appeal, the Board ordered that the parties submit briefs in support of their respective positions pursuant to Board Rule 532.4(b).² In its brief, FOP reiterates its initial contention that the proposal is negotiable. FOP also provides a more detailed explanation for why it believes that the District Personnel Manual and the Comprehensive Merit Personnel Act (CMPA) support its position³. Additionally, FOP relies on the University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia case to support its contention that an Agency has a duty to bargain over the impact and effect of a management right, including policies and procedures relating to that management right.

45 DCR 4771, Slip Op. No. 517, PERB Case No. 97-U-12(1998). (Petitioner's Brief at p. 3). Finally, FOP relies on AFGE Local 383, AFL-CIO v. D.C. Department of Human Services to support its contention that management rights do not relieve an agency "of its obligation to bargain with the exclusive representative of its employees over the impact or effects of, and procedures concerning, the implementation of these management rights decisions."49 DCR 770, Slip Op. No. 418, PERB Case No. 94-U-09 (1994).

DOC claims that FOP's proposal is contrary to law⁴ and regulations because it unlawfully tries to alter RIF procedures. DOC argues that altering the RIF procedures in this manner is an act

²In a Decision and Order dated November 21, 2001, the Board directed that the parties submit briefs. Fraternal Order of Police/Department of Corrections Labor Committee v. Department of Corrections, 49 DCR 800, Slip Op. No. 666, PERB Case No. 01-N-01 (2002).

³FOP relies on D.C. Code § 1-617.08(b)(2001 ed.) in support of its position that RIF procedures are negotiable. D.C. Code § 1-617.08 provides that "all matters shall be deemed negotiable unless those that are proscribed by this subchapter."

⁴DOC relies on the language in D.C. Code § 1-624.08(j) (2001 ed.), which provides that: Notwithstanding the provisions of § 1-617.08(2001 ed.) (Management Rights; Matters subject to collective bargaining) or § 1-624.02(d) (2001 ed.) (Procedures- Reductions-in-Force), the provision of this chapter shall *not* be deemed negotiable. FOP argues that D.C. Code § 1-624.08(j) is not applicable to the present fact situation. In addition, FOP argues that, by implication, Chapter 24 of the District Personnel Manual(DPM), entitled "Reductions In Force", contemplates that parties will be negotiating over RIF procedures. § 2402 of the DPM is entitled "Actions not Covered" and gives a list of actions to which Chapter 24 does not apply. Specifically, FOP relies on § 2402.2 which provides that : "To the extent inconsistent with the provisions of a collective bargaining agreement, this chapter shall not apply to employees covered by such agreement with respect to the specific inconsistencies."

which is not consistent with the mandates of D.C. Code §1-624.08(j)(2001ed.). DOC also relies on language in the preamble of D.C. Law 12-124 to support its position that altering RIF procedures is unlawful. Specifically, the preamble states that one of its purposes is to eliminate the Union's right to negotiate over RIF policies and procedures⁵. For the above noted reasons, DOC asserts that the proposal should be declared non-negotiable because it concerns a matter which is not an appropriate subject for impact and effects bargaining.

The Board has the authority to consider the negotiability of the proposals pursuant to Board Rules 532.1⁶ and 532.4⁷.

⁵DOC argues that the language contained in the pre-amble of D.C. Law 12-124 evidences the D.C. City Council's legislative intent to eliminate RIF policies and procedures from the list of permissible negotiable subjects.

⁶Board Rule 532.1 provides as follows: If in connection with collective bargaining, an issue arises as to whether a proposal is within the scope of bargaining, the party presenting the proposal may file a negotiability appeal with the Board. If the Board determines that an impasse occurred regarding non-compensation matters, and an issue of negotiability exists at the time of such impasse determination, the negotiability issue must be withdrawn or a negotiability appeal filed within five (5) days of the Board's determination as to the existence of an impasse.

⁷Board Rule 532.4 provides as follows:

Upon the expiration of the period for filing the appeal and answer with the Board, the Executive Director shall refer the matter to the Board which shall expeditiously:

- (a) Issue a written decision on appeal and the answer, if any;
- (b) Order the submission of written briefs and/or oral argument within no more than fifteen (15) days and promptly thereafter issue a written decision;
- (c) Order a hearing, which may include briefs and arguments; or
- (d) Direct the parties to an informal mediation or conference with the Executive Director or any staff members or agents empowered to conduct informal mediation on the Board's behalf.

The Board has held that management is required to bargain, upon request of the exclusive representative, over the “effects or impact of a non-bargainable management decision upon terms and conditions of employment.” Teamsters 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 DCR 96, 100, Slip Op. No. 249, PERB Case No. 89-U-17 (1991). (Teamsters v. DCPS). “Included within this limited scope of bargaining is the obligation to bargain over procedures for implementing that decision when it is made.” Id.

The specific issue presented in this Negotiability Appeal concerns whether the Petitioner’s proposal to alter the District of Columbia’s RIF procedures is negotiable.

We believe that the Petitioner’s proposal, which attempts to alter the District of Columbia’s RIF procedures, is *non-negotiable*, notwithstanding the Board’s precedent cited above. The Board has exclusive authority to interpret the Comprehensive Merit Personnel Act (CMPA) and “the Board’s interpretation of the CMPA will not be altered unless a reviewing court finds that the Board’s interpretation is unreasonable in light of prevailing law or is inconsistent with the CMPA.” See, D.C. Metropolitan Police Department and Fraternal Order of Police, 41 DCR 6092, Slip Op. No. 325, PERB Case Nos. 92-A-06, 92-A-07, and 92-A-09, *aff’d sub nom.* D.C. Metropolitan Police Department v. PERB, MPA 92-29 (1993).

After reviewing D.C. Law 12-124, “Omnibus Personnel Reform Act of 1998”, the Board finds that this Act amended the CMPA, by, *inter alia*, excluding RIF procedures and policies as proper subjects of bargaining. In making this determination, the Board relies on the plain language of the Act itself which states, *inter alia*, that the purpose of the act is “To amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978...to eliminate the provision allowing RIF policies and procedures to be appropriate matters for collective bargaining.”⁸ The Board finds that this is reflected in the subchapter of the D.C. Code entitled “Reductions-in-Force”. Specifically, D.C. Code §1-624.08(j)(2001 ed.) states that: “notwithstanding the provisions of 1-617.08⁹ (2001 ed.) or 1-624.02 (d)(2001 ed.)¹⁰, the provisions of this chapter shall *not* be deemed negotiable. In view of the above, we find that FOP’s proposal, which attempts to alter the RIF

⁸This statement is contained in the introductory paragraph or pre-amble to the act. The Board believes that the above referenced statement makes the D.C. Council’s legislative intent clear.

⁹D.C. Code§1-617.08 (2001 ed.) entitled “Management rights; matters subject to collective bargaining” provides in pertinent part that: “All matters shall be deemed negotiable except those that are proscribed by this subchapter...”

¹⁰D.C. Code §1-624.02 (2001 ed.) entitled “Procedures” deals with the procedures for implementing RIFs. D.C. Code§ 1-624.02 (2001 ed.) describes the notice requirements for conducting a RIF.

procedures for employees at DOC, is non-negotiable.

The case law cited by FOP pre-dates the 1998 amendment to the CMPA. Therefore, the Board finds that it is inapplicable to the present facts. Pursuant to D.C. Code §1-617.08 (2001 ed.), all matters are deemed negotiable, except those that are specifically excluded. Since the Omnibus Personnel Amendment Act of 1998 specifically excludes negotiation over RIF policies and procedures, the Board finds that FOP's proposal is non-negotiable.

ORDER

IT IS HEREBY ORDERED THAT:

1. Fraternal Order of Police's proposal, concerning D.C. Government's RIF Policies and Procedures, is not within the scope of impact and effects bargaining and is; therefore, non-negotiable.
2. Pursuant to Board Rule 559.1, this decision is final upon issuance.

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

September 30, 2002

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 01-N-01 was transmitted via Fax and U.S. Mail to the following parties on this 30th day of September 2002.

Walter Wojcik, Esq.
Supervisory Labor Relations Specialist
D.C. Office of Labor Relations & Collective
Bargaining
441 4th Street, NW
Suite 820 North
Washington, D.C. 20001

FAX & U.S. MAIL

James Wallington, Esq.
Baptiste & Wilder, P.C.
1150 Connecticut Avenue, NW
Suite 500
Washington, D.C. 20036

FAX & U.S. MAIL

Courtesy Copies:

Odie Washington, Director
Department of Corrections
1923 Vermont, Ave
Room N203
Washington, D.C. 20001

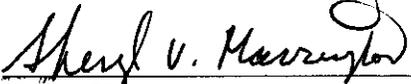
U.S. MAIL

Mary Leary, Director
Office of Labor Relations
and Collective Bargaining
441 4th Street, NW
Suite 820 North
Washington, D.C. 20001

U.S. MAIL

Pamela Chase, President
FOP/DOC Labor Committee
711 4th Street, NW
Washington, D.C. 20001

U.S. MAIL



Sheryl Harrington
Secretary