

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any formal errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

International Brotherhood
of Police Officers,
Local No. 445, AFL-CIO

Petitioner,

and

District of Columbia
Department of Administrative
Services,

Respondent.

PERB Case No. 94-N-05
Opinion No. 392

DECISION AND ORDER ON NEGOTIABILITY APPEAL

On April 6, 1994, the International Brotherhood of Police Officers, Local 445, AFL-CIO (IBPO) filed a Negotiability Appeal with the Public Employee Relations Board (Board) appealing the negotiability of items proposed by IBPO concerning employer-provided accommodations for IBPO representatives.^{1/} The Appeal arises from negotiations between IBPO and the D.C. Department of Administrative Services (DAS) for a successor collective bargaining agreement on noncompensation terms and conditions of employment.

On April 25, 1994, the Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of DAS, filed a Response to the Negotiability Appeal. OLRCB states that IBPO's proposal on employee representative accommodations "is not properly before the PERB in the form of a Negotiability Appeal." (Resp. at 4.) OLRCB states that it is not claiming that IBPO's proposal is contrary to law, regulation or controlling agreement, but rather

^{1/} IBPO's Appeal did not conform to the Board's filing requirements for Negotiability Appeals. IBPO was notified of those deficiencies, and filed an amended Appeal on May 6, 1994.

that the proposal does not address terms and conditions of employment and therefore concerns a permissive subject of bargaining over which DAS has no obligation to bargain.

UNION OFFICE SPACE AND EQUIPMENT

The Employer shall provide the union with an office encompassing an area of equal to or greater than 150 square feet. The Employer shall equip the office with the following:

1. 1 telephone
2. 1 desk
3. 1 table
4. 1 file cabinet
5. 2 chairs

The Board's jurisdictional "authority to make determinations as to whether a matter is within the scope of collective bargaining ... is invoked by the party presenting a proposal which has been declared nonnegotiable by the party responding to the proposal (See Board Rule 532.1)." (emphasis in original) Fraternal Order of Police/MPD Labor Committee and Metropolitan Police Department, 38 DCR 847, Slip Op. No. 261 at 2, PERB Case No. 90-N-05 (1991). Board Rule 532.3 requires that the declaration from the responding party be a "written communication ... asserting that a proposal is nonnegotiable". See, e.g., Teamsters Local Union Nos. 639 and 730 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and D.C. Public Schools, 39 DCR 5992, Slip Op. No. 299 at n. 4, PERB Case No. 90-N-01 (1992).

IBPO contends that this jurisdictional requirement was met by a March 8, 1994 letter from OLRCB to IBPO that stated, in pertinent part:

In response to your request for information relative to your proposal that the District provide the Union with free office space and other amenities, this is a permissive subject of bargaining and thus is not subject to the impasse procedure. See, UDCFA/NEA v. University of the District of Columbia, 29 DCR 2975, Slip Op. No. 43, PERB Case No. 82-N-01 (1982). Accordingly, we are not obligated to provide you with the information requested since this issue is no longer a subject of negotiations.

OLRCB's characterization of the proposal as permissive to

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avoid the Board's jurisdiction over this Appeal, IBPO contends, is employed "rather loosely to encompass arguments which give rise to questions concerning the negotiability of th[is] proposal as well." (App. at 2 quoting Committee of Interns and Residents and D.C. General Hospital, Slip Op. No. 301 at 2, PERB Case 92-N-01 (1992).) In support of this contention, IBPO cites an argument made by OLR CB in its Response which stated "[t]he Union proposal at issue is not [sic] mandatory subject of bargaining. The proposal does not concern wages, hours, or other terms and conditions of employment." (Resp. at 10.) IBPO asserts that the March 8th letter and other correspondence reflects OLR CB's "refus[al] to negotiate."^{2/} (App. at 3.) Based on these assertions, IBPO equates OLR CB's alleged refusal to negotiate over this proposal as constituting the required assertion that the proposal is nonnegotiable.

Upon reviewing OLR CB's March 8, 1994 letter to IBPO, as well as the arguments made by OLR CB in its Response to the Appeal (including the one cited by IBPO), we find the context and substance of OLR CB's letter and Response to the Appeal is specifically directed to DAS' obligation to bargain over the subject of the disputed proposal. OLR CB's arguments address its obligation to negotiate to impasse over a subject which it contends is not a "term and condition of employment" under the CMPA. See D.C. Code Sec. 1-618.1(b)(2).^{3/} In view of our findings, the precise question presented by IBPO's Appeal is not the general negotiability of the subject addressed by the proposal, but rather the extent of DAS' obligation to negotiate under the CMPA with respect to this subject matter.

To the extent that OLR CB contends that these proposals are

^{2/} Although IBPO refers to other correspondence from OLR CB that reflect its refusal to negotiate over this matter, the March 8, 1994 letter is the only correspondence attached to or specifically noted in IBPO's Amended Appeal.

^{3/} OLR CB's argument stems from the distinction made by the Supreme Court under the National Labor Relations Act (NLRA) with respect to the duty to bargain. The Court observed that the duty to bargain was limited to the actual subjects enumerated under the NLRA, i.e., "wages, hours and other terms and conditions of employment." NLRB v. Wooster Division of the Borg-Warner Corporation, 356 US 342 (1958). In the wake of this decision, those subjects not expressly authorized under the NLRA were termed "permissive" by the National Labor Relations Board to denote their nonmandatory nature with respect to the duty to bargain.

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permissive, i.e., that DAS may elect not to negotiate over them, no issue of negotiability is raised.^{4/} Therefore, we have no occasion in this negotiability appeal proceeding to address the arguments in support of this contention. See, District of Columbia Fire Department and American Federation of Government Employees, Local 3721, 35 DCR 6361, Slip Op. No. 185, PERB Case No. 88-N-02 (1988).^{5/}

ORDER

IT IS HEREBY ORDERED THAT:

The proposal concerning Union Office Space and Accommodations is dismissed since it presents no issue of negotiability for the Board's determination.

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

June 28, 1994

^{4/} The Board has declined to assert jurisdiction over a negotiability appeal when the dispute is not over an issue concerning the negotiability of the proposal, but rather a contention, as OLRB asserts, that a proposal is permissive, i.e., a subject over which a party has discretion whether or not to negotiate. Committee of Interns and Residents and D.C. General Hospital, Slip Op. No. 301, PERB Case No. 92-N-01 (1992). We ruled that the "latter issue focuses on a party's obligation to bargain over the subject matter under certain circumstances rather than the general negotiability of the subject matter under the CMPA." Id. at 2. See, also, Teamsters Local Union No. 639 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and D.C. Public Schools 38 DCR 6698, Slip Op. No. 267 at n. 9, PERB Case No. 90-U-05 (1991).

^{5/} We note that IBPO currently has pending before the Board an Unfair Labor Practice Complaint, i.e., PERB Case No. 94-U-13, alleging that DAS violated the CMPA, D.C. Code Sec. 1-618.4(a)(1) and (5) by refusing to provide IBPO, upon request, with information concerning the subject of this proposal. Our disposition of this Appeal is made without prejudice to any amendment to the Complaint or other appropriate cause of action IBPO may file should an issue of negotiability arise in accordance with Board Rule 532.