Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Washington Teachers Union	
Petitioner	PERB Case No. 24-N-04, 24-N-05, 24-N-06, 24-N-07, 24-N-08, 24-N-09
v.	
	Opinion No. 1884
District of Columbia Public Schools	
Respondent	

DECISION AND ORDER

I. Statement of the Case

On April 1, 2024, the Washington Teachers Union (WTU) filed negotiability appeals in PERB Case Nos. 24-N-08 and 24-N-09. On April 3, 2024, WTU filed negotiability appeals in PERB Case Nos. 24-N-04, 24-N-05, 24-N-06, and 24-N-07.[1] These six negotiability appeals were consolidated on April 5, 2024, and PERB Case No. 24-N-04 was designated as the lead case. The instant consolidated negotiability appeal concerns thirteen (13) proposals made by WTU and declared nonnegotiable by District of Columbia Public Schools (DCPS).

II. Background[2]

WTU and DCPS are currently in the process of negotiating a successor CBA concerning terms and conditions of employment for a unit of schoolteachers. Negotiations began in June of 2023, when WTU submitted a proposed memorandum of agreement (MOA) concerning emergency preparedness/safety, a subject which was not covered under the existing CBA.[3] DCPS

[1] These four negotiability appeals were initially filed on March 28, 2024. However, they were resubmitted on April 3, 2024, to correct minor deficiencies.
[2] There are no factual disputes in this case.
[3] 24-N-08 Appeal at 1-2.

did not reply to WTU's proposal.[4] In September of 2023, WTU reproposed the MOA regarding emergency preparedness/safety, and proposed two new MOAs, one concerning a climate curriculum task force, and one concerning teacher diversity.[5] Those topics were not covered under the existing CBA. In September of 2023, WTU also submitted a proposal regarding class size, a topic which is covered under Article 23.13 of the existing CBA.[6]

On November 29, 2023, DCPS sent its initial set of responses and proposals to WTU,[7] asserting that the following provisions of the current CBA concerned nonnegotiable topics: Articles 2.10.1.7-2.10.1.8; 2.11.2.1.7-2.11.2.1.8; and 2.12.10-2.12.11 (partnership, collaborative, and improvement schools);[8] Article 15.2 (teacher evaluations); Articles 16.1 and 16.3-16.5 (interruptions, communication systems, and monitoring of teachers); Article 22 (the student activity fund); and Articles 39.1 and 39.5-39.7 (reduction in force (RIF), abolishment, and furlough).[9] Additionally, DCPS responded to WTU's proposal regarding class size, asserting that the subject was nonnegotiable.[10] That same day, DCPS sent WTU proposals which sought to delete existing portions of the CBA, including Article 1.5.2 (job duties); Article 20 (relief from non-teaching duties); Article 24.5.5 (Individualized Education Program (IEP) caseload);[11] and Articles 18.1.2-18.1.4; 18.1.6-18.12; and 18.2-18.4 (behavior management and student discipline).[12]

On December 30, 2023, DCPS asserted that the subjects covered under the following existent CBA provisions were nonnegotiable: Article 23.1 (work year); Article 23.2 (work day); Article 23.3 (signing in and out); and Article 23.4 (leaving the school building).[13] On February 26, 2024, DCPS declared that the subjects of WTU's three proposed MOAs (emergency preparedness, the climate curriculum task force, and teacher diversity) were also nonnegotiable.[14]

On March 10, 2024, WTU responded to DCPS' proposals by proposing to retain the following existent CBA provisions: Article 23.1 (work year); Article 23.2 (work day); Article 23.3 (signing in and out); Article 23.4 (leaving the school building);[15] Articles 24.2.8-24.2.11 (counselors);[16] Article 18 (behavior management and student discipline);[17] Articles 2.10.1.7-2.10.1.8; 2.11.2.1.7-2.11.2.1.8; and 2.12.10-2.12.11 (partnership, collaborative, and improvement schools); Articles 16.1 and 16.3-16.5 (interruptions, communication systems, and monitoring of

[4] 24-N-08 Appeal at 3.
[5] 24-N-08 Appeal at 1.
[6] 24-N-09 Appeal at 3-6. In its Appeal, WTU mistakenly states that class size is covered under Article 23.1. However, the CBA shows that class size is covered under Article 23.13. Article 23.1 covers work year.
[7] 24-N-05 Appeal at 3; 24-N-06 at 3; 24-N-07 Appeal at 2; 24-N-09 at 2.
[8] 24-N-07 Appeal at 2.
[9] 24-N-07 Appeal at 2.
[10] 24-N-09 Appeal at 3-6.
[11] 24-N-05 Appeal at 3.
[12] 24-N-06 Appeal at 3.
[13] DCPS Brief at 3.
[14] 24-N-08 Appeal at 3.
[15] 24-N-04 Appeal at 2.
[16] 24-N-04 Appeal at 2.
[17] 24-N-06 Appeal at 2-3.

teachers); Article 22 (the student activity fund); and Articles 39.1; 39.5-7 (RIF, abolishment, and furlough).[18] In the alternative, WTU proposed revised language for the CBA provisions regarding work year; work day;[19] behavior management and student discipline;[20] job duties; relief from non-teaching duties; IEP caseload;[21] and teacher evaluations.[22]

On March 19, 2024, DCPS declared nonnegotiable WTU's proposals regarding behavior management and student discipline;[23] relief from non-teaching duties; work year; work day;[24] partnership, collaborative, and improvement schools; teacher evaluations; interruptions, communication systems, and monitoring of teachers; and RIF, abolishment, and furlough.[25] Around the same time, DCPS made known that it deemed the subjects of job duties and IEP caseload to be nonnegotiable as well.[26] All these topics were covered under the existing CBA.

On March 22, 2024, WTU proposed Article 24.8, a new CBA provision that would extend the terms regarding relief from non-teaching duties, to apply to "related service providers, such as school social workers."[27] DCPS did not respond to that proposal.[28] On March 22, 2024, WTU sent DCPS a revised proposal regarding class size, removing the language limiting class sizes while creating procedures in the event that DCPS sought to increase them.[29] WTU also sent DCPS a revised version of the proposed MOA regarding emergency preparedness.[30] During a March 26, 2024 bargaining session, DCPS declared WTU's revised class size proposal to be nonnegotiable.[31] The record suggests that DCPS did not respond to WTU's revised proposal for an MOA regarding emergency preparedness.[32]

Between April 1 and April 3, 2024, WTU filed six (6) negotiability appeals, since consolidated, which assert the negotiability of nineteen (19) proposals that DCPS has declared nonnegotiable. DCPS submitted its Answer on May 8, 2024, concurrently withdrawing its declaration of non-negotiability concerning WTU's proposed MOA to establish a climate curriculum task force.[33] DCPS also withdrew its declaration of non-negotiability concerning

[18] 24-N-07 Complaint at 2.
[19] 24-N-04 Appeal at 5-8.
[20] 24-N-06 Appeal at 2-3. WTU expressed a preference for retaining the current language concerning behavior management and student discipline. However, WTU proposed a revised version of that provision as an alternative.
[21] 24-N-05 Appeal at 3.
[22] 24-N-07 Appeal at 2.
[23] 24-N-06 Appeal at 3 (citing WTU Exhibit 6).
[24] 24-N-04 Appeal at 2 (citing WTU Exhibit 2).
[25] 24-N-07 Appeal at 2 (citing WTU Exhibit 4). The cited exhibit is a March 19, 2024, email from OLRCB (on behalf of DCPS) to WTU, asserting the non-negotiability of several proposals. It does not discuss the proposal to retain the CBA provisions regarding partnership, collaborative, and improvement schools. However, DCPS does not contest that it declared that proposal nonnegotiable on March 19, 2024.
[26] 24-N-05 Appeal at 3.
[27] 24-N-05 Appeal at 3.
[28] 24-N-05 Appeal at 3.
[29] 24-N-09 Appeal at 2.
[30] 24-N-08 Appeal at 4.
[31] 24-N-09 Appeal at 3.
[32] 24-N-08 Appeal at 4-7.
[33] Joint Stipulation of Partial Dismissal as to Certain Proposals at 1.

WTU's proposals to retain the current CBA language regarding the student activity fund; signing in and out; and leaving the school building.[34] Additionally, DCPS partially withdrew its declaration of non-negotiability concerning WTU's proposed MOA regarding emergency preparedness/safety; and partially withdrew its declaration of non-negotiability with respect to WTU's proposal to retain the current CBA language regarding counselors.[35] DCPS filed a supporting brief (DCPS Brief) on May 16, 2024, reasserting that the remainder of WTU's proposals were non-negotiable and arguing that much of the appeal was untimely under Board Rule 532.2.[36]

On June 5, 2024, DCPS withdrew its declaration of non-negotiability regarding WTU's proposed revision concerning behavior management and student discipline.[37] On June 5, 2024, WTU submitted a supporting brief (WTU Brief). DCPS filed a Surreply on June 13, 2024.[38] On July 29, 2024, DCPS withdrew its declaration of non-negotiability regarding WTU's revised proposal for relief from non-teaching duties.[39] The remaining thirteen (13) proposals are before the Board for disposition.

III. Standard of Review

There are three categories of collective bargaining subjects: (1) mandatory subjects over which the parties must bargain if either party requests it; (2) permissive subjects over which the parties may bargain; and (3) illegal subjects over which the parties may not bargain.[40] A permissive subject of bargaining is nonnegotiable if either party declines to bargain on the subject.[41] Management rights are permissive subjects of bargaining.[42] Section 1-617.08(a) of the D.C. Official Code sets forth management rights giving management the "sole rights" to undertake actions listed therein.[43]

Matters that do not contravene section 1-617.08(a) or other provisions of the Comprehensive Merit Personnel Act (CMPA) are negotiable.[44] Section 1-617.08(b) of the D.C. Official Code provides that the right to negotiate over terms and conditions of employment extends to all matters except those that are proscribed by the CMPA.[45]

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[34] Joint Stipulation of Partial Dismissal as to Certain Proposals at 1.
[35] Joint Stipulation of Partial Dismissal as to Certain Proposals at 1.
[36] DCPS Brief at 4-13.
[37] Joint Stipulation of Partial Dismissal as to Certain Proposals at 1.
[38] DCPS concurrently submitted a motion for leave to file a surreply. WTU did not file an opposition. DCPS' motion for leave to file a surreply is hereby granted and DCPS' Surreply is accepted into the record.
[39] Joint Stipulation of Partial Dismissal as to Article 20 Proposal at 1.
[40] *D.C. Nurses Ass'n v. D.C. Dep't of Pub. Health*, 59 D.C. Reg. 10776, Slip Op. No. 1285 at 4, PERB Case No. 12-N-01 (2012) (*citing NLRB v. Wooster Div. of Borg-Warner Corp*., 356 U.S. 342 (1975)).
[41] *Univ. of D.C. Faculty Ass'n v. UDC*, 64 D.C. Reg. 5132, Slip Op. No. 1617 at 2, PERB Case No. 16-N-01 (2017).
[42] *NAGE Local R3-06 v. WASA*, 60 D.C. Reg. 9194, Slip Op. No. 1389 at 4, 13-N-03 (2013); *FEMS and AFGE, Local 3721*, 54 D.C. Reg. 3167, Slip Op. 874 at 9, PERB Case No. 06-N-01 (2007).
[43] D.C. Official Code § 1-617.08(a).
[44] *Univ. of D.C. Faculty Ass'n* , Slip Op. No. 1617 at 4.
[45] D.C. Official Code § 1-617.08(b).

Pursuant to section 1-605.02(5) of D.C. Official Code, the Board is authorized to make a determination in disputed cases as to whether a matter is within the scope of collective bargaining. The Board's jurisdiction to decide such questions is invoked by the party presenting a proposal that has been declared nonnegotiable by the party responding to the proposal.[46] The Board will separately consider the negotiability of each of the matters in a dispute.[47]

IV. Analysis

There are Thirteen (13) proposals which DCPS has identified as nonnegotiable subjects of bargaining. These proposals are set forth below.

A. Article 1.5.2 (Job Duties)

Current version:[48]

DCPS shall not, during the life of this Agreement, change the duties and/or responsibilities of an existing job classification without first bargaining to agreement with the WTU.

Revised version:[49]

DCPS shall not, during the life of this Agreement, change the duties and/or responsibilities of an existing job classification without first engaging in impacts and effects bargaining with the WTU. If the parties reach impasse, the parties will request the assistance of a third-party to resolve the impasse through mediation, fact-finding, or other mutually agreeable process. DCPS may not implement a change prior to the completion of impacts and effects bargaining, including impasse proceeding.[50]

DCPS' Position

DCPS argues that both the current version of Article 1.5.2 and the revised version of Article 1.5.2 are nonnegotiable because WTU's negotiability appeals are time barred under Board Rule 532.2.[51] Regarding the current version of Article 1.5.2, DCPS asserts that the appeal deadline was January 3, 2024,[52] (thirty-five (35) days after DCPS made its November 29, 2023, declaration of non-negotiability).[53] DCPS asserts that the appeal deadline was the same for the revised version

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[46] *FOP/Protective Serv. Police Dep't Labor Comm. v. DGS*, 62 D.C. Reg. 16505, Slip Op. 1551 at 1, PERB Case No. 15-N-04 (2015).
[47] *Univ. of D.C. Faculty Ass'n,* Slip Op. No. 1617 at 2-3.
[48] The term "current version" refers to a provision which is part of the existent CBA.
[49] The term "revised version" refers to a new version of an existent CBA provision which WTU has proposed inserting into the CBA in place of the current version. Some of the parties' submissions use the term "proposed alternative version" to describe the same thing.
[50] 24-N-05 Appeal at 6-7.
[51] DCPS Brief at 4-5 (citing *Compensation Unit 31 v. WASA*, 66 D.C. Reg. 3197, Slip Op. No. 1640, PERB Case No. 16-N-02 (2019)).
[52] In its Brief, DCPS misstates this date as December 3, 2023. DCPS Brief at 5 (citing Board Rule 532.2).
[53] DCPS Brief at 5.

of Article 1.5.2, because that adaptation does not materially alter the substance of the current version.[54]

DCPS also argues that both versions of Article 1.5.2 are nonnegotiable because they infringe on the management right to direct and assign employees, as established under D.C. Official Code § 1-617.08(a)(1) and (2).[55] Additionally, DCPS argues that the revised version of Article 1.5.2 violates Board precedent which holds that there is no right to impasse procedures under impact and effects bargaining.[56]

WTU's Position

WTU asserts that its appeal concerning the revised version of Article 1.5.2 is timely.[57] WTU argues that under Board Rule 532.1, the thirty-five (35) day clock starts to run at the time a proposal is declared nonnegotiable, not at the time an existing CBA provision is declared nonnegotiable.[58] WTU proposed the revised version of Article 1.5.2 on March 10, 2024, which DCPS declared non-negotiable on or about March 19, 2024.[59] Under WTU's calculus, the appeal deadline was on or about April 23, 2024 (thirty-five (35) days after the revised version was declared nonnegotiable).[60] WTU does not appeal DCPS' declaration of non-negotiability concerning the current version of Article 1.5.2.[61]

Additionally, WTU argues that the revised version of Article 1.5.2 is negotiable because the CMPA establishes a presumption of negotiability,[62] thereby imposing on DCPS the "burden…to establish its contentions with respect to proposals it declares nonnegotiable."[63] WTU argues that the revised version of Article 1.5.2 is negotiable because it provides procedures for changing job duties, while preserving management's right to make those changes.[64] Under the revised version, WTU asserts, "management need only engage in impact and effects bargaining…and… need only bargain to impasse and attempt to resolve the impasse, before it can

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[54] DCPS Brief at 7-8 (citing *WTU, Local 6 v. DCPS*, 46 D.C. Reg. 8090, Slip Op. No. 450 at 3, PERB Case No. 95-N-01 (1999)). Concerning the twelve (12) subsequent proposals discussed herein, unless stated otherwise, DCPS presents the same argument as to why WTU's negotiability appeals are untimely.
[55] 24-N-05 Appeal, WTU Exhibit 2 at 10.
[56] DCPS Brief at 8 (citing *AFGE, Local 872 v. WASA*, 69 D.C. Reg. 5580, Slip Op. No. 1811 at 3, PERB Case No. 22-I-02 (2022)).
[57] 24-N-05 Appeal at 3.
[58] 24-N-05 Appeal at 4-6.
[59] 24-N-05 Appeal at 3.
[60] Concerning the twelve (12) subsequent proposals discussed herein, unless stated otherwise, WTU presents the same argument as to why its negotiability appeals are timely.
[61] WTU Brief at 11.
[62] 24-N-05 Appeal at 7 (citing *AFGE v. FEMS*, 64 D.C. Reg. 13378, Slip Op. No. 1641, PERB Case No. 16-N-03 (2017)).
[63] 24-N-05 Appeal at 7 (quoting *Teamsters Local Union No. 639 v. DCPS*, 38 D.C. Reg. 6693, Slip Op. No. 263 at 13, PERB Case Nos. 90-N-02, 90-N-03, & 90-N-04 (1991)).
[64] 24-N-05 Appeal at 7.

alter job duties."[65] WTU asserts that the Board has previously found that similar proposals did not impact management rights and were, therefore, negotiable.[66]

WTU contends that the portion of the revised version which concerns third-party impasse procedures is negotiable, as the Board has previously held that parties may propose to "create impasse resolution procedures in the parties' collective bargaining agreement independent of those outlined in PERB Rule 527."[67] WTU argues that its revised version is negotiable because "[i]t creates a process for implementing management rights, including impact and effects bargaining, third-party impasse proceedings, and an obligation to complete bargaining before implementing a change."[68]

Board's Conclusion

The Board finds that WTU's negotiability appeal regarding the revised version of Article 1.5.2 is timely. Under Board Rules 532.1 and 532.2, where a party presents a proposal and receives a written declaration of non-negotiability in response, the proposing party has thirty-five (35) days from the declaration of non-negotiability in which to file an appeal. Applying that principle to the instant matter, the Board finds that WTU's March 28, 2024, appeal was submitted well before the approximate deadline of April 23, 2024, and is, therefore, timely.[69]

However, the Board finds that the revised version of Article 1.5.2 is nonnegotiable. Under D.C. Official Code § 1-617.08(a)(1) and (2), management has the sole right to direct employees and assign work. The Board has held that the right to assign work encompasses the right to determine particular duties to be assigned, when work assignments will occur, and to whom or what positions the duties will be assigned.[70] At the union's request, management is required to bargain over the impacts and effects of such decisions.[71] However, the Board has established that there is no obligation to reach an agreement during impact and effects bargaining, and thus impact and effects bargaining can never reach impasse as defined in PERB Rule 599.1.[72] The revised version of Article 1.5.2 interferes with the management rights established in D.C. Official Code § 1-617.08(a)(1) and (2),[73] as it would require the parties to bargain to impasse over the impact and

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[65] 24-N-05 Appeal at 7.
[66] 24-N-05 Appeal at 7-8 (citing *AFGE, Local 3721 v. FEMS*, 65 D.C. Reg. 7650, Slip Op. No. 1658 at 3-6, PERB Case No. 17-N-03 (2018).
[67] 24-N-05 Appeal at 8 (citing *AFGE, Local 3721*, Slip Op. No. 1658 at 5).
[68] 24-N-05 Appeal at 8.
[69] Concerning the twelve (12) subsequent proposals discussed herein, unless stated otherwise, the Board finds those negotiability appeals timely for the same reason.
[70] *AFSCME, Local 1959 v. OSSE*, 68 D.C. Reg. 1349, Slip Op. No. 1766 at 4, PERB Case No. 21-N-01 (2021) (citing *AFGE, Local 1985*, 55 FLRA 1145, 1148 (1999)).
[71] *Teamsters, Local 446*, Slip Op. No. 312 at 3, PERB Case No. 91-U-06 (1994) (establishing that an exercise of management rights does not relieve the employer of its obligation to bargain over the impact and effects of, and procedures concerning, the implementation of those rights).
[72] *AFGE, Local 1000, et al. v. DHS, et al.*, 64 D.C. Reg. 4889, Slip Op. No. 1612 at 2-3, PERB Case No. 17-I-03 (2017).
[73] *AFGE, Locals 383, 1000, 1975, 2725, 2741, and 2978 v. RHC, et al.*, 68 D.C. Reg. 40, Slip Op. No. 1798 at 6, PERB Case No. 21-N-03 (2021) (finding that a proposal concerning emergency operations was nonnegotiable because

effects of management's decisions concerning employees' duties.[74] Therefore, the Board finds that proposal to be nonnegotiable.[75]

B. Articles 2.10.1.7-2.10.1.8; 2.11.2.1.7-2.11.2.1.8; and 2.12.10-2.12.11 (Partnership, Collaborative, and Improvement Schools)

Current version:[76]

2.10.1.7

DCPS is prohibited from substantially changing the working conditions at any Partnership School during any school year.

2.10.1.8

If DCPS desires to implement working conditions or compensation at any Partnership School that are different than those found in this Agreement, DCPS must first negotiate such terms with the WTU. If the Parties are unable to agree, the working condition or compensation at the Partnership Schools shall remain the same as defined in this Agreement.

2.11.2.1.7

DCPS is prohibited from substantially changing the working conditions at any Collaborative School during any school year.

2.11.2.1.8

If DCPS desires to implement working conditions or compensation at any Collaborative that are different than those found in this Agreement, DCPS must first negotiate such terms with the WTU. If the Parties are unable to agree, the working condition or compensation at the Collaborative [*sic*] shall remain the same as defined in this Agreement.

2.12.10

DCPS is prohibited from substantially changing the working conditions at any Improvement School during any school year.

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it interfered with management's right to assign work, as established under D.C. Official Code § 1-617.08(a)(2)); *Univ. of D.C. Faculty Ass'n*, Slip Op. No. 1617 at 40 (finding that a proposal was nonnegotiable because it "imposed a variety of restrictions on assignments to faculty," thereby interfering with management's right to direct employees, as established under D.C. Official Code § 1-617.08(a)(1)).

[74] *Cf. AFGE, Local 3721*, Slip Op. No. 1658 at 4 (finding that a proposal to establish third-party impasse procedures for impacts and effects bargaining over working conditions was negotiable, as the proposal did not impact the management rights established in D.C. Official Code § 1-617.08(a)).

[75] The current version of Article 1.5.2 is not a proposal and is not the subject of the instant negotiability appeal. Thus, the Board makes no determination regarding its negotiability.

[76] WTU's Brief asserts that "[t]he content of WTU's proposed 'modified' article 2 is nearly identical to the existing language – it only adds the following sentence: 'If the Parties are unable to agree, the working conditions or compensation at the [partnership/collaborative/improvement] School shall remain the same as defined in this Agreement.'" WTU Brief at 9. The record shows that the current CBA includes that sentence. Therefore, the Board has determined that WTU appeals the non-negotiability of a proposal to retain the current CBA language.

2.12.11

If DCPS desires to implement working conditions or compensation at any Improvement School that are different than those found in this Agreement, DCPS must first negotiate such terms with the WTU. If the Parties are unable to agree, the working conditions or compensation at the Improvement School shall remain the same as defined in this Agreement.[77]

DCPS' Position

DCPS argues that WTU's proposal to retain Articles 2.10.1.7-2.10.1.8; 2.11.2.1.7-2.11.2.1.8; and 2.12.10-2.12.11 is nonnegotiable because it infringes on management's right to implement working conditions, which DCPS contends falls within the management right to assign work, as established under D.C. Official Code § 1-617.08(a)(2).[78]

WTU's Position

DCPS argues that its proposal to retain the current versions of Articles 2.10.1.7-2.10.1.8; 2.11.2.1.7-2.11.2.1.8; and 2.12.10-2.12.11 is negotiable, as D.C. Official Code § 1-617.17(f)(1)(A)(ii) of the CMPA provides that "working conditions or other non-compensation matters shall be negotiated concurrently with negotiations concerning compensations."[79] Additionally, WTU asserts that the CBA "designate[s] WTU as the sole and exclusive bargaining representative for negotiating…working conditions for employees."[80]

Board's Conclusion

The Board finds that WTU's proposal to retain Articles 2.10.1.8; 2.11.2.1.8; 2.12.11 is negotiable. The Board has held that proposals which would require management to bargain over working conditions are negotiable, provided they do not infringe upon the management rights established in D.C. Official Code § 1-617.08 of the CMPA.[81] The scope of these proposals is limited to negotiable subjects, as they solely apply to working conditions already agreed upon in the CBA.

However, the Board finds that WTU's proposal to retain Articles 2.10.1.7; 2.11.2.1.7; and 2.12.10 is nonnegotiable. The statement that "DCPS is prohibited from substantially changing the working conditions at any [Partnership/Collaborative/Improvement] School during any school year" is overly broad. The Board has found that a proposal with broad working conditions language is negotiable if it is expressly limited to matters properly within the scope of collective bargaining.[82] WTU's proposal to retain Articles 2.10.1.7; 2.11.2.1.7; and 2.12.10 is nonnegotiable, as it provides no express limitation on the prohibition against changing working conditions and has the potential to infringe on management's rights.

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[77] 24-N-07 Appeal at 5-6.
[78] 24-N-07 Appeal, WTU Exhibit 2 at 21.
[79] 24-N-07 Appeal at 6.
[80] 24-N-07 Appeal at 6-7 (quoting WTU Exhibit 6 at 5).
[81] *E.g.*, *WTU, Local 6*, Slip Op. No. 450 at 20-21.
[82] *Id*.

C. Article 15.2 (Teacher Evaluation)

Revised version:

15.2

Though not required to do so per Section 15.1 above, DCPS makes the following commitments:

15.2.1

The WTU shall have the opportunity to consult[83] with the Chancellor on the Teacher evaluation process on an ongoing basis.

15.2.2

Teachers will be provided a copy of the documentation of all formal observations promptly following each observation. A teacher shall be given a copy of his/her final evaluation promptly following the final evaluation conference between the teacher and the rating officer. The copy, which includes the signature of the reviewing officer, shall be given to the teacher promptly after the evaluation year but not later than September 30 of that calendar year.

15.2.3

Copies of the evaluation process shall be made available to each teacher.

15.2.4

DCPS and the WTU recognize the importance of the evaluation process. To that end, DCPS shall develop and implement professional development for all Teachers on the evaluation process.[84]

DCPS' Position

DCPS argues that WTU's proposed revision to Article 15.2, as well as the current version of Article 15.2, are nonnegotiable under D.C. Official Code § 1-617.18 of the CMPA, which provides that "the evaluation process and instruments for evaluating District of Columbia Public Schools employees shall be a nonnegotiable item for collective bargaining purposes."[85]

WTU's Position

WTU argues that its proposal to revise Article 15.2 is negotiable because the subject of teacher evaluations has been included in the parties' CBA for decades, and does not infringe on

[83] WTU indicates that for the purposes of Article 15.2.1, the verb "consult" is akin to the verb "advise," i.e., to make a non-binding suggestion. 24-N-07 Appeal at 8.
[84] 24-N-07 Appeal at 8.
[85] DCPS Brief at 9, 16.

the management rights established under D.C. Official Code § 1-617.08(a) of the CMPA.[86] WTU further asserts that its proposal is negotiable because it would merely require ongoing, nonbinding negotiation which can be likened to previous proposals the Board has found negotiable.[87] WTU argues that under Federal Labor Relations Authority (FLRA) caselaw, "proposals which merely require an agency to notify employees of matters concerning their conditions of employment are negotiable procedures."[88] WTU further argues that Article 15.2.4, specifically, is negotiable because it relates to training, a subject which the Board has previously held does not interfere with management rights.[89]

Board's Conclusion

The Board finds that WTU's proposed revision of Article 15.2 is negotiable. Pursuant to D.C. Official Code § 1-617.18 of the CMPA, teacher evaluations are a management right. The Board has held that a proposal is nonnegotiable if it dictates that the union shares decision-making authority over a management right.[90] However, the Board has established that a proposal concerning a management right is negotiable if it is merely procedural and does not infringe on management's decision-making process.[91] The revised version of Article 15.2 is negotiable because although it concerns teacher evaluations, it is purely procedural and does not infringe on DCPS's process for assigning evaluation scores to teachers.

D. Articles 16.1; 16.3-16.5 (Interruptions, Communications, and Monitoring of Teachers)

Current version:

16.1

Interruption of the scheduled program of instruction during the day shall be kept at a minimum.

16.3

In buildings where the central communication systems are operable, the system shall be used only for:

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[86] 24-N-07 Appeal at 7-8.
[87] 27-N-07 Appeal at 8-9 (citing *UDC Fac. Ass'n*, Slip Op. No. 1617 at 25-30 (finding that a proposal to create a college promotion committee was negotiable because the committee would solely make recommendations); *SEIU, Local 500 v. UDC*, 62 D.C. Reg. 14633, Slip Op. No. 1539 at 2, PERB Case No. 15-N-01 (2025) (finding that a proposal to create a labor management committee was negotiable because the committee would make recommendations on health and safety issues without requiring action from UDC)).
[88] 24-N-07 Appeal at 10 (quoting *Fort Bragg Ass'n of Educators, NEA v. Dep't of the Army*, 30 F.L.R.A. 508 (Dec. 21, 1987)).
[89] 24-N-07 at 10 (citing *AFSCME, Local 1959 v. OSSE*, 65 D.C. Reg. 7657, Slip Op. No. 1659 at 6, PERB Case No. 17-N-04 (2018)).
[90] *UDC Fac. Ass'n*, Slip Op. No. 1617 at 30.
[91] *See Id*. at 29.

16.3.1

Routine announcements at scheduled times determined by the Supervisor or his/her designee in consultation with the School Chapter Advisory Committee;

16.3.2

Emergency directions concerning all personnel at any time; and

16.3.3

Individual communications of any emergency nature to any given room only when time is an essential factor.

16.4

Under no circumstances will the electronic communication system be used to monitor the activities in a classroom or teachers' cafeteria without the knowledge and consent of the Teacher(s).

16.5

In cases of emergency, phone messages for Teachers shall be delivered immediately or as soon as the Teacher can be reached. Other telephone messages will be placed in the teachers' mailboxes. This message shall include the date and time of the call.[92]

DCPS' Position

DCPS argues that WTU's proposal to retain Articles 16.1 and 16.4 is nonnegotiable because it infringes on management's rights, under D.C. Official Code § 1-617.08(a)(1) and (4) of the CMPA, to direct its employees and maintain the efficiency of DCPS operations.[93] DCPS also argues that WTU's proposal to retain Articles 16.3 and 16.4 is nonnegotiable because those provisions address the use of school communication systems, which DCPS deems to be "precisely the type of technology contemplated by D.C. Official Code § 1-617.08(a)(5)(C)."[94] Lastly, DCPS asserts that Article 16.5 is nonnegotiable because it concerns emergency messages, a subject which DCPS contends falls within the scope of D.C. Official Code § 1-617.08(a)(6).[95]

WTU's Position

WTU argues that its proposal to retain Articles 16.1 and 16.3 does not interfere with DCPS' managerial right to maintain the efficiency of its operations.[96] Rather, WTU argues, Articles 16.1 and 16.3 are "focused on eliminating barriers to teachers carrying out their assigned duties…[b]y

[92] 24-N-07 Appeal at 11-12.
[93] DCPS Brief at 16-18. D.C. Official Code § 1-617.08(a)(5)(C) of the CMPA grants management the right to determine the technology of performing the Agency's work.
[94] DCPS Brief at 17. D.C. Official Code § 1-617.08(a)(6) of the CMPA grants management the right [t]o take whatever actions may be necessary to carry out the mission of the District government in emergency situations."
[95] DCPS Brief at 18.
[96] 24-N-07 Appeal at 12.

avoiding interruptions."[97] WTU asserts that "DCPS does not have a managerial right to interrupt employees in performing the duties that management has assigned them."[98]

Additionally, WTU argues that its proposal to retain Article 16.3 relates to the health and safety of teachers, a topic which the Board has consistently found is a mandatory subject of bargaining.[99] WTU also asserts that its proposal to retain Article 16.4 is negotiable, as the management rights enumerated in D.C. Official Code § 1-617.08(a) do not include a right to "monitor" employees, with or without their consent.[100] Regarding Article 16.4, WTU argues that it does not interfere with the managerial right to direct employees or maintain efficiency, as it does not dictate how DCPS assigns work to teachers and does not relate to the technology DCPS uses to complete its work.[101]

Lastly, WTU asserts that its proposal to Retain Article 16.5 "in no way inhibits [DCPS'] ability to direct work, hire or fire employees, maintain efficiency, or to determine the agency's mission." WTU contends that Article 16.5 is negotiable because it relates to emergency messages, which fall under the umbrella of health and safety.[102]

Board's Conclusion

The Board finds that WTU's proposal to retain the current version of Article 16.1 is negotiable. The FLRA[103] has held that the level of interruption an employee experiences at work constitutes a working condition.[104] Under Board precedent, proposals which would require management to bargain over working conditions are negotiable, provided they do not infringe on the management rights established in D.C. Official Code § 1-617.08 of the CMPA.[105] Article 16.1 does not prohibit interruptions or even place a limit on the number of interruptions permitted; it merely establishes that interruptions "shall be kept at a minimum." The current version of Article 16.1 is negotiable because it does not infringe on the management right to direct employees and maintain the efficiency of operations.

However, the Board concludes that WTU's proposal to retain the current version of Article 16.3 is nonnegotiable. Under D.C. Official Code § 1-617.08(a)(5)(C), management has the right to determine the technology of performing the Agency's work. The Board has held that "[t]he

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[97] 24-N-07 Appeal at 12.
[98] 24-N-07 Appeal at 12.
[99] 24-N-07 Appeal at 12 (citing *FOP/DOC Labor Comm. v. DOC*, 67 D.C. Reg. 8532, Slip Op. No. 1744 at 6, PERB Case No. 20-U-24 (2020); *WTU, Local 6*, Slip Op. No. 450 at 14).
[100] 24-N-07 Appeal at 13.
[101] 24-N-07 Appeal at 13 (citing *AFSCME, Local 1959*, Slip Op. No. 1659 at 4-5).
[102] 24-N-07 Appeal at 14 (citing *FOP/DOC Labor Comm.*, Slip Op. No. 1744).
[103] The Board has held that it will look to precedent set by other labor relations authorities when the Board has no set precedent on an issue. *FOP/MPD Labor Comm. v. MPD*, Slip Op. No. 1119 at 5, PERB Case No. 08-U-38 (2011).
[104] *Soc. Sec. Admin. Carolina Field Off. Carolina, Puerto Rico Respondent & Am. Fed'n of Gov't Emps., Loc. 2608 Charging Party*, No. BN-CA-09-0371, 2012 WL 7990132, at *11 (Apr. 24, 2012) (citing 92 Bomb Wing, Fairchild Air Force Base, Spokane, Wash., 50 FLRA 701, 704 (1995)) (finding that by lessening employees' uninterrupted work time, the employer "imposed a practice that was different from what previously existed and, consequently, constituted a change in conditions of employment").
[105] *E.g.*, *WTU, Local 6*, Slip Op. No. 450 at 20-21.

technology of performing the agency's work" is not so broad as to preclude negotiability on any proposal related to technology, but instead only proposals that impact the core technology an agency uses to carry out its mission.[106] The Board has established that this management right encompasses the introduction of new technology, as well as the manner in which existing technological resources are used.[107] By seeking to establish that DCPS' central communication systems "shall be used only for" certain purposes, Article 16.3 interferes with the core technology DCPS uses to carry out its mission. Thus, it is nonnegotiable.[108]

The Board finds that WTU's proposal to retain the current version of Article 16.4 is nonnegotiable. The Board has adopted the National Labor Relations Board (NLRB) standard that that an "employer's action must effect a material, substantial, and significant change in terms of conditions of employment" to constitute a change in working conditions.[109] Under Board precedent, there is a management right to alter the method used to monitor employees, provided there is no change to employees' duties, income, physical surroundings, or likelihood of discipline.[110] Here, the record does not indicate that the current version of Article 16.4 impacts those factors. Therefore, the Board concludes that provision is nonnegotiable. Regarding Article 16.5 however, the Board finds that WTU's proposal to retain the current version is negotiable, as it concerns the health and safety of teachers.

E. Article 23.1 (Work Year)

Revised version:

23.1 Work Year

23.1.1 General

23.1.1

To the extent DCPS seeks to extend the work year beyond that set forth in the Articles 23.1.2 to 23.1.5, DCPS may do so by taking the following steps: (1) Inform WTU at least 90 days before the school year in which the extension would take effect, (2) Provide a list of schools and Teachers to be affected by the extension, and (3) Meet with WTU for impacts and effects bargaining, beginning at least 60 days before the start of the school year in question. If the parties reach

[106] *AFSCME, Local 1959*, Slip Op. No. 1659 at 4-5.
[107] *AFSCME, Local 1959*, Slip Op. No. 1659 at 4-5 (holding that D.C. Official Code § 1-617.08(a)(5)(C) granted management the right to place thermometers on school buses); *UDC Fac. Ass'n*, Slip Op. No. 1617 at 55 (finding that management had the right, under D.C. Official Code § 1-617.08(a)(5)(C), to determine how the agency used its existing technological resources, including its website).
[108] The Board recognizes that Articles 16.3.2 and 16.3.3 concern emergency announcements, thereby implicating the health and safety of teachers. However, the Board declines to find those provisions negotiable, as they fall under Article 16.3, which the Board has found to be nonnegotiable.
[109] *AFGE, Local 1975 v. OLRCB, et al.*, 69 D.C. Reg. 5574, Slip Op. No. 1810 at 3, PERB Case No. 22-U-01 (2022) (citing *Frankl v. Fairfield Imports, LLC*, 198 L.R.R.M. (BNA) 2222, 2014 WL 130937 (E.D. Cal. 2014)).
[110] *See AFGE, Local 1975*, Slip Op. No. 1810 at 3 (citing *Frankl v. Fairfield Imports, LLC*, 198 L.R.R.M. (BNA) 2222, 2014 WL 130937 (E.D. Cal. 2014)).

impasse, the parties will request the assistance of a third-party to resolve the impasse through mediation, fact-finding, or other mutually agreeable process. DCPS may not implement a school year extension prior to the completion of impacts and effects bargaining, including impasse proceeding.

23.1.2

Absent a contrary agreement, any Teacher affected by an extension of the work year will be entitled to additional salary equal to 200% of their ordinary daily pay rate (i.e., their annual salary divided by the ordinary number of days in the school year) for each of additional work.

23.1.2 ET-15 Teachers

23.1.1.1

The work year for 10-month ET-15 Teachers shall be one hundred ninety-two (192) days, of which not more than one hundred eighty-five (185) shall be Instructional Days.

23.1.1.2

DCPS shall have the right to extend the work year up to one hundred ninety-six (196) days, provided that each additional day beyond the one hundred ninety-two (192) days referred above is used for professional development jointly developed by DCPS and the WTU.

23.1.3 ET-15/11 Teachers

The work year for eleven-month Teachers shall be two hundred ten (210) days. ET 15/11 Teachers shall receive the same holidays and breaks as ET 15 Teachers, including July 4th, the day after Thanksgiving and winter and spring breaks.

23.1.4 ET-15/12 Teachers

The work for twelve-month Teachers shall be 228 days. ET 15/12 Teachers shall receive the same holidays and breaks as ET 15 Teachers, including July 4th, the day after Thanksgiving and winter and spring breaks.

23.1.5 EG-09 Teachers

EG-09 Teachers shall receive the same holidays and breaks as ET 15 Teachers, including July 4th, the day after Thanksgiving and winter and spring breaks.[111]

[111] 24-N-04 Appeal at 6-7.

DCPS' Position

DCPS argues that WTU's March 10, 2024, proposed revision to Article 23.1 is nonnegotiable because it relates to employees' tour of duty, which is an exclusive management right under D.C. Official Code § 1-617.08(a)(5)(B) of the CMPA.[112] DCPS asserts that under Board precedent, DCPS has a management right to determine the number of duty days and thus, a proposal which seeks to fix the length of the work year is nonnegotiable.[113] DCPS contends that, when determining the length of the work year, management need only engage in impact and effects bargaining.[114] DCPS further contends that it is not required to bargain impact and effects to impasse.[115]

WTU's Position

WTU argues that the proposed revision to Article 23.1.1 does not infringe on DCPS' management rights, as it allows DCPS to change the work year (provided certain procedures are followed and specified compensation is rendered).[116] WTU asserts that provision merely sets forth the procedures for impact and effects bargaining, which is already required by law.[117] WTU argues that the Board has previously found that proposals are negotiable which require "notice and bargaining" before management may make changes to subjects not covered under the agreement, including management rights.[118] WTU asserts that under Board caselaw, DCPS must bargain to impasse over the impacts and effects of changes to the work year.[119]

WTU argues that the length of the school year is integral to the issue of teachers' compensation, due to the unique nature of their profession.[120] WTU contends that the proposed revision to Article 23.1.2 is negotiable because it addresses the compensation owed to teachers if the work year is extended.[121] WTU asserts that under D.C. Official Code § 1-617.17(b) of the CMPA, DCPS is expressly obligated to bargain over compensation, including "wage" and "hours," to include "premium pay," which is what WTU argues the proposal aims to establish.[122]

From the section titled, "23.1.2 ET-15 Teachers" onward, WTU's revised proposal is the same as the Article 23.1 present in the current CBA.[123] WTU argues that these provisions do not infringe on DCPS' management rights, as they expressly allow DCPS to alter the school year and

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[112] DCPS Brief at 19 (citing *WTU, Local 6*, Slip Op. No. 450 at 11).
[113] DCPS Brief at 19 (citing *WTU, Local 6*, Slip Op. No. 450 at 11).
[114] DCPS Brief at 19.
[115] DCPS Brief at 19.
[116] 24-N-04 Appeal at 9.
[117] 24-N-04 Appeal at 9 (citing *FOP/DOC Labor Comm.*, Slip Op. No. 1744 at 4; *AFGE, Local 3721*, Slip Op. No. 1658 at 5-6).
[118] 24-N-04 Appeal at 9 (citing *AFGE, Local 3721*, Slip Op. No. 1658 at 3-6).
[119] 24-N-04 Appeal at 9 (citing AFGE, Local 3721, Slip Op. No. 1658 at 3-6).
[120] 24-N-04 Appeal at 12.
[121] 24-N-04 Appeal at 10, 12-13. WTU asserts that Article 23.1.1.2 is negotiable because it concerns compensation. However, WTU was clearly referring to Article 23.1.2, as that is the only section of the instant proposal which addresses compensation.
[122] 24-N-04 Appeal at 10.
[123] 24-N-04 Appeal at 6-10.

"simply reflect the baseline from which changes should be measured."[124] Regarding the discussion of holidays and breaks in Articles 23.1.3-5, WTU argues DCPS has waived any non-negotiability claim by bargaining over the subject of holidays in separate negotiations.[125]

Lastly, WTU contends that the existing language of Article 23.1 is negotiable because rather than establishing a tour of duty, it establishes an annual calendar for bargaining unit members who are preassigned to work a certain number of months per year.[126]

Board's Conclusion

The Board finds that the proposal to revise Article 23.1.1 is nonnegotiable. Under Board precedent, DCPS has a management right to determine the number of duty days and thus, a proposal which seeks to fix the length of the work year is nonnegotiable.[127] At the union's request, management is required to bargain over the impacts and effects of such decisions.[128] However, the Board has established that there is no obligation to reach an agreement during impact and effects bargaining, and thus impact and effects bargaining can never reach impasse as defined in PERB Rule 599.1.[129] The revised version of Article 23.1.1 interferes with the management rights established in D.C. Official Code § 1-617.08(a)(5)(A),[130] as it would require the parties to bargain to impasse over the impact and effects of management's decisions concerning DCPS' mission and employees' tour of duty.[131] Therefore, the Board finds that proposal to be nonnegotiable.

The Board finds that the proposed revision to Article 23.1.2 is negotiable. Under D.C. Official Code § 1-617.17(b) of the CMPA, DCPS is expressly obligated to bargain over compensation, including "wage" and "hours," to include "premium pay," which is the subject of WTU's proposal.

However, from the section titled, "23.1.2 ET-15 Teachers" onward, the Board finds that WTU's revised proposal is nonnegotiable. Under Board precedent, DCPS has a management right to determine the number of duty days and thus, a proposal which seeks to fix the length of the work year is nonnegotiable, except for impact and effects.[132] The Board is unpersuaded by WTU's assertion that DCPS has separately waived its non-negotiability claim regarding the subject of holidays and breaks. The Board has established that if management has waived a management right in the past (by bargaining over that right), it does not mean that management has waived that

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[124] 24-N-04 Appeal at 10.
[125] 24-N-04 Appeal at 11 (citing *AFGE, Locals 383, 1000, 1975, 2725, 2741, and 2978*, Slip Op. No. 1798 at 6).
[126] 24-N-04 Appeal at 14-15.
[127] *WTU, Local 6*, Slip Op. No. 450 at 16.
[128] *Teamsters, Local 446*, Slip Op. No. 312 at 3, PERB Case No. 91-U-06 (1994) (establishing that an exercise of management rights does not relieve the employer of its obligation to bargain over the impact and effects of, and procedures concerning, the implementation of those rights).
[129] *AFGE, Local 1000, et al.*, Slip Op. No. 1612 at 2-3.
[130] *WTU, Local 6*, Slip Op. No. 450 at 16-17 (finding that a proposal to establish the length of the work year was nonnegotiable, as it infringed on the management rights established in D.C. Official Code § 1-617.08(a)).
[131] *Cf. AFGE, Local 3721*, Slip Op. No. 1658 at 4 (finding that a proposal to establish third-party impasse procedures for impacts and effects bargaining over working conditions was negotiable, as the proposal did not impact the management rights established in D.C. Official Code § 1-617.08(a)).
[132] *See WTU, Local 6*, Slip Op. No. 450 at 16.

right (or any other management right) in any subsequent negotiations.[133] Pursuant to Board precedent, the parties' bargaining history concerning holidays and breaks does not affect the instant negotiability determination.[134]

Lastly, WTU contends that the existing language of Article 23.1 is negotiable because it establishes a calendar, as opposed to a tour of duty.[135] However, this distinction is inconsequential. The Board has established that proposals seeking to bargain over the number of weeks in a work year are nonnegotiable because they infringe on a management right.[136]

F. Article 23.2 (Work Day)

Revised version:

23.2 Work Day

23.2.1 General

23.2.1.1[137]

To the extent DCPS seeks to extend the work day beyond that set forth in Articles 23.2.2 to 23.2.4, DCPS may do so by taking the following steps: (1) Inform WTU at least 60 days before the school year in which the extension would take effect, (2) Provide a list of schools and Teachers to be affected by the extension, and (3) Meet with WTU for impacts and effects bargaining, beginning at least 45 days before the start of the school year in question. If the parties reach impasse, the parties will request the assistance of a third-party to resolve the impasse through mediation, factfinding, or other mutually agreeable process. DCPS may not implement a school year extension prior to the completion of impacts and effects bargaining, including impasse proceeding.

23.2.1.2

Absent a contrary agreement, any Teacher affected by an extension of the work day will be entitled to additional pay at a rate of 200% of their ordinary hourly pay rate (i.e., their annual salary divided by their ordinary number of annual work hours) for each additional hour of work.

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[133] *AFGE, Local 631 v. DPW*, 59 D.C. Reg. 4968, Slip Op. No. 965 at 2, PERB Case No. 08-N-02 (2012).
[134] *See Local 36, IAF v. FEMS*, 60 D.C. Reg. 17359, Slip Op. No. 1445 at 1, PERB Case No. 13-N-04 (2013).
[135] 24-N-04 Appeal at 14-15.
[136] *WTU, Local 6*, Slip Op. No. 450 at 16 (citing *Teamsters Local Union No. 639*, Slip Op. No. 263.
[137] In WTU's 24-N-04 Appeal, Article 23.2.1.1 is mislabeled as "23.1.1.1" and Article 23.2.1.2 is mislabeled as "23.1.1.2." The Board has corrected those numbers herein, to conform to the numbering scheme used in the other proposals.

23.2.2

The work day for ET-15 and ET-15/12 Teachers shall be seven-and-one-half (7.) consecutive hours beginning no earlier than 7:30 AM and ending no later than 4:30 PM, inclusive of a duty-free lunch period, except as provided for elsewhere in this Agreement.

23.2.3

The workweek for EG-09 Teachers shall be forty (40) hours.

23.2.4

Individual Teacher schedules and the schedules of groups of teachers in their respective Schools may be adjusted but in no case shall a Teacher's schedule exceed the length of the workday specified above without the Teacher's consent or as otherwise provided for in this Agreement.[138]

DCPS' Position

DCPS argues that WTU's March 10, 2024, proposed revision to Article 23.2 is nonnegotiable because it relates to employees' tour of duty, which is an exclusive management right under D.C. Official Code § 1-617.08(a)(5)(B) of the CMPA.[139] DCPS further argues that the proposed revision to Article 23.2 violates D.C. Official Code § 1-612.01(a)(2), which provides that basic workweek and hours of work for all DCPS employees shall be established pursuant to the rules and regulations of the Board of Education.[140] DCPS asserts that under Board precedent, DCPS has a management right to determine the basic work week or hours of work, and need only bargain over the impact and effects of such determinations.[141] DCPS further asserts that it is not required to bargain impact and effects to impasse.[142]

WTU's Position

WTU argues that the proposed revision to Article 23.2.1.1 does not infringe on DCPS' management rights, as it allows DCPS to change the work day (provided certain procedures are followed and specified compensation is rendered).[143] WTU asserts that provision merely sets forth the procedures for impact and effects bargaining, which is already required by law.[144] WTU argues that the Board has previously found that proposals are negotiable which require "notice and bargaining" before management may make changes to subjects not covered under the agreement,

[138] 24-N-04 Appeal at 7-8.
[139] DCPS Brief at 19 (citing *WTU, Local 6*, Slip Op. No. 450 at 11).
[140] DCPS Brief at 19 (citing *WTU, Local 6*, Slip Op. No. 450 at 11).
[141] DCPS Brief at 19 (citing *Teamsters Local Union No. 639*, Slip Op. No. 263 at 9).
[142] DCPS Brief at 19.
[143] 24-N-04 Appeal at 9.
[144] 24-N-04 Appeal at 9 (citing *FOP/DOC Labor Comm.*, Slip Op. No. 1744 at 4; *AFGE, Local 3721*, Slip Op. No. 1658 at 5-6).

including management rights.[145] WTU asserts that under Board caselaw, DCPS must bargain to impasse over the impacts and effects of changes to the work day.[146]

WTU contends that the proposed revision to Article 23.2.1.2 is negotiable because it addresses the compensation owed to teachers if the work day is extended.[147] WTU asserts that under D.C. Official Code § 1-617.17(b) of the CMPA, DCPS is expressly obligated to bargain over compensation, including "wage" and "hours," to include "premium pay," which is what WTU argues the proposal aims to establish.[148]

From the section numbered, "23.2.2" onward, WTU's revised proposal is the same as the Article 23.2 present in the current CBA.[149] WTU argues that these provisions to not infringe on DCPS' management rights, as they expressly allow DCPS to alter the work day and "simply reflect the baseline from which changes should be measured."[150] WTU contends that the existing language of Article 23.2 is negotiable because rather than rather than covering tour of duty (the number of hours/days per week an employee is required to work), it covers basic work scheduling (when an employee's duties are scheduled within those requirements).[151]

Board's Conclusion

The Board finds that the proposal to revise Article 23.2.1.1 is nonnegotiable. Pursuant to Board precedent, DCPS has a management right to determine the tour of duty and thus, a proposal which seeks to fix the hours of the workday is nonnegotiable.[152] At the union's request, management is required to bargain over the impacts and effects of such decisions.[153] However, the Board has established that there is no obligation to reach an agreement during impact and effects bargaining, and thus impact and effects bargaining can never reach impasse as defined in PERB Rule 599.1.[154] The revised version of Article 23.2.1.1 interferes with management's right to establish the tour of duty,[155] as it would require the parties to bargain to impasse over the impact

[145] 24-N-04 Appeal at 9 (citing *AFGE, Local 3721*, Slip Op. No. 1658 at 3-6).
[146] 24-N-04 Appeal at 9 (citing *AFGE, Local 3721*, Slip Op. No. 1658 at 3-6).
[147] 24-N-04 Appeal at 10, 12-13.
[148] 24-N-04 Appeal at 10.
[149] 24-N-04 Appeal at 6-10.
[150] 24-N-04 Appeal at 10.
[151] 24-N-04 Appeal at 15.
[152] *WTU, Local 6*, Slip Op. No. 450 at 17 (finding that a proposal which sought to "establish the basic workweek and hours of work" was nonnegotiable, as it infringed on a management right).
[153] *Teamsters, Local 446*, Slip Op. No. 312 at 3 (establishing that an exercise of management rights does not relieve the employer of its obligation to bargain over the impact and effects of, and procedures concerning, the implementation of those rights).
[154] *AFGE, Local 1000, et al. v. DHS, et al.*, 64 D.C. Reg. 4889, Slip Op. No. 1612 at 2-3, PERB Case No. 17-I-03 (2017).
[155] *WTU, Local 6*, Slip Op. No. 450 at 17.

and effects of management's decisions regarding that subject.[156] Therefore, the Board finds that the proposed revision to Article 23.2.1.1 is nonnegotiable.[157]

The Board finds that the proposed revision to Article 23.2.1.2 is negotiable. Under D.C. Official Code § 1-617.17(b) of the CMPA, DCPS is expressly obligated to bargain over compensation, including "wage" and "hours," to include "premium pay," which is the subject of WTU's proposal.

However, from the section numbered, "23.2.2" onward, the Board finds that WTU's revised proposal is nonnegotiable. Under Board precedent, DCPS has a management right to determine the tour of duty and thus, a proposal which seeks to fix the hours of the workday is nonnegotiable, except for impact and effects.[158] WTU contends that the existing language of Article 23.2 is negotiable because it establishes basic work scheduling, as opposed to a tour of duty.[159] This argument is unpersuasive. The Board has established that proposals seeking to bargain over the number of hours in a work day or work week are nonnegotiable because they infringe on a management right.[160]

G. Article 23.13 (Class Size)

Revised version:

23.13 Class Size

23.13.1

The term "maximum class size" shall be defined as follows:

Class Type	Maximum Size
Pre-Kindergarten Without an Aide	15
Pre-Kindergarten With an Aide	20
Kindergarten Through Grade 2	20
Grades 3 Through 12	25
Remedial Classes	12
Career and Technology Education	18

[156] *Cf. AFGE, Local 3721*, Slip Op. No. 1658 at 4 (finding that a proposal to establish third-party impasse procedures for impacts and effects bargaining over a management rights decision was negotiable, as the proposal did not impact the management rights established in D.C. Official Code § 1-617.08(a)).
[157] The current version of Article 1.5.2 is not a proposal and is not the subject of the instant negotiability appeal. Thus, the Board makes no determination regarding its negotiability.
[158] *WTU, Local 6*, Slip Op. No. 450 at 17.
[159] 24-N-04 Appeal at 15.
[160] *WTU, Local 6*, Slip Op. No. 450 at 17.

23.13.2

For self-contained special education classrooms, the term "maximum class size" shall be defined as follows. If more than 40% of students in a classroom have one of the conditions set forth below, the applicable maximum class size for that condition shall apply. If multiple conditions meet the 40% threshold, then the lowest applicable maximum class size shall apply:

Class Type	Maximum Size
Autism Spectrum Disorder	6
Emotional Disabilities	8
Hearing Impairments/Deafness	5
Intellectual disability (Mild/Moderate)	12
Intellectual disability (Severe)	6
Intellectual disability (Profound)	4
Orthopedic Impairments	10
Physical Disabilities	4
Speech/Language Impairments	12
Traumatic Brain Injury	10
Visual Impairments/Blindness	5

23.13.3

Learning Centers

For a special education Learning Center, the term "maximum class size" shall be defined as follows:

Class Type	Maximum Size
Learning Center	10

23.13.4

If DCPS intends to assign a teacher a class size that exceeds the applicable maximum class size, it must provide 30 days advance notice to the teacher, the SCAC, the LSAT, and the WTU. If advance notice is not possible due to an emergency situation, DCPS must provide notice within three days after assigning a teacher a class size that exceeds the maximum class size. The notice must identify the number of students in the class and specify which of the following reasons caused the class size to exceed the maximum class size:

23.13.4.1

Lack of sufficient funds for equipment, supplies, or rental of classroom space;

23.13.4.2

Lack of classroom space and/or personnel available to permit scheduling of any additional class or classes in order to reduce class size;

23.13.4.3

Conformity to the class size objective because it would result in the organization of half or part time classes;

23.13.4.4

A class larger than the above is necessary and desirable in order to provide for specialized or experimental instruction;

23.13.4.5

Placement of pupils in a subject class for which there is only one (1) on a grade level;

23.1.4.6

Size of specific classroom space is inadequate.

23.13.4.7

Other/no reason

23.13.5

Compensatory Payments

23.13.5.1

In the event that the number of students in any class exceeds the maximum size, the Teacher(s) responsible for that class shall be entitled to additional compensation retroactive to the first day class size exceeded the maximum size as defined in this Article.

23.13.5.2

In elementary schools and self-contained classrooms, Teachers shall receive the Administrative Premium for each student per day above the class size limit for the duration of the excess.

23.13.5.3

In secondary schools, Teachers shall receive one-third (1/3) of the Administrative Premium for each student per class period above the maximum for the duration of the excess.

23.13.5.4

If more than 50 percent of students in a general education classroom are students with Individual Education Plans (IEPs), the Teacher shall receive the Administrative Premium for each additional student with an IEP per day.

23.13.5.5

Compensation provided under this Article shall be pensionable.

23.13.6

Reporting and Verification

23.13.6.1

Teachers are required to promptly notify the school administration in writing when their class size exceeds the established limits.

23.13.6.2

The school administration will verify the reported class size and process the additional compensation, ensuring timely payment.[161]

DCPS' Position

DCPS argues that WTU's appeal of the revised proposal concerning Article 23.13 is time-barred under Board Rule 532.2.[162] DCPS asserts that the appeal deadline was January 3, 2024[163] (thirty-five (35) days after DCPS made its November 29, 2023, declaration of non-negotiability).[164]

Additionally, DCPS argues that under Board precedent, "[l]imits on class size restrict DCPS's decisions as to its educational mission and are nonnegotiable."[165] DCPS asserts that the proposed revision to Article 23.13 is nonnegotiable because it mandates notice and compensatory pay where the maximum class size is exceeded.[166]

WTU's Position

WTU argues that its proposal to revise Article 23.13 is timely, as it differs substantially from WTU's initial proposal regarding class size, which DCPS declared nonnegotiable on November 23, 2023.[167] WTU argues that unlike the previous proposal, the revised proposal omits

[161] 24-N-09 Appeal at 3-6.
[162] DCPS Brief at 4-5, 7-8 (citing *Compensation Unit 31*, Slip Op. No. 1640).
[163] In its Brief, DCPS misstates this date as December 3, 2023. DCPS Brief at 5 (citing Board Rule 532.2).
[164] DCPS Brief at 5.
[165] DCPS Brief at 20 (citing *WTU, Local 6*, Slip Op. No. 450 at 13, 17-18).
[166] DCPS Brief AT 20.
[167] 24-N-09 Appeal at 3.

the phrase "shall not exceed," and "does not limit the reasons for which DCPS can change class sizes."[168]

WTU argues that its revised proposal regarding class size is negotiable because DCPS fails to overcome the presumption of negotiability which the Board has established.[169] WTU asserts that the revised proposal allows DCPS to exercise its management right to change maximum class sizes, and "merely provides procedures for implementation of such changes, as well as premium pay when class sizes change beyond current maximums."[170] WTU asserts that these current maximums, which are set forth in the proposed revisions to Articles 23.13.1; 23.13.2; and 23.13.3, reflect the "status quo" established in the parties' previous agreements. WTU notes that although the proposed revision to Article 23.13.4 would require DCPS to provide a reason for increasing class sizes, DCPS has the option to merely specify "other/no reason."[171]

WTU asserts that Article 23.13.5 is negotiable because it addresses compensation, in the form of premium pay owed to teachers who must teach oversized classes. WTU argues that under D.C. Official Code § 1-617.17(b) of the CMPA, management is required to negotiate premium pay. Additionally, WTU asserts that Article 23.13.6 is negotiable because it imposes an obligation on teachers (as opposed to management), and because it merely ensures thar DCPS provides the premium pay discussed in Article 23.1.5.

WTU contends that the Board has previously found similar proposals negotiable.[172] WTU asserts that under Board precedent, "notice and bargaining" must occur before the agency can make "any change in an area not covered by the agreement, including management rights."[173]

Board's Conclusion

The Board finds that WTU's negotiability appeal regarding the proposed revision of Article 23.13 is premature. Pursuant to Board Rules 532.1 and 532.2, where a party presents a proposal and receives a *written* declaration of non-negotiability in response, the proposing party has thirty-five (35) days in which to file an appeal. Here, WTU submitted its negotiability appeal after only receiving DCPS' verbal assertion that the proposed revision to Article 23.13 was nonnegotiable.[174] Thus, the appeal is premature under Board Rules 532.1 and 532.2.

The Board has established that it will not issue advisory opinions regarding negotiability disputes.[175] Thus, the Board declines to address the substantive negotiability of WTU's proposed revision to Article 23.13.

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[168] 24-N-09 Appeal at 3.
[169] 24-N-09 Appeal at 6 (citing *AFGE*, Slip Op. No. 1641).
[170] 24-N-09 Appeal at 6.
[171] 24-N-09 at 7.
[172] *AFGE, Local 3721*, Slip Op. No. 1658 at 3-6.
[173] *Id*.
[174] 24-N-09 Appeal at 3.
[175] *UDC Fac. Ass'n*, Slip Op. No. 1617 at 3.

H. Articles 24.2.8-24.2.10[176] (Counselors)

Current version:

24.2.8

All Senior High School 10-month counselors who desire to be converted to 11- month counselors shall be entitled to such conversion during the 2010-2011 school year.

24.2.9

For school year 2010-2011, if there is an insufficient number of 10-month counselors who wish to convert to 11-month counselors, DCPS may designate one of the counseling positions or up to 50% of the existing counseling positions at the school as 11-month counselors (ET15-11). These counselors shall be paid on a prorated basis based on their current salary. For school years 2011-2012 and beyond, all high school counseling positions will be 11 month positions.

24.2.10

In such cases, the selection of the 11-month counselor shall be determined by the principal based on the recommendation of the school's Personal Committee. If there are an insufficient number of counselors who volunteer to convert to 11- month positions within a school, DCPS shall make the position available to other senior high school certified counselors currently employed within DC Public Schools. If there are not enough senior high applicants, DCPS shall make the position available to other certified counselors within DCPS.[177]

DCPS' Position

DCPS asserts that Articles 24.2.8 and 24.2.9 are no longer operative and thus, should be stricken from the CBA.[178] DCPS also asserts that the portion of Article 24.2.10 which has been included herein is nonnegotiable because it interferes with the management rights established in D.C. Official Code § 1-617.08(a)(1) and (2) of the CMPA.[179] Specifically, DCPS argues that the term "shall" in Article 24.2.10 renders that proposal nonnegotiable because it would impermissibly dictate the manner in which DCPS' assigns employees.[180]

[176] On June 5, 2024, DCPS withdrew its declaration of non-negotiability regarding WTU's proposal to retain the current language of Article 24.2.11. DCPS also partially withdrew its declaration of non-negotiability regarding WTU's proposal to retain the current language of Article 24.2.10. Joint Stipulation of Partial Dismissal as to Certain Proposals at 1. The parties still dispute the negotiability of all Article 24.2 excepts included herein.
[177] 24-N-04 Appeal at 17.
[178] DCPS Brief at 21.
[179] DCPS Brief at 21.
[180] DCPS Brief at 21-22 (citing *UDC Fac. Ass'n*, Slip Op. No. 1617 at 33; *AFGE, Local 631 v. WASA*, 60 D.C. Reg. 16462, Slip Op. No. 1435 at 4, PERB Case No. 13-N-05 (2013); *Leornard v. D.C.*, 801 A.2d 82, 84-85 (D.C. 2002)).

WTU's Position

WTU agrees that much of the language in Articles 24.2.8 and 24.2.9 is no longer operative.[181] However, unlike DCPS, WTU asserts that the defunct status of those provisions means they do not infringe on management's rights and, therefore, are negotiable.[182]

WTU argues that Article 24.2.10 is negotiable because it permits DCPS to select counselors, requiring only that DCPS consider the non-binding recommendations of the Personnel Committee before doing so.[183] WTU argues that Article 24.2.10 does not infringe on DCPS' management rights, as that provision merely requires DCPS to "make certain positions available to certain groups of employees" and does not require DCPS to hire from those groups.[184] Additionally, WTU asserts that "[t]he reference to the Personnel Committee in Article 24.2.10 is negotiable because DCPS agreed on March 19, 2024, to retain the existing contract language regarding the Personnel Committee."[185]

Board's Conclusion

Pursuant to Board Rule 532.1, the Board has authority to resolve disputes regarding whether a proposal is within the scope of bargaining. It is not the Board's role to determine whether a contract provision remains operative. Disregarding the undisputedly outdated timeline set forth in the current versions of Articles 24.2.8 and 24.2.9, the Board finds that those proposals are nonnegotiable. The Board has established that a proposal which constrains management's promotional selection process is nonnegotiable because it violates the management right to assign employees, as established under D.C. Official Code § 1-617.08(a)(2).[186] Articles 24.2.8 and 24.2.9 are nonnegotiable because they constrain DCPS' selection process for converting 10-month counselors to 11-month counselors.

However, the Board finds that Article 24.2.10 is negotiable. Under Board precedent, a proposal which requires management to receive a committee's recommendation concerning a management rights issue is negotiable if the proposal does not prevent the agency from exercising its management rights.[187] Under D.C. Official Code § 1-617.08(a)(2), DCPS has the sole right to assign employees to positions within the agency. The current version of Article 24.2.10 requires DCPS to receive recommendations from personal committees regarding the assignment of employees to 11-month counselor positions. It also requires DCPS to receive job applications for the position of 11-month counselor from certain DCPS employees. Article 24.2.10 does not

[181] 24-N-04 Appeal at 18.
[182] 24-N-04 Appeal at 18.
[183] WTU Brief at 21.
[184] WTU Brief at 22.
[185] 24-N-04 Appeal at 18.
[186] *See AFSCME, Local 1959*, Slip Op No. 1766 at 8 (holding that a proposal was nonnegotiable because it created a seniority criterion for filling promotional vacancies, thereby constraining management's selection process, in violation of D.C. Official Code § 1-617.08(a)(2)).
[187] *SEIU, Local 500*, Slip Op. No. 1539 at 20 (finding that a proposal was negotiable because although it required the agency to receive recommendations from a committee concerning a management rights issue, it did not require the agency to adopt those recommendations).

require that any employee be assigned to or excluded from the 11-month counselor role. Therefore, it is negotiable.

I. Article 24.5.5 (IEP Caseload)

Revised version:

24.5.5

The annual IEP [Individualized Education Program] caseload for special education teachers shall not exceed 10 per Teacher, except by mutual Agreement between the Supervisor and special education Teacher. If Teacher [*sic*] agrees to complete more than 10 IEPs annually, the Teacher shall receive administrative premium at the rate of six (6) hours per additional IEP per quarter.[188]

DCPS' Position

Under DCPS' interpretation, this proposal aims to place restrictions on the number of IEP students that DCPS is permitted to place in each special education class.[189] DCPS argues that the proposal is nonnegotiable because it interferes with management's right to assign employees, as established under D.C. Official Code § 1-617.08(a)(2).[190] DCPS asserts that while the Board has previously found that proposals establishing non-mandatory workload are negotiable, that precedent is inapplicable to Article 24.5.5, given the mandatory phrase, "shall not exceed."[191]

WTU's Position

WTU asserts that the revised Article 24.5.5 aims to place restrictions on the number of special education students for whom each teacher is required to prepare a yearly IEP report.[192] Thus, WTU argues, Article 24.5.5 concerns workload, not class size.[193] WTU asserts that the Board has previously established that workload proposals are negotiable.[194] WTU contends that each IEP report requires "a significant amount of work over and above a special education teacher's teaching duties"[195] and thus, the Board should follow its prior holding that proposals which "set a particular workload in terms of hours of teaching" do not infringe on management rights.[196]

Board's Conclusion

As a preliminary matter, the Board defers to WTU's interpretation of the proposed revision to Article 24.5.5, as WTU is the proposing party. The Board has also determined that WTU's

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[188] 24-N-05 Appeal at 13.
[189] DCPS Brief at 22.
[190] DCPS Brief at 22-23.
[191] DCPS Brief at 22-23 (citing *UDC Fac. Ass'n*, Slip Op. No. 1617 at 33).
[192] 24-N-05 Appeal at 13-14.
[193] WTU Brief at 22-23.
[194] 24-N-05 Appeal at 14 (citing *UDC Fac. Ass'n*, Slip Op. No. 1617 at 34-40).
[195] WTU Brief at 23.
[196] DCPS Appeal at 14 (citing *UDC Fac. Ass'n*, Slip Op. No. 1617 at 34-40).

explanation of the proposal is supported by its plain language, which discusses "caseload," as opposed to class size. Thus, the Board finds that the instant proposal aims to (1) limit teachers' workload by placing a cap on the number of IEP reports which DCPS may annually assign to each teacher; and (2) establish a premium rate of pay for each additional IEP report that a teacher voluntarily completes.

WTU argues that this matter is akin to *UDC Faculty Association v. UDC*, in which the Board found that a proposal to establish teachers' "normal workload assignment" was negotiable.[197] In that case, the term "normal workload" was used to describe the number of Professional Units (PU), i.e., credit hours, that UDC was permitted to assign to a teacher during the semester.[198] Like that proposal, the proposed revision to Article 24.5.5. seeks to quantify the number of times management may assign a task to an employee within a specified timeframe. However, where the UDC Faculty Association's proposal established the "normal" workload to be placed on teachers, the proposed revision to Article 24.5.5 seeks to establish a definitive limit to the number of IEPs that DCPS may assign to a teacher each semester, regardless of whether normal circumstances apply. DCPS places emphasis on this distinction.

The Board finds that the instant matter is more comparable to a different negotiability dispute which occurred between the UDC Faculty Association and UDC.[199] In that case, the proposal used the same "shall not exceed" phrase to definitively cap the number of credit hours each instructor would be required to teach during a semester. UDC asserted that the proposal violated management's rights, under D.C. Official Code § 1-617.08(a)(1), (4), and (5) of the CMPA, to direct employees, to maintain the efficiency of operations, to determine the mission of the agency, and to determine which employees would be assigned to a work project or tour of duty.[200] The Board determined that the proposal concerned workload, which was categorized under basic work scheduling, a subject that D.C. Official § 1-612.01(a)(2) of the CMPA explicitly designates as negotiable.[201] There, the Board found that the union's proposal was negotiable.[202] In the present case, the Board finds that Article 24.5.5 is likewise negotiable. This determination of negotiability extends to the portion of Article 24.5.5 which discusses premium pay, as that issue is subject to bargaining under D.C. Official Code § 1-617.17(b) of the CMPA.

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[197] 24-N-05 Appeal at 14 (citing *UDC Fac. Ass'n*, Slip Op. No. 1617 at 34-40).
[198] *UDC Fac. Ass'n*, Slip Op. No. 1617 at 34.
[199] *UDC Fac. Ass'n v. UDC*, 29 D.C. Reg. 2975, Slip Op. No. 43, PERB Case No. 82-N-01 (1982).
[200] *Id*. at 6. At the time Opinion No. 43 was issued, those provisions were codified under D.C. Official Code § 1-618.8(a)(1), (4) and (5) of the CMPA.
[201] *Id*. at 6-7. At the time Opinion No. 43 was issued, that provision was codified under D.C. Official Code § 1-613.1(a)(2) of the CMPA.
[202] *Id*. at 7-8.

J. Article 24.8 (Relief from Non-Teaching Duties for Related Service Providers)

New version:[203]

24.8[204]

Non-teaching duties for Related Service Providers and others

24.8.1

For purposes of Article 20 [*sic*], the term "non-teaching duties" for Related Service Providers, School Counselors, Special Education Teachers, ESL Teachers, Instructional Coaches, and Librarians shall be defined to include any responsibilities that are not associated with the direct instruction or oversight of students, including, but not limited to, administrative tasks, clerical duties, hall monitoring, and lunch supervision, as well as nonessential classroom coverage that is unrelated to their core professional responsibilities.

24.8.2

Bargaining unit members shall not be expected to perform tasks outside of their designated working hours.[205]

DCPS' Position

WTU's 24-N-05 Appeal indicates that DCPS had not responded to the Article 24.8 proposal as of April 3, 2024.[206] The record contains no evidence that DCPS subsequently responded to the proposal. Additionally, DCPS has not presented any arguments regarding the proposal in its submissions to the Board.

WTU's Position

WTU argues that its proposal to add Article 24.8.2 to the CBA is negotiable for the same reasons as its proposal to revise Article 20.[207]

Board's Conclusion

The Board finds that WTU's negotiability appeal regarding the proposed addition of Article 24.8 is premature. Pursuant to Board Rules 532.1 and 532.2, where a party presents a proposal and receives a written declaration of non-negotiability in response, the proposing party has thirty-five (35) days in which to file an appeal. Here, WTU submitted its negotiability appeal

[203] The term "new version" is used to refer to CBA provisions or memoranda of agreement which do not exist in the current CBA, or elsewhere.
[204] Article 24 of the current CBA concerns auxiliary and ancillary services and ends with 24.6.5. The record does not indicate how WTU selected the number 24.8 for its proposed addition.
[205] 24-N-05 Appeal at 14-15.
[206] 24-N-05 Appeal at 3.
[207] 24-N-05 Appeal at 14-15.

without receiving a response to the proposal.[208] Thus, the appeal is premature under Board Rules 532.1 and 532.2.

The Board has established that it will not issue advisory opinions regarding negotiability disputes.[209] Thus, the Board declines to address the substantive negotiability of WTU's proposal to add Article 24.8 to the CBA.

K. Articles 39.1; 39.5-7 (RIF, Abolishment, and Furlough Procedures)

Current version:

39.1

DCPS intends not to use the reduction in force (RIF) or abolishment procedures in cases commonly known as "Fall Equalization," "Spring Excessing," or in any other excess as defined in this Agreement. In these situations, DCPS intends to use the performance-based excessing and mutual consent provisions of this Agreement.

39.5.

When DCPS determines a RIF, Abolishment, or Furlough may be necessary, the LSAT shall explore alternative ways to address the required budget reductions prior to making a recommendation that affects a reduction of personnel. If the Supervisor's final decision departs from the recommendation of the LSAT, the Supervisor shall prepare a written justification. A copy of the justification shall be provided to the Chancellor and President of the WTU. Upon the request of the WTU President, the justification shall require the approval of the Chancellor, or the Chancellor's designee prior to implementation of the RIF, Abolishment, or Furlough at the school.

39.6.

After the effective date of a reduction in force or an abolishment, DCPS shall offer multiple hiring opportunities, e.g., job fairs and interviews, for Teachers subject to the RIF or abolishment. DCPS shall provide the WTU a listing of all current vacancies and post such list on its Web site.

39.7.

As vacancies arise after the effective date of a reduction in force or abolishment, DCPS will require principals to interview 2 appropriately qualified Teachers who lost their positions as a result of the reduction in force or abolishment before considering any other candidate to fill a vacancy for the remainder of the school year.[210]

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[208] 24-N-05 Appeal at 3.
[209] *UDC Fac. Ass'n*, Slip Op. No. 1617 at 3.
[210] 24-N-07 Appeal at 16.

DCPS' Position

DCPS argues that WTU's proposal to retain Articles 39.1; 39.5-39.7 is nonnegotiable.[211] DCPS asserts that pursuant to D.C. Official Code § 1-617.08(a)(2), (3), and (4) of the CMPA, management has the sole right to hire and/or retain employees, relieve employees of duty, and maintain the efficiency of operations, including through the conduction of RIFs.[212] DCPS further argues that pursuant to the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124 (Omnibus Act), codified under D.C. Official Code § 1-624.08(j) of the CMPA,[213] proposals to dictate or modify RIF procedures are nonnegotiable.[214] Thus, DCPS contends that WTU's proposal to retain Articles 39.1; 39.5-39.7 of the CBA is nonnegotiable under D.C. Official Code §§ 1-617.08(a)(2), (3), and (4); and 1-624.08(j) of the CMPA, as it seeks to restrict the scope and procedures available to management when determining RIFs, abolishments, and furloughs.[215]

WTU's Position

WTU argues that its proposal to retain the current versions of Articles 39.1; 39.5-7 is negotiable as those provisions do not interfere with DCPS' management right to discharge employees under a RIF, abolishment, or furlough.[216] WTU contends that Articles 39.1; 39.5-7 preserve DCPS' right to take these actions, while minimizing the negative effects.[217] WTU asserts that Articles 39.1; 39.5-7 "do nothing more than make non-binding aspirational statements, requests for justifications, or post-RIF mitigation procedures."[218] WTU emphasizes that these provisions have been included in the parties' CBA for decades.[219]

WTU argues that Article 39.1 and Article 39.5 are distinguishable from proposals which the Board has previously deemed nonnegotiable, as Article 39.1 and Article 39.5 do not place time restrictions on RIFs or require DCPS to rehire certain employees.[220] Rather, WTU argues, Articles 39.1 and 39.5 allow DCPS to use its own RIF and abolishment procedures, without quotas, notice requirements, or substantive limits.[221] WTU contends that under Article 39.5, DCPS need only

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[211] DCPS Brief at 23-27.
[212] DCPS Brief at 23 (citing *UDC Fac. Ass'n*, Slip Op. No. 43 at 4).
[213] D.C. Official Code § 1-624.08 is also known as the Abolishment Act.
[214] DCPS Brief at 23 (citing *AFGE, Local 631 v. WASA,* 59 D.C. Reg. 5411, Slip Op. No. 982 at 6, PERB Case No. 08-N-05 (2012); *FOP/DOC Labor Comm. v. DOC*, 49 D.C. Reg. 11141, Slip Op. No. 692 at 5, PERB Case No. 01-N-01 (2002)).
[215] DCPS Brief at 23-24 (citing *AFGE, Local 631 v. WASA*, 52 D.C. Reg. 2510, Slip Op. No. 730 at 2, PERB Case No. 02-U-19 (2005)). Additionally, DCPS argues that Articles 39.1; 39.5-39.7 are nonnegotiable because those provisions infringe on management's sole right, under D.C. Official Code § 1-617.08(a)(5)(A), to establish employees' tour of duty. DCPS Brief at 26-27. The Board concludes that this argument was presented in error, as the right to establish a tour of duty is unrelated to the proposal at hand.
[216] 24-N-07 Appeal at 17.
[217] 24-N-07 Appeal at 17 (citing *UDC Fac. Ass'n*, Slip Op. No. 43 at 4).
[218] WTU Brief at 23.
[219] 24-N-07 Appeal at 16.
[220] 24-N-07 Appeal at 18 (citing *FOP/Protective Services Police Dep't Labor Comm.*, Slip Op. No. 1532 at 5-6; D.*C. Nurses Ass'n v. DOH*, 62 D.C. Reg. 11809, Slip Op. No. 1529 at 3, PERB Case No. 15-N-03 (2015); *AFGE, Local R3-07 v. D.C. Off. of Unified Communications*, 61 D.C. Reg. 7353, Slip Op. No. 1467 at 5-6, PERB Case No. 14-N-01 (2014)).
[221] WTU Brief at 25.

fulfill "minimal procedural obligations."[222] WTU further contends that under Article 39.5, the DCPS Chancellor (or other DCPS designee) has the option to disregard the LSAT's recommendations, and immediately approve RIF and abolishment requests.[223] Thus, WTU asserts that the current versions of Articles 39.1 and 39.5 are negotiable.[224]

WTU argues that Articles 39.6 and 39.7 of the current CBA merely address the post-implementation effects which RIFs have on teachers, [225] and establish procedural requirements to lessen the impact of job loss.[226] WTU asserts that while Articles 39.6 and 39.7 require DCPS to offer hiring opportunities; supply vacancy lists; and grant interviews to employees affected by RIFs, those provisions do not infringe on DCPS' right to RIF employees and do not require DCPS to rehire them.[227]

Board's Conclusion

The Board concludes that WTU's proposal to retain the current versions of Articles 39.1; 39.5; 39.6; and 39.7 is nonnegotiable. The Board has established that D.C. Official Code § 1-617.08(a)(3) of the CMPA grants management the sole right to relieve employees of their duties due to lack of work or other legitimate reasons, including through the conduction of RIFs.[228] Additionally, the Board has held that under the Omnibus Act, proposals regarding RIF policies are not within the scope of impact and effects bargaining.[229]

WTU argues that Articles 39.1 and 39.5 merely create "minimal procedural obligations" for management to meet before implementing a RIF.[230] This argument is unavailing. The current version of Article 39.1 aims to limit the circumstances under which DCPS may conduct a RIF. Similarly, the current version of Article 39.5 seeks to establish a series of mandatory procedures for DCPS to follow before conducting a RIF. Both articles aim to dictate DCPS' RIF procedures and thus, are outside the scope of impact and effects bargaining.

Additionally, the Board finds that WTU's proposal to retain the current versions of Articles 39.6 and 39.7 is nonnegotiable. The Board has previously established that under D.C. Official Code § 1-624.08(j) of the CMPA, a proposal is nonnegotiable if it seeks to require management to consult with the union after a RIF in order to minimize its impact.[231] The Board has held that such proposals, while not requiring the agency to take specific steps before or during a RIF, nonetheless

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[222] 24-N-07 Appeal at 18.
[223] WTU Brief at 24-25.
[224] WTU Brief at 24-25.
[225] WTU Brief at 23 (citing *UDC Fac. Ass'n*, Slip Op. No. 43 at 4).
[226] 24-N-07 Appeal at 17-18.
[227] 24-N-07 Appeal at 17.
[228] *UDC Fac. Ass'n*, Slip Op. No. 43 at 4. At the time Opinion No. 43 was issued, that provision of the CMPA was codified under D.C. Official Code Section 1-618.8(a)(3).
[229] *FOP/DOC Labor Comm.*, Slip Op. No. 692 at 5.
[230] 24-N-07 Appeal at 18.
[231] *AFGE, Local R3-07*, Slip Op. No. 1467 at 5-6.

constitute improper attempts to affect management's RIF procedures and may frustrate its purpose for conducting the RIF.[232] Therefore, Articles 39.6 and 39.7 are nonnegotiable.

Lastly, the Board is unpersuaded by WTU's argument that the parties have a history of negotiating over RIFs. Even if management has waived a management right in the past (by bargaining over that right), management has not automatically waived that right (or any other management right) in any subsequent negotiations.[233] Pursuant to Board precedent, the parties' bargaining history concerning RIF, abolishment, and furlough procedures does not affect the instant negotiability determination.[234]

L. Memorandum of Agreement Regarding Emergency Preparedness

New version:

Adjustments to School Operations

15

Immediately after the initial response to a traumatic event at a school, the WTU President and Chancellor shall immediately meet to discuss necessary adjustments to the school calendar. Although every effort should be made to reopen the school as soon as possible, the health and welfare of the students, staff, and the entire school community will be the primary factor in any discussion.

16

No school will reopen and no teacher will be required to report to a school until all necessary physical and emotional supports, including those set forth in paragraphs 6 and 7, are in place. The school's LSAT shall have responsibility for examining the school site to ensure it is ready to welcome students back. If the necessary supports cannot be implemented within a reasonable timeframe, other arrangements will be made to ensure the entire school community can return to teaching and learning as soon as possible.

17

In the case of a traumatic event at a particular school or subset of schools, the evaluation timeline shall be immediately suspended at the option of the bargaining unit employee for a minimum of 90 days for all staff. During this interruption, the bargaining unit employee's last summative evaluation rating shall be maintained and submitted to the proper agencies. Probationary teachers, who were assigned to a school that experienced a traumatic event, shall receive a satisfactory summative rating for the year. After at least 90 days, the evaluation timeline shall resume at the point it was interrupted and continue in a normal fashion.[235]

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[232] *See id*.
[233] *AFGE, Local 631*, Slip Op. No. 965 at 2.
[234] *See Local 36, IAF*, Slip Op. No. 1445 at 1.
[235] 24-N-08 Appeal at 7.

DCPS' Position

DCPS asserts that under Board precedent, a proposal which "prevents management from determining when work will occur and to whom work will be assigned" is nonnegotiable.[236] DCPS argues that the proposed MOA provision concerning adjustments to school operations is nonnegotiable, as it infringes on management's right to direct and assign employees, maintain the efficiency of school operations, determine internal security practices, and take whatever actions it deems necessary to carry out its mission in emergency situations.[237] Additionally, DCPS argues that WTU's proposal is nonnegotiable because it "implicates the work of the Department of General Services" (DGS), which is not a party to the CBA.[238]

WTU's Position

WTU argues that the proposed MOA provision regarding adjustments to school operations is negotiable because it concerns the health and safety of bargaining unit members, a topic which the Board has previously held to be a mandatory subject of bargaining.[239] WTU asserts that under Board precedent, where the purpose and effect of a proposal is "to address employee safety and welfare when performing their job," the proposal is negotiable.[240] WTU contends that Section 15 of the proposal is negotiable because it exclusively seeks to require consultation over the calendar in cases where a traumatic event has occurred.[241]

Board's Conclusion

The Board finds that Sections 15 and 16 of the proposed MOA provision regarding adjustments to school operations are nonnegotiable. The Board has established that health and safety conditions of employment are a mandatory subject of bargaining.[242] However, management is not required to bargain over health and safety proposals which interfere with its management right, as established under D.C. Official Code § 1-617.08(a), to determine when work will occur and to whom it will be assigned.[243]

Additionally, the Board finds that Section 17 of the proposed MOA provision regarding adjustments to school operations is nonnegotiable. Pursuant to D.C. Official Code § 1-617.18 of the CMPA, "the evaluation process and instruments for evaluating District of Columbia Public

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[236] DCPS Brief at 13 (quoting *AFSCME, Local 1959*, Slip Op. No. 1766 at 4).
[237] DCPS Brief at 13 (citing D.C. Official Code § 1-617.08(a)(1), (2), (4), (5), and (6)).
[238] DCPS Brief at 13, fn. 5.
[239] 24-N-08 Appeal at 8 (citing *FOP/DOC Labor Comm.*, Slip Op. No. 1744 at 6; *Teamsters Local Union No. 639*, Slip Op. No. 263 at 5-6).
[240] 24-N-08 Appeal at 8-9 (quoting *WTU, Local 6*, Slip Op. No. 450 at 14).
[241] 24-N-08 Appeal at 10.
[242] *FOP/DOC Labor Comm.*, Slip Op. No. 1744 at 6-7 (holding that DOC was required to bargain with FOP over health and safety conditions related to the pandemic); *Teamsters Local Union No. 639*, Slip Op. No. 263 at 5-6 (finding that DCPS was required to bargain with the Teamsters over a proposal aimed to prevent employees from working in dangerous locations alone).
[243] *See AFSCME, Local 1959*, Slip Op. No. 1766 at 3-4 (holding that a proposal to alter bus drivers' tour of duty during inclement weather was nonnegotiable because although it related to health and safety, it interfered with management's right to assign work).

Schools employees shall be a nonnegotiable item for collective bargaining purposes."[244] Thus, teacher evaluations are a management right. The Board has held that a proposal is nonnegotiable if it dictates that the union shares decision-making authority over a management right.[245]

M. Memorandum of Agreement Regarding Diversity of Instructional Staff

New version:

The Washington Teachers Union (WTU) and The District of Columbia Public Schools (DCPS) mutually acknowledge the importance of increasing the diversity of the instructional staff in DC's schools. Research shows that a diverse teaching staff can benefit students by:

- Improving academic outcomes;
- Reducing disciplinary problems;
- Increasing a sense of belonging; and
- Enhancing cultural awareness.

Such diversity is essential for fostering an inclusive educational environment and for enhancing the quality of education for all students. In addition, a diverse teaching staff can help to create a more welcoming and inclusive school environment. There are several things that can be done to ensure the diversity of the teaching staff, including:

- Recruiting more teachers of color: Targeting recruitment efforts to minority-serving institutions, offering financial incentives to teachers of color, and creating a more welcoming and inclusive environment for teachers of color.
- Supporting teachers of color: Providing teachers of color with professional development opportunities, mentoring programs, and a supportive school community.
- Changing how we think about teaching: Moving away from the idea that there is one right way to teach and embrace the diversity of teaching styles and approaches.

To this end, WTU and DCPS will partner to:

- Recruit more teachers of color to DCPS. By showing a shared interest in recruiting teachers of color, candidates will be more likely to consider teaching in DC's schools.
- Create a more welcoming and inclusive environment for teachers of color. This means addressing implicit bias and discrimination, and creating a culture where all teachers feel valued and respected.
- Support teachers of color through joint professional development opportunities and mentoring programs. This can help teachers develop their skills and confidence, and to feel supported in their work.

[244] DCPS Brief at 9, 16.
[245] *UDC Fac. Ass'n*, Slip Op. No. 1617 at 30.

- Advocate for policies that promote diversity in the teaching workforce. This includes supporting legislation that increases funding for teacher preparation programs, and that provides financial incentives for teachers of color.

By taking these steps, we can create a more diverse and equitable teaching workforce that benefits all students.

Quarterly meetings will be held between the Union and the District to review the progress made in achieving the objectives of this Agreement. A joint annual report will be prepared and disseminated to evaluate the effectiveness of the actions taken under this Agreement.[246]

DCPS' Position

DCPS argues that the proposed MOA regarding teacher diversity is nonnegotiable because it is largely aspirational in nature and therefore, unenforceable.[247] DCPS further argues that the MOA is nonnegotiable because it seeks to make WTU a "partner" in recruiting and hiring teachers, thereby interfering with DCPS' management rights, as established under D.C. Official Code § 1-617.08(a)(2) of the CMPA.[248]

WTU's Position

WTU argues that the proposed MOA regarding teacher diversity is negotiable because it is merely designed to define the parties' shared diversity goals and to ensure the publication of a joint annual report.[249] WTU argues that under the proposed MOA, WTU would be excluded from the hiring process, and the only concrete requirements for DCPS would be to hold quarterly meetings and issue a joint annual report.[250] WTU contends that the instant proposal does not include any specific quotas, hiring policies, or procedures, and merely recommends "broad strategies for improving diversity and creating a welcoming work environment."[251] WTU asserts that the proposal is negotiable, as the Board and the FLRA have found proposals which included "much more specific requirements for promoting diversity in the workforce" to be negotiable.[252]

Board's Conclusion

The Board finds that the proposed MOA concerning teacher diversity is nonnegotiable. Pursuant to Board precedent, proposals which establish a union's right to provide hiring recommendations are negotiable.[253] However, the Board has held under D.C. Official Code § 1-

[246] 24-N-08 Appeal at 14-15.
[247] DCPS Brief at 14.
[248] DCPS Brief at 14 (citing *FEMS*, Slip Op. 874 at 23).
[249] 24-N-08 Appeal at 15.
[250] WTU Brief at 25.
[251] 24-N-08 Appeal at 16.
[252] WTU Brief at 25 (citing *Univ. of D.C. Faculty Ass'n*, Slip Op. No. 1617 at 25-30); 24-N-08 Appeal at 15-16 (citing *Dep't of the Interior Nat'l Park Serv. Golden Gate Nat'l Recreation Area, S.F. Cal. V. Loc. 1276, Laborers Int'l Union of N. Am., AFL-CIO*, FLRA Case No. 1994-FSIP-121 (Jan. 11, 1995).
[253] *Univ. of D.C. Faculty Ass'n*, Slip Op. No. 1617 at 25-30 (holding that a proposal to establish a promotion recommendation committee was negotiable, as the recommendations were nonbinding and UDC retained its management right, under D.C. Official Code § 1-617.08(a)(2), to make promotion decisions).

617.08(a)(2), a proposal is nonnegotiable if it seeks to create shared authority over hiring decisions.[254] In the present case, rather than seeking the right to recommend candidates for hire, the proposed MOA aims to require that DCPS share its hiring authority with WTU ("WTU and DCPS will partner to…[r]ecruit more teachers of color to DCPS"). Thus, the proposed MOA regarding teacher diversity is nonnegotiable under § 1-617.08(a)(2).[255]

[254] *See FEMS*, Slip Op. 874 at 23 (holding that a proposal was nonnegotiable because it sought to require management to endorse all requests for voluntary employee transfers).

[255] The Board finds that the preceding portion of the proposed MOA does not seek to mandate any specific action by the parties. Thus, the Board finds that portion, on its own, does not constitute a proposal. Additionally, the Board finds that the final portion of the proposed MOA cannot be considered a proposal by itself, as the quarterly meetings described are intended to facilitate accomplishment of the aforementioned "objectives." Thus, the Board declines to make a determination regarding the negotiability of those sections. The core of WTU's proposal is nonnegotiable, rendering the remainder inconsequential.

ORDER

IT IS HEREBY ORDERED THAT:

1. WTU's proposal to revise Article 1.5.2 is nonnegotiable.
2. WTU's proposal to retain the current versions of Articles 2.10.1.8; 2.11.2.1.8; and 2.12.11 is negotiable.
3. WTU's proposal to retain the current versions of Articles 2.10.1.7; 2.11.2.1.7; and 2.12.10 is nonnegotiable.
4. WTU's proposal to revise Article 15.2 is negotiable.
5. WTU's proposal to retain the current versions of Articles 16.1 and 16.5 is negotiable.
6. WTU's proposal to retain the current versions of Article 16.3 and 16.4 is nonnegotiable.
7. WTU's proposal to revise Articles 23.1.1; 23.1.1.1; 23.1.1.2; 23.1.3; 23.1.4; and 23.1.5 is nonnegotiable.
8. WTU's proposal to revise Article 23.1.2 is negotiable.
9. WTU's proposal to revise Articles 23.2.1.1; 23.2.2; 23.2.3; and 23.2.4 is nonnegotiable.
10. WTU's proposal to revise Article 23.2.1.2 is negotiable.
11. WTU's proposal to revise Article 23.13 is nonnegotiable, as the appeal is untimely.
12. WTU's proposal to retain the current versions of Articles 24.2.8 and 24.2.9 is nonnegotiable.
13. WTU's proposal to retain the current version of Article 24.2.10 is negotiable.
14. WTU's proposal to revise Article 24.5.5 is negotiable.
15. The Board declines to render a decision regarding WTU's proposal to add Article 24.8 to the CBA, as the appeal is premature.
16. WTU's proposal to retain the current versions of Articles 39.1; 39.5; 39.6; and 39.7 is nonnegotiable.
17. WTU's proposed MOA regarding emergency preparedness is nonnegotiable.
18. WTU's proposed MOA regarding diversity of instructional staff is nonnegotiable.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By vote of Board Chairperson Douglas Warshof and Members Renee Bowser, Mary Anne Gibbons, and Peter Winkler.

August 20, 2024
Washington, D.C.

APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration, requesting the Board reconsider its decision. Additionally, a final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1-605.2(12) and 1-617.13(c), which provides 30 days after a decision is issued to file an appeal.