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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

_____)	
In the matter of)	
)	
D.C. Police Union, Lodge #2,)	
)	
Complainant)	
)	
v.)	PERB Case No. 22-U-08
)	
District of Columbia Metropolitan Police)	Opinion No. 1941
Department, ¹)	
)	Motion for Reconsideration
Respondent)	
_____)	

DECISION AND ORDER

I. Statement of the Case

On October 9, 2025, the District of Columbia Metropolitan Police Department (MPD) filed a motion for reconsideration (Motion) of the Board’s decision in Opinion No. 1925. MPD requests that the Board reconsider its decision on remand² which found that MPD violated Sections 1-617.04(a)(1) and (5) of the Comprehensive Merit Personnel Act (CMPA) by categorically refusing to bargain in good faith with D.C. Police Union, Lodge #2 (the Union) or to provide information responsive to the Union’s request for information regarding the District’s COVID-19 vaccination requirements. On October 22, 2025, the Union filed an opposition to the Motion (Opposition).

For the reasons discussed herein, the Motion for Reconsideration is denied.

¹ As the Board dismissed the District of Columbia Office of Labor Relations and Collective Bargaining (OLRCB) in Opinion No. 1925 and OLRCB has filed the instant motion for reconsideration on behalf of MPD, OLRCB has been removed from the case caption in the instant Decision & Order. *D.C. Police Union, Lodge #2 v. MPD*, Slip Op. No. 1925 at 1-2 (fn. 3), PERB Case No. 22-U-08 (RO) (2025).

² In Opinion No. 1925, the Board addressed the instant case on remand pursuant to the judgment issued by the Superior Court of the District of Columbia (Superior Court) in *FOP/MPD Labor Comm., D.C. Police Union v. PERB, et. al.*, 2022-CA-002698-P(MPA) (D.C. Super. Ct. August 25, 2023) (*FOP v. PERB*). The Superior Court remanded the administrative dismissal of PERB Case No. 22-U-08 back to PERB for consideration of the merits of the case.

II. Standard of Review

The Board has established that the standard for a motion for reconsideration is clear legal error.³ The moving party must provide authority which compels reversal of the initial decision.⁴ Motions for reconsideration that do not provide a basis to compel reversal of an initial decision will be denied.⁵

III. Discussion

MPD seeks reconsideration of the Board's decision in Opinion No. 1925 on the grounds that: (1) the Board failed to fully consider MPD's argument regarding mootness; and (2) MPD acted in good faith reliance on PERB precedent in refusing to bargain.⁶ The Union opposes the Motion on the grounds that: (1) MPD's mootness argument is meritless, mere disagreement with the Board's decision in Opinion No. 1925;⁷ and (2) MPD's good faith and *stare decisis* arguments are both substantively and procedurally meritless.⁸

A. The decision did not fail to address MPD's mootness argument.

MPD argues that Opinion No. 1925 did not sufficiently consider controlling precedent on mootness.⁹ This argument is unavailing. Further, this argument has been considered and rejected by both the Superior Court in its remand order and the Board in Opinion No. 1925.¹⁰ The Board considered and distinguished the instant case from *AFGE v. PERB (AFGE)*. In *AFGE*, the District of Columbia Court of Appeals determined that the central issue of appeal was moot because the emergency legislation that the union sought to negotiate expired, and remedies were no longer available.¹¹ Unlike the court's decision in *AFGE*, Opinion No. 1925 addressed MPD's refusal to bargain, and—having found that MPD violated the CMPA—ordered available remedies, such as notice posting.¹²

MPD has exhausted its argument on mootness and offers no compelling evidence that the Board erred in rejecting that argument.

³ *FOP/MPD Labor Comm. v. MPD*, 59 D.C. Reg. 7165, Slip Op. No. 1233 at 4, PERB Case No. 11-E-01 (2012).

⁴ *AFSCME, District Council 20 v. OSSE*, D.C. Reg. 7165, Slip Op. No. 1679 at 3, PERB Case No. 17-N-04(a) (2018).

⁵ *WTU, Local #6 v. DCPS*, Slip Op. No. 1930 at 2, 24-U-19 (MFR) (2025).

⁶ Motion for Reconsideration at 3-5.

⁷ Opposition at 4-9.

⁸ Opposition at 10-13. The Union further asserts that the Motion is untimely because the instant case was “issued” on September 18, 2025, and MPD filed its Motion twenty-one (21) days later on October 2, 2025—in violation of Board Rule 559.2. Opposition at 4. This assertion is incorrect. Board Rule 559.2 states, “A party may file a motion for reconsideration of an order of the Board no later than fourteen (14) days after issuance of the order.” The Board decided the instant case on September 18, 2025, but did not *issue* the opinion until September 25, 2025. Therefore, MPD's October 9, 2025 Motion is timely.

⁹ Motion for Reconsideration at 3.

¹⁰ *FOP v. PERB* at 8-10; *D.C. Police Union, Lodge #2 v. MPD*, Slip Op. No. 1925 at 5-6.

¹¹ *AFGE, Local 872, AFL-CIO v. District of Columbia Public Employee Rel. Board*, 319 A.3d 977, 982 (Aug. 8, 2024) (noting that “even the availability of a partial remedy is sufficient to prevent a case from being moot,” but “a pending appeal generally becomes moot when there occurs an event that renders the relief sought by a party impossible or unnecessary.”).

¹² *FOP v. PERB* at 9 (fn. 3); *D.C. Police Union, Lodge #2 v. MPD*, Slip No. 1925 at 7 (fn. 51).

B. MPD waived its argument concerning good faith reliance by failing to raise the argument before the Board.

MPD argues that because it allegedly acted in good faith reliance on PERB and District precedent, the unfair labor practice claims against it must be dismissed.¹³ Significantly, MPD did not raise this good faith defense in its brief prior to the Board’s decision in Opinion No. 1925.¹⁴ Thus, MPD has waived the argument.¹⁵

Notwithstanding, this argument is also unavailing. Contrary to MPD’s assertion that the Board departed from its own precedents without explanation, Opinion No. 1925 brought the Board’s determinations in the instant case into compliance with controlling precedent. In remanding PERB’s original administrative dismissal, the Superior Court explicitly rejected both the Board’s interpretations of D.C. Official Code § 7-2304(b)(16) in that dismissal and the Board’s decision in Opinion No. 1804¹⁶ as clearly erroneous.¹⁷ The Superior Court remand *was* the controlling precedent. Further, the National Labor Relations Board (NLRB) has held that an employer’s refusal to bargain based on an unsupported ground renders good faith unavailable as a defense.¹⁸ The Superior Court’s holding that PERB’s—and thus, MPD’s—interpretation of the COVID-19 Response Emergency Amendment Act was clearly erroneous renders MPD’s good faith defense unavailing.

MPD waived its argument that it acted in good faith reliance on PERB’s case law; regardless, the argument that MPD acted in good faith does not compel the reversal of Opinion No. 1925.

IV. Conclusion

The Board finds no grounds to overturn the decision in Opinion No. 1925. Therefore, the Motion for Reconsideration is denied.

¹³ Motion for Reconsideration at 4-5.

¹⁴ *See, generally*, MPD’s Brief. Notably, MPD did not respond to the Union’s arguments directly addressing the lack of availability of a good faith defense for MPD under the circumstances. Union’s Brief at 9-15.

¹⁵ *See, e.g., MPD v. FOP/MPD Labor Comm.*, Slip No. 1882 at 2, PERB Case No. 24-A-05 (2024) (holding that the parties’ arguments not part of the full record before the Board in the original decision were not properly before the Board and were therefore excluded from consideration).

¹⁶ *AFGE, Local 631 v. OLR CB, DPW, DGS, et al.*, 69 D.C. Reg. 159, Slip Op. No. 1804, PERB Case No. 22-N-02 (2022). As noted, *supra* and in Opinion No. 1925, Opinion No. 1804 is clearly distinguishable and irrelevant to the determinations in the instant case. *D.C. Police Union, Lodge #2 v. MPD*, Slip Op. 1925 at 5-6.

¹⁷ *FOP v. PERB* at 10-13 (citing *FOP/MPD Labor Comm., D.C. Police Union, et al. v. District of Columbia, et al.*, 2022-CA-000584-P(MPA) (D.C. Super. Ct. August 25, 2022) (*FOP v. D.C.*)).

¹⁸ *H & W Construction Co., Inc.*, 161 N.L.R.B. No. 77 at 9 (Nov. 10, 1966) (holding that a respondent must present a substantial basis of believable evidence which would lead reasonably to the conclusion that it operated in good faith; otherwise, the case law would create “the absurd result that an employer’s naked statement that he had a ‘good-faith doubt’ would be unassailable.”); *see also Artcraft Mantel & Fireplace Co.*, 174 N.L.R.B. No. 110 (Feb. 25, 1969) (holding that an employer’s sincere belief that the NLRB lacked jurisdiction was a mistake of law that did not provide a defense to a wrongful refusal to recognize and bargain with a union). The Board will sometimes look to NLRB or FLRA precedent for guidance when relevant, primarily when the Board’s own case law is silent on a particular issue. *FOP/MPD Labor Comm. v. MPD*, Slip Op. No. 1526 at 8, PERB Case Nos. 06-U-23, et al. (2015).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Motion for Reconsideration 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.

December 18, 2025.

Washington, D.C.