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

In the Matter of:)	
)	
American Federation of Government)	
Employees, Locals 1000, 2725, 2741,)	
2978, 3444, and 3721,)	PERB Case No. 17-I-03
)	
Petitioner,)	Opinion No. 1612
)	
and)	
)	
DHS, DDS, DYRS, DOES, DDOT, DMV,)	
DFHV, DHCD, DCHA, DCRA, DOEE, OSSE,)	
DRP, DOH, MPD, FEMS,)	
)	
Respondent.)	

DECISION AND ORDER

I. Statement of the Case

Before the Board is a Notice of Impasse for Non-Compensation Negotiations (“Notice”) filed by the American Federation of Government Employees, Locals 1000, 2725, 2741, 2978, 3444, and 3721 (“AFGE”) pursuant to PERB Rule 527 *et seq.* against sixteen (16) District of Columbia agencies¹ (“Agencies”). AFGE asserts that the parties were engaged in terms and conditions of employment bargaining over proposals for ePerformance and drug and alcohol

¹ Department of Human Services, Department of Disability Services, District Department of Transportation, Metropolitan Police Department, Department of Employment Services, Fire and Emergency Medical Services Department, Office of State Superintendent of Education, Department of Youth Rehabilitation Services, Department of Health, District Department of For-Hire Vehicles, and District of Columbia Department of Consumer and Regulatory Affairs, Department of Housing and Community Development, Department of Motor Vehicles, Department of Parks and Recreation, District of Columbia Housing Authority, and Department of Energy and Environment.

testing programs before reaching impasse on December 7, 2016.² AFGE requests PERB advance the matter through impasse procedures.³

The Agencies filed a Motion to Dismiss, arguing that the parties were engaged in impacts and effects (“I&E”) bargaining, and not negotiations of the terms and conditions of collective bargaining agreements.⁴ The Agencies note that the Board has held that impasse procedures are reserved for negotiations of the terms and conditions of collective bargaining agreements.⁵ For the reasons stated below, AFGE’s Notice is dismissed and the Agencies’ Motion to Dismiss is granted.

II. Background

In April 2009, ten (10) AFGE Locals filed an unfair labor practice complaint against twenty-one (21) District agencies, alleging that the agencies refused to bargain over the development of a new annual electronic performance management system known as ePerformance, and a drug and alcohol testing program.⁶ In June 2015, the Board determined in Slip Opinion 1528 that the Agencies committed an unfair labor practice and ordered the Agencies to engage in I&E bargaining.⁷ Subsequently, at the request of AFGE, the parties commenced negotiations and met four (4) times between June 2, 2016 and September 6, 2016.⁸ The parties continued to bargain and exchange proposals until December 1, 2016.⁹ On December 7, 2016, the Agencies notified AFGE that the parties were not at agreement.¹⁰ Consequently, AFGE filed this Notice.¹¹

III. Analysis

The contentions presented here do not differ significantly from those raised in the Notice of Impasse filed by the District of Columbia Nurses’ Association (DCNA) in PERB Case 16-I-07 (Slip Opinion 1602). There, DCNA asserted it had reached impasse with the District of Columbia Department of Health (“DOH”) during I&E bargaining over relocating the DOH Immunization Clinic, and asked PERB to find that the parties were at impasse.¹² In that case, the Board stated, “Unlike the negotiation of collective bargaining and compensation agreements,

² Notice at 2

³ *Id.*

⁴ Motion to Dismiss at 3.

⁵ *Id.* (citing *D.C. Nurses Ass’n v. D.C. Dep’t of Health*, 64 D.C. Reg. 723, Slip Op. 1602, PERB Case No. 16-I-07 (2016)).

⁶ Motion to Dismiss, Exhibit A.

⁷ *AFGE v. D.C. Gov’t*, 62 D.C. Reg. 11793, Slip Op. 1528, PERB Case No. 9-U-31 (2016).

⁸ Notice at 4; Motion to Dismiss at 2.

⁹ Motion to Dismiss at 3.

¹⁰ Notice at 3.

¹¹ *Id.*

¹² *D.C. Nurses’ Ass’n*, Slip Op. 1602 at 1.

there is not an obligation to reach an agreement during I&E bargaining.¹³ Thus, I&E bargaining can never reach ‘impasse’ as defined in PERB Rule 599.17¹⁴ and therefore does not qualify for the impasse resolution procedures in PERB Rule 526 and 527.”¹⁵ In rejecting DCNA’s arguments, the Board concluded “that the impasse procedures outlined in PERB Rule 527 *et seq.* are reserved for negotiations of terms and conditions collective bargaining agreements pursuant to D.C. Official Code § 1-617.01(b)(2).”¹⁶

Despite AFGE’s unfounded assertions that the Parties are engaged in non-compensation negotiations over the terms and conditions of a collective bargaining agreement, the Board’s review of the pleadings reveals that the Parties were engaged solely in I&E bargaining.¹⁷ As previously stated, in Slip Opinion 1528, the Board directed the Parties to engage in I&E bargaining over ePerformance and drug and alcohol testing program proposals. The Board finds there is no basis for distinguishing AFGE’s assertions here and the arguments presented in DCNA’s Notice of Impasse in PERB Case 16-I-07 (Slip Opinion 1602). Accordingly, the Board concludes for the reasons stated in Slip Opinion 1602, that the impasse procedures outlined in PERB Rule 527 *et seq.* are not available to the parties over the proposals at issue here. Therefore, AFGE’s Notice of Impasse is denied and the case dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Agencies’ Motion to Dismiss is granted.
2. AFGE’s Notice of Impasse is dismissed with prejudice.
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 Ann Hoffman and Douglas Warshof.

¹³ *D.C. Nurses Ass’n*, Slip Op. 1602 at 2.

¹⁴ PERB Rule 599.1: “**Impasse** - The point in collective bargaining negotiations at which no further progress can be made by the parties without the intervention of a neutral third party, except as otherwise defined by the CMPA for compensation bargaining.”

¹⁵ *D.C. Nurses Ass’n*, Slip Op. 1602 at 2; *See AFSCME, Dist. Council 20, Local 240*, Slip Op. No. 1497 .

¹⁶ *D.C. Nurses Ass’n*, Slip Op. 1602 at 1(citing *Am Fed’n of State, Cnty, and Mun. Emp., Dist. Council 20, Local 2401, AFL-CIO and D.C. Child and Family Serv. Agency*, 61 D.C. Reg. 12586, Slip Op. 1497, PERB Case No. 10-I-06 (2014); *see also D.C. Nurses Ass’n and D.C. Dept. of Health*, 62 D.C. Reg. 10498, Slip Op. 1522, PERB Case No. 15-I-06 (2015)).

¹⁷ *See, AFGE v. D.C. Gov’t*, Slip Op. 1528.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 17-I-03, Op. No. 1612 was sent by File and ServeXpress to the following parties on this the 24th day of February, 2017.

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