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

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In the Matter of:	)	
	)	
Stephen Amobi	)	
	)	
Complainant	)	PERB Case No. 24-U-43
	)	
v.	)	Opinion No. 1905
	)	
District of Columbia Department of Corrections	)	
	)	
Respondent	)	

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**DECISION AND ORDER**

**I. Statement of the Case**

On May 20, 2024, the Board revoked certification of the Fraternal Order of Police/Department of Corrections Labor Committee (FOP) as the exclusive bargaining representative for employees at the District of Columbia Department of Corrections (DOC).<sup>1</sup> That decertification, which FOP has since appealed to the Superior Court of the District of Columbia,<sup>2</sup> provides the backdrop for the instant dispute.

On September 5, 2024, a DOC Correctional Officer (Complainant) filed an unfair labor practice complaint (Complaint) in the above-captioned matter after serving a 30-day suspension without pay.<sup>3</sup> The Complaint alleges that DOC violated D.C. Official Code § 1-617.04(a)(1) of the Comprehensive Merit Personnel Act (CMPA) by refusing to engage in arbitration over the Complainant’s suspension.<sup>4</sup> The Complaint further alleges that DOC violated D.C. Official Code § 1-617.04(a)(5) of the CMPA by refusing to participate in arbitration proceedings, both before

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<sup>1</sup> *Darlene Bryant, et al. v. FOP/DOC Labor Comm.*, Slip Op. No. 1871, PERB Case No. 22-S-05 (2024).

<sup>2</sup> *FOP/DOC Labor Comm. v. PERB*, Case No. 2024-CAB-003838. On October 22, 2024, the D.C. Superior Court granted the Motion for Temporary Restraining Order and Preliminary Relief which FOP filed in that case. Accordingly, the Board stayed enforcement of Opinion No. 1871. *Darlene Bryant, et al.*, Slip Op. No. 1881.

<sup>3</sup> The Complaint includes a Motion for an immediate injunction to bar DOC from refusing to engage in arbitration proceedings which arose prior to FOP’s decertification, or which implicate rights accrued or vested in the CBA between DOC and FOP. Complaint at 12-13. PERB declined to decide that Motion until the conclusion of its investigation. Given the issuance of this decision, the Motion is now moot.

<sup>4</sup> Complaint at 7-8.

and after the decertification order was issued.<sup>5</sup> The Complaint contends that post-decertification, the unit members retained the right to arbitration which they accrued or vested under the CBA.<sup>6</sup> Thus, the Complaint asserts, DOC has a continuing obligation to participate in arbitration proceedings.<sup>7</sup>

On October 1, 2024, DOC submitted an Answer to the Complaint, denying the CMPA violations alleged therein. DOC asserts that FOP has failed to meet its burden of proof with regard to the alleged violation of D.C. Official Code § 1-617.04(a)(1).<sup>8</sup> DOC also asserts that because the Board decertified FOP, the Complainant does not belong to a bargaining unit and consequently, there can be no violation of D.C. Official Code § 1-617.04(a)(5).<sup>9</sup> Lastly, DOC argues that even if the Board finds that the CBA still governs, the Complaint must be dismissed because FOP violated the CBA by simultaneously invoking arbitration and appealing his suspension to the Office of Employee Appeals (OEA).<sup>10</sup>

On October 22, 2024, the D.C. Superior Court issued an Order in the related appeal, enjoining the Board from enforcing or recognizing the decertification of FOP until the appeal is resolved. The court's Order further established that the noncompensation CBA between DOC and FOP shall remain enforceable during the appeal.

On November 19, 2024, PERB issued a letter to the parties, requesting that they submit briefs addressing the following issues: (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; (2) Whether the Complainant's submission of an appeal to OEA affected the Complainant's right to arbitrate; and (3) Whether DOC was obligated to proceed to arbitration after the Board revoked FOP's certification as an exclusive representative. The parties submitted their briefs ("Complainant Brief" and "DOC Brief") on January 7, 2025.

For the reasons discussed herein, the Board finds that DOC has violated D.C. Official Code § 1-617.04(a)(1) and (5) of the CMPA.

## **I. Background<sup>11</sup>**

The Complainant has been a DOC Correctional Officer for over twenty-five (25) years and has no record of discipline.<sup>12</sup> On March 7, 2023, the Complainant was assigned to escort an inmate from DOC to Howard University Hospital (HUH).<sup>13</sup> While receiving medical care, the inmate

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<sup>5</sup> Complaint at 7-8.

<sup>6</sup> Complaint at 9-12 (citing *Litton Fin. Printing Div. v. N.L.R.B.*, 501 U.S. 190, 209 (1991)).

<sup>7</sup> Complaint at 9-12 (citing *Litton Fin. Printing Div.*, 501 U.S. at 209).

<sup>8</sup> Answer at 8 (citing *Washington Teachers' Union, Loc. No. 6, Am. Fed'n of Tchrs., AFL-CIO v. D.C. Pub. Sch.*, 77 A.3d 441 (D.C. 2013)).

<sup>9</sup> Answer at 2, 9

<sup>10</sup> Answer at 10.

<sup>11</sup> As no hearing was held in this matter, a definitive factual record was not established. The Board indicates herein where the parties' accounts differ and notes that these disagreements do not impact the Board's ultimate disposition.

<sup>12</sup> Complaint at 3.

<sup>13</sup> Complaint at 3.

escaped from custody.<sup>14</sup> On August 29, 2023, the Complainant was served with a Proposal of Removal (Proposal) for his alleged role in the inmate's escape.<sup>15</sup> The Complainant challenged the Proposal, and a hearing was held on October 2, 2023.<sup>16</sup> Before the Hearing Officer, the Complainant argued that DOC had failed to justify his removal.<sup>17</sup> On October 5, 2023, the Hearing Officer issued a determination in favor of the Complainant.<sup>18</sup> On December 7, 2023, DOC issued a Final Decision, sustaining the charges against the Complainant, but lessening the Complainant's discipline to a 30-day suspension without pay.<sup>19</sup>

On December 19, 2023, the Complainant submitted a grievance to the Director of DOC, challenging the final decision.<sup>20</sup> The Complainant did not receive a response from DOC.<sup>21</sup> On January 5, 2024, FOP invoked arbitration on the Complainant's behalf, and received an acknowledgment from the Office of Labor Relations and Collective Bargaining (OLRCB).<sup>22</sup> FOP did not receive a substantive response to the invocation of arbitration.<sup>23</sup> The same day, the Complainant filed a Petition for Review (Petition) with OEA.<sup>24</sup> DOC received the Petition on January 9, 2024.<sup>25</sup> Throughout January, February, and March of 2024, FOP continued its efforts to initiate the arbitration process, but did not receive a response from OLRCB.<sup>26</sup>

On May 20, 2024, the Board issued a decision in *Darlene Bryant, et al. v. FOP/DOC Labor Committee*, decertifying the FOP as the representative of the Complainant's bargaining unit.<sup>27</sup>

On July 16, 2024, OEA dismissed the Petition for lack of jurisdiction, stating that the Complainant had chosen his exclusive avenue for relief when he submitted a grievance to DOC.<sup>28</sup> After the dismissal, FOP reached out to OLRCB to follow up regarding arbitration.<sup>29</sup> OLRCB responded on August 8, 2024, asserting that DOC would not engage in arbitration because the

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<sup>14</sup> Complaint at 3.

<sup>15</sup> Complaint at 3-4.

<sup>16</sup> Complaint at 3-4.

<sup>17</sup> Complaint at 4.

<sup>18</sup> Complaint at 4.

<sup>19</sup> Complaint at 4. The Complainant alleges that the Final Decision was untimely, as it was issued after DOC's 45-day decision deadline had passed. Complaint at 4. DOC disagrees. Complaint at 4.

<sup>20</sup> Complaint at 4.

<sup>21</sup> Complaint at 5.

<sup>22</sup> Complaint at 5.

<sup>23</sup> Complaint at 5.

<sup>24</sup> Complaint at 5. The Complainant asserts that he filed the Petition with the goal of preserving his right to contest the Final Decision. Complaint at 5.

<sup>25</sup> Complaint at 5. DOC acknowledges that OLRCB may have received one or more calls from FOP during that timeframe. Answer at 3-4.

<sup>26</sup> Complaint at 5-6. DOC states that "OLRCB may have had at least once call" from FOP during that time. Answer at 3.

<sup>27</sup> *Darlene Bryant, et al. v. FOP/DOC Labor Comm.*, Slip Op. No. 1871.

<sup>28</sup> Complaint at 6. The Complainant asserts that "Throughout the OEA proceedings, the Agency vigorously contested OEA's jurisdiction on the basis that the parties' negotiated grievance procedure was a 'binding decision.'" Complaint at 6.

<sup>29</sup> Complaint at 6.

Board's decertification order stripped FOP of its status as the accredited representative for the Complainant's bargaining unit.<sup>30</sup>

## II. Discussion

The first issue before the Board is 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. DOC acknowledges that it refused to arbitrate the Complainant's suspension.<sup>31</sup> However, DOC asserts that its refusal to arbitrate was consistent with the CBA, as the CBA prohibits the parties from simultaneously pursuing multiple methods of dispute resolution (i.e., grievance arbitration and an OEA appeal).<sup>32</sup>

The Board has established that it does not have the authority to interpret collective bargaining agreements.<sup>33</sup> Where the parties have differing contractual interpretations, resulting in a dispute regarding the arbitrability of a grievance, the Board has consistently found that it does not have jurisdiction.<sup>34</sup> Accordingly, the Board declines to decide the issue of 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. Likewise, the Board declines to decide the issue of whether the Complainant's submission to OEA affected the arbitrability of his grievance.

Under the CMPA, there is no pre-arbitration remedy available to a party claiming that arbitration was invoked over a contractually-inarbitrable grievance.<sup>35</sup> Thus, the Board has established that questions of arbitrability shall initially be resolved by the arbitrator.<sup>36</sup> If a party disagrees with the arbitrator's conclusion concerning arbitrability, the party may file an arbitration review request with the Board, appealing the award.<sup>37</sup> 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.<sup>38</sup>

The Board finds that DOC has not availed itself of the option to seek pre-arbitration relief through the D.C. Superior Court, nor has it engaged in arbitration and exercised its right to appeal the award to the Board. Rather, DOC has summarily refused to arbitrate the Complainant's grievance, thereby precluding an arbitrability determination concerning his termination.

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<sup>30</sup> Complaint at 7.

<sup>31</sup> Answer at 8.

<sup>32</sup> Answer at 8. Article 11 of the CBA provides that "Employees have the right to contest corrective or adverse actions taken for cause through the negotiated grievance procedure as provided in Article 10." Article 10 further states, "Employees have the right to contest adverse actions taken for cause through the grievance procedures or through the Office of Employee Appeals (OEA) as specified by OEA rules, but not both."

<sup>33</sup> *FOP/MPD Labor Comm. v. MPD*, 60 D.C. Reg. 2585, Slip Op. No. 1360 at 4, PERB Case No. 12-U-13 (2013).

<sup>34</sup> *E.g., AFGF, Local 2725 v. DCRA*, 59 D.C. Reg. 5041, Slip Op. No. 969, PERB Case No. 06-U-43 (2012).

<sup>35</sup> *Washington Teachers' Union, Loc. No. 6, Am. Fed'n of Tchrs., AFL-CIO*, 77 A.3d at 451.

<sup>36</sup> *E.g., AFSCME, Council 20 v. D.C. Gen. Hosp. & OLRCB*, 36 D.C. Reg. 7101, Slip Op. No. 227, PERB Case No. 88-U-29 (1989).

<sup>37</sup> *Washington Teachers' Union, Loc. No. 6, Am. Fed'n of Tchrs., AFL-CIO*, 77 A.3d at 447.

<sup>38</sup> D.C. Official Code § 16-4407.

Having established that the arbitrability of a dispute is a question for the arbitrator, the Board must determine whether DOC was obligated to commit the issue of arbitrability to an arbitrator, given the Board's revocation of FOP's certification as the exclusive representative of the Complainant's bargaining unit. DOC contends that this matter must be dismissed because when the Board decertified FOP, it rendered the CBA void and eliminated DOC's duty to bargain with FOP.<sup>39</sup> DOC further contends that disputes over arbitrability are governed by the CBA and thus, because the Board lacks the authority to interpret the CBA, this matter must be dismissed as outside the Board's jurisdiction.<sup>40</sup>

The Board concludes that due to the D.C. Superior Court's October 22, 2024, Order in the ongoing related appeal, the CBA between FOP and DOC remains enforceable. Accordingly, the Board finds that, by declining to commit the issue of arbitrability to an arbitrator, DOC has failed to bargain in good faith with FOP, thereby committing an unfair labor practice in violation of D.C. Official Code § 1-617.04(a)(1) and (5) of the CMPA.

The Board further finds that, even if the decertification remained in effect, DOC's refusal to commit the issue of arbitrability to an arbitrator would nonetheless constitute an unfair labor practice. Where, as here, the Board encounters an issue of first impression, it may look to precedent from the National Labor Relations Board (NLRB) for guidance.<sup>41</sup> The NLRB has established that, after a union is decertified, the employer is nonetheless obligated to arbitrate grievances which were filed prior to decertification.<sup>42</sup> The Board "has primary jurisdiction to determine whether a particular act or omission constitutes an unfair labor practice under the CMPA."<sup>43</sup> Thus, the Board concludes that agencies have a duty to process pre-decertification grievances through arbitration and refusal to do so constitutes an unfair labor practice in violation of D.C. Official Code § 1-617.04(a)(1) and (5) of the CMPA.

### III. Conclusion

Accordingly, the Board orders DOC to cease and desist from violating D.C. Official Code § 1-617.04(a)(1) and (5) of the CMPA; engage in arbitration with FOP regarding the matter of the Complainant's termination; and post an appropriate notice to employees.<sup>44</sup>

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<sup>39</sup> Answer at 5. 9-10, 12; DOC Brief at 7-10.

<sup>40</sup> Answer at 10; DOC Brief at 10-11.

<sup>41</sup> See *Doctors' Council of D.C. v. DHS*, 46 D.C. Reg. 2430, Slip Op. No. 462, PERB Case No. 96-U-06 (1996).

<sup>42</sup> *Antioch Building Materials*, 316 NLRB 647 n.1 (1995) (citing *Arizona Portland Cement Co.*, 302 NLRB 36 (1991); *Missouri Portland Cement Co.*, 291 NLRB 1043, 1044 (1988)).

<sup>43</sup> *Hawkins v. Hall*, 537 A.2d 571, 574 (D.C.1988).

<sup>44</sup> This decision was issued contemporaneously with Opinion No. 1904 in PERB Case No. 24-U-42, which presented the same issues and resulted in the same Board determination.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The District of Columbia Department of Corrections shall cease and desist from violating D.C. Official Code § 1-617.04(a)(1) and (5) of the CMPA;
2. The District of Columbia Department of Corrections shall engage in arbitration with the Fraternal Order of Police/Department of Corrections Labor Committee regarding the matter of the Complainant's termination;
3. The District of Columbia Department of Corrections shall post the attached notice to employees;
4. 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.

February 26, 2025

**Washington, D.C.**

## **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.