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

In the Matter of:	)	
	)	
American Federation of Government	)	
Employees, AFL-CIO, Local 631	)	
Police Department Labor Committee,	)	
Complainant,	)	PERB Case No. 08-U-48
	)	
v.	)	Slip Opinion No. 1008
	)	
District of Columbia Water and Sewer	)	
Authority,	)	
Respondent.	)	
	)	

**I. Statement of the Case**

This matter involves an unfair labor practice complaint ("Complaint") filed by the American Federation of Government Employees, Local 631 ("AFGE", "Union" or "Complainant") on June 5, 2008 against the District of Columbia Water and Sewer Authority ("WASA", "Agency" or "Respondent"). In the Complaint, AFGE asserts that the Respondent committed an unfair labor practice by refusing to bargain over AFGE's January 4, 2008 proposals regarding Visitor Access, Employee Identification Card and Drivers Qualification and Certification Policies in violation of D.C. Code § 1-617.04(a)(5). On June 25, 2008, the Respondents filed a document styled Answer to Unfair Labor Practice Complaint ("Answer"), denying the allegations in the Complaint.

The matter was referred to a Hearing Examiner, a hearing was held, and on February 13, 2009, the Hearing Examiner's Report and Recommendation ("R&R") was issued recommending that the Board dismiss AFGE'S Complaint. (See R&R at pgs. 13-14).

The Complainant submitted Exceptions to the R&R ("Exceptions"). WASA did not file exceptions to the R&R, but replied in opposition to the Complainants' Exceptions

("Opposition"). The Hearing Examiner's R&R, the Complainant's Exceptions and the Respondents' Opposition are before the Board for disposition.

## **II. Hearing Examiner's Report and Recommendation**

### **A. Findings of Fact**

Based upon the testimony and evidence provided at the hearing and the arguments submitted in the briefs, the Hearing Examiner found that "[m]ost of the facts giving rise to the Complaint [were] not in dispute between the parties." (R&R at p. 2). Thus, the Hearing Examiner made the following findings of fact:

On September 6, 2007, pursuant to Article 4, Section B of the Parties' collective bargaining agreement (CBA), WASA notified AFGE by letter that WASA intended to exercise "its management rights to implement changes to WASA's policies and procedures regarding: "Drivers Qualifications and Workplace Violence." WASA's letter also stated that it intended to implement "a new Visitors Policy, and WASA identification Card Policy." Copies of the proposed policies were attached to the letter.

On or about September 17, 2007, AFGE responded stating that "the Union is entitled to exercise its full rights to bargain over any new personnel policies, prior to any change being implemented."

On September 20, 2007, WASA replied stating that the implementation of all four policies was a management right and AFGE was only entitled to negotiate regarding the impact and effects of the implementation of the policies. WASA also stated that it was "willing to interpret your letter dated September 17, 2007 as a request to negotiate impact and effects." WASA proposed to meet to negotiate the impact and effects of the policies on "September 26 and/or October 5, 2007."

On September 21, 2007, AFGE responded "requesting full bargaining" over the policies regarding Workplace Violence, Drivers Qualification, Employee Referral Bonus and Employee Identification Badge. AFGE agreed that the Visitors Policy was a management right and requested impact and effects bargaining on this policy. Shortly thereafter, the Parties began bargaining over a successor working condition CBA and exchanged proposals on three of the four policies at issue in this case.

(R&R at pgs. 2-3) (citations to record and footnote omitted).

In addition, the Hearing Examiner observed:

On October 15, 2007, AFGE presented WASA a written proposal on the Visitors Policy. . . . [and that o]n October 17, 2007, WASA responded to AFGE's Visitors Policy proposal in writing declaring some proposals non-negotiable based on management's rights and counter-proposing on the visitor drop off location and 24-hour-7-day-per-week access to WASA's facility for WASA employees who are Union officials. WASA proposed another meeting on October 19 or 25, 2007.

(R&R at pgs. 3-4) (citations to record and footnote omitted).

The Hearing Examiner also determined that during subsequent negotiations, the Union submitted proposals regarding Drivers Qualification, Workplace Violence, and a new Visitors Policy. (See R.R. at 4). WASA responded in writing to AFGE's proposals and rejected most of them as non-negotiable based on management's rights. (See R.R. at p. 4). The Hearing Examiner noted that "[d]uring this same time, the Parties were also engaged in working conditions negotiations for a successor CBA [and that o]n January 4, 2008, the Parties executed a Memorandum of Understanding (MOU) that provided for additional negotiations on the four policies that [were] at issue in this case." (R&R at p. 4). The Hearing Examiner found that the MOU between the parties was set forth in a handwritten note on January 4, 2008, which provided that the subsequent negotiations would also include a RIF notice issue. (See R&R at p. 4). Based on these findings, the Hearing Examiner discerned that [t]he meaning of this January 4, 2008 MOU [was] at the core of the Parties' dispute over the continuing negotiations on the four policies." (R&R at p. 4).

In addition, the Hearing Examiner noted it was WASA's position "that negotiations regarding the four policies would be limited to impact-and-effects bargaining because implementation of the policies was a management right." (R&R at p. 4). The Hearing Examiner also found that "AFGE sought to have the phrase 'full bargaining' added to the MOU, [but] [i]n the end, the Parties agreed that the January 4, 2008 MOU would refer only to 'bargaining' without further qualification." (R&R at p. 4). The Hearing Examiner's findings indicate that negotiations continued between the parties, and that:

[o]n February 27, 2008, WASA asked AFGE in writing for dates to meet to begin negotiations on the . . . policies [at issue in the MOU]. On April 30, 2008, AFGE submitted proposals on the Visitors, Drivers Qualification and Identification Card policies . . . [and] WASA responded to AFGE in writing rejecting the Union's Visitors Policy proposal. WASA reiterated its position that AFGE was entitled only to impact-and-effects bargaining with respect to the policies and stated[:]

Finally, given that the Authority has previously responded to these same Union proposals last November with exactly the same response, the Authority is now declaring that it is at impasse with AFGE, Local 631 over any outstanding issues relating to these impact and effect negotiations. As such, the Authority shall be distributing and implementing its Visitor Policy.

(R&R at pgs. 4-5).

Lastly, the Hearing Examiner found:

On May 2, 2008, WASA and AFGE met for a bargaining session on the Union's Workplace Violence policy proposal. . . [and that] WASA responded to AFGE in writing to the Union's proposals with three letters on Workplace Violence, Drivers Qualification and Employee Identification Card policies. WASA's three letters reiterated its position that implementation of the policies was a management right. The letters stated that WASA would "be distributing and implementing" the policies.

(R&R at p. 5).

#### **B. AFGE's Position**

AFGE's position is that the January 4, 2008 MOU language required full bargaining regarding WASA's Visitor Access, Employee Identification Card and the Drivers Qualification and Certification Policies. (See R&R at p. 5). In support of this position, AFGE argued that: (1) "WASA's assertion that the Union's proposals were non-negotiable management rights was directly contrary to the bargained for MOU"; (2) [i]n executing the MOU, WASA had waived its rights and therefore, any refusal to bargain is a repudiation of the MOU, a repudiation of the collective bargaining process and a breach of the CMPA"; and (3) WASA did not "assert those rights at the time it executed the MOU." (R&R at pgs 5-6). In addition, AFGE claimed that "[t]he CMPA does not prohibit WASA from waiving and agreeing to bargain over its management rights." (R&R at p. 6). Thus, AFGE asserted that: (a) "WASA's refusal to bargain [was in] bad faith because the January 4, 2008 MOU language is unambiguous and WASA knew the intent"; (b) "WASA had an opportunity to change the language and took no action to alter the January 4, 2008 MOU language"; and (c) "[f]or this reason, costs are warranted in the interest of justice to assure the Parties adhere to the CMPA collective bargaining process." (R&R at p. 6).

Based on these allegations, the Hearing Examiner found that crux of AFGE's position maintains that WASA's actions were in violation of the CMPA, and requested that the Board

issue an order: (1)“finding WASA violated the CMPA;” (2)“requiring WASA to engage in full bargaining with the AFGE on the proposals in the MOU;” (3)“requiring WASA to rescind the policies; and requiring WASA to post a notice for six months at bargaining unit members' work sites stating it engaged in bad faith bargaining with AFGE, Local 631”; and (4) award costs] in the amount of \$110.45.” (R&R at p. 6).

### C. WASA's Position

WASA claimed that it did not violate the CMPA because the decision to implement the policies at issue in the MOU is a management right, over which WASA had no duty to bargain. (See R&R at p. 6). WASA also argued that because it negotiated with AFGE over the impact and effect of the policies' implementation, there was no violation of its duty to bargain when it unilaterally implemented the policies. (See R&R at p. 6). WASA claimed its position was supported by PERB precedent which holds that an employer is required only to provide a union with an opportunity to bargain over the impact and effects in response to a request from the union. (See R&R at p. 6).

At the hearing, WASA also presented evidence and testimony in support of its position that since September 6, 2007, WASA had informed AFGE, both orally during negotiations and in writing that it had a management right to implement its Drivers Qualification, Workplace Violence, Visitors and Employee Identification Card policies. (See R&R at p. 7). In addition, the Hearing Examiner observed that WASA denied AFGE's allegations that it had agreed to engage in full bargaining when it executed the January 4, 2008 MOU. (See R&R at p. 7). WASA further asserted that the CMPA provides that an employer may not, by any "act, exercise, or agreement," waive management rights. (See R&R at p. 7).

WASA claimed that AFGE failed to make proposals or to request bargaining within forty-five days as was required by the January 4, 2008 MOU and it was WASA that wrote AFGE asking about negotiations. (See R&R at p. 7). Consequently, WASA claimed that its obligations under the January 4, 2008 MOU expired and that it was “not an unfair labor practice for WASA to declare these proposals to be a management right which PERB Rule 532 recognizes.” (R&R at p. 7).

WASA also argued that: (1) “[a] breach of the January 4, 2008 MOU may be a basis for a grievance under CBA only. Also under PERB Rule 532, AFGE could have filed a negotiability appeal, but it did not”; (2 ) “[b]ecause WASA lawfully declared the [MOU policies] a management right, and offered to and engaged in impact and effects bargaining, and AFGE never filed a negotiability appeal, this ULP charge should be denied and dismissed”; (3) “AFGE's ULP must be dismissed because it is untimely under PERB Rule 520 which provides that a ULP complaint must be filed no later than 120 days after the date on which the alleged violation occurred. The ULP was filed on June 5, 2008 and WASA announced the implementation of the policies as exercises of its management rights on September 6, 2007. Accordingly, AFGE's ULP charge is untimely.” (R&R at pgs. 7-8).

#### D. Conclusions and Recommendations

The Hearing Examiner made two central recommendations: (1) that AFGE's Complaint, pursuant to Board Rule 520.11, is timely; and (2) AFGE has failed to prove that WASA's conduct regarding the implementation of the Visitor Access, Employee Identification Card, and Drivers Qualification and Certification Policies constituted a violation of D.C. Code § 1-617.04(a)(5). (See R&R at p. 8).

The Hearing Examiner first addressed the issue of WASA's assertion that AFGE's "Complaint is untimely because WASA gave notice to AFGE of the implementation of the Visitor Access, Employee Identification Card, and Drivers Qualification and Certification Policies on September 6, 2007 and AFGE filed its Complaint on June 25, 2008." (R&R at p. 8) (emphasis and citation omitted). As stated above, it is WASA's claim that on September 6, 2007, written notice was sent to AFGE stating that it will exercise its management right to change the Drivers Qualification and Workplace Violence policies, and will implement new Visitors and Identification Card policies. (See R&R at p. 8). The Hearing Examiner observed that after submitting the September 6, 2007 notice, the parties discussed the aforementioned issues on a number of occasions, and that the "negotiations culminated with the January 4, 2008 MOU which signaled the roll-over of the working condition agreement and continuation of bargaining on the policies." (R&R at p. 8). The Hearing Examiner found that negotiations on these subjects continued after the execution of the MOU and until "May 2, 2008, when WASA notified AFGE in writing in three letters that the implementation of the policies was a management right and WASA would "be distributing and implementing" the Workplace Violence, Drivers Qualification and Employee Identification Card policies." (R&R at pgs. 8-9). The Hearing Examiner concluded:

[I]t was not until May 2, 2008[,] that WASA finally and unequivocally notified AFGE of the implementation and distribution of the policies despite AFGE's continuing objection and its demand for full scope bargaining. Just over 30 days later, AFGE filed the instant *Complaint*. Therefore, the event giving rise to AFGE's Complaint was WASA's May 2, 2008 written notification and implementation of the policies.

For these reasons, the Hearing Examiner finds that AFGE's June 5, 2008 *Complaint* is timely and the PERB had jurisdiction over the case.

(R&R at p. 9).

As to the merits of the Complaint, the Hearing Examiner noted that the parties dispute the "starting point for the relevant and material facts. AFGE's analysis of the facts starts with the January 4, 2008 MOU. WASA's analysis of the facts starts on September 6, 2007[,] when WASA notified AFGE in writing of its "intent to implement revised Drivers' Qualification and

Workplace Violence policies and to implement new Visitors and WASA Identification Card Policies.” (R&R at p. 9).

The Hearing Examiner rejected AFGE’s contention that the parties’ intent in the January 4, 2008 MOU was to engage in full scope bargaining on the policies going forward or that WASA’s execution of the January 4, 2008 MOU, constituted a waiver of its management’s rights. (See R&R at pgs. 10-13). In addition, the Hearing Examiner found that “there is no evidence in the record that WASA acted in bad faith from the September 6, 2006 notice to AFGE to May 2, 2008 when it implemented the policies. During this time, the facts establish, WASA steadfastly adhered to the position that the policies were negotiable only as to impact and effects.” (R&R at p. 10). In addition, the Hearing Examiner examined the language of the January 4, 2008 MOU, which states as follows:

This Memorandum of Understanding between the American Federation of Government Employees, AFL-CIO, Local 631 (The Union) and the D. C. Water and Sewer Authority (the Authority) is entered into for the purposes of resolving the Noncompensation Agreement for the Union's bargaining unit members.

The parties agree the Authority has issued new policies on Driver Qualifications and Certification, Identification Badges, Visitor Access to the Facilities, and Workplace Violence. The parties agree the Union requested bargaining on the aforementioned policies.

In the interest of resolving the parties['] differences, the parties hereby agree to [meet] and bargain over the aforementioned policies, within forty-five days of the execution of this Memorandum of Understanding.

(R&R at p. 10).

The Hearing Examiner found:

It is a basic canon of contract construction that the clear terms of a collective bargaining agree foreclose the consideration of oral testimony on the intent or meaning of the agreement.

The January 4, 2008 MOU’s terms provide that the Parties will meet and bargain, nothing more and nothing less. The January 4, 2008 MOU’s plain language does not contain a waiver of WASA’s management’s rights. Therefore, the Hearing Examiner finds that WASA’s refusal to engage in full scope bargaining regarding the policies is not a violation of either the January 4, 2008 MOU or the CMPA.

Even assuming, *arguendo*, that the language of the January 4, 2008 MOU constituted a waiver of WASA's management's rights, WASA argues that, under D.C. Code § 1.617.08(a-1), WASA "could not have waived its management rights to implement the policies even had it wanted to do so."

(R&R at p. 11).

The Hearing Examiner also noted that D.C. Code § 1.617.08 provides as follows:

**D.C. Code 1-617.08 Management rights; matters subject to collective bargaining**

(a) The respective personnel authorities (management) shall retain the sole right, in accordance with applicable laws and rules and regulations:

- (1) To direct employees of the agencies;
- (2) To hire, promote, transfer, assign, and retain employees in positions within the agency and to suspend, demote, discharge, or take other disciplinary action against employees for cause;
- (3) To relieve employees of duties because of lack of work or other legitimate reasons;
- (4) To maintain the efficiency of the District government operations entrusted to them;
- (5) To determine:
  - (A) The mission of the agency, its budget, its organization, the number of employees, and to establish the tour of duty;
  - (B) The number, types, and grades of positions of employees assigned to an agency's organizational unit, work project, or tour of duty;
  - (C) The technology of performing the agency's work; and
  - (D) The agency's internal security practices; and
- (6) To take whatever actions may be necessary to carry out the mission of the District government in emergency situations.

(a-1) An act, exercise, or agreement of the respective personnel authorities (management) shall not be interpreted in any manner as a waiver of the sole management rights contained in subsection (a) of this section.

(R&R at pgs. 11-12).

The Hearing Examiner opined that:

sub-paragraph (a-1) provides that an agreement shall not be interpreted as a waiver of the management rights in § 1-617(a). Therefore, the Hearing Examiner finds that sub-paragraph (a-1) would operate to render void *ab initio* WASA's waiver of its management's rights in the January 4, 2008 MOU even if such a waiver existed as argued by AFGE. However, it worth repeating the point that the Hearing Examiner has already concluded that the January 4, 2008 MOU does not constitute a waiver of WASA's management's rights regarding the policies.

(R&R at p. 11).

In addition, the Hearing Examiner found that although the further proposals or requests to bargain were to conclude within forty-five days, as was required by the January 4, 2008 MOU, both parties failed to meet that deadline and WASA's claim that its obligation to the January 4, 2008 MOU expired is without merit. (See R&R at pgs. 12-13).

Lastly, the Hearing Examiner noted:

The language of PERB Rule 532 operates to remove negotiability disputes from the unfair labor practice dispute resolution process. For this reason, [Board] Rule 532, the Hearing Examiner lacks the jurisdiction to determine if bargaining over the policies should be full scope bargaining or limited to impact and effects. Assuming AFGE believes the policies are subject to full scope bargaining, it must advance an appeal of WASA's refusal to bargain based on its management's rights under PERB Rule 532.

(R&R at p. 13).

Based on the foregoing, the Hearing Examiner concluded that "AFGE . . . failed to prove its Complaint by a preponderance of evidence, and recommended "that AFGE's *Complaint* be dismissed with prejudice." (R&R at pgs. 13-14).

### III. AFGE's Exceptions to the Hearing Examiner's Report and Recommendation

AFGE's Exceptions regarding management rights contend that the Hearing Examiner erred by "finding that [D.C. Code § 1-617.08(a-1)] precluded management from negotiating over a management right." (Exceptions at p. 5). AFGE claims that the Hearing Examiner:

rejected PERB's precedent on this matter and the legislative history, in reaching his finding the MOU was void [*ab initio*]. The Report and Recommendation should be reversed, since it is contrary to the clear intent of the statute and the PERB's rulings on this issue. The MOU was clear and unambiguous and the evidence in the record supported a finding that WASA had agreed to bargain over the policies, with no preconditions. . . . WASA chose to exercise its right to bargain and cannot under the statute repudiate the agreement it made. The refusal to bargain fully over the policies and implementing the policies, after entering into the MOU, is a violation of the statute.

(Exceptions at p. 5).

A clear reading of the Hearing Examiner's R&R is at odds with AFGE's contention. First, AFGE's argument is based on a disagreement with the Hearing Examiner's findings that: (1) the MOU does not require the parties to fully bargain over the policies at issue; and (2) WASA did not intend its execution of the MOU to constitute a waiver of its position that the policies at issue were management rights. (See R&R at pgs. 10-11). The Board has held that a mere disagreement with the Hearing Examiner's findings of fact do not constitute a valid exception or support a claim of reversible error. See *Hoggard v. District of Columbia Public Schools*, 46 DCR 4837, Slip Op. No. 496, PERB Case 95-U-20 (1996). The Board has also rejected challenges to the Hearing Examiner's findings based on: (1) competing evidence; (2) the probative weight accorded evidence; and (3) credibility resolutions. *American Federation of Government Employees, Local 2741 v. D.C. Department of Recreation Parks*, 46 DCR 6502, Slip Op. No. 588, PERB Case No. 98-U-16 (1999).

In addition, the Hearing Examiner's analysis of D.C. Code § 1-617.8(a-1) is consistent with Board precedent. On April 13, 2005, the CMPA was amended at D.C. Code §1-617.08(a-1) (Supp. 2005). The following language was added at subsection (a-1):

*(a-1) An act, exercise, or agreement of the respective personnel authorities (management) shall not be interpreted in any manner as a waiver of the sole management rights contained in subsection (a) of this section. (Emphasis added).*

In *District of Columbia Fire and Emergency Medical Service Department and American Federation of Government Employees, Local 3721*, 54 DCR 3167, Slip Op. No. 874, PERB Case No. 06-N-01 (2007), the Board considered one of the first negotiability appeals filed after the

April 2005 amendment. In that case the Board stated “that at first glance, the above amendment could be interpreted to mean that the management rights found in D.C. Code §1-617.08(a) may no longer be a subject of permissive bargaining. However, it could also be interpreted to mean that the rights found in §1-617.08(a) may be subject to permissive bargaining, if such bargaining is not considered as a permanent waiver of that management right or any other management right. As a result, [the Board indicated] that the language contained in the statute is ambiguous and unclear. Therefore, in order to determine the intent of the City Council, the Board reviewed the legislative history of the 2005 amendment.” Slip Op. No. 874 at p. 8.

The Board noted that “[t]he section-by-section analysis prepared by the Subcommittee on Public Interest, chaired by Councilmember Mendelson, stated as follows:

Section 2(b) also protects management rights generally by providing that no ‘act, exercise, or agreement’ by management will constitute a more general waiver of a management right. *This new paragraph should not be construed as enabling management to repudiate any agreement it has, or chooses, to make. Rather, this paragraph recognizes that a right could be negotiated. However, if management chooses not to reserve a right when bargaining, that should not be construed as a waiver of all rights, or of any particular right at some other point when bargaining. (emphasis added).*” Slip Op. No. 874 at p. 8.

After reviewing the legislative history of the 2005 amendment, the Board observed that under the 2005 amendment:

(2) *management may not repudiate any previous agreement concerning management rights during the term of the agreement; (emphasis added).* Slip Op. No. 874 at p. 8.

In the present case, the Hearing Examiner’s analysis is consistent with the precedent discussed above. Moreover, the Board has held that it will adopt a Hearing Examiner’s recommendation if it finds that, upon review of the record, that the Hearing Examiner’s analysis, reasoning and conclusions are rational, reasonable, persuasive and supported by the record. See *D.C. Nurses Association and D.C. Department of Human Services*, 32 DCR 3355, Slip Op. No. 112, PERB Case No. 84-U-08 (1985) and *D.C. Nurses Association and D.C. Health and Hospitals Public Benefit Corporation*, 46 DCR 6271, Slip Op. No. 583, PERB Case No. 98-U-02 (1999). The Board finds the Hearing Examiner’s findings and conclusions to be rational, supported by the record and consistent with Board precedent; therefore, AFGE’s Exceptions are denied. The Board adopts the Hearing Examiner’s finding that the AFGE failed to present evidence that WASA’s implementation of the policies at issue in the MOU violated the CMPA.

AFGE bases its second exception on its view that the Hearing Examiner’s R&R required the Union to file a negotiability appeal, and that such a requirement was in error. (See Exceptions at pgs. 6-7). In addition, AFGE reasserts that WASA failed to bargain over the

issues in the MOU. (See Exceptions at p. 6). This exception is based on a misreading of, and disagreement with, the Hearing Examiner's findings and conclusions, as well as a misapplication of Board Rule 532.1

It is clear that Board Rule 532 concerns the filing of an appeal when an issue of negotiability arises during negotiations. However, the negotiability of the policies contained in the MOU is not at issue before the Board. The issue in the instant Complaint is whether WASA violated the CMPA by refusing to bargain. As stated above, the Board finds that the record supports the Hearing Examiner's finding that during negotiations with the Union, WASA had communicated its position that the policies described in the MOU were management rights. The Hearing Examiner's findings state that "*if* bargaining over the policies should be full scope bargaining or limited to impact and effects. . . . it must advance an appeal of WASA's refusal to bargain based on its management's rights under PERB Rule 532." (R&R at p. 13) (emphasis added). It is clear that the Hearing Examiner was not requiring, as part of his recommendation to the Board, that AFGE file a negotiability appeal. To the contrary, the Hearing Examiner was merely explaining that the issue was not the negotiability of disputed provisions of the MOU, but whether WASA's actions constituted an unfair labor practice. Because the Hearing Examiner's findings and conclusions are rational, supported by the record and consistent with Board Rules, the Board denies AFGE's Exceptions.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The American Federation of Government Employees, AFL-CIO, Local 631's unfair labor practice complaint is dismissed.

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#### 1 Board Rule 532.1 - Impasses and Negotiability Issues

If in connection with collective bargaining, an issue arises as to whether a proposal is within the scope of bargaining, the party presenting the proposal may file a negotiability appeal with the Board.

#### Board Rule 532.3 - Negotiability Appeal - Filing

Except as provided in Subsection 532.1 of these rules a negotiability appeal shall be filed within thirty (30) days after a written communication from the other party to the negotiations asserting that a proposal is nonnegotiable or otherwise not within the scope of collective bargaining under the CMPA. A response to the negotiability appeal may be filed within fifteen (15) days after the date of service of the appeal.

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2. Pursuant to Board Rules 559.1 this Decision and Order is effective and final upon issuance.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**  
**Washington, D.C.**

December 31, 2009

**CERTIFICATE OF SERVICE**

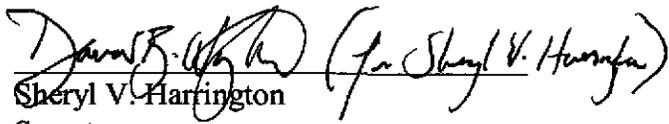
This is to certify that the attached Decision in PERB Case No. 08-U-48 was served via FAX and U.S. Mail to the following parties on this the 31st day of December, 2009.

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