

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:)	
)	
American Federation of State, County and Municipal Employees, Local 2401)	
Complainant)	PERB Case No. 23-U-02
)	Opinion No. 1861
v.)	Motion for Reconsideration
District of Columbia Office of the Attorney General)	
Respondent)	

DECISION AND ORDER

I. Statement of the Case

On January 12, 2024, the District of Columbia Office of the Attorney General (OAG) filed a motion for reconsideration (Motion) of the Board’s Decision in Opinion No. 1855. On January 19, 2024, the American Federation of State, County and Municipal Employees, Local 2401 (Union) filed an Opposition to OAG’s Motion.

For the reasons stated herein, OAG’s motion for reconsideration is denied.

II. Discussion

OAG seeks reconsideration of the Board’s ruling that employee Robinson’s *Weingarten* rights were triggered during the Performance Improvement Plan (“PIP”) meetings at issue.¹ OAG argues that “the Board did not identify what facts in this case demonstrate that Robinson had a reasonable fear of discipline based on objective standards under all the circumstances,” in Opinion No. 1855.² OAG further argues that the Board’s adoption of the Hearing Examiner’s conclusion that *Weingarten* rights were triggered, without further elaboration, does not comport with the D.C.

¹ OAG’s Motion at 2.

² OAG’s Motion at 1.

Court of Appeals' holding in *MPD v. PERB*.³ OAG requests that the Board clarify what facts in the record it relied on in affirming the Hearing Examiner's conclusion.⁴ In its Opposition to OAG's Motion, the Union argues that OAG has failed to establish any legal ground for the Board to reconsider its decision.⁵

In its decision in Opinion No. 1855, the Board reviewed the record and adopted the Hearing Examiner's finding that OAG's PIP meetings with Robinson were "investigatory interviews" to which *Weingarten* rights attached.⁶ The Board stated: "The record reflects that the Hearing Examiner properly considered and rejected OAG's argument that the Agency's weekly PIP meetings with Robinson were not investigatory in nature."⁷ The Board's adoption of the Hearing Examiner's conclusion on this issue necessarily includes adoption of the Hearing Examiner's material findings of fact, which were detailed in Opinion No. 1855. Specifically, the Board found:⁸

The Hearing Examiner noted that the OAG policy on PIPs clearly identified removal as one possible outcome of the PIP process for an employee. The Hearing Examiner cited Robinson's testimony at the hearing that he feared being placed on a PIP would eventually result in his termination. The Hearing Examiner also found that OAG management's questioning of Robinson "was, at times, contentious and deeply detailed" during Robinson's weekly PIP meetings. The Hearing Examiner further found that, despite OAG's testimony to the contrary, Robinson's responses during his PIP meetings formed part of the basis for his removal.

The Board will deny motions for reconsideration that are based upon mere disagreement with the initial decision, or which do not provide a statutory basis for reversal.⁹ The Board has established that an argument previously made, considered, and rejected is a "mere disagreement" with the initial decision.¹⁰

The Board has previously addressed the Hearing Examiner's finding that OAG's PIP meetings with Robinson were "investigatory interviews" to which *Weingarten* rights attached, and the Board determined that finding to be reasonable, supported by the record, and consistent with Board precedent.¹¹ OAG's Motion amounts to a mere disagreement with the Board's decision in Opinion No. 1855. Therefore, OAG's basis for reconsideration does not merit reversal of the Board's decision.

³ OAG's Motion at 4 (citing *D.C. Metro. Police Dep't v. D.C. Pub. Emp. Rels. Bd.*, 282 A.3d 598, 605 (D.C. 2022)).

⁴ OAG's Motion at 1.

⁵ Union's Opposition at 2.

⁶ *AFSCME, Local 2401 v. OAG*, Slip Op. No. 1855 at 6-7, PERB Case No. 23-U-02 (2024).

⁷ *AFSCME, Local 2401*, Slip Op. No. 1855 at 7.

⁸ *AFSCME, Local 2401*, Slip Op. No. 1855 at 3.

⁹ *AFGE, Local 1000 v. Dep't of Emp. Servs.*, Slip Op. No. 1486, PERB Case No. 13- U-15 (2014).

¹⁰ *Jackson v. Teamsters, Local 639*, 63 D.C. Reg. 10694, Slip Op. No. 1581 at 3, PERB Case No. 14-S-02 (2016).

¹¹ See *AFSCME, Local 2401*, Slip Op. No. 1855.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Motion for Reconsideration of Opinion Number 1855 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.

February 22, 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 provide thirty (30) days after a Board decision is issued to file an appeal.