

Notice: This decision may be formally revised 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**

In the Matter of:)	
)	
Public Service Commission)	
)	
Petitioner)	PERB Case No. 18-N-03
)	
v.)	Opinion No. 1672
)	
American Federation of Government)	
Employees, Local 1403)	
)	
Respondent)	
)	

DECISION AND ORDER

Before the Board is a negotiability appeal and a Motion to Strike Respondent’s Opposition (“Motion”) filed by the Public Service Commission (“Commission”), in which the Commission has named the American Federation of Government Employees, Local 1403 (“Local 1403”) as Respondent. In the negotiability appeal, the Commission requests that the Board declare Local 1403’s proposed amendment to Article 38, Section 2 of the parties’ collective bargaining agreement nonnegotiable.¹ Local 1403 filed an opposition, requesting that the Board deny the negotiability appeal as frivolous and without merit.² Thereafter, the Commission moved the Board to strike Local 1403’s opposition on the grounds that the opposition violates the requirements of PERB Rule 532.3.³

The Commission’s negotiability appeal is denied. The Board considers negotiability appeals when an issue arises as to whether a proposal is within the scope of bargaining.⁴ PERB

¹ The Commission also requests leave to further brief the Board on the issues raised in this appeal.

² On April 30, 2018, Local 1403 served its response to the negotiability appeal on the Commission via U.S. mail. On May 20, 2018, after speaking with the parties’ representatives, the Board determined that Local 1403 intended to electronically file its response on April 30, 2018. On May 22, 2018, Local 1403 electronically filed an unopposed motion for an extension to file its response, which the Board granted the same day. On May 22, 2018, Local 1403 also electronically filed its response, but did not electronically serve the Commission. On May 22, 2018, the Board sent Local 1403 a deficiency letter, stating that the Commission must electronically serve the Commission pursuant to PERB Rule 501.12(a) and noting that the caption and case number were incorrect on Local 1403’s response. On May 23, 2018, Local 1403 properly filed and served its response to the Commission’s negotiability appeal.

³ Pursuant to PERB Rule 532.3, an answer to a negotiability appeal shall state in short and plain terms the party’s position on each negotiability issue raised in the appeal.

⁴ PERB Rule 532.1.

Rule 532.1 states that “the party presenting the proposal may file a negotiability appeal with the Board.” In the present matter, the Commission concedes that Local 1403 presented the proposed amendment to Article 38, Section 2 of the parties’ collective bargaining agreement.⁵ Accordingly, the Board cannot consider the Commission’s negotiability appeal because the Commission is not “the party presenting the proposal.” The Commission’s negotiability appeal is therefore denied.

The Board also denies the Commission’s Motion requesting that the Board strike Local 1403’s answer to the Commission’s negotiability appeal, as the Motion is moot.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Petitioner’s negotiability appeal is dismissed with prejudice.
2. The Petitioner’s Motion to Strike Respondent’s Motion is denied.
3. Pursuant to Board Rule 559.1, this decision and order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy and Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

Washington, D.C.

July 26, 2018

⁵ Negotiability Appeal at 2.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 18-N-03, Op. No. 1672 was sent by File and ServeXpress to the following parties on this the 27th day of July, 2018.

Lloyd J. Jordan, Esq.
Motley Waller LLP
300 New Jersey Ave., NW
Suite 900
Washington, D.C. 20001

Kimberly Lincoln-Stewart, Esq.
Public Service Commission
1325 G Street, NW
Suite 800
Washington, DC 20005

/s/ Sheryl Harrington
PERB