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

In the Matter of:)	
)	
American Federation of Government Employees, Local 3721,)	PERB Case No. 16-N-03
)	
Petitioner,)	Opinion No. 1641
)	
and)	
)	
District of Columbia Fire and Emergency Medical Services Department,)	
)	
Respondent.)	
)	

DECISION AND ORDER

On September 23, 2016, the American Federation of Government Employees, Local 3721 (“Union” or “AFGE Local 3721”) filed this Negotiability Appeal (“Appeal”). The Appeal concerns 16 proposals made by the Union and declared nonnegotiable by the District of Columbia Fire and Emergency Medical Services Department’s (“Agency” or “FEMS”). FEMS and AFGE Local 3721 are engaged in bargaining concerning non-compensation matters. AFGE Local 3721 has withdrawn nine of the proposals in question, and therefore only appeals the declared nonnegotiable of the remaining seven proposals.¹ FEMS filed a timely Answer to the Appeal.

I. Standard of Review

Under sections 1-605.02(5) and 1-617.02(b)(5) of the D.C. Official Code, the Board is authorized to make determinations concerning whether a matter is within the scope of bargaining. The Board’s jurisdiction to decide such questions is invoked by the party presenting a proposal that has been declared nonnegotiable by the party responding to the proposal.²

¹ AFGE Local 3721 originally appealed the declared nonnegotiability of 8 of its proposals, but subsequently withdrew its appeal with regard to Declaration 12, concerning “Regulations and Release of Information.” *See* Amendment to Negotiability Appeal.

² *See* PERB Rule 532.1.

The Board applies the U.S. Supreme Court's standard concerning subjects for bargaining established in *National Labor Relations Board v. Borg-Warner Corp.*³ Under this standard, "the three categories of bargaining subjects are as follows: (1) mandatory subjects, over which the parties must bargain; (2) permissive subjects, over which the parties may bargain; and (3) illegal subjects, over which the parties may not legally bargain."⁴

Section 1-617.08(b) of the D.C. Official Code provides that "[a]ll matters shall be deemed negotiable, except those that are proscribed by this subchapter." The Board has held that this language creates a presumption of negotiability.⁵ The subjects of a negotiability appeal and the context in which their negotiability is appealed are determined by the petitioner, not the party declaring the matters nonnegotiable.⁶ The Board reviews the disputed proposals and addresses each in light of the statutory dictates and relevant case law.⁷

II. Analysis of Proposals

The Union's proposals are set forth below. The proposals are followed by: (1) the Agency's arguments in support of nonnegotiability; (2) the Union's arguments in support of negotiability; and (3) the Board's findings.

AFGE Local 3721 Proposal 1 – Commensurate Pay (New Article):

NEW ARTICLE

COMMENSURATE PAY

Members who are transferred or detailed outside of operations, to a forty (40) hour work week in administrative positions to include Office of the Fire Chief, Office of the Medical Director, Training Academy or Logistics, their salary will be commensurate with their prior position and work schedule. In the event the employee is no longer detailed, they will be returned to their prior position and work schedule.

Commensurate Salary will occur on the first full pay period after the transfer or detail occurs. Members shall remain eligible to work overtime, and at their discretion may choose to work on

³ 356 U.S. 3342 (1975).

⁴ *Univ. of D.C. Faculty Ass'n/NEA v. Univ. of D.C.*, 29 D.C. Reg. 2975, Slip Op. No. 43 at p. 2, PERB Case No. 82-N-01 (1982).

⁵ *See Int'l Ass'n of Firefighters, Local 36 v. D.C. Fire & Emergency Med. Servs. Dep't*, 51 D.C. Reg. 4185, Slip Op. No. 742, PERB Case No. 04-N-02 (2004).

⁶ *Int'l Ass'n of Firefighters, Local 36 v. D.C. Fire & Emergency Med. Servs. Dep't*, 45 D.C. Reg. 4760, Slip Op. No. 515, PERB Case No. 97-N-01 (1997).

⁷ *Fraternal Order of Police/Protective Servs. Police Dep't Labor Comm. v. Dep't of Gen. Servs.*, 62 D.C. Reg. 16505, Slip Op. No. 1551 at p. 2, PERB Case No. 15-N-04 (2015).

holidays and governmental closings. At which time they will receive Administrative Closing Pay or Holiday Premium pay.⁸

Agency: This article is nonnegotiable because it involves a compensation matter and infringes upon management's rights under section 1-617.08(a) of the D.C. Official Code to set the tour of duty.⁹ In addition to the title of "Commensurate Pay," the first paragraph of the proposal provides that an employee's salary will remain the same if transferred or detailed to a higher graded position, a violation of sections 1-611.01(a)(2) and 1-611.03(a)(2) of the D.C. Official Code.¹⁰

Furthermore, the proposal relates to overtime, which is subject to bargaining in the compensation agreement between the District Government and Compensation Units 1 and 2.¹¹ In addition to section 1-617.17(b) of the D.C. Official Code, which states that overtime pay is a subject of compensation negotiations, the parties have previously disputed the interpretation of the "Overtime" article within the compensation agreement that governs the parties.¹² The matter is nonnegotiable in a non-compensation agreement.

The proposal also eliminates the Agency's right to assign essential employees to work on holidays or during periods of early dismissal or governmental closings. The first paragraph of the proposal dictates an employee's tour of duty if transferred or detailed. These are a violation of management rights under sections 1-617.08(a)(1), 1-617(a)(5)(A), and 1-617.08(a)(5)(B). The proposal also dictates that work performed on a holiday or government closing is subject to holiday premium pay or administrative closing pay, which is a subject of compensation negotiations.¹³ Finally, the proposal infringes on the Agency's right to set the tour of duty for essential employees.¹⁴

Union: The proposal has no bearing on the Agency's ability to set the tour of duty for bargaining unit employees. The proposal does not concern pay, benefits or any other compensation matter that is appropriate for negotiations during Compensation 1 and 2 bargaining.¹⁵ The impact of the proposal concerns the Agency's decision to transfer or reassign employees, matters that are intertwined with working conditions. The proposal attempts to memorialize the current practice between the parties, which is that transfers and reassignments do not render an employee ineligible to work overtime.¹⁶

Further, the proposal has no bearing on the Agency's ability to set the tour of duty for bargaining unit employees because the proposal solely refers to the ability of employees to

⁸ Appeal, Ex. 1.

⁹ Answer at 2.

¹⁰ Answer at 2.

¹¹ Answer at 3.

¹² Answer at 3.

¹³ Answer at 4.

¹⁴ Answer at 4.

¹⁵ Appeal at 2.

¹⁶ Appeal at 3.

volunteer for, and the ability of the Agency to approve, overtime when an employee is not scheduled to work.¹⁷

Board: Section 1-617.17(b) of the D.C. Official Code, which specifically addresses collective bargaining concerning compensation, states that management shall meet with labor organizations to negotiate in good faith with respect to “salary, wages, health benefits, within-grade increases, overtime pay, education pay, shift differential, premium pay, hours, and any other compensation matters.” The proposal states that “salary shall be commensurate with their prior position and work schedule.” The proposal goes on to state that “members shall be eligible to work overtime, and at their discretion may choose to work on holidays and governmental closings.” The Board has ruled in numerous cases that under section 1-617.17(b) salary and overtime pay are subject to bargaining in the compensation agreement.¹⁸ All aspects of this proposal concern salary and overtime pay. This proposal relates to a compensation agreement. Therefore it is nonnegotiable in a non-compensation agreement.

The Board finds the Union’s proposal *nonnegotiable*.

AFGE Local 3721 Proposal 6 – Miscellaneous Conditions of Employment:

MISCELLANEOUS CONDITIONS OF EMPLOYMENT

SECTION 1 – FOOD AT ALARMS OR SPECIAL ASSIGNMENTS

It is agreed that when unusual conditions of service or weather make it necessary, or when an employee is required to work significantly beyond his/her regularly scheduled tour at alarms or special assignments, the Agency shall provide appropriate food, beverages and/or meals to the employees.

SECTION 3 – PARKING

It is agreed that the Agency will attempt to make parking available for those unit members who are in a duty status, without charge. Those arrangements are intended solely as a convenience for employees. The Agency assumes no liability which might arise as a consequence of said parking facilities. A joint labor management

¹⁷ Appeal at 3.

¹⁸ See *Teamsters, Local Union No. 639 and D.C. Pub. Sch.*, 38 D.C. Reg. 6693, Slip Op. No. 263, PERB Case Nos. 90-N-02, 03 and 90-N-04 (1991); *Int’l Ass’n of Fire Fighters, Local 36 and D.C. Fire & Emergency Medical Servs. Dep’t*, 45 D.C. Reg. 4760, PERB Case No. 97-N-01, Slip Op. No. 515 (1997).

committee shall consider any parking or security problems that may exist at any Agency facility.¹⁹

Agency: Section 1 and 3 are nonnegotiable because the proposal concerns compensation matters that must be addressed during Compensation Unit 1 and 2 negotiations consistent with section 1-617.17 of the D.C. Official Code.²⁰ Federal and District law prohibit providing food to employees as stated in section 1. The U.S. Government Accountability Office (GAO) states that in the absence of statutory authority, the government may not furnish meals or refreshments to employees within their official duty stations.²¹ Therefore, the proposal is nonnegotiable because it concerns a compensation matter. Furthermore, parking is a personal expense under federal appropriations law and making parking available for employees without charge constitutes a compensation item.²²

Union: The proposal does not concern pay, benefits or any other compensation matter that should be addressed in compensation negotiations. The proposal concerns a working conditions issue, namely mitigating the impact to employees when they are required to work significantly beyond their tour of duty, in the event of a weather emergency. FEMS will be required to provide food to employees in the same fashion that it is already provided to bargaining unit employees.²³

The proposal also provides that FEMS will attempt to provide employees with onsite parking, which it already provides in various cases. The proposal seeks to ensure fairness and equity with respect to conditions under which employees are required to work.²⁴

Board: The Board has previously held that parking is compensation constituting a condition of employment and thus a mandatory subject of bargaining under the CMPA.²⁵ A compensation matter is nonnegotiable in a non-compensation agreement.

The proposal states that the Agency shall provide food when “unusual conditions of service or weather make it necessary, or when an employee is required to work significantly beyond his/her regularly scheduled tour at alarms or special assignments.” Since food and/or beverages will only be provided during these circumstances it is not a compensation matter but a term and condition of employment. The Federal Labor Relations Authority (“FLRA”) has stated that when there is a direct connection between the matter and the work situation or employment relationship there is an obligation to bargain.²⁶

¹⁹ Appeal, Ex. 2.

²⁰ Answer at 6.

²¹ Answer at 6.

²² Answer at 7.

²³ Appeal at 4.

²⁴ Appeal at 5.

²⁵ *AFGE, Local 383 v. MRDDA*, 59 D.C. Reg. 4584, PERB Case 07-U-03, Slip Op. No. 938 (2011).

²⁶ *Marine Corps Logistics Base Barstow, Cal. and AFGE Local 1482, AFL-CIO*, 46 FLRA 782, 794 (1992).

The Board finds section 1 of the Union's Proposal *negotiable* and section 3 *nonnegotiable*.

AFGE Local 3721 Proposal 8 – Injury or Sickness While On Duty:

INJURY OR SICKNESS WHILE ON DUTY

SECTION 2 – UTILIZATION OF THE POLICE AND FIRE CLINIC

1. Employees injured in the line of duty shall be free to select their treating physician from the list maintained by the D.C. Office of Risk Management.
2. Employees injured in the line of duty may, at their option, select to utilize the Police and Fire Clinic (PFC) as their treating physician, but no employee shall be mandated to utilize the PFC as their treating physician.
3. Recommendations for treating physicians outside of D.C. Office of Risk Management will be honored and treatment by recommended physician continued to maintain continuity and employee wellness.

SECTION 3 – DETERMINATION OF RETURN TO FULL DUTY

The treating physician of the employee who was injured in the line of duty shall be the sole determinant as to whether or not the injured employee may return to full duty with the Agency.

SECTION 4 – FITNESS FOR DUTY PHYSICALS

1. The Agency shall comply with Chapter 20 of the District Personnel Manual when requesting a fitness for duty physical for an employee.
2. An employee's failure to comply with an order for a fitness for duty physical which was not in compliance with Chapter 20 of the District Personnel Manual shall not form a basis of disciplinary action against the employee.

3. The Agency shall bear the burden of proof, by a preponderance of the evidence that the fitness for duty physical was ordered in compliance with the regulations in place.

SECTION 5 – TRANSPORTATION OF THE SICK OR INJURED EMPLOYEE

The Agency shall provide transportation of any employee that becomes sick or injured while on duty to a facility of their choice and back to his/her duty station. No Employee shall be required to be transported in an ambulance to a treatment facility.²⁷

Agency: Sections 2 through 5 of this proposal are nonnegotiable because the proposal violates section 1-623.23 of the D.C. Official Code.²⁸ Section 1-623.23 governs when an employee is injured in the performance of his or her duty; therefore it preempts Section 2 of the proposed article. Furthermore, the Police and Fire Clinic (Clinic) serves as the District’s medical officer/designated physician for employees represented by AFGE Local 3721. Section 2 undermines the Mayor’s statutory authority to designate the Clinic as the treating physician for paramedics and emergency medical technicians injured on duty.²⁹

Section 3 is also nonnegotiable because under this proposal the treating physician can be any doctor even those outside of the D.C. Office of Risk Management, who are not subject to any government oversight.³⁰ Section 5 of the proposal is nonnegotiable because it gives the employee the right to choose his or her medical provider if injured on duty, contrary to section 1-623.23.³¹

Union: Section 1-623.23 concerns the disability or death of an employee resulting from personal injury sustained while performing official duties. This is inapplicable to the Union’s proposal. The proposal concerns temporary employee illness regardless of whether it stemmed from the employee’s work duties, not disability or death.³²

Board: Section 1-623.23 states that “an employee shall submit to examination by a medical officer of the District of Columbia government or by a physician designated or approved by the Mayor, after the injury and as frequently and at the times and place as may be reasonably required. The employee may have a physician designated and paid by him or her present to participate in the examination.” In direct contradiction of the statute, Section 2 would allow employees to refuse treatment by a medical officer approved by the D.C. government. Section 3 also allows the treating physician of the employee to be the sole determining influence as to whether the injured employee may return to full duty. This proposal is contrary to the statute,

²⁷ Appeal, Ex. 3.

²⁸ Appeal at 6.

²⁹ Answer at 8.

³⁰ Answer at 9.

³¹ Answer at 9.

³² Appeal at 6.

which states that the employee shall submit to an examination by an approved medical officer or physician.

Section 4(1) requires the agency to comply with Chapter 20 of the District Personnel Manual; this requirement is not a violation the statute. The Board is concerned with the degree to which Section 4(2) and (3) interfere with the Agency's right to take disciplinary action. The right to take disciplinary action is a management right under section 1-617.08(a)(2) of the D.C. Official Code. Section 5 of the proposal allows the employee to be transported to a treatment facility of their choice; once again the statute states that employees shall submit to an examination by an approved physician after an injury. Although the statute does allow an employee's chosen physician to be present and participate in the examination, the employees must submit to an agency approved physician as well.

The Board finds that section 4(1) of the Union's proposal is *negotiable* and sections 2, 3, 4(2), 4(3), and 5 are *nonnegotiable*.

AFGE Local 3721 Proposal 9 – Hours of Work / Continuation of Duty:

HOURS OF WORK / CONTINUATION OF DUTY

SECTION 1 – HOURS OF WORK

Unit employees, except those assigned to Fleet Maintenance, Clerical or Logistics, shall have the option to work twenty-four (24) hour shifts.

SECTION 2 – CONTINUATION OF DUTY

1. Ambulance crews shall not work more than thirteen (13) hours on any tour of duty when assigned to twelve (12) hour shifts; however, an ambulance shall not be placed out of service when it is not in quarters.
2. Ambulance crews who have exceeded fourteen (14) hours on any tour of duty when assigned to twelve (12) hour shifts shall be placed out of service, and the crew allowed to go off duty, regardless of whether the ambulance is in quarters or not.
3. Ambulance crews shall not work more than twenty-five (25) hours on any tour of duty when assigned to twenty-four (24) hour shifts, an ambulance shall not be placed out of service when it is not in quarters.

4. Ambulance crews who have exceeded twenty-six (26) hours on any tour of duty when assigned to twenty-four (24) hour shift, shall be placed out of service, and the crew allowed to go off duty, regardless of whether the ambulance is in quarters or not.³³

Agency: The Hours of Work/Continuation of Duty Article is nonnegotiable because it infringes upon management's right to establish a tour of duty under section 1-617.08(a) of the D.C. Official Code.³⁴ Under the proposal, employees must work a 12-hour shift unless they elect to work a 24-hour shift, the Agency has no role in vetoing an employee's election of a 24-hour shift, and the Agency cannot require its paramedics and emergency technicians to work a traditional 8-hour daily shift. The proposal infringes on management's right to set a tour of duty.³⁵

Union: The proposal does not establish a tour of duty but rather, provides the existing tours that are available to employees and the procedures when employees will be required to work beyond the tour of duty. The existing tours have been set by the Agency, not the Union.³⁶ The Union relies on the presumption of negotiability as the statute does not prohibit negotiations over the matters raised in the proposal.³⁷

Board: Section 1-617.08(a)(5)(A) states that management shall retain the sole right to establish the tour of duty. The Union describes the shifts named in these proposals as tours of duty but claims they are negotiable because they have already been established by FEMS. Regardless, establishing tours of duty is a management right and is not negotiable as a compensation matter or as a non-compensation matter pursuant to section 1-617.08 (b).³⁸ A union may not confine management to the current outcome of a management rights decision.³⁹

The Board finds that the Union's proposal is *nonnegotiable*.

AFGE Local 3721 Proposal 10 – Union Rights:

UNION RIGHTS

SECTION 10:

³³ Appeal, Ex. 4.

³⁴ Appeal at 7.

³⁵ Answer at 11.

³⁶ Appeal at 7.

³⁷ Appeal at 7.

³⁸ *Local 36, Int'l Ass'n of Firefighters, AFL-CIO v. D.C. Dep't of Fire & Emergency Med. Servs.*, 61 D.C. Reg. 5632, PERB Case 13-N-04, Slip Op. No. 1466 (2014).

³⁹ *See Univ. of D.C. Faculty Ass'n/NEA v. Univ. of D.C.*, 64 D.C. Reg. 5132, Slip Op. No. 1617 at 29, PERB Case No. 16-N-01 (2017).

The Agency agrees that accredited national representatives of AFGE shall have free access to the premises of the agency during working hours to conduct Union business.⁴⁰

Agency: Section 10 of the Union Rights Article is nonnegotiable because infringes upon management's right to determine internal security practices under section 1-617.08(a) of the D.C. Official Code.⁴¹ Granting unfettered access to all FEMS facilities to nonemployees interferes with the Agency's right to determine its internal security practices under section 1-617.08(a)(5)(D).⁴²

Union: The proposal does not infringe upon or even address internal security practices at the Agency. The proposal enables the Union to fulfill its legal obligations under section 1-617.11 of the D.C. Official Code which states that the labor organization certified as 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.⁴³ The Agency's position that union representatives have no access to the Agency's facilities is nonsensical and evidence of the Agency's unwillingness to make a good faith effort to reach an agreement.⁴⁴

Board: Section 1-617.08(a)(5)(D) states that management retains the sole right to determine the Agency's internal security practices. This does not preclude union representatives who are not District of Columbia employees from entering FEMS facilities. The proposal does not state that AFGE representatives may bypass any internal security practices; it simply states that they may enter the facilities during working hours to conduct Union business.

Based on the presumption of negotiability established by section 1-617.08(b), the Board finds that section 10 of the Union's proposal is *negotiable*.

AFGE Local 3721 Proposal 15 – Ambulance, Fleet Maintenance Division, and Logistics Division:

**AMBULANCE, FLEET MAINTENANCE DIVISION &
LOGISTICS DIVISION**

SECTION 2 – REPORTING EQUIPMENT

⁴⁰ Appeal, Ex. 5.

⁴¹ Appeal at 8.

⁴² Answer at 13

⁴³ Appeal at 8.

⁴⁴ Appeal at 8.

Employees will assist in assuring that ambulances are properly equipped and operationally safe by immediately reporting operations problems or equipment problems to the supervisors. This will remain in accordance with agency regulations. If the operational or equipment problem is discovered after dispatch, it shall be reported at the conclusion of the response, unless there are life safety hazards to the patient or crew members. At that time, operational or equipment problems will be communicated with Dispatch and ELO. If the shop foreman determines that the ambulance is operationally or mechanically defective or not adequately equipped, the shop foreman shall take steps to resolve the problem. If the problem is unable to be resolved, the unit shall be placed out of service until such time that the unit is restored to proper operational/mechanical and equipment status.

SECTION 4 – TOOLS

The agency shall either provide all basic tools and equipment necessary to perform fleet maintenance, including specialized tools germane to service a particular brand product, or provide a tool stipend of \$3,000.00 per year for each employee assigned to the Fleet Maintenance Division.

SECTION 5 – COMMERCIAL DRIVERS LICENSES

The Agency shall reimburse Employees of the Fleet Maintenance Division all fees directly associated with obtaining and maintaining a commercial drivers license.⁴⁵

Agency: Section 2 is nonnegotiable because it dictates the technology of performing work in violation of section 1-618.08(a) of the D.C. Official Code.⁴⁶ The technology of equipment is a permissive subject of bargaining, therefore FEMS may choose to bargain or not to bargain over it.⁴⁷ As a result, the matter is nonnegotiable.

Section 4 of the proposed article is also nonnegotiable. The proposal grants certain employees a stipend for a fixed dollar amount. Therefore it is a compensation matter subject to section 1-617.17(b).⁴⁸ Furthermore, the proposal requires FEMS to reimburse certain employees for fees necessary for job qualification such as a commercial driver's license. The GAO has held that fees incident to obtaining licenses to qualify a federal employee to perform the duties of his

⁴⁵ Appeal, Ex. 7.

⁴⁶ Appeal at 11.

⁴⁷ Answer at 16.

⁴⁸ Answer at 17.

position are considered to be personal expenses.⁴⁹ Accordingly, FEMS is prevented from using funds to reimburse employees for the costs associated with qualifying for the job. Even if such a reimbursement was permitted, it would be subject to compensation collective bargaining under section 1-617.17(b) of the D.C. Official Code.⁵⁰

Union: The proposal in no way infringes upon, or interferes with management's right to determine the technology of performing work. If an ambulance is determined to be defective, the proposal provides that employees will not be required to work in an unsafe environment.⁵¹ The Agency maintains the authority to determine the equipment that will be used and thus the technology of performing work. The proposal addresses a pertinent working condition issue, whether the employee will be required to work on a defective vehicle.⁵² Furthermore, the proposal that employees have the equipment and licenses necessary to perform their official duties and responsibilities is inextricably intertwined with a working conditions matter.⁵³

Board: The phrase "the technology of performing its work" has been interpreted by the Board to refer to the technology used to perform the agency's mission.⁵⁴ The proposal refers to ambulances and employees' role in assuring that the ambulances are properly equipped and operationally safe. The proposal does not require that any specific type of equipment, ambulances or otherwise be used. This proposal does not preclude the Union from exercising its right under section 1-617.08(a) to determine the particular type of equipment to perform the Agency's mission; in fact, it specifically states that safety reports will be in accordance with Agency regulations. Based on the presumption of negotiability, Section 2 of the Union's proposal is negotiable.

The FLRA has held that a provision that requires management to provide assistance to employees in the form of additional personnel, tools or equipment is negotiable.⁵⁵ Section 4 is negotiable concerning the provision of tools by the Agency, however a stipend would be a compensation matter and therefore nonnegotiable. Section 4 is partially *negotiable* regarding the provision of tools and partially *nonnegotiable* regarding the stipend.

The FLRA has held that employees must bear the cost of qualifying for the performance of their official duties and, if a personal license is necessary, employees must procure that license even if the licensing requirement is established after they are hired.⁵⁶ Accordingly, the FLRA found that in the absence of statutory authority, Federal agencies are precluded from using appropriated funds to pay for licenses that unit employees need in the performance of their

⁴⁹ Answer at 17.

⁵⁰ Answer at 17.

⁵¹ Appeal at 11.

⁵² Appeal at 11.

⁵³ Appeal at 11.

⁵⁴ *Int'l Bhd. of Police Officers, Local 446 and D.C. Gen. Hosp.*, 42 D.C. Reg. 5482 Slip Op. 336, PERB Case 92-N-05, (1992).

⁵⁵ *Nat'l Ass'n of Gov't Employees, Local R4-75 and U.S. Dep't of the Interior Nat'l Park Serv. Blue Ridge Parkway*, 24 F.L.R.A. 56 (1986).

⁵⁶ *Nat'l Ass'n of Gov't Employees, Local R1-100 and U.S. Dep't of the Navy, Naval Submarine Base New London Groton, Connecticut*, 47 F.L.R.A. 750 (1993).

official duties. Using this reasoning, obtaining a commercial driver's license is necessary in order for an employee to perform his or her official duties and employees are precluded from being reimbursed for obtaining such a license.

The Board finds section 2 of the Union's proposal is *negotiable*, section 4 is *partially negotiable* and *partially nonnegotiable*, and section 5 is *nonnegotiable*.

AFGE Local 3721 Proposal 16 – Promotions, Transfers, Reassignments, Details and Merit Staffing:

**PROMOTIONS, TRANSFERS, REASSIGNMENTS,
DETAILS AND MERIT STAFFING**

For the purposes of this agreement the terms:

“Transfer shall mean any action by the Agency that assigns an employee to a department within the District of Columbia Government other than the agency where the employee was originally employed.

“Reassignment” shall define the movement of members from assignment to assignment within the Fire and Emergency Medical Services Department.

“Detail” shall define the temporary movement of members where it is expected that a member will return to his/her original assignment. Details shall not exceed a three (3) month time period.

SECTION 3 – Ambulance Crew Member in Charge (ACIC):

The ACIC of a transport unit, to include ambulances, basic units and medic units, shall be determined by ACIC seniority. Ambulance Crew-Member-In-Charge seniority shall be determined by the earliest date of appointment as an ACIC when of equal qualifications. When two (2) qualified ACIC's are assigned to a transport unit and one must be detailed, the detail shall be rotated every other tour (weekly rotation changes on Sunday).

SECTION 4 – PROMOTIONS:

6. Generally no employee shall be involuntarily detailed to a higher graded position and may, without penalty, demand to bargain the detail to a higher graded position in writing.

Agency: The final sentence of Section 3 and the entirety of Section 4(6) are nonnegotiable because the proposals determine the tour of duty in violation of section 1-617.08(a) of the D.C. Official Code.⁵⁷ The last sentence of section 3 requires the Agency to no longer be in control of establishing tours of duty for details. The proposal limits details to a week and requires details to begin on a Sunday.⁵⁸ The proposal is an infringement of section 1-617.08(a)(5)(B).

Section 4(6) of the proposal denies the Agency the right to detail an employee to a higher grade position even if a critical need arises for that position to be immediately filled.⁵⁹ Furthermore, it converts a management right to a mandatory subject of bargaining by proposing the employee may demand to bargain the detail.⁶⁰

Union: Section 3 of the proposal has no bearing on tours of duty. The proposal provides only that if the Agency rotates employee schedules, they will be rotated amongst eligible employees.⁶¹

Section 4(6) of the proposal provides that the Union has the right to bargain with the Agency over involuntary reassignments to higher grade positions. The Union maintains the right to bargain with the Agency concerning changes to employee working conditions, consistent with sections 1-617.02(b)(4) and 1-617.11 of the D.C. Official Code. The proposal does not address employee tours of duty and otherwise does not infringe upon any of the rights provided to the Agency.⁶²

Board: Section 1-617.08(a)(5)(A) states that management shall retain the sole right to determine “the number, types, and grades of positions of employees assigned to an agency’s organization unit, work project, or tour of duty.” Section 3 of the proposal specifies the detail assignment of employees assigned to a transport unit and the rotational changes of the detail. This is an infringement of management’s right to establish the tour of duty. Another violation of section 1-617.08(a)(5)(A) arises when Section 4(6) states that no employee shall be involuntarily detailed to a higher graded position. Tours of duty are not negotiable as a compensation matter or as a non-compensation matter pursuant to section 1-617.08 (b).⁶³

The Board finds that section 3 and section 4(6) of the Union’s proposal is *nonnegotiable*.

⁵⁷ Appeal at 12.

⁵⁸ Answer at 18.

⁵⁹ Answer at 19.

⁶⁰ Answer at 19.

⁶¹ Appeal at 12.

⁶² Appeal at 13.

⁶³ *Local 36, Int’l Ass’n of Firefighters v. D.C. Dep’t of Fire & Emergency Med. Servs*, 61 D.C. Reg. 5632, PERB Case 13-N-04, Slip Op. No. 1466 (2014).

ORDER

IT IS HEREBY ORDERED THAT:

1. AFGE Local 3721's Proposal 1 is nonnegotiable;
2. Section 1 of AFGE Local 3721's Proposal 6 is negotiable and section 3 of AFGE Local 3721's Proposal is nonnegotiable;
3. Section 4(1) of AFGE Local 3721's Proposal 8 is negotiable and Sections 2, 3, 4(2), 4(3), and 5 of AFGE Local 3721's Proposal 8 are nonnegotiable;
4. AFGE Local 3721's Proposal 9 is nonnegotiable;
5. AFGE Local 3721's Proposal 10 is negotiable;
6. Section 2 of AFGE Local 3721's Proposal 15 is negotiable, Section 4 of AFGE Local 3721's Proposal 15 is partially negotiable and partially nonnegotiable, and Section 5 of AFGE Local 3721's Proposal 15 is nonnegotiable;
7. Sections 3 and 4(6) of AFGE Local 3721's Proposal 16 are nonnegotiable;
8. 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 Members Douglas Warshof, Barbara Somson and Mary Anne Gibbons.

Washington, D.C.

October 19, 2017

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-N-03, Op. No. 1641 was transmitted to the following parties on this the 30th day of October, 2017.

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