

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

_____ )	
American Federation of Government )	
Employees, AFL-CIO, Local 631, )	
)	
Petitioner, )	PERB Case No. 08-N-05
)	
and )	Opinion No. 982
)	
District of Columbia Water and Sewer )	
Authority, )	
)	
Respondent. )	
_____ )	

**DECISION AND ORDER**

**I. Background**

On July 3, 2008 the American Federation of Government Employees, AFL-CIO, Local 631 (“Petitioner” or “Union”) filed a Negotiability Appeal (“Appeal”) in the above-captioned matter. The District of Columbia Water and Sewer Authority (“Respondent” or “WASA”) and the Petitioner are parties to a collective bargaining agreement which expires September 30, 2011. The parties are not currently engaged in negotiations for a successor agreement. On January 4, 2008, the parties entered into a Memorandum of Understanding to negotiate over the “Reduction-in-Force (RIF) notice issue”. (See Union’s Appeal at p. 2).<sup>1</sup> The parties met on April 30, May 2 and June 3, 2008. By letter dated June 4, 2008, WASA declared the Union’s

<sup>1</sup> The Memorandum of Understanding provides, in part, as follows: “This Memorandum of Understanding between the American Federation of Government Employees, AFL-CIO, Local 631 . . . and the D.C. Water and Sewer Authority . . . is entered into for the purposes of resolving the Noncompensation Agreement for the Union’s bargaining unit members.

\* \* \*

In the interest of resolving the parties differences, the parties hereby agree to meet and bargain over the aforementioned policies, within forty-five days of the execution of this Memorandum of Understanding. [There is an annotation to] *Include a RIF Notice.*” (emphasis added).

proposal to be nonnegotiable. On July 3, 2008, the Union filed this Appeal requesting that the Board declare negotiable the Union's Proposal on Reduction in Force ("RIF") at Section A, ¶ 1 and at Section E. (Appeal at pgs. 1-3).<sup>2</sup> On July 23, 2008, WASA filed a "Response to the Union's Negotiability Appeal and to the Union's Request for Impasse" ("Response").

## II. Positions of the Parties Concerning the Union's Proposal

The Union's proposals for Section A, ¶ 1 and Section E are set forth below, followed by the positions of the parties and a discussion by the Board.

### Section A Bargaining Over the Impact and Effect

[¶ 1] The Authority agrees to minimize a Reduction-In-Force (RIF) affecting bargaining unit employees through such means as furloughs, reassignment, retaining or restricting recruitment to reduce the impact. The Authority shall utilize attrition and other cost savings measures to avoid or minimize the impact on employees of a RIF.

"[The Union asserts that in] order to infringe on a management right, the proposal would have to mandate specific action which [WASA] must use in conducting a RIF. [The Union claims that the] proposal directs no specific action which [WASA] must take and is therefore negotiable." (Appeal at p. 2).<sup>3</sup> The Union maintains that the proposal does not infringe on any management rights because "Section A, ¶ 1 does not require [WASA to] maintain any specific number of employees and does not interfere with [WASA's] right to implement or conduct a RIF. The [Union contends that the] proposal is [merely] a commitment [by WASA to] minimize the effect of a RIF on bargaining unit employees." (Appeal at p. 2).

WASA states that the Board has previously held that RIF policies and procedures are not negotiable.<sup>4</sup> WASA asserts that "in FOP [*FOP/Dep't of Corrections Labor Committee v. D.C.*

<sup>2</sup> The Appeal was accompanied by a document styled "Union's Statement and Request for Impasse". In that document, the Union requested that the Board assign a mediator for the resolution of the impasse on the RIF notice issue. The issue of impasse will not be addressed here. The impasse case has been designated PERB Case No. 08-I-09.

<sup>3</sup> The Union further makes arguments pertaining to the impact and effects of a RIF. Specifically, the Union argues that "Section A, ¶ 2 would require [WASA] to negotiate with the Union to lessen the impact of a RIF and would require [WASA] to begin bargaining, after the decision is made to conduct the RIF. [The Union claims that WASA's] proposal would limit bargaining to current impact and implementation rights under the statute and the current collective bargaining agreement ["CBA"]." (Union's Statement and Request for Impasse at p. 2).

<sup>4</sup> In support of its position, WASA cites *AFGE Local 631 v. D.C. Water and Sewer Authority*, 51 DCR 4170, Slip Op. No. 730, PERB Case No. 02-U-19 (2003) and *FOP/Dep't of Corrections Labor Committee v. D.C. Dep't of Corrections*, 49 DCR 11141, Slip Op. No. 692, PERB Case No. 01-N - 01 (2002).

*Dep't of Corrections*, 49 DCR 11141, Slip Op. No. 692, PERB Case No. 01-N - 01 (2002)], as in this matter, the negotiability appeal arose out of impact and effects bargaining. The [Board] in that case examined . . . the language of D.C. Law 12-124, 'Omnibus Personnel Reform Act of 1998' and found that [it] 'amended the CMPA by, inter alia, excluding RIF procedures and policies as proper subjects of bargaining'. The Board relied on 'the plain language of the Act itself which states, inter alia, that the purpose of the Act is '[t]o 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'. *Id.* at p. 4." (Response at pgs. 2-3). WASA maintains that based on D.C. Code § 1-624.08(j), any attempts to alter the RIF procedures for covered agency employees are nonnegotiable. (Response at p. 1).

WASA asserts that the Union's proposal in the present case is contrary to law to the extent that it would alter WASA's policies and procedures for conducting a RIF. WASA relies on "[t]he Comprehensive Merit Personnel Act ["CMPA"] at D.C. Code § 1-624.08, [stating that it] establishes the absolute right of management to identify positions for abolishment, to abolish those positions, and to separate employees encumbering positions that have been identified for abolishment. The same section establishes a minimum period of 30 days for written advance notice of separation to employees, and establishes the rights of employees who are separated pursuant to a RIF." (Response at p. 3).

WASA claims that "[t]he Union's proposal attempts to impermissibly restrict the circumstances and means by which [WASA] may conduct a RIF and attempts to force changes to the procedures whereby [WASA] carries out a RIF. [WASA states that in *AFGE Local 631 v. D.C. Water and Sewer Authority*, 51 DCR 4170, Slip Op. No. 730, PERB Case No. 02-U-19 (2003),] the Board specifically applied the decision in FOP [Slip Op. No. 692] to the policies and procedures established by [WASA's] RIF regulations. *AFGE, Local 631*, Slip Op. No. 730 at p. 3. For these reasons, [WASA claims that] the Negotiability Appeal should be dismissed." (Response at p. 3).<sup>5</sup>

The Union's proposal for Section E follows:

Section E      Layoff Notice

All notices of a reduction in force shall identify the abolished position causing the separation of an employee, the specific action being taken and its effective date; the employee's competitive area; competitive level; tenure group; RIF service computation date; the

---

<sup>5</sup> WASA further maintains that a declaration of impasse would be improper for a proposal that is contrary to law. Furthermore, WASA claims that "the Union has failed to engage in sufficient good faith negotiations . . . [A]fter WASA declined by letter dated June 4, 2008 to simply concede to [the] Union's initial demands, the Union made no counterproposal." The parties did not meet again before the Union filed its Request for Impasse. (See Response at p. 4).

employee's priority rehire rights; and the employee's appeal and grievance rights.

The Union claims that "Section E does not impact on WASA's regulatory rights or interfere with [WASA's] right to issue regulations. To infringe on [WASA's] regulatory rights, the proposal would have to require [WASA] to issue a specific regulation or to infringe on or limit [WASA's] regulatory authority. The enumerated rights set forth in D.C. Code § 1-617.08(a), do not specifically address an agency's regulatory authority. The [Union asserts that the] items to be included in a layoff notice do not fall within any of the enumerated management rights and therefore [are not] an infringement on a management right. The items to be included in a notice are procedural matters not matters affecting substantive rights of the employer.

[The Union contends that] [e]ven if one believed [WASA's] regulatory rights are management rights, in executing the MOU, [WASA] agreed to bargain over the RIF notice issue. In *American Federation of Government Employees, Local 631 and D.C. Water and Sewer Authority*, 54 DCR 3210, Slip Op. No. 877 at p. 8, PERB Case No. 05-N - 02 (2002), the Board held that nothing in the statute prevents management from bargaining over rights listed in the statute. Section E proposes [that WASA] add the name of the position abolished to layoff notices to employees. The remaining items in Section E are consistent with [WASA's] regulation." (Appeal at pgs. 3-4).

Therefore, the Union maintains that "because Section A, ¶ 1 and Section E do not infringe [on] any of the enumerated management rights and [because WASA] agreed to negotiate over the RIF notice issue, the Union's proposal is negotiable." (Appeal at p. 4).

WASA counters that ". . . D.C. Code § 1-624.08, establishes the absolute right of management to identify positions for abolishment, to abolish those positions, and to separate employees encumbering positions that have been identified for abolishment. The same section establishes a minimum period of 30 days for written advance notice of separation to employees, and establishes the rights of employees who are separated pursuant to a [RIF]." (Response at p. 3). WASA claims that the proposal "attempts to impermissibly restrict the circumstances and means by which [WASA] may conduct a RIF and to force changes to the procedures [for carrying out] a RIF." (Response at p. 3).

### III. Discussion

The Board has the authority to consider the negotiability of the proposal pursuant to Board Rules 532.1 and 532.4. At the outset, we find that the Union's proposal pertains to RIF procedures.

The Board has previously addressed the issue of whether RIF procedures are negotiable. In *Fraternal Order of Police/Department of Corrections Labor Committee v. D.C. Dep't of Corrections*, 49 DCR 11141, Slip Op. No. 692 at p. 4, PERB Case No. 01-N-01 (2002), the

specific issue presented was “whether the Petitioner’s proposal to alter the District of Columbia’s RIF procedures is negotiable.” We considered this issue in light of then recent legislation found in D.C. Law 12-124, “Omnibus Personnel Reform Act of 1998” pertaining to the RIF process. Reversing our position in a previous case, the Board stated as follows:

We believe that the Petitioner’s proposal, which attempts to alter the District of Columbia’s RIF procedures, is nonnegotiable, notwithstanding the Board’s precedent [in Slip Op. No. 249]. 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 Dep’t 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. [omitted]. 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.” [omitted]. 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 1-617.08 (2001 ed.) or [§] 1-624.02(d)(2001 ed.) (omitted), 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 procedures for employees at DOC, is nonnegotiable.

\* \* \*

. . . 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 Reform Act of 1998 specifically

excludes negotiation over RIF policies and procedures, the Board finds that FOP's proposal is nonnegotiable.

Consistent with our findings in *Fraternal Order of Police/Department of Corrections Labor Committee v. D.C. Dep't of Corrections*, 49 DCR 11141, Slip Op. No. 692 at p. 4, PERB Case No. 01-N-01 (2002), we find that "the purpose of D.C. Law 12-124, "Omnibus Personnel Reform Act of 1998" [is to] amend the [CMPA of 1978] . . . to eliminate the provision allowing RIF policies and procedures to be appropriate matters for collective bargaining."

Since the Omnibus Personnel Reform Act of 1998 specifically excludes negotiation over RIF policies and procedures, the Board finds that the Union's RIF proposal in the present case attempts to alter the RIF procedures for employees at WASA. Therefore, we find that the proposal is **nonnegotiable**.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The proposal of the American Federation of Government Employees, AFL-CIO, Local 631, concerning the District of Columbia Water and Sewer Authority's RIF Policies and Procedures, is nonnegotiable.
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, 2009

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 08-N-05 was transmitted via Fax and U.S. Mail to the following parties on this the 30<sup>th</sup> day of September 2009.

Barbara Hutchinson, Esq.  
7907 Powhatan Street  
New Carrollton, MD 20784

**FAX & U.S. MAIL**

Brian Hudson, Esq.  
Venable, Baetjer, Howard  
& Civiletti, LLP  
575 7<sup>th</sup> Street, N.W.  
Washington, D.C. 20004

**FAX & U.S. MAIL**

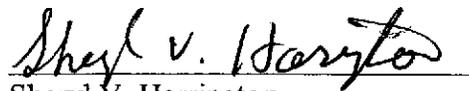
Kenneth Slaughter, Esq.  
Venable, Baetjer, Howard  
& Civiletti, LLP  
575 7<sup>th</sup> Street, N.W.  
Washington, D.C. 20004

**FAX & U.S. MAIL**

**Courtesy Copy:**

Stephen Cook  
D.C. Water and Sewer Authority  
5000 Overlook Avenue, S.W.  
Washington, D.C. 20032

**U.S. MAIL**

  
\_\_\_\_\_  
Sheryl V. Harrington  
Secretary