Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Washington Teachers Union	
Petitioner	PERB Case No. 24-N-04, 24-N-05, 24-N-06, 24-N-07, 24-N-08, 24-N-09
v.	Opinion No. 1897
District of Columbia Public Schools	Motion for Reconsideration
Respondent	

DECISION AND ORDER

I. Statement of the Case

On August 27, 2024, the Board issued Opinion No. 1884 in the above-captioned case, finding that various proposals which the Washington Teachers Union (WTU) submitted to District of Columbia Public Schools (DCPS) were nonnegotiable.[1] On September 10, 2024, WTU filed a motion for reconsideration (Motion) of Opinion No. 1884. The Motion requests that the Board reconsider its determination of non-negotiability regarding WTU's proposals to revise existent collective bargaining agreement (CBA) provisions covering job duties (Article 1.5.2); work year (Articles 23.1.1[2]-23.1.4); and work day (Articles 23.2.1.1 and 23.2.2-23.2.4). DCPS opposes the Motion.

For the reasons stated herein, the Motion for Reconsideration is denied.

[1] In Opinion No. 1884, the Board also determined that many of WTU's proposals to DCPS were negotiable. Those determinations are not at issue here.

[2] In its Motion, WTU uses the title "Article 23.1.1.1." to refer to the proposal which is labeled "Article 23.1.1" in the underlying appeal and in Opinion No. 1884. For the sake of consistency, the Board uses the title "Article 23.1.1" herein.

II. Standard of Review

The Board has established that the standard for a motion for reconsideration is clear legal error.[3] The Board will deny a motion for reconsideration which is based on mere disagreement with the underlying decision, or which does not provide a statutory basis for reversal.[4] Additionally, the Board has held that a motion for reconsideration must assert new issues for the Board to reverse its decision.[5] The Board will deny a motion for reconsideration which solely raises arguments that the Board addressed in its initial decision.[6]

III. Discussion

A. Job Duties

1. Article 1.5.2

In Opinion No. 1884, the Board established that pursuant to D.C. Official Code § 1-617.08(a)(1) and (2), management has the sole right to direct employees and assign work.[7] The Board noted that the right to assign work encompasses the right to determine particular duties to be assigned, when work assignments will occur, and to whom or what positions the duties will be assigned.[8] The Board explained that while management is required to bargain over the impact and effects of such decisions,[9] there is no obligation to reach an agreement during impact and effects bargaining, and thus, impact and effects bargaining can never reach impasse as defined in PERB Rule 599.1.[10] The Board acknowledged its previous holding in *AFGE, Local 3721 v. FEMS*, which established that a proposal to create third-party impasse procedures for impact and effects bargaining over working conditions was negotiable.[11] However, the Board distinguished that precedent, explaining that it is solely applicable to proposals which do not infringe on the management rights established in D.C. Official Code § 1-617.08(a)).[12] Finding that WTU's proposal to revise Article 1.5.2 infringed on the management rights set forth in § 1-617.08(a)(1) and (2), the Board determined it was nonnegotiable.[13]

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[3] *FOP/DOC Labor Comm. v. MPD*, 59 D.C. Reg. 7165, Slip Op. No. 1233 at 4, PERB Case No. 11-E-01 (2012).
[4] *FOP/DOC Labor Comm. v. BEGA*, 62 D.C. Reg. 14628, Slip Op. No. 1538 at 2, PERB Case No. 13-U-35 (2015) (citing *AFGE, Local 1000 v. DOES*, 61 D.C. Reg. 9776, Slip Op. No. 1486, PEB Case No. 13-U-15 (2014)).
[5] *DOC and FOP/DOC Labor Comm.*, 59 D.C. Reg. 6493, Slip Op. No. 1105 at 8, PERB Case No. 07-E-09 (2012).
[6] *FOP/DOC Labor Comm. v. MPD*, 59 D.C. Reg. 9817, Slip Op. No. 1283 at 2, PERB Case No. 07-U-10 (2012); *DiAngelo and Doctor's Council of D.C. v. OCME*, 59 D.C. Reg. 6399, Slip Op. No. 1006 at 5, PERB Case Nos. 05-U-47 and 07-U-22 (2012).
[7] *WTU v. DCPS*, Slip Op. No. 1884 at 7, PERB Case No. 24-N-04 (2024).
[8] *AFSCME, Local 1959 v. OSSE*, 68 D.C. Reg. 1349, Slip Op. No. 1766 at 4, PERB Case No. 21-N-01 (2021) (citing *AFGE, Local 1985*, 55 FLRA 1145, 1148 (1999)).
[9] Slip Op. No. 1884 at 7 (citing *Teamsters, Local 446 v. D.C. Gen. Hosp.*, Slip Op. No. 312 at 3, PERB Case No. 91-U-06 (1994) (establishing that an exercise of management rights does not relieve the employer of its obligation to bargain over the impact and effects of, and procedures concerning, the implementation of those rights)).
[10] Slip Op. No. 1884 at 7 (citing *AFGE, Local 1000, et al. v. DHS, et al.*, 64 D.C. Reg. 4889, Slip Op. No. 1612 at 2-3, PERB Case No. 17-I-03 (2017)).
[11] Slip Op. No. 1884 at 8, fn. 74 (citing *AFGE, Local 3721 v. FEMS*, 65 D.C. Reg. 7650, Slip Op. No. 1658 at 4, PERB Case No. 17-N-03 (2018)).
[12] Slip Op. No. 1884 at 8, fn. 74 (citing *AFGE, Local 3721*, Slip Op. No. 1658 at 4).
[13] Slip Op. No. 1884 at 7-8.

In its Motion, WTU asserts that pursuant to the Board's holding in *AFGE, Local 3721 v. FEMS*, a proposal to create impasse resolution procedures independent of those outlined in PERB Rule 527 is negotiable.[14] WTU argues that based on the decision in *AFGE, Local 3721*, WTU's proposal to revise Article 1.5.2 is negotiable because it would not necessitate the use of PERB's impasse procedures, but would merely require the parties to request the use of a third party to resolve any impasse reached while bargaining over the impact and effects of management's decisions concerning employees' job duties.[15] WTU asserts that in Opinion No. 1884, the Board mischaracterized the *AFGE, Local 3721 v. FEMS* decision when it concluded that the holding of that case applied solely to bargaining over topics which do not implicate management rights.[16]

Additionally, the Motion asserts that since the issuance of Opinion No. 1884, DCPS has submitted a counterproposal to the revised version of Article 1.5.2, thereby waiving its non-negotiability objection concerning that provision for the pendency of the current round of contract bargaining.[17] DCPS does not challenge WTU's assertion that the Agency submitted a counterproposal regarding Article 1.5.2 during the current round of bargaining.

The Board finds that WTU has not met its burden to show that the Board made a clear legal error when it determined that the proposed revision to Article 1.5.2 was nonnegotiable. The proposal at issue in *AFGE, Local 3721 v. FEMS* broadly established optional third-party impasse procedures for impact and effects bargaining over working conditions, which is a mandatory subject that management must substantively bargain to impasse, regardless of any CBA provision. By contrast, the instant proposal seeks to create mandatory third-party impasse procedures for impact and effects bargaining over decisions concerning employees' job duties, which D.C. Official Code § 1-617.08(a)(1) and (2) establish as a management right. Thus, the Board properly distinguished the holding in *AFGE, Local 3721 v. FEMS* from the case at hand.

The Board finds that WTU has not met its burden to show that the Board made a clear legal error when it determined that the proposed revisions to Article 1.5.2 was nonnegotiable. WTU requests that the Board sever any portion of Article 1.5.2 which it deems nonnegotiable.[18] The Board concludes that Article 1.5.2 is nonnegotiable in its entirety and therefore, severance is unnecessary.

B. Work Year

2. Article 23.1.1

In Opinion No. 1884, the Board established that pursuant to D.C. Official Code § 1-617.08(a)(5)(A), determining the number of duty days in a year constitutes a nonnegotiable management right.[19] The Board explained that while management is required to bargain over the

[14] Motion at 9 (citing *AFGE, Local 3721*, Slip Op. No. 1658 at 4-5).
[15] Motion at 9 (citing *AFGE, Local 3721*, Slip Op. No. 1658 at 4-5).
[16] Motion at 3 (citing *AFGE, Local 3721*, Slip Op. No. 1658 at 4-5).
[17] Motion at 9, fn. 1.
[18] Motion at 4.
[19] *WTU v. DCPS*, Slip Op. No. 1884 at 17, PERB Case No. 24-N-04 (2024) (citing *WTU, Local 6 v. DCPS*, 46 D.C. Reg. 8090, Slip Op. No. 450 at 16, PERB Case No. 95-N-01 (1999)).

impacts and effects of such decisions,[20] there is no obligation to reach an agreement during impact and effects bargaining, and thus, impact and effects bargaining can never reach impasse as defined in PERB Rule 599.1.[21] The Board acknowledged its previous holding in *AFGE, Local 3721 v. FEMS*, which established that a proposal to create third-party impasse procedures for impact and effects bargaining over working conditions was negotiable.[22] However, the Board distinguished that precedent, explaining that it is solely applicable to proposals which do not infringe on the management rights established in D.C. Official Code § 1-617.08(a)).[23] Finding that WTU's proposal to revise Article 23.1.1 infringed on the management rights set forth in § 1-617.08(a)(5)(A), the Board determined it was nonnegotiable.[24]

In its Motion, WTU asserts that pursuant to the Board's holding in *AFGE, Local 3721 v. FEMS*, a proposal to create impasse resolution procedures independent of those outlined in PERB Rule 527 is negotiable.[25] WTU argues that, based on that decision, WTU's proposal to revise Article 23.1.1 is negotiable because it would not necessitate the use of PERB's impasse procedures, but would merely require the parties to request the use of a third party to resolve any impasse encountered while bargaining over the impact and effects of management's decisions concerning employees' tour of duty.[26] WTU asserts that in Opinion No. 1884, the Board mischaracterized *AFGE, Local 3721 v. FEMS* when it concluded that the holding of that case applied solely to bargaining over issues unrelated to management rights.[27]

The Board finds that WTU has not met its burden to show that the Board made a clear legal error when it determined that the portion of the proposed revision to Article 23.1.1 which concerned impasse was nonnegotiable. The proposal at issue in *AFGE, Local 3721 v. FEMS* broadly established optional third-party impasse procedures for impact and effects bargaining over working conditions, which is a mandatory subject that management must substantively bargain to impasse, regardless of any CBA provision. By contrast, WTU's present proposal seeks to create mandatory third-party impasse procedures for impact and effect bargaining over decisions concerning employees' tour of duty, which D.C. Official Code § 1-617.08(a)(5)(A) establishes as a management right. Thus, the Board properly distinguished the holding in *AFGE, Local 3721 v. FEMS* from the case at hand.

WTU requests that the Board sever any portion of Articles 23.1.1 which it deems nonnegotiable.[28] The Board concludes that Article 23.1.1 is nonnegotiable in its entirety and therefore, severance is unnecessary.

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[20] Slip Op. No. 1884 at 17 (citing *Teamsters, Local 446*, Slip Op. No. 312 at 3 (establishing that an exercise of management rights does not relieve the employer of its obligation to bargain over the impact and effects of, and procedures concerning, the implementation of those rights)).
[21] Slip Op. No. 1884 at 17 (citing *AFGE, Local 1000, et al.*, Slip Op. No. 1612 at 2-3).
[22] Slip Op. No. 1884 at 17, fn. 131 (citing *AFGE, Local 3721 v. FEMS*, 65 D.C. Reg. 7650, Slip Op. No. 1658 at 4, PERB Case No. 17-N-03 (2018).
[23] Slip Op. No. 1884 at 17, fn. 131 (citing *AFGE, Local 3721*, Slip Op. No. 1658 at 4).
[24] Slip Op. No. 1884 at 17.
[25] Motion at 2-3 (citing *AFGE, Local 3721*, Slip Op. No. 1658 at 4-5).
[26] Motion at 2-3 (citing *AFGE, Local 3721*, Slip Op. No. 1658 at 4-5).
[27] Motion at 3 (citing *AFGE, Local 3721*, Slip Op. No. 1658 at 4-5).
[28] Motion at 4.

3. Articles 23.1.2-23.1.4

In Opinion No. 1884, the Board determined that the first sentence of the proposed revision to Article 23.1.2 was negotiable because it concerned "wage" and "hours," including "premium pay," which is a form of compensation over which management must bargain, pursuant to D.C. Official Code § 1-617.17(b) of the CMPA.[29] The Board held that the remaining proposed revisions to Articles 23.1.2 (from "ET-15 Teachers," onward) through 23.1.5 were nonnegotiable, as those provisions sought to fix the length of the work year, which the Board has established as a management right.[30]

In its Motion, DCPS argues that the proposed revisions to Articles 23.1.2 "ET-15 Teachers" through 23.1.4[31] are negotiable because they merely reflect the status quo, thereby setting a baseline for the work year, "beyond which any extension would trigger the compensation provision and procedural provisions."[32] WTU presented this argument in the initial appeal and the Board rejected it in Opinion No. 1884.[33] The Board explained that under PERB precedent, DCPS has a management right to determine the number of duty days and thus, a proposal which seeks to fix the length of the work year is nonnegotiable, except for impact and effects.[34] The Motion asserts that compensation and the length of the work year are inextricably linked for teachers, whose vacation time is determined by the school calendar.[35] However, regarding teachers, the Board has established that "determining the number of duty days concerns a matter that has such high policy implications as to preclude a requirement that DCPS engage in collective bargaining."[36]

The Motion argues that during the current round of contract negotiations, DCPS bargained over the subject of holidays, thereby waiving non-negotiability regarding the discussion of holidays in Articles 23.1.2 "ET-15 Teachers" through 23.1.4.[37] In its Opposition, DCPS asserts that it did not bargain over holidays, except to propose a separate provision, numbered "Article 22.9" and titled "Holidays Recognized and Observed," listing the official District-observed holidays as they are set forth in D.C. Official Code § 1-612.02.[38] The record supports DCPS' contention, indicating that while DCPS proposed to include the statutorily-established list of District holidays in the CBA, DCPS declined to bargain over the holiday-related provisions in Articles 23.1.2 "ET-15 Teachers" through 23.1.4.[39] The Board finds that DCPS did not waive non-negotiability regarding the discussion of holidays in Articles 23.1.2 "ET-15 Teachers" through 23.1.4 when it proposed to include a predetermined, independently-existing list of District holidays in the CBA.

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[29] *WTU v. DCPS*, Slip Op. No. 1884 at 17, PERB Case No. 24-N-04 (2024).
[30] Slip Op. No. 1884 at 17 (citing *WTU, Local 6*, Slip Op. No. 450 at 16).
[31] WTU's Motion does not contest the Board's finding that the proposal to revise Article 23.1.5 is nonnegotiable.
[32] Motion at 4-5.
[33] Slip Op. No. 1884 at 16-18.
[34] Slip Op. No. 1884 at 17 (citing *WTU, Local 6*, Slip Op. No. 450 at 16).
[35] Motion at 7.
[36] *WTU, Local 6*, Slip Op. No. 450 at 16.
[37] Motion at 5-6.
[38] Opposition at 6; 24-N-04 Appeal, Exhibit 8 at 82-83.
[39] 24-N-04 Appeal, Exhibit 8 at 73-74, 82-83.

The Motion argues that Opinion No. 1884 did not address WTU's argument that the proposals to revise Articles 23.1.2 "ET-15 Teachers" through 23.1.4 were negotiable as a matter of compensation.[40] The Motion asserts that pursuant to the Board's holding in *Teamsters Local Union No. 639 v. DCPS*, "proposals setting the length of time that workers are expected to work for the pay they receive are negotiable as a matter of compensation."[41]

Contrary to WTU's assertion, in Opinion No. 1884, the Board acknowledged WTU's compensation argument and found that the proposed revisions to Articles 23.1.2 "ET-15 Teachers" through 23.1.4 did not discuss compensation.[42] *Teamsters Local Union No. 639* is distinguishable from the instant case, as the terms deemed negotiable therein merely established the existence of breaks and extra duty pay, as opposed to establishing a specific number of days in the work year.[43] Furthermore, the decision in *Teamsters Local Union No. 639* indicates that proposals to establish the number of duty days in a work year are nonnegotiable.[44]

The Board finds that WTU has not met its burden to show that the Board made a clear legal error when it determined that the proposed revisions to Articles 23.1.2 "ET-15 Teachers" through 23.1.4 were nonnegotiable. Because the proposals to revise Articles 23.1.2 "ET-15 Teachers" through 23.1.4 are nonnegotiable in their entirety, the Board concludes that severance is unnecessary regarding those provisions.

C. Work Day

1. Article 23.2.1.1

Opinion No. 1884 established that pursuant to Board precedent, management has a right to determine the tour of duty and thus, a proposal which seeks to fix the hours of the workday is nonnegotiable.[45] The Board explained that while management is required to bargain over the impacts and effects of such decisions,[46] there is no obligation to reach an agreement during impact and effects bargaining, and thus, impact and effects bargaining can never reach impasse as defined in PERB Rule 599.1.[47] The Board acknowledged its previous holding in *AFGE, Local 3721 v. FEMS*, which established that a proposal to create third-party impasse procedures for impact and

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[40] Motion at 6.
[41] Motion at 6-7 (citing *Teamsters Local Union No. 639 v. DCPS*, 38 D.C. Reg. 6693, Slip Op. No. 263 at 13, PERB Case Nos. 90-N-02, 90-N-03 & 90-N-04 (1991)).
[42] Slip Op. No. 1884 at 16, fn. 121.
[43] *Teamsters Local Union No. 639 v. DCPS*, 38 D.C. Reg. 6693, Slip Op. No. 263 at 13-14, PERB Case Nos. 90-N-02, 90-N-03 & 90-N-04 (1991)).
[44] *See Teamsters Local Union No. 639 v. DCPS*, 38 D.C. Reg. 6693, Slip Op. No. 263 at 13-15, PERB Case Nos. 90-N-02, 90-N-03 & 90-N-04 (1991)).
[45] Slip Op. No. 1884 at 20 (citing *WTU, Local 6*, Slip Op. No. 450 at 17.
[46] *WTU v. DCPS*, Slip Op. No. 1884 at 20, PERB Case No. 24-N-04 (2024) (citing *Teamsters, Local 446*, Slip Op. No. 312 at 3 (establishing that an exercise of management rights does not relieve the employer of its obligation to bargain over the impact and effects of, and procedures concerning, the implementation of those rights)).
[47] Slip Op. No. 1884 at 20 (citing *AFGE, Local 1000, et al.*, Slip Op. No. 1612 at 2-3).

effects bargaining over working conditions was negotiable.[48] However, the Board distinguished that precedent, explaining it is solely applicable to proposals which do not infringe on the management rights established in D.C. Official Code § 1-617.08(a)).[49] Finding that WTU's proposal to revise Article 23.2.1.1 interfered with management's right to establish the tour of duty, the Board determined it was nonnegotiable.[50]

In its Motion, WTU asserts that pursuant to the Board's holding in *AFGE, Local 3721 v. FEMS*, a proposal to create impasse resolution procedures independent of those outlined in PERB Rule 527 is negotiable.[51] WTU argues that based on that decision, WTU's proposal to revise Article 23.2.1.1 is negotiable because it would not necessitate the use of PERB's impasse procedures, but merely require the parties to request the use of a third party to resolve any impasse encountered while bargaining over the impact and effects of management's decisions concerning employees' tour of duty.[52] WTU asserts that in Opinion No. 1884, the Board mischaracterized *AFGE, Local 3721 v. FEMS* when it concluded that holding applied solely to bargaining over issues unrelated to management rights.[53]

The Board finds that WTU has not met its burden to show that the Board made a clear legal error when it determined that the portion of the proposed revision to Article 23.2.1.1 which concerned impasse was nonnegotiable. The proposal at issue in *AFGE, Local 3721 v. FEMS* broadly established optional third-party impasse procedures for impact and effects bargaining over working conditions, which is a mandatory subject that management must substantively bargain to impasse, regardless of any CBA provision. By contrast, WTU's present proposal seeks to create mandatory third-party impasse procedures for impact and effect bargaining over decisions concerning employees' tour of duty, which D.C. Official Code § 1-617.08(a)(5)(A) establishes as a management right. WTU has not shown that the Board made a clear legal error when it declined to apply the holding in *AFGE, Local 3721 v. FEMS* to the case at hand.

WTU requests that the Board sever any portion of Article 23.2.1.1 which it deems nonnegotiable.[54] The Board concludes that Article 23.2.1.1 is nonnegotiable in its entirety and therefore, severance is unnecessary.

2. Articles 23.2.2-23.2.4

In Opinion No. 1884, the Board determined that the proposed revisions to Articles 23.2.2-23.2.4 were nonnegotiable because under Board precedent, DCPS has a management right to determine the tour of duty and thus, a proposal which seeks to fix the hours of the workday is nonnegotiable, except for impact and effects.[55]

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[48] Slip Op. No. 1884 at 21, fn. 156 (citing *AFGE, Local 3721 v. FEMS*, 65 D.C. Reg. 7650, Slip Op. No. 1658 at 4, PERB Case No. 17-N-03 (2018)).
[49] Slip Op. No. 1884 at 21, fn. 156 (citing *AFGE, Local 3721*, Slip Op. No. 1658 at 4).
[50] Slip Op. No. 1884 at 20-21 (citing *WTU, Local 6*, Slip Op. No. 450 at 17).
[51] Motion at 2-3 (citing *AFGE, Local 3721*, Slip Op. No. 1658 at 4-5).
[52] Motion at 2-3 (citing *AFGE, Local 3721*, Slip Op. No. 1658 at 4-5).
[53] Motion at 3 (citing *AFGE, Local 3721*, Slip Op. No. 1658 at 4-5).
[54] Motion at 4.
[55] Slip Op. No. 1884 at 21.

In its Motion, DCPS argues that the proposed revisions to Articles 23.2.2-23.2.4, are negotiable because they merely reflect the status quo, thereby setting a baseline for the work day, "beyond which any extension would trigger the compensation provision and procedural provisions."[56] WTU presented this argument in the initial appeal and the Board rejected it in Opinion No. 1884, explaining that under Board precedent, proposals seeking to bargain over the number of hours in a work day or work week are nonnegotiable because they infringe on the management right to determine the tour of duty.[57] Additionally, the Board previously determined that a WTU proposal which was effectively identical to the revised Article 23.2.4 was nonnegotiable.[58]

The Motion argues that Opinion No. 1884 did not address WTU's argument that the proposals to revise Articles 23.2.2-23.2.4 are negotiable as a matter of compensation.[59] The Motion asserts that pursuant to the Board's holding in *Teamsters Local Union No. 639 v. DCPS*, "proposals setting the length of time that workers are expected to work for the pay they receive are negotiable as a matter of compensation."[60] *Teamsters Local Union No. 639* is distinguishable from the instant case, as the terms deemed negotiable therein merely established the existence of breaks and extra duty pay, as opposed to the specific start and end time for the work day; the specific number of hours in a workweek; or the requirements for changing individual employees' schedules.[61]

The Motion contends that while Opinion No. 1884 cites Board decisions which "appear to suggest that proposals regarding the length of the work day are not negotiable," that precedent is nonbinding because earlier Board precedent holds that such proposals are negotiable.[62] This argument is predicated on the principle, adhered to by the District of Columbia Court of Appeals, that where precedents conflict, the earlier precedent prevails.[63] However, the Board does not follow that principle. Rather, the Board's decisions develop over time, adjusting and overturning previous holdings where appropriate.[64] If a party to a case is dissatisfied with the Board's decision, that party may request reconsideration from the Board[65] or from the District of Columbia Superior Court.[66] Disregarding controlling precedent to rely on outdated caselaw is not an appropriate

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[56] Motion at 4-5.
[57] *WTU v. DCPS*, Slip Op. No. 1884 at 21, PERB Case No. 24-N-04 (2024) (citing *WTU, Local 6 v. DCPS*, 46 D.C. Reg. 8090, Slip Op. No. 450 at 17, PERB Case No. 95-N-01 (1999)).
[58] *WTU, Local 6*, Slip Op. No. 450 at 17.
[59] Motion at 6.
[60] Motion at 6-7 (citing *Teamsters Local Union No. 639 v. DCPS*, 38 D.C. Reg. 6693, Slip Op. No. 263 at 13, PERB Case Nos. 90-N-02, 90-N-03 & 90-N-04 (1991)).
[61] *Teamsters Local Union No. 639 v. DCPS*, 38 D.C. Reg. 6693, Slip Op. No. 263 at 13-14, PERB Case Nos. 90-N-02, 90-N-03 & 90-N-04 (1991).
[62] Motion at 7 (citing Slip Op. No. 1884 at 18, fn. 136; 21, fn. 160).
[63] Motion at 7 (citing *Thomas v. United States*, 731 A.2d 415, 420 n.6 (D.C. 1999)).
[64] This is the same approach taken by the National Labor Relations Board. *See e.g.*, *Siren Retail Corp. d/b/a Starbucks & Workers United Affiliated with Serv. Emps. Int'l Union*, 373 NLRB No. 135 (Nov. 8, 2024) (demonstrating the NLRB's practice of overturning its previous holdings, thereby creating new precedent to which the Board adheres in future decisions).
[65] Board Rule 559.2.
[66] D.C. Official Code §§ 1-605.2(12) and 1-617.13(c).

avenue for challenging the Board's decisions. Thus, the Board finds that WTU's chronological argument is unpersuasive.

The Motion asserts that under Federal Labor Relations Authority (FLRA) precedent, a proposal need not expressly provide that it is a compensation proposal, so long as it can be construed that way.[67] Where the Board has previously assessed the negotiability of proposals to establish the hours of a "normal work day," the Board has deemed those provisions to be a nonnegotiable infringement on management's right to establish "basic work week" and "hours of work." Regarding WTU's reliance on FLRA precedent, decisions from other labor boards are not binding on the Board but may be considered where the Board has no precedent which is on-point.[68] Here, the Board finds it unnecessary to rely on the FLRA's holding, as the Board's precedent demonstrates the non-negotiability of the proposals to revise Articles 23.2.2-23.2.4.[69]

The Board finds that WTU has not met its burden to show that the Board made a clear legal error when it determined that the proposed revisions to Articles 23.2.2-23.2.4 are nonnegotiable. Because the proposals to revise Articles 23.2.2-23.2.4 are nonnegotiable in their entirety, the Board concludes that severance is unnecessary regarding those provisions.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Motion for Reconsideration is Denied.
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 Chairperson Douglas Warshof and Members Mary Anne Gibbons and Peter Winkler.

December 19, 2024
Washington, D.C.

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[67] Motion at 7 (quoting *Nat'l Educ. Ass'n v. U.S. Dep't of Def. Dep't of Def. Domestic Schs.*, 51 F.L.R.A. 733 (Jan. 11, 1996)).
[68] *E.g., AFGE, Local 383, et al. v. RHC, et al.*, 68 D.C. Reg. 40, Slip Op. No. 1798 at 5-6, PERB Case No. 21-N-03 (2021).
[69] *WTU, Local 6*, Slip Op. No. 450 at 17; *Teamsters Local Union No. 639 v. DCPS*, 38 D.C. Reg. 6693, Slip Op. No. 263 at 13-14, PERB Case Nos. 90-N-02, 90-N-03 & 90-N-04 (1991).

APPEAL RIGHTS

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.