GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
International Association of Fire Fighters, Local 36, Petitioner,	PERB Case No. 97-N-01 Opinion No. 505
and	
District of Columbia Fire and Emergency Medical Services Department, Respondent.	

DECISION AND ORDER ON NEGOTIABILITY APPEAL

On November 4, 1996, the International Association of Fire Fighters, Local 36 (IAFF) filed a Negotiability Appeal in the above-captioned proceeding. The Appeal concerns the negotiability of a single proposal by IAFF declared nonnegotiable by the District of Columbia Fire and Emergency Medical Services Department (FEMSD) during the parties' negotiation for a successor compensation agreement. Following the submission of a supplemental brief by IAFF, the Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of FEMSD, filed its Response to the Appeal.[1/]

The relevant facts underlying this issue are not in dispute.

[1/] Ordinarily, pursuant to Board Rule 532.4, briefs are not submitted unless the Board orders such a submission following its consideration of the initial Appeal and Response. However, the Executive Director granted the parties' joint request to file briefs prior to the Board's consideration of the Negotiability Appeal. Subsequently, IAFF filed a request for leave to file a reply brief to OLRCB's Response and attached said brief. OLRCB filed an Opposition to IAFF's request asserting that the filing of a response brief violates Board Rules. While our Rules do not expressly provide for unsolicited briefs in negotiability appeals, we find no prejudice to either party by such filings prior to the determination of essentially a legal issue. As noted above, the initial briefs filed by both parties were not solicited by the Board as prescribed by our Rules. In this regard, we find no violation of the letter or spirit of our Rules by IAFF's unsolicited brief and reply brief in view of the parties' agreement to deviate from prescribed procedure.

On September 30, 1996, IAFF notified the Board of an automatic impasse in the parties' negotiations pursuant to D.C Code § 1-618.17(f)(1).[2/] In response to a proposal submitted by IAFF, FEMSD submitted a counter proposal on October 31, 1996, wherein it declared that "[h]ours of work are not negotiable." Following FEMSD's declaration, this Appeal ensued. (App., Attach. C.)

IAFF's proposal is as follows:

Hours of Work/Work Schedule/Leave

The leave provisions, hours of work and work schedule in effect as of September 30, 1995 (sic) shall remain in effect.

This proposal makes reference to section B of the parties' "Hours of Work/Work Schedule/Leave" provisions of their Compensation Agreement for Fiscal Years 1991-1995 (Agreement). In pertinent part, section B, entitled "Workweek", provides that "[n]ot later than the pay period containing December 13, 1992, the Department shall reduce the workweek for bargaining unit members in the Firefighting Division to 42 hours." (App., Exh. A.) IAFF contends that this provision establishes when a member is entitled to overtime pay, i.e., hours worked during a work week that exceed 42 hours.

OLRCB, bargaining on behalf of FEMSD, countered with the following proposal: "Hours of work are nonnegotiable. When Management changes the hours of work, the parties will renegotiate the work schedule and manner of computing leave." (App., Exh. C.) IAFF asserts that "hours of work for firefighters, insofar as they determine pay, are negotiable." (App. at 3.) IAFF seeks a narrow determination of whether "management retains the nonnegotiable prerogative to determine the number of hours an employee may be required to work before he or she is entitled to extra pay beyond the regular pay." (App. at n. 1.)

Compensation, whether in the form of regular or overtime pay, is generally a negotiable matter under the Comprehensive Merit Personnel Act (CMPA). See, e.g., Teamsters, Local Union No. 639, a/w IBTCWHA, AFL-CIO and D.C. Public Schools, 38 DCR 1627, Slip Op. No. 263 (Proposal No. 12 and 16), PERB Case No. 90-N-02, 03 and 04 (1991). We have observed with respect to the negotiability of hours of work that there is a distinction between proposals that "measure the amount of time an employee will work and terms and conditions that determine the value or worth of the employee's time." Teamsters, Local Unions No. 639 and 730, a/w IBTCWHA, AFL-

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[2/] PERB Case No. 96-I-02.

CIO and D.C. Public Schools, 43 DCR 3545, Slip Op. No. 377, at n. 5, PERB Case No. 94-N-02 (1994). In its pure sense, the former determines only time while the latter determines remuneration or compensation for that time." Id. The distinction was drawn because for certain personnel authorities, the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. Code § 1-613.1(a)(2), accords a statutory right to establish through their own rules and regulations the basic workweek and hours of work of its employees.[3]/

Absent expressed language statutorily excepting a matter from determination through collective bargaining, the CMPA establishes an affirmative presumption that "[a]ll matters shall be deemed negotiable". See, D.C. Code § 1-618.8(b) and International Association of Firefighters, Local 36 and D.C. Fire Dept, 34 DCR 118, Slip Op. No. 167, 87-N-01 (1988). Cf., Fraternal Order of Police/MPD Labor Committee and MPD, 38 DCR 847, Slip Op. No. 261, PERB Case No. 90-N-05 (1990) and Teamsters Local Unions No. 639 and 730, 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 90-N-02, 03 and 04 (1991)(statutory provisions both within and outside the CMPA serves to render a matter nonnegotiable). OLRCB asserts that D.C. Code §§ 4-305 and 4-405, like D.C. Code § 1-613.1(a)(2), provides such express language with respect to establishing the hours of work for which these employees would be compensated. Specifically, D.C. Code § 4-305(a) provides that the Mayor "is authorized and directed to establish a workweek for officers and members of the Firefighters Division of the Fire Department... which will result in an average workweek not to exceed 48 hours during an administratively established workweek cycle which the Mayor is authorized to establish from time to time".

OLRCB argues that D.C. Code § 4-305(a), like D.C. Code § 1-613.1(a)(2), excepts from negotiation the determination of the basic workweek for firefighters, at least those hired before January 1, 1980, by D.C. Code §§ 1-633.3(1)(M) and (V) and 1-637.1. We need not consider Section 4-305(a), however, because the dispute in this case is not over hours of work but rather overtime compensation.

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[3]/ D.C. Code § 1-613.1(a)(2) provides that "[t]he basic workweek and hours of work for all employees" of the Boards of Education, School of Law and the University of the District of Columbia "shall be established under the rules and regulations issued by the respective Boards".

Although, IAFF's proposal appears to establish hours of work, IAFF actually seeks a determination of the negotiability of compensation in the form of a non-overtime and overtime rate of pay based on a 42-hour basic workweek. The parties agree that the 42-hour provision of their former agreement did not limit hours of work, but merely defined the hours for which employees were compensated at overtime pay. This understanding is consistent with our view that the "basic workweek" is the total number of non-overtime hours employees work in a week.

Nothing under D.C. Code §§ 4-305, 4-405 or 1-613.1(a)(1) renders nonnegotiable the compensation, i.e., rate of pay, of these employees for the hours they work. Absent express language removing a matter from the scope of all matters otherwise negotiable under the CMPA, the matter shall be deemed negotiable. To the extent IAFF's proposal determines remuneration or compensation per hour for a basic workweek, i.e., non-overtime work week, it is negotiable. Cf., District of Columbia Public Schools and Teamsters Local Unions No. 639 and 730, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO and, 38 DCR 2483, Slip Op. No. 273, Proposal 13 at p. 16 and 17, PERB Case 91-N-01 (1991). Furthermore, once the rate of pay for hours of work that will constitute the basic workweek is established, the rate of pay for hours that exceed that number is also negotiable.

ORDER

IT IS HEREBY ORDERED THAT:

The IAFF's proposal, insofar as it establishes the hours for which overtime will be paid, is within the scope of collective bargaining and therefore is negotiable.

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

January 15, 1997