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

_____)	
In the Matter of:)	
)	
Taiwo Akintolu,)	
)	
Complainant)	PERB Case No. 24-U-42
)	
v.)	Opinion No. 1942
)	
District of Columbia Department of Corrections)	Motion to Vacate
)	
Respondent)	CORRECTED
_____)	

DECISION AND ORDER

I. Statement of the Case

On July 29, 2025, the District of Columbia Department of Corrections (DOC) filed a motion to vacate judgment (Motion),¹ requesting the Board vacate its decision in PERB Opinion No. 1904.² In Opinion No. 1904, the Board found that DOC violated D.C. Official Code §§ 1-617.04(a)(1) and (5) of the Comprehensive Merit Personnel Act (CMPA) by refusing to arbitrate a terminated employee’s (Complainant) grievance. The Complainant did not file a response to the Motion. DOC asserts that the Board erroneously reversed its own precedent that individual employees lack standing to file complaints regarding an agency’s failure to bargain with a labor organization in good faith and derivative violations of section 1-617.04(a)(1), which include interfering with, restraining, or coercing an employee in the exercise of protected rights.³ DOC further asserts that: (1) the Board erred in ordering DOC to bargain with the Fraternal Order of Police/Department of Corrections Labor Committee (FOP), a nonparty to the case;⁴ (2) Opinion No. 1904 misstates legal precedent that preempted the caselaw cited in the decision;⁵ and (3) Opinion No. 1904 inappropriately relies on a disputed determinative fact—namely, whether DOC

¹ DOC filed its Motion pursuant to Board Rule 559.2, which addresses the fourteen (14)-day time limit for filing a motion for reconsideration of a Board order. DOC has already filed and withdrawn a motion for reconsideration in the instant case. If the Board were to consider the instant Motion under Board Rule 559.2, it would be untimely. However, the Board has previously considered motions to vacate under Board Rules 555.1, 502 and 561. *AFGE, Local 2725 v. DOH*, 72 D.C. Reg. 7257, Slip Op. No. 1914 at 1, PERB Case No. 24-U-41 (2025). Thus, the Board will consider the Motion under Board Rule 555.

² *Taiwo Akintolu v. DOC*, 72 D.C. Reg. 5594, Slip Op. No. 1904, PERB Case No. 24-U-42 (2025).

³ Motion to Vacate at 3-6.

⁴ Motion to Vacate at 6.

⁵ Motion to Vacate at 7-8.

refused to arbitrate the grievance once the Superior Court enjoined the revocation of FOP's certification as an exclusive bargaining representative.⁶

For the reasons stated herein, the Motion to Vacate Opinion No. 1904 is granted.

II. Background and Procedural History⁷

On July 27, 2022, a group of FOP members filed a standards of conduct complaint alleging that FOP violated its by-laws and the standards of conduct for labor organizations as prescribed by D.C. Official Code §§ 1-617.03(a)(1) and (5).⁸ On October 19, 2023, the Board issued Opinion No. 1850, finding that FOP had committed standards of conduct violations and ordering compliance by the time of a second hearing, which ultimately occurred on December 1, 2023.⁹ On October 23, 2023,¹⁰ the Complainant was suspended.¹¹ On January 12, 2024, DOC rescinded the Complainant's suspension and placed him on administrative leave pending discipline.¹² On February 2, 2024, DOC served the Complainant with a notice of proposed removal. On March 4, 2024, a DOC Hearing Officer recommended the Complainant undergo remedial training in lieu of termination.¹³ On March 20, 2024—against the recommendation of the Hearing Officer—the DOC Director sustained the Complainant's termination.¹⁴

On March 28, 2024, FOP filed a grievance with DOC on the Complainant's behalf.¹⁵ On April 9, 2024, DOC denied the grievance.¹⁶ On April 11, 2024, FOP invoked arbitration on the Complainant's behalf.¹⁷ On May 1, 2024, DOC emailed FOP stating that “[t]he union should contact [the Federal Mediation and Conciliation Services (FMCS)] for the panel. We need to know the rates for the arbitrators.”¹⁸ DOC further expressed its intent to dispute the arbitrability of the

⁶ Motion to Vacate at 9-10.

⁷ As no hearing was held in this matter, a definitive factual record was not established.

⁸ *Darlene Bryant, et al. v. FOP/DOC Labor Comm.*, 70 D.C. Reg. 14894, Slip Op. No. 1850, PERB Case No. 22-S-05 (2023).

⁹ *Id.* at 8-9; *Darlene Bryant, et al. v. FOP/DOC Labor Comm.*, 71 D.C. Reg. 7891, Slip Op. No. 1871 at 2, PERB Case No. 22-S-05 (2024).

¹⁰ The Complaint states that suspension occurred on October 23, 2024. However, based on the context and the full record, that date was clearly an error.

¹¹ Complaint at 3.

¹² Complaint at 3.

¹³ Complaint at 4.

¹⁴ Complaint at 4.

¹⁵ Complaint at 4.

¹⁶ Complaint at 4.

¹⁷ Complaint at 5.

¹⁸ Answer at 5-6. DOC asserted that the Complaint mischaracterizes this exchange. Answer at 5-6. The Complaint stated that DOC notified the Complainant's counsel that “it was the Union's responsibility to request and pay for a panel from FMCS.” Complaint at 5.

grievance.¹⁹ On May 2, 2024, FOP requested an FMCS panel.²⁰ On May 7, 2024, DOC cancelled a meeting to strike the panel scheduled for that day, asserting that FOP had not followed the procedures laid out in DOC and FOP's collective bargaining agreement (CBA).²¹ DOC further asserted that it had "not received a written grievance or anything adhering to the agreed upon practices," noting, "feel free to send the grievance *if it exists* – we have not received it."²² FOP forwarded documentation to DOC.²³ On May 10, 2024, DOC and FOP met to strike the arbitration panel and successfully selected an arbitrator.²⁴

On May 16, 2024, six (6) days after the parties selected an arbitrator, the Board revoked FOP's certification as an exclusive bargaining representative for failure to adhere to the standards of conduct prescribed by the CMPA.²⁵ Thereafter, on July 12, 2024, DOC notified FOP's counsel and the arbitrator that the Agency would no longer participate in arbitration of the grievance.²⁶ On September 4, 2024, the Complainant timely filed an unfair labor practice complaint (Complaint). On October 1, 2024, DOC filed its Answer to the Complaint, admitting that it would not arbitrate because FOP had lost its status as the accredited representative.²⁷ On October 22, 2024, the Superior Court issued an order enjoining the Board from enforcing the revocation of FOP's certification as an exclusive bargaining representative and holding that the CBA between DOC and FOP would remain in effect pending final resolution of FOP's appeal of Opinion No. 1871.²⁸ On October 17, 2024, the Board ordered that DOC and FOP's CBA would remain effective during the pendency of FOP's Superior Court appeal.²⁹

On January 7, 2025, at PERB's direction, the parties submitted briefs addressing:

- 1) Whether the Complainant accrued or vested a right to arbitrate his grievance prior to the Board's revocation of FOP's certification as the exclusive bargaining representative?

¹⁹ Complaint at 5; Answer at 6. FOP noted that the email did not include DOC's reasoning for disputing the arbitrability of the grievance. Complaint at 5. In the email, DOC expressed its doubt regarding the arbitrability of the grievance, but noted that "FOP's counsel requested to have a phone call during which the reasons for contesting the arbitrability of the matter would be discussed." Answer at 6.

²⁰ Complaint at 5. DOC appears to oppose FOP's request for an arbitration panel, Answer at 5-6. However, based on the record, the parties agree that FMCS provided the arbitration panel and they planned to meet on May 7, 2024, to strike the panel. Complaint at 5; Answer at 6.

²¹ Complaint at 5-6; Answer at 6.

²² Complaint at 5-6 (emphasis in original).

²³ Complaint at 6; Answer at 6-7. The parties disputed whether FOP's grievance was sufficient.

²⁴ Complaint at 6.

²⁵ *Darlene Bryant, et al.*, Slip Op. No. 1871.

²⁶ Complaint Ex. 3, July 12 Email, Complaint Exhibits at 69.

²⁷ Complaint at ¶ 31; Answer at ¶ 31.

²⁸ October 22, 2024, Hearing Order, Case No. 2024-CAB-003838. The Order formalized the Court's October 9, 2024 ruling. *Id.*

²⁹ *Darlene Bryant, et al. v. FOP/DOC Labor Comm.*, 71 D.C. Reg. 16167, Slip Op. No. 1890 at 2, PERB Case No. 22-S-05 (2024).

- 2) Whether DOC was obligated to proceed to arbitration after the Board revoked FOP's certification as an exclusive representative?³⁰

On March 5, 2025, the Board issued Opinion No. 1904, ordering DOC to engage in arbitration with FOP—the exclusive representative for the Complainant's bargaining unit at the time—as a result of the Superior Court's order.³¹

On March 10, 2025, DOC filed a motion for reconsideration of Opinion No. 1904 (Motion for Reconsideration). On March 24, 2025, counsel for the Complainant filed a reply brief opposing the Motion for Reconsideration (Opposition).³² On March 27, 2025, DOC filed a motion for leave to file a response to the Opposition and the accompanying response (Opposition Response). On July 10, 2025, the parties submitted a joint motion to withdraw the Motion for Reconsideration without prejudice (Joint Motion).³³ On September 11, 2025, the Superior Court upheld the Board's revocation of FOP's certification as an exclusive bargaining representative for DOC employees.³⁴

III. Motion to Vacate

The Motion to Vacate asserts that exceptional circumstances justify vacatur of Opinion No. 1904. DOC argues that: (1) without explanation, the Board deviated from its precedent that only an exclusive bargaining representative has standing to assert a violation of D.C. Official Code § 1-617.04(a)(5) and concluded that DOC violated that section in a case brought by an employee;³⁵ (2) without explanation, for the first time, the Board concluded that an individual employee can successfully claim a derivative violation of D.C. Official Code § 1-617.04(a)(1) on the basis of a violation of D.C. Official Code § 1-617.04(a)(5);³⁶ (3) Opinion No. 1904 contained a clear legal error, as it misinterpreted the law and included preempted Board precedent;³⁷ and (4) the Board relied on a disputed determinative fact.³⁸

³⁰ See, generally, Complainant's Brief; DOC's Brief. The Board notes that the Complainant's counsel signed the Complaint as "Attorneys for Taiwon [sic] Akintolu," but thereafter signed pleadings as "Counsel for Taiwo Akintolu and FOP/DOC."

³¹ *Taiwo Akintolu*, Slip Op. No. 1904 at 5-6.

³² The Board notes that the Opposition case caption included "FOP/DOC" as a Complainant, despite the Union never having filed a request to intervene, as required under Board Rule 502.15, or acknowledged its goal of becoming a Complainant. See, generally, Complainant's Reply Brief in Response to Agency's Motion for Reconsideration.

³³ The Joint Motion included the following stipulation of fact:

Both Parties also concede that the Agency did not explicitly refuse to arbitrate the underlying matter once FOP regained its certification, however, it did request that the matter be resolved through an order from the D.C. Superior Court to compel arbitration. As such, the PERB's determination in its March 5, 2025 decision in this matter that DOC had summarily refused to arbitrate the Complainant's grievance is not entirely accurate; the Agency only refused to arbitrate the matter after FOP's recognition as the exclusive bargaining representative was revoked. The Agency concedes that it has an obligation to arbitrate this matter.

Joint Motion at 4.

³⁴ *FOP/DOC Labor Comm. v. PERB*, Case No. 2024-CAB-003838 (D.C. Super. Ct. Sept. 11, 2025).

³⁵ Motion to Vacate at 3-5.

³⁶ Motion to Vacate at 5-6.

³⁷ Motion to Vacate at 7-8.

³⁸ Motion to Vacate at 9.

IV. Discussion

The standard for vacatur—established under *U.S. Bancorp Mortgage Co. v. Bonner Mall (Bancorp)*³⁹—requires a showing of exceptional circumstances to override the judicial and public interests in the finality of judgments.⁴⁰ In *Bancorp*, the Supreme Court held that judicial precedents serve the public interest and “are not merely the property of private litigants,”⁴¹ and, therefore, “should stand unless a court concludes that the public interest would be served by a vacatur.”⁴² The D.C. Superior Court has held that, considering the goal of respecting the finality of judgments, providing post-judgment relief will only occur “under **exceptional circumstances**, in unusual and extraordinary situations justifying an exception to the overriding policy of finality, or where the judgment may work an extreme and undue hardship.”⁴³

DOC argues that Opinion No. 1904 deviated from longstanding precedent that only a union has standing to assert a violation of D.C. Official Code § 1-517.04(a)(5) or a derivative violation of D.C. Official Code § 1-617.04(a)(1).⁴⁴ The instant case admittedly comprises unique circumstances. FOP’s status remained unsettled throughout the life of the case. However, the issue of whether FOP was the exclusive representative of the Complainant’s bargaining unit at any given moment during the instant case has no bearing on the Complainant’s lack of standing to file a claim asserting a refusal to bargain under D.C. Official Code § 1-617.04(a)(5), or a derivative violation

³⁹ *U.S. Bancorp Mortgage Co.*, 413 U.S. 18 (1994) (denying a motion to vacate based on mootness by reason of settlement).

⁴⁰ *Id.* at 27-28; *see also Kids Holding, Inc. v. Hinojosa*, 311 A.3d 910, 915 (D.C. 2024) (holding that “[T]he purpose of [Super. Ct. Civ. R.] 60(b) is to respect the finality of judgments by providing post-judgment relief only under **exceptional circumstances**, in unusual and extraordinary situations justifying an exception to the overriding policy of finality, or where the judgment may work an extreme and undue hardship”; D.C. Superior Court Civil Rule 60(b), GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER OR PROCEEDING (emphasis added), which states that:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

D.C. Super. Ct. Civ. R. 60(b).

⁴¹ *U.S. Bancorp Mortgage Co.* at 26.

⁴² *Id.*; *see also AFGE, Local 1403 v. OAG*, 59 D.C. Reg. 5066, Slip Op. No. 973 at 2-3, PERB Case No. 06-U-01 (2012) (denying a joint motion to vacate because the parties did not proffer public interest and did not meet the “exceptional circumstances” standard).

⁴³ *Kids Holdings, Inc. v. Hinojosa*, 311 A.3d 910, 915 (D.C. 2024) (emphasis in original).

⁴⁴ Motion at 3-6.

of D.C. Official Code § 1-617.04(a)(1).⁴⁵ Opinion No. 1904 does not address the issue of the Complainant's standing to file a complaint in the first place.⁴⁶ Nor does the Opinion explain the decision to include FOP as a party without any request to intervene, despite ordering DOC to engage in arbitration with FOP.⁴⁷ Once enjoined by the Superior Court from enforcing its revocation of FOP's certification, PERB operated as if FOP was a party, allowing FOP to assert itself more and more in the pleadings without directly addressing FOP's status or requesting intervention in this matter.⁴⁸ The record contains no acknowledgement of FOP as party. Under these circumstances, PERB issued an order which inappropriately granted claims that the individual Complainant lacked standing to seek redress for and granted relief directly to FOP, a nonparty to the case.⁴⁹

V. Conclusion

DOC has presented exceptional circumstances that justify the extraordinary relief of vacating a final decision by the Board. Therefore, the Board grants DOC's Motion to Vacate Judgment of Opinion No. 1904.⁵⁰

⁴⁵ See *Charles E. Pitt v. DOC and FOP/DOC Labor Comm.*, 59 D.C. Reg. 5554, Slip Op. No. 998 at 4 (2012) (holding that under the express language of D.C. Official Code § 1-617.04(a)(5), an individual bargaining unit member lacked standing to assert a violation of that section).

⁴⁶ See, generally, *Taiwo Akintolu*, Slip Op. No. 1904.

⁴⁷ See, generally, *id.* The Board notes that Opinion No. 1904 included a single instance of framing a claim as coming from FOP, rather than the Complainant. *Id.* at 3 (fn. 19).

⁴⁸ See, generally, Complainant's Brief; Complainant's Reply Brief in Response to Agency's Motion for Reconsideration; Joint Motion to Withdraw Motion for Reconsideration.

⁴⁹ The Board need not make an explicit ruling on the claim that the Board relied on disputed fact in Opinion No. 1904, as the Complainant's lack of standing—as well as FOP's improper intervention in the case—are sufficient to justify vacatur. Further, the Board need not address DOC's argument that Opinion No. 1904 misinterpreted case law regarding arbitrability, as DOC asserts that it has agreed to arbitrate this grievance. Motion to Vacate at 7-8.

⁵⁰ This decision was issued contemporaneously with Opinion No. 1943 in PERB Case No. 24-U-43, which presented the same issues and resulted in the same determinations by the Board.

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Metropolitan Police Department's Motion to Vacate is granted;
2. PERB Opinion No. 1904 is vacated in its entirety; and
3. 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, DC

APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration, requesting the Board reconsider its decision. Additionally, 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 file an appeal.