

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

International Association  
of Firefighters, Local 36,

Petitioner,

and

District of Columbia  
Fire Department,

Respondent.

PERB Case No. 87-N-01  
Opinion No. 167

DECISION AND ORDER

The parties to this proceeding are Local 36, International Association of Firefighters (IAFF or Union) and the District of Columbia Fire Department (DCFD or Agency). A collective bargaining agreement between these parties, expired on September 30, 1987. During the negotiation of a successor agreement, a dispute arose as to the negotiability of a proposal submitted by the IAFF on or about June 12, 1987, when the parties commenced negotiations.

IAFF's initial bargaining proposals included a proposal to retain the provisions set forth in Article 18 of the parties' 1985-1987 collective bargaining agreement, as well as those contained in a side letter agreement. <sup>1/</sup> This proposal is the only subject of the instant appeal.

In a letter dated July 6, 1987, IAFF's proposal was rejected by DCFD as an illegal subject of bargaining, hence, a non-negotiable subject of bargaining. <sup>2/</sup> During a negotiation session on July 13th, DCFD reaffirmed its position that it had no duty to negotiate the proposal under the provisions of Section 1-618.8(a) and (b) of the Comprehensive Merit Personnel Act of 1978 (CMPA or Statute).

Following the Agency's July 13th rejection of the Union's proposal, IAFF timely filed this negotiability appeal on July 27, 1987, in accordance with the Interim Rules of the Public Employee Relations Board (Board). The representatives of IAFF and DCFD stipulated on August 25, 1987,

<sup>1/</sup> Article 18 is captioned "Manning of Companies" See Appendices A & B

<sup>2/</sup> See Exh. "B" IAFF Appeal

that: (1) DCFD would supplement its initial response to the appeal by filing a supplemental memorandum; (2) IAFF would file a response to the memorandum; and (3) the parties would present their oral arguments to the Board. 3/

The pertinent statutory provision, Section 1-618.8 "Management Rights; Matters Subject to Collective Bargaining," is set forth, in relevant part, below:

Section 1-618.8 Management rights; Matters Subject to Collective Bargaining.

(a) The respective personnel authorities (management) shall retain the sole right, in accordance with applicable laws and rules and regulations:

• • \*

(5) To determine the mission of the agency, its budget, its organization, the number of employees and the number, types and grades of positions of employees assigned to an organizational unit, work project or tour of duty, and the technology of performing its work; or its internal security practices; and

\* • \*

(b) All matters shall be deemed negotiable except those that are proscribed by this subchapter. Negotiations concerning compensation are authorized to the extent provided in Section 1-347.16.

The IAFF contends that its proposal is a mandatory subject of bargaining because Article 18 concerns the safety of bargaining unit members and consequently is a term and condition of employment, which constitute mandatory subjects of bargaining pursuant to Section 1-618.1(2) of the Comprehensive Merit Personnel Act of 1978 (CMPA). DCFD denies both of these contentions, asserting instead that the proposal does not deal with safety and is a prohibited subject of bargaining under the Managements' Rights provisions in Section 1-618.8 (a). At best, argues DCFD, Article 18 may be viewed as a permissive subject of bargaining under Section 1-618.8 (b).

The questions before the Board are whether the contested proposal of IAFF is removed from collective bargaining by one or more of the exceptions stated in 1-618.8 (a) *supra*; if not, whether the proposal is a mandatory or permissive subject of bargaining under Section 1-618.8 (b).

3/ The parties submitted their filings as described above, and oral arguments were heard by the Board on September 11, 1987. Subsequently, the Board's Executive Director asked the parties to respond to interrogatories.

We conclude, for the reasons set forth below, that the challenged proposal is excluded from collective bargaining under the CMPA.

Section 1-618.8 (b) explicitly states that "all matters shall be deemed negotiable except those that are proscribed by this subchapter." This statutory declaration of a broad policy favoring collective bargaining requires the Board to proceed cautiously and not on the basis of generalizations. (See, University fo the District of Columbia Faculty Association and University of the District of Columbia, PERB Case No. 82-N-01, Opinion No. 43) For our purposes, in order to determine whether the Union's proposal falls within the scope of the non-negotiable management prerogatives listed in Section 1-618.8 (a) (5), the Board must place into context the operative phrases, "organizational unit," "tour of duty," and "work project."

The Board notes that the Statute defines the entity referred to in the beginning of subsection (5) -- "the agency" -- in all encompassing terms. Section 1-603.1 defines "agency" as "(a)ny unit of the District of Columbia government required by law, by the Mayor of the District of Columbia, or by the Council of the District, to administer any law, rule or any regulation under the authority of the law." We find that the DCFD is undoubtedly an "agency" within the District of Columbia government. Moreover, by reading the above-cited provisions in pari materia with each other, we conclude that Section 1-618.8 (a) (5) is clear in its intent to reserve to an agency, the sole right to determine an "organizational unit," "tour of duty," or "work project," within the agency's jurisdiction.

In the Board's view, the reference to "numbers" twice in the Statute, with respect to an agency's discretion to determine the manner in which it may effectuate its mission, is indicative of the legislature's intention that an agency may determine the numbers of its employees in the aggregate; including the numbers of employees assigned to a fire engine company, ambulance, fire boat, etc. These are entities which an agency may define as necessary to carry out its designated mission.

In the absence of any legislative history to the contrary, the Board concludes that the most obvious and reasonable construction of the terms, "work project," "tour of duty" and "organizational unit," is to infer that they are matters subject to managements' discretion in determining its "mission," "budget," etc.

The parties submitted the organizational chart of the DCFD, which shows "Divisions", but does not include the "engine companies," etc., with which Article 18 deals. Nevertheless, the word "unit" appears in various other documents which the DCFD has submitted to us, and in the parties' 1985-1987 collective bargaining agreement, <sup>4/</sup> as it does in D.C. Code Section 4-301, which states the following:

<sup>4/</sup> Article 22 of the parties' agreement states in relevant part that, "[t]he position of technician...in engine, truck and rescue squad units shall be filled from within the unit in which the vacancy occurs..."

The Fire Department of the District of Columbia shall provide fire prevention and fire protection within the geographical boundaries of the District of Columbia. The District shall be divided into such fire companies and other units as the Council of the District of Columbia may from time to time direct.

We find that the "Fire Company Operation Resolution of 1983," cited by the DCFD, makes clear the intent of the term "organizational unit," so as to include fire engine companies. 5/

The Board notes the Union's argument that the parties have in fact negotiated the provisions contained in Article 18 for the past fifteen (15) years, and concludes as we did in UDCFA and UDC, supra, that "where the statutory dictate is unclear, (emphasis added) it becomes relevant that the parties have on previous occasions either accepted or rejected negotiation overtures... (t)he previous practice does not control or settle the issue..." As stated previously, we construe the provisions of subsection (5) to expressly mandate that these statutory exceptions are reserved to management's discretion and are not subject to the collective bargaining process. Therefore, the parties' previous practice is not relevant to the Board's consideration of whether Article 18 is a bargainable subject under the CMPA. 6/ It is our view that the Union's proposal to maintain the requirements set out in Article 18, directly interferes with DCFD's right to determine the numbers of its employees assigned to a particular organizational unit; hence, it is non-negotiable.

We turn now briefly, to the relevant provisions of Chapter 25A of the District Personnel Manual (DPM), the predecessor of the CMPA. Specific sections of the DPM addressed the questions of "workload" and "manning," finding that "management's decisions on the above matters are not within the scope of collective bargaining, but notwithstanding the above questions concerning the practical impact that decisions on the above matters have on employees, such questions of workload or manning, are within the scope of bargaining." (emphasis added) IAFF argues that the omission of these provisions in the CMPA is merely evidence that the legislature did not find it necessary to explicitly include these provisions. The Board, however, acknowledges that the parties' practice of bargaining the "impact" and "effects" of the exercise of management's

5/ The September 6, 1983 Resolution states that:

Sec. 3. The Council of the District of Columbia approves, in part, the proposal of the Mayor of the District of Columbia, and hereafter, the Fire Department of the District of Columbia shall operate 54 fire companies, 17 aerial ladder companies 4 rescue squads, and 1 fire boat.

6/ There is no evidence in the record that DCFD has expressly waived or relinquished its reserved rights on this subject, by bargaining on the issue of minimum staffing units as presented in Article 18 and similar provisions in prior agreement between the parties.

rights is consistent with the Chapter 25A provisions of the DPM. <sup>7/</sup> Moreover, DCFD's assertion that the impact and effect of management's decisions was not intended by the Council to be a bargainable issue and was intentionally omitted from the CMPA, is not in the Board's view, a convincing argument. To the contrary, the Board agrees with the Union that the legislature found it unnecessary to specifically include the DPM provisions in the CMPA. Therefore, the Board finds that it is the potential adverse impact upon bargaining unit members, resulting from management's exercise of its statutory prerogatives, which is a bargainable subject. The Union's proposal as currently presented, however, is non-negotiable because it falls squarely within the prohibited subjects which are excepted from the overall obligation to bargain collectively, as stated in Section 1-618.8 (b).

On the basis of the foregoing analysis, the Board finds it unnecessary to address the parties' respective arguments regarding the safety aspects pertaining to the Union's proposal. The non-negotiability of the Union's proposal does not preclude the presentation of a proposal related to impact bargaining, which specifically addresses safety issues. <sup>8/</sup>

Finally, the Board concludes that the IAFF's proposal at issue here is prohibited by D.C. Code Section 1-618.8 (a) (5). The DCFD is therefore not required to bargain the proposal under Section 1-618.8(b).

O R D E R

IT IS ORDERED THAT:

The District of Columbia Fire Department is not required to bargain upon request, the continuation of Article 18 of the present contract or any similar proposal.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD  
October 28, 1987

<sup>7/</sup> This finding is also consistent with the Board's conclusion in UDFA and UDC supra at p. 3 and 4 of the slip op., wherein it states that: "[S]ection 1-618.8 (a) (3) clearly indicates the intention that management shall have exclusive authority to determine what work force is needed. A distinction must be made...between the authority, on one hand, to decide how many employees are needed, and the determination...of how the effects or impact of this decision are to be handled."

<sup>8/</sup> Both DCFD and IAFF cite rulings of other public sector jurisdictions on the issue of safety; while those rulings are of interest to this Board, we conclude that our statute differs with respect to the scope of negotiability. Similarly, the Board is not persuaded by the DCFD's references to the Federal Sector rulings on negotiability, since the Civil Service Reform Act of 1978, among other distinguishing characteristics, treats the subject "numbers, types, grades of positions," etc, as permissive subjects of bargaining and there is no such counterpart provision under the CMPA.

APPENDIX "A"

ARTICLE 18

MANNING OF COMPANIES

Section A. Minimum Requirements: The Employer and the union concur that the most effective and efficient method of operation to attain the mission of the Department, consistent with the objective of achieving maximum safety for the firefighters, necessitates the following minimum requirements:

- (1) Engine companies--Five (5) bargaining unit members
- (2) Truck Companies--Five (5) bargaining unit members
- (3) Rescue Squads--Five (5) bargaining unit members
- (4) Fire Boat--Five (5) bargaining unit members
- (5) Ambulance--Two (2) employees, if at least one bargaining unit member is assigned to the ambulance

If at any time--whether before or after a tour of duty begins--a particular engine company, truck company, rescue squad, fire boat or ambulance cannot maintain the minimum manning requirement set forth above, then each such company, squad, etc. shall be placed out of service until the minimum manning requirement is satisfied. \* It is the expressed intention of the parties, however, that no engine or truck company, rescue squad, fire boat or ambulance shall have to be placed out of service for failure to satisfy the above-specified minimum manning requirements. To that end, the Department agrees that in carrying out its operational and managerial responsibilities it will maintain an adequate reserve staffing pool which will be available for assignment on an expedited basis whenever the need for any such assignment arises so as to assure that the minimum manning requirements shall be met. Those firefighters who comprise the pool shall also be available for other assignments in the Department at the direction of Management when they are not needed in the companies to satisfy the manning requirements.

Upon the request of either party, quarterly meetings of two representatives of each of the parties shall take place for the purpose of reviewing the administration of this Article. In case of emergency, upon the request of either party, the representatives shall meet immediately.

Section B. Security Details: Off-duty employees shall receive overtime compensation, if money is available, for security details.

\*This provision is subject to one exception: under conditions of Department Plan "E" as defined in Article XVII, Section 43 of the Order Book, or of Plan "F" all companies may operate with one bargaining unit member less than the minimum requirement set forth in Section A.

APPENDIX "B"

SIDE LETTER MEMORANDUM OF UNDERSTANDING

MANNING OF COMPANIES

In the negotiations which culminated in Article 18, Manning of Companies the parties, among other things, reached the following agreements: "It is the expressed intention of the parties...that no engine or truck company, rescue squad, fire boat, or ambulance shall have to be placed out of service for failure to satisfy the...minimum manning requirements specified in Section A. To that end, the Department agrees that in carrying out its operational and managerial responsibilities it will maintain an adequate reserve staffing pool which will be available for assignment on an expedited basis whenever the need for any such assignment arises so as to assure that the minimum manning requirements shall be met."

In the negotiations which led to the agreement concerning those above quoted provisions Local 36 made a demand that "an adequate reserve staffing pool" should be defined further in the contract by inserting a specific minimum number of firefighters from the Firefighting Division who would comprise the pool; the District on the other hand took the position that it would determine the manner the Department met its obligations to provide an adequate pool. While local 36 did not agree with the District's position the Union nevertheless withdrew its demand, conditioned upon the following understandings:

Any claim that the Department has violated any provision of the Manning Article including, but not limited to, a claim that the Department has failed to maintain "an adequate reserve staffing pool..so as to assure that the minimum manning requirements shall be met" shall be subject to the Grievance/Arbitration Article.

In any such case the arbitrator shall have the authority to issue an appropriate award. if the arbitrator finds that the Department has engaged in a persistent course of conduct in failing to maintain a reserve staffing pool that is adequate to meet the minimum manning requirements, such award may include an order requiring the Department to provide an adequate reserve staffing pool that shall consist of a specified number of firefighters.

DISSENTING OPINION OF MEMBER KOHN  
Case No. 87-N-01  
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The statute (D.C. Code Section 1-618.8) does not speak to me with the same clarity as to the majority on the question presented here: whether the manning of the Fire Department's engine companies, truck companies, rescue squads, fire boat, and ambulances is a subject reserved to management determination or, instead, is subject to collective bargaining.

Since the terms of the statute do not reveal, to me, a necessary answer to that question, I believe that assistance must be sought in the legislation's history. Examination of the prior law, the nature of the CMPA, and the understanding of both of these by the parties to this proceeding--the latter embodied in a consistent series of bargaining agreements over 15 years that were presumably known to the Council at and in the years following adoption of the CMPA--leads me to the conclusion that the manning proposal presented to us is not reserved to management by Section 1-618.8(a)(5). Rather, it is negotiable under Section 1-618.8(b), and is a mandatory subject whether looked at as (a) a proposal to deal with the effects of decisions that are reserved to management by subsection 1-618.8(a)(5), or (b) a proposal concerned with the safety of bargaining unit members. These points are elaborated below.

I

A. First, the words of Section 1-618.8. As the majority points out, the declaration of a broad policy favoring collective bargaining in subsection (b) "requires the Board to proceed cautiously and not on the basis of generalizations" (slip op. p. 3). I agree with the majority that the Fire Department is an "agency" and thus entitled to make unilaterally those decisions enumerated in subsection (a)(5). But the precise question here is whether those decisions include the manning of the engine companies, etc., in the challenged proposal. The one thing that is clear is that such manning decisions are not specified in subsection (a)(5). <sup>1/</sup> Are they, however, decisions necessarily encompassed within "the mission of the agency, its budget, its organization, the number of employees and the number, types and grades of positions of employees assigned to an organizational unit, work project or tour of duty, and the technology of performing its work"?

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<sup>1/</sup> The majority's assertion, slip op. p. 4 that the provisions of subsection (5) "expressly mandate" exclusion of the proposal is simply incorrect.

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The proposal does not speak to the Fire Department's goals, its reasons for being, hence it does not intrude upon determinations of the Department's "mission." Cf, UDC and UDC Faculty Ass'n, PERB Case No. 82-N-01, Op. No. 43, slip op. p. 7 ("quantitative [proposal] does not involve the qualitative elements that are suggested by [mission of the agency]"). Unless it follows that any decision that will have an effect on the budget of an agency is for that reason removed from bargaining--a proposition that would leave little of consequence negotiable--I do not see how the challenged manning proposal could be said to be included within decisions on the Department's mission or its budget. Similarly, while there may be a relationship between manning as described in the proposal and "the technology of performing [the Department's] work", it has not been shown that the Department's chosen technology would be precluded by adoption of the proposal (should that be the outcome of bargaining).

We are left, then, with the question whether the manning decisions in the proposal fall within the determin[ation of] "the number of employees and the number, types and grades of positions of employees assigned to an organizational unit, work project or tour of duty." The first of these phrases I, like the majority, take to refer to the total number of Department employees--its employees "in the aggregate" (slip op. p.3). (I do not, however, understand what the majority means when it adds immediately thereafter, "including the numbers of employees assigned to a fire engine company, ambulance, fire boat, etc." (emphasis added))

Are the proposed manning decisions included within the reserved decisions on number, types and grades of positions of employees assigned to an "organizational unit," "work project" or "tour of duty?" Work project appears to refer to something more ad hoc than engine companies, truck companies, etc., and tour of duty, in the Fire Department, is used to refer to shift. The majority does not treat these phrases as relevant here, nor do I.

And so we reach the nub: are engine companies, truck companies, rescue squads, fire boats and ambulances "organizational units"? I can find nothing in the language or the spirit of the statute that compels an answer, "Yes". It may be that the Council intended the phrase to include any and every component of an agency, from a desk, automobile or other entity

that may be used by one employee at a time on up to just below (or perhaps including) the agency itself. But that is not necessarily so. It is equally possible that the Council intended to leave the definition of "organizational unit" to definition agency by agency, with the agency formal structure determining the reach of management's reserved power over "number, types and grades...assigned" (in which case we would look to the agency's organizational chart). It may be that the Council thought some entities or substructures within the D.C. Government were too small to be included at all among the subjects of decisions reserved to management in subsection (a)(5). Or it may be that the Council either intended to leave this question to the Board or had no actual intent here, in which case a board or court required to decide a case would draw upon all sources that could assist in reaching a sensible decision consonant with the statutory purposes. Because I see no basis for choice among these possibilities in the words or spirit of the statute, I must dissent from the majority's conclusion that the challenged proposal is excluded from collective bargaining under the CMPA by the clear terms of the statute.

The Board's own reasoning does not lead to its conclusion. Despite its call for caution rather than generalizations, the majority treats the separate phrases and subjects of subsection (a)(5) as if they were one; it reaches subsidiary conclusions which, while correct, are irrelevant; it treats the word "unit" used elsewhere by the Government and the union as synonymous with and useful in interpreting "organizational unit" in subsection (a)(5); and, as the preceding demonstrates, the majority relies upon material outside the statute while at the same time holding the parties' bargaining history irrelevant because, they say, the statute itself is clear in "expressly mandat[ing] that these statutory exceptions [sic] are reserved to management's discretion" (slip op. p.4, emphasis added).

Specifically: (1) After concluding that the Fire Department "is undoubtedly an 'agency' within the District of Columbia Government" (slip op. p.3), the majority immediately states that "by reading the above-cited provisions in pari materia with each other, we conclude that Section 1-618.8(a)(5) is clear in its intent to reserve to an agency, the sole right to determine an 'organizational unit' 'tour of duty,' or 'work project,' within

the agency's jurisdiction." (Ibid.) The "above-cited provisions" appears to mean the phrases concerning "the agency" and the three separate phrases then quoted, and the "reading...in pari materia" appears to mean (if it means anything) that A equals B. (2) In the sentence just quoted, and again two paragraphs later, the majority concludes that subsection (a)(5) reserves to management "the sole right to determine an 'organizational unit' etc." and "infer[s] that ['organizational unit' etc.] are matters subject to managements' discretion in determining its [sic] 'mission,' 'budget,' etc." (Ibid.) That subsection (a)(5) gives management the right to define (i.e., determine) an organizational unit may be assumed here; that is not our question. (3) The majority concedes that the Fire Department's organizational chart does not include the engine companies, etc., with which the proposal deals. Thus, whether or not "organizational units" for purposes of subsection (a)(5), the engine companies, etc., are not such in the eyes of the Department. The majority ignores the implications of that fact, however, preferring to rely on the certainly less significant (if significant at all) fact that the word "unit" appears in various other documents including the most recent bargaining agreement and D.C. Code Section 4-301. The latter is a provision establishing the Department and its role, and stating that the District shall be divided into such fire companies and other units as the Council shall from time to time direct. I shall discuss below the significance of Section 4-301 and of the Fire Company Operation Resolution of 1983 as well as other extra-statutory materials for the question in this case. For the moment, suffice it to note that the use of the word "unit" in Section 4-301, like use of the same word in the bargaining agreement quoted by the majority, casts no light at all on our inquiry as to the inclusion vel non in "organizational unit" of the engine companies, etc., of the proposal.

B. If, then, the words of the statute do not lead ineluctably to an answer to our question, we must look outside, and first to the legislation's history. In the narrow and usual sense, we have no legislative history -- no committee report, no recorded debate. We do, however, have the prior governing law and it has something to say here. The District Personnel Manual (DPM Chapter 25A), then in force, provided:

\* \* \* \*

"Section 11(b)(3)

"(b) Management shall retain the sole right, in accordance with applicable laws and regulations, (1) to direct employees of the agency, (2) to hire, promote, transfer, assign, and retain employees... (5) to determine the mission of the agency, its budget, its organization, the number of employees and the numbers, types and grades of positions on employees assigned to an organizational unit, work project or tour of duty.

(c) Management's decisions on the above matters are not within the scope of collective bargaining, but, notwithstanding the above, the questions concerning the practical impact that decision on the above matters have on employees, such as questions of workload or manning, are within the scope of collective bargaining. [emphasis added]

In short, under the prior, more limited law, the rights reserved to management need in relevant respects just as they do now and the then-law explicitly treated as negotiable "questions concerning the practical impact that decision on [reserved matters] have on employees, such as questions of workload or manning." The present parties, accordingly, included within each of their agreements at least as far back as 1972 provisions comparable to the proposal challenged here. We must assume that the D.C. Council, when it approved the CMPA, had before it not only the prior law but also the bargaining agreements that had been negotiated under that law.

What is to be inferred from the repetition in the CMPA of the management rights of the prior law and the omission of any reference to impact bargaining? The Fine Department would have us conclude that the purpose and effect was to remove manning from negotiability. Its logic, however, would require us to hold

that the impact of decisions reserved to management is, across the board, no longer negotiable. That we cannot do both because it is inconsistent with the broad scope of bargaining established by the CMPA and because the Board has previously ruled that the practical impact of a properly unilateral management decision is bargainable, see UDC and UDC Faculty Ass'n, supra, slip op. at pp. 3, 4. On the point that impact is bargainable the majority and I are in agreement (see slip op. at p.5). The majority "agrees with the Union that the legislature found it unnecessary to specifically include the DPM provisions in the CMPA" (ibid.) But because it had already concluded that the proposal here was prohibited by subsection (a)(5), the Board excised "manning" from the carried-over obligation to bargain on impact (slip op. pp 4, 5).<sup>2/</sup> I do not think one legislative action can be thus divided into two opposite intentions, at least without some instruction from the legislature that this is its aim.

The present parties interpreted the CMPA as carrying forward their obligation to bargain on manning (and their right to adopt proposals such as that challenged here). Like provisions have been in every agreement to and including the one that expired a few weeks ago. I do not begin to suggest that a subject may be made bargainable by parties' conduct in the face of Code provision to the contrary. It is, however, as true here as it was in the UDC case, supra, slip op. at p.3, and as the majority agrees (p.4), that "where there is a close question

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<sup>2/</sup> As a result, the majority found the parties' previous practice irrelevant. In so finding, the Board majority assented that "[t]here is no evidence in the record that DCFD has expressly waived or relinquished its reserved rights on this subject, by bargaining on the issue of minimum staffing..." (n. 6, p.4). One would be hard put to come up with cleaner evidence of waiver or relinquishment of rights than actual bargaining on and agreement to provisions on the disputed subject. But apart from that, the majority is apparently unwilling to accept the consequences of its conclusion that the challenged proposal is prohibited, for if bargaining on the proposal is unlawful, management cannot lawfully "waive or relinquish" its right to determine the matter unilaterally.

regarding a particular issue and the statutory dictate is unclear, it becomes relevant that the parties have on previous occasion either accepted or rejected negotiation overtures."

Moreover, D.C. Code Section 1-618.15 directs that each collective bargaining agreement reached is to be submitted to the Council for its information. Thus, it is not unreasonable to assume that the Council has been apprised of the continuing adoption of contract proposals like the one challenged here. Years have passed since adoption of the CMPA, but neither the Mayor (through proposals to amend or clarify) nor the Council has sought any change in the provisions here relevant. To be sure, in September, 1983, the Council adopted a Resolution (quoted by the majority in its fn. 5 at p.4) "approv[ing] in part the proposal of the Mayor [that] hereafter, the Fire Department... shall operate 54 fire companies, 17 aerial ladder companies, 4 rescue squads, and 1 fire boat." I take this as approval of a structural change as contemplated by D.C. Code Section 4-301 (also inappropriately relied on by the majority to support its conclusion) and as casting no light at all upon the negotiability of a manning proposal. The Resolution approves a fixed number of fire companies, aerial ladder companies, etc. It says nothing about the number of employees to form the minimum complement of each. Like D.C. Code Section 4-301, <sup>3/</sup> the 1983 "Fire Company Operation Resolution" is entirely compatible with a management's reserved right to establish the total employee complement for the Department, and (b) the establishment through collective bargaining of the specific manning minima for engine company, etc. <sup>4/</sup>

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<sup>3/</sup> This Code provision, the first in Title 4, Chapter 3, "Fire Department", is entitled "Area of Service; Division of District into Fire Companies; and Approval Required for Major Changes in Manner of Fire Protection." Definitional and structural, the provision was enacted in 1977. It is quoted in full by the majority at p.4.

<sup>4/</sup> In finding that this Resolution of 1983 "makes clear the intent of the term 'organizational unit,' so as to include fire engine companies," the majority ignores the elementary principle that a subsequent legislative act can tell nothing about the intention of the legislature that enacted the prior measure.

In sum, what the terms of Section 1-618.8 leave indeterminate, the history of that provision and the prior, contemporaneous and subsequent conduct of the parties suggest, and the conduct of the Mayor and Council do not contradict: the CIPA in Section 1-618.8(a) and (b) was not intended to preclude bargaining on the manning of fire engine companies, truck companies, rescue squads, fire boat(s) and ambulance(s).

## II

Is the challenged proposal, which I have concluded is negotiable, a mandatory or a permissive subject of bargaining? I conclude that it is mandatory, whether viewed as a proposal to deal with the impact upon bargaining unit employees of managerial decisions on the organization of the Department and its total employee complement, or as a proposal concerned with the safety of bargaining unit employees.

A. As shown above, the Board is unanimous in holding that proposals to deal with the effects on employees of reserved managerial decisions are mandatory subjects of bargaining. The proposal challenged here can be characterized as such a proposal-dealing with the effect on bargaining unit members of management decisions as to the structure and organization of the Department, on its total available personnel, or both.

B. Alternatively, the challenged proposal may be characterized as a proposal concerned with the safety of bargaining unit members, and as such a mandatory subject of bargaining. See, e.g., NLRB v. Gulf Power Co., 384 F. 822 (5th Cir. 1967), enforcing 156 NLRB 622 (1966); and see Fibreboard Paper Prods. Co., v. NLRB, 379 U.S. 203, 222 (1964). The Fire Department may not be heard to deny the safety interest in this proposal in view of its long-term agreement to contract provisions such as the most recent, which stated in its introductory paragraph that "The Employer and the union concur that the most effective and efficient method of operation to attain the mission of the Department, consistent with the objective of achieving maximum safety for the firefighters, necessitates the following minimum requirements:" (Article 18 of the parties' agreement that expired on September 30, 1987, attached to the majority's opinion as Appendix "A".) In any event, the safety implications of the number of fellow workers serving with a firefighter at the scene of a fire (or on an ambulance or fireboat) would seem to be self-evident.

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For all the above reasons, I would conclude that the Union's proposal challenged here is not excluded from bargaining by D.C. Code Section 1-618.8(a)(5) but is, to the contrary, a subject as to which the Fire Department must bargain upon request under Section 1-618.8(b).