Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
District of Columbia, Department of General Services,	)	PERB Case No. 15-A-11
Petitioner,	)	Opinion No. 1594
v.	)	
Fraternal Order of Police/Protective Services Police Labor Committee,	)	Motion for Reconsideration
Respondent.	)	

DECISION AND ORDER

On July 12, 2016, the Board issued a Decision and Order in PERB Case No. 15-A-11[1] (hereinafter "Slip Op. No. 1586"). The decision denied an Arbitration Review Request filed by Petitioner Department of General Services ("DGS") on April 17, 2015. On July 20, 2016, DGS filed a Motion for Reconsideration ("Motion") asking the Board to reconsider its decision. For the reasons stated herein, DGS' Motion is denied.

I. Statement of the Case

DGS employs officers that are responsible for law enforcement activities and the physical security of all properties owned, leased, or otherwise under the control of the District of Columbia Government.[2] The officers are represented for purposes of collective bargaining by FOP.

On March 21, 2014, Respondent Fraternal Order of Police/Protective Services Police Labor Committee ("FOP") filed a step 4 class grievance alleging in part that DGS had violated

[1] *Dist. of Columbia Dep't of Gen. Serv. v. Fraternal Order of Police/Protective Serv. Police Labor Comm.*, Slip Op. No. 1586, PERB Case No. 15-A-11 (July 12, 2016).
[2] Slip Op. No. 1586 at 1.

Article 16 of the parties' Collective Bargaining Agreement ("CBA") by failing to (1) provide requisite training to members of the bargaining unit; (2) offer training by instructors with demonstrated sufficient knowledge of the subject matter; (3) create a training plan; and (4) engage FOP and bargaining unit members to plan and evaluate appropriate training.[3] The grievance further alleged that by failing to adequately train bargaining unit members, DGS had created unsafe conditions in violation of Article 17.[4]

On May 1, 2014, DGS denied FOP's grievance, reasoning that it had complied with all of the training requirements for Special Police Officers outlined in District of Columbia Municipal Regulations ("DCMR") 6-A §§ 1100 *et seq*., and that it had not violated Article 17 because FOP had not alleged any specific unsafe conditions in its grievance.[5] FOP thereafter requested arbitration[6] and a hearing was held.

On March 31, 2015, Arbitrator Ellen S. Saltzman issued the Arbitration Award, finding that (1) DGS violated Article 16 of the CBA by failing to engage with FOP to establish a training program and by failing to provide its police officers with adequate training; and (2) there was no violation of Article 17 of the CBA because FOP had not followed the proper procedures for reporting safety concerns.[7] The Arbitrator reasoned that since the job descriptions, uniform requirements, terms of hire, and duties of the Special Police Officers in the bargaining unit were not the same as those described in 6-A DCMR §§ 1100, *et seq.*, the minimum training requirements in the DCMR did not apply.[8]

On April 17, 2015, DGS filed an Arbitration Review Request, asserting that the Arbitrator was without, or exceeded, her jurisdiction when she found that 6-A DCMR §§ 1100, *et seq.* did not apply to the Special Police Officers in the bargaining unit, and also that the Award was on its face is contrary to law and public policy.[9] On July 12, 2016, the Board issued Slip Op. No. 1586, holding that the Arbitrator's finding drew its essence from the CBA and therefore was not in excess of her authority. The decision further held that since the D.C. Superior Court had found in another case that DGS' special police officers are different from those described in 6-A DCMR §§ 1100, *et seq.*, the Arbitrator's finding was not on its face contrary to law or public policy.[10]

II. Analysis

D.C. Official Code § 1-605.02(6) authorizes the Board to modify or set aside a grievance arbitration award in only three limited circumstances: (1) if an arbitrator was without, or

[3] *Id.* at 1-2.
[4] *Id.* at 2.
[5] *Id.*
[6] *Id.*
[7] *Id.* at 4-5.
[8] *Id.* at 4.
[9] *Id.* at 5.
[10] *Id.* at 4-8.

exceeded her or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.[11]

Motions for reconsideration cannot be based upon a "mere disagreement" with the initial decision.[12] The moving party must provide authority which "compels reversal" of the initial decision.[13] A party that has failed to raise certain arguments in prior proceedings waives its right to raise those specific issues for the first time in a motion for reconsideration.[14]

DGS' primary argument in its Motion for Reconsideration is that two provisions of the D.C. Code compel reversal of the Arbitrator's finding.[15] DGS contends that D.C. Official Code § 10-551.02(6) established the DGS Protective Services Division and requires DGS to employ "special police officers and security officers, as defined in § 47-2839.01."[16] DGS then notes that D.C. Official Code § 47-2839.01 defines a "special police officer" as "an individual appointed under § 5-129.02, and subject to the requirements of Chapter 11 of Title 6-A of the District of Columbia Municipal Regulations."[17] DGS' contention is therefore that "the Arbitrator's award is contrary to law and public policy to the extent that it holds that the DGS Special Police Officer position 'is different from the Special Police Officer described in [6-A DCMR §§ 1100 *et seq.*] and therefore, [6-A DCMR §§ 1100, *et seq.*] does not apply' to the DGS Special Police Officer position."[18]

The instant Motion for Reconsideration is the first time that DGS has raised any arguments concerning D.C. Official Code §§ 10-551.02(6) and 47-2839.01. It did not present these claims before the Arbitrator, and it did not raise them in its Arbitration Review Request, or at any other time since arbitration was requested in 2014. Accordingly, the Board finds that DGS has waived its right to raise them for the first time in its Motion for Reconsideration.[19]

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[11] *See also* PERB Rule 538.3.
[12] *See Univ. of the Dist. of Columbia Faculty Ass'n/Nat'l Educ. Ass'n v. Univ. of the Dist. of Columbia,* 59 D.C. Reg. 6013, Slip Op. No. 1004 at p. 10, PERB Case No. 09-U-26 (2009); *see also Am. Fed'n of Gov't Emp., Local 2725 v. Dist. of Columbia Dep't of Consumer and Regulatory Affairs and Dist. of Columbia Office of Labor Relations and Collective Bargaining*, 59 D.C. Reg. 5041, Slip Op. No. 969 at ps. 4-5, PERB Case No. 06-U-43 (2003).
[13] *UDC Faculty Ass'n. v. UDC*, Slip Op. No. 1004 at p. 10, PERB Case No. 09-U-26; *see also AFGE, Local 2725 v. DCRA and OLRCB*, Slip Op. No. 969 at ps. 5, PERB Case No. 06-U-43.
[14] *Am. Fed'n of State, Cnty and Mun. Emp., Dist. Council 20, Local 2921, AFL-CIO and Dist. of Columbia Pub. Sch.*, 62 D.C. Reg. 9200, Slip Op. No. 1518 at 4-6, PERB Case No. 12-E-10 (2015); *see also* AFGE, *Local 2725 v. DCRA and OLRCB*, 59 D.C. Reg. 6013, Slip Op. No. 969 at p. 5, PERB Case No. 06-U-43; *Fraternal Order of Police/Metro. Police Dep't Labor Comm. v. Metro. Police Dep't*, 59 D.C. Reg. 5006, Slip Op. No. 966 at p. 5, PERB Case No. 08-E-02 (2012); *Am. Fed'n of State, Cnty and Mun. Emp., Dist. Council 20, Local 2921, AFL-CIO v. Dist. of Columbia Pub. Sch.*, 50 D.C. Reg. 5077, Slip Op. No. 712 at p. 4, PERB Case No. 03-U-17 (2003); *and Am. Fed'n of State, Cnty and Mun. Emp., Dist. Council 20, Local 2921, AFL-CIO v. Dist. of Columbia Pub. Sch.*, 51 D.C. Reg. 4170, Slip Op. No. 731 at p. 2, PERB Case No. 03-U-17 (2003).
[15] Motion at 2-3.
[16] *Id.* at 2 (emphases removed).
[17] *Id.* (emphases removed).
[18] *Id.* at 3.
[19] *AFSCME, Dist. Council 20, Local 2921, AFL-CIO and DCPS*, 62 D.C. Reg. 9200, Slip Op. No. 1518 at 4-6, PERB Case No. 12-E-10.

The stipulated issue that the parties jointly placed before the Arbitrator was whether DGS had failed to engage FOP in a training program and whether it had failed "to provide adequate training as required by the CBA," and if so, what should be the remedy.[20] In so doing, the parties agreed not only to be bound by the Arbitrator's interpretation of their CBA, but also to be bound by her interpretation of any related rules and/or regulations.[21] In the Award, the Arbitrator duly considered all of the evidence and information the parties placed before her and provided a very thorough interpretation of the CBA and its relationship with 6-A DCMR §§ 1100, *et seq*. Most importantly, the Arbitrator found that DGS violated Article 16 of the CBA when it failed to engage FOP in a training program and when it failed "to provide *adequate* training" to its officers based on their stated job descriptions and duties.[22] Indeed, in Article 16 DGS agreed to provide bargaining unit members with a level of training that was commensurate "with the performance of their official duties."[23] Therefore, although 6-A DCMR §§ 11, *et seq*. stated a minimum standard of training for special police officers based on a limited set of listed duties, once DGS gave its special police officers additional duties above and beyond those stated in the DCMR, it was required under Article 16 of the CBA to provide additional training commensurate with the performance of those added duties.[24] Accordingly, the Arbitrator did not err when she evaluated the job descriptions and duties of DGS' police officers and determined that the minimum training standard articulated in 6-A DCMR §§ 11, *et seq*. was inadequate based on the requirements of Article 16.

DGS also argues that PERB's denial of DGS' Arbitration Review Request was itself contrary to law because it (1) presumed that the Mayor misclassified DGS' officers; (2) presumed that PERB had personnel authority over the Mayor's appointments; (3) encroached on the Mayor's statutory authority to classify positions under her authority; and/or (4) encroached on the Mayor's authority to set training standards for DGS' officers.[25]

The Board disagrees. When the Board issued Slip Op. No. 1586, it merely exercised its express authority under D.C. Official Code § 1-605.02(6) to review the Award, at DGS' request, to determine whether the Arbitrator exceeded her authority and/or whether the Award was on its face contrary to law and public policy. In its Decision and Order, the Board noted that DGS and FOP both duly placed before the Arbitrator the express tasks of determining whether DGS had violated Article 16, and if so, what should be the remedy. The Board further noted that in order to answer those questions, "it was necessary for the Arbitrator to identify who was covered by the CBA."[26] The Board then highlighted the Arbitrator's reasoning and determined that the

[20] Slip Op. No. 1586 at 3.
[21] *Dist. of Columbia Pub. Sch. V. Council of Sch. Officers, Local 4, Am. Fed'n of Sch. Adm'rs, AFL-CIO*, 63 D.C. Reg. 8980, Slip Op No. 1574 at p. 6, PERB Case No. 15-A-05 (2016); *see also Dist. of Columbia Pub. Sch. v. Teamsters, Local 639*, 49 D.C. Reg. 4351, Slip Op. No. 423 at 5, PERB Case No. 95-A-06 (1995); *and Dist. of Columbia Pub. Sch. and Washington Teachers' Union, Local 6*, 60 D.C. Reg. 12096, Slip Op. No. 1406 at 5, PERB Case No. 12-A-08 (2013).
[22] *See* Award at 18-21, 24 (emphasis added).
[23] *See* CBA, Article 16 § A.
[24] *See id.*
[25] Motion at 4-7.
[26] Slip Op. No. 1586 at 5.

Award was "based on a thorough analysis and cannot be said to be clearly erroneous or contrary to law and public policy." [27] Accordingly, the Board found, in full accordance with its express authority under D.C. Official Code § 1-605.02(6), "that the Arbitrator did not exceed her authority and the Award on its face is not contrary to law and public policy."[28]

Again, as reasoned, *supra*, 6-A DCMR §§ 1100, *et seq*. merely established minimum training requirements for special police officers. However, the Arbitrator found that since DGS and FOP, in Article 16 of their CBA, agreed that the special police officers in the bargaining unit would be trained in relation "to the performance of their official duties," and since the stated duties of DGS' special police officers were different from those the DCMR listed for special police officers, the minimum training standards in the DCMR did not apply, and additional training was required. Nothing in the Award or in PERB's Decision usurped the Mayor's authority or found that the Mayor misclassified DGS' officers; nor did either decision exercise any personnel authority over the Mayor's appointments, encroach on the Mayor's statutory authority to classify positions under her authority, or encroach on the Mayor's authority to set training standards for DGS' officers.

Accordingly, DGS' Motion for Reconsideration is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. DGS' Motion for Reconsideration is denied.

2. Pursuant to Board Rule 559.3, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Yvonne Dixon, Ann Hoffman, and Douglas Warshof. Member Barbara Somson was not present.

September 22, 2016

Washington, D.C.

[27] *Id.* at 6-8.
[28] *Id.* at 8.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-A-11, Opinion No. 1594, was transmitted through File & ServeXpress to the following parties on this the 28th day of September 2016.

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