Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 2725, AFL-CIO	
Complainant	PERB Case No. 24-U-41
	Motion to Vacate
v.	
	Opinion No. 1914
District of Columbia Department of Health	
Respondent	

DECISION AND ORDER

I. Statement of the Case

On March 14, 2025, the American Federation of Government Employees, Local 2725, (AFGE) and the District of Columbia Department of Health (DOH) filed a joint motion to vacate judgement (Motion), requesting the Board vacate its decision in Opinion No. 1898.[1] Opinion No. 1898 reversed the Executive Director's earlier administrative dismissal of this case following a motion for reconsideration (Motion for Reconsideration) from AFGE.

For the reasons stated herein, the Motion to Vacate Opinion No. 1898 is Denied.

II. Background and Procedural History

On September 3, 2024, AFGE filed an unfair labor practice complaint (Complaint) that outlined the alleged history of anti-union animus by DOH management and asserted that DOH had violated D.C. Official Code §§ 1-617.04(a)(1), (2) and (5) by interfering with and restraining AFGE from exercising its right to exclusively represent its bargaining unit members, and by failing

[1] *AFGE Local 2725 v. DOH*, Slip Op. No. 1898, PERB Case No.24-U-41 (2025).

to bargain in good faith.[2] Specifically, the Complaint asserted that DOH refused to arbitrate grievances concerning the assignment of work outside position descriptions.[3]

AFGE invoked arbitration on July 29, 2024.[4] On August 5, 2024, DOH declined to arbitrate the case.[5] On September 17, 2024, DOH filed an answer (Answer), admitting its refusal to arbitrate the related grievance.[6]

After reviewing the Complaint and Answer, on December 3, 2024, PERB's Executive Director administratively dismissed the Complaint for lack of jurisdiction over contractional issues.[7] On December 6, 2024, AFGE filed its Motion for Reconsideration, arguing that the Executive Director erred in dismissing the Complaint.[8] AFGE argued that the Board had jurisdiction over the matter.[9] On December 20, 2024, DOH filed an opposition to the Motion for Reconsideration (Opposition). On January 16, 2025, the Board issued Opinion No. 1898, granting AFGE's Motion for Reconsideration, finding the administrative dismissal inconsistent with PERB precedent regarding jurisdiction.[10] The Board determined that because DOH had neither availed

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[2] Complaint at 2-5.

[3] Complaint at 1-4. The Complaint contended that DOH's refusal to arbitrate was based on a misinterpretation of the parties' collective bargaining agreement (CBA). Complaint at 4. AFGE alleged DOH incorrectly determined that the grievance concerned a classification issue and therefore, under the CBA, was exclusively appealable through the procedures outlined in the District Personnel Manual (DPM). Complaint at 4-6. After DOH denied the related grievance, AFGE invoked arbitration on July 29, 2024. Complaint at 5. On August 5, 2024, DOH declined to arbitrate the case. Complaint at 5. AFGE requested as remedies that the Board: (1) permanently enjoin DOH from engaging in the unlawful practices, policies, customs, and usages set forth in the Complaint; (2) order DOH to modify or eliminate practices, policies, customs, and usages…and all other such practices shown to be in violation of applicable law so that DOH does not retaliate against collective bargaining unit (CBA) employees; (3) require DOH to post a notice for ninety (90) days; (4) order DOH to pay all costs associated with AFGE's prosecution of the charge; and (5) order DOH to bargain collectively in good faith and proceed with arbitration for the grievance submitted on June 20, 2024, as well as order DOH to cease and desist from assigning work to bargaining unit employees outside of their position descriptions, and make the employees whole by ordering DOH to grant the remedies requested in its June 20, 2024 grievance. Complaint at 7.

[4] Complaint at 5.

[5] Complaint at 5.

[6] Answer at 3.

[7] December 3, 2024 Administrative Dismissal Letter at 2.

[8] Motion for Reconsideration at 5.

[9] Motion for Reconsideration at 2-5. AFGE argued, in pertinent part, that: (1) DOH's refusal to arbitrate constituted an unfair labor practice; and (2) the refusal to engage in good-faith arbitration constituted a statutory violation of the CMPA under PERB's jurisdiction. Report at 2-3, 4-5. AFGE requested, in pertinent part, that the Board reverse the administrative dismissal, find that DOH violated D.C. Official Code § 1-617.04(a), and order DOH to bargain in good faith. Motion for Reconsideration at 5.

[10] *AFGE, Local 2725 v. DOH*, Slip Op. No. 1898 at 3. The Board noted that it does not have authority to interpret CBAs in order to resolve an arbitrability dispute or grant pre-arbitration relief to a party claiming that arbitration was invoked over a contractually inarbitrable grievance. *AFGE, Local 2725 v. DOH*, Slip Op. No. 1898 at 3 (citing *Washington Teachers' Union, Loc. No. 6, Am. Fed'n of Tchrs, AFL-CIO v. D.C. Pub. Sch.*, 77 A.3d 441, 451 (D.C. 2013). Rather, questions of arbitrability shall initially be resolved by the arbitrator. *AFGE, Local 2725 v. DOH*, Slip Op. No. 1898 at 3 (citing, *e.g., AFSCME, District Council 20 v. D.C. Gen. Hosp. & OLRCB*, 36 D.C. Reg. 7101, Slip Op. No. 227, PERB Case No. 88-U-29 (1989)). If a party disagrees with the arbitrator's determination concerning arbitrability, that party may file an arbitration review request with the Board. *AFGE, Local 2725 v. DOH*, Slip Op. No. 1898 at 3 (citing *Washington Teachers' Union, Loc. No. 6, Am. Fed'n of Tchrs., AFL-CIO*, 77 A.3d at 447).

itself of available avenues for pre-arbitration relief nor and finding that DOH had committed an unfair labor practice in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5) of the CMPA by failing to bargain in good faith with AFGE.[11]

III. Joint Motion to Vacate

In the Motion to Vacate, the parties argue that the Board should vacate Opinion No. 1898 because it meets the standard for vacatur—established under *U.S. Bancorp Mortgage Co. v. Bonner Mall* (*Bancorp*)[12]—which requires a showing of "unusual and of exceptional circumstances to override the judicial and public interests in the finality of judgments.[13] In *Bancorp*, the Supreme Court held that judicial precedents "serve the public interest and are not merely the property of private litigants,"[14] and, therefore, "should remain in place 'unless a court concludes that the public interest would be served by a vacatur.'"[15]

Where a party seeks pre-arbitration relief, it may submit a motion to stay arbitration to the D.C. Superior Court, in accordance with the Arbitration Act. *AFGE, Local 2725 v. DOH*, Slip Op. No. 1898 at 3-4 (citing D.C. Official Code § 16-4407). However, DOH had not availed itself of the option to seek pre-arbitration relief, nor engaged in arbitration and then exercised its right to appeal the award to the Board. *AFGE, Local 2725 v. DOH*, Slip Op. No. 1898 at 4. Rather, DOH had summarily refused to arbitrate AFGE's grievances and therefore precluded an arbitrability determination concerning the assignment of work outside position descriptions. *AFGE, Local 2725 v. DOH*, Slip Op. No. 1898 at 4.

[11] *AFGE, Local 2725 v. DOH*, Slip Op. No. 1898 at 4, PERB Case No. 24-U-41 (2025).

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

[13] *U.S. Bancorp Mortgage Co.*, 413 U.S. 18, 27-28. The parties further cite to D.C. Court of Appeals precedent 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." Motion to Vacate at 1 (citing *Kids Holding, Inc. v. Hinojosa*, 311 A.3d 910, 915 (D.C. 2024); D.C. Superior Court Civil Rule 60(b), GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER OR PROCEEDING, 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:
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> (1) mistake, inadvertence, surprise, or excusable neglect;
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> (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);
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> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
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> (4) the judgment is void;
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> (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).

[14] Motion to Vacate at 2.

[15] Motion to Vacate at 2 (citing *U.S. Bancorp Mortgage Co.* at 26). The parties note that PERB has applied the *Bancorp* standard since 2009. Motion to Vacate at 2 (citing *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).

The Motion to Vacate asserts that the Board deviated from precedent by granting the Motion for Reconsideration in a matter where factual disputes remained and without explicitly stating that the matter could be decided solely on the pleadings pursuant to Board Rule 520.6.[16] The Motion to Vacate argues that resolution of the instant case could have benefited from a hearing, which might have provided an opportunity for clarifying outstanding factual issues.[17] The Motion to Vacate further asserts that a decision based solely on the pleadings, despite the presence of material factual disputes, presents an exceptional circumstance warranting vacatur.[18] The Motion to Vacate further asserts it is in the public interest that matters with disputed facts are resolved based on a fully developed factual record.[19] The parties assert that they are actively working toward settling the underlying grievance.[20] The Motion to Vacate argues that vacating opinion No. 1898 would allow for the resolution of the related District of Columbia Superior Court appeal of the opinion and, therefore, the avoidance of indefinite litigation.[21] The Motion to Vacate suggests that "[h]ad mediation been offered [by PERB], there is a strong possibility that a settlement could have been reached."[22] The Motion to Vacate contends that preserving the option for mediation, which PERB did not actively prompt the parties to partake in, is essential and in the public's interest.[23]

IV. Discussion

Board Rule 520.6 states: "If 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."[24] The only requirement for a decision on the pleadings within the Board rules and case law is that a review of the pleadings reveals that no issue of fact *warrants a hearing*. DOH has admitted to *the determinative fact* in the instant case; that it refused to engage in arbitration with AFGE regarding the grievance at issue.[25] Further, AFGE's Motion for Reconsideration did not raise any factual disparities or disputes, nor request a mediation or hearing in this case.[26] Rather, AFGE requested that the Board find that DOH's refusal to arbitrate constituted an unfair labor practice, order DOH to engage in good-faith arbitration and compel DOH to present evidence and testimony supporting its refusal to arbitrate.[27]

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[16] Motion to Vacate at 2-3 (citing, *e.g. Clarence E. Mack v. DOC*, 47 D.C. Reg. 10082, Slip Op. No. 440 at , PERB Case No. 95-U-14) (2000); *FOP/DOC Labor Comm. v. DOC*, 70 D.C. Reg. 6720, Slip Op. No. 1835 at 2, PERB Case No. 23-U-03 (2023); PERB Rule 520.6, which states, "If 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.").
[17] Motion to Vacate at 1-4.
[18] Motion to Vacate at 4.
[19] Motion to Vacate at 4.
[20] Motion to Vacate at 4.
[21] Motion to Vacate at 4.
[22] Motion to Vacate at 4. The Board notes that mediation is a voluntary program offered by PERB which parties may request. *See* Board Rules 558.1-558.6.
[23] Motion to Vacate at 4.
[24] Board Rule 520.6
[25] Complaint at 5; Answer at 3.
[26] Motion for Reconsideration at 5.
[27] Motion for Reconsideration at 5.

The parties have had ample opportunity throughout PERB's processing of the instant case to request mediation and/or a hearing. They have not availed themselves of that opportunity.

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** (emphasis original), 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."[28] The Supreme Court has held that even the existence of a post-judgment settlement agreement alone is insufficient grounds to vacate a court's final judgment.[29] The potential for settlement in the instant case does not outweigh the public interest in the finality of judgment.[30]

V. Conclusion

The parties have not presented exceptional circumstances that justify the radical relief of vacating a final decision by the Board. Therefore, the Board denies AFGE and DOH's Motion to Vacate Judgement of Opinion No. 1898.

ORDER

IT IS HEREBY ORDERED THAT:

1. This matter is dismissed in its entirety; 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.

May 22, 2025.

Washington, D.C.

[28] *Kids Holdings, Inc. v. Hinojosa*, 311 A.3d 910, 915 (D.C. 2024).
[29] *U.S. Bancorp Mortgage Co. v. Bonner Mall*, 513 U.S. 18 (1994).
[30] *AFGE, Local 1403 v. OAG*, Slip Op. No. 973 at 2.

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.