Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)
	)
American Federation of State,	)
County and Municipal Employees,	)
District Council 20	) PERB Case No. 17-N-04
	)
Petitioner	) Opinion No. 1679
	) **Motion for Reconsideration**
and	)
	)
Office of the State Superintendent of	)
Education	)
	)
Respondent	)
	)

DECISION AND ORDER

Before the Board is a Motion for Reconsideration ("Motion") filed on April 17, 2018, by the Office of the State Superintendent of Education ("OSSE") in response to the Board's Decision and Order in Slip Opinion 1659, PERB Case No. 17-N-04 (March 27, 2018). OSSE alleges that the Board erred in its conclusion that the proposed "Article XVI: Leave" was negotiable. OSSE contends that the proposal is nonnegotiable on the grounds that the Mayor and City Council intended section 1-612.03 of the D.C. Official Code to implement a leave program for all district employees hired after September 30, 1987. On May 3, 2018, the American Federation of State, County and Municipal Employees, District 20 ("Union") filed an opposition. For the reasons stated herein, OSSE's Motion is denied.

I.   Background

In Slip Opinion 1659, the Board determined that the following proposal is negotiable:

A. Article XVI: Leave

1. Starting on the first full pay period of their employment employees covered by the terms of this agreement shall accrue annual leave as follows:
    a. Less than three (3) full-time equivalent years of service: Two (2) hours annual leave earned for every twenty (20) hours of work;
    b. Three (3) years full-time-equivalent years of service but fewer than ten (10) full-time-equivalent years of service: One and one half (1 and ½) Three (3) hours annual leave earned for every twenty (20) hours of work;
    c. Ten (10) or more full-time-equivalent years of service: Four (4) hours annual leave earned for every twenty (20) hours of work.

2. Request for annual leave shall be submitted by the employee, on a form provided by the Department, to the employee's Assistant Terminal Manager. The Assistant Terminal Manager shall approve or disapprove, pursuant to Section C. of this Article, prior to the date such leave is to begin.

3. The rate of annual pay shall be the employee's regular straight time rate of pay at the time the leave is earned.

4. Annual leave that is not used by an employee shall be accumulated from year to year for use in succeeding year. The maximum allowable leave balance shall not exceed three hundred twenty (320) hours.

5. Upon the execution of this agreement, an employee's "use or lose" annual leave balance will not be reduced to the maximum number of carryover hours until the beginning of the first full pay period after the pay period that includes January 10 of each year.

Before the Board, OSSE contended, *inter alia*, that the proposed section conflicts with section 1-612.03(e)(1)(B) and (C) of the D.C. Official Code. The Board disagreed. In Slip Opinion 1659, the Board explained that section 1-612.03(a) of the D.C. Official Code outlines employee annual and sick leave and is only applicable to employees first hired before October 1, 1987. All employees hired thereafter are exempt from that section.[1] The Board concluded that there is no explicit statutory restriction on employee leave for all employees and that the Union's proposal is negotiable.

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[1] D.C. Official Code § 1-612.03(a)(6).

II.   Positions of the Parties

OSSE disputes the Board's conclusion that the District has not adopted a statutory leave program for employees first hired after September 30, 1987. OSSE contends that through promulgating municipal regulations, the Mayor and City Council intended to implement the statutory leave program under section 1-612.03 of the D.C. Official Code for employees hired after September 30, 1987.[2] OSSE asserts that section 1232.1 of Title 6-B of the District of Columbia Municipal Regulations ("DCMR") titled "Accrual of Annual Leave" "specifically adopts the crux of the leave program set forth under D.C. Official Code §1-612.03(e)(1) . . . ."[3]

Further in support of this request, OSSE points to three instances when the City Council amended section 1-612.03 of the D.C. Official Code as evidence of the section's applicability to all employees, regardless of their hire date. OSSE contends that because the amendments to the statute do not explicitly state that it is restricted to employees hired before October 1, 1987, the Council intended that the statute apply to all District employees.[4] Lastly, OSSE asserts that the Union did not argue before the Board in its Negotiability Appeal that section 1-612.03 is inapplicable to employees hired after September 30, 1987.[5]

III.   Discussion

A motion for reconsideration cannot be based upon a mere disagreement with the Board's initial decision.[6] The Board has repeatedly held that a moving party must provide authority which compels reversal of the Board's decision.[7] Absent such authority, the Board will not overturn its decision.[8]

First, Title 6-B of the DCMR does not implement a statutory leave program for employees hired after September 30, 1987. As the Union notes, section 1201, titled "Statutory Authority and Applicability," contains the following clause: "The provisions of a collective bargaining agreement shall take precedence over the provisions of this chapter for those employees covered by such an agreement, to the extent that there is a difference."[9] The Board finds that Title 6-B of the DCMR specifically yields to the parties' collective bargaining agreement. Therefore, the cited regulation does not compel reversal of the Board's decision.

Second, as the Board stated in Slip Opinion 1659, section 1-612.03(a)(6) of the D.C. Official Code explicitly states that the annual and sick leave system established therein is not

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[2] Motion at 4.

[3] Motion at 5.

[4] Motion at 6.

[5] Motion at 8.

[6] *Washington Teachers Union, Local #6 Am. Fed'n of Teachers v. Dist. of Columbia Pub. Schs.*, Slip Op. No. 1657 at 1, PERB Case No. 14-U-02 (Mar. 27, 2018).

[7] *Id.*

[8] *Id.*

[9] 6-B DCMR § 1201.3.

applicable to employees first hired after September 30, 1987.[10] Nonetheless, OSSE points to three separate instances when the City Council amended the statute as evidence that the Mayor and City Council intended it to be applicable to employees hired after September 30, 1987. However, despite these changes, the Council never amended the language that limits the statute's applicability to employees hired before October 1, 1987. Accordingly, the cited amendments do not prove that the Mayor and City Council intended that section 1-612.03 of the D.C. Official Code is applicable to employees hired after September 30, 1987. Therefore, the Board finds that the cited amendments do not compel reversal of the Board's Order.

Finally, the Union's failure to argue in its Negotiability Appeal that section 1-612.03 of the D.C. Official Code is only applicable to employees hired before October 1, 1987, does not compel reversal of the Board's decision. Pursuant to section 1-605.02(5) of D.C. Official Code, the Board is authorized to make a determination in disputed cases as to whether a matter is within the scope of collective bargaining. The Board reviews the disputed proposals and addresses each in light of the statutory dictates and relevant case law.[11] The Board's jurisdiction to decide such questions is invoked by the party presenting a proposal that has been declared nonnegotiable.[12]

IV.   Conclusion

The Board finds that OSSE's Motion for Reconsideration fails to provide authority which compels reversal of the Board's initial decision in Slip Opinion 1659. Therefore, the Motion is denied.

IT IS HEREBY ORDERED THAT:

1. The Office of the State Superintendent of Education's Motion for Reconsideration is denied.

2. Pursuant to Board Rule 559.1, 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 Board Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

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[10] The parties did not address the applicability of the proposal to employees hired before October 1, 1987. However, as the Board determined in *American Federation of State, County and Municipal Employees, District Council 20 v. District of Columbia Public Schools, Office of the State Superintendent of Education & Department of General Service*, Slip Op. No. 1677, PERB Case No. 18-N-02 (August 16, 2018), employees hired prior to October 1, 1987 are subject to the statutory leave program outlined in section 1-612.03 of the D.C. Official Code.

[11] *F.O.P./Protective Servs. Police Dep't Labor Comm. v. Dep't of Gen. Servs.*, 62 D.C. Reg. 16505, Slip Op. No. 1551 at p. 2, PERB Case No. 15-N-04 (2015).

[12] *See* Board Rule 532.1.

August 16, 2018

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 17-N-04, Opinion No. 1679 was sent by File and ServeXpress to the following parties on this the 24th day of August, 2018.

Brenda Zwack, Esq.
Murphy Anderson PLLC
1401 K Street, NW, Suite 300
Washington, D.C. 20005

Kathryn Naylor, Esq.
Office of Labor Relations and
Collective Bargaining
441 4th Street, SW, Suite 820 North
Washington, D.C. 20001

/s/ Sheryl Harrington
Administrative Assistant