

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:	)	
	)	
Fraternal Order of Police/Department of Corrections Labor Committee	)	
	)	
Complainant	)	PERB Case No. 23-U-03
	)	
v.	)	Opinion No. 1835
	)	
District of Columbia Department of Corrections	)	Motion for Reconsideration
	)	
Respondent	)	
	)	

**DECISION AND ORDER**

**I. Statement of the Case**

On March 14, 2023, the District of Columbia Department of Corrections (DOC) filed a Motion for Reconsideration of Opinion No. 1829. DOC requests that the Board reconsider its finding that DOC committed an unfair labor practice under D.C. Official Code § 1-617.04(a)(1) and (5) of the Comprehensive Merit Personnel Act (CMPA) when it (1) repudiated Article 18, Section D of the parties’ collective bargaining agreement (CBA) by issuing a memorandum that contradicted DOC policy 5010.8H; and (2) repudiated Article 5, Section G of the CBA by failing to bargain with the Fraternal Order of Police/Department of Corrections Labor Committee (FOP) over the 5010.8I amendment to DOC policy 5010.8H. FOP opposes DOC’s Motion for Reconsideration.

For the reasons stated herein, DOC’s Motion for Reconsideration is denied.

**II. Discussion**

Pursuant to Board Rule 502.13, “[a] respondent who fails to file a timely answer may be deemed to have admitted the material facts alleged in the initial pleading and to have waived a hearing.” DOC did not file an answer to FOP’s unfair labor practice complaint (Complaint). Rather, DOC filed a “Motion to Dismiss the Complaint in Lieu of an Answer” (Motion to Dismiss).

The Motion to Dismiss argued that the Board lacked jurisdiction over the Complaint.<sup>1</sup> The Motion to Dismiss did not contain any factual assertions. Thus, pursuant to Board Rule 502.13, PERB deemed DOC to have admitted the material facts alleged and found that a hearing was unnecessary. The matter went before the Board on February 21, 2023, and the Board issued Slip Opinion No. 1829 on the pleadings, finding that DOC violated D.C. Official Code § 1-617.04(a)(1) and (5) of the CMPA.<sup>2</sup>

In its Motion for Reconsideration, DOC argues that Board rules 520.6 and 520.8 “compel the [Board] to reverse its decision that foreclosed the DOC from an opportunity to be heard, on the merits, because...there are factual disputes at-issue.”<sup>3</sup> DOC argues that its Motion to Dismiss was pending at the time the Board issued Slip Opinion No. 1829 and asserts that DOC was entitled to a hearing “because its responsive pleading raised an issue of fact.”<sup>4</sup> DOC argues that the issue of fact presented in its Motion to Dismiss was whether DOC’s alleged violation of the CBA and DOC departmental policy amounted to an unfair labor practice (ULP) under the CMPA.<sup>5</sup>

Board rule 520.6 states that “[i]f a review of the complaint and any response thereto reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings or may request briefs and/or oral argument.” Board Rule 520.8 provides that “[i]f the investigation reveals that the pleadings present an issue of fact warranting a hearing, the Executive Director must issue a notice of hearing and serve it upon the parties.”

DOC failed to raise any disputes concerning issues of fact in its Motion to Dismiss. In this Motion for Reconsideration, DOC attempts to present its previously argued legal conclusions as disputes over issues of fact. However, the question of whether DOC’s conduct constituted an unfair labor practice is not an outstanding issue of fact. It is an issue of law,<sup>6</sup> which the Board resolved in Slip Opinion No. 1829.<sup>7</sup> The Board “has repeatedly held that a motion for reconsideration cannot be based upon mere disagreement with its initial decision.”<sup>8</sup> The Board has established that “[a]n argument previously made, considered, and rejected is a ‘mere disagreement’ with the initial decision.”<sup>9</sup> DOC’s Motion for Reconsideration amounts to a “mere disagreement” with the Board’s decision in Slip Opinion No. 1829.

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<sup>1</sup> Motion to Dismiss at 2-3.

<sup>2</sup> *FOP/DOC Labor Comm. v. DOC*, 63 D.C. Reg. 10694, Slip Op. No. 1829 at 2, 4, PERB Case No. 23-U-03 (2023).

<sup>3</sup> Motion for Reconsideration at 2.

<sup>4</sup> Motion for Reconsideration at 3.

<sup>5</sup> Motion for Reconsideration at 3 (citing Motion to Dismiss at 1).

<sup>6</sup> See *Brokenborough v. DCPS*, 65 D.C. Reg. 7114, Slip Op. No. 1666, PERB Case No. 18-U-10 (2018) (finding that the factual record was undisputed and, thus, the Board could render a decision on the pleadings concerning the outstanding legal issue of whether DCPS committed a ULP); *AFGE, Locals 631, 872, & 2553 v. WASA & AFSCME, Local 2091 & NAGE, Local R3-06*, 62 D.C. Reg. 16493, Slip Op No. 1549 at 2, 6, PERB Case No. 15-U-23 (2015) (determining that the only unresolved question – whether WASA committed a ULP – was an issue of law); *WTU, Local 6 v. DCPS*, 38 D.C. Reg. 2650, Slip Op. No. 258 at 3, PERB Case No. 90-U-13 (1992) (finding that the question of whether DCPS’s unilateral action constituted a ULP was an issue of law).

<sup>7</sup> *FOP/DOC Labor Comm.*, Slip Op. No. 1829 at 2, 4.

<sup>8</sup> *Peterson v. WTU*, Slip Op. No. 1254 at 2, PERB Case No. 12-S-01 (2012) (quoting *UDC Faculty Ass’n v. UDC*, 59 D.C. Reg. 6013, Slip Op No. 1004 at 10, PERB Case No. 09-U-26 (2009)).

<sup>9</sup> *Jackson v. Teamsters, Local 639*, 63 D.C. Reg. 10694, Slip Op. No. 1581 at 3, PERB Case No. 14-S-02 (2016).

For the reasons stated, the Motion for Reconsideration is denied. DOC has not provided any authority that would compel the Board to reach a different result. Absent such authority, the Board will not overturn its decision.<sup>10</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Motion for Reconsideration of Opinion No. 1829 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.

April 20, 2023

**Washington, D.C.**

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<sup>10</sup> *FOP/MPD Labor Comm. v. MPD*, 60 D.C. Reg. 12058, Slip Op. No. 1400 at 6, PERB Case No. 11-U-01 (2013).

## **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 provides 30 days after a decision is issued to file an appeal.