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

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| In the Matter of: | |) | |
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| American Federation of | |) | |
| Government Employees, Local 2978, | |) | |
| | |) | PERB Case No. 08-U-47 |
| Complainant, | |) | |
| | |) | Opinion No. 1456 |
| | v. |) | |
| | |) | Motion for Reconsideration |
| District of Columbia | |) | |
| Department of Health, | |) | |
| | |) | |
| Respondent. | |) | |
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DECISION AND ORDER

I. Statement of the Case

The instant matter stems from an Unfair Labor Practice Complaint (“Complaint”) filed by the Complainant American Federation of Government Employees, Local 2978 (“AFGE” or “Union”) against the Respondent District of Columbia Department of Health (“DOH” or “Agency”) for alleged violations of sections 1-617.04(a)(1), (3), and (5) of the Comprehensive Merit Personnel Act (“CMPA”). The matter was submitted to an unfair labor practice hearing, and in Slip Op. No. 1256, the Board adopted the Hearing Examiner’s conclusion that the Agency committed an unfair labor practice and ordered the Agency to reinstate Grievant Robert Mayfield. (Slip Op. No. 1256 at p. 11-12). Additionally, the Board instructed the Union to submit “a verified statement as to the appropriate amount for a make whole remedy, i.e. back pay.” *Id.* at 12. The Agency was instructed to provide a response to the verified statement, at which point the Board would issue a supplemental order ruling on the appropriate remedy. *Id.*

In subsequent exchanges between the parties, the Union and Agency disagreed over interest on the back pay award, and the manner in which annual leave hours must be restored to

Mr. Mayfield. On October 31, 2013, the Board issued Slip Op. No. 1443, ordering the parties to brief the following issues: (1) whether the Agency must pay interest on Mr. Mayfield's back pay award, and if so, at what rate; and (2) whether Mr. Mayfield's accrued annual leave must be restored via "restored hours" or as a lump sum payout? Pursuant to the briefing schedule outlined in Slip Op. No. 1443, the Union's brief was filed on November 27, 2013, and the Agency's Amended Reply Brief was filed on December 30, 2013.

On February 25, 2014, the Board issued Slip Op. No. 1454, ordering Mr. Mayfield be paid interest on his back pay award at a rate of four percent per annum, and denying AFGE's request for a lump sum payout of Mr. Mayfield's accrued leave hours. Slip Op. No. 1454 at 6. On March 7, 2014, AFGE filed a Motion for Reconsideration ("MFR"), asking the Board to reconsider its denial of the lump sum payout. (MFR at 1). On March 14, 2014, DOH filed an Opposition to the MFR ("Opposition"), objecting to AFGE's calculation of Mr. Mayfield's accrued leave, and contending that Mr. Mayfield is not entitled to a lump sum payout and could still utilize most of his restored leave in calendar year 2014. (Opposition at 2-4).

The MRF and Opposition are now before the Board for disposition.

II. Discussion

In its MFR, AFGE requests that the Board reverse its decision in Slip Op. No. 1454 because "the denial of cash compensation for 679 hours of accrued leave is inequitable and will effectively cause Mr. Mayfield to forfeit the vast majority of those hours." (MFR at 1). AFGE then asked the Board to establish a briefing schedule. *Id.*

In response, DOH first noted that AFGE incorrectly referred to 679 hours of restored leave, when the actual number was 436 hours restored leave and 240 hours placed into Mr. Mayfield's regular annual leave bank. (Opposition at 2). Next, DOH rejects AFGE's argument that it would be inequitable to refuse Mr. Mayfield a lump sum payout for his restored leave, stating that "what is truly inequitable is that [DPM subsection 1239.2] allowed Mr. Mayfield two years to use his restored leave and he appears to have either neglected and/or refused to utilize *any* of this restored leave since he was reinstated." (Opposition at 3; emphasis in original). DOH notes that in calendar year 2014, Mr. Mayfield used 246 hours of annual leave from his regular leave bank, and "[t]he fact that Mr. Mayfield chose not to use any of his restored leave in 2013 was his choice and his alone, and the Board should therefore not now reverse its February 25, 2014, decision regarding this issue." (Opposition at 3-4). Finally, DOH states that Mr. Mayfield could still use all or most of his restored leave in calendar year 2014. (Opposition at 4).

In Slip Op. No. 1454, the Board concluded that nothing in the chapter of the D.C. Municipal Regulations pertaining to back pay for District personnel, 6-B DCMR § 1149.2, required that annual leave be restored as a lump-sum payout instead of as restored leave. Slip Op. No. 1454 at p. 6. Additionally, the Board noted that in its brief, AFGE cited to no cases in which the Board *sua sponte* ordered a lump-sum payout for restored annual leave hours, nor was the Board aware of such precedent. *Id.* at p. 5.

Similarly, in its MFR, AFGE fails to provide any authority which compels the reversal of the Board's decision in Slip Op. No. 1454. Instead, AFGE's argument amounts to no more than

a disagreement with the Board's underlying decision. See *University of the District of Columbia Faculty Ass'n/NEA v. University of the District of Columbia*, 59 D.C. Reg. 6013, Slip Op. No. 1004 at p. 7, PERB Case No. 09-U-26 (2009). The Board has repeatedly held that "a motion for reconsideration cannot be based upon mere disagreement with its initial decision." *AFGE Local 2725 v. D.C. Dep't of Consumer and Regulatory Affairs and Office of Labor Relations and Collective Bargaining*, 59 D.C. Reg. 5041, Slip Op. No. 969, PERB Case Nos. 06-U-43 and 02-A-05 (2003); see also *D.C. Dep't of Human Services v. Fraternal Order of Police/Dep't of Human Services Labor Committee*, 52 D.C. Reg. 1623, Slip Op. No. 717, PERB Case Nos. 02-A-04 and 02-A-05 (2003); *D.C. Metropolitan Police Dep't v. Fraternal Order of Police/Metropolitan Police Dep't Labor Committee*, 49 D.C. Reg. 8960, Slip Op. No. 680, PERB Case No. 01-A-02 (2002). Therefore, AFGE's MFR is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. AFGE's Motion for Reconsideration is dismissed.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

April 2, 2014

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 08-U-47 was transmitted via File & ServeXpress to the following parties on this the 2nd day of April, 2014.

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