

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

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

| | | |
|--------------------------------------|---|----------------------------|
| |) | |
| |) | |
| District of Columbia Public Schools |) | |
| |) | PERB Case No. 24-A-04(MFR) |
| Petitioner |) | |
| |) | Opinion No. 1887 |
| v. |) | |
| |) | |
| Washington Teachers' Union, Local #6 |) | |
| |) | |
| Respondent |) | |
| |) | |

DECISION AND ORDER

I. Statement of the Case

On July 14, 2024, the District of Columbia Public Schools (DCPS) filed a motion for reconsideration (Motion) of the Board's Decision and Order in Opinion No. 1875. On August 2, 2024, the Washington Teachers' Union, Local #6 (WTU) filed an Opposition to the Motion.

For the reasons stated herein, DCPS' motion for reconsideration is denied.

II. Background

On December 17, 2021, the Arbitrator issued an Award, in which he found that DCPS improperly exceeded the Grievant.¹ The Arbitrator determined that the Grievant's back pay should include a tax gross-up to account for the tax burden resulting from the lump sum the Grievant received in payment.² On January 26, 2024, DCPS filed an arbitration review request, asking the Board to overturn the Arbitrator's Award on the basis that it is contrary to law or public policy.³ The Board denied DCPS' Request in Opinion No. 1875.⁴

¹ *DCPS v. WTU, Local #6*, 71 D.C. Reg., Slip Op. No. 1875 at 1, PERB Case No. 24-A-04 (2024).

² *DCPS*, Slip Op. No. 1875 at 2.

³ *See id.*

⁴ *See id.*

III. Discussion

DCPS argues in its Motion that Opinion No. 1875 failed to address DCPS' argument that the Back Pay Act precludes tax gross-up payments.⁵ DCPS argues that any monetary damages in excess of back pay, interest, and attorney fees would be an award of pay in excess of the amount that the D.C. Council or Congress authorized an employee to receive under the Federal Back Pay Act.⁶

In Opinion No. 1875, the Board noted that the Arbitrator's tax gross up remedy does not on its face clearly violate District statute or regulation.⁷ The Board further held that federal caselaw does not explicitly foreclose any claim for tax gross ups in the District.⁸ The D.C. Superior Court has further held that the award of a tax gross up is entirely within an arbitrator's equitable powers to fashion a "make whole" award.⁹

In a motion for reconsideration, the moving party must provide authority which compels the reversal of the initial decision.¹⁰ Absent such authority the Board will not overturn its decision.¹¹

DCPS' claim that the federal Back Pay Act precludes the Award's tax gross up remedy lacks merit. DCPS does not provide support for its assertion that the Federal Back Pay Act limits an arbitrator's power to fashion an equitable remedy specifically only to back pay, interest and attorney fees.

The Board finds that DCPS' motion for reconsideration fails to assert any legal grounds that compel reversal of the Board's earlier decision in Opinion No. 1875. Therefore, the motion for reconsideration is denied.

ORDER

IT IS HEREBY ORDERED THAT:

⁵ Motion at 4.

⁶ Motion at 7.

⁷ DCPS, Slip Op. No. 1875 at 4.

⁸ DCPS, Slip Op. No. 1875 at 4 (citing *DCPS v. WTU, Local #6*, 70 D.C. Reg., Slip Op. No. 1844 at 7, PERB Case No. 23-A-03 (2023)); see also *Fogg v. Gonzales*, 492 F.3d 447, 456 (D.C. Cir. 2007); *Dashnaw v. Pena*, 12 F.3d 1112, 1116 (D.C. Cir. 1994).

⁹ *D.C. Pub. Schools v. D.C. Pub. Employee Relations Bd.*, 2023-CAB-004448 at 15 (Jun. 25, 2024) (Pittman, J. H.).

¹⁰ *AFGE, Local 631 v. OLR CB*, 66 D.C. Reg. 1513, Slip Op. No. 1721 at 2, PERB Case No. 19-I-02 (2019); *FOP/MPD Labor Comm. v. MPD*, 66 D.C. Reg. 6743, Slip Op. No. 1706 at 2, PERB Case No. 18-U-33 (2019); *FOP/MPD Labor Comm. v. MPD*, 65 D.C. Reg. 6430, Slip Op. No. 1661 at 1, PERB Case No. 17-U-26 (2018).

¹¹ *AFGE, Local 631 v. OLR CB*, 66 D.C. Reg. 1513, Slip Op. No. 1721 at 2, PERB Case No. 19-I-02 (2019); *FOP/MPD Labor Comm. v. MPD*, 66 D.C. Reg. 6743, Slip Op. No. 1706 at 2, PERB Case No. 18-U-33 (2019); *FOP/MPD Labor Comm. v. MPD*, 65 D.C. Reg. 6430, Slip Op. No. 1661 at 1, PERB Case No. 17-U-26 (2018).

1. The Motion for Reconsideration of Opinion Number 1875 is denied; and
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By vote of Board Chairperson Douglas Warshof and Members Renee Bowser, Mary Anne Gibbons, and Peter Winkler.

October 17, 2024

Washington, D.C.

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.