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,	
Petitioner,	
	PERB Case No. 94-N-02
	Opinion No. 377
v.	
District of Columbia Public Schools,	
Respondent.	

DECISION AND ORDER ON NEGOTIABILITY APPEAL

On January 3, 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 certain items proposed by the Teamsters that were declared nonnegotiable by District of Columbia Public Schools (DCPS) during the parties' negotiations for a successor collective bargaining agreement.[1]/

On January 12, 1994, DCPS filed a Response to Negotiability Appeal. DCPS contended that the Teamsters' Appeal is untimely and presented arguments in support of its declaration that the Teamsters' proposals are nonnegotiable. The Teamsters filed a Reply to DCPS' Response and contention that its Appeal was

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[1]/ These negotiations cover five separate bargaining units for which the Teamsters are the exclusive bargaining representative. Employees included in these units are employed by DCPS in the operating engineer unit, custodial worker unit, transportation and warehouse service unit, cafeteria worker unit and cafeteria manager unit.

untimely.

The parties do not dispute the relevant factual representations supporting the issues raised by this Appeal. Sometime in September 1993, the Teamsters "submitted contract proposals that reiterated proposals which had been declared non-mandatory subjects of bargaining during the 1990-1993 negotiations in a PERB decision [i.e., 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, 38 DCR 2483, Slip Op. No. 273, PERB Case 91-N-01 (1991)] which was pending review by the [D.C.] Court of Appeals." (App. at 3.) By letter dated September 20, 1993, DCPS declared these proposals nonnegotiable. (App. at 3 and Resp. at 1.) On December 8, 1993, after the Court of Appeals had affirmed the Board's Decision and Order in PERB Case 91-N-01, Drivers, Chauffeurs and Helpers Local Union No. 639 et al. v. District of Columbia, No. 92-CV-319, ____ A.2d ____ (D.C. 1993), the Teamsters resubmitted the September proposals with certain revisions or changes. (App. at 3.) On December 17, 1993, DCPS issued a letter to the Teamsters asserting that the "changes" made in the Teamsters' September proposals "d[id] not remove these proposals from the ambit of [DCPS'] nonnegotiability declaration contained in [its] letter ... of September 20, 1993. (App., Exh. 6.) DCPS reiterated its declaration that the disputed proposals submitted on December 8, 1993, are nonnegotiable. Id. These "revised" proposals are the subject of this Appeal.

With respect to the issue of timeliness, the Teamsters correctly note that when a declaration of nonnegotiability is properly made, the other party "can file a timely Negotiability Appeal" or "revise its proposals in an attempt to cure the defect." (Rep. at 1 and 2.) Teamsters contend that it has filed a timely appeal to DCPS' December 17, 1993 letter declaring its revised proposals nonnegotiable. DCPS maintains that the Teamsters' Appeal is untimely because the Teamsters did not, in any significant way, revise the September proposals when it resubmitted them in December. Thus, any determination of timeliness, DCPS argues, must be measured from its September 20, 1993 declaration that the proposals submitted by the Teamsters in September are nonnegotiable. Teamsters counter, however, that the "changes" made to the September proposals are "substantial" and therefore the proposals submitted in December should not be viewed as the same proposals submitted in September. (Rep. at 2.)

The parties do not dispute the extent of the changes made to the September proposals; only the effect of the changes on the Board's consideration of this Appeal. This threshold issue turns

on whether or not the Teamsters' December 8th proposals were significantly different from the proposals it submitted to DCPS in September 1993 --which the parties agree "reiterate" the proposals we ruled upon in PERB Case No. 91-N-01, Opinion No. 273-- to warrant reconsideration of our former ruling on these proposals. (App. at 2-3.)

The proposals submitted by the Teamsters in September, which we considered in PERB Case No. 91-N-01, addressed a variety of hours-of-work matters for employees in the five bargaining units represented by the Teamsters. See n. 1. The parties agree that the December proposals were the September proposals revised in three ways: (1) The caption of each of the four proposals expressly denoted the proposal as a "compensation article" (as opposed to its previous consideration in a noncompensation bargaining context); (2) a modification to the proposed wording of one of the provisions in the proposal concerning the cafeteria workers unit; and (3) a modification to the proposal concerning former 8-hour cafeteria workers. In all other respects, the December proposals left intact the proposed wording of the September proposals.

With respect to its designation of the December proposals as compensation items, the Teamsters urge that since the Board in PERB Case No. 91-N-01 had previously considered its September proposals as "noncompensation items", that the Board should consider these proposals anew as compensation items for purposes of this filing.

We have reviewed the December proposals and have found that, in the main, the leopard has not changed its spots. By designating the September proposals as "compensation articles", we can discern no effect on the actual nature of these proposals or what they propose. To the extent that the Teamsters' "clarification" of its September proposals as part of its "compensation package" represents the only "change" in its December proposals over the September proposals, we find no basis for considering the December proposals as distinct from the proposals we considered and ruled upon in PERB Case No. 91-N-01. When the net effect of a so-called revision to a proposal is merely superficial, as here, we will not elevate form over substance. [2]/ We find the Teamsters' January 3, 1994 Appeal of

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[2]/ Our discussion and analysis of the negotiability of these identical proposals 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

(continued...)

DCPS' declaration of nonnegotiability of its December proposals, "revised" only by their designation as "compensation articles", to be an appeal of proposals upon which we have previously ruled. We find no basis for reconsidering these proposals anew in this proceeding and, therefore, defer to our respective negotiability rulings in PERB Case No. 91-N-01, Slip Op. No. 273, as to each of these proposals.

With respect to the two other above-noted revisions of the proposals contained in this Appeal, for the reasons stated in our discussion of the merits that these amendments are more than superficial, we find these proposals warrant consideration in their own right. Consequently, we find timely the Teamsters' appeal, as amended, of DCPS' December 17, 1993 declaration of nonnegotiability of these proposals.[3]/

The proposals set forth below appears as the Board considered it in PERB Case No. 91-N-01 and as the Teamsters first submitted it in September 1993.

HOURS OF WORK- CAFETERIA WORKER UNIT

The basic workday for employees in the following classifications will be seven (7) hours a day, five (5) days per week:

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[2](...continued)
Schools, 38 DCR 2483, Slip Op. No. 273 (Proposal No. 13), PERB Case 91-N-01 (1991) establishes these items as noncompensation matters. In that Decision, the Board ruled upon proposals that are identical to the ones presented in this Appeal. Some were found to be nonnegotiable while others, negotiable. This Appeal contained an additional proposal that concerned employees in the custodian, transportation, warehouse and engineer units entitled "Basic Workweek-Custodial, Transportation, Warehouse and Engineer Units". The proposal, however, is identical to the proposal the Board considered concerning the cafeteria manager unit.

[3]/ Board Rule 532.3 requires that "negotiability appeals [ ] be filed within (30) days after a written communication from the other party to the negotiations asserting that a proposal is nonnegotiable." Since we find the amendments to these proposals created new proposals, DCPS could not declared these proposals to be nonnegotiable prior to their submission on December 8, 1993. Thus, with respect to these proposals, DCPS' December 17, 1993 declaration of nonnegotiability is the effective declaration. Therefore, the Teamsters' January 3, 1994 appeal of DCPS' declaration, with respect to these amended proposals, is timely.

Cook I
Cook II
Baker I
Baker II
Food Service Worker Leader

The preface of this proposal was amended when submitted on December 8, 1993, as follows:

> The basic workweek for employees in the following classifications will be a thirty-five (35) hour workweek:

The proposal, as amended, no longer establishes the number of hours in a basic workday or the number of days in a week over which those workdays can be distributed. This represents a significant change in what is being proposed and on that basis the present appeal is a timely appeal of a new proposal.

In PERB Case No. 91-N-01, we found the unamended proposal nonnegotiable because it contravened DCPS' authority under D.C. Code Sec. 1-613.1(a)(2) to establish its employees' basic work week, which included those employees' hours of work.[4]/ Based on this same statutory provision, we also found nonnegotiable a proposal that the "basic work week for each employee shall be forty (40) hours". Slip Op. No. 273 at 16. Notwithstanding the Teamsters' designation of this amended proposal as a compensation

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[4]/ The Comprehensive Merit Personnel Act, D.C. Code Sec. 1-613.1 entitled "Hours of work" provides under subsection (a)(2) the following:

> A basic administrative workweek of 40 hours is established for each full-time employee and the hours of work within that workweek shall be performed within a period of not more than 6 of any consecutive days: Except that:
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> (2) The basic workweek and hours of work for all employees of the Board of Governors of the School of Law, the Board of Education and the Board of Trustees of the University of the District of Columbia shall be established under rules and regulations issued by the respective Boards: Provided, however, that the basic work scheduling for all employees in recognized collective bargaining units shall be subject to collective bargaining, and collective bargaining agreements shall take precedence over the provisions of this subchapter.

item, we find that this proposal, similarly, seeks to establish the basic work week for employees.[5]/ As such, the proposal

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[5]/ The Teamsters argue that when this proposal was determined to be nonnegotiable by the Board in its unamended form, both the Board and the Superior Court, in affirming the Board's decision, viewed the proposal in the context under which it was being negotiated, i.e., noncompensation negotiations. The Teamsters assert that the amended proposal as well as the context of the negotiations address a compensation matter. The Teamsters' argument rests on its contention that D.C. Code Sec. 1-618.17, entitled "Collective bargaining concerning compensation", subsection (b), provides that the various listed personnel authorities of the District Government, including DCPS, shall "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."(emphasis added.) The Teamsters claim that the Board has ignored the existence of this provision's inclusion of "hours" as a negotiable compensation matter.

While all employee compensation is not based on an hourly rate, we have no quarrel with the Teamsters' general proposition that total compensation for a given period is determined by the rate of pay and the time worked. However, we nevertheless maintain that there is a distinction between terms and conditions of employment that measure the amount of time an employee will work and terms and conditions that determine the value or worth of the employee's time. In its pure sense, the former determines only time while the latter determines remuneration or compensation for that time.

Moreover, the Teamsters' argument fails to recognize that individual statutory provisions addressing a particular subject matter rarely can be viewed in a vacuum. While, generally, "hours" has been statutorily prescribed as a compensation matter subject to negotiations, other provisions of the CMPA except from the duty to negotiate, certain aspects of both compensation and noncompensation terms and conditions of employment for certain personnel authorities. D.C. Code Sec. 1-613.1(a)(2), as we held, provides such an exception for DCPS with respect to determining hours of work. This dichotomy under the CMPA --subjecting matters to the collective bargaining process and providing exceptions or reservations to those matters-- has been addressed by the Board more often under D.C. Code Sec. 1-618.8 entitled "Management rights; matters subject to collective bargaining".

(continued...)

contravenes D.C. Code Sec. 1-613.1(a)(2) and therefore is nonnegotiable.

FORMER EIGHT (8) HOUR CAFETERIA WORKERS

> All current employees who had been classified previously as eight (8) hour workers shall be afforded an opportunity to work seven (7) hour shifts.

This proposal, as amended by the Teamsters and resubmitted to DCPS on December 8, 1993, appeared as follows:

> All current employees who had been previously classified as eight (8) hour workers shall be afforded the opportunity to work a thirty-five (35) hour workweek.

The proposal, as amended, no longer calls for affording employees an opportunity to work shifts consisting of a certain number of hours but rather workweeks consisting of a certain number of hours. Again, this represents a significant change in what is being proposed, and on that basis the Teamsters have presented a timely appeal of the disputed proposal.

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[5](...continued)

Finally, the Teamsters argue that this amended proposal is analogous to a proposal the Board found negotiable in University of the District of Columbia Faculty Association/National Education Association and University of the District of Columbia, 29 DCR 2975, Slip Op. No. 43, PERB Case No. 82-N-02 (1982). There, we found negotiable a proposal which, inter alia, proposed that (1) a "full workload shall not exceed 24 semester hours" and (2) the number of "office hours" during an academic year. We determined that the proposal sought to establish "basic work scheduling" which is a negotiable matter under D.C. Code Sec. 1-613.1(a)(1). That proposal, unlike the instant proposal, did not propose to establish employees' hours of work or their workweek, but rather proposed a maximum number of hours employees would spend doing a particular type of work activity. In this context, the Board found the proposal negotiable as proposing only a limit on the number of hours that employees would engage in these two work duties, i.e., "contact-semester hours" and "office hours" during an academic year. The Board did not equate "full workload" with employees' "basic hours of work" or the number of "office hours" an employee would keep as establishing employees "basic workweek. The fact that a "full workload" under the proposal did not include "office hours" provided further support for our determination.

In PERB Case No. 91-N-01, we found the unamended proposal to be negotiable because it "did not require an action within management's prerogative, i.e., assigning workers." Slip Op. No. 273 at 16. See also D.C. Code Sec. 1-618.8(a). This determination was based on an interpretation that the proposal required "only that DCPS afford such employees the opportunity ... if such an opportunity arises." Id. Consistent with this interpretation, we do not find management's statutory prerogatives under the amended proposal contravened to the extent that the proposal calls for DCPS to afford former 8-hour employees the opportunity to work 35-hour workweeks if such an opportunity arises. In this context, this proposal is negotiable.

ORDER

IT IS HEREBY ORDERED THAT:

1. The proposed preface to the proposal concerning the basic work week of employees in the cafeteria worker unit as set forth in the Decision is not within the scope of collective bargaining and is therefore nonnegotiable.

2. The proposal concerning the basic work week of former 8-hour employees as set forth in the Decision is within the scope of collective bargaining and therefore negotiable.

3. The Negotiability Appeal with respect to the remainder of the proposals is dismissed as presenting a previously determined issue.

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

February 18, 1994