

Notice: This decision may be formally revised 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**

In the Matter of:)	
)	
Shari Acosta)	
)	
Petitioner)	PERB Case No. 20-U-20
)	
v.)	Opinion No. 1841
)	
American Federation of Government Employees, Local 2725)	Motion for Reconsideration
)	
Respondent)	
)	

DECISION AND ORDER

I. Statement of the Case

On April 7, 2023, Shari Acosta (Petitioner) filed a Motion for Reconsideration (Motion) of the Board’s decision in Opinion No. 1832. The Petitioner requests that the Board reconsider its decision dismissing her unfair labor practice claim against the American Federation of Government Employees, Local 2725 (AFGE). AFGE filed an Opposition to the Motion.

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

II. Background

In Opinion No. 1832, the Board considered the Petitioner’s unfair labor practice Complaint against AFGE.¹ The Petitioner alleged that AFGE breached its duty of fair representation by failing to intervene and challenge her removal from the Union after the Petitioner was reassigned from her former bargaining unit position at the Department of Housing and Community Development to a non-bargaining unit position at the newly formed Rental Housing Commission (RHC).²

¹ *Acosta v. AFGE, Local 2725*, 70 D.C. Reg. 4115, Slip Op. No. 1832, PERB Case No. 20-U-20 (2023).

² *Acosta*, Slip Op. No. 1832 at 2.

A hearing was held on the matter, and the Hearing Examiner issued a Report and Recommendations (Report) concluding that AFGE did not engage in an unfair labor practice with respect to any of the contentions set forth in the Complaint.³ The Petitioner filed Exceptions to the Report challenging the Hearing Examiner's determinations.

The Board adopted the Hearing Examiner's findings and held that the Petitioner failed to state a claim that AFGE violated its duty of fair representation.⁴ The Board found that the Petitioner had not demonstrated that AFGE's actions with respect to any of the allegations were arbitrary, discriminatory, or the product of bad faith.⁵ For these reasons, the Board dismissed the Complaint.⁶

III. Discussion

In the Motion, the Petitioner alleges that AFGE violated its statutory standards of conduct under D.C. Code § 1-617.03, in addition to alleging that AFGE's conduct constituted an unfair labor practice. The Petitioner did not raise a standards of conduct claim throughout the case and at hearing; nor was it addressed in Opinion No. 1832.⁷ As AFGE notes in its Opposition, the Board rejects new arguments that could have been but were not presented to the Hearing Examiner as having been waived.⁸ Therefore, to the extent that any arguments made in the Motion allege standards of conduct violations, such allegations fail to state a claim.

The Petitioner asks the Board to reconsider its decision on the following grounds. The Petitioner alleges AFGE breached its statutory duty of fair representation when the Union president displayed personal animus toward the Petitioner, and failed to defend the Petitioner as a result of this personal animus.⁹ The Petitioner further alleges that "there was no reason for the Union to defer to the [OLRCB], which was in effect the District of Columbia Government, and there was no credible evidence that the job would involve sensitive management issues."¹⁰ The Petitioner disputes that her "work following her reassignment included handling of confidential information which served as the basis for the Union's decision to discontinue its representation of her."¹¹ The Petitioner also argues that she "further provided sufficient evidence to support her claim that the Union has a reasonable basis to challenge the decision of the OLRCB."¹² Finally, the Petitioner argues that "this forum is proper with respect to seeking relief for Chairman Spencer's actions in

³ *Acosta*, Slip Op. No. 1832 at 4.

⁴ *Acosta*, Slip Op. No. 1832 at 6.

⁵ *Acosta*, Slip Op. No. 1832 at 6.

⁶ *Acosta*, Slip Op. No. 1832 at 2.

⁷ The Petitioner filed her initial Complaint as standards of conduct case, but the parties, the Hearing Examiner and PERB considered the matter to be an unfair labor practice case throughout the proceeding and at hearing. Therefore, in Opinion No. 1832, the Board considered all allegations made in the Complaint to be unfair labor practice claims.

⁸ Opposition at 3. See *Hamilton v. AFSCME, District Council 20*, 63 D.C. Reg. 4598, Slip Op. No. 1564 at 3, PERB Case No. 16-S-01 (2016); *Jones-Patterson v. SEIU*, 62 D.C. Reg. 16471, Slip Op. No. 1546, PERB Case No. 14-S-06 (2015).

⁹ Motion at 3.

¹⁰ Motion at 7.

¹¹ Motion at 7-8.

¹² Motion at 9.

discriminating against her and initialing her removal from the Union.”¹³ The Petitioner argues that she “sought relief in this forum as Chairman Spencer’s actions catalyzed the actions of the Union.”¹⁴

All of the issues the Petitioner raises for reconsideration were raised at the hearing, in the Petitioner’s post-hearing brief, and in her exceptions to the Hearing Examiner’s Report.¹⁵ The Petitioner’s Motion amounts to a “mere disagreement” with the Board’s decision in Opinion No. 1832. The Board has previously considered and rejected each of the arguments the Petitioner makes in the Motion. The Board has repeatedly held that a motion for reconsideration cannot be based solely on a mere disagreement with its initial decision.¹⁶ An argument previously made, considered, and rejected is a “mere disagreement” with the initial decision.¹⁷

For these reasons, the Motion for Reconsideration is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. Petitioner’s Motion for Reconsideration 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.

May 18, 2023

Washington, D.C.

¹³ Motion at 12. The Petitioner’s initial Complaint named RHC, and former RHC Chairman Michael Spencer, and AFGE as joint Respondents. The record reflects that the Petitioner instituted an action in the D.C. Superior Court against Chairman Spencer and the District of Columbia Government, which was ultimately settled. Thereafter, the Petitioner filed a motion with PERB to partially dismiss her claims against RHC and Chairman Spencer, pursuant to the parties’ settlement agreement. PERB granted the Petitioner’s motion and dismissed the allegations made against RHC and Chairman Spencer with prejudice. In Opinion No. 1832, the Board restated that its scope of review of the case was limited to the Petitioner’s claim against AFGE, for breach of its statutory duty of fair representation.

¹⁴ Motion at 10.

¹⁵ Opposition at 2.

¹⁶ *AFSCME District Council 20, Local 2921 v. DCPS*, 62 D.C. Reg. 9200, Slip Op. No. 1518 at p. 3-4, PERB Case No. 12-E-10 (2015). See also *FOP/MPD Labor Comm. v. MPD*, Slip Op. No. 1554 at 8-9, PERB Case No. 11-U-17 (Nov. 19, 2015); *Rodriguez v. MPD*, 59 D.C. Reg. 4680, Slip Op. No. 954 at 12, PERB Case No. 06-U-38 (2010).

¹⁷ *DGS v. AFGE Local 631*, 63 D.C. Reg. 12567, Slip Op. No. 1589 at 3, PERB Case No. 14-UM-02 (2016); *Renee Jackson v. Teamsters Local 639*, 63 D.C. Reg. 10694, Slip Op. No. 1581 at 3, PERB Case No. 14-S-02 (2016).

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.