

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

In The Matter Of:)

International Brotherhood of)
Police Officers,)
Local 446, AFL-CIO)

Petitioner,)

and)

District of Columbia General)
Hospital,)

Respondent.)

PERB Case No. 92-N-05
Opinion No. 336

DECISION AND ORDER ON NEGOTIABILITY APPEAL

On September 9, 1992, the International Brotherhood of Police Officers, Local 446 (IBPO) filed a Negotiability Appeal (Appeal) with the Public Employee Relations Board (Board) pursuant to Board Rule 532.3. The Appeal concerned matters that were declared nonnegotiable by the District of Columbia General Hospital (DCGH) during impact-and-effects bargaining regarding the implementation of a new security post at DCGH. ^{1/}

DCGH filed a Response to the Appeal on September 24, 1992. Based on arguments and assertions addressed below, DCGH contends that IBPO's proposals concerning light duty assignments and recruitment are "outside the scope of collective bargaining." (Resp. at 1.)

We have reviewed the parties' pleadings and conclude for the following reasons that IBPO's proposal concerning light duty

^{1/} DCGH's establishment of the new security post and thereafter refusing to bargain upon request over the impact and effects of this action on bargaining-unit employees', i.e., special police officers, terms and conditions of employment was the subject of an unfair labor practice complaint in International Brotherhood of Police Officers, Local 446, AFL-CIO v. District of Columbia General Hospital, ___ DCR ___, Slip Op. No. 312, PERB Case No. 91-U-06 (1992). There we found DCGH's action a breach of its duty to bargain in good faith in violation of D.C. Code Sec. 1-618.4(a)(5).

assignments is a matter not within the scope of collective bargaining; its proposal concerning recruitment, however, is a matter within the scope of collective bargaining.

Proposal No. 1

LIGHT DUTY ASSIGNMENTS

Light duty assignments will be available for officers who are unable to perform 100% of their duties as Special Police Officers. The assignments shall be limited to the following posts: dispatch and Post #13.

DCGH contends that the proposal interferes with management's sole right under, inter alia, D.C. Code Sec. 1-618.8(a)(2) of the Comprehensive Merit Personnel Act (CMPA) to "...assign and retain employees in positions within the agency" ^{2/} Notwithstanding the CMPA's expressed reservation of listed prerogatives in the management rights provision under D.C. Code Sec. 1-618.8(a), we have on numerous occasions held that the impact and effect of exercising these management actions, as well as the procedures that implement these rights, are negotiable. See Teamsters Local Union No. 639 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO and District of Columbia Public Schools, 38 DCR 1586, Slip Op. No. 263, PERB Case No. 90-N-02, 03 and 04 (1991) and the cases cited therein.

While the above proposal clearly concerns a management right, i.e., Section 1-618.8(a)(2), the proposal does not address matters concerning the impact or effect of the exercise of that management right. Rather, it directly mandates that under certain circumstances management must assign light duty for positions within the agency, i.e., special police officers stationed at dispatch and post No. 13. We therefore find that the proposal contravenes management's sole right to assign employees under D.C. Code Sec. 1-618.8(a)(2) and, thus, is nonnegotiable.

^{2/} DCGH also contends that the proposal violates D.C. Code Sec. 1-618.8(a)(4) and (5). In view of our determination above, we find no need to rule on the merits of these and other contentions.

Proposal No. 2

Recruitment^{3/}

a. The DCGH will run a vacancy announcement for Special Police Officer on an "open and continuous" basis. Any qualified applicants who meet hiring criteria but are not selected will remain on the roster for a period of one year.

b. The DCGH will actively recruit for the Special Police Officer position, including regular public advertisements in a[t] least the Washington Post, the Washington Times, Jobs, the Capitol Spotlight, and the Maryland and Virginia Journals, D.C. Personnel Office and the D.C. Department of Employment Services.

c. Potential applicants who meet minimum requirements will be interviewed and rated by a panel consisting of one union representative, one supervisor, one personnel specialist, and one clinician. The Union will be provided with a list of all qualified applicants as soon as it is developed.

d. Vacancies will be filled, without favoritism or discrimination, with qualified applicants on the basis of merit principles.

e. Vacancy announcements and other hiring notices will be promptly provided to the Union President and posted conspicuously on Personnel and employee bulletin boards.

DCGH raises essentially two arguments in support of its contention that IBPO's proposal concerning recruitment is nonnegotiable. First, DCGH argues that the recruitment of its employees constitutes "the technology of how the Hospital's Human Resources Department [,i.e., DCGH,] performs its work[.]" (Resp. at 3.) In this regard, DCGH contends that the proposal infringes upon management's sole right "[t]o determine... the technology of performing its work..." pursuant to D.C. Code Sec. 1-618.8(a)(5). We disagree.

The assertion that procedures establishing a method or means

^{3/} DCGH contends that this proposal has already been decided in International Brotherhood of Police Officers, Local 446, AFL-CIO and District of Columbia General Hospital, ___ DCR ___, Slip Op. No. 328, PERB Case No. 92-N-02 (1992). The issues in that case, which arose in a different set of negotiations, were never addressed on the merits since the Appeal was dismissed as untimely.

for recruiting employees constitutes the technology of performing DCGH's work stretches beyond reason the concept of technology. Such rationale would render virtually nothing negotiable under a statute that the Board has interpreted as having a "broad policy favoring collective bargaining[.]" International Association of Firefighters, Local 36 and District of Columbia Fire Department, 34 DCR 118, Slip Op. No. 167 at 3, PERB Case No. 87-N-01 (1988). Moreover, the phrase "the technology of performing its work" in Section 1-618.8(a)(5) refers to the technology used to perform the agency's mission and not procedures that implement a management right affecting employees' terms and conditions of employment, e.g., hiring pursuant to Section 1-618.8(a)(2), which we have ruled to be negotiable. We find that the above proposal addresses the latter.

Finally, DCGH asserts that "the manner in which the Hospital recruits to fill special police officer vacancies does not affect the employment relationship with current bargaining unit members, nor their wages, hours and working conditions... ." (Resp. at 3.) Since applicants are not part of the bargaining unit, DCGH argues, "how [DCGH] recruits these individuals is nonnegotiable." *Id.* In response to this contention by DCGH, we turn to the National Labor Relations Board (NLRB) decision in National Labor Relations Board v. Houston Chapter, Associated General Contractors of America, Inc., et al., 143 NLRB 409 (1963), enforced, 349 F.2d 449 (CA 5, 1965), cert. denied, 382 U.S. 1026 (1966). There, the NLRB observed with respect to bargaining collectively over employees' wages, hours and other terms and conditions of employment, that "'employment' connotes the initial act of employing as well as the consequent state of being employed... ." *Id.* at 412. The NLRB further observed that "employees" under the National Labor Relations Act were "not limited to those individuals already working for the employers" but also included "prospective employees." *Id.* In view of the noted broad policy under the CMPA favoring collective bargaining, and the absence of provisions under Subchapter XVIII of the CMPA expressly proscribing the subject matter of this proposal pursuant to D.C. Code Sec. 1-618.9(b), we similarly find matters concerning the "act of employing", which affect "prospective employees", to constitute "terms and conditions of employment" as prescribed under D.C. Code Sec. 1-618.2(b)(4). Therefore, we rule that the subject matter of this proposal falls within the scope of matters negotiable under the CMPA, to the extent that it does not directly contravene a reserved management right. Since we have concluded, in addressing DCGH's first argument, that the proposal does not directly contravene a management right, we find no merit in this argument by DCGH and

conclude that the proposal is negotiable. ^{4/}

ORDER ^{5/}

IT IS HEREBY ORDERED THAT:

1. The International Brotherhood of Police Officers Local 446, AFL-CIO's (IBPO) proposal concerning light duty assignments is not within the scope of collective bargaining under the Comprehensive Merit Personnel Act and is therefore nonnegotiable.
2. IBPO's proposal concerning recruitment is within the scope of collective bargaining with respect to these employees and is therefore negotiable.

^{4/} DCGH also cited our decision in University of the District of Columbia Faculty Association/National Education Association and University of the District of Columbia, 27 DCR 2975, Slip Op. No. 43, PERB Case No. 82-N-01 (1982) in support of its contention "there is no statutory mandate or basis for giving labor organizations the right to negotiate over a subject concerning employees who are not part of the bargaining unit." (Resp. at 3.) What we held in that case, however, is that "[t]here appears to be no statutory basis to support a contention that a labor organization has any legal or mandatory right" with respect to negotiating over matters peculiar to "management employees". (Emphasis added.) UDC Faculty Association/NEA and UDC, *supra*, Slip Op. at 7. Clearly, the object of IBPO's proposal in the instant proceeding, concerning the recruitment of applicants to fill bargaining-unit positions, does not address management employee matters.

^{5/} DCGH raised the argument with respect to both of IBPO's proposals that IBPO has not met its burden of establishing that the proposals are related to the impact or effect of DCGH "having redeployed its security staff." (Resp. at 1 and 3.) DCGH further contends that IBPO's proposal concerning recruitment is permissive. We find both of these contentions to be without merit. See Committee of Interns and Residents and D.C. General Hospital Commission, ___ DCR ___, Slip Op. No. 301, PERB Case No. 92-N-01 (1992); Teamsters Local Union No. 639 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO and District of Columbia Public Schools, *supra* and District of Columbia Fire Department and American Federation of Government Employees, Local 3721, 35 DCR 6361, Slip. Op. 185, PERB Case No. 88-N-02 (1988).

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

December 8, 1992