

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

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

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In the Matter of:)	
)	
Fraternal Order of Police/Metropolitan)	
Police Department Labor Committee)	
	Petitioner)	PERB Case No. 24-N-03 & 24-N-10
)	Opinion No. 1900
	v.)	
)	
District of Columbia Metropolitan)	
Police Department)	
	Respondent)	
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DECISION AND ORDER

I. Statement of the Case

On March 28, 2024, the Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP) filed a negotiability appeal in PERB Case No. 24-N-03. On May 17, 2024, FOP filed a negotiability appeal in PERB Case No. 24-N-10. The two negotiability appeals were consolidated on November 20, 2024. The instant consolidated negotiability appeal concerns three (3) proposals made by FOP and declared non-negotiable by the Metropolitan Police Department (MPD).

For reasons stated herein, the Board concludes that FOP’s proposals concerning Article 12, and Article 19 Sections (E)(1) and (2) are non-negotiable.

II. Background

FOP and MPD are in the process of negotiating a successor collective bargaining agreement (CBA). On July 3, 2023, FOP submitted its initial proposals regarding both compensation and non-compensation items to MPD.¹ On July 24, 2023, MPD asserted that the following proposals were nonnegotiable: Article 12; Article 14, Sections 1-3; Article 15, Sections 7-9; Article 19, Sections E(1) and (2); Article 38, Sections 1-2; Article 39, Section 1; Article 47, Section 1; and Article 50.²

The parties engaged in negotiations over the proposals from September 2023 to March 2024.³ On March 25, 2024, FOP filed a Notice of Automatic Impasse regarding Article 35 (Wages).⁴ On May 22, 2024, PERB stayed all proceedings in the consolidated negotiability appeals in this case, pending the resolution of the impasse.⁵

On August 20, 2024, the parties agreed to revert to status quo on articles 14, 15, and 47.⁶ The Union further withdrew its proposal for Article 50.⁷ On September 30, 2024, the Parties submitted a Joint Status Report to PERB indicating that both sides have participated in mediation and are still scheduling impasse arbitration.⁸ On October 17, the parties agreed to revert to status quo on Articles 38 and 39.⁹

PERB lifted the stay on the consolidated negotiability appeals on October 2, 2024. The remaining three (3) proposals are before the Board for disposition.

III. Standard of Review

There are three categories of collective bargaining subjects: (1) mandatory subjects, over which the parties must bargain if either party requests it; (2) permissive subjects, over which the parties may bargain; and (3) illegal subjects, over which the parties may not bargain.¹⁰ A permissive subject of bargaining is nonnegotiable if either party declines to bargain on the subject.¹¹ Management rights are permissive subjects of bargaining.¹² Section 1-617.08(a) of the

¹ FOP's Appeal at 3.

² FOP's Appeal at 3.

³ MPD's Answer at 2.

⁴ MPD's Answer at 2.

⁵ MPD's Answer at 2.

⁶ MPD's Answer at 2.

⁷ MPD's Answer at 2.

⁸ MPD's Answer at 2.

⁹ MPD's Answer at 2.

¹⁰ *D.C. Nurses Ass'n v. D.C. Dep't of Mental Health*, 59 D.C. Reg. 10776, Slip Op. No. 1285 at 4, PERB Case No. 12-N-01 (2012) (citing *NLRB v. Wooster Div. of Borg-Warner Corp.*, 356 U.S. 342 (1975)).

¹¹ *UDC Faculty Ass'n v. UDC*, 64 D.C. Reg. 5132, Slip Op. No. 1617 at 2, PERB Case No. 16-N-01 (2017).

¹² *NAGE Local R3-06 v. WASA*, 60 D.C. Reg. 9194, Slip Op. No. 1389 at 4, 13-N-03 (2013); *FEMS and AFGGE, Local 3721*, 54 D.C. Reg. 3167, Slip Op. 874 at 9, PERB Case No. 06-N-01 (2007).

D.C. Official Code sets forth management rights giving management the “sole rights” to undertake actions listed therein.¹³

Matters that do not contravene section 1-617.08(a) or other provisions of the Comprehensive Merit Personnel Act (CMPA) are negotiable.¹⁴ Section 1-617.08(b) of the D.C. Official Code provides that the right to negotiate over terms and conditions of employment extends to all matters except those that are proscribed by the CMPA.¹⁵

Pursuant to § 1-605.02(5) of D.C. Official Code, the Board is authorized to make a determination in disputed cases as to whether a matter is within the scope of collective bargaining.¹⁶ 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.¹⁷ The Board will separately consider the negotiability of each of the matters in a dispute.¹⁸

IV. Analysis

There are three (3) proposals that MPD has identified as nonnegotiable subjects of bargaining. The proposals are set forth below.

ARTICLE 12

DISCIPLINE

FOP proposes to revise certain language in the CBA as follows:

Section 4

The Chief of Police or his/her designee ~~shall~~ will only take adverse action after providing the employee with (1) written notification of the charges and proposed action and after providing the employee with (2) fifteen (15) business days to submit a written response to the charges. In the event the Department proposes termination, the employee shall have twenty-one (21) business days to submit his/her response. In his/her response, the employee shall also indicate whether he/she desires a Departmental hearing.

¹³ D.C. Official Code § 1-617.08(a).

¹⁴ *UDC Faculty Ass’n*, Slip Op. No. 1617 at 4.

¹⁵ D.C. Official Code § 1-617.08(b).

¹⁶ See *WTU v. DCPS*, Slip Op. No. 1884, PERB Case Nos. 24-N-04, *et al.* (2024).

¹⁷ *FOP/Protective Serv. Police Dep’t Labor Comm. v. DGS*, 62 D.C. Reg. 16505, Slip Op. 1551 at 1, PERB Case No. 15-N-04 (2015).

¹⁸ *UDC Faculty Ass’n*, Slip Op. No. 1617 at 2-3.

Section 910

If the Employer suspends an officer/employee without pay during the resolution of a criminal indictment and the criminal indictment is dropped or in any way resolved, then the Employer agrees to return the officer/employee to a pay status or issue notification of the charges and proposed action within thirty (30) business days of the date the indictment was either dropped or resolved. Likewise, if the Employer suspends an officer/employee without pay after the officer/employee has been convicted of criminal charges, the Employer agrees to either return the officer to a pay status or issue notification of the charges and proposed action within thirty (30) business days of the date it removed the officer from the pay status.

Section 11

~~Disciplinary action will not preclude an employee from participating in the promotional process. Notwithstanding the foregoing, if, after the eligibility list is formed, a final disciplinary penalty of a suspension of twenty (20) days or greater is imposed, the member need not be promoted from that list. In addition, notwithstanding the foregoing, if after the eligibility list is formed an adverse action is proposed, the promotion may be held in abeyance pending a final disposition. If the disposition is favorable to the member, or the penalty is less than a suspension of twenty (20) days, he/she shall be promoted forthwith with back pay retroactive to the date when the member would otherwise have been promoted.~~

MPD's Position

MPD asserts that FOP's proposal for Article 12 is nonnegotiable because it violates D.C. Code § 1-617.08(c)(1), which explicitly states that "all matters pertaining to the discipline of sworn law enforcement personnel shall be retained by management and not be negotiable through bargaining, including substantive or impacts-and-effects bargaining."¹⁹ MPD argues that management has the right to implement discipline.²⁰

FOP's Position

FOP argues that, although the current D.C. Code provides that proposals related to discipline, including the impacts and effects of discipline, are retained by management, "there is a pending bill in the U.S. House of Representatives that seeks to restore D.C. Police Union's right to negotiate matters pertaining to discipline to law enforcement officers."²¹ FOP argues that it is premature for MPD to assert that Article 12 is non-negotiable because "there is a likelihood that

¹⁹ MPD's Answer at 6.

²⁰ MPD's Answer at 8.

²¹ FOP's Appeal at 5 (citing H.R. 5798, 118th Cong. (1st Session 2023)).

collective bargaining rights over matters related to discipline will be restored during the parties' ongoing negotiations and before a final contract is agreed upon."²²

Board's Conclusion

The Union does not contest that D.C. Code §1-617.08(c)(1) explicitly reserves the discipline of sworn law enforcement personnel to management. The Union's reliance on proposed legislation to argue otherwise is meritless. Therefore, the proposed Article 12 is non-negotiable.

ARTICLE 19

GRIEVANCE PROCEDURE

E. ARBITRATION

FOP proposes to add certain language to the CBA as follows:

Section 1

The parties agree that arbitration is the method of resolving grievances which have not been satisfactorily resolved pursuant to the Grievance Procedure and is the agreed method of appealing any fine, suspension, removal from service, or any reduction of rank or pay of any employee who is not serving a probationary period.

MPD's Position

MPD maintains that the proposed language for Article 19, Section E, Paragraph 1 seeks to limit management's rights under D.C. Official Code §1-617.08(c)(1) as it interferes with management's right to discipline employees.²³

FOP's Position

FOP notes that under the current D.C. Code, proposals related to the discipline, including the impacts and effects discipline, are not negotiable.²⁴ However, FOP argues that negotiating rights over discipline may be restored during the life of the contract, and therefore, the MPD's assertion of non-negotiability as to Article 19 is premature due to the pending legislation in the House of Representatives.²⁵

²² FOP's Appeal at 6.

²³ MPD's Answer at 8.

²⁴ FOP's Appeal at 14.

²⁵ FOP's Appeal at 14 (citing H.R. 5798).

Board's Conclusion

The Union does not contest that D.C. Code §1-617.08(c)(1) explicitly reserves the discipline of sworn law enforcement personnel to management. The Union's reliance on proposed legislation to argue otherwise is meritless. Therefore, the proposed Article 19, Section E(1) is nonnegotiable.

ARTICLE 19

GRIEVANCE PROCEDURE

E. ARBITRATION

FOP proposes to add certain language to the CBA as follows:

Section 2

Within fifteen (15) business days of the decision of the Chief of Police on *an adverse action or grievance*, the Union, on behalf of an employee or employees, may advise the Chief of Police in writing, signed by the aggrieved employee, of its demand for arbitration or request to utilize the Grievance Mediation procedure. The parties agree to meet at least once in a last attempt at conciliation. Should conciliation fail to settle the dispute, the parties will attempt to agree on a statement of the issue for submission to arbitration/mediation. If the parties are unable to agree on a joint statement of the issue the arbitrator/mediator shall be free to determine the issue.

MPD's Position

MPD maintains that the proposed language for Article 19, Section E, Paragraph 1 seeks to limit managements rights under D.C. Official Code §1-617.08(c)(1) as it interferes with management's right to discipline employees.²⁶

FOP's Position

FOP notes that under the current D.C. Code, proposals related to the discipline, including the impacts and effects discipline, are not negotiable.²⁷ However, FOP argues that negotiating rights over discipline may be restored during the life of the contract, and therefore, the MPD's assertion of non-negotiability as to Article 19 is premature due to the pending legislation in the House of Representatives.²⁸

²⁶ MPD's Answer at 8.

²⁷ FOP's Appeal at 15.

²⁸ FOP's Appeal at 15 (citing H.R. 5798).

Board's Conclusion

The Union does not contest that D.C. Code §1-617.08(c)(1) explicitly reserves the discipline of sworn law enforcement personnel to management. The Union's reliance on proposed legislation to argue otherwise is meritless. Therefore, the proposed Article 19, Section E(2) is nonnegotiable.

ORDER

IT IS HEREBY ORDERED THAT:

1. FOP's proposal to add Article 12 is nonnegotiable;
2. FOP's proposal to add Article 19, Section (E)(1) is nonnegotiable;
3. FOP's proposal to add Article 19, Section (E)(2) is nonnegotiable; and
4. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

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

January 16, 2025

Washington, D.C.

APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration, requesting the Board reconsider its decision. Additionally, a final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1-605.2(12) and 1-617.13(c), which provides 30 days after a decision is issued to file an appeal.