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

In the Matter of:)	
)	
American Federation of State, County and Municipal Employees, District Council 20, Local 2401, AFL-CIO,)	PERB Case No. 10-N-03
)	
Complainant,)	Opinion No. 1462
)	
and)	Decision and Order
)	
District of Columbia Child and Family Services Agency,)	
)	
Respondent.)	
)	

DECISION AND ORDER

I. Statement of the Case

On June 11, 2010, American Federation of State, County and Municipal Employees, District Council 20, Local 2401, AFL-CIO (“AFSCME” or “Union”) filed a Negotiability Appeal in accordance with PERB Rule 532. On May 6, 2010, the District of Columbia Child and Family Services Agency (“CFSA” or “Agency”) announced that it would, as part of a realignment, conduct a Reduction-in-Force (“RIF”) of approximately 57 employees, represented by the Union, holding the position of Social Service Assistant (“SSA”), and replace them with employees who could meet the qualifications for the approximately 35 newly created Family Support Worker (“FSW”) positions¹, which would require a Bachelor’s degree. (Appeal at 1-2). Thereafter, AFSCME and CFSA engaged in impact and effects (“I&E”) bargaining.

During I&E negotiations, AFSCME proposed that the Agency rehire employees who previously occupied SSA positions in the newly created FSW positions contingent upon those employees obtaining a Bachelor’s degree “at a later date.” *Id.* CFSA counter-proposed that the

¹ SSAs were positions in Grades 6, 7, and 8, whereas FSWs are Grade 9. (Response, at 1).

Agency rehire the former SSA employees into FSW positions contingent upon those employees obtaining a Bachelor's degree within six (6) months. *Id.* AFSCME proposed that the Agency give the employees four (4) years to obtain the degree, to which CFSA counter-proposed that the Agency give the employees until the end of the calendar year (approximately seven (7) months). *Id.*, at 2-3. As a final counter offer, AFSCME proposed that the Agency give the former SSA employees seven (7) semesters (or approximately three and a half (3.5) years) to obtain the degree. *Id.*, at 3. CFSA rejected AFSCME's final proposal and stated it was unwilling to deviate from its final proposal to give the employees until the end of the calendar year to obtain the degree. *Id.* On May 27, 2010, AFSCME filed with the Public Employee Relations Board ("PERB") a Declaration of Impasse and Request for Impasse Resolution (PERB Case No. 10-I-06).² *Id.*

On June 10, 2010, CFSA, through its representative, the D.C. Office of Labor Relations and Collective Bargaining ("OLRCB"), notified AFSCME by letter that AFSCME's proposal to give the employees three and a half (3.5) years to obtain a Bachelor's degree constituted an "extensive delay of a management right" and was "equal to nullifying that right" and was therefore nonnegotiable. *Id.*, Exhibit 3.³

On June 11, 2010, AFSCME filed the instant Negotiability Appeal noting that "[a]lthough the Agency considered the issue negotiable when it made its two proposals on the issue, the Agency now contends that the Union's proposal is too far reaching and the issue is therefore nonnegotiable." *Id.*, at 3. AFSCME contends the parties' compensation agreement "addresses the process the parties must follow to alter employee classifications and requirements." *Id.* AFSCME further argued that the parties' collective bargaining agreement ("CBA") addresses "numerous issues implicated in the impact and effect negotiations." *Id.* Last, AFSCME asserted that its "aforementioned proposals are negotiable." *Id.*

In its Response, CFSA asserts that AFSCME's proposal violated D.C. Official Code § 1-617.08⁴ and other PERB precedents. CFSA states:

Petitioner's proposal to extend the timeline for new employees to meet the new positions' qualification requirements violates management's right to assign and direct employees and is nonnegotiable. Under its right to assign employees, management has the right to set qualifications and skills. While a union may reasonably be thought to be protecting the interests of employees affected by a change in required qualifications with its proposal, it

² On July 1, 2010, AFSCME also filed an Unfair Labor Practice Complaint against CFSA (PERB Case 10-U-37) alleging CFSA violated the CMPA when it, among other things, declared that AFSCME's final proposal during impact and effects bargaining was nonnegotiable, which AFSCME claims forced it to file a negotiability appeal (the instant case) after it initiated impasse proceedings (PERB Case No. 10-I-06).

³ The pertinent part of the letter stated as follows: "One of the Union's demands during our impact and effect bargaining was to have the Agency delay implementation of its degree requirement for three and one half years. This extensive delay of a management right is equal to nullifying that right. Therefore, I am giving you formal notice that that proposal is nonnegotiable and the Agency will not consider it during impasse."

⁴ Governing management rights.

cannot interfere with management's rights. The Board has held a seven-month delay to be unreasonable, therefore a three and a half year extension would surely be unreasonable and an excessive burden on management's rights.

(Response, at 2-3) (citing *American Federation of Government Employees, Local 1403, and District of Columbia Office of the Corporation Counsel*, Slip Op. No. 709, PERB Case No. 03-N-02 (July 25, 2003)⁵; *National Association of Government Employees and Department of Veteran Affairs Medical Center*, 53 FLRA 403 (1997)⁶; and *American Federation of Government Employees, Locals 383, 1015, 2737 and 2798, and District of Columbia Department of Human Services*, 28 D.C. Reg. 5106, Opinion No. 21, PERB Case No. 80-U-11 (1981)⁷).

CFSA further notes that seventeen (17) individuals who formerly held SSA positions met the new degree requirement and were rehired as FSWs. *Id.*, at 1-2. AFSCME's Appeal is before the Board for consideration.

II. Discussion

Under D.C. Official Code § 1-617.08, RIFs are a management right. *Doctors' Council of the District of Columbia v. District of Columbia Department of Youth and Rehabilitation Services*, 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 decisions. *American Federation of State, County and Municipal Employees, District Council 20, Local 2921, AFL-CIO, v. District of Columbia Department of General Services*, 59 D.C. Reg. 12682, Slip Op. No. 1320 at ps. 2-3, PERB Case No. 09-U-63 (2012); *Fraternal Order of Police/Department of Corrections Labor Committee v. District of Columbia Department of Corrections.*, 52 D.C. Reg. 2496, Slip Op. No. 722 at ps. 5-6, PERB Case Nos. 01-U-21, 01-U-28 and 01-U-32 (2003); *AFGE v. DCOCC, supra*, Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02; and *International Brotherhood of Police Officers, Local 446, AFL-CIO v. District of Columbia General Hospital*, 41 D.C. Reg. 2321, Slip Op. No. 312 at p. 3, PERB Case No. 91-U-06 (1992). Notwithstanding, D.C. Official Code § 1-624.08 ("Abolishment Act") narrows this

⁵ Holding that management rights include the rights to direct and assign employees, establish work priorities, and establish job requirements that fulfill the agency's mission and functions. (*See* p. 8).

⁶ Holding that a proposal that required an agency to delay filling a detail until the conclusion of the negotiation process was not within the duty to bargain because it impermissibly affected management's right to assign work. (*See* ps. 419-421).

⁷ Holding that while an agency's failure to reproduce and distribute copies of a negotiated agreement to its employees over a period of seven (7) months "appear[ed]" to constitute an unreasonable delay, the parties had never negotiated a timeline for the distribution of the agreement, so the agency did not commit an unfair labor practice by waiting seven (7) months to do so. (*See* p. 2). The Board notes that in the case CFSA cites, it only stated that it "appeared" a seven (7) month delay was unreasonable, but ultimately did not find that the delay constituted an unfair labor practice. *Id.* Therefore, the Board rejects CFSA's contention in its Response that the Board "has held a seven-month delay to be unreasonable" because that is not what the Board actually found in the case. (Response, at 3).

duty as it relates to RIFs. Congress enacted the Abolishment Act as Section 2408 of the District of Columbia Appropriations Act of 1998, 111 Stat. 2160 (1998). The District of Columbia Council amended the Act to cover the 2000 fiscal year and subsequent fiscal years. *Washington Teachers' Union, Local 6, v. District of Columbia Public Schools*, 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. See D.C. Official Code § 1-624.08(a)-(i), and (k). The Abolishment Act further provides, “[n]otwithstanding the provisions of § 1-617.08 or § 1-624.02(d), the provisions of this chapter shall not be deemed negotiable.” D.C. Official Code § 1-624.08(j). See also Omnibus Personnel Reform Amendment Act, 1998 D.C. Law 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 attempts to affect or alter RIF procedures is not within the scope of impact and effects bargaining and is therefore nonnegotiable. *American Federation of Government Employees, Local 631, and District of Columbia Water & Sewer Authority*, 59 D.C. Reg. 5411, Slip Op. No. 982 at p. 6, PERB Case No. 08-N-05 (2009); and *Fraternal Order of Police/Department of Corrections Labor Committee v. District of Columbia Department of Corrections*, 49 D.C. Reg. 11141, Slip Op. No. 692 at p. 5, PERB Case No. 01-N-01 (2002).

In the instant case, the Board agrees with CFSA that AFSCME’s proposal to give the RIF’d employees three and a half (3.5) years to obtain a Bachelor’s degree constituted an attempt to affect or alter the RIF procedures, and further constituted a violation of CFSA’s rights to direct and assign employees, establish work priorities, and establish job requirements that fulfill the agency’s mission and functions. *AFGE and WASA, supra*, Slip Op. No. 982 at ps. 2 and 6, PERB Case No. 08-N-05; and *AFGE v. DCOCC, supra*, Slip Op. No. 709 at p. 8, PERB Case No. 03-N-02.

In *AFGE and WASA, supra*, Slip Op. No. 982, PERB Case No. 08-N-05, the Board considered the negotiability of a proposal by a union that would require the agency, employing bargaining unit members, to first attempt “furloughs, reassignment, retaining or restricting recruitment” and/or “utilize attrition and other cost saving measures to avoid or minimize the impact on employees of a RIF.” P. 2. The union argued the proposal was negotiable because it did not: 1) mandate that the agency take any “specific” action when conducting a RIF; 2) require the agency to maintain any specific number of employees during or after a RIF; or 3) interfere with the agency’s right to implement or conduct a RIF. *Id.* The Board found that the union’s proposal constituted an attempt to alter the agency’s RIF procedures and was therefore nonnegotiable pursuant to the Omnibus Personnel Reform Amendment Act. *Id.*, at 6. Here, AFSCME’s proposal similarly attempts to minimize the effects of CFSA’s RIF on bargaining unit employees by asking CFSA to retain, reassign, or rehire the RIF’d employees for three and a half (3.5) years in order to give them time to meet the new Bachelor’s degree requirement. (Appeal, at 2-3). The Board finds that AFSCME’s proposal constitutes an attempt to alter or affect CFSA’s RIF procedures. *AFGE and WASA, supra*, Slip Op. No. 982, PERB Case No. 08-N-05. Additionally, the Board finds the proposal constitutes an attempt to frustrate CFSA’s

purposes for conducting the RIF, as well as an attempt to interfere with CFSA's rights to direct and assign employees, establish work priorities, and establish job requirements that fulfill the Agency's mission and functions. *AFGE v. DCOCC, supra*, Slip Op. No. 709 at p. 8, PERB Case No. 03-N-02.

Therefore, based on the foregoing, and in accordance with PERB Rule 532.7(a), the Board finds that AFSCME's proposal is nonnegotiable.⁸

ORDER

IT IS HEREBY ORDERED THAT:

1. The proposal by American Federation of State, County and Municipal Employees, District Council 20, Local 2401, AFL-CIO ("AFSCME"), made during impact and effects bargaining with the District of Columbia Child and Family Services Agency ("CFSA"), which proposes that CFSA rehire RIF'd employees for three and a half (3.5) years in order to give them time to meet a new Bachelor's degree requirement, is nonnegotiable.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Donald Wasserman and Ann Hoffman

April 30, 2014

⁸ The Board finds it is not necessary to address AFSCME's argument that CFSA "considered the issue negotiable when it made its two proposals" but then considered AFSCME's final three and a half (3.5) year proposal to be "too far reaching" and therefore nonnegotiable because the only question before the Board in the instant matter is whether AFSCME's final proposal is negotiable, not whether any or all of the proposals made by any of the parties during I&E bargaining are negotiable. (Appeal, at 3). PERB Rule 532.1 states: "[i]f 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" (emphasis added). *See also FOP v. DOC., supra*, Slip Op. No. 692 at p. 4, PERB Case No. 01-N-01 (in which the Board only considered the negotiability of the union's proposal that the agency declared to be nonnegotiable). Additionally, the Board finds it is not necessary to address AFSCME's contentions that the parties' compensation agreement states the processes that must be followed to alter employee classifications and requirements and that the parties' CBA addresses "numerous issues implicated in the impact and effect negotiations" because similarly, whether or not CFSA followed the correct processes to alter the applicable employee classifications and/or whether or not the parties' CBA addresses issues the parties discussed during I&E bargaining (which AFSCME failed to identify with any particularity in its Appeal) are not the subjects at issue in the instant case. *Id.*

CERTIFICATE OF SERVICE

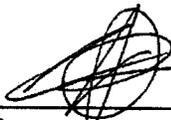
This is to certify that the attached Decision and Order in PERB Case No. 10-N-03, Slip Op. No. 1462, was transmitted via U.S. Mail and e-mail to the following parties on this the 5th day of May, 2014.

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