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

In the Matter of:)	
)	
American Federation of Government Employees, Local 1000)	
Complainant)	PERB Case No. 13-U-07
v.)	Opinion No. 1742
)	Motion for Reconsideration
District of Columbia)	
Department of Employment Services)	
Respondent)	

DECISION AND ORDER

I. Statement of the Case

Before the Board is a Motion for Reconsideration (Motion) filed by the American Federation of Government Employees, Local 1000 (AFGE), in response to the Board’s Decision and Order in Opinion 1730, PERB Case No. 13-U-07 (October 17, 2019). The Motion requests that the Board reconsider its Order regarding the appropriate remedy. The Department of Employment Services (DOES) did not file an opposition to the Motion.

II. Background

In Opinion 1730, the Board found that DOES violated D.C. Official Code § 1-617.04(a)(1) and (5) by failing to engage in substantive bargaining over its 2012 Dress Code. The Board found that the typical remedy for failing to bargain is an order for the parties to engage in substantive bargaining; however, in this case, the Board found that an order to bargain would not be appropriate because DOES implemented a new dress code (2018 Dress Code) after the filing of the instant case.¹ The Board found that the remedy to bargain regarding the 2012 Dress Code was rendered moot, because DOES implemented a subsequent dress code (2018 Dress Code).² AFGE

¹ *AFGE, Local 1000 v. DOES*, Slip Op. No. 1730 at 7, PERB Case No. 13-U-07 (October 7, 2019).

² *Id.*

did not file an unfair labor practice complaint regarding the 2018 Dress Code or amend its Complaint to include allegations regarding the 2018 Dress Code.

III. Discussion

A motion for reconsideration cannot be based upon a mere disagreement with the Board's initial decision.³ The Board has repeatedly held that a moving party must provide authority which compels reversal of the Board's decision.⁴ Absent such authority, the Board will not overturn its decision.⁵

In its Motion, AFGE argues that it never withdrew its demand to bargain over the implementation of a dress code by DOES and that DOES was well aware of AFGE's demand to bargain over the decision to implement a dress code.⁶ AFGE further argues that it should not be penalized for "failing to make a futile repeated demand to bargain in the face of the Agency's clear and unretractable position that it was refusing to bargain."⁷ Therefore, AFGE requests that the Board reconsider its conclusions regarding the appropriate remedy in Opinion 1730.

The Board found in Opinion 1730 that DOES violated D.C. Official Code 1-617.04(a)(1) and (5) by failing to engage in substantive bargaining over the 2012 Dress Code.⁸ The Board further stated that the remedy to bargain over the 2012 Dress Code was rendered moot, as it had been superseded by the 2018 Dress Code. The Board has previously held that bargaining should be limited to those issues that are not deemed moot by the passage of time.⁹ The 2018 Dress Code was not an allegation in the Complaint that was before the Board in Opinion 1730. Therefore, the Board did not incorporate the 2018 Dress Code into its remedy Order.

AFGE asserts that the "remedy of restoring the status quo and ordering bargaining is in no way moot."¹⁰ The Board has held that *status quo ante* relief may be appropriate for a respondent's failure to bargain in good faith.¹¹ Before the Hearing Examiner, the parties presented arguments and evidence on the 2018 Dress Code, and stipulated that there was no substantive or impacts and effects bargaining regarding the 2018 Dress Code.¹² The Hearing Examiner found that the 2012 and 2018 Dress Codes were substantially similar.¹³ Based on these facts, the Board finds that DOES's failure to bargain over the 2018 Dress Code is a continuation of its failure to bargain over

³ *Washington Teachers' Union, Local #6 Am. Fed'n of Teachers v. Dist. of Columbia Pub. Schs.*, 65 D.C. Reg. 6927, Slip Op. No. 1657 at 1, PERB Case No. 14-U-02 (2018).

⁴ *Id.*

⁵ *Id.*

⁶ Motion for Reconsideration at 3.

⁷ Motion for Reconsideration at 4.

⁸ Slip Op. No. 1730 at 7.

⁹ *AFGE, Local 383 v. D.C. Dep't of Mental Health*, 52 D.C. Reg. 2527, Slip Op. No. 753 at 8, PERB Case No. 02-U-16 (2005).

¹⁰ Motion for Reconsideration at 4.

¹¹ *AFGE Local 383 v. DYRS*, 61 D.C. Reg. 1544, Slip Op. No. 1449 at 11, PERB Case No. 13-U-06 (2014), *see also AFGE Local R3-06 v. WASA*, 47 D.C. Reg. 7551, Slip Op. No. 635 at 14-15, PERB Case No. 99-U-04 (2000).

¹² Report at 14.

¹³ Report at 18.

the 2012 Dress Code, as they are the substantially the same dress code in this situation. In its prior decision, the Board did not give proper weight to the Hearing Examiner's factual determination concerning the similarity of the 2012 and 2018 dress codes. There was substantial evidence supporting the Hearing Examiner's decision and the Board now adopts that decision.

The Board also notes that DOES did not oppose AFGE's motion for reconsideration and, consequently, does not dispute that bargaining has not been rendered moot. The Board finds that the parties should return to *status quo ante* in regards to the dress code, until such time as the parties have engaged in substantive bargaining over this issue.

IV. Conclusion

The Board grants AFGE's Motion for Reconsideration.

IT IS HEREBY ORDERED THAT:

1. The American Federation of Government Employees, Local 1000's Motion for Reconsideration is granted.
2. The Department of Employment Services, its agents, and representatives shall cease and desist from violating D.C. Official Code § 1-617.04(a)(1) and (5) by failing and refusing to bargain in good faith with AFGE, Local 1000 regarding the dress code policy.
3. The parties will return to a position of *status quo ante* on the 2018 Dress Code.
4. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

March 19, 2020

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 13-U-07, Op. No. 1742 was sent by File and ServeXpress to the following parties on this the 21st day of April, 2020.

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