

OFFICE OF CONGRESSIONAL WORKPLACE RIGHTS

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Fraternal Order of Police, District of)	
Columbia Lodge No. 1, U.S. Capitol)	
Police Labor Committee,)	
)	
Petitioner,)	
and)	Case No. 24-LM-02 (NG)
)	
United State Capitol Police,)	
)	
Respondent.)	

Before the Board of Directors: Barbara Childs Wallace, Chair; Susan S. Robfogel; Alan V. Friedman; Roberta L. Holzwarth; Barbara L. Camens, Members.

DECISION AND ORDER OF THE BOARD OF DIRECTORS

The negotiability petition, involving one proposal, was filed by the Fraternal Order of Police, District of Columbia Lodge No. 1, U.S. Capitol Police Labor Committee (Union) after the United States Capitol Police (USCP or Department) took the position that the proposal was outside its duty to bargain. The petition comes before the Board of Directors of the Office of Congressional Workplace Rights pursuant to § 7105(a)(2)(E) of the Federal Service Labor-Management Relations Statute, as applied by section 220(c)(1) of the Congressional Accountability Act, 2 U.S.C. § 1351(c)(1).

I. Statement of the Case

On October 18, 2022, the Capitol Police Board approved amendments to the Capitol Police Board Resolutions for Rates of Basic Pay (Pay Resolutions), including an amendment that revised the eligibility requirements for a member to be considered for Private First Class (PFC) rank and pay (October amendment). The October amendment provided that “Eligibility to be paid at the level of [PFC] shall be based on completion of [a specified period] of satisfactory service *from the date of graduation* as a sworn member of the [USCP].” Prior to the October amendment, the Pay Resolutions stated that members were eligible for PFC rank and pay upon completion of a specified period of satisfactory service *with the Department*.

On February 22, 2023, USCP issued Bulletin 23.26 “Change to Eligibility for Private First Class,” informing both employees and the Union of the October amendment. The Bulletin explained that the amendment became effective on the date of approval and that an update to Directive 2052.007 “Designation as Private First Class” would be forthcoming.

On November 21, 2023, USCP informed the Union that it planned to update Directive 2052.007. As relevant here, the revised Directive set forth the minimum eligibility criteria for designation as a PFC, including that an officer must:

Demonstrate satisfactory service (see USCP Directive 2052.004) with the Department for a minimum of twenty-four months after the graduation from the USCP Training Academy.

The pre-November 2023 Directive had defined an eligible private as:

Any sworn employee of the USCP who has been promoted to the rank of Private with Training (Pay Grade LP-2) and has demonstrated satisfactory service with the Department for 30 or months is eligible for consideration for designation as a Private First Class (PFC) (Pay Grade LP-3).

In response, the Union submitted a demand to bargain, which included a proposal, set forth in Section II, to amend the above eligibility requirement for designation as PFC. Deeming the Union's proposal non-negotiable, the USCP declined to bargain, and the Union then filed the petition that is currently before us.

II. Proposal in Dispute

The Union proposes the bolded language be added to the minimum eligibility requirement for designation as a PFC:

For employees of the bargaining unit represented by the FOP/U.S. Capitol Police Labor Committee hired after February 22, 2023, demonstrate satisfactory service (see USCP Directive 2052.004) with the Department for a minimum of twenty-four months after the graduation from the USCP Training Academy. For employees of the bargaining unit represented by the FOP/U.S. Capitol Police Labor Committee hired on or before February 22, 2023, demonstrate satisfactory service (see USCP Directive 2052.004) with the Department for 30 or more months after they are sworn.

III. Analysis and Conclusions

The Union contends that "amending the procedures for determining when Privates with Training are eligible for designation" as PFCs constituted a change in condition of employment for its bargaining unit employees, thereby triggering the Department's obligation to bargain. The Union alleges that this change in employment took place on November 21, 2023, when the Department notified the Union that it planned to amend Directive 2052.007. According to the Union, it was at that time that the Department proposed changing the PFC eligibility requirement from a period of satisfactory service with the Department (Departmental service eligibility requirement) to a period of satisfactory service from the date of graduation from the Academy (post-graduation service eligibility requirement).

The Union's proposal seeks to apply the post-graduation service eligibility requirement to those hired after February 22, 2023, and to apply the Departmental service eligibility requirement to those hired on or before February 22, 2023. But as the Union acknowledges, the Department began applying the post-graduation service eligibility requirement in October 2022, when the Capitol Police Board adopted the Pay Resolutions. As a result, the Union's proposal seeks to modify past events and receive retroactive relief for events that already occurred.

This type of proposal is not appropriate for resolution as a negotiability issue. See *Marine Engineers' Beneficial Assn., District No. 1-PCD and U.S. Dep't of the Navy, Sealift Command*, 60 FLRA 828, 829 (2005) (*Marine Engineers*) (finding claim for retroactive relief inappropriate as negotiability petition); *AFGE Local 1867 and Dep't of the Air Force, United States Air Force Academy*, 42 FLRA 787, 793 (1991) (same).

In *Marine Engineers*, the Union proposed reclassifying a ship to an earlier date than that put forward by the Agency. 60 FLRA at 832. If adopted, the proposal would have resulted in employees becoming eligible for an increased rate of pay retroactively. *Id.* Characterizing the petition as "a claim for compensation for events that have already occurred," the Federal Labor Relations Authority dismissed the petition as inappropriate for the negotiability process. *Id.* at 833.

Here, too, the Union seeks to alter the eligibility requirements for pay retroactively. Like the proposal in *Marine Engineers*, the Union's proposal seeks retroactive relief for events that already occurred, rather than prospective relief in the form of mitigating measures from a proposed Department change. As a result, the Union's claim is not appropriate for the negotiability process and instead should be resolved in other appropriate proceedings. *AFGE 1867*, 42 FLRA at 793. Indeed, the Union raises similar claims and seeks similar relief in a grievance that it filed on December 4, 2023, and in an unfair labor practice charge that it filed on April 14, 2023.

Accordingly, we dismiss the petition.

IV. ORDER

The Union's petition is dismissed.

Issued, at Washington, D.C., January 29, 2025