

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

ASSOCIATION OF PENNSYLVANIA STATE :  
COLLEGE AND UNIVERSITY FACULTIES :  
:  
v. : Case No. PERA-C-10-244-E  
:  
PENNSYLVANIA STATE SYSTEM OF HIGHER :  
EDUCATION, CALIFORNIA UNIVERSITY :

**FINAL ORDER**

The Pennsylvania State System of Higher Education, California University (PASSHE) and the Association of Pennsylvania State College and University Faculties (APSCUF), both filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on June 1, 2011, to a Proposed Decision and Order (PDO) issued on May 12, 2011. PASSHE filed a brief with its exceptions on June 1, 2011, and following an extension of time granted by the Secretary of the Board, APSCUF filed a brief in support of its exceptions on June 21, 2011. APSCUF and PASSHE filed briefs in response to the other party's exceptions on June 21 and July 11, 2011, respectively. After a thorough review of the exceptions and all matters of record, the Board makes the following:

AMENDED FINDING OF FACT

5. In October 2009, PASSHE began constructing a convocation center on the main campus of California University as part of a master plan to provide, among other things, additional space for commencement and intercollegiate athletics. The construction of the convocation center was on a site that included a lot where faculty and staff had been parking, resulting in the loss of parking there. In order to provide access to additional parking, PASSHE instituted a shuttle service between the main campus and a parking lot at a remote campus known as Roadman Park. (N.T. I 51, 53, 57-58, 102-103, 153-154, 163; II 9-18, 26, 29, 41, 44, 136, 159-160; APSCUF Exhibits 5-6, PASSHE Exhibit 14)

DISCUSSION

In the PDO, the Hearing Examiner concluded that PASSHE violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by unilaterally implementing a fee to park on campus for bargaining unit faculty and coaches. To remedy the unfair practice, the Hearing Examiner directed PASSHE to reinstate the *status quo ante* and reimburse parking fees that had been paid by bargaining unit employees. The facts found by the Hearing Examiner, as amended herein, to support the finding of an unfair practice, are summarized as follows.

PASSHE and APSCUF are parties to collective bargaining agreements covering the faculty and coaches through June 30, 2011. An Article in each of the agreements pertains to "**MISCELLANEOUS CONDITIONS**" and has a section concerning past practices with substantially similar language, as follows:

Rules, regulations, policies or practices relating to wages, hours, and terms and conditions of employment now existing and not in conflict with this Agreement shall remain in effect unless modified, amended or eliminated in the same manner as they had been adopted. The provisions of this section of this Article shall be subject to the provisions of ... GRIEVANCE PROCEDURE AND ARBITRATION, but only with respect to whether the procedure used to modify, amend or eliminate the rules, regulations, policies or practices was the same as was used to establish the rules, regulations, policies or practices.

A separate Article of the agreements is entitled "**TOTALITY OF AGREEMENT**" and provides as follows:

The parties acknowledge that this Agreement represents the results of collective negotiations between said parties conducted under and in accordance with the provisions of Act 195 and constitutes the entire Agreement between the parties for the term of said Agreement or any extension thereof. Each party waives his/her right to bargain collectively with the other with reference to any other subject, matter, issue, or thing, whether specifically covered here or wholly omitted herefrom, whether or not said subject was mentioned or discussed during the negotiations preceding the execution of this Agreement.

In October 2009, PASSHE began constructing a convocation center on the main campus of California University as part of a master plan to provide, among other things, additional space for commencement and intercollegiate athletics. The construction of the convocation center resulted in the loss of parking on a site where faculty and staff had been parking for free. In order to provide access to additional parking, PASSHE instituted a shuttle service between the main campus and a parking lot at a remote campus known as Roadman Park.

On February 18, 2010, the parties held a bargaining session with a mediator in attendance where PASSHE presented a proposal on a parking fee structure. PASSHE's February 18, 2010 proposal included "Reserved Tier" parking at a rate of \$3.99 per day; "Tier One" parking at \$2.99 per day, and "Tier Two" parking at \$1.99 per day. The proposal included a "Tier Three" where parking would be free at the Roadman lot. The rates were to take effect with the start of the Fall semester on August 30, 2010. During the meeting, APSCUF asked what the parking fees would be on academic year, semester and calendar year bases. During the next bargaining session on March 16, 2010, PASSHE presented APSCUF with a revision to its proposal noting the daily, weekly, pay period, calendar year, academic year and semester rates for each of the parking tiers.

At a bargaining session on April 8, 2010, APSCUF responded to PASSHE's proposal with a counteroffer of, *inter alia*, 408 free parking spaces for faculty/staff on the main campus in Tier One and Tier Two locations. In addition, paid parking would be made available for those faculty and coaches interested in guaranteed reserved spaces.

At a bargaining session on June 3, 2010, PASSHE presented to APSCUF "the following final offer of California University of Pennsylvania (California University) regarding the parking tiers and fees at the University." The offer stated that "[f]ree parking will continue to be provided for all California University employees at the Roadman Stadium Parking Area including free transportation to and from the Roadman Stadium Parking area." The offer also included parking fees during 2010-2011, 2011-2012, and 2012-2013, for Tier One, Tier Two and Reserved parking. The offer further stated that "[y]ear 3 fees will remain in place beyond 2012-2013 unless you are notified of an intended change and provided an opportunity to meet and discuss over the proposed changes." APSCUF rejected the proposal.

That same day (June 3, 2010), PASSHE posted the following on California University's website:

*"June 3, 2010*

All Cal U students, faculty and staff who intend to park in University parking lots, including the Roadman Lot, in Fall 2010 must pre-register for parking between **June 21 and July 6.**

Pre-registration is the chance for drivers to indicate which parking areas they prefer and to select one of the proposed parking plans.

Beginning **August 2 through August 11**, drivers will be able to go online and purchase a parking permit. Once this is complete, the permit/RFID hang tag will be mailed to the address identified during pre-registration.

Beginning on August 26, all drivers who wish to park on the main campus or at Roadman Park must have an RFID card to access parking areas, including all lots at Roadman Park.

Both pre-registration and registration forms will be posted online at <https://parking.calu.edu>, effective June 18, 2010. **Both forms must be completed** during the appropriate time periods.

The fee structure, a parking map, answers to Frequently Answered Questions, key dates, details on how to get your RFID card and other information also will be posted at <https://parking.calu.edu>, effective June 18, 2010. Updated parking information will be posted at this address, as well. The campus community is encouraged to check their campus email and the parking website regularly."

The fee for purchasing a parking permit was \$20.00.

Another bargaining session with a mediator was held on July 6, 2010. APSCUF presented a response to PASSHE's June 3, 2010 proposal, that sought 355 free parking spaces at the main campus for faculty and coaches, and reserved parking at the 2010-2011 Tier Two rate, and free ADA parking accommodations. The proposal also provided that the agreement would expire on June 30, 2011, along with the current collective bargaining agreement. PASSHE responded that a one-year agreement was a deal breaker and walked out.

In response to APSCUF's July 6, 2010 proposal, in a letter dated July 16, 2010, PASSHE's assistant vice chancellor for labor relations (Michael Mottola) wrote to APSCUF's president at California University (Dr. Michael Slavin), in pertinent part, as follows:

While we are not in agreement with any of the five points you proposed in your July 6, 2010, response, California University and the Office of the Chancellor managers continue to be willing to meet with APSCUF in an attempt to resolve the parking issues at California University.

On or about August 30, 2010, without any additional bargaining and while the faculty and coaches were not on strike, PASSHE began charging faculty and coaches to park on campus at California University, including the payment of permit fees.

There is no dispute in this case, or on exceptions, that employee parking fees are matters of employee wages and working conditions, and thus are a mandatory subject of bargaining. *Commonwealth (West Chester State College) v. PLRB*, 467 A.2d 1187 (Pa. Cmwlth. 1983). On exceptions, PASSHE contends that implementation of the parking fees was not a separate issue for bargaining, but only an impact of its decisions to relocate parking eliminated by the construction of the convocation center, and to make improvements to parking facilities. Therefore, PASSHE argues that the Hearing Examiner erred in finding an unfair practice because APSCUF failed to allege an impact bargaining violation.

The Hearing Examiner correctly noted that an employer's decision to move employee parking in order to construct improvements to the property is a managerial prerogative. *Mt. Lebanon Education Association v. Mt. Lebanon School District*, 32 PPER ¶32047 (Final Order, 2001). However, whether to implement fees for employee parking, where none previously existed, is a wholly separate issue from the managerial prerogative of where employee parking spaces are to be located. Furthermore, an employer's decision to have employees contribute to finance capital improvements does not transform employee wages, hours and working conditions into a mere impact of the employer's financial decision, or

otherwise eliminate the employees' statutory right to bargain.<sup>1</sup> Here, APSCUF clearly alleged in its charge of unfair practices that PASSHE violated its statutory bargaining obligation by eliminating free on-campus parking and imposing parking fees for faculty and coaches. Accordingly, PASSHE's exception, arguing that parking fees are a mere impact issue, is dismissed.

PASSHE also argues that if there is a bargaining obligation, it fulfilled that obligation by negotiating the past practice language in the parties' collective bargaining agreements. The Board recognizes that an employer may defend against allegations of a refusal to bargain by pointing to contract language that provides a sound arguable basis or contractual privilege for the employer's actions. Pennsylvania State Troopers Association v. PLRB, 761 A.2d 645 (Pa. Cmwlth. 2000); Jersey Shore Area Education Association v. Jersey Shore Area School District, 18 PPER ¶ 18117 (Final Order, 1987). The Board has held that to support a contractual privilege of unilaterally altering a mandatory subject of bargaining, the language relied upon by the employer must specifically address the wage, hour or working condition matters at issue and arguably authorize the employer to take unilateral action with respect to that subject matter. Port Authority Transit Police Association v. Port Authority of Allegheny County, 39 PPER 147 (Final Order, 2008).<sup>2</sup> Quoting Port Authority of Allegheny County, the Board held in Temple University Hospital Nurses Association v. Temple University Health System, 41 PPER 3 (Final Order, 2010) as follows:

Consistent with these holdings and Jersey Shore, the Board recently reiterated that the employer may establish the defense of a "sound arguable basis" for changes in terms and conditions of employment only "where there is language in the contract that supports the employer's claimed right to act unilaterally regarding a specific subject matter ...." Port Authority Transit Police Association v. Port Authority of Allegheny County, 39 PPER 147 at 513 (Final Order, 2008).

As the case law in this area demonstrates, the employer's authority to unilaterally alter a mandatory subject of bargaining must arise from the terms of the collective bargaining agreement. Indeed, even before expressly adopting the contractual privilege defense in Jersey Shore, the Board recognized that in a mutually negotiated agreement, the parties may expressly provide that otherwise negotiable matters are the sole province of the employer, thus negating a claim of an alleged failure to bargain subsequent employer changes to the subject matter. In the Matter of the Employees of the Port Authority of Allegheny County, 433 A.2d 578 (Pa. Cmwlth. 1981). However, where the employer asserts a contractual right to change a mandatory subject of bargaining, ... it must point to specific, agreed-upon contract language which arguably indicates that the union expressly and intentionally authorized the employer to take the precise unilateral action at issue. See Port Authority Transit Police Association v. Port Authority of Allegheny County, *supra*.

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<sup>1</sup> In this regard, PASSHE argues on exceptions that the Hearing Examiner's finding that the convocation center was financed in part by parking fees is not supported by the record. Upon review of the findings and the record, we have amended Finding of Fact 5. Nevertheless, regardless of whether parking fees were imposed to finance the convocation center or improvements to parking facilities, that fact does not alter the conclusion that imposition of employee parking fees is a mandatory subject of bargaining. Thus, the amendment to Finding of Fact 5 does not affect the outcome of this case.

<sup>2</sup> The cases relied upon by PASSHE in its brief in support of exceptions are consistent with the Board's policy as set forth in Port Authority of Allegheny County, *supra*. In Amalgamated Transit Union Local #801 v. Altoona Metro Transit, 26 PPER ¶26085 (Final Order, 1995), the collective bargaining agreement incorporated specific promulgated work rules and arguably permitted the employer to modify those rules. In AFSCME, District Council 13 v. Commonwealth, State Police, 20 PPER ¶20173 (Proposed Decision and Order, 1989), the contract specifically addressed work schedules and the employer's ability to change schedules. In Amalgamated Transit Union Local 85 v. Port Authority of Allegheny County, 34 PPER ¶68 (Proposed Decision and Order, 2003), the contract specifically addressed discipline and was previously interpreted to allow the employer to alter a performance code. PASSHE's reliance on Ellwood City Wage and Policy Unit v. Ellwood City Borough, 29 PPER ¶29213 (Final Order, 1998), *aff.*, 736 A.2d 707 (Pa. Cmwlth. 1999), is also misplaced as in that case the employer's limitations on union business on work time was a managerial prerogative concerning direction of personnel, and did not interfere with any existing contractual right of the union to process grievances on work time.

Temple University Health System, 41 PPER at 9-10. Conversely, language in the contract which purportedly allows the employer to make unilateral changes to unspecified wage, hour and working condition matters, is insufficient to support a contractual privilege defense. Commonwealth (Venango County Board of Assistance) v. PLRB, 459 A.2d 452 (Pa. Cmwlth. 1983); Temple University Health System, *supra*.

Here the collective bargaining agreements for the faculty and coaches provided, in substantially similar language, as follows:

Rules, regulations, policies or practices relating to wages, hours, and terms and conditions of employment now existing and not in conflict with this Agreement shall remain in effect unless modified, amended or eliminated in the same manner as they had been adopted. The provisions of this section of this Article shall be subject to the provisions of ... GRIEVANCE PROCEDURE AND ARBITRATION, but only with respect to whether the procedure used to modify, amend or eliminate the rules, regulations, policies or practices was the same as was used to establish the rules, regulations, policies or practices.

While this language is more than just an expression of the continuation or cessation of past practices, and purports to address the procedures for changes to past practices, the language is still general in the sense that it does not address the specific wage, hour and working condition matter over which APSCUF allegedly waived its right to bargain. In our view, the Hearing Examiner astutely applied the reasoning set forth by the Commonwealth Court in Commonwealth (West Chester State University), *supra*, to the facts of this case. The Commonwealth Court's holding in that case is equally applicable here, and was stated by the Court as follows:

Petitioner argues that the past practice clause preserves the right of Petitioner to change existing working conditions via its managerial rights and, therefore, Petitioner had the authority to change the past parking policy of no fee, to implementing a \$20.00 parking fee. Relying on a past practice clause to make unilateral changes in matters which are not expressly included in a collective bargaining agreement is not a novel theory. In a footnote to our decision in Commonwealth v. Pennsylvania Labor Relations Board, 74 Pa. Commonwealth Ct. 1, 459 A.2d 452 (1983), we noted that it would be "problematic in the extreme" for us to permit unilateral alterations in working conditions based on a past practice clause, while at the same time excusing the employer from bargaining over an issue not in the agreement based on the zipper clause. We did not allow the petitioner to unilaterally change an issue which was not included in the collective bargaining agreement based on the past practice clause in that case, and we will not allow it in the case *sub judice*.

Commonwealth (West Chester State University), 467 A.2d at 190-191.

There is no specific language in the past practice clause relied upon by PASSHE that arguably evidences APSCUF's agreement to allow PASSHE to take unilateral action with respect to parking fees, as would be required to support a sound arguable basis, or contractual privilege, defense to the charge. Temple University Health System, *supra*. The language in the collective bargaining agreements does not specifically address PASSHE's ability to unilaterally eliminate free parking and unilaterally impose parking fees, and therefore PASSHE's contractual privilege defense is simply not supported by the collective bargaining agreement.

Additionally, we note that under the law, the contract language would not support a claimed right to unilaterally cease an existing past practice. PASSHE incorrectly argues that because the past practice of free parking was unilaterally imposed, the practice can be ceased unilaterally. The problem with PASSHE's argument is that it is based on a false premise that past practices are unilateral. A "past practice" does not arise from unilateral action, however, but must be shown to be the accepted course of conduct characteristically repeated in response to the given set of underlying circumstances, and

thus arises only through repeated acquiescence. Teamsters Local Union No. 764 V. Berwick Area Joint Sewer Authority, 39 PPER ¶ 22 (Final Order, 2008). Thus, under the law, the procedure to create any past practice requires both parties. In accordance with the parties' collective bargaining agreement, because free parking was created by APSCUF's acquiescence, the past practice language of the collective bargaining agreement would require APSCUF's acquiescence to cease the practice and impose parking fees. The fact that a grievance may be filed under the collective bargaining agreement does not excuse PASSHE's unlawful unilateral modification of the contract language to eliminate a mandatory subject of bargaining. Wilkes-Barre Township v. PLRB, 878 A.2d 977 (Pa. Cmwlth. 2005); Temple University Health System, *supra*.

PASSHE further argues on exceptions that the Hearing Examiner erred in failing to apply cases which recognize an employer's right to subcontract bargaining unit work after negotiating to impasse. See e.g. Mars Area Association of School Service Personnel v. PLRB, 538 A.2d 585 (Pa. Cmwlth. 1987). Contrary to PASSHE's arguments on exceptions, the Board has always recognized a dichotomy between subcontracting, where the employer has the managerial right to determine level of services and eliminate positions, and those situations involving unilateral changes to existing wages, hours and working conditions for employees who are to remain in the employ of the employer. PLRB v. Employees' Committee of the Wilkesburg Sanitation Department, 463 Pa. 521, 345 A.2d 641 (1975); AFSCME, District Council 86 v. Clinton County, 24 PPER ¶24144 (Final Order, 1993). In rejecting the same arguments raised by PASSHE here, and thoroughly discussing the distinction between subcontracting, and wages, hours and working conditions for employees, the Board held in Clinton County, as follows:

There exists yet another distinction between the lines of authority for each of these separate propositions of law which should be noted...

The collective bargaining agreement is an understanding between the employer and the union that if there is to be employment for members of the bargaining unit what the wages, hours and working conditions of that employment shall be. Accordingly, as the parties engage in collective bargaining over subcontracting, the issue presented as is relevant to the union and the employer is if the work is ultimately retained inhouse, what the wages and benefits shall be for the employees. At the same time the employer is negotiating with a representative of its employees, it is also exploring options with potential subcontractors or other alternative providers of these same public services. Ultimately, after exchange of relevant information ... and completion of the Article VIII impasse procedures, the employer must ultimately decide whether to subcontract the work, given the competing interests and political decisions it must make concerning the overall expenditure of its funds in the provision of all public services, or retain the work inhouse. After the collective bargaining procedures in Article VIII are exhausted, the public employer must retire, deliberate and then decide whether to retain the work inhouse or subcontract that work given its competing concerns over funding and provision of public services. It is fundamentally a political decision of the employer to decide the level of public services to be provided and the standards of those services. ... Simply stated, while the statutory and case law is clear that the collective bargaining representative of the employees is a full and equal partner with the employer over wages, hours and working conditions, the law is equally clear that the public employer retains unilateral managerial control over fundamental political decisions concerning the quality and quantity of public services provided to its citizens.

This case presents no such level of managerial decision-making. The Employer resolved the fundamental political decisions over the quality and quantity of public services to be provided its citizens, it is merely negotiating over wages and economic fringe benefits with employees whose work remains inhouse. ... The only question involved here is the wages, hours and other terms of employment which will be provided the employees who perform these public

services. Such decisions are not managerial in nature, are not fundamental political decisions, but are mandatory subjects of collective bargaining.... The Board established and continues to adhere to the rule of law which has now been affirmed by the appellate courts of the Commonwealth concerning the relative obligation of the employer to negotiate regarding subcontracting. These cases and issues however resolve questions far more fundamental and at some level managerial in nature such that following completion of the collective bargaining process, the public employer's ultimate decision with regard to letting the subcontract or retaining the work inhouse consistent with the terms negotiated with its employees is decided by the employer....

However, where no such political or managerial decision need ultimately be made and where the employer negotiates with its employees over wages, hours and working conditions, the union is a full and equal partner under the bargaining obligation imposed in the Act and the employer may not unilaterally impose its resolution of the impasse for the reasons stated by the Board and Commonwealth Court in [Philadelphia Housing Authority v. PLRB, 620 A.2d 594 (Pa. Cmwlth. 1993), *petition for allowance of appeal denied*, 536 Pa. 634, 637 A.2d 294 (1993)]. We thus find the Employer's reliance on Wilkinsburg and its progeny to be misplaced and that the collective bargaining policy set forth in [Appeal of Cumberland Valley School District, 483 Pa. 134, 394 A.2d 946 (1978)], Williamsport, PHA and Commonwealth v. PLRB (Venango County Board of Assistance) correctly states the underlying statutory and common law tenets upon which the Board must base its decision herein.

Clinton County, 24 PPER at 388.

The policy of maintaining the *status quo* for employees who continue to work for the public employer, as discussed in such cases as Appeal of Cumberland Valley School District and Philadelphia Housing Authority, furthers the purposes of PERA of providing stability in the bargaining relationship and continuity of providing uninterrupted essential public services.<sup>3</sup> Moreover, the sound labor policy that there must be a strike by employees in addition to an impasse in negotiations for an employer to be able to implement its last offer, as required by Philadelphia Housing Authority, is not even implicated on this record. Here, not only were the employees not on strike, but as the Hearing Examiner correctly concluded, the parties were not even at impasse.<sup>4</sup>

An impasse in negotiations may arise where "the parties have exhausted the prospects of concluding an agreement and further discussions would be fruitless... [and] all that can be said with confidence is that an impasse is a 'state of facts in which the parties, despite the best of faith, are simply deadlocked.'" Norwin School District v. Belan, 510 Pa. 255, 268 n.9, 507 A.2d 373, 380 n.9 (1986).<sup>5</sup> The testimony and documentary evidence presented by both PASSHE and APSCUF overwhelmingly supports the finding that the

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<sup>3</sup> Indeed, were the employer permitted to be the first to modify the *status quo* through unilateral implementation, there would be much less of an incentive for employees to remain at work and continue bargaining, where striking employees may then be entitled to unemployment benefits. Miceli v. Unemployment Compensation Board of Review, 519 Pa. 515, 549 A.2d 113 (1988); see Philadelphia Housing Authority, 620 A.2d at 600. Likewise, the employer would be less likely to negotiate in good faith with a sincere desire to reach an agreement if it knows it may implement its last offer after twenty-one days of bargaining and twenty days of mediation. Philadelphia Housing Authority, 620 A.2d at 600. Moreover, the Board has limited the *status quo* at contract expiration to exclude automatic wage increases to balance the interests of the employees, the employer and the public, and further encourage uninterrupted public services and collective bargaining to resolve disputes. State Park Officers Association v. PLRB, 854 A.2d 674 (Pa. Cmwlth. 2004), *petition for allowance of appeal denied*, 582 Pa. 704, 871 A.2d 194 (2005).

<sup>4</sup> PASSHE does not except to the Hearing Examiner's determination that there was no *bona fide* impasse at the time of implementation of the parking fees.

<sup>5</sup> "As the term 'impasse' is used in public sector law under PERA, however, it can also mean the end of the statutory dispute resolution process, as well as deadlock". Philadelphia Housing Authority, 620 A.2d at 596.

parties were not at an impasse in their negotiations over free parking and parking fees for faculty and coaches.

Here, prior to PASSHE's implementation of the parking fees, APSCUF made a proposal regarding parking for faculty and coaches on April 8, 2010. PASSHE amended its previous proposal and presented APSCUF with a proposal on June 3, 2010. On July 6, 2010, APSCUF amended its proposals, and presented a counter-proposal to PASSHE for parking for faculty and coaches. Thereafter, Mr. Mottola wrote to Mr. Slavin, and while rejecting APSCUF's July 6, 2010 proposal, expressly stated that "[PASSHE] continue[s] to be willing to meet with APSCUF in an attempt to resolve the parking issues...." (APSCUF Exhibit 14).<sup>6</sup>

The above facts are ample record evidence to support the finding that PASSHE and APSCUF continued to negotiate the parking issues in good faith and that further discussions would not have been fruitless.<sup>7</sup> Accordingly, the Hearing Examiner did not err in concluding that because the parties were not at impasse, PASSHE violated Section 1201(a)(1) and (5) of PERA by unilaterally implementing parking fees for the faculty and coaches.<sup>8</sup>

PASSHE also challenges the Hearing Examiner's remedy for the unfair practice. In this respect, PASSHE points to 72 proposed findings which, for the most part, suggest that APSCUF was the party engaging in bad faith bargaining during the negotiations.<sup>9</sup> PASSHE asserts that given APSCUF's conduct in bargaining, the Hearing Examiner erred in reinstating the *status quo ante*. In PLRB v. Garnet Valley School District, 8 PPER 365 (Final Order, 1977), the Board recognized that where the employer announces a change in wages, hours, and working conditions, or approaches the union with proposed changes, and the union either fails to assert its right to bargain or refuses to bargain before the employer makes unilateral changes, the Board may decline to reinstate the *status quo ante*. Since the decision in Garnet Valley, the Board has issued a limited remedy in those cases where it is apparent that the union refuses to come to the bargaining table. However, the Board does not apply a Garnet Valley type remedy in those situations, as here, where the union engages in the bargaining process but refuses to concede to the employer's bargaining demands. See 43 P.S. §1101.701 (neither party may be compelled to make concessions in bargaining).

The facts reveal that although the bargaining process was slow to get under way, once bargaining commenced in earnest, APSCUF's desire to reach an agreement cannot be questioned. As evidence of good faith bargaining, after receiving requested information, APSCUF presented a proposal for on campus parking on April 8, 2010. Thereafter, APSCUF

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<sup>6</sup> In this vein, PASSHE filed an exception arguing that the Hearing Examiner erred in rejecting evidence of agreements that PASSHE reached with other bargaining units after the July 2010 exchange with APSCUF. The Hearing Examiner rejected this testimony as irrelevant. However, we note that it is also cumulative of the substantial record evidence supporting PASSHE's desire to continue bargaining.

<sup>7</sup> APSCUF has also filed exceptions arguing that the Hearing Examiner erred in failing to find that PASSHE engaged in surface bargaining and insisted on a non-mandatory subject of bargaining. Contrary to the assertions of surface bargaining, PASSHE was not, at any time, required to make concessions, see 43 P.S. §1101.701, but nonetheless altered its proposals in an effort to reach an agreement. In addition, there is no evidence of insistence on a non-mandatory subject where PASSHE made a proposal for a three-year agreement, but also sought to continue bargaining over that proposal. APSCUF also filed an exception that the Hearing Examiner erred in failing to find that PASSHE implemented a \$20.00 parking registration fee. This exception is refuted by Finding of Fact 10, which states that a \$20.00 registration fee was imposed. Accordingly, APSCUF's exceptions are dismissed.

<sup>8</sup> We note that the parties' collective bargaining agreement expired June, 30, 2011, and as recognized by the parties, parking fees are a mandatory subject of bargaining. Thus, parking fees for faculty and coaches at California University are a matter for the negotiations of a successor agreement. Thus, while the parties negotiate, the *status quo* with respect to wages, hours and working conditions for all bargaining unit members must be maintained. Appeal of Cumberland Valley School District, 483 Pa. 134, 394 A.2d 946 (1978); see also State Park Officers Association, supra. (defining *status quo* at contract expiration).

<sup>9</sup> It should be noted that PASSHE has not filed a failure to bargain charge against APSCUF. Generally, the Board need not render findings on all the facts of record, but only those relevant to the determination of the issues presented. Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975). Each of PASSHE's 72 proposed findings are either irrelevant or unnecessary to the ultimate determination of whether PASSHE violated PERA. Accordingly, PASSHE's exceptions to the Hearing Examiner's failure to find facts are dismissed.



met with PASSHE on June 3, 2010, the same day that PASSHE announced its parking registration schedule. APSCUF met again with PASSHE and presented another proposal on July 6, 2010, which was rejected by PASSHE on July 16, 2010. The fact that APSCUF did not concede to PASSHE's demands for parking fees for faculty and coaches may have been hard bargaining, but it was not a refusal to bargain. On this record, it cannot be said that APSCUF was not bargaining in good faith when PASSHE implemented its "final offer".

Where, as here, the union has asserted its right to bargain and is engaging in the bargaining process, a Garnet Valley type remedy is inappropriate, and the Board will direct its typical remedy of a restoration of the *status quo*.<sup>10</sup> Accordingly, the Hearing Examiner did not err in directing PASSHE to reinstate free parking on campus for faculty and coaches and to reimburse bargaining unit employees for parking and registration fees incurred as a result of PASSHE's unfair practice.

After a thorough review of the exceptions and all matters of record, we find that PASSHE and APSCUF were not at an impasse in negotiations over parking fees and bargaining unit faculty and coaches were not on strike, and therefore the Hearing Examiner did not err in concluding that PASSHE violated Section 1201(a)(1) and (5) of PERA by unilaterally implementing parking fees for the bargaining unit faculty and coaches. Accordingly, the exceptions filed by PASSHE and APSCUF shall be dismissed, and the Proposed Decision and Order made final.

#### ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the Board

#### HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Pennsylvania State System of Higher Education, California University and the exceptions filed by the Association of Pennsylvania State College and University Faculties are hereby dismissed, and the May 12, 2011 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, and James M. Darby, Member, this eighteenth day of October, 2011. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.

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<sup>10</sup> Requiring bargaining out from under a *fait accompli* is not favored. See, Snyder County Prison Board v. PLRB, 912 A.2d 356 (Pa. Cmwlth. 2006); Pennsylvania State Police v. PLRB, 912 A.2d 909 (Pa. Cmwlth. 2006), *petition for allowance of appeal denied*, 593 Pa. 730, 928 A.2d 1292 (2007).

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ASSOCIATION OF PENNSYLVANIA STATE :  
COLLEGE AND UNIVERSITY FACULTIES :  
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v. : Case No. PERA-C-10-244-E  
:  
PENNSYLVANIA STATE SYSTEM OF HIGHER :  
EDUCATION, CALIFORNIA UNIVERSITY :

**AFFIDAVIT OF COMPLIANCE**

PASSHE hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (5) of PERA, that it has rescinded the fees for faculty and coaches to park on campus at California university, that it has reimbursed faculty and coaches for any parking fees paid by them as the result of its imposition on them of fees for parking on campus at California university, that it has paid interest on any monies due them as directed in the Proposed Decision and Order, that it has posted the Proposed Decision and Order and Final Order as directed, and that it has served an executed copy of this affidavit on APSCUF.

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Signature / Date

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Title

SWORN AND SUBSCRIBED TO before me  
the day and year aforesaid.

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Signature of Notary Public