Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 2741	
Complainant	PERB Case Nos. 24-U-28 & 24-U-29
	Opinion No. 1917
v.	CORRECTED
District of Columbia Department of General Services and Department of Parks and Recreation	
Respondents	

DECISION AND ORDER

I. Statement of the Case

On May 17, 2024, the American Federation of Government Employees, Local 2741 (AFGE) filed two unfair labor practice complaints (24-U-28 Complaint and 24-U-29 Complaint) against the District of Columbia Department of General Services (DGS) and Department of Parks and Recreation (DPR), respectively, asserting that the Agencies violated D.C. Official Code §§ 1-617.04(a)(1) and (5) of the Comprehensive Merit Personnel Act (CMPA). AFGE argued that the Agencies' transfer of three (3) employees from work sites that had public first-come, first-serve parking to a work site that had only paid parking options nearby constituted interference with and refusal to bargain in good faith with AFGE regarding a material change in a mandatory subject of bargaining.[1] On June 5, 2024, the Agencies each filed an answer to the Complaints (24-U-28 Answer and 24-U-29 Answer). On August 19, 2024, PERB consolidated the two casesd under PERB Case No. 24-U-28.[2]

On February 21, 2025, the parties agreed to submit joint exhibits and joint stipulations of fact (Joint Stipulations) in lieu of a hearing.[3] The parties submitted a pre-hearing status report and

[1] 24-U-28 Complaint at 2; 24-U-29 Complaint at 2.
[2] AFGE filed a consent motion to consolidate the two Complaints on August 19, 2024.
[3] Pre-Hearing Status Report and Request for Resolution on a Stipulated Record Without a Hearing at 1-2.

the Joint Stipulations on February 21, 2025, and submitted post-hearing briefs (AFGE Post-Hearing Brief and Agencies' Post-Hearing Brief) on April 10, 2025.

Upon consideration of the Hearing Examiner's Report and Recommendations (Report), applicable law, and the joint record presented by the parties, the Board adopts the Hearing Examiner's Report and dismisses the Complaints.

II. Hearing Examiner's Report and Recommendations

A. Hearing Examiner's Factual Findings

The Hearing Examiner reviewed the parties' Joint Stipulations, which included, in pertinent part, that: (1) DGS reassigned one AFGE bargaining unit member from Rosedale Recreation Center to Stead Recreation Center (Stead); (2) DPR reassigned two AFGE bargaining unit members from Palisades Recreation Center and Fort Stanton Recreation Center to Stead Recreation Center; (3) each of these transferred employees' prior worksite had free parking available to the public on a first come, first serve basis; (4) Stead does not have free parking available, but rather has: (a) time-limited, paid street parking; (b) a nearby commercial parking garage for which employees must use their own money to park; and (c) a DGS-owned and operated lot approximately seven (7) blocks away from Stead; (5) AFGE did not agree to these transferred employees losing the benefit of free, available parking adjacent to their work locations; (6) AFGE and the Agencies are parties to a collective bargaining agreement (CBA) covering compensation for thousands of District employees across multiple agencies and represented by multiple unions; (6) since the filing of these Complaints, two out of three of the involved employees have been reassigned again and no longer report to Stead; and (7) DPR has approximately eighty (80) sites it needs to staff.[4] The parties also stipulated to each of the involved employees' position descriptions, provided as joint exhibits.[5]

The Hearing Examiner made several factual findings based on the evidentiary record, which included the following: (1) AFGE represents two separate bargaining units of DGS and DPR employees; and (2) although the parties' CBA provides for a monthly "Metro Pass" worth $50, the CBA does not provide for any parking benefits.[6]

[4] Report at 3-4.
[5] Report at 4.
[6] Report at 4-5.

B. Hearing Examiner's Recommendations

The Hearing Examiner considered both parties' statements on the issues of the case.[7] The Hearing Examiner framed the issues as a primary and secondary issue:

> (1) Whether the Respondent violated D.C. Code §§ 1-617.04(1) and (5) when it failed to provide parking at no cost to the three employees who were reassigned to Stead; and
> (2) Whether the Respondent unilaterally changed working conditions for these three employees without giving notice to the Union.[8]

As a preliminary matter, the Hearing Examiner considered and rejected the Agencies' argument that this case was moot with respect to two of the three of the involved employees—who had subsequently been reassigned to work sites for which there is no information on the record regarding parking.[9] The Hearing Examiner noted that "[t]he mere fact that these two employees are no longer employed at Stead does not make these unfair labor practices moot. For an indefinite period, [they] were required to pay for parking. The rights of these two employees remained at issue even though they were eventually reassigned…."[10] The Hearing Examiner also rejected the Agencies' argument that the present inquiry ends at the finding that AFGE failed to prove refusals to bargain in good faith by the Agencies.[11] The Hearing Examiner determined that the evidence did not show that AFGE made any demand to bargain and, therefore, the Agencies could not have refused to bargain.[12]

At the hearing, AFGE asserted that the Agencies committed an unfair labor practice by unilaterally ending a past practice of providing access to free parking, which was a matter concerning compensation.[13] The Hearing Examiner considered the issue of whether the parking available to the employees at their original worksites constituted a past practice, and noted that "there can be a statutory violation for a unilateral change in a past practice which is different from a statutory violation for a refusal to bargain."[14]

The Hearing Examiner reviewed Opinion No. 1739[15]—relied upon by both parties—and found that case was factually distinguishable from the instant matter.[16] In that case, DGS explicitly refused to bargain, upon FOP's demand[17] over the unilateral withdrawal of negotiated free parking passes which DGS itself had provided for three (3) years before relocating to a building with paid

[7] Report at 5.
[8] Report at 7.
[9] Report at 5-6.
[10] Report at 6.
[11] Report at 6-7.
[12] Report at 6.
[13] Report at 4-5.
[14] Report at 7.
[15] *FOP/PSD Labor Comm. v. DGS*, 67 D.C. Reg. 7031, Slip Op. No. 1739, PERB Case No. 18-U-01 (2020).
[16] Report at 7.
[17] Report at 7.

parking.[18] In Opinion No. 1739, the Board found that DGS' previous provision of free parking constituted a binding past practice and an implied term and condition of employment.[19] The Hearing Examiner determined that here, unlike in the previous case, the Agencies had not provided free parking for any of the three employees, but rather, those employees had merely happened to work at District government sites with free public parking nearby.[20] The Hearing Examiner concluded that "happenstance does not mean that these employees are therefore entitled to free parking at any site to which they may be reassigned by these agencies in the future."[21] The Hearing Examiner further determined that, in this case, the Agencies did not have control over whether parking would be available to the employees at their previous worksites, as all that parking was first-come, first-serve.[22] The Hearing Examiner found that the Agencies in the instant case "did not create, authorize, or endorse any type of system for the three employees to park for free at their previous sites,"[23] and noted that the free public parking at those sites was "entirely independent of the two agencies themselves."[24]

The Hearing Examiner reviewed Federal Labor Relations Authority (FLRA) precedent which held that "the standard for a past practice is 'whether a practice was consistently exercised for an extended period of time with the other party's knowledge and express or implied consent.'"[25] The Hearing Examiner found that the record evidence did not show that either of the Agencies here tracked the three (3) employees' parking habits or knew they had made use of the free public parking available at their previous worksites.[26] The Hearing Examiner noted that "[t]he mere existence of nearby free parking … is not evidence that these two agencies either knew about the free parking situation or acquiesced to such a practice."[27] The Hearing Examiner further noted that both the FLRA and PERB require a showing that a past practice has been consistently exercised over a significant period of time and followed by both parties, or else followed by one party and not challenged by the other.[28] The Hearing Examiner concluded that here, AFGE had failed to show that the three (3) employees' parking habits were consented to or even known by the Agencies' management.[29]

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[18] *FOP/PSD Labor Comm. v. DGS*, Slip Op. No. 1739 at 2-3.
[19] Report at 7-9.
[20] Report at 8.
[21] Report at 8.
[22] Report at 8.
[23] Report at 8.
[24] Report at 8.
[25] Report at 9 (citing *Dept' of Labor and AFGE, Local 2139*, 65 FLRA 677 (2011) (finding that the respondent's rejection of the union's mid-term bargaining request regarding parking spots allocated to the respondent where the parties' CBA did not already address respondent-controlled parking constituted an unfair labor practice)).
[26] Report at 9.
[27] Report at 9.
[28] Report at 9-10 (citing *Dep't of Labor and AFGE, Local 2139*, 65 FLRA 677 (2011); *AFGE, Local 383 v. DYRS and OLRCB*, 60 D.C. Reg. 7160, Slip Op. No. 1301 at 4, PERB Case No. 09-U-04 (2013)).
[29] Report at 9 (citing *Immigration and Naturalization Serv. And AFGE, Local 505*, Case No. SA-CA-20810 (1995); *U.S. Dep't of Labor and AFGE, Nat'l Council of Field Labor Locals, Local 1748*, 38 FLRA 899, 908 (Dec. 13, 1990; *AFGE, Local 383 v. DYRS and OLRCB*, Slip Op. No. 1301 at 4).

The Hearing Examiner concluded that AFGE failed to meet its burden to establish that DGS and DPR unilaterally changed past practices regarding free parking.[30] Thus, the Hearing Examiner found no violation of the CMPA.[31]

III. Discussion

Under Board Rule 520.11, "[t]he party asserting a violation of the CMPA shall have the burden of proving the allegations of the complaint by a preponderance of the evidence." The Board will adopt a Hearing Examiner's Report & Recommendations if it is reasonable, supported by the record, and consistent with PERB precedent.[32] The Board has held that "issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner."[33] An argument previously made, considered, and rejected does not constitute a proper exception, if the record contains evidence supporting the hearing examiner's conclusions.[34]

Generally, a unilateral change to employees' existing terms and conditions of employment is a violation of the CMPA.[35] Notwithstanding, the Board has held that a unilateral change of a past practice can constitute an unfair labor practice, subject to the limitations of statutory rights.[36] A condition of employment becomes a past practice when it is readily ascertainable over a reasonable period of time and goes unchallenged by the parties.[37] In the absence of a documented agreement, the customs and practices that the parties have maintained over time are particularly important.[38] Determining whether the parties have established a mutually acceptable past practice

[30] Report at 10.
[31] Report at 10.
[32] *AFGE, Local 2978 v. OCME*, 61 D.C. Reg. 4267, Slip Op. No. 1457 at 6-7, PERB Case No. 09-U-62 (2014).
[33] *Bernard Bryan, et al. v. FOP/DOC Labor Committee, et al.*, 67 D.C. Reg. 8546, Slip Op. No. 1750 at 5, PERB Case No. 19-S-02 (2020).
[34] *See, e.g., FOP/MPD Labor Comm. v. MPD*, 62 D.C. Reg. 11756, Slip Op. No. 1521 at 10, 12, PERB Case Nos. 07-U-40, et al. (2015) (dismissing MPD's exceptions as repetition of arguments, testimony and evidence considered and rejected by the hearing examiner); *DHS v. AFSCME, District Council 20, Local 2401*, Slip Op. No. 1845 at 9, PERB Case No. 23-A-04 (2023) (holding that an argument previously made, considered, and rejected is a "mere disagreement" with the initial decision); *AFSCME, District Council 20, Local 2087 v. UDC*, 67 D.C. Reg. 8903, Slip Op. No. 1751 at 4, PERB Case No. 18-U-03 (2020) (holding that mere disagreements with a hearing examiner's findings or challenges to a hearing examiner's findings with competing evidence do not constitute proper exceptions).
[35] *FOP/PSD Labor Comm. v. DGS*, Slip Op. No. 1739 at 7 (citing *AFGE, Local 2978 v. DOH*, 62 D.C. Reg. 2874, Slip Op. No. 1499, PERB Case No. 14-U-14 (2015)).
[36] *Id* (citing *AFSCME District Council 20 and Local 2091 v. DPW*, 52 D.C. Reg. 5925, Slip Op. No. 1514 at 2, PERB Case No. 14-U-14 (2015)).
[37] *Id* (citing *AFGE, Local 383 v. DYRS and OLRCB*, 60 D.C. Reg. 7160, Slip Op. No. 1301 at 4, PERB Case No. 09-U-04 (2013); *U.S. Dep't of Labor and AFGE, Nat'l Council of Field Labor Locals, Local 1748*, 38 FLRA 899, 908 (Dec. 13, 1990) (holding that a past practice must be consistently exercised over a significant period of time and followed by both parties or followed by one party and not challenged by the other)).
[38] *Id* at 7-8 (citing *United Steelworkers of Am. V. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 581-82 (1960) ("The labor arbitrator's source of law is not confined to the express provisions of the contract, as the industrial common law—the practices of the industry and the shop—is equally a part of the collective bargaining agreement although not expressed in it.")).

is an issue of fact concerning the probative value of the evidence reserved for the hearing examiner.[39]

AFGE first argues in its Exceptions that the Hearing Examiner erred in relying on *AFSCME, District Council 20, Local 2921, AFL-CIO v. DCPS*[40]—which addressed impact and effects bargaining—because that case, unlike the instant matter, did not concern mandatory subjects of bargaining.[41] AFGE asserts that in conflating the types of bargaining at issue in each case the Hearing Examiner imposed an additional requirement on substantive bargaining over a change to a mandatory subject; namely, that a union must demand bargaining over changes to a mandatory subject of bargaining.[42] AFGE further argues that: (1) the Hearing Examiner erroneously distinguished between the instant case and *FOP/PSD Labor Comm. v. DGS*, wherein the employees enjoyed employer provided parking passes;[43] and (2) the Hearing Examiner erred in concluding that the record evidence did not show that the Agencies' management knew about these three employees' use of free parking at their previous worksites.[44] The Agencies challenge AFGE's Exceptions, arguing that: (1) the Hearing Examiner's Report does not impose a burden on AFGE to demand bargaining, and therefore the Report is consistent with PERB precedent;[45] (2) AFGE's Exceptions are mere repetition of arguments the Hearing Examiner properly rejected;[46] and (3) the Hearing Examiner's findings are reasonable and supported by the record.[47]

AFGE's arguments are unavailing. AFGE asserts that "a unilateral change to a past practice concerning a mandatory subject of bargaining is a violation of the duty to bargain in good faith and it is not contingent on the Union demanding bargaining as it would have to do for a matter subject to impact and effects bargaining."[48] The case law cited by AFGE is distinguishable, as the facts of the instant case do not support a finding of an established past practice.[49] PERB Case No. 18-U-01, in which the Board issued Opinion No. 1739, involved an established past practice of employer-provided free parking.[50] There, DGS employee parking was located in a fenced-in area within a larger public lot, the agency initiated bargaining with the union regarding a pilot parking

[39] *Id* at 8 (citing *FOP/DOC Labor Comm. v. DOC*, 49 D.C. Reg. 8937, Slip Op. No. 679 n. 20, PERB Case Nos. 00-U-36 and 00-U-40 (2002)).
[40] *AFSCME, District Council 20, Local 2921, AFL-CIO v. DCPS*, 60 D.C. Reg. 2602, Slip Op. No. 1363 at 7, PERB Case No. 10-U-49(a) (2013).
[41] Exceptions at 3.
[42] Exceptions at 2-4.
[43] Exceptions at 4-7.
[44] Exceptions at 7.
[45] Opposition to Exceptions at 2-3.
[46] Opposition to Exceptions at 3-4.
[47] Opposition to Exceptions at 5.
[48] Exceptions at 4.
[49] *See AFGE, Local 383, AFL-CIO v. D.C. Dep't of Human Services*, 49 D.C. Reg. 770, Slip Op. No. 418 at 5, PERB Case No. 94-U-09 (2002) (holding that an agency does not commit a violation of its duty to bargain in good faith by not bargaining over the exercise of a management right or any impact and effects of exercising that right when no request to bargain concerning the impact and effects is made). *But see FOP/PSD Labor Comm.*, Slip Op. No. 1739 at 8 (stating that the Board resolves issues involving the scope of bargaining on a case-by-case basis and holding that *employer-provided* parking is part of employees' wages and constitutes a bargainable term and condition of employment under the CMPA).
[50] *Id.* at 7-9.

program that provided 20-25 parking spaces for bargaining unit employees at the new office location by issuing free parking passes to employees, and the agency continued with that practice for roughly three (3) years before cancelling the parking passes and requiring bargaining unit employees to pay for parking.[51] Further, in Opinion No. 1739, the agency initiated bargaining months before the original relocation and clearly established free worksite parking as a binding past practice.[52] In the instant case, the transfer of one (1) or two (2) Agency employees from one work site to another did not trigger an employer duty to bargain over a mandatory subject for which a change in policy effected a bargaining unit-wide change.[53] Rather, these individual work site changes constituted the exercise of managements' statutory right to "hire, promote, transfer, assign, and retain employees in positions within the agency…."[54] As such, AFGE had the right to request bargaining over the impact the transfers had on the transferred employees' terms and conditions of employment.[55] However, AFGE did not exercise this right.[56] The Hearing Examiner found no evidence that AFGE requested to bargain over this alleged change in policy after the Agencies transferred any of these three (3) employees.[57] The Hearing Examiner's finding that AFGE did not request impact and effects bargaining is reasonable and supported by the record.[58]

Regarding AFGE's assertion that the Hearing Examiner erred in not considering the Joint Stipulations as record evidence that "management knew that the employees in this case had free

[51] *Id.* at 2-3.
[52] *Id.* at 8.
[53] *But see In re United Parcel Service*, 336 NLRB No. 119 (2001) (holding that while the respondent had no role in the decision to relocate a parking lot leased from the owner and operator of the lot for the purpose of providing parking to its tenants and their employees, the respondent still had an obligation to bargain because it had the ability to address the effects of the decision); *c.f. FOP/MPD Labor Comm. and MPD*, 38 D.C. Reg. 847, Slip Op. No. 261 at 3-4, PERB Case No. 90-N-05 (1991) (holding that an FOP proposal regarding the provision of permits to park at Metro Parking Facilities and ride Metro trains to court for job-related court attendance was a mandatory subject of bargaining). The Board has held that it will sometimes look to NLRB or FLRA precedent for guidance when relevant, primarily when the Board's own case law is silent on a particular issue. *Samantha Brown v. DCPS*, Slip Op. No. 1889 at 5, PERB Case No. 22-U-16(MFR) (2024) (citing *FOP/MPD Labor Comm. v. MPD*, 63 D.C. Reg. 6457, Slip Op. No. 1526 at 8, PERB Case Nos. 06-U-23, et al. (2015)). Here, given the limited nature of Board precedent on the issue of employee parking as a past practice, the Board finds it appropriate to examine NLRB case law.
[54] D.C. Official Code § 1-617.08(a)(2). *See also Mail Contractors of America v. N.L.R.B.*, 514 F.3d 27, 34-35 (D.C. Cir. 2008) (rejecting assertion that management-implemented change had a direct effect on wages where that effect was incidental).
[55] *See AFSCME, District Council 20 and Local 2091 v. DPW*, 62 D.C. Reg. 5925, Slip Op. No. 1514 at 4-6, PERB Case No. 14-U-03(a) (2015) (holding that the impact and effects of management's implementation of a policy change are bargainable upon request and rejecting a finding of a failure to bargain in good faith by the agency where the implemented change did not effect any change in employees' terms and conditions of employment).
[56] *See AFGE, Local 383, AFL-CIO v. D.C. Dep't of Human Service*, Slip Op. No. 418 at 2; *see also FOP/MPD Labor Comm. v. MPD*, 47 D.C. Reg. 1449, Slip Op. No. 607 at 3, PERB Case No. 99-U-44 (2000) (holding that a violation of the duty to bargain arises not from an agency merely unilaterally implementing a management rights decision, but rather from the agency's failure to provide an opportunity to bargain over the impact and effects once a request to bargain is made).
[57] Report at 7.
[58] Although the Hearing Examiner analyzed the circumstances of the instant case under both impact and effects and past practice frameworks, Report at 6-10, the facts here do not implicate past practice case law; the Board therefore does not find it necessary to comment on or adopt the Hearing Examiner's findings or recommendations with respect to the past practice analysis.

parking available at their previous locations,"[59] AFGE overstates the nature of these stipulations. The Agencies' stipulation that three (3) employees had access to free parking at their previous worksites does not imply that the Agencies consented to or had knowledge of that access while it existed.

IV. Conclusion

The Board finds that the Hearing Examiner's determination that neither DGS nor DPR violated D.C. Official Code §§ 1-617.04(a)(1) or (5) is reasonable, supported by the record, and consistent with PERB precedent. Therefore, the Board adopts the Hearing Examiner's Report and Recommendations,[60] denies AFGE's requests for relief, and dismisses the Complaints against DGS and DPR.

ORDER

IT IS HEREBY ORDERED THAT:

1. These matters are dismissed in their entirety; and

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 Interim Chairperson Peter Winkler and Members Renee Bowser and Mary Anne Gibbons.

June 24, 2025
Washington, D.C.

[59] Exceptions at 7.
[60] Except as otherwise noted, *supra*, regarding the Hearing Examiner's application of a past practice framework to the facts of the instant case.

APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration, requesting the Board reconsider its decision. Additionally, a final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1-605.2(12) and 1-617.13(c), which provides 30 days after a decision is issued to file an appeal.