

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

In the Matter of:	)	
	)	
American Federation of Government Employees	)	PERB Case No. 16-N-03
Local 3721	)	
	)	
Petitioner	)	Opinion No. 1650
	)	
v.	)	<b>Motion for Reconsideration</b>
	)	
District of Columbia Fire and Emergency	)	
Medical Services Department	)	
	)	
Respondent	)	

**DECISION AND ORDER**

**I. Introduction**

The Respondent District of Columbia Fire and Emergency Medical Services Department (“Agency”) filed a motion for reconsideration and a motion for enlargement of time to file its motion for reconsideration. The Agency seeks reconsideration, in part, of the Board’s Decision and Order issued on October 30, 2017, Slip Opinion No. 1641. The Agency requests that the Board reconsider its Decision and Order and declare section 1 of proposal 6 and section 10 of proposal 10 to be nonnegotiable.

For the following reasons, the Agency’s motion for reconsideration is denied.

**II. Discussion**

Pursuant to PERB Rule 559.2, a party may file a motion for reconsideration within 14 days after issuance of the decision. This motion for reconsideration was filed 20 days after the issuance of the decision. The Agency asks the Board to grant this motion for enlargement of time as counsel for the Agency was ill and absent from work during a portion of the appeals period.<sup>1</sup> Since the Agency presented good cause and in the absence of an objection by the petitioner, the Board grants the Agency’s motion for enlargement of time.

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<sup>1</sup> Motion for Reconsideration at 4.

**AFGE Local 3721 Proposal 6 – Miscellaneous Conditions of Employment:**

**MISCELLANEOUS CONDITIONS OF EMPLOYMENT**

**SECTION 1 – FOOD AT ALARMS OR SPECIAL ASSIGNMENTS**

It is agreed that when unusual conditions of service or weather make it necessary, or when an employee is required to work significantly beyond his/her regularly scheduled tour at alarms or special assignments, the Agency shall provide appropriate food, beverages and/or meals to the employees.

The Agency argues that section 1 of proposal 6 is nonnegotiable as a matter of appropriations law.<sup>2</sup> The Agency requests that the Board reconsider its reasoning and find that the proposal is nonnegotiable because the U.S. Government Accountability Office (GAO) has consistently held that in the absence of statutory authority, the government may not furnish meals or refreshments to employees within their official duty stations.<sup>3</sup> The GAO has “held that free food and refreshments normally cannot be justified as a ‘necessary expense’ under an appropriation since such expenses are considered personal expenses that government employees are expected to bear from their own salaries.”<sup>4</sup>

The Board found that the provision of food, as it relates to proposal 6, is not a compensation matter but rather a term and condition of employment. The proposal relates specifically to when “unusual conditions of service or weather make it necessary, or when an employee is required to work significantly beyond his/her regularly scheduled tour at alarms or special assignments.”<sup>5</sup> The GAO language states that food and refreshments “normally cannot be justified as a necessary expense.” The proposal does not relate to normal conditions but rather to unusual conditions of weather, work significantly beyond regularly scheduled tour, or special assignments. As stated in the Decision and Order, since food and/or beverages will be provided only during these circumstances, it is not a compensation matter but a term and condition of employment.<sup>6</sup>

**AFGE Local 3721 Proposal 10 – Union Rights:**

**UNION RIGHTS**

**SECTION 10:**

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<sup>2</sup> Motion for Reconsideration at 2.

<sup>3</sup> Motion for Reconsideration at 2.

<sup>4</sup> Motion for Reconsideration at 2.

<sup>5</sup> *AFGE, Local 3721 and D.C. Dep’t of Fire & Emergency Med. Servs*, Slip Op. No. 1641, PERB Case No. 16-N-03, (Oct. 19, 2017).

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

The Agency agrees that accredited national representatives of AFGE shall have free access to the premises of the agency during working hours to conduct Union business.<sup>7</sup>

The Agency argues that proposal 10 is made nonnegotiable by its use of the word “free.”<sup>8</sup> The Agency states that the Board did not address its argument that free access is distinct from access and a person with free access may enter a facility without limitation.<sup>9</sup>

The Board stated in its Decision and Order that section 10 of proposal 10 does not allow AFGE representatives to bypass any internal security practices.<sup>10</sup> Under section 1-617.08(a)(5)(D) of the D.C. Official Code, management retains the sole right to determine the Agency’s internal security practices. The Union’s negotiability appeal states that the “proposal provides that Union representatives will have access to Department facilities, free of charge, in order to perform representation duties and responsibilities.”<sup>11</sup> The definition of “free access” may be determined by the parties during negotiations, and the Agency is under no obligation to give up its management right to determine internal security practices and the Union’s proposal did not ask it to do so. Based on the presumption of negotiability, section 10 of the proposal is negotiable.

### **III. Conclusion**

The Agency’s motion for enlargement of time is granted. The Agency’s request that the Board declare section 1 of proposal 6 and section 10 of proposal 10 nonnegotiable is denied. The motion for reconsideration is denied.

### **ORDER**

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

1. The motion for enlargement of time is granted.
2. The motion for reconsideration is denied.
3. 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, Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson and Douglas Warshof.

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<sup>7</sup> Appeal, Ex. 5.

<sup>8</sup> Motion for Reconsideration at 3.

<sup>9</sup> Motion for Reconsideration at 3.

<sup>10</sup> *AFGE, Local 3721*, Slip Op. No. 1641 at p. 10.

<sup>11</sup> Appeal at 8.

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January 18, 2018

Washington, D.C.

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 16-N-03, Op. No. 1650 was sent by File and ServeXpress to the following parties on this the 31<sup>st</sup> day of January, 2018.

Keisha Williams  
Legal Rights Attorney, AFGE, District 14  
444 North Capital Street, NW  
Suite 841  
Washington, D.C. 20010

Kevin Stokes  
Office of Labor Relations and Collective Bargaining  
441 4<sup>th</sup> Street, NW  
Suite 820 North  
Washington, D.C. 20001

/s/ Sheryl Harrington

PERB