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

In the Matter of:)	
)	
American Federation of)	
Government Employees, Local 631)	
)	PERB Case No. 19-I-02
Petitioner)	
)	Opinion No. 1717
v.)	
)	
Office of Labor Relations and)	
Collective Bargaining)	
)	
Respondent)	

DECISION AND ORDER

I. Introduction

On May 17, 2019, the American Federation of Government Employees, Local 631 (AFGE) filed a Request for Impasse Resolution (Request). On May 30, 2019, the Office of Labor Relations and Collective Bargaining (OLRCB) filed a motion to dismiss the Request. Pursuant to the Comprehensive Merit Personnel Act (CMPA), § 1-617.02(d) of the D.C. Official Code, “if after a reasonable period of negotiation concerning the terms and conditions of employment to be incorporated into a collective bargaining agreement further negotiation appears unproductive to the Board, an impasse shall be deemed to have occurred.” Upon consideration of the applicable law and the record presented by the parties, OLRCB’s motion to dismiss is granted for the reasons stated herein.

II. Statement of the Case

On February 25, 2019, the District of Columbia made a presentation to the leadership of multiple public employee unions regarding the implementation of its Automated Dues Processing (ADP) initiative as an alternative to the authorization of dues using a paper form.¹

¹ Motion to Dismiss at 1.

The ADP initiative permits bargaining unit employees to authorize and cancel dues deductions electronically.² OLRCB did not require the participation of any union in the ADP initiative. If a union chose not to participate in the ADP initiative, no changes would be made in the way authorization would be implemented.³

On March 5, 2019, OLRCB sent an email to the union presidents to notify all unions wishing to participate in the ADP initiative of the information required to participate. OLRCB requested that the unions submit: (1) an email address of the union's point of contact to receive automated confirmation notifications, and (2) specific information for the website landing page, which outlined the obligations and terms associated with dues deduction.⁴ The email also described the employee information that would be provided in the automated confirmation notifications, including the last four digits of the employee's Social Security number.⁵ Finally the email provided that "given the risks and liability with email transmission, the District will not provide personal identifying information such as home addresses in the automated email."⁶

Under AFGE's collective bargaining agreement, members currently authorize dues deduction using a specific D.C. Form 277. The D.C. Form 277 requests members to provide their nine-digit Social Security number and their home addresses.

On March 6, 2019, OLRCB and AFGE met to bargain over the ADP initiative.⁷ OLRCB informed AFGE that the parties were present to engage in impact and effects bargaining regarding the implementation of the ADP.⁸ AFGE disagreed and insisted that the parties were engaged in substantive bargaining regarding the terms and conditions of the collective bargaining agreement.⁹ Although the parties did not agree on the type of bargaining in which they were engaged, the parties still discussed their respective positions on the ADP initiative. AFGE's position was that the ADP initiative should be formatted to provide the same information available on the paper D.C. Form 277.¹⁰ OLRCB maintained that the personal identifiable information would not be provided.¹¹

Subsequently, AFGE and OLRCB exchanged emails regarding the status of the ADP implementation. On March 20, 2019, AFGE sent an email asking for the status of the dues deduction issue. On March 22, 2019, OLRCB communicated that the District would not provide the full Social Security numbers or home addresses of employees.¹² On March 25, 2019, AFGE sent OLRCB a proposal and letter requesting substantive bargaining.¹³ After receiving no

² Request at 2.

³ Motion to Dismiss at 3.

⁴ Motion to Dismiss at 3.

⁵ Motion to Dismiss at 3.

⁶ Motion to Dismiss at 3.

⁷ Request at 2.

⁸ Motion to Dismiss at 3.

⁹ Motion to Dismiss at 3.

¹⁰ Request Ex. C.

¹¹ Motion to Dismiss at 4.

¹² Motion to Dismiss at 4.

¹³ Request at 2.

response, AFGE in a letter dated May 8, 2019, declared an impasse and asserted that OLRCB implemented the electronic dues deduction process without completing negotiations.¹⁴ On May 9, 2019, OLRCB responded to AFGE's letter and rejected the declaration of impasse, rejected the proposal, and asserted its right to secure the personal identifiable information of public employees.¹⁵

III. Discussion

There are two issues in this dispute that the Board will address in order: OLRCB's erroneous contention that the implementation of the ADP initiative is not a mandatory subject of bargaining and OLRCB's question of the negotiability concerning AFGE's proposal, which required OLRCB to provide AFGE with employees' Social Security numbers and home addresses.

First, under § 1-617.07 of the D.C. Official Code “. . . the exclusive representative shall, upon request, have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues. Such authorization, costs, and termination shall be proper subjects of collective bargaining.” The Board finds that, under this statutory provision, the automated dues processing initiative is a mandatory subject of bargaining and subject to the impasse proceedings under Board Rule 527. The Board finds that the parties have engaged in a reasonable period of negotiation and further negotiations would be unproductive.¹⁶ It is the Board's determination that the parties have reached an impasse.¹⁷

Although an impasse exists related to a mandatory subject of bargaining, the only proposal at issue has been declared nonnegotiable by OLRCB. In these circumstances, pursuant to Board Rule 532.1, and a finding by the Board that an impasse has occurred in a non-compensation matter, the issue for which negotiability has been challenged must be withdrawn from PERB, or a negotiability appeal filed with the Board within seven (7) days of the determination of an impasse.¹⁸

Therefore, the Petitioner is directed to either withdraw the proposal or file a negotiability appeal within seven (7) days of issuance of this decision. Additionally, the impasse proceedings will be suspended until the issue of negotiability is resolved as the proposal before the Board is the sole issue creating the impasse.

¹⁴ Request Ex. E.

¹⁵ Motion to Dismiss Ex. C.

¹⁶ Board Rule 527.1

¹⁷ *Cheney Cal. Lumber Co. v. NLRB*, 319 F.2d 375, 380 (9th Cir. 1963). (finding the determinative issue for impasse is whether the Union in that case had reasonable cause to believe and did sincerely believe that an impasse had been reached)

¹⁸ *AFGE, Local 3721 v. FEMS*, 46 D.C. Reg.7613, Slip Op. 390 at n.1, PERB Case No. 94-N-04 (1999).

ORDER

IT IS HEREBY ORDERED THAT:

1. AFGE and OLRCB have reached impasse.
2. AFGE is directed to withdraw its proposal or file a negotiability appeal within seven (7) days of issuance of this order.
3. Impasse proceedings are suspended until resolution of the negotiability issue.
4. 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, Members Douglas Warshof, and Mary Anne Gibbons.

Washington, D.C.
July 18, 2019

