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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)	
)	
Petitioner)	PERB Case No. 22-N-02
)	
and)	Opinion No. 1808
)	
)	Motion for Reconsideration
D.C. Office of Labor Relations and Collective Bargaining, D.C. Department of Public Works, D.C. Department of General Services, D.C. Office of Planning, D.C. Office of Contracting and Procurement, D.C. Office of Zoning, and D.C. Department of Environment and Energy)	
)	
Respondents)	
)	

DECISION AND ORDER

I. Statement of the Case

On January 4, 2022, the American Federation of Government Employees, Local 631 (Union) filed a motion for reconsideration of Opinion No. 1804 (Motion). The Union requests that the Board reconsider its decision finding that the Union’s proposals related to the coronavirus (COVID-19) vaccine requirement for District employees (herein “Vaccine Requirements”) were non-negotiable. The Agencies oppose the Union’s Motion.

For the reasons stated herein, the Union’s Motion is denied.

II. Discussion

In Opinion No. 1804, the Board applied the court’s holding in *OLRCB v. PERB*¹ to D.C. Official Code § 1-617.08(a)(6), which authorizes management to “take whatever actions may be

¹ *OLRCB v. PERB*, Case No. 2020 CA 003086 P(MPA) (D.C. Super. Ct. September 29, 2021) (holding that D.C. Official Code § 7-2304 (COVID-19 Response Emergency Amendment Act of 2020) “gives management the sole right

necessary to carry out the mission of the District government in emergency situations.” In Opinion No. 1804, the Board found that the Agencies have the management right under section 1-617.08(a)(6) to unilaterally effectuate the Vaccination Requirements without bargaining even impact and effects.² In its Motion, the Union argues that the court’s holding in *OLRCB v. PERB* applies solely to the specific personnel actions enumerated in the COVID-19 Response Emergency Amendment Act of 2020 and that the Board erred in finding that the Vaccination Requirements are not subject to bargaining.³

In *OLRCB v. PERB*, the court took a broad view of management’s rights. Reading the court’s decision, the Board concludes that the court made the assumption, without going into a detailed explanation, that the COVID-19 Emergency Act broadly includes any actions that may be necessary. The court reasoned that the COVID-19 Emergency Act did not need to enumerate the specific actions management can take in an emergency because, under D.C. Official Code § 1-617.08(a)(6), management already has “flexible, expansive, open-ended authority to take ‘whatever actions may be necessary’ to address” the COVID-19 emergency.⁴ In addressing the “[n]otwithstanding any provision of [the CMPA]” clause of the COVID-19 Emergency Act, the court relied on the Court of Appeals “well-established principle that the use of such a notwithstanding clause clearly signals the drafter’s intention that the provisions of the notwithstanding section override conflicting provisions of any other section.”⁵ Therefore, pursuant to the court’s decision, the Board finds that the COVID-19 Emergency Act merely restates management’s pre-existing authority under D.C. Official Code § 1-617.08(a)(6) and applies that authority to the specific COVID-19 emergency. The Board finds the Union’s argument is mere disagreement with the Board’s interpretation of the applicable law and that the Union has not provided any authority that would require the Board to overturn its decision.

In addition, the Union claims that the Board failed to follow prior cases in which the Board separately explained its review of each bargaining proposal.⁶ In the instant case, the Board determined that all of the Union’s proposals related to the Vaccination Requirements for District employees were non-negotiable for the same reason, namely the court’s decision in *OLRCB v. PERB*. It would have been unnecessarily duplicative to repeat the same analysis. Moreover, there is no authority requiring the Board to separately explain its review of each proposal.

For the reasons stated, the Motion is denied. The Union has not provided any authority that would compel the Board to reach a different result. Absent such authority, the Board will not overturn its decision.⁷

to take any necessary personnel action in emergency situations,” “notwithstanding” any contradictory provision of the Comprehensive Merit Personnel Act (CMPA)).

² Slip Op. No. 1804 at 2.

³ Motion at 1-3 (citing *OLRCB v. PERB*, Case No. 2020 CA 003086 P(MPA) (D.C. Super. Ct. September 29, 2021)).

⁴ *OLRCB v. PERB*, at 6-7.

⁵ *Id.* at 5 (quoting *Burton v. Office of Employee Appeals*, 30 A.3d 789, 796 (D.C. 2011) (internal quotations omitted)).

⁶ Motion at 2-4 (citing *UDC Faculty Ass’n v. UDC*, 64 D.C. Reg. 5132, Slip Op. No. 1617 at 2-3, PERB Case No. 16-N-01 (2017)).

⁷ *FOP/MPD Labor Comm. v. MPD*, 60 D.C. Reg. 12058, Slip Op. No. 1400 at 6, PERB Case No. 11-U-01 (2013).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Motion for Reconsideration of Opinion No. 1804 is denied; and
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By vote of Board Chairperson Douglas Warshof and Members Mary Anne Gibbons, Peter Winkler, and Renee Bowser.

February 17, 2022

Washington, D.C.

