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

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	)	
In the Matter of:	)	
	)	
Local 36, International Association of Firefighters,	)	PERB Case No. 13-N-04
	)	
Petitioner,	)	Opinion No. 1543
	)	
v.	)	
	)	
District of Columbia Department of Fire And Emergency Medical Services,	)	Decision and Order
	)	
Respondent.	)	
	)	
	)	
	)	
	)	
	)	

**DECISION AND ORDER**

This case is before the Board based upon an order of the D.C. Superior Court (Case No. 2014 CA 003025 P (MPA)). In its ruling, the court affirmed in part and vacated in part the Board's decision in PERB Case No. 13-N-04. In accordance with the court's order, the Board issues this opinion vacating in part PERB Opinion No. 1445.

**I. Statement of the Case**

This case arises from the 2013 negotiations between the International Association of Firefighters ("Union") and the D.C. Fire and Emergency Medical Services ("Agency"). During the course of those negotiations, the Agency claimed that two proposals offered by the Union were non-negotiable. Article XX pertained to the Agency's selection criteria for Special Operations Companies (Rescue Squads, Hazardous Materials Unit, Fireboat) and Article 45B addressed tour of duty (hours of work, schedule and leave).

The issue of the negotiability of these two articles was raised in the instant negotiability appeal filed with PERB. In its July 8, 2013 brief, the Union noted that it had withdrawn its proposal on Article XX. The Union went on to explain that it relied on the specific notice in the

brief that the proposal was withdrawn and that the Union had notified the Agency of this withdrawal at the same time it had filed its brief. While the Union made no further reference in its brief to Article XX, the Agency addressed the substantive arguments of nonnegotiability as it related to both proposals in its brief and made no acknowledgment of the withdrawn proposal. However, sometime later, the Agency filed a motion reflecting the Agency's understanding that the Article XX proposal had been withdrawn.

On December 3, 2013, PERB issued Opinion No. 1445 finding that both Articles XX and 45B were non-negotiable. Two weeks later, the Union filed a motion for reconsideration asserting that the negotiability of Article XX had been withdrawn and was therefore improperly before PERB and that PERB erred in determining that Article 45B was non-negotiable. That motion was subsequently denied and the Union filed an appeal in D.C. Superior Court on May 16, 2014.

## II. Analysis

The court ruled that Article XX was not properly before PERB. The court reasoned that there was substantial evidence that the Union withdrew the proposal. First, there was the statement in the brief that the Union had withdrawn its proposal.<sup>1</sup> Second, there was no reference in the Union's brief to the substance of the Article XX proposal.<sup>2</sup> While the court stated in its decision that the Union's statement of withdrawal could have been clearer, it did agree that both the statement of withdrawal in the brief and the absence of any substantive reference to the proposal in the brief were both substantial evidence that the proposal had been withdrawn.<sup>3</sup> Furthermore, the court stated that there is no authority in the PERB rules that require a party to file a motion for leave to withdraw a proposal in a negotiability appeal.<sup>4</sup> Absent any such rule, PERB erred in requiring a motion for leave to withdraw in this case.<sup>5</sup> Therefore the Court vacated PERB's finding of non-negotiability as it related to Article XX.<sup>6</sup>

## III. Conclusion

Based on the foregoing, and in accordance with D.C. Official Code § 1-617.13(c), the Board finds that it erred in denying the Union's motion for reconsideration and, under the circumstances of this case, finding that Article XX was non-negotiable. The Board therefore vacates that portion of its decision and order in Slip Opinion 1445 to find, in accordance with the Superior Court, that Article XX is withdrawn.

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<sup>1</sup> Id.

<sup>2</sup> Id at 6.

<sup>3</sup> Id at 7.

<sup>4</sup> Id at 8.

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

<sup>6</sup> Id at 9.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. Slip Opinion 1445 is vacated in part.
2. Article XX is withdrawn.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By unanimous vote of Board Chairman Charles Murphy and Members Keith Washington, Ann Hoffman, and Yvonne Dixon

September 22, 2015

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 13-N-04, Op. No. 1543, was transmitted via U.S. Mail and e-mail to the following parties on this the 23d day of September, 2015.

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PERB