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

In the Matter of:	)	
	)	
International Association of Firefighters, Local 36,	)	PERB Case No. 14-U-21
	)	
Complainant,	)	Opinion No. 1504
	)	
v.	)	
	)	
District of Columbia Fire and Emergency Medical Services Department,	)	Decision and Order
	)	
Respondent.	)	

**DECISION AND ORDER**

**I. Statement of the Case**

Complainant International Association of Firefighters, Local 36 (“Union”) filed an Unfair Labor Practice Complaint (“Complaint”) alleging that Respondent D.C. Fire and Emergency Medical Services Department (“FEMS”) violated D.C. Official Code § 1-617.04(a)(1) and (5) when it refused the Union’s request to bargain a new compensation agreement for Fiscal Year 2015.<sup>1</sup> FEMS asserts it had no obligation to negotiate over compensation for FY 2015 because the Union’s May 1, 2014, bargaining request was untimely under D.C. Official Code § 1-617.17(f)(1)(A)(i) and Article 55, Section D in the parties’ Collective Bargaining Agreement.

The issues before PERB are 1) whether FEMS had an obligation to negotiate compensation matters for FY 2015 in response to the Union’s May 1, 2014, request; and 2) if so, whether FEMS committed an unfair labor practice when it refused said request. For the reasons stated below, the Board finds that FEMS was not obligated to engage in compensation bargaining for FY 2015 and therefore did not commit an unfair labor practice when it refused the Union’s request. The Union’s Complaint is therefore dismissed.

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<sup>1</sup> (Complaint at 6).

## II. Background

The parties began negotiating a successor collective bargaining agreement in 2011.<sup>2</sup> Negotiations continued until the parties reached impasse in November 2012.<sup>3</sup> The impasse proceeded to interest arbitration. One of the issues presented to the arbitrator was the term of the contract. FEMS proposed that the agreement be effective from FY 2011 through FY 2017, whereas the Union proposed that it only be effective from FY 2011 through FY 2014.<sup>4</sup> The arbitrator issued his Award on February 20, 2014, wherein he determined that the agreement would only be effective through FY 2014.<sup>5</sup> Under D.C. Official Code §§ 1-617.17(i)(1) and (2), FEMS had until April 22, 2014 to submit the Award to the D.C. Council along with a financial plan that included proposed funding for the contract's compensation components.<sup>6</sup> The Award was not submitted to the Council until June 27, 2014, after which the Council approved the contract on July 14, 2014.<sup>7</sup> The new collective bargaining agreement covering FY 2011-2014 was scheduled to become effective on September 1, 2014.<sup>8</sup>

On May 1, 2014, before the Award had been submitted to the Council, the Union sent written notice to FEMS' representative, the D.C. Office of Labor Relations and Collective Bargaining ("OLRCB"), requesting commencement of bargaining over compensation and non-compensation issues for FY 2015-2017.<sup>9</sup> OLRCB responded on May 21 and June 2, 2014, that FEMS would accept the Union's notice to reopen negotiations for non-compensation matters covering FY 2015-2017, but that FEMS refused to bargain compensation matters for FY 2015 because the Union's notice was untimely under D.C. Official Code § 1-617.17(f)(1)(A)(i)<sup>10</sup> and Article 55 Section D<sup>11</sup> of the parties' Collective Bargaining Agreement.<sup>12</sup> On July 30, 2014, the Union filed the instant Complaint alleging that FEMS' refusal violated D.C. Official Code § 1-617.04(a)(1) and (5). As a remedy, the Union seeks: 1) preliminary and final relief requiring

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<sup>2</sup> *Id.* at 2.

<sup>3</sup> PERB Case No. 13-I-01.

<sup>4</sup> (Complaint at 2-3).

<sup>5</sup> *Id.* at 3-4.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.* at 6.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 5.

<sup>10</sup> D.C. Official Code § 1-617(f)(1)(A)(i):

(f)(1) Collective bargaining for a given fiscal year or years shall take place at such times as to be reasonably assured that negotiations shall be completed prior to submission of a budget of said year(s) in accordance with this section.

(A)(i) A party seeking to negotiate a compensation agreement shall serve a written demand to bargain upon the other party during the period 120 days to 90 days prior to the first day of the fiscal year, for purposes of negotiating a compensation agreement for the subsequent fiscal year.

<sup>11</sup> Article 55 Section D of the parties' Collective Bargaining Agreement, in pertinent part, states:

"[T]he non-compensation provisions of this Agreement shall be considered automatically opened in the event that one of the parties provides the applicable statutory notice that it is seeking to terminate or modify the compensation provisions of this Agreement."

<sup>12</sup> *Id.* at 5-6, Exhibits 6 and 8.

FEMS to reopen bargaining over compensation matters for FY 2015; 2) attorneys' fees; and 3) such further relief as the Board deems appropriate.

### III. Analysis

#### A. Preliminary Issues

PERB Rule 520.8 states: “[t]he Board or its designated representative shall investigate each complaint.” PERB Rule 520.10 states that “[i]f the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings....” However, PERB Rule 520.9 states that if “the investigation reveals that the pleadings present an issue of fact warranting a hearing, the Board shall issue a Notice of Hearing and serve it upon the parties.”

In this matter, FEMS generally denies Complainants' legal conclusions, but does not dispute the Complaint's underlying alleged facts, which are the following: 1) on May 1, 2014, the Union sent FEMS a written notice requesting compensation and non-compensation bargaining for FY 2015-2017; and 2) FEMS responded it would consent to a request by the Union to begin compensation bargaining for FY 2016-2017 but not for FY 2015, and that it would immediately begin non-compensation bargaining for FY 2015-2017. Because these facts are undisputed by the parties, leaving only legal questions to be resolved, the Board finds it can properly decide this matter based upon the pleadings in the record in accordance with PERB Rules 520.10.<sup>13</sup>

Furthermore, because the Board is rendering a final decision based upon the pleadings in the record, it is not necessary to address the Union's request for preliminary relief in accordance with PERB Rule 520.15.

#### B. FEMS Reasonably Relied on the Statutorily Prescribed Timeframe for Requesting Compensation Bargaining in D.C. Official Code §§ 1-617.17(b) and 1-617.17(f)(1)(A)(i) and Therefore Did Not Commit an Unfair Labor Practice

D.C. Official Code § 1-617.17(b) requires compensation negotiations to take place “at reasonable times in advance of the District's budget making process.” Additionally, D.C. Official Code § 1-617.17(f)(1) states that “[c]ollective bargaining for a given fiscal year or years shall take place at such times as to be reasonably assured that negotiations shall be completed prior to the submission of a budget for said year(s).” Subsection (f)(1)(A)(i) goes further and states that “[a] party seeking to negotiate a compensation agreement shall serve a written demand

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<sup>13</sup> See *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 60 D.C. Reg. 5337, Slip Op. No. 1374 at p. 11, PERB Case No. 06-U-41 (2013); see also *American Federation of Government Employees, AFL-CIO Local 2978 v. District of Columbia Department of Health*, 60 D.C. Reg. 2551, Slip Op. No. 1356 at p. 7-8, PERB Case No. 09-U-23 (2013).

to bargain upon the other party during the period 120 days to 90 days prior to the first day of the fiscal year, for purposes of negotiating a compensation agreement for the subsequent fiscal year.” In accordance with these provisions, the Board finds that FEMS is correct in its assertion that the deadline for the Union to request compensation bargaining for FY 2015 was 120 days to 90 days prior to the first day of FY 2014, or during the month of June in 2013.

The Union argues that it could not have met the June 2013 deadline because it had already passed “before the parties had even scheduled the interest arbitration ... to resolve issues in the last round” of bargaining, the dates of which were not known until July 2, 2013.<sup>14</sup> Further, the Union notes that the parties did not know whether that Collective Bargaining Agreement would be effective through FY 2014 or FY 2017 until the Arbitrator issued the Award on February 20, 2014.<sup>15</sup> The Union asserts that once the Arbitrator ruled that the Agreement would only be effective through FY 2014, it timely served FEMS with its demand for compensation and non-compensation bargaining for FY 2015-2017 on May 1, 2014.<sup>16</sup> For the reasons stated below, the Board finds that the Union’s arguments do not prevail.

In *Teamsters Local 639 v. District of Columbia Public Schools*, 38 D.C. Reg. 6698, Op. No. 267, PERB Case No. 90-U-05 (1991), the Board upheld a hearing examiner’s conclusion that the respondent agency had no obligation to bargain compensation matters for FY 1990 because the union’s demand came too late in the District’s budget-making process.<sup>17</sup> In that case, the Board stated:

The Hearing Examiner, in a Report and Recommendation (R&R) issued on August 16, 1990, concluded that DCPS had no obligation to bargain with the Teamsters over FY 90 compensation matters.... The Hearing Examiner ruled that notwithstanding his conclusion that the Teamsters had been duly certified as the unit employees’ representative for purposes of compensation and terms and conditions bargaining, the Teamsters “could not insist on bargaining over compensation proposals for fiscal year 1990” (R&R at 6) at the time it made its formal demand for bargaining on November 7, 1989. This conclusion was based on the Examiner’s determination that the D.C. Superior Court decision in *Barry v. Public Employee Relations Board*, Civil Action No. 15364-80 (June 30, 1981) was controlling. There, the court, interpreting the D.C. Code Sec. 1-618.17(b)<sup>18</sup> provision that the Board of Education “shall meet with labor organization(s)... which [] have been authorized to negotiate compensation at reasonable times in advance of the District’s budget-making process...,” held that

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<sup>14</sup> (Complaint at 6).

<sup>15</sup> *Id.* at 3-4.

<sup>16</sup> *Id.* at 5.

<sup>17</sup> *See* ps. 1-4.

<sup>18</sup> Now D.C. Official Code § 1-617.17(b).

negotiations “must commence earlier than 10 days into the new fiscal year, a point in time which must reasonably be viewed as near the very end of the budget making process.” Slip Opinion at 5. The facts here, the Examiner found, established that the Teamsters was not “certified [and thereby not authorized to negotiate compensation] until after the start of the [1990] fiscal year and its initial demand for bargaining [on November 7, 1989] was more than 5 weeks after the commencement of the fiscal year.” (R&R at p. 6).<sup>19</sup>

\* \* \*

The Teamsters contend that the *Barry* decision turned on the fact that the union there did not file its representation petition until September 30, 1989, the last day of the fiscal year, so that bargaining could not have begun before the commencement of the new fiscal year. Here, in contrast, the Teamsters filed its representation petition almost 3 months before the end of the fiscal year. The Teamsters assert that but for “vigorous opposition by DCPS... PERB would most certainly have granted Local 639’s Petition way in advance of the commencement of Fiscal Year 1990” and that compensation bargaining for that year would therefore have been timely demanded. In support of their ultimate contention, Teamsters say that “there have been many interest arbitration awards rendered in the public sector after the commencement of the fiscal year, which have effectively awarded [compensation] increases retroactively.” ...

These arguments ... were rejected by the Hearing Examiner. We cannot conclude that DCPS’ opposition to the Teamsters July 10, 1989, petition to substitute representatives distinguishes this case from *Barry*, a decision which we agree with the Hearing Examiner controls here.<sup>20</sup>

In the instant case, the Union’s May 1, 2014 demand to open compensation negotiations for FY 2015, much like those in the *Teamsters* and *Barry* cases, came “near the very end of the budget making process.” In *Teamsters*, *supra* the Board found that the Teamster’s request for compensation bargaining for FY 1990 was submitted too late in the process to comply with the statutory requirement in then D.C. Code § 1-618.17(b) that compensation negotiations commence at “reasonable times in advance of the District’s budget making process.” Applying that same reasoning to the instant case, the Board finds that because the Mayor had already

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<sup>19</sup> *Teamsters 639 v. DCPS*, *supra*, Op. No. 267 at ps. 1-2, PERB Case No. 90-U-05.

<sup>20</sup> *Id.* at 3-4.

submitted the District's FY 2015 budget on April 3, 2014<sup>21</sup>, the Union's May 1, 2014 demand to bargain for FY 2015 was likewise submitted too late in the process to comply with the identical requirement in the current statute<sup>22</sup> that parties "negotiate compensation at reasonable times in advance of the District's budget making process...."

Even if one considers the language of D.C. Official Code § 1-617.17(b) to be vague, the specific time period for the commencement of compensation bargaining established in D.C. Official Code § 1-617.17(f)(1)(A)(i) is not. Added to the statute effective October 1, 2002,<sup>23</sup> § 1-617.17(f)(1) states that "[c]ollective bargaining for a given fiscal year or years shall take place at such times as to be reasonably assured that negotiations shall be completed prior to the submission of a budget for said year(s)." Subsection (f)(1)(A)(i) is even more specific and states that "[a] party seeking to negotiate a compensation agreement shall serve a written demand to bargain upon the other party during the period 120 days to 90 days prior to the first day of the fiscal year, for purposes of negotiating a compensation agreement for the subsequent fiscal year."<sup>24</sup> Based on these amendments, the Board finds that the Union's demand in this case for compensation bargaining for FY 2015 was indeed untimely because it had not been submitted "prior to the submission of [the FY 2015] budget" as required by § 1-617.17(f)(1), and because it was submitted almost a full year after the June 2013 window dictated by § (f)(1)(A)(i).<sup>25</sup> Accordingly, FEMS had no obligation to engage in compensation bargaining with the Union for FY 2015, and therefore did not commit an unfair labor practice when it refused the Union's demand.<sup>26</sup>

Furthermore, the Board sympathizes with the Union's arguments that it could not have met the statutory requirement because the June 2013 deadline had already passed "before the parties had even scheduled the interest arbitration ... to resolve issues in the last round" of bargaining, and also because the parties did not know that that Collective Bargaining Agreement would only be effective through FY 2014 until the arbitrator issued the Award in February 2014. Notwithstanding, the Board's caselaw dictates that those reasons do not constitute a defense for missing the statutory deadline.

In both the *Teamsters* and *Barry* cases cited above, the respective unions argued that their demands should be considered timely because it was legally impossible for either of them to

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<sup>21</sup> (Answer at 5).

<sup>22</sup> D.C. Official Code § 1-617.17(b).

<sup>23</sup> See "The Fiscal Year 2003 Budget Support Act of 2002", Oct. 1, 2002, D.C. Law 14-190, 49 D.C. Reg. 6968.

<sup>24</sup> The Board finds that the 2002 amendments substantiate and strengthen the Board's and the Superior Court's respective conclusions in the *Teamsters* and *Barry* cases that agencies have no duty to bargain an untimely request for compensation bargaining.

<sup>25</sup> *Id.*

<sup>26</sup> The Board notes that the Council's purpose in enacting such specific time lines and procedures was not to frustrate the compensation bargaining process, but to put mechanisms and deadlines in place that would ensure a stable, timely budget. Indeed, the Council's expressly stated purpose for adopting the amendments was "to revise procedures ... to allow compensation negotiations to begin at appropriate times consistent with the District of Columbia government budget cycle". D.C. Law 14-190, *supra* at p. 8.

have submitted their demands within the timeframe prescribed under then D.C. Code § 1-618.17(b). Notwithstanding, the Board found that such did not constitute a valid exception to the statute's requirement that compensation negotiations commence at "reasonable times in advance of the District's budget making process."<sup>27</sup> If impossibility was not a valid defense under then § 1-618.17(b), it likewise cannot constitute a valid defense today under the identical language of the current § 1-617.17(b)—especially since the statute's 2002 amendments imposed an even stricter and more specific deadline for the commencement of bargaining. In this case, however, the Board finds that it was not impossible for the Union to serve its demand during the time period prescribed by the statute. Indeed, the Union was the bargaining unit's recognized exclusive representative in June 2013, and therefore could have served its demand (or even a prospective demand) on FEMS at that time in accordance with the statutory requirements, but failed to do so until almost a year after that deadline expired.<sup>28</sup> Therefore, even though the Union's reasons for not meeting the deadline are understandable, they do not exempt the Union from having to comply with the statute.

Therefore, based on the foregoing, the Board finds that FEMS was not obligated to engage in compensation bargaining for FY 2015 because the Union's May 1, 2014, demand (only insofar as it relates to compensation bargaining<sup>29</sup>) was untimely under D.C. Official Code §§ 1-617.17(b) and 1-617.17(f)(1)(A)(i).<sup>30</sup> Furthermore, the Board finds that FEMS' refusal did not constitute an unfair labor practice in violation D.C. Official Code §§ 1-617.04(a)(1) or (5). Accordingly, the Union's Complaint is dismissed with prejudice.<sup>31</sup>

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<sup>27</sup> *Teamsters 639 v. DCPS*, *supra*, Op. No. 267 at ps. 1-4, PERB Case No. 90-U-05.

<sup>28</sup> (Complaint at 5); (Answer at 5).

<sup>29</sup> As the Board noted in *Teamsters*, *supra*, even though the Union's demand for compensation bargaining was untimely under D.C. Official Code §§ 1-617.17(b) and 1-617.17(f)(1)(A)(i), the Union's demand for non-compensation terms and conditions bargaining was timely and FEMS was obligated to engage in those negotiations accordingly. The Complaint's Exhibit 6 demonstrates that FEMS complied with that obligation when it accepted the Union's demand for non-compensation bargaining and agreed to "engage in that exercise immediately."

<sup>30</sup> The Board notes that this ruling does not preclude the Union from attempting to bargain for additional increases in future fiscal years to make up for any perceived losses that may result from its inability to bargain compensation matters for FY 2015.

<sup>31</sup> The Board notes that even though the Union makes numerous factual claims in its Complaint about FEMS' alleged failure to timely submit the parties Arbitration Award to the Council by April 22, 2014, it does not ultimately assert those allegations as unfair labor practices. (Complaint at 4-6). Indeed, paragraph 18 of the Complaint expressly limits the scope of the Union's unfair labor practice charges to the allegation concerning FEMS' refusal to engage in compensation bargaining for FY 2015. Accordingly, because that issue is not before the Board for evaluation, the Board will not consider it. See *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, Slip Op. No. 1316 at ps. 5-6, PERB Case No. 09-U-50 (August 24, 2012) (holding that the Board may not rule on allegations that are not properly before it).

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Complaint is dismissed in its entirety with prejudice.
2. 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 Donald Wasserman, Keith Washington, Yvonne Dixon, and Ann Hoffman.

December 22, 2014

Washington, D.C.

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 14-U-21, Opinion No. 1504 was transmitted *via* File & ServeXpress and Email to the following parties on this the 24<sup>th</sup> Day of December, 2014.

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/s/ Sheryl Harrington

PERB