GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
Teamsters Local Unions No. 639 and 730, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO,	
Petitioners,	
	PERB Case No. 94-N-06
	Opinion No. 403
v.	
District of Columbia Public Schools,	
Respondent.	

DECISION AND ORDER ON NEGOTIABILITY APPEAL

On July 26, 1994, Teamsters Local Unions No. 639 and 730, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Teamsters) filed a Negotiability Appeal with the Public Employee Relations Board (Board). The Appeal concerns the negotiability of a proposal by the Teamsters concerning the percentage of employer contribution to health care benefits premiums. The proposal was declared nonnegotiable by District of Columbia Public Schools (DCPS) during the parties' negotiations for a successor collective bargaining agreement.

The relevant facts are not in dispute. In September 1993, the Teamsters submitted to DCPS contract proposals for the parties' 1994-1997 agreement, which included a proposal regarding the employer's contribution to premiums for employees' health care benefits.[1/] The Teamsters' proposal "sought retention of the

[1/] These negotiations cover five separate bargaining units of employees employed by DCPS for whom Teamsters Local Unions No. 639 and 730 are jointly certified as the exclusive bargaining representative. These units include the following: operating

(continued...)

language from the 1990-1993 contract," (App. at 3.), which states as follows:

ARTICLE XLII. HEALTH PLAN

> **Effective October 1, 1993, the School Board will pay eighty percent (80%) of the actual health premium for each School Board employee.**

At a July 14, 1994 mediation session, the Teamsters submitted its proposal on health care contributions, reiterating its position that DCPS "continue the language from the 1990-1993 proposal." Id. During this session, DCPS advised the Teamsters in writing that the proposal was illegal. By letter on July 15, 1994, DCPS reaffirmed its position, thus precipitating this Appeal.

The Teamsters raise a threshold issue regarding the timeliness of DCPS' declaration of nonnegotiability, contending that since DCPS "did not challenge the negotiability of the Union's proposal for retention of the 80% contribution rate" during the collective bargaining negotiations for 1990-1993 agreement --which eventually became part of an arbitration award-- DCPS' objection in the current negotiations for a successor agreement is untimely under the Board's Rules.

In Teamsters Local Unions No. 639 and 730, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO and District of Columbia Public Schools, 39 DCR 5992, Slip Op. No. 299, PERB Case 90-N-01 (1992), upon which both parties rely, we held that Board Rules require that a declaration of nonnegotiability be made "in connection with collective bargaining," in order to give rise to a negotiability appeal within our jurisdiction. The Teamsters also cite our Decision in Teamsters Local Unions No. 639 and 730, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO and District of Columbia Public Schools, __ DCR ___, Slip Op. No. 377, PERB Case 94-N-02 (1994). There, we ruled that we will not consider a revision to a proposal over which we have previously made a negotiability determination, when the "so-called revision to a proposal is merely superficial". The facts of this Appeal, however, do not fall within the holdings of either of these cases.

Board Rules set no time limit within which a declaration of

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[1](...continued)
engineer unit, custodial worker unit, transportation and warehouse service unit, cafeteria worker unit and cafeteria manager unit.

nonnegotiability must be made, as long as it is made prior to the conclusion of collective bargaining. In Opinion No. 299, we ruled that "all phases of collective bargaining had ceased upon the issuance of the final and binding interest arbitration award." In the instant Appeal, the Teamsters state that DCPS' declaration of nonnegotiability was made "during the last mediation session". In our view, mediation is a process that is part of collective bargaining, and DCPS' challenge to the negotiability of the Union's proposal during mediation, albeit some 10 months after it was proposed, was timely.

Nor do we find support in Opinion No. 377 for the Teamsters' contention that DCPS' declaration is untimely because DCPS failed to challenge the identical proposal in the 1990-93 negotiations. We have made no previous determination with respect to this proposal, and a party's failure to challenge the negotiability of a proposal during the course of collective bargaining for one agreement does not foreclose a challenge in negotiations for successor agreements.

We now turn to the merits of the Appeal. The Comprehensive Merit Personnel Act (CMPA) expressly authorizes negotiations with respect to compensation and, specifically, as the Teamsters note, over health benefits, as codified under D.C. Code § 1-618.17(b). DCPS states that to the extent that the Teamsters propose to establish a health benefit plan premium contribution by the District that exceeds 75%, it contravenes the CMPA, D.C. Code § 1-622.9 and is illegal and therefore nonnegotiable. Section 1-622.9, which applies to District Government employees hired after September 30, 1987, provides as follows:

> **§ 1-622.9. District Contribution.**
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> (a) The District's contribution to the cost of any health benefit plan shall be an amount equal to 75% of the subscription charge of the standard option indemnity plan, except that in no event shall the District's contribution exceed 75% of the total subscription charge of any plan or option in which the employee is enrolled. The District's contribution shall be paid on a regular pay period basis. (emphasis added.)
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> (b) The Mayor shall determine the amount of the District contribution for individual and for self and family enrollments before the beginning date of each contract period.

Section 1-622.1 governs the Federal "health insurance benefit provisions of Chapter 89 of Title 5 of the United States Code" for

"all employees of the District Government first employed before October 1, 1987, except those specifically excluded by law or rule and regulation."[2]/ Those provisions, as codified under 5 USC § 8906(b)(2), impose an identical limitation on "Government contribution for an employee or annuitant enrolled in a plan under this chapter[, i.e.,] shall not exceed 75% of the subscription charge."

We have held that when one aspect of a subject matter, otherwise generally negotiable in other respects, is fixed by law, e.g., the CMPA, that aspect is nonnegotiable. See, e.g., D.C. Council 20, AFSCME, AFL-CIO, Locals 709, et al. v. Government of the District of Columbia et al., ___ DCR ____, Slip Op. No. 343, PERB Case No. 92-U-24 (1993); Committee of Interns and Residents and D.C. General Hospital, ____ DCR _____, Slip Op. No. 301 (Proposal No. 3), PERB Case No. 92-N-01 (1992); District of Columbia Public Schools and Teamsters Local Unions No. 639 and 730, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, 38 DCR 2483, Slip Op. No. 273 (Proposals Nos. 4, 10 and 13), PERB Case 91-N-01 (1991); Fraternal Order of Police/MPD Labor Committee and Metropolitan Police Department, 38 DCR 847, Slip Op. No. 261 (Proposal No. 3), PERB Case No. 90-N-05 (1990); and Teamsters Local Unions No. 639, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO and District of Columbia Public Schools, 38 DCR 1586, Slip Op. No. 263 (Proposal No. 6), PERB Case 90-N-02, 90-N-03 and 90-N-04 (1990).

The provisions of the CMPA, D.C. Code § 1-622.1 and 1-622.9 unequivocally limit the District's contribution to employee health benefit plans for all employees to "75% of the total subscription charge of any plan or option". Thus, the Teamsters' proposal providing for an 80% contribution to "the actual premiums" of "each School board employee", is preempted by law and nonnegotiable.

ORDER

IT IS HEREBY ORDERED THAT:

The Teamsters' proposal concerning the percentage of employer contribution to the premium of employees' health care benefits is

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[2]/ Under the CMPA, as codified under D.C. Code § 1-601.1 and 1-602.3, the District of Columbia Board of Education, i.e., DCPS, is a subdivision of the District government and is governed by the provisions of the CMPA with the exception of certain limited subchapters not applicable herein.

not within the scope of collective bargaining and therefore is nonnegotiable.

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BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

September 19, 1994