

# DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

**Board of Directors** 

Human Resources and Labor Relations
Committee
May 9, 2012
Agenda

1. Call to OrderKathleen Boucher, Chairperson
2. Union Presidents
A. Response to comments made by Chris Carew
About the Labor Management Relationship at DC WaterAll Presidents
B. Issue regarding jersey walls at Bryant Street NWJonathan Shanks
3. Open discussion
4. Action Item: Contract No. WAS-08-030-AA-MB, Option Year Four – AON Consultant
5. Strategic Plan Assignment/DiscussionDoug Bean/Gerry Wexelbaum, Sunesis
6. Executive Session – To discuss legal, confidential or privileged matters pursuant to Section 2-575(b)(4);collective bargaining negotiations
7. Adjournment

# DC Water Board of Directors Human Resources and Labor Relations Committee

# Meeting with the Union Presidents

May 9, 2012

# Response to DC Water's March 14, 2012 Presentation

"State of Labor Relations at DC Water"

# Good morning:

I am Barbara J. Milton, President of AFGE Local 631. In addition to employees our local represents within the District government under the authority of the Mayor, we also represent employees here at DC Water in the Department of Engineering and Technical Services, Wastewater Treatment and Procurement.

AFGE Local 631 and the other Unions at DC Water have worked to assure a cooperative working relationship and assure the members of our bargaining units have the full rights guaranteed under the labor-management laws of the District of Columbia. To that end, our approach has always been to resolve problems at the lowest level. As General Manager Hawkins stated, we have consistently brought our concerns to the attention of him and his designees. I endorse Mr. Hawkins's approach and have practiced it throughout the years. When Mr. Hawkins was initially appointed General Manager, we worked cooperatively with him and his staff and participated in the communication meetings he held with employees of D.C. Water.

At the March 14, 2012 meeting, I listened with interest to the statements Mr. Carew made about conflict and frustration. Mr. Carew spoke about his frustration and lack of trust among labor and management, which he characterized as credibility. We view management's choice to deal directly with union employees and not with the Union leadership as an untrustworthy/non-credible act and a violation of law and agreements that dictates the foundation of labor management relations. This "direct dealing" also serves to lessen the respect for the Union among bargaining unit employees and undermines our ability to effectively represent our members. Mr. Carew stated that DC Water is undergoing a lot of changes. However, if those changes (affecting bargaining unit employees) are leaving the station without the Union leadership and outside the scope of the agreements and laws that binds us, it is going no where. I have spoken at several HR Committee Board meetings, here at DC Water, about the Team Blue Safety program working groups and stated that the Union leadership was not being allowed to participate in the program. I stated to this Committee that DC Water was wasting time and rate payer money which was being paid to consultants to facility these working groups. Dealing directly with employees and ignoring the "exclusive representative" is a violation of law and our Collective Bargaining Agreement, which is explained in detail in the arbitrator's decision and award which ruled in favor of our Union. A copy is hereto attached with highlighted marking which I wish to bring to your attention. The arbitrator ordered DC Water to cease the Team Blue Safety working groups, immediately. We are not seeking to stop progress. We are seeking to be included and recognized as the "exclusive representative" for employees we represent.

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In his March 14, 2012 presentation, Mr. Carew spoke of the accomplishments made while working with labor. See pages 17-18 of his power-point presentation. The presentation identifies the success of the facility safety tours; the voluntary leave donation program; the duty station incentive program; the issuance of new ID badges; and parking passes. These initiatives were successful because labor and management worked together with mutual respect for each other's position and we exhibited value for each other's opinions. Somewhere along the way, DC Water began to view the Union leadership as an impediment and sought to deal directly with employees and excluded the Union from meaningful dialog.

Although, Mr. Carew met with the Unions to ask us what we thought P.A.C.T. meant, it was without context. When I asked to see a draft of the P.A.C.T pledge, Mr. Carew refused to provide us with a copy. Some of us view the meeting as merely a cursory meeting to say DC Water discussed the P.A.C.T with the Unions. Had I been given a copy of the draft pledge, I could have given a meaningful response that was suitable and directly responsive to the pledge. As of this day, labor has not been given a copy of the DC Water P.A.C.T. pledge nor have I had an opportunity to review a copy.

In spite of this, in our Union environment, a P.A.C.T. philosophy is not foreign to labor. We do have positive attitudes. We are always seeking a positive outcome to issues and problems. We are accountable to our membership. Our status as Union leaders is dictated by our responsiveness and accountability to our members. We do communicate with our members and managers both orally and in writing and we work as a team.

There is a balance that must be struck between labor and management. It is a balance of respect for each other's positions and for those who occupy the positions. I am in concurrence with Mr. Croft's statement that management may not be aware of how things they say come across to Union representatives and that we should both (labor and management) walk in each other's shoes from time to time. I would like to point out - for example, Mr. Carew frequently states that there are those Union representatives who are working for the greater good of the enterprise and those who are working for selfish gain. It offends us each time we hear him make this statement. His comments about selfish gain demonstrate a lack of respect for the role of the Union leadership in the workplace. You cannot establish a healthy labor management relationship, if you believe the Union is motivated by selfish gain.

We welcome the General Manager's commitment to work with the Union leadership to involve us in issues and changes before they are implemented. It is true that labor-management relations is a two way street, to achieve a cooperative relationship, both parties must be willing and open to communication and management must be willing to include the Union in plans and discussions.

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We look forward to dialoging with Mr. Hawkins on a more regular basis. We also welcome Mr. Griffin's suggestion that we (the labor leadership and senior management) go on a one day retreat to focus on the mission of DC Water and how to work together in a collaborative effort to achieve the objectives of the organization.

Respectfully submitted,

Barbara J. Milton, President

AFGE Local 631

# In the Matter of Arbitration Between

# AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES LOCAL 631

**AND** 

# DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

FMCS Case No. 11-0614-02652-A Class Grievance

# OPINION AND AWARD OF BARBARA B. FRANKLIN, ARBITRATOR

Having been duly appointed by the Federal Mediation and Conciliation Service, the undersigned arbitrator held a hearing in this matter at the offices of the District of Columbia Water and Sewer Authority (the Authority) in Washington, D.C. on October 18 and 19, 2011. The Parties were afforded full opportunity for the examination and cross-examination of witnesses and the introduction of relevant exhibits. All witnesses testified under oath and the proceedings were transcribed by a court reporter. Timely briefs were filed and served on December 2, 2011.

# **APPEARANCES**

For the Union:

Barbara B. Hutchinson, Esq.

For the Authority:

Deborah M. Leahy, Esq.

Mustaafa Dozier, Esq.

# **ISSUES**

The parties did not stipulate to the issues in this case. I conclude that they are:

Did the Authority violate the parties' collective bargaining agreement, entitled Working Conditions Agreement, and/or the D.C. Comprehensive Merit Personnel Act (CMPA) when it implemented the Team Blue Project and its subsequent teams without giving the Union prior notice and the opportunity to bargain over the Team Blue Project or to participate in the Team Blue Project meetings?

If so, what remedial action should be taken?

### RELEVANT PORTIONS OF PERTINENT PROVISIONS

# **WORKING CONDITIONS AGREEMENT**

Article 4 – MANAGEMENT RIGHTS

Section A General

2. All matters shall be deemed negotiable except those that are proscribed by the CMPA Subchapter XVIII, Labor-Management Relations (D.C. Code §§ 1.617 et seq.)

Section B Exercise of Management Rights and Bargaining Over Negotiable Issues

2. The Authority shall give the President of the Union advance written notice of changes in personnel policies, practices, or working conditions affecting employees covered by this Agreement. The Union shall have the opportunity to exercise their full rights to bargain.

# Article 5 – REPRESENTATION DURING INVESTIGATIONS AND MEETINGS

Section B Meetings

The Authority shall provide the Union with reasonable prior notice of, and an opportunity to attend, formal meetings (which do not include regular meetings to give staff routine directions) held with Union employees to discuss personnel policies, practices or working conditions. At any such meeting the Union shall be provided an opportunity to present the Union's point of view....

# Article 6 - STATUS OF EMPLOYEE REPRESENTATIVES

Supervisors shall not impose any restraint, interference, coercion, or discrimination against employees in the right to organize and designate representatives of their own choosing for the purpose of collective bargaining, the prosecution of grievances, appeals, pursuit of actions before the PERB, Union-Authority cooperation, or upon duly designated employee representatives acting on behalf of an employee or group of employees covered by this Agreement.

# Article 12 - HEALTH AND SAFETY

# Section H Safety Committee

- 1. A Safety Committee shall be created and utilized to identify and resolve any and all safety issues appropriate for Labor-Management dialogue. It also shall review safety training, consider criteria for and implement selection and presentation of safety awards, investigate and make recommendations regarding accidents and safety equipment, and address all worker safety issues involving or affecting the Authority and/or its employees. This Safety Committee shall be composed of one representative from each of the WASA Unions and the same number of Management representatives (to include the Authority's Safety Officer)....
- 2. Either party may furnish the other with an itemized agenda setting forth the topics of discussion prior to the meeting.... The Safety Committee shall conduct safety surveys, including initiating an employee health study, .... The Safety Committee shall do visual walk through inspections of the workplace, consider training needs, make recommendations and bring safety and health problems to the attention of Management or the General Manager, and exercise workers' legal rights under OSHA regulations and other applicable laws....

# COMPREHENSIVE MERIT PERSONNEL ACT (D.C. Code §§ 1-617 et seq.)

- § 617.04 (a) The District, its agents, and representatives are prohibited from:
  - (1) Interfering with, restraining, or coercing any employee in the exercise of the rights guaranteed by this subchapter;
  - (5) Refusing to bargain collectively in good faith with the exclusive representative.
- § 617.11 (a) The labor organization which has been certified to be the exclusive representative of all employees in the unit shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to membership in the labor organization; ....

### **BACKGROUND AND FACTS**

The Authority provides water distribution services and sewage collection, treatment and disposal for the District of Columbia and portions of the D.C. metropolitan area. Its unionized employees are covered by five separate collective bargaining agreements, including the one between the Union and the Authority relied upon here.

In March 2010 the recently-named General Manager of the Authority announced to all employees a "new effort" that he called The Team Blue Project. Its first manifestation was a series of voluntary meetings, as well as online and paper surveys, centered on the topic of improving internal communications. Prior to these meetings, the general manager met with the five local union presidents and explained their purpose. The union presidents or their representatives attended the meetings and encouraged their members to attend and speak out. Based on feedback obtained from the meetings and surveys, management produced a report that contained proposed solutions to perceived communication problems.

On December 21, 2010, Christopher Carew, the Authority's Chief of Staff, signed a memorandum to all employees announcing that Dave Cross would lead the Team Blue Project. That memo stated:

Over the next months, Dave will be engaging staff at all levels, introducing himself and the concepts of the Team Blue approach, and soliciting your feedback about how and where we can focus our efforts to advance operational excellence, a positive cultural environment, and the rewards – personal, professional and organizational – that follow.

Sometime in early 2011<sup>1</sup>, Barbara Milton, the president of Local 631, met Mr. Carew in the hall and asked him for information about the Team Blue Project. He suggested that

<sup>&</sup>lt;sup>1</sup> Mr. Carew testified that he thought that this informal meeting with Ms. Milton took place before December 21, 2010, but he was unsure about the date. Based on his uncertainty, his reference in a March

they talk about this with Mr. Cross. The three of them proceeded to discuss the matter in the hallway for 90 minutes. According to the uncontested testimony of Ms. Milton, "they were explaining how the program was going to work." She continued:

And I listened to it and when they got finished explaining it to me, I told them I heard nothing of where the union would be involved in this process. And they said, 'Well, you're not involved in it right now.' So I said, 'Will we be involved in it,' and they said, 'Well, we don't think so.'

And so I asked them, I said, 'Well, we want to be involved in this process and we need to know what's going on in this process because some of the things that you're going to be working on will affect working conditions and we need to know what those things are going to be.'

And I asked could we either be – could we, the five presidents, or the leadership five presidents be on their Leadership Team with the executive board or could they make a committee below that was a committee with the presidents on it that was above the work groups, but below the executive staff, where anything that was going on could float up to us, we could see what was going on, and then we would be part of making recommendation to the executives.

And he said that he would take that under consideration. They said they were going to take it back to the Executive Committee and ask about that.

By an email to Mr. Carew dated February 25, 2011, Ms. Milton asked about the status of the meeting for the union presidents to receive detailed information about the Team Blue Project. She also requested that he provide the union presidents "with all documents that describe the program in its totality, including its goals, its methodology, participants, employees chosen to participate in the program, topics to be discussed by these teams" and what effect it would have on collective bargaining.

Mr. Carew responded on March 2, stating that no formal, written documentation about the Team Blue Project was available. He then proceeded to explain that the goal of the project was to involve employees at every level of the Authority to determine how

<sup>2, 2011,</sup> email, discussed below, to a meeting with Ms. Milton that occurred "last week," and Ms. Milton's testimony, I conclude the conversation occurred in late February 2011.

best to improve business processes and to improve morale. The leadership team, comprised of the executive staff, would identify operational areas to be improved through the work of project teams; establish a structure within which the teams would operate; establish the process for selecting the teams; and guide and consider recommendations by the teams. Parenthetically, he stated: "We encourage and hope for participation by union leaders as well." He said that the first two team projects would likely "focus on safety and asset management" and ended the email as follows:

Lastly, in response to a concern you expressed in our conversation last week, I want to reiterate that this process is not intended to replace or impact any aspect of the collective bargaining process.

The above constitutes all the relevant, substantive information about the Team Blue Project as we are planning it. We will present this vision and answer questions about it at the meeting with the union presidents when it is scheduled.

Mr. Cross held a meeting with the five union presidents on March 3, 2011, but, according to Ms. Milton, he provided very little additional information at that meeting about the Team Blue Project. By letter dated March 17, 2011, four of the union presidents, including Ms. Milton, requested to bargain "over the development and implementation of DC Water's 'Team Blue Project[.]'"

On April 1, 2011, the General Manager sent an email to all employees entitled "Team Blue Update." It explained that the leadership team had identified the first two Team Blue Project initiatives as "1) enhancing and reinforcing the safety program; and 2) developing and implementing a best-in-class asset management program." It stated that they had identified over thirty employees who would be asked to volunteer for the teams and that each project team member would have to commit to solicit at least ten other employees for ideas and suggestions for consideration by the teams. With regard to

Minutes of the September 14, 2011, meeting of the Authority's Human Resources and Labor Relations Committee show that the five union presidents were in attendance and participated in a discussion of the Team Blue Project. Ms. Milton objected to the fact that the union leadership had not been involved in either the leadership team or in appointing union members to the teams. She contended that, in the absence of discussions with the unions in the early stages of the project, the promise to negotiate any recommendation that affects working conditions would be a waste of time. Mr. Carew admitted that the leadership team had appointed two to four union members to each of the two project teams and reiterated his commitment to negotiate any negotiable item the Authority decides to implement.

The Union filed a Step 3 Class Grievance on April 15, 2011, claiming that the Authority's actions in implementing the Team Blue Project working groups violated Article 4 §§A(2) and B(2); Article 5 §B; Article 6; and Article 12 §H(1) of the Working Conditions Agreement; and D.C. Code §§1-617.04(a)(1) and (5) and §1-617.11(a) - (b). The Authority denied the grievance on April 27, 2011.

# POSITIONS OF THE PARTIES

### The Union

Under Article 4 §§A and B of the parties' agreement the Authority is required to give the Union advance notice of changes in matters affecting working conditions and to negotiate the impact and implementation of management rights. Under Article 5 §B, the Authority is required to give the Union advance notice of formal meeting with employees and the opportunity to attend the meetings and participate in them. Article 12 §H established a Safety Committee to address all safety issues affecting Authority

employees. The Authority violated these provisions by intentionally excluding the Union from the Team Blue Project working groups, which were discussing working conditions affecting employees; refusing the Union's requests to bargain; failing to notify the Union of the working groups' meetings; and engaging in discussions of safety issues without using the established Safety Committee. Even if the Authority believed it was exercising a management right, the Union was entitled to bargain over the impact and implementation of the right. The Authority's claim that the working groups would only make recommendations is disingenuous and is an effort to avoid its obligations under the agreement. If the working groups do make recommendations, the Union has the right to participate in meetings and present its point of view. Testimony by a unit member who participated in one of the working groups shows that participation was not voluntary because he was notified of his selection by his immediate supervisor; in addition, the leadership team, and not the employees, selected the topics for discussion.

It is a violation of the CMPA for an employer to bypass the exclusive representative and deal directly with employees on matters affecting working conditions. In support, the Union cites *Fraternal Order of Police/MPD Labor Committee and D.C. Metropolitan Police Department*, 37 DCR 2714, Slip Op. No. 242, PERB Case No. 89-U-07 (1990). The Authority also violated Article 6 of the parties' agreement and the CMPA by excluding the Union from the appointment of working group members.

Accordingly, the grievance should be sustained. As remedy, the Union requests that the Authority: (1) terminate the Team Blue Project working groups; (2) bargain with the Union over the composition and implementation of those groups, including the designation of members and identification of projects; (3) send written notification to

employees of the violations; and (4) agree to cease and desist from interfering with the Union's rights as the exclusive representative. In addition, the Union requests the award of attorney fees, in the amount of \$5,442.07, and costs, in the amount of \$1,966.18. The imposition of attorney fees and costs are warranted, in the interest of justice, because the Authority's actions were in bad faith and were meant to, and did, undermine the Union. In this regard, the Union cites American Federation of Government Employees, Local 631 and the D.C. Water and Sewer Authority, 52 DCR 5148, Slip Op. No. 778, PERB Case No. 04-U-02 (2005) (AFGE Local 631) and an arbitrator's broad equitable powers in fashioning relief.

# The Authority

Article 4 of the Working Conditions Agreement does not bar the creation of the Team Blue leadership and project teams because the Authority had no duty to bargain over either the creation of the project teams or the appointment of union members to those teams. Such a duty would exit only if the appointment of union members to the teams resulted in a change to policies, procedures, or working conditions of the employees represented by the Union. The Authority has no obligation to provide notice and negotiate over changes that management has yet to fully develop, analyze, or determine are viable and should be implemented. For this proposition, the Agency cites Fraternal Order of Police/Metropolitan Police Department Labor Committee and District of Columbia Metropolitan Police Department, 47 DCR 1449, Slip Op. No. 607, PERB Case No. 99-U-44 (2000) (FOP/MPD).

The Authority did not violate Article 5 of the Agreement on Working Conditions, which requires notice to the Union of formal meetings. This provision applies only when

management is meeting with a group of employees for the specific purpose of discussing personnel policies, practices or working conditions, such as the reorganization of a department. It does not apply to meetings of the Team Blue Project teams, which were comprised mainly of managers and supervisors and were held for the purpose of allowing the participating employees to learn more about their jobs and to share their professional and personal insights. Moreover, the Authority committed in writing that it would notify the Union of any proposed change accepted by the leadership team on a negotiable issue.

The Authority did not violate Article 6 by dealing directly with Union employees. None of the Authority's actions show any intention to circumvent the Union. Documents show the limited nature of the Union members' participation on the project teams and, as a Union member testified, Mr. Cross stated his intention to involve the Union leadership in the future.

The Authority did not violate Article 12 of the agreement when it created the Team Blue Project Safety Team. That provision makes it clear that the Authority has an affirmative duty to provide a safe workplace for its employees that goes well beyond participating in the Joint Safety Committee defined by Section H of the Article. This duty is not limited to actions taken in concert with the labor-management safety team, which has broad discretion to consider safety issues appropriate for labor-management discussion. Nowhere in the language of Article 12 does it indicate that this committee shall be the sole group charged to review safety issues.

The Authority did not violate the CMPA by creating the Team Blue Project teams. This is a matter of first impression for PERB, but similar cases before the NLRB indicate that such violations require the establishment of labor organizations dominated

by management where management-appointed members are able to overrule non-management committee members on negotiable proposals. Here, in contrast, the purpose of the project teams is to create recommendations to be submitted to a purely management body, the Team Blue Leadership team. Further, violations of Section 1.617.04(a) (1) usually involve an employer's action against either an individual union representative or member, which did not occur in this case which involves the voluntary participation of Union members on the teams. Nor did the Authority violate section 1.617.04(a) (5) by refusing to bargain with the Union in good faith, for the reasons stated above.

# **DISCUSSION AND ANALYSIS**

# Article 4 §§A (2) and B (2); CMPA, § 1-617.04 (a) (5)

Article 4 of the Working Conditions Agreement recognizes that certain management rights are not subject to negotiations; however, it requires the Authority to give written notice to the Union of any changes in personnel policies, practices, or working conditions affecting employees and to allow the Union an opportunity to exercise its full rights to bargain at that time. In other words, even though the Authority has a management right to take certain actions and establish practices it deems necessary to conduct its operations, as spelled out in Article 4 §A (1), it may not act unilaterally to change those practices without giving the Union the opportunity to bargain over the negotiable effects of the change. This is what is generally known as impact and implementation bargaining or "effects bargaining." It is a bedrock principle of labor law, as the parties' agreement acknowledges, that the duty to engage in impact and implementation bargaining does not arise unless there has been a change in a condition of

employment that is more than *de minimis* or unless it is reasonably foreseeable that such an effect will occur.

An examination of the record in this case demonstrates that the Team Blue Project meetings did not constitute a change in any conditions of employment of unit employees so as to raise a duty to bargain about the process of establishing the project or the substance of the meetings. An employer does not have to bargain with the union representing its employees before it holds meetings to communicate with those employees about matters of mutual concern. The Union does not contend that it had a right to bargain before the Authority could hold the first Team Blue Project meetings with employees in March 2010 to discuss communication issues, even though the email sent to employees on March 5, 2010, stated that that one of the "most important goals" of the effort was to obtain feedback from employees. At that time, the Union wanted only the ability to participate in those meetings, which it did, encouraging its members to participate and speak out. Similarly, the Authority was not obligated to bargain with the Union before it held the subsequent Team Blue Project meetings under the leadership of Dave Cross. The December 21, 2010, email announcing those meetings indicated that the matters on which management wanted additional employee feedback related to decisions within management's rights to make, such as "operational excellence." Further, the record discloses no discernible changes in the working conditions of unit employee that have resulted from the Team Blue Project meetings or subsequent activities. Rather, the Authority has assured the Union that it will fulfill its bargaining obligations if and when changes are contemplated as a result of the deliberations of the project teams. Although the project teams have been tasked with recommending specific changes to the leadership team, it was not reasonably foreseeable at the time the grievance was filed that any changes would in fact occur. Consequently, when the Union requested bargaining there were no potential changes that were ripe for negotiations. Accordingly, I find that the Authority did not violate Article 4 of the Working Conditions Agreement or section 617.04 (a) (5) of the CMPA by failing to bargain with the Union when it established the Team Blue Project and the project's teams. *Cf. FOP/MPD* (request to engage in I & I bargaining premature if an employer decides not to implement or suspends implementation of a management rights decision).

# Article 5 §B; CMPA, § 617.11(a)

Pursuant to Section 617.11(a) of the CMPA, a certified union has the right to act for all employees in the unit. An employer that deals directly with employees on matters involving terms and conditions of employment – rather than through the union that represents those employees – runs the risk of violating the CMPA. However, the D.C. Public Employee Relations Board (PERB) has ruled that not all communications with the membership of a union will violate this section of the CMPA. In a recent opinion involving the Authority and a union that represents a different unit of its employees, PERB distinguished between communications to employees on the status of contract negotiations ("mere communication") and entering into a contractual agreement with bargaining unit members without the knowledge or consent of their bargaining representative ("direct dealing"). American Federation of Government Employees, Local 872 v. D.C. Government Water and Sewer Authority, \_\_\_\_ DCR \_\_\_\_, Slip Op. No. 1213, PERB Case No. 11-U-19 (2011). Accordingly, it is necessary to determine whether the Authority's actions regarding the Team Blue Project constituted mere communication or

direct dealing with unit employees. If the latter, the Authority unlawfully bypassed the Union. I am aided in this inquiry by Article 5 §B of the Working Conditions Agreement, which obligates the Authority to provide the Union with prior notice of, and an opportunity to attend, formal meetings at which the Union must be allowed to present its point of view. Thus, if the Team Blue Project meetings were "formal meetings" within the meaning of Article 5§ B, the Authority should have given the Union advance notice of the meetings and allowed Union representatives to participate fully in them. Article 5 defines formal meetings as those held with Union employees to discuss personnel policies, practices or working conditions. Excluded from the definition are "regular meetings to give staff routine directions."

First, it is clear that the meetings were not convened simply to give routine directions to the staff. From the very beginning, as shown in the email sent to all employees on December 21, 2010, the Team Blue Project was designed to elicit employee "feedback about how and where we can focus our efforts to advance operational excellence, a positive cultural environment, and the rewards – personal, professional and organizational – that follow." The meetings would be ongoing and would engage staff at all levels.

Second, it was clear from the quoted statement in the December 21 email – and became clearer in subsequent messages – that the meetings would focus on discussions of specific policies, practices and working conditions. For example, in his March 2, 2011, email to Union President Milton, Mr. Carew said that the Team Blue Project envisaged "a fluid, team-driven structure" devised by the executive staff that would involve employees across multiple departments and would focus initially "on safety and asset

management[.]" In an email sent to all employees on April 1, 2011, the Authority's General Manager clarified that the first two Team Blue project initiatives would be: "1) enhancing and reinforcing the safety program; and 2) developing and implementing a best-in-class asset management program." Each team member would be expected to communicate with at least ten other employees to tell them about the project and solicit their input for ideas and suggestions for consideration by the team. Eventually, the teams were expected to make recommendations to the leadership team in a formal presentation. As described in the power-point printout that Mr. Carew prepared for a June 8 presentation, the safety team would focus on "safe facilities and work practices" and the employees on that team would "connect directly with their co-workers continuously to inform and critique decisions." The planned power-point stated that the asset management team had received "training on asset management best practices" and that a "Maximo Team" would address "the management of work." Finally, the presentation stated that all three teams would "present detailed plans, schedules and budgets to senior management during the coming budget preparation cycle" and that the Team Blue Project model would "drive future decisions in all operational areas[.]" I conclude that the Team Blue Project meetings involved discussions of personnel policies, practices and working conditions. Accordingly, I find that they constituted formal meetings within the meaning of Article 5 §H of the parties' Agreement.

There is no question that the Authority failed to give the Union adequate notice of the Team Blue Project meetings, other than the first one held in March 2010, and to allow the Union to participate fully in those meetings. Indeed, according to Ms. Milton, Mr. Carew and Mr. Cross were quite explicit in the 90-minute meeting they had with her in

February 2011 that the Union was not involved in the Team Blue Project at that time and that the Union's later participation was not contemplated. Although they told Ms. Milton that they would take her suggestion for involvement by all the unions to the Executive Committee, there is no indication in the record that they did so or that any additional Union involvement resulted. Management proceeded to set up the meetings and to select the topics and the team members, comprised in part of employees whose "voluntary" participation management solicited – all without any involvement by the Union.

Based on the foregoing, I conclude that the Authority violated Article 5 §B of the Working Conditions Agreement by failing to provide the Union with reasonable prior notice of formal meetings and an opportunity to attend and participate fully in such meetings. I also conclude that, in so doing, the Authority bypassed the Union as the exclusive representative of a unit of its employees, in violation of Section 617.11(a) of the CMPA. In the scheme adopted for labor-management relations in the District of Columbia, a governmental entity and the duly-certified bargaining representative of its employees are supposed to form a partnership to deal with the working conditions under which unit employees work. In its understandable zeal to reach a higher level of excellence under a new General Manager, the Authority neglected to involve its partner when it conducted the Team Blue Project. Instead of allowing the Union to perform its role as intermediary by assisting in choosing employees to serve on project teams, which were expected to present recommendations to management on a number of issues involving conditions of employment, and by presenting the Union's views during Team Blue Project meetings, the Authority arrogated those functions to itself and thereby virtually shut out the Union. Such actions predictably lead to a lessening of respect for

the role of a union in the eyes of the employees who have selected it as their representative. The fact that the Authority planned to bargain with the Union over any changes made as a result of the Team Blue Project recommendations does not militate against a violation – if unit employees are involved in formulating recommendations concerning the conditions under which they will work, their exclusive representative has both a statutory and contractual right to participate in the process.

# Article 12 §H

More specifically, the Authority encroached on the Union's contractual rights when it enlisted unit employees to study safety issues and make recommendations through the Team Blue Project Safety Team. Article 12 §H of the parties' Agreement establishes a Safety Committee "to identify and resolve any and all safety issues appropriate for Labor-Management dialogue." This committee is composed of one representative from each of the unions representing the Authority's employees and an equal number of management representatives. It is tasked, among other things, with reviewing safety training, considering criteria for, and implementing the selection and presentation of, safety awards, and addressing all worker safety issues involving or affecting the Authority and its employees. By contrast, the employee members of the Team Blue Project Safety Team are handpicked by management and are outnumbered by management representatives. With regard to the areas addressed, Richard Delaney, a member of the Union who was chosen by management to participate on the Team Blue Project Safety Team, testified as follows about the initial meetings of the Team:

the topics are primarily safety driven, consciousness of safety and how to incentivize our people and inform them of practices, safe and unsafe, re-educate them, if they need to, on new products and some of the old stuff.

He stated that a subgroup was going to look at the Safety Certification Program but that no meeting had been scheduled at that time. He further testified that at some point the Union would be included in discussions of that issue as well as other policy issues, stating:

From the very beginning, it was clearly understood by everyone in the room that, "We're going to go as far as we can go with getting ourselves together and then we'll introduce the union and then we'll start seeing about how policy can be enhanced,"....

.... You come up with ideas, you research, you look and you'll see and then you have to bring a union person in or the union in its entirety and they have to vet that and input.... So it never was in question that we would not have to include the union.

In response to a question, Mr. Delaney said that they had talked about the cost of workmen's compensation and what could be done to reduce costs. Later, he elaborated on the one idea involving that issue that he thought was to be implemented:

And that is if a regular worker who works with his hands was out doing his job and he damaged his foot and he was going to be out of work eight weeks, they said they would like to give him the opportunity ... to cross-train in an office environment where if they wanted to come back to work and learn another task while they were rehabbing, as opposed to staying home the whole time, that would be their choice, in effect bringing down the cost of compensation for paying that person and giving them an opportunity to cross-train into another field and in the whole run, saving the Authority some money.

Mr. Delaney emphasized that management representatives reiterated that they intended to involve the Union in later discussions of policy issues, and I have no doubt that they planned to do so. However, Article 12 §H obligates management to utilize the contractual Safety Committee to identify and resolve any and all issues appropriate for Labor-Management dialogue. Thus, in agreeing to involve that committee in merely identifying issues appropriate for "dialogue," it seems clear that the parties contemplated a far broader goal for the committee than bargaining over negotiable matters concerning

safety. Moreover, Article 12 §H(2) includes some specific actions, such as considering training needs, making recommendations and bringing safety and health problems to the attention of management, that seem remarkably similar to topics addressed by the Team Blue Safety Team. For example, the record shows that the Team Blue Safety Team members were addressing such matters as incentivizing employees to be conscious of safety issues, studying the Safety Certification Program, and cross-training employees on workmen's compensation, all of which appear to be issues within the purview of the contractual Safety Committee. By setting up a parallel group, which includes unit members, to discuss such issues, the Authority bypassed the Union in violation of Article 5 §B. By failing to bring those issues before the contractual Safety Committee, the Authority violated Article 12 §H.

# Article 6

The record discloses no evidence of restraint, interference, coercion, or discrimination against employees in their right to organize and designate representatives other than the bypass of the Union described above. Consequently, I see no reason to find that the Authority separately violated Article 6 by its actions concerning the Team Blue Project.

# Appropriate Remedy

First, as I have found no changes in terms and conditions of employment stemming from the Team Blue Project, it follows that a general *status quo ante* remedy is unnecessary. However, based on the finding that the Authority unlawfully bypassed the Union when it established and implemented the Team Blue Project Safety Team without input from the Union or the contractual Safety Committee, I will order that the Authority

terminate the Team Blue Project Safety Team and cease its activities unless and until the Union and/or the contractual Safety Committee agrees to its re-establishment.

The Authority must cease and desist from bypassing the Union in any manner, including holding formal meetings with unit employees without giving the Union prior notice of those meetings and an opportunity to participate fully in them. When an employer bypasses the employees' exclusive representative and instead deals directly with employees, the predictable effect is to lessen respect for the union among unit employees and to undermine its ability adequately to represent their interests.

Accordingly, I will also order the Authority to assure the employees represented by the Union of its intent to abide fully by its contractual obligations toward the Union. The Union has requested that the Authority be required to notify the employees in writing; I conclude that posting notices to this effect where they can be viewed by all employees is more appropriate.

The Union has also requested an award of attorney fees. Such an order is improper against an agency of the District of Columbia without a waiver of the government's sovereign immunity. The Back Pay Act, 5 U.S.C. §5596, does authorize an award of attorney fees against agencies of the District of Columbia if an employee is found to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the employee's pay, allowances, or differentials. As none of these criteria has been met in this case and, to my knowledge, as no other statute permits an award of attorney fees in the circumstances of this case, I conclude that I am without authority to make such an award. The Union also requests that it be reimbursed for costs of \$1,996.18, not otherwise explained, because of "the

Authority's intentional and flagrant violations of the law." D.C. Code 1-617.13 (d) does permit PERB to award the payment of reasonable costs incurred by a party in a dispute before it. Assuming that provision, by extension, also applies to arbitrators, I nonetheless conclude that the actions of the Authority were not sufficiently egregious to warrant an award of costs in this case. *Cf. AFGE Local 631* (refusal to bargain for over a year resulted in withholding employees' annual pay increases and other benefits and justified an award of costs).

# <u>AWARD</u>

The grievance is sustained in part and denied in part.

The Authority violated Article 5 §B of the parties' Working Conditions

Agreement and D.C. Code §1-617-11(a) when it held formal meetings concerning the

Team Blue Project and its subsequent working teams without giving the Union prior

notice of the meetings and an opportunity to participate fully in those meetings.

The Authority violated Article 12 of the Working Conditions Agreement and D.C. Code §1-617-11(a) when it established the Team Blue Project Safety Team without the involvement of the Union or the contractual Safety Committee.

The Authority shall cease and desist from holding formal meetings within the meaning of Article 5 §B of the Working Conditions Agreement, such as Team Blue Project meetings, without giving the Union prior notice of those meetings and an opportunity to participate.

The Authority shall cease and desist from bypassing the Union and ignoring its obligations under Article 12 of the Working Conditions Agreement to identify and resolve any and all safety issues appropriate for Labor-Management dialogue through the

Human Resources and Labor Relations Committee Meeting - 3. Discussion

contractual Safety Committee. To that end, the Authority shall discontinue the Team

Blue Project Safety Team unless and until the Union and/or the contractual Safety

Committee agree to its continuation.

The Authority shall inform all unit employees of the undertakings set forth above

and its commitment to fulfilling its contractual obligations to the Union by conspicuously

posting the attached notice within 10 days of this Award in all places where notices to

unit employees are normally posted. These notices shall be signed by the General

Manager and remain posted for thirty days.

Dated: February 2, 2012 Washington, D.C.

signed

Barbara B. Franklin, Arbitrator

# NOTICE TO ALL EMPLOYEES REPRESENTED BY AFGE LOCAL 631

WE HEREBY NOTIFY employees that an arbitrator has found that we violated Article 5 §B of the Working Conditions Agreement between the Authority and AFGE Local 631 and D.C. Code §1-617-11(a) by holding meetings concerning the Team Blue Project and its working teams without giving AFGE Local 631 prior notice and an opportunity to participate fully in these efforts. The arbitrator also found that we violated our Agreement with Local 631 by establishing the Team Blue Project Safety Team without the involvement of the Safety Committee created by Article 12 of that Agreement.

WE WILL cease and desist from bypassing Local 631 and dealing directly with employees represented by that Union in formal meetings without giving Local 631 prior notice and an opportunity to participate fully in those meetings.

WE WILL cease and desist from bypassing the Union and ignoring our obligations under Article 12 of the Working Conditions Agreement to identify and resolve any and all safety issues appropriate for Labor-Management dialogue through the contractual Safety Committee.

WE WILL discontinue the Team Blue Project Safety Team unless and until the Union and/or the contractual Safety Committee agree to its continuation.

Date	Ву	
•	General Manager	

This notice must remain posted for thirty (3) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

# NOTICE TO ALL EMPLOYEES REPRESENTED BY AFGE LOCAL 631

WE HEREBY NOTIFY employees that an arbitrator has found that we violated Article 5 §B of the Working Conditions Agreement between the Authority and AFGE Local 631 and D.C. Code §1-617-11(a) by holding meetings concerning the Team Blue Project and its working teams without giving AFGE Local 631 prior notice and an opportunity to participate fully in these efforts. The arbitrator also found that we violated our Agreement with Local 631 by establishing the Team Blue Project Safety Team without the involvement of the Safety Committee created by Article 12 of that Agreement.

WE WILL cease and desist from bypassing Local 631 and dealing directly with employees represented by that Union in formal meetings without giving Local 631 prior notice and an opportunity to participate fully in those meetings.

WE WILL cease and desist from bypassing the Union and ignoring our obligations under Article 12 of the Working Conditions Agreement to identify and resolve any and all safety issues appropriate for Labor-Management dialogue through the contractual Safety Committee.

WE WILL discontinue the Team Blue Project Safety Team unless and until the Union and/or the contractual Safety Committee agree to its continuation.

Date February 9, 2012

By General Manager

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.

# DC WATER AND SEWER AUTHORITY **BOARD OF DIRECTORS CONTRACTOR FACT SHEET**

### **ACTION REQUESTED**

#### **GOODS AND SERVICES OPTION YEAR**

# Human Resources Consulting Services in the areas of Health & Welfare and Retirement (Joint Use)

Approval to execute the fourth (4<sup>th</sup>) option year in the amount of \$205,407.00.

#### CONTRACTOR/SUB/VENDOR INFORMATION PRIME: PARTICIPATION: SUBS: Aon Consulting 1120 20th Street, NW None None Suite 600 Washington, DC 20036 DESCRIPTION AND PURPOSE

Original Contract Value:

\$179,000

**Original Contract Dates:** 

July 14, 2008 - July 13, 2009

No. of Option Years in Contract:

First Option Year Value:

\$185,265

First Option Year Dates: Second Option Year Value:

July 14, 2009 - July 13, 2010

\$191,750 July 14, 2010 - July 13, 2011

Second Option Year Dates:

\$198,461

Third Option Year Value: Third Option Year Dates:

Fourth Option Year Value:

July 14, 2011 - July 13, 2012

\$205.407

Fourth Option Year Dates::

July 14, 2012 - July 13, 2013

### **Purpose of the Contract:**

To provide the Department of Human Capital Management with human resources consulting services.

# **Price Modification:**

\$112,000 (The additional work from July 14,2009 through April 10,2012.)

### Spending Previous Year:

- Cumulative Contract Value: (07/14/2008 to 07/13/2012) - \$ 866,476,00
- Cumulative Contract Spending: (0714/2008 to 07/30/2012) \$ 810,260.16

#### Contractor's Past Performance:

The contractor's performance has been satisfactory.

#### Note:

The additional \$112,000 was for a benefit audit, compensation statements, labor relations negotiation for union employees retirement readiness, domestic partner research and open enrollment plan changes.

This is a requirements contract based upon a firm fixed fee; DC Water will only pay for services rendered. Thus, it is in the best interest of DC Water to exercise option year four (4).

	PROCUREMENT I	NFORMATION	
Contract Type:	Requirements Firm Fixed Fee	Award Based On:	Highest ranked firm
Commodity:	Goods & Services	Contract Number:	WAS-08-030-AA-MB
<b>Contractor Market:</b>	Open Market	***************************************	

# **BUDGET INFORMATION**

Funding:	Operating	Department: Human Capital Management		
Project Area:		Department Head:	Rick Green	
Project:	N/A			

# **USER SHARE INFORMATION**

User	Share %	Dollar Amount
District of Columbia	46.19%	\$161,665.00
Washington Suburban Sanitary Commission	39.67%	\$138,845.00
Fairfax County	9.14%	\$ 31,990.00
Loudoun County	4.46%	\$ 15,610.00
Other Potomac Interceptor	0.54%	\$ 1,890.00
Total Estimated Dollar Amount	100%	\$205,407.00

Yvette Downs

Date

Director of Finance & Budget

Rosalind R. Inge

Director, Department of Procurement

Katrina Wiggins

Asst General Manager

**Support Services** 

George S. Hawkins General Manager Date

# DCWATER

# HUMAN RESOURCES/LABOR RELATIONS COMMITTEE MEETING

May 9, 2012







Human Resources and Labor Relations Committee Meeting - 6. Strat	tegic Planning Assignment/Discussion - Darin Thomas, Sunesis

# **AGENDA**

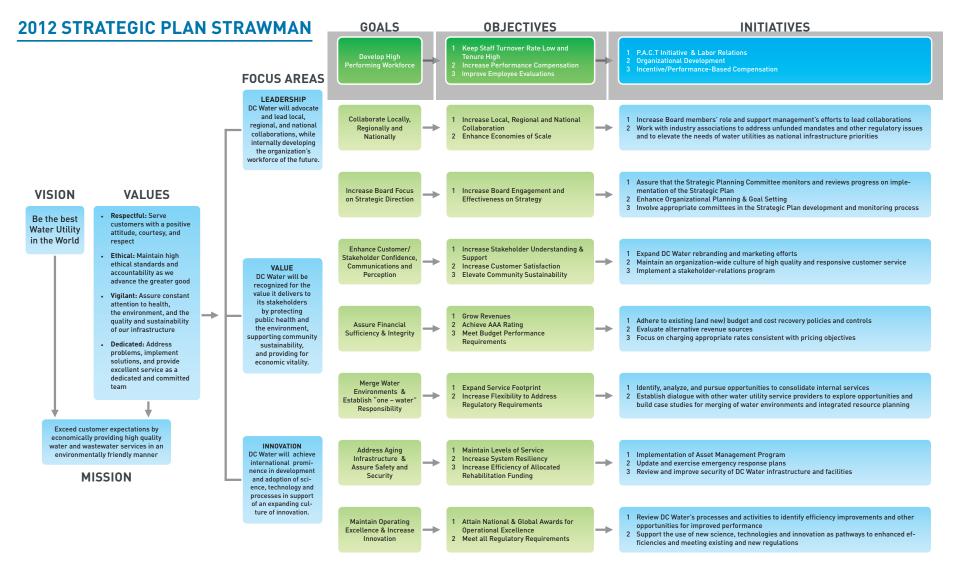
# HUMAN RESOURCES/LABOR RELATIONS COMMITTEE MEETING

MAY 9, 2012

- I. The DC Water Strategic Planning Process
- II. Strategic Plan Strawman
- III. Discussion of Goal/Strategic Direction
- IV. Objectives
- V. Input on Initiatives
- VI. Next Steps

# THE DC WATER STRATEGIC PLANNING PROCESS

EVENT	AGENDA	TIMING		
Board Retreat	SWOT	February 24 (Done)		
	DC Water Focus Areas			
	Strategic Direction			
Strategic Planning Committee Meeting	Review Strawman	May 8		
John Miller Meeting	Adopt Vision, Values, and Mission			
	Review Strategic Focus areas and Goals/ Strategic Directions			
	Review Committee Assignments and Process			
Committee Sessions	Finalize Goals	May 9 – May 24		
	Draft Objectives			
	Consider Initiatives			
Draft Plan	Draft Strategic Plan Framework	June 8		
Executive Management Review	Provide Information on Board Direction June 18			
. Nortow	Further Definition of Objectives and Strategic Initiatives			
Board Presentation	Input for Plan Finalization	July 5		



HUMAN RESOURCES/LABOR RELATIONS COMMITTEE MEETING

DC WATER 03

Human Resources and Labor Relations Committee Meeting - 6. Strat	egic Planning Assignment/Discussion - Darin Thomas, Sunesis
04 DC WATER	HUMAN RESOURCES/LABOR RELATIONS COMMITTEE MEETING

# GOAL/STRATEGIC DIRECTION DEVELOP HIGH PERFORMING WORKFORCE

Is this the direction the Committee wants to provide?			
not, Revisions?			

# **OBJECTIVES**DEVELOP HIGH PERFORMING WORKFORCE

# Mentioned at the Board Retreat:

- Keep Staff Turnover Rate Low and Tenure High
- Increase Performance Compensation
- Improve Employee Evaluations

How should DC Water measure achievement of this Goal/Strategic Direction? (No more than three)

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# INPUT ON INITIATIVES DEVELOP HIGH PERFORMING WORKFORCE

ny suggestions that rategies initiative ave established?			

# **NEXT STEPS**

- Document the results of this meeting (Consultants).
- Committee members review and provide comments/ suggestions/revisions.

Is additional committee work required?				
f so, when and how?				