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

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In the Matter of:	)
)	)
Compensation Unit 31 (American Federation of	)
Government Employees, Locals 631, 872, and	)
2553; American Federation of State, County, and	)
Municipal Employees, Local 2091; and National	)
Association of Government Employees,	)
Local R3-06),	)
)	)
Appellant,	)
)	)
and	)
)	)
District of Columbia Water and Sewer	)
Authority,	)
)	)
Respondent.	)
)	)
)	)

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**DECISION AND ORDER**

Compensation Unit 31 (“Comp. Unit 31”), consisting of American Federation of Government Employees, Locals 631, 872, and 2553; American Federation of State, County, and Municipal Employees, Local 2091; and National Association of Government Employees, Local R3-06 filed a Negotiability Appeal (“Appeal”) against the District of Columbia Water and Sewer Authority’s (“WASA” or “Authority”) written declaration of the non-negotiability of three proposals made during the parties’ negotiation of a successor compensation agreement. WASA filed a timely Answer to the Appeal.

**I. Standard of Review**

Under D.C. Official Code §§ 1-605.02(5) and 1-617.02(b)(5), the Board is authorized to make determinations concerning whether a matter is within the scope of bargaining. The Board’s

jurisdiction to decide such questions is invoked by the party presenting a proposal that has been declared nonnegotiable by the party responding to the proposal.<sup>1</sup>

The Board applies the U.S. Supreme Court's standard concerning subjects for bargaining established in *National Labor Relations Board v. Borg-Warner Corp.*<sup>2</sup> Under this standard, "the three categories of bargaining subjects are as follows: (1) mandatory subjects, over which the parties must bargain; (2) permissive subjects, over which the parties may bargain; and (3) illegal subjects, over which the parties may not legally bargain."<sup>3</sup>

D.C. Official Code § 1-617.08(b) provides that "[a]ll matters shall be deemed negotiable, except those that are proscribed by this subchapter." The Board has held that this language creates a presumption of negotiability.<sup>4</sup> D.C. Official Code § 1-617.08(b) further states that "[n]egotiations concerning compensation are authorized to the extent provided in § 1-617.16." D.C. Official Code § 1-617.16 provides in part that the "Board shall provide for collective bargaining concerning compensation under the procedures of and on the dates provided in § 1-617.17."<sup>5</sup> D.C. Official Code § 1-617.17(b) requires in part that management and labor "negotiate in good faith with respect to salary, wages, health benefits, within-grade increases, overtime pay, education pay, shift differential, premium pay, hours, and any other compensation matters."

The subjects of a negotiability appeal and the context in which their negotiability is appealed are determined by the Appellant, not the party declaring the matters nonnegotiable.<sup>6</sup> The Board reviews the disputed proposals and addresses each in light of the statutory dictates and relevant case law.<sup>7</sup>

## II. Analysis of Proposals

Comp. Unit 31's proposals are set forth below. The proposals are followed by: (1) WASA's arguments in support of nonnegotiability; (2) Comp. Unit 31's arguments in support of negotiability; and (3) the Board's findings.

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<sup>1</sup> See PERB Rule 532.1.

<sup>2</sup> 356 U.S. 3342 (1975).

<sup>3</sup> *Univ. of D.C. Faculty Ass'n/NEA v. Univ. of D.C.*, 29 D.C. Reg. 2975, Slip Op. No. 43 at p. 2, PERB Case No. 82-N-01 (1982).

<sup>4</sup> See *Int'l Ass'n of Firefighters, Local 36 v. D.C. Fire & Emergency Med. Servs. Dep't*, 51 D.C. Reg. 4185, Slip Op. No. 742, PERB Case No. 04-N-02 (2004).

<sup>5</sup> See D.C. Official Code § 1-617.16(a).

<sup>6</sup> *Int'l Ass'n of Firefighters, Local 36 v. D.C. Fire and Emergency Med. Servs. Dep't*, 45 D.C. Reg. 4760, Slip Op. No. 515, PERB Case No. 97-N-01 (1997).

<sup>7</sup> *Fraternal Order of Police/Protective Servs. Police Dep't Labor Comm. v. Dep't of Gen. Servs.*, 62 D.C. Reg. 16505, Slip Op. No. 1551 at p. 2, PERB Case No. 15-N-04 (2015).

**Comp. Unit 31 Proposal 1 - Article 1, Section B:**

**Section B      Performance-Based Bonus<sup>8</sup>**

The parties agree that the Letter of Understanding executed on August 14, 2000 and the Memorandum of Understanding executed on September 27, 2002, regarding “classification, compensation, and performance evaluation” are no longer in effect upon execution of this Agreement. However, performance evaluations shall continue to be administered per the terms of the ‘D.C. Water and Sewer Authority Union Employees Performance Evaluations Guidelines,’ attached at Appendix A of this Agreement.

**Performance Based Bonus**

Beginning with the March, 31, 2012 2016 annual ratings and each subsequent annual rating during the term of this contract, employees covered by this Agreement shall be eligible to receive a pay for performance lump sum bonus based on the employees’ base rate of compensation for the first full pay period during Fiscal Year 2012 2016, and each subsequent Fiscal Year during the term of this contract that shall be calculated as follows:

- 1. (A) Level 1 Rarely Meets Expectations, Performance Rating – 0% lump sum bonus
- 2. (B) Level 2 Occasionally Does Not Meet Expectations, Performance Rating – 1% lump sum bonus
- 3. (C) Level 3 Consistently Meets Expectations, Performance Rating – 2% 3% lump sum bonus
- (D) Level 4 Exceeds Expectations, Performance Rating – 4% lump sum bonus

If an employee believes that he or she should have received a higher final performance rating and therefore a higher lump sum bonus, he/she may file an appeal to the Authority’s Human Resources Director, within ten (10) thirty (30) days of the issuancee receipt of the rating by his/her supervisor. The Employee shall state the reasons he/she believes that the supervisor’s rating should be elevated and include any relevant documentation to support

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<sup>8</sup> Comp. Unit 31’s new proposed language is underlined.

his/her appeal. The Human Resource Director shall review the employee's appeal and, after review, shall issue Management's final decision on the rating level. The amount of the lump sum bonus shall be paid based on Management's final decision on the rating level.

Disputes over performance evaluations shall not be subject to the grievance and arbitration procedure set forth in Article 17 of this Compensation Agreement.<sup>9</sup>

WASA: WASA notes that the Board has held that "management's right to evaluate employee performance is an exclusive one," and "is an exercise of management's rights to direct and assign work" under D.C. Official Code § 1-617.08(a)<sup>10</sup> WASA argues that, accordingly, Comp. Unit 31's Article 1, Section B proposal is nonnegotiable because it seeks to award pay based on a performance system that is contrary to the one the Authority is in the process of implementing."<sup>11</sup> Further, WASA argues that the Board has held that under D.C. Official Code § 1-617.08(a-1),<sup>12</sup> just because an agency has waived a management right in a past negotiation, that does not mean it has waived that same management right (or any other management rights) in any current or future negotiations.<sup>13</sup>

Comp. Unit 31: Comp. Unit 31 contends that D.C. Official Code § 1-617.08(a) "is not applicable to this matter because [the proposal] has no bearing on, or relevance to, the Authority's ability to exercise any of the rights under those sections."<sup>14</sup> Additionally, Comp. Unit 31 argues that its proposal is negotiable because, although D.C. Official Code § 1-613.53(b)<sup>15</sup> makes the implementation of the District's performance management system nonnegotiable, that section is not applicable to WASA under the restrictions of WASA's enabling statute—specifically D.C. Official Code § 34-2201.15(a)(1)<sup>16</sup>—which states that WASA is not subject to the Comprehensive Merit Personnel Act ("CMPA") except for

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<sup>9</sup> Supplement to Comp. Unit 31's Negotiability Appeal, Ex. 2.

<sup>10</sup> Answer at 3-4, 6 (citing and quoting *Am. Fed'n of Gov't Emp., Local 1403 v. D.C. Office of the Corp. Counsel*, Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02 (July 25, 2003)).

<sup>11</sup> Answer at 6.

<sup>12</sup> D.C. Official Code § 1-617.08(a-1): "An act, exercise, or agreement of the respective personnel authorities (management) shall not be interpreted in any manner as a waiver of the sole management rights contained in subsection (a) of this section."

<sup>13</sup> Answer at 1-2 (citing *Am. Fed'n of Gov't Emp., Local 631 v. D.C. Water & Sewer Auth.*, 54 D.C. Reg. 3210, Slip Op. No. 877 at p. 7-9, PERB Case No. 05-N-02 (2007) (observing that pursuant to D.C. Official Code § 1-617.08(a-1), "if management has waived a management right in the past (by bargaining over that right) this does not mean that it has waived that right (or any other management right) in any subsequent negotiations")).

<sup>14</sup> Appeal at 3.

<sup>15</sup> D.C. Official Code § 1-613.53(b): "Notwithstanding any other provision of law or of any collective bargaining agreement, the implementation of the performance management system established in this subchapter is a non-negotiable subject for collective bargaining."

<sup>16</sup> "(a) Except as provided in this section and in § 34-2202.17(b), no provision of §§ 1-601.01 *et seq.*, shall apply to employees of the Authority except as follows: (1) Subchapters V and XVII of Chapter 6 of Title 1 shall apply to all employees of the Authority...."

subchapters V (governing PERB) and XVII (governing Labor Management Relations).<sup>17</sup> Comp. Unit 31 further asserts that its proposal is negotiable because WASA's enabling statute "does not provide that the Authority has a legal right to establish a performance evaluation system," and the Board "has ruled that any changes that are not mandated by statute are subject to substantive bargaining."<sup>18</sup> Comp. Unit 31 contends that, accordingly, since the parties "have engaged in negotiations over performance evaluations in compensation bargaining [since 2002]," and since its performance proposal is "inextricably intertwined" with compensation, the Board should find that the proposal is negotiable.<sup>19</sup>

**Board:** In *American Federation of Government Employees, Local 1403 v. District of Columbia Office of the Corporation Counsel*,<sup>20</sup> and similarly in *Service Employees International Union, Local 500, v. University of the District of Columbia*,<sup>21</sup> the Board held that a proposal that sets forth the purpose of a performance evaluation system or that contains criteria for the agency to consider for performance evaluations is nonnegotiable under D.C. Official Code § 1-617.08(a) "because it interferes with management's right to direct and assign employees" and because it "is within management's [exclusive] rights to implement a performance evaluation system." In *American Federation of Government Employees, Local 631 v. WASA*,<sup>22</sup> the Board also held, pursuant to D.C. Official Code § 1-617.08(a-1), that "if management has waived a management right in the past (by bargaining over that right) this does not mean that it has waived that right (or any other management right) in any subsequent negotiations."<sup>23</sup> Accordingly, with regard to Comp. Unit 31's Article 1, Section B proposal, it is irrelevant whether or not WASA's enabling statute empowers WASA to implement a performance evaluation system since that right, under PERB's case law, is also bestowed by D.C. Official Code § 1-617.08(a)<sup>24</sup> Since D.C. Official Code § 1-617.08(a) falls under subchapter XVII of the CMPA, it is unquestionably applicable to WASA under the express terms of § 34-2202.15(a)(1) in WASA's enabling statute. It is also irrelevant that WASA has negotiated with Comp. Unit 31 over performance evaluations in the past, since D.C. Official Code § 1-617.08(a-1) enables WASA to still assert its management rights in the current and any future negotiations.<sup>25</sup>

With regard to the proposal itself, Comp. Unit 31 states in its Appeal that the proposal creates "a method by which [an] employee's work performance is measured and establishes a bonus payout to reward adequate work performance."<sup>26</sup> The Board finds that this is an attempt

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<sup>17</sup> Appeal at 4-5.

<sup>18</sup> Appeal at 4-5.

<sup>19</sup> Appeal at 3-7.

<sup>20</sup> Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02 (July 25, 2003).

<sup>21</sup> 62 D.C. Reg. 14633, Slip Op. No. 1539 at p. 12-14, PERB Case No. 15-N-01 (2015).

<sup>22</sup> 54 D.C. Reg. 3210, Slip Op. No. 877, PERB Case No. 05-N-02 (2007).

<sup>23</sup> *Id.* at p. 7-9.

<sup>24</sup> See *Serv. Emp. Int'l Union, Local 500, v. Univ. of D.C.*, Slip Op. No. 1539 at p. 12-14, PERB Case No. 15-N-01; see also *Am. Fed'n of Gov't Emp., Local 1403 v. D.C. Office of the Corp. Counsel*, Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02.

<sup>25</sup> See *Am. Fed'n of Gov't Emp., Local 631 v. D.C. Water & Sewer Auth.*, Slip Op. No. 877 at p. 7-9, PERB Case No. 05-N-02.

<sup>26</sup> Appeal at 4.

to set forth the purpose of WASA’s performance evaluation system.<sup>27</sup> Moreover, the Board finds that the proposal’s addition of language detailing what WASA should consider when determining whether employees meet expectations, as well as its addition of a new fourth level of evaluation, constitute attempts to establish criteria for WASA to consider when conducting performance evaluations.<sup>28</sup> Therefore, in accordance with D.C. Official Code § 1-617.08(a), the Board finds that the proposal interferes with WASA’s right to direct and assign employees and is contrary to WASA’s exclusive right to implement a performance evaluation system.<sup>29</sup>

The Board finds that Comp. Unit 31’s proposal is *nonnegotiable*.

**Comp. Unit 31 Proposal 2 – Appendix A:**

Due to the considerable length and complexity of Comp. Unit 31’s Appendix A proposal,<sup>30</sup> the Board does not restate the text of the proposal here.

**WASA:** WASA asserts that Comp. Unit 31’s Appendix A proposal is nonnegotiable because it infringes on management’s rights, contrary to PERB case law.<sup>31</sup> WASA argues that the proposed language on page 2 that “Union employees shall not be rated on goals” serves as an “absolute restriction on the Authority’s management right to direct and assign employees.”<sup>32</sup> Further, WASA notes that Comp. Unit 31’s proposed language attempts to establish criteria for evaluating union employees that are different than those that WASA has established,<sup>33</sup> attempts to add a fourth tier that WASA would have to consider when determining whether employees meet expectations, and attempts to prohibit WASA from issuing certain ratings to union representatives.<sup>34</sup> WASA contends that each of these examples, and others, “infringes directly on the Authority’s right to direct, assign, and evaluate its employees, including those who serve as union representatives.”<sup>35</sup> WASA concedes that its new performance management system, which is planned to be implemented on April 1, 2017, is subject to impact and effects bargaining.<sup>36</sup> WASA also concedes that “compensation proposals that seek to incorporate the performance ratings, as determined by the Authority’s new system when implemented, would also be appropriate for negotiation over compensation.”<sup>37</sup> WASA asserts, however, that Comp. Unit 31’s Appendix A proposal does not do that but rather proposes Comp. Unit 31’s “own set of

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<sup>27</sup> *Serv. Emp. Int’l Union, Local 500*, Slip Op. No. 1539 at p. 12-14, PERB Case No. 15-N-01; see also *Am. Fed’n of Gov’t Emp., Local 1403 v. D.C. Office of the Corp. Counsel*, Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02.

<sup>28</sup> *Serv. Emp. Int’l Union, Local 500, v. Univ. of D.C.*, Slip Op. No. 1539 at p. 12-14, PERB Case No. 15-N-01.

<sup>29</sup> See *Serv. Emp. Int’l Union, Local 500, v. Univ. of D.C.*, Slip Op. No. 1539 at p. 12-14, PERB Case No. 15-N-01; see also *Am. Fed’n of Gov’t Emp., Local 1403 v. D.C. Office of the Corp. Counsel*, Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02.

<sup>30</sup> See Supplement to Comp. Unit 31’s Negotiability Appeal, Ex. 6.

<sup>31</sup> Answer at 4.

<sup>32</sup> Answer at 4.

<sup>33</sup> Answer at 4-5.

<sup>34</sup> Answer at 5.

<sup>35</sup> Answer at 5, 10-11.

<sup>36</sup> Answer at 5.

<sup>37</sup> Answer at 5-6.

competencies, standards, and rating scales.”<sup>38</sup> WASA argues that such restrictions are contrary to D.C. Official Code § 1-617.08(a) and the Board’s case law and are therefore nonnegotiable.<sup>39</sup>

Comp. Unit 31: Comp. Unit 31 raises the same arguments in defense of its Appendix A proposal that it raised on behalf of its Article 1, Section B proposal.<sup>40</sup>

Board: As the Board noted in its analysis of Comp. Unit 31’s Article 1, Section B proposal, a proposal that sets forth the purpose of a performance evaluation system or that contains criteria for the agency to consider for performance evaluations is nonnegotiable under D.C. Official Code § 1-617.08(a) “because it interferes with management’s right to direct and assign employees” and because it “is within management’s [exclusive] rights to implement a performance evaluation system.”<sup>41</sup> Based on the examples WASA noted and numerous others within the proposal, and for the same reasons articulated in the Board’s analysis regarding the nonnegotiability of Comp. Unit 31’s Article 1, Section B proposal, the Board finds that Comp. Unit 31’s Appendix A proposal attempts to set forth the purpose of WASA’s performance evaluation system and to establish criteria for WASA to consider when conducting performance evaluations.<sup>42</sup> Therefore, in accordance with D.C. Official Code § 1-617.08(a), the Board finds that the proposal interferes with WASA’s right to direct and assign employees and is contrary to WASA’s exclusive rights to implement a performance evaluation system.<sup>43</sup>

The Board finds that Comp. Unit 31’s proposal is *nonnegotiable*.

**Comp. Unit 31 Proposal 3 – (New Article) New and Existing Job Review Standards:**

**New Article**

**New and Existing Job Review Standards**

The Union and the Authority agree, upon execution of this Agreement, to form a joint committee to develop methods for the establishment of wages for current and new positions, wage increases for promotions of bargaining unit employees to positions, and methods for review of jobs of bargaining unit employees when the Authority adds new skills, duties, qualifications, certifications, licensing, and/or new technology to positions. The parties shall

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<sup>38</sup> Answer at 6.

<sup>39</sup> Answer at 10-11.

<sup>40</sup> Appeal at 2-7.

<sup>41</sup> *Serv. Emp. Int’l Union, Local 500, v. Univ. of D.C.*, Slip Op. No. 1539 at p. 12-14, PERB Case No. 15-N-01; *see also Am. Fed’n of Gov’t Emp., Local 1403 v. Dist. of Columbia Office of Corp. Counsel*, Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02.

<sup>42</sup> *Serv. Emp. Int’l Union, Local 500, v. Univ. of D.C.*, Slip Op. No. 1539 at p. 12-14, PERB Case No. 15-N-01.

<sup>43</sup> *See Serv. Emp. Int’l Union, Local 500, v. Univ. of D.C.*, Slip Op. No. 1539 at p. 12-14, PERB Case No. 15-N-01; *see also Am. Fed’n of Gov’t Emp., Local 1403 v. D.C. Office of Corp. Counsel, supra*, Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02.

negotiate a Memorandum of Agreement implementing the results, which arise from the actions of the Joint Committee.

The Authority agrees, prior to implementation, to negotiate wages for existing positions when new skills, duties, qualifications, licensing, certification, and/or new technology are added to existing positions.<sup>44</sup>

**WASA:** WASA asserts that Comp. Unit 31's proposed New Article is nonnegotiable because the proposal's requirement that a joint committee be formed to develop "methods for the establishment of wages for current and new positions" and for the "review of jobs of bargaining unit employees when the Authority adds new skills, duties, qualifications, certifications, licensing, and/or technology to positions" infringes on its management rights under D.C. Official Code § 1-617.08(a)(5)(B) to determine the "types" and "grades" of positions.<sup>45</sup> A "grade," WASA posits, is a standardized "range of compensation across equivalent skill sets and responsibilities."<sup>46</sup> WASA argues that the proposal "seeks to have the parties share in the process of establishing a 'grade' for an existing or new position," and to therefore "share rights that were intended to reside exclusively with management."<sup>47</sup> WASA contends, therefore, that the proposal is nonnegotiable despite being "disguised as an effort to determine compensation."<sup>48</sup> WASA further argues that the proposal's requirement that the parties negotiate wages "prior to implementation" whenever WASA adds new requirements and/or qualifications to existing positions infringes upon its management rights under D.C. Official Code § 1-617.08(a) and is contrary to PERB case law.<sup>49</sup> WASA contends that it does not object to negotiating "over the wages associated with a job [after it has been] legally placed within a grade" under the "grading system established by the Authority," but asserts that management has the exclusive rights to establish its own pay grade system and to determine the specific "grade" to which each position gets assigned.<sup>50</sup>

**Comp. Unit 31:** Comp. Unit 31 argues that its proposed New Article is negotiable because it "in no way infringes upon or restricts management's right to determine the number, types, and grades of positions."<sup>51</sup> Comp. Unit 31 concedes that D.C. Official Code § 1-617.08(a) gives management the "right to determine the number, types and grades of positions."<sup>52</sup> Comp. Unit 31 contends that, rather, its proposal "provides that the parties will establish a joint committee and will negotiate concerning the wages for new positions, wage increases for bargaining unit

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<sup>44</sup> Supplement to Comp. Unit 31's Negotiability Appeal, Ex. 4.

<sup>45</sup> Answer at 11.

<sup>46</sup> Answer at 11.

<sup>47</sup> Answer at 11.

<sup>48</sup> Answer at 11-12.

<sup>49</sup> Answer at 12-13 (citing *Am. Fed'n of Gov't Emp., Local 631 v. D.C. Water & Sewer Auth.*, Slip Op. No. 877 at p. 9-10, PERB Case No. 05-N-02 (wherein the Board found that a proposal that would have required WASA to bargain over changes to the job descriptions of existing positions "prior to implementation" was nonnegotiable because it represented "a restriction on management's right to assign to work")).

<sup>50</sup> Answer at 13-14.

<sup>51</sup> Appeal at 7.

<sup>52</sup> Appeal at 8.

employees, and method [*sic*] for the parties to jointly review the compensation that should accompany the Authority's decision to add new skills, duties, qualifications, licensing, certifications, and technology requirements to bargaining unit positions.”<sup>53</sup>

Board: D.C. Official Code § 1-617.08(a) grants management the exclusive rights to “direct employees of the agencies,” to “hire, promote, transfer, assign, and retain employees in positions within the agency....,” to “maintain the efficiency of the [agency’s operations],” and to determine “its budget,” the “number, types, and grades of positions,” and the “technology of performing the agency’s work.” With regard to collective bargaining concerning compensation, D.C. Official Code § 1-617.17(b) provides in part that management and labor must “negotiate in good faith with respect to salary, wages, health benefits, within-grade increases, overtime pay, education pay, shift differential, premium pay, hours, and any other compensation matters.” Reading these two provisions together, it is evident that management has the exclusive right to establish its own pay grade methodology, and to determine the grades to which each of its positions is assigned.<sup>54</sup> However, once that determination has been made, “salary, wages, health benefits, within-grade increases, overtime pay, education pay, shift differential, premium pay, hours, and any other compensation matters” are appropriate subjects of bargaining in compensation negotiations.<sup>55</sup>

Here, Comp. Unit 31’s proposed New Article requires more than simply bargaining over wages, within-grade increases, premium pay, etc. Indeed, it attempts to require WASA to bargain over the development of “methods for the establishment of wages”—or in other words, the development of a pay grade system or methodology. As noted, WASA has the exclusive right to develop its own methodology by which pay grades are established.

Additionally, the proposal attempts to compel WASA to bargain over the development of “methods for review of jobs of bargaining unit employees” whenever WASA adds new job requirements and/or qualifications to the bargaining unit members’ positions. The Board notes that that language would require WASA to bargain over much more than just wages, within-grade increases, premium pay, etc. Thus, it is not appropriate for compensation bargaining.

The proposal also attempts to compel WASA to negotiate over wages “prior to implementation” of any additions it makes to the “skills, duties, qualifications, licensing, certification, and/or new technology” of existing positions. In *American Federation of Government Employees, Local 631 v. WASA*,<sup>56</sup> the Board found that a proposal that attempted to require WASA to bargain over changes to the job descriptions of existing positions “prior to implementation” was nonnegotiable because it represented “a restriction on management’s right to assign to work.” The instant proposal’s “prior to implementation” clause would impose a similar restriction on WASA’s right to add new qualifications to existing positions.

Accordingly, the Board finds that, within the context of compensation bargaining, Comp. Unit 31’s proposed New Article infringes upon WASA’s exclusive rights to “direct employees

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<sup>53</sup> Appeal at 7-8.

<sup>54</sup> See D.C. Official Code § 1-617.08(a)(1), (2), (4), & (5)(A)-(C).

<sup>55</sup> See D.C. Official Code § 1-617.17(a)-(b).

<sup>56</sup> 54 D.C. Reg. 3210, Slip Op. No. 877 at p. 9-10, PERB Case No. 05-N-02 (2007).

of the agencies,” to “hire, promote, transfer, assign, and retain employees in positions within the agency...,” to “maintain the efficiency of the [agency’s operations],” and to determine “its budget,” the “number, types, and grades of positions,” and the “technology of performing the agency’s work.”

The Board finds that Comp. Unit 31’s proposal is *nonnegotiable*.

## **ORDER**

### **IT IS HEREBY ORDERED THAT:**

1. Comp. Unit 31’s Article 1, Section B proposal is *nonnegotiable*.
2. Comp. Unit 31’s Appendix A proposal is *nonnegotiable*.
3. Comp. Unit 31’s proposed New Article is *nonnegotiable*.
4. 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 Chairperson Charles Murphy, and Members Ann Hoffman and Douglas Warshof. Member Barbara Somson was not present.

May 18, 2017

Washington, D.C.

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 16-N-02, Op. No. 1624 was transmitted to the following parties on this the 9<sup>th</sup> day of June, 2017.

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