



Written exceptions to the Hearing Officer's Report and Recommendation pursuant to PERB Rule 109.22 were not filed by the parties.

The Hearing Examiner concluded that "... the implementation of the Supercan test by the Department is not a subject of collective bargaining under D.C. Law 2-139", but rather is within the scope of management's rights.

The Hearing Examiner concluded, further, that Respondent did not refuse "... either to bargain or consult with the Union concerning the implementation and impact of the Supercan test". We concur in both conclusions and, accordingly, confirm them.

A review of the record before us indicates that the cause of action herein is based upon the implementation of the "Supercan" test program. It is not clear whether or not there is an allegation of statutory violation based upon an implementation of the program on a permanent basis, but a review of the record appears to indicate no such allegation. Accordingly, that issue is determined not to be before the Board in this action.

A further review of the record indicates that Respondent has taken no affirmative steps toward contracting out work currently being performed by members of the bargaining unit. Respondent's actions in requesting and accepting bids must be more appropriately described, at this juncture, as exploratory in nature. It is determined, therefore, that the issue of Respondent's right to contract out work is premature and not before the Board at this time.

ORDER

1. That portion of the Complaint alleging an unlawful refusal to bargain over changes in terms and conditions of employment as a result of implementing the "Supercan" test program is dismissed.
2. That portion of the Complaint alleging an unlawful refusal to bargain over changes in terms and conditions of employment as a result of implementing the "Supercan" program is determined not to be before the Board in this action, and is dismissed.
3. That portion of the Complaint alleging the unlawful contracting out of work is not determined to be before the Board at this time and is dismissed without prejudice to the Complainant's right to raise the issue with the Board under appropriate circumstances.