Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 383, Complainant,	
v.	PERB Case No. 07-U-03
District of Columbia Mental Retardation and Developmental Disabilities Administration, Respondent.	Opinion No. 938

DECISION AND ORDER

I. Statement of the Case:

This case involves an Unfair Labor Practice Complaint ("Complaint") filed by the American Federation of Government Employees, Local 383, AFL-CIO ("Complainant" or "Union") against the District of Columbia Mental Retardation and Developmental Disabilities Administration ("Respondent" or "MRDDA"). The Union alleges that MRDDA violated D.C. Code § 1-617.04(a)(1) and (5) of the Comprehensive Merit Personnel Act ("CMPA") by implementing a new parking policy without negotiating with the Union. The Respondent filed an Answer denying the allegations.

A hearing was held in this matter, and Hearing Examiner Leonard M. Wagman issued a Report and Recommendation ("R&R"), concluding that MRDDA's conduct interfered with, restrained, and coerced employees in the exercise of their rights under the CMPA. (See R&R at p. 13). In addition, the Hearing Examiner found that MRDDA refused, and continues to refuse, to bargain in good faith with the Union. (See R&R at p. 13). Consequently, the Hearing Examiner recommended that the Board order MRDDA to: (1) cease and desist from violating the CMPA; (2) reinstate the parking policy outlined in the parties' collective bargaining agreement ("CBA"); (3) make the employees affected by MRDDA's change in the parking policy whole for any losses; and (4) provide the Union costs for prosecution of the Complaint. (See R&R at pgs. 13-14).

MRDDA filed exceptions ("Exceptions") to the Hearing Examiner's R&R. The Union filed a Response to MRDDA's Exceptions. The Hearing Examiner's R&R, MRDDA's Exceptions, and the Union's Response are before the Board for disposition.

II. Background

The MRDDA was scheduled to relocate to 1125 - 15th Street, NW, on October 10, 2006. (See R&R at p. 2). Article 12, Section E of the parties' collective bargaining agreement ("CBA") provides that "[e]mployees required as a condition of employment to use their personal vehicle in the performance of their official duties may be provided a parking space or shall be reimbursed for non-commuter parking expenses which are incurred in the performance of their official duties." (R&R at p. 2). All MRDDA employees were provided parking at its previous locations. (See R&R at p. 2). On September 22, 2006, MRDDA sent an e-mail to employees about the parking situation at 1125 – 15th Street and instructed them to respond stating their interest in parking. (See R&R at p. 5). Another e-mail was sent to employees on October 3, 2006, instructing the employees who had responded to the September 22nd e-mail to pair-up in order to share parking spaces and to notify management of their arrangements. (See R&R at p. 6). On October 4, 2006, the MRDDA informed Union representatives that the new building had a parking garage with 101 available spots, and the MRDDA intended to offer sixty ("60") parking spaces to be shared by the MRDDA union and non-union staff. (See R&R at p. 6). The 60 spaces would be shared by employees who would take turns using the same space on alternate days. Also, twenty-five ("25") of the 101 spaces would be reserved for management. (See R&R at p. 7). The Union responded to MRDDA's parking plan/proposal with a counter-proposal asking that MRDDA adhere to the provisions of the parties' CBA or postpone the move. (See R&R at p. 7). On October 5, 2006, MRDDA informed employees that the parking plan, as communicated to the Union on October 4th, would be implemented on October 10th. MRDDA did not respond to the Union's request. On October 6th, the Union filed the present Complaint, and MRDDA's plan was implemented on October 10th. (See R&R at p. 8).

At the hearing, the Union argued that MRDDA had violated D.C. Code § 1-617.04(a)(1) and (5) by: (a) failing to comply with a current provision of the parties' CBA requiring MRDDA to provide free parking to all bargaining unit employees whose assigned work requires them to use their personal vehicles as a condition of their employment; and (b) unilaterally terminating a longstanding practice of affording bargaining unit employees free parking at their workplace. (See R&R at p. 10). MRDDA countered that its treatment of the parking situation at 1125 – 15th Street was an exercise of its management right to make decisions about Agency operations. (See R&R at p. 10).

III. The Hearing Examiner's Report and Recommendation

Based on the pleadings, the record developed at the hearing, and the parties' post hearing briefs, the Hearing Examiner identified one issue for resolution.

> *Did MRDDA unilaterally implement changes to the parking policy for employees and refuse to bargain in good faith regarding the allocation of parking spaces at 1125 – 15th Street?*

Relying on *Fraternal Order Of Police/Metropolitan Police Department Labor Committee v. Metropolitan Police Department*, 38 DCR 847, Slip Op. No. 261, PERB Case No. 90-N-05 (1991) or "FOP/MPD v. MPD" , the Hearing Examiner observed that "[t]he Board has held that parking is compensation constituting a condition of employment and thus a mandatory subject of collective bargaining under the D.C. Code." (R&R at p. 10). The Hearing Examiner relied on the Board's analysis of National Labor Relations Board ("NLRB") case law in *FOP/MPD v. MPD* and noted:

> In the [c]ase of *Abbott Worsted Mills*, cited in the quotation from the *Weyerhauser Timber* case, company-owned houses were leased to employees as "a privilege" which the NLRB observed "amount[ed] in effect to a part of [the employees'] wages and constitute[d] a term and condition of their employment within the meaning of Section 8(3) (sic) of the NLRA...[.]" Employer-provided parking and transit passes may similarly be viewed as compensation, bargainable under the CMPA.

FOP/MPD v. MPD, Slip Op. 261 at p. 5, fn. 3.

The Hearing Examiner stated that the Board has "also recognized that the duty to bargain collectively requires that an employer afford its employees' collective bargaining representative an opportunity to bargain before changing an established past practice affecting the terms and conditions of employment." (R&R at p. 10). See *Fraternal Order of Police/Department of Corrections Labor Committee v. District of Columbia Department of Corrections*, 49 DCR 8960, Slip Op. No. 679, PERB Case No. 00-U-36 and 00-U-40 (2002). In addition, the Hearing Examiner also identified NLRB case law which provides "that an employer's collective bargaining obligations include providing its employees' collective-bargaining representative with notice and opportunity to bargain about any contemplated alteration in a regular and longstanding practice which thus has become a term and condition of the bargaining unit employees' employment." (R&R at p. 10). See *Sunoco, Inc. (R&M)*, 349 NLRB No. 26 (January 31, 2007).[1]

[1] The NLRB adopted the Administrative Law Judge's findings in making its decision. (See ALJ Decision p. 5).

The Hearing Examiner determined that MRDDA had unilaterally determined to change the parking policy in violation of both the terms and conditions of employment set out in the parties' CBA and the past practice of providing free parking to the bargaining unit employees. (See R&R at pgs. 10-11). In addition, the Hearing Examiner found that MRDDA had failed to provide the Union with notice or the opportunity to bargain over the development or implementation of a new parking policy. (See R&R at p. 12). Instead, the Hearing Examiner found that MRDDA began dealing directly with bargaining unit members about the parking situation. (See R&R at p. 12). The Hearing Examiner also discerned that MRDDA had implemented a new parking policy on October 10, 2006, without notice to the Union or an opportunity to bargain. (See R&R at p. 13). Based upon these findings, the Hearing Examiner concluded that MRDDA's conduct interfered with, restrained, and coerced employees in the exercise of their rights under D.C. Code § 1-617.04(a)(1). (See R&R at p. 13). The Hearing Examiner recommended that MRDDA "be ordered to cease and desist [from violating the CMPA] and that it be further ordered to take certain affirmative action designed to effectuate the policies of the D.C. Code." (R&R at p. 13). The Hearing Examiner also recommended that the Board order MRDDA to: (1) reinstate the longstanding policy of providing free parking to the bargaining unit employees; (2) comply with the provisions of the CBA; (3) make whole bargaining unit employees for all monetary losses they have suffered and are suffering as a result of MRDDA's failure to bargain in good faith with the Union, plus interest; (4) pay costs to the Union incurred in the prosecution of the Complaint; and (5) post a notice of its violation of the CMPA for sixty (60) consecutive days. (See R&R at pgs. 13-14).

IV. MRDDA's Exceptions

MRDDA argues that the Hearing Examiner "based his recommendation exclusively on a PERB decision that mistakenly identified parking as a form of compensation rather than a non-compensation term and condition of employment." (Exceptions at p. 3).

In support of this argument, MRDDA asserts that the Board's finding in *FOP/MPDLC v. MPD*, Slip Op. No. 261 (that parking constituted compensation) was a misinterpretation of NLRB precedent. (See Exceptions at pgs 4-5). MRDDA argues that recent NLRB case law does not support the Board's holding that parking can be viewed as compensation. (See Exceptions at p. 5).[2]

[2] MRDDA cites *Berkshire Nursing Home, LLC*, 345 NLRB No. 14 (2005); *United Parcel Service*, 336 NLRB 1134 (2001); *Advertising Mfg. Co.*, 280 NLRB 1185 (1986); *Frank Leta Honda*, 321 NLRB 482 (1986); and *Dynatron/Bondo Corp.*, 324 NLRB 572 (1997). The Board has reviewed the cases cited by MRDDA and concludes that they do not support MRDDA's argument. Instead, these cases address whether unilateral changes in parking policies (e.g. location of the parking lot, rules for parking, etc.) violated § 8(a)(1) and (5) of the NLRA where the unilateral change was material, substantial and significant. In the present case, these issues were not the substance of the Complaint.

In *Fraternal Order of Police v. Metropolitan Police Department*, the Board addressed whether a proposal concerning bargaining unit members' parking while attending court was negotiable. The Board stated:

> In deciding whether the above proposal concerns matters that are terms and conditions of employment subject to negotiation under the CMPA, the Board turns to decisions of the National Labor Relations Board (NLRB) for guidance. In *Weyerhauser Timber Co. and International Woodworkers of America, Local 6-12, CIO*, 87 NLRB No. 123, at n.1 (1949), the NLRB observed:
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> > We have previously rejected, with approval of the Courts, the similar argument that "conditions of employment" has no broader meaning than that perhaps spontaneously suggested by the term "working conditions," and that it therefore only refers to the physical conditions under which employees are compelled to work rather than to the terms or conditions under which employment status is afforded or withdrawn, *Inland Steel Company*, 77 NLRB [No.]1 [1948]; *enforced*, 170 F.2d 247 (C.A. 7); *cert. denied*, 336 U.S. 960. See also, *Abbott Worsted Mills, Inc.* . . .
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> In *Inland Steel Co. v. NLRB*, 170 F.2d 247 (7th Cir. 1948). *cert. denied*, 336 U.S. 960 (1949), the U.S. Court of Appeals for the Seventh Circuit in upholding the NLRB stated that the "[NLRA] makes no distinction between 'tenure' of employment and 'conditions' of employment so far as subject matter of collective bargaining is concerned." The unqualified use of "terms and conditions of employment" in the CMPA warrants a no less broad interpretation than that attributed to it by the NLRB and the courts. If a subject matter pertains to employment status, as we find that this proposal does, it is a term and condition of employment.

Fraternal Order Of Police/Metropolitan Police Department Labor Committee v. Metropolitan Police Department, Slip Op. No. 261. at pgs. 3-4. Based on this analysis, the Board noted that parking can be viewed as compensation. (See *Id* at n. 3).

In the present case, the Board observes that MRDDA has cited no authority which contradicts the Board's determination that parking is compensation. Furthermore, the Board's 1991 decision has not been reversed by either the Board, the Superior Court of the District of Columbia, or the District of Columbia Court of Appeals. Consequently, the Board believes that MRDDA's request to reverse its previous decision is without merit. In addition, the Board finds the Hearing Examiner's findings and recommendations to be reasonable and consistent with Board precedent. Therefore, the

Board adopts the Hearing Examiner's finding that parking, under these circumstances, is compensation and a mandatory subject of bargaining. (See R&R at p. 10).

MRDDA also argues that, under NLRB case law, parking should not be considered a compensation term and condition of employment, but a non-compensation term and condition of employment. (See Exceptions at p. 5). MRDDA contends that although it was required to bargain, its bargaining obligation was limited because parking should be considered a non-compensation term and condition of employment.[3]

MRDDA also suggests that the Hearing Examiner should have found that the *real* issue over which the Union wished to bargain was the move of its facilities from 429 O Street, NW and 25 M Street, SE to 1125 – 15th Street, NW.[4] (See Exceptions at pgs. 7-15). Thus MRDDA contends that the decision to move is a management right, and MRDDA was only obligated to bargain over the impact and effects of that move.[5] (See

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[3] The Board notes that parking issues are included in the collectively bargained Compensation Agreement, as Article 12, Section E. Consequently, the Board believes that MRDDA's assertion here that parking should be considered a non-compensation issue is disingenuous. Whereas the Board has adopted the Hearing Examiner's finding and recommendation that parking is a compensation term and condition of employment, MRDDA's argument is rejected.

[4] See Exceptions subparts B, C, D, E, and F(1).

[5] D.C. Code § 1-617.08. Management rights; matters subject to collective bargaining provides:

> (a) The respective personnel authorities (management) shall retain the sole right, in accordance with applicable laws and rules and regulations:
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> (1) To direct employees of the agencies;
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> (2) To hire, promote, transfer, assign, and retain employees in positions within the agency and to suspend, demote, discharge, or take other disciplinary action against employees for cause;
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> (3) To relieve employees of duties because of lack of work or other legitimate reasons;
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> (4) To maintain the efficiency of the District government operations entrusted to them;
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> (5) To determine:
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> (A) The mission of the agency, its budget, its organization, the number of employees, and to establish the tour of duty;
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> (B) The number, types, and grades of positions of employees assigned to an agency's organizational unit, work project, or tour of duty;
>
> (C) The technology of performing the agency's work; and

Exceptions at pgs. 8-9). By implication, MRDDA argues that parking is a by-product of the move and should be considered a matter over which it was only obligated to bargain concerning the impact and effects. (See Exceptions at p. 9).

Specifically, MRDDA contends that "[b]ecause selection of facilities is a management right, Respondent was only obligated to engage in impact and effects bargaining with the Union." (Exceptions at p. 7). In this exception, MRDDA reasserts its disagreement with the Hearing Examiner's finding that parking is compensation and that because it had a management right to move its facility, it should only have been obligated to bargain over the impact and effect of its management decision to move the facility. (See Exceptions at p. 10). MRDDA also makes the exception that "[t]he Hearing Examiner erred as a matter of law by converting a management right to a mandatory subject of bargaining because of past practice." (Exceptions at p. 10). Again, MRDDA does not "contest the Union's right to impact and effect bargaining because of the move to the new facility. . . [and MRDDA's] bargaining obligations." (Exceptions at p. 11). MRDDA asserts that "[t]he {Hearing Examiner}, however, has converted a management right – choice of facility – into a mandatory subject of bargaining through the operation of past practice." (Exceptions at p. 11). The Board believes that in both these exceptions, MRDDA's disagreement stems from its attempt to substitute the issue of "a unilateral change in the parking policy" for MRDDA's right to change locations.

The Board believes that MRDDA's argument represents a disagreement with the Hearing Examiner's finding that the issue was parking, and not MRDDA's relocation. The Board has long held that a disagreement with the Hearing Examiner's findings is not a ground for reversal where the findings are supported by the record. *Allen-Lewis, et al v. American Federation of State, County and Municipal Employees, Local 2401, et al*, 52 DCR 2481, Slip Op. No. 703, PERB Case No. 99-U-24 (2003). "The Board has also rejected challenges to the Hearing Examiner's findings based on: (1) competing evidence; (2) the probative weight accorded evidence; and (3) credibility resolutions." *Id.* at 11 (citing *AFGE, Local 2741 v. D.C. Dept. of Recreation and Parks*, 46 DCR 6502, Slip Op. no. 588, PERB Case No. 98-U-16 (1999)). In addition, the Board has held that a disagreement with the Hearing Examiner's finding, coupled with a desire for the Board to adopt its interpretation of the law, is not a ground for reversal. See *Zenian, et al. v.*

(D) The agency's internal security practices; and

(6) To take whatever actions may be necessary to carry out the mission of the District government in emergency situations.

(a-1) An act, exercise, or agreement of the respective personnel authorities (management) shall not be interpreted in any manner as a waiver of the sole management rights contained in subsection (a) of this section.

(b) All matters shall be deemed negotiable except those that are proscribed by this subchapter. Negotiations concerning compensation are authorized to the extent provided in § 1-617.16.

American Federation of State, County and Municipal Employees, Local 2743, _DCR_, Slip Op. 901, PERB Case Nos. 03-RD-02 and 04-U-30 (2007).

The Hearing Examiner found that the issue before him was whether MRDDA unilaterally implemented a parking policy that changed the terms and conditions of employment. The Board opines that this finding is substantially supported by the record. It is clear that the issue identified in the Complaint concerns MRDDA's unilateral change in the parking policy **and not** the move to 1125 – 15th Street. MRDDA's exceptions, based on the above assertion, merely represent a disagreement with the Hearing Examiner's findings. As stated above, the Hearing Examiner's finding in this regard is reasonable, supported by the record and consistent with Board precedent. In addition, MRDDA's exceptions do not contend that it attempted to meet any bargaining obligation; either over the terms and conditions of employment or impact and effect. Therefore, the Board finds these exceptions to be wholly without merit and adopt the Hearing Examiner's recommendation that MRDDA unilaterally changed the terms and conditions of employment without bargaining in good faith.

Relying on *University of the District of Columbia v. University of the District of Columbia Faculty Association/National Education Association*, 37 DCR 1012, Slip Op. 240, PERB Case No. 89-U-09 (1990), MRDDA makes an exception which asserts that it had no duty to bargain over the issue of parking because the issue is the subject of a current collective bargaining agreement. (See Exceptions at p. 12). The Board finds that the case cited by MRDDA is inapplicable in the present case. In *UDC v. UDCFA/NEA*, the Agency, mid-term, sought to negotiate with the union over pay increases. When the union refused to bargain, UDC filed an unfair labor practice complaint. The Board held that the union was under no obligation to bargain over an issue that had already been resolved in the parties' collective bargaining agreement. This case is factually inapplicable because here, it is MRDDA that has unilaterally changed the terms and conditions of employment. Neither the Union nor MRDDA are seeking to bargain over changes in the collective bargaining agreement. Furthermore, the Hearing Examiner made no finding that the Union wished to renegotiate the terms of the CBA with respect to parking. The Board rejects this challenge as being without merit.

MRDDA also filed an exception to the Hearing Examiner's remedy. MRDDA asserts that "[t]he remedy recommended by the Hearing Examiner is excessively punitive and based on a misinterpretation of the law." (Exceptions at p. 14). This exception is premised on MRDDA's belief that it was only required to bargain over the impact and effect of its move to 1125 – 15th Street NW. (See Exceptions at pgs. 14-20). As stated above, this assertion represents a mere disagreement with the Hearing Examiner's findings and is not a proper exception. MRDDA asserts that a *status quo ante* remedy is inappropriate in cases involving impact and effect bargaining. In support of this argument, MRDDA cites *AFGE, Local 872 and D. C. Department of Public Works*, Slip Op. No. 439, PERB Case Nos. 94-U-02 and 94-U-08, (1995), where the Board found that restoration of the *status quo ante* was inappropriate. The Board's ruling in *AFGE* was based on the fact that: (1) the agency's bargaining obligations attached only to the impact

and implementation of a reduction-in-force (RIF); (2) there was no evidence that bargaining would have affected the RIF; and (3) the rescission of the RIF would disrupt and impair the agency's operations. The Board noted "that it weighs all of the above factors in determining the appropriateness of such relief, when the duty to bargain is limited to impact and effects". Slip Op. at n. 3.

The Board has the authority to, and has imposed, *status quo ante* remedies for a respondent's failure to bargain in good faith (D.C. Code §§ 1-605.02(3) and 1-617.13(a)). The Board has used this authority both to remedy the effects of the failure to bargain and to impress on an offending party the importance of fulfilling its bargaining obligations, particularly where the offenses are seen as egregious. See *National Association of Government Employees, Local R3-06 v. District of Columbia Water and Sewage Authority*, 47 DCR 7551, Slip Op. No. 635, PERB Case No. 99-U-04 (2000). In the present case, the Board has adopted the Hearing Examiner's finding that this case concerned a mandatory subject of bargaining. Since MRDDA's exception is based on the assertion that this case *only* concerns impact and effect bargaining, the Board believes that this exception lacks merit,rejects its exception, and adopts the Hearing Examiner's recommended remedy.

MRDDA also asserts that the remedy of payment of costs is unwarranted in this case. MRDDA argues that the Hearing Examiner erred in finding that it refused to bargain over a mandatory subject of bargaining. MRDDA also argues that even if it had been obligated to bargain, its refusal to do so was not done in bad faith. (See Exceptions at p. 16).

Under D.C. Code §1-617.13(d), the Board has "the authority to require the payment of reasonable costs incurred by a party to a dispute from the other party or parties as [it] may determine." In *AFSCME, District Council 20, Local 2776 v. D.C. Department of Finance and Revenue*, 37 DCR 5658, Slip Op. No. 245, PERB Case No. 89-U-02(1990), the Board addressed, for the first time, the circumstances under which it is appropriate to award costs:

> First, any such award of costs necessarily assumes that the party to whom the pay is to be made was successful in at least a significant part of the case, and that the costs in question are attributable to that part. Second, it is clear on the face of the statute that it is only those costs that are "reasonable" that may be ordered reimbursed. This is not to say that we are imposing any limit on the costs that a party may incur, but only that the amount of cost incurred that will be ordered paid by the other party will be limited to that part that the Board finds to be "reasonable". Last, and this of course is the nub of the matter, we believe such an award must be shown to be in the interest of justice.

> Just what characteristics of a case will warrant the finding that an award of costs will be in the interest of justice cannot be exhaustively catalogued. We do not believe it possible to elaborate in any one case a complete set of rules or earmarks to govern al cases, nor would it be wise to rule out such awards in circumstances that we cannot now foresee. What we can say here is that among the situations in which such an award is appropriate are those in which the losing party's claim or position was wholly without merit, those in which the successfully challenged action was undertaken in bad faith, and those in which a reasonably foreseeable result of the successfully challenged conduct is the undermining of the union among the employees for whom it is the exclusive bargaining representative.

In the present case (and as noted above), the Hearing Examiner found that that MRDDA had unilaterally implemented a new parking policy and refused to bargain in good faith. The Hearing Examiner also found that MRDDA had circumvented the Union and dealt directly with the employees concerning the parking situation. The Board finds that: (1) MRDDA's position is wholly without merit; (2) that the successfully challenged action was undertaken in bad faith; and (3) that the reasonably foreseeable result of the successfully challenged conduct was the undermining of the Union among the employees for whom it is the exclusive bargaining representative. The Board believes an award of costs is reasonable, supported by the record, and consistent with Board precedent. Therefore, the Board adopts the Hearing Examiner's recommendation to award costs.

MRDDA also makes an exception to the award of costs and claims that "[the Hearing Examiner's order mandating the District agency to provide monetary payment of personnel commuting expenses that are not associated with essential transaction of official business is contrary to law." (Exceptions at p. 17). MRDDA contends that the Hearing Examiner failed to consider the District of Columbia Municipal Regulations ("DCMR") concerning the reimbursement of employees for official business expenses. (See Exceptions at p. 18).[6] MRDDA argues that under the DCMR, it is contrary to law to pay employees for parking which is not business related.[7]

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[6] Specifically, MRDDA cites DCMR §§ 800.1, 801.1(a) and (c), 801.3, 801.5 and 818.3, which provide for the reimbursement of employees for official business expenses.

[7] Title 1 DCMR 800.1, 801.1(a) and (c), 801.3, 801.5 and 818.3 provide:

> 800.1 The purpose of this chapter is to establish the procedure for the request and authorization of official travel and the reimbursement of official business expenses, pursuant to Reorganization Plan No. 5 of 1983 and Mayor's Order 84-52.

The Board finds nothing in the DCMR which prohibits an agency from providing free parking to its employees. Moreover, this argument is refuted by MRDDA's own unilateral change in the parking policy, which clearly provides free parking.[8] Therefore, the Board rejects this challenge as being without merit.

MRDDA also makes an exception to the remedy of making the collective bargaining unit employees whole for parking expenses. It claims that because, under the DCMR, parking is not compensation, but merely travel expenses, the Federal Back Pay ("FBPA") Act, 5 U.S.C. § 5596(b)(1), precludes payment to an employee for losses incurred for the loss in parking privileges. (See Exceptions at p. 19).

5 U.S.C. § 5596(b)(1) provides that:

> An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or grievance) is found by appropriate authority under applicable law, rule,

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> 801.1 When business requirements necessitate employees to travel or incur business related expenses, it shall be the responsibility of the duly authorized individual approving the expense to do the following:
> (a) Assure that each trip or expense is clearly required for the benefit of the District of Columbia;
> (b) Limit the number of participants to the minimum required to accomplish the purpose; and
> (c) Select the best alternative providing the least cost consistent with the purpose and the most efficient use of manpower and dollars.
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> 801.3 An authorization shall be issued prior to the incurrence of expenses and shall be as specific as possible in the circumstances or to the travel to be performed. Requests for exemptions shall be approved by the agency director or his or her designee.
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> 801.5 Travel expenses for which reimbursement is sought shall be confined to expenses that are essential to the transaction of official business. Excess costs, e.g., expenses incurred as a result of circuitous routes, unnecessary or unjustified delays or luxury accommodations and services, or any other expenses that are unnecessary or unjustified in the performance of official business, shall not be reimbursable. The traveler shall be responsible for such costs.
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> 818.3 Local bus, metrorail, taxi, and parking expenses duly authorized in conducting official District of Columbia Government business shall be reimbursed at the actual rate of fare or fee, including tip. Requests for reimbursement in this category which exceed ten dollars ($10) shall be accompanied by receipts. Requests for reimbursement of parking fees shall always be accompanied by receipts regardless of the amount.

[8] MRDDA also clearly recognizes that an agency can provide free parking in its Exception at p. 20.

> regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee - -
>
> (A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect - -
>
> (i) an amount equal to all or any part of pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personal action had not occurred, less amounts earned by the employee through other employment during that period . . . .

The FBPA provides for the back payment of pay, allowances and differentials to employees who have been affected by unjustified or unwarranted personnel action. The Board finds that the FBPA is irrelevant to the present case. There is nothing in the record which indicates that the Hearing Examiner was recommending that the collective bargaining unit employees be made whole as a result of an adverse personnel action under the Federal Back Pay Act. In addition, the Board finds that this exception is merely a disagreement with the Hearing Examiner's finding that parking is compensation. This challenge has been rejected and the Hearing Examiner's finding adopted. Consequently, the Board rejects this exception as being wholly without merit and adopts the Hearing Examiner's recommendation to make the employees whole.

The Board notes that the Hearing Examiner also recommended that the employees be made whole with interest.

As is plainly set forth in *University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia*, 39 DCR 8594, Slip Opinion No. 285, PERB Case No. 86-U-16, the Board cited *AFSCME v. DCBE*, D.C. Superior Court. Misc. Nos. 65-86 and 93-86, decided August 22, 1986, Wash. Law Reporter 2113 (Oct. 15, 1986), for the expressed limited purpose of providing authority that the Board'sorder of back pay created a "liquidated debt" and as such it was subject to the statutory "prejudgment interest" rate of four percent **(4%)** per annum. D.C. Code Sec. 28-3302 and D.C. Code Sec. 15-108. Slip Op. No. 285 at 17.

Notwithstanding this statutory limitation, however, the Board's remedial authority in proceedings properly within its jurisdiction is provided under D.C. Code Sec. 1-605.2(3) and Sec. 1-618.13 of the Comprehensive Merit Personnel Act. The Board finds that *AFSCME v. DCBE* concerned the extent of the Superior Court's authority to award