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

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In the Matter of:	)	
	)	
American Federation of	)	
Government Employees, Local 631	)	
	)	PERB Case No. 19-N-01
Petitioner	)	
	)	Opinion No. 1726
v.	)	
	)	
	)	
Office of Labor Relations and	)	
Collective Bargaining	)	
	)	
Respondent	)	

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**DECISION AND ORDER**

**I. Statement of the Case**

On August 6, 2019, the American Federation of Government Employees, Local 631 (AFGE) filed a Negotiability Appeal in accordance with the Board’s Decision and Order in PERB Case No. 19-I-02.<sup>1</sup> Therein, the Board suspended impasse proceedings due to the existence of a negotiability issue related to AFGE’s March 25, 2019 proposal (Proposal).<sup>2</sup> OLRCB filed a response.

For the reasons stated herein, the Board finds the Proposal is negotiable, except to the extent that, as written, it would require the District to breach its security practices and transmit employees’ personal identifiable information to AFGE without the employees’ consent.

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<sup>1</sup> *AFGE, Local 631 v. OLRCB*, Slip Op. No. 1717, PERB Case 19-I-02 (2019).

<sup>2</sup> Pursuant to Board Rule 532.1, the Board will consider negotiability issues separately from impasse “[i]f the Board or its designee determines that an impasse has occurred regarding non-compensation matters, and an issue of negotiability exists at the time of such impasse determination, the negotiability issue must be withdrawn or a negotiability appeal filed with the Board within seven (7) days of the Board’s determination as to the existence of an impasse.”

## II. Background

On February 25, 2019, the District of Columbia made a presentation to the leadership of multiple unions regarding the implementation of its Automated Dues Processing (ADP) initiative, as an alternative to dues authorization using a paper form.<sup>3</sup> Under AFGE's collective bargaining agreement, members authorize dues deduction using a specific D.C. Form 277. Therein, a member provides a nine-digit Social Security number, and a home address. The member then provides AFGE with the D.C. Form 277 directly, and then AFGE submits the document to the District for dues deduction. Under the ADP initiative, bargaining unit members would authorize dues through the District's online human resources portal, and the District would then send an email to AFGE confirming the employee's authorization of dues deduction, along with the last 4-digits of the employee's Social Security number and the employee's work location.

On March 6, 2019, OLRCB and AFGE met to bargain over the ADP initiative.<sup>4</sup> OLRCB informed AFGE that the parties were present to engage in impact and effects bargaining regarding the implementation of the ADP.<sup>5</sup> AFGE disagreed and insisted that the parties were engaged in substantive bargaining over the terms and conditions of the collective bargaining agreement.<sup>6</sup> Although the parties did not agree on the type of bargaining in which they were engaged, the parties nonetheless discussed their respective positions on the ADP initiative. AFGE's position was that the ADP initiative should be formatted to provide the same information available on the paper D.C. Form 277.<sup>7</sup> OLRCB rejected that position and stated that personal identifiable information, such as home addresses and nine digit Social Security numbers, would not be provided.<sup>8</sup>

On March 25, 2019, AFGE submitted its written Proposal to OLRCB.<sup>9</sup> AFGE requested a response by April 5, 2019 and stated that AFGE would consider the parties at impasse if OLRCB failed to submit a counterproposal or response by that date.

On May 8, 2019, AFGE submitted a letter to OLRCB declaring an impasse after receiving no response to the written Proposal. In a letter dated May 9, 2019, OLRCB responded to AFGE and rejected the declaration of impasse, asserting that the parties were engaged in impact and effects bargaining regarding the implementation of the ADP initiative. In addition, OLRCB again asserted that the District would not provide employees' personal identifiable information due to its internal security protocols, which prohibits the District from disclosing personal identifiable information without an employee's consent.

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<sup>3</sup> *AFGE, Local 631 v. OLRCB*, Slip Op. No. 1717 at 2, PERB Case 19-I-02 (July 18, 2019).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *AFGE, Local 631 v. OLRCB*, Slip Op. No. 1717 at 2.

<sup>9</sup> *Id.*

On May 17, 2019, AFGE filed an impasse petition. On July 18, 2019, the Board found that dues deduction, including the ADP initiative, is a mandatory subject of bargaining and subject to the impasse proceedings under Board Rule 527. The Board found that the parties had reached an impasse and that a negotiability issue existed. Pursuant to Rule 532.1, the Board ordered AFGE to either withdraw the challenged issue or file a negotiability appeal with the Board.<sup>10</sup> AFGE filed the instant Negotiability Appeal.

### **III. Discussion**

#### **A. Jurisdiction**

OLRCB argues that the instant Negotiability Appeal should be dismissed because AFGE failed to comply with the filing requirements of Board Rule 532.2 (b) and (c). AFGE filed the Negotiability Appeal in accordance with the Board's Order in Opinion No. 1717. The filing includes a short, plain statement on the issues of negotiability; a copy of the Proposal; and specific references to the applicable statute and collective bargaining agreement. AFGE disputes the finding of a negotiability issue and, therefore, did not include the declaration of nonnegotiability as required by Board Rule 532.2(c).

The Board has discretion over whether to require strict compliance with its rules.<sup>11</sup> Although AFGE did not comply with all the filing requirements of Board Rule 532.2 (c), the Board finds that the parties' filings demonstrate a negotiability issue exists related to the Proposal, which cannot be resolved through dismissal. Therefore, the Board will exercise its discretion and determine whether the Proposal is negotiable.

#### **B. AFGE's Proposal**

AFGE's March 25, 2019 Proposal states:

The American Federation of Government Employees, Local 631 (Union) and the District of Columbia (District) enter into this Memorandum of Understanding on the use of an electronic process for the authorization of deduction of union dues by bargaining unit employees.

1. The Union and the District agree that union dues deduction is required by law for the exclusive representative of employees.
2. The District agrees it will provide an electronic dues authorization process which contains the same information currently contained on D.C. Form 277.
3. The District agrees the completed electronic form and information provided by bargaining unit employees on the completed form shall be provided to the Union, when the authorization is completed by the bargaining unit employee.

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<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Ernest Durant, Jr. and Carlton Butler v. FOP/DOC Labor Comm. and Jerrad F. Young FOP Lodge #1, President*, 45 D.C. Reg. 2047, Slip Op. No. 537 at 2, PERB Case No. 98-S-02 (1998) (holding that the Board will not impose strict compliance with the standard of clarity required of pleadings).

### AFGE's Position

AFGE argues that OLRCB failed to make a clear, written communication asserting that the Proposal was nonnegotiable, while the parties had a meaningful opportunity for give and take during collective bargaining.<sup>12</sup> AFGE argues that all information in its Proposal is provided voluntarily by an employee, and, therefore, is negotiable.<sup>13</sup> AFGE contends that each employee must voluntarily authorize the deduction of dues, and that the District is only a conduit for the information.<sup>14</sup> AFGE also claims that the District has not specified which management rights would be infringed by permitting employees to provide, voluntarily, in an electronic sign-up process, the same information requested on the paper D.C. 277 form.<sup>15</sup>

### OLRCB's Position

OLRCB argues that the District retains the sole management right to determine the District's internal security practices.<sup>16</sup> OLRCB contends that the Proposal infringes on the District's internal security practices to protect employees and secure their private information by requiring the District to provide the full nine digit Social Security numbers and home addresses in an email confirmation.<sup>17</sup>

### **C. Negotiability**

The Board rejects AFGE's argument that OLRCB did not provide sufficient notice of non-negotiability. On May 8, 2019, AFGE notified OLRCB that AFGE believed the parties were at impasse, and on May 9, 2019, OLRCB subsequently made, clearly and unambiguously, a written declaration that the Proposal was nonnegotiable. AFGE asserts that OLRCB failed to provide AFGE a declaration of nonnegotiability while the parties had a meaningful opportunity for give and take, during collective bargaining.<sup>18</sup> The Board has held that nonnegotiability must be declared while "the potential for the ongoing and meaningful give-and-take of bargaining still exists."<sup>19</sup> The Board has determined this issue by considering the totality of circumstances.<sup>20</sup> In the present case, the parties were capable of continuing negotiations, because they had not yet entered into any proceedings that would prevent additional negotiations nor reached a point in any proceeding where there would be no obligation by either party to continue negotiations, such as impasse arbitration. Additionally, the parties had not attended mediation, exchanged last-best offers before arbitration, or sought any intervention from PERB. Therefore, under the totality of circumstances, the Board finds that OLRCB's declaration of nonnegotiability was timely.

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<sup>12</sup> Appeal at 3.

<sup>13</sup> Appeal at 4.

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

<sup>15</sup> Appeal at 4.

<sup>16</sup> Response at 5.

<sup>17</sup> Response at 5.

<sup>18</sup> Appeal at 3.

<sup>19</sup> *UDCFA v. UDC*, 59 D.C. Reg. 6481, Slip Op. No. 1104 at 6, PERB Case No. 09-N-02 (2012).

<sup>20</sup> *Id.* at 7.

As to the Proposal's substantive negotiability, the Board finds that the Proposal is negotiable, except to the extent that, as written, it requires the District to transmit personal identifiable information to AFGE without the employees' consent, contrary to its internal security protocols.

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.<sup>21</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>22</sup> Under this standard, "the three categories of bargaining subjects are: (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>23</sup> Further, D.C. Official Code § 1-617.08(b) provides, "All 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>24</sup>

The Proposal requires an electronic form identical to D.C. Form 277 that includes employees' full Social Security numbers and home addresses, which would be transmitted to AFGE by the District. Pursuant to D.C. Code § 1-631.01, OLRCB has a statutory responsibility to ensure the greatest degree of employee privacy, while providing adequate, necessary, and complete information to enable the exclusive bargaining representative to carry out its responsibilities. OLRCB asserts that the transmission of home addresses and nine digit Social Security numbers would breach the District's internal security protocol. Under D.C. Code § 1-617.08(a)(5)(D), management has the sole right to determine the agency's internal security practices. In weighing the presumption of negotiability against the District's management right to establish internal security practices, the Board finds that the Proposal is negotiable, except to the extent that the Proposal, as written, requires the District to violate its internal security protocols.<sup>25</sup>

#### **IV. Conclusion**

The Board grants AFGE's negotiability appeal and finds AFGE's Proposal is negotiable except to the extent that, as written, the Proposal would require the District to act in violation of its internal security protocols. The Board's decision does not preclude the parties from negotiating alternative language that would enable the union to obtain the information it is seeking.

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<sup>21</sup> *FOP/DYRS Labor Comm. v. DYRS*, D.C. Reg. 10133, Slip Op. No. 1636 at 2, PERB Case No. 17-N-02 (2017).

<sup>22</sup> 356 U.S. 342 (1975).

<sup>23</sup> *FOP/DYRS Labor Comm. v. DYRS*, D.C. Reg. 10133, Slip Op. No. 1636 at 2, PERB Case No. 17-N-02 (2017).

<sup>24</sup> *Id.*

<sup>25</sup> *SEIU, Local 500 v. UDC*, 62 D.C. Reg. 14633, Slip Op. No. 1539 at 15, PERB Case No. 15-N-01 (2015).

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The American Federation of Government Employees Local 631 negotiability appeal is granted.
2. Pursuant to Board Rule 559.1, this decision and order is final upon issuance.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By vote of Board Chairperson Charles Murphy, Members Ann Hoffman, Douglas Warshof, and Mary Anne Gibbons

Washington, D.C.

September 12, 2019

**Certificate of Service**

This is to certify that the attached Decision and Order in PERB Case 19-N-01. Slip Op. No. 1726 was sent by File & ServeXpress to the following parties on this the 30<sup>th</sup> day of September 2019.

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