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

In the Matter of:)	
)	
Department of General Services,)	
Petitioner)	PERB Case No. 14-UM-02
)	
and)	Opinion No. 1589
)	
AFGE Local 631,)	Motion for Reconsideration
AFGE Local 2741,)	
AFGE Local 3444,)	
AFSCME Local 2091,)	
and Teamsters Locals 639 and 730)	
)	
Respondents.)	

DECISION AND ORDER

I. Statement of the Case

On May 9, 2016, the Board issued PERB Opinion No. 1575, dismissing PERB Case No. 14-UM-02 for lack of subject-matter jurisdiction. On May 27, 2016, Petitioner, the Department of General Services (“DGS” or “Agency”) filed a Motion for Reconsideration of that decision. The American Federation of Government Employees Local 631 (“Local 631”) and American Federation of State, County and Municipal Employees Local 2091 (“Local 2091”) both opposed the motion. For the reasons stated herein, the Motion is denied.

II. Background

On June 27, 2014, the Department of General Services (“DGS” or “Agency”) filed a Unit Modification Petition (“Petition”), which was later amended on January 30, 2015 (“Amended Petition”). DGS requested that the Board make a unit determination regarding the consolidation of different bargaining units from different agencies into one agency in which multiple labor organizations represented the same classifications within the agency. The AFGE Locals and

AFSCME opposed the Amended Petition on jurisdictional grounds, arising from D.C. Official Code § 1-617.09(a).

On May 9, 2016, the Board issued PERB Opinion No. 1575. In that opinion, the Board considered whether it had subject-matter jurisdiction over the Agency's Amended Petition. Because the Board has held that subject-matter jurisdiction cannot be waived and may be raised by the Board at any time, the Board evaluated the jurisdictional issues in the case before addressing the merits.¹

Section 1-617.09(a) of the Comprehensive Merit Personnel Act ("CMPA") provides the Board's subject-matter jurisdiction over unit determinations:

The determination of an appropriate unit will be made on a case-to-case basis and will be made on the basis of a properly-supported request from a labor organization. No particular type of unit may be predetermined by management officials nor can there be an arbitrary limit upon the number of appropriate units within an agency. The essential ingredient in every unit is community of interest: Provided, however, that an appropriate unit must also be one that promotes labor relations and efficiency of agency operations. A unit should include individuals who share certain interests, such as skills, working conditions, common supervision, physical location, organization structure, distinctiveness of functions performed, and the existence of integrated work processes. No unit shall be established solely on the basis of the extent to which employees in a proposed unit have organized; however, membership in a labor organization may be considered as 1 factor in evaluating the community of interest of employees in a proposed unit.²

(Emphasis added).

Interpreting § 1-617.09 strictly, the Board determined that unit modifications are available only to labor organizations. As the petition in this case was filed by the Agency, the Board determined that it did not have subject-matter jurisdiction over the petition. Therefore, the Board dismissed the Amended Petition, and did not discuss the merits of the case.

In its motion for reconsideration, the Agency argues that because Local 631 and the Agency requested that PERB add all transferred employees into one bargaining unit, Local 631 supported its petition. The Agency also argues that Teamster Locals 639 and 730 ("Teamsters Locals") supported the Agency petition because, while this case was pending, the Teamster Locals filed its own unit modification petition in which the Teamster Locals asserted some of the same arguments that the Agency raises in its unit modification petition. The Agency also asserts that the Teamster Locals also filed a related compensation unit petition in which it "voluntarily echoed DGS's community of interest arguments."

¹ *FOP/MPD Labor Committee v. MPD*, Slip Op. No. 1372, PERB Case No. 11-U-52 (2013).

² D.C. Official Code (2001 ed. & Supp. 2014).

III. Discussion

It is well settled that a motion for reconsideration cannot be based on a mere disagreement with the initial decision.³ An argument previously made, considered, and rejected is a “mere disagreement” with the initial decision.⁴ The moving party must provide authority which compels reversal of the initial decision.⁵ Absent such authority, PERB will not overturn its decision.⁶ Moreover, we have long held that a movant cannot use a motion for reconsideration to raise new arguments or present new evidence.⁷

A. AFGE Local 631 did not support the Amended Petition

In its motion, the Agency argues that PERB erroneously concluded “that no labor organization filed or supported the Amended Petition” and that Local 631 objected to the Amended Petition.⁸ However, in the next sentence, the Agency states that “[i]t is true that AFGE Local 631 challenged DGS’s statutorily [sic] ability to file the Amended Petition...”⁹ There is no doubt that Local 631 did not support DGS’s petition. This is evidenced not only by the lack of DGS filing a joint or consent petition but also by the numerous oppositions filed throughout this case. Not at any juncture did AFGE Local 631 miss an opportunity to oppose the petition, nor does DGS point to any. Instead, DGS states in its motion that the proof that Local 631 supports its petition can be found in Local 631’s request for PERB to issue an order requiring DGS, as the successor employer to recognize Local 631 as the exclusive representative of all transferred employees.¹⁰

This argument is fatally flawed. This “request” is embedded in the opposition to the petition for modification. While it appears that Local 631 wants PERB to recognize it as the exclusive representative, it still opposes the DGS petition to modify the unit. Any such opposition cannot be ignored, nor can the statements made in that opposition be construed as support for the DGS petition. Moreover, we decline to consider this argument because DGS raises it for the first time in its motion for reconsideration. As stated earlier, a motion for reconsideration is not a proper

³ *AFSCME District Council 20, Local 2921 and District of Columbia Public Schools*, 62 D.C. Reg. 9200, Slip Op. No. 1518 at p. 3-4, PERB Case No. 12-E-10 (2015). See also, *F.O.P./Metro. Police Dep’t Labor Comm. v. Metro. Police Dep’t*, Slip Op. No. 1554 at 8-9, PERB Case No. 11-U-17 (Nov. 19, 2015); *Rodriguez v. D.C. Metropolitan Police Department*, 59 D.C. Reg. 4680, Slip Op. No. 954 at 12, PERB Case No. 06-U-38 (2010).

⁴ *Renee Jackson v. Teamsters Local Union No. 639*, ___ D.C. Reg. ___, Slip Op. No. 1581 at p.3, PERB Case No. 14-S-02 (2016).

⁵ *Id.*

⁶ *FOP Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department*, 60 D.C. Reg. 12058, Slip Op. No. 1400 at p. 6, PERB Case No. 11-U-01 (2013).

⁷ *AFSCME District Council 20, Local 2921 and District of Columbia Public Schools*, 62 DCR 9200, Op. No. 1518, PERB Case No. 12-E-10 (2015). See also, *Psychologists Union, Local 3758 of the D.C. Dept. of Health, 1199 National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO v. D.C. Dept. of Mental Health*, 59 DCR 3315, Op. No. 816, PERB Case No. 05-U-41 (2005).

⁸ Motion at 3.

⁹ *Id.*

¹⁰ *Id.*

forum for the Board to entertain new arguments or evidence. Issues not raised in pleadings cannot be the basis for a motion for reconsideration.¹¹

B. Teamster Locals did not support the Amended Petition.

DGS also argues that the Teamster Locals supported the Amended Petition.¹² As evidence, DGS offers that while the instant Petition was pending, Teamsters 639 and 730 filed a unit modification petition and in that petition, Teamsters recited the facts as determined by the hearing examiner and reasserted the same substantive arguments made by DGS in its petition.¹³ This argument fails for a few reasons. First, the Teamsters petition upon which DGS relies was withdrawn. Second, this argument was raised for the first time in the motion for reconsideration. Again, as explained earlier, we decline to consider arguments raised for the first time in a motion for reconsideration.¹⁴

C. D.C. Official Code § 1-617.09(a) bars the Amended Petition.

DGS argues in its motion that PERB should adopt a more liberal interpretation of D.C. Official Code § 1-617.09 to allow for the Amended Petition.¹⁵ The fact that DGS is inferring what PERB “should” do in interpreting its own statute, by its own nature shows that DGS is in disagreement with PERB’s previous decision. As we have stated many times before, a motion for reconsideration cannot be based upon a mere disagreement with the Board’s initial decision.¹⁶ The moving party must provide authority that compels reversal.

In the case at hand, DGS asks PERB to abandon its “plain meaning” of the statute and to interpret § 1-617.09 liberally. In support of this position, DGS cites to a case that it believes stands for the proposition that “the ‘plain meaning’ doctrine has always been subservient to a truly discernable legislative purpose...”¹⁷ Unfortunately, in its motion, DGS only provides a small portion of the text from this case. The excerpt in its entirety reads:

Consideration of the legislature’s policy may occasionally have to yield in a case where the statutory language is so emphatic that it cannot be bypassed — although the “plain meaning” doctrine has always been subservient to a truly discernible legislative purpose however discerned, by equitable construction or recourse to legislative history. But we need

¹¹ See Footnote 7.

¹² *Id.* at 4.

¹³ *Id.* at 4-5.

¹⁴ *FOP Metropolitan Police Department Labor Committee and D.C. Metropolitan Police Department*, 59 DCR 7165, Op. No. 1233, PERB Case No. 11-E-01 (2011).

¹⁵ *Id.* at 7-8.

¹⁶ See *AFSCME District Council 20, Local 2921 and District of Columbia Public Schools*, 62 D.C. Reg. 9200, Slip Op. No. 1518 at p. 3-4, PERB Case No. 12-E-10 (2015).

¹⁷ *District of Columbia v. Orleans*, 406 F.2d 957, 959 (D.C. Cir. 1968).

not pursue the issue as to when “plain” language must yield, for here the language is not sufficient of itself, without assistance through the maxim of strict construction, to propel us to the result sought by the government.

(*Id.* 958-959.)

The case law from the Court of Appeals has evolved since 1969. As we stated in our initial decision, the D.C. Court of Appeals has more recently stated its “primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he [or she] has used.”¹⁸ The Court of Appeals notes, “The first step in construing a statute is to read the language of the statute and construe its words according to their ordinary sense and plain meaning. If the statute is clear and unambiguous, we must give effect to its plain meaning.”¹⁹ In other words, there is no need to examine the legislative purpose of a statute when its plain meaning is clear. For the reasons stated in our initial decision, the statute is clear that a petition under D.C. Official Code § 1-617.09 must be made on the basis of a properly-supported request from a labor organization. DGS is not a labor organization and therefore the Board does not have jurisdiction over the petition.

III. Conclusion

The Board finds that it does not have subject-matter jurisdiction over the Amended Petition. For the reasons stated herein, the motion for reconsideration is hereby denied.

Order

IT IS HEREBY ORDERED THAT:

1. The Department of General Services’ 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 Chairman Charles Murphy, and Members Ann Hoffman, Barbara Somson, and Douglas Warshof.

July 27, 2016

Washington, D.C.

¹⁸ *Corbin v. United States*, 120 A.3d 588, 597 (D.C. 2015) (citing *Wynn v. United States*, 48 A.3d 181, 188 (D.C. 2012)).

¹⁹ *O'Rourke v. D.C. Police & Firefighters' Ret. & Relief Bd.*, 46 A.3d 378, 383-84 (D.C. 2012) (citations omitted).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 14-UM-02 was served to the following parties via File & ServeXpress on this the 16th day of August 2016:

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