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

In the Matter of:)	
)	
American Federation of Government Employees, District 14)	
)	
Petitioner)	
)	PERB Case No. 24-RC-03
and)	
)	Opinion No. 1909
District of Columbia Department of Corrections)	
)	
Respondent)	Motion for Reconsideration
)	
and)	
)	
Fraternal Order of Police/Department of Corrections Labor Committee)	
)	
Intervenor)	
)	

**DECISION AND ORDER ON UNIT DETERMINATION
AND DIRECTION OF ELECTION**

I. Statement of the Case

On January 27, 2025, the Board issued Opinion No. 1901¹ in the above-captioned case, directing that a mail ballot election be held to determine whether a majority of eligible employees at the District of Columbia Department of Corrections (DOC) desire recognition of the American Federation of Government Employees, District 14 (AFGE), the Fraternal Order of Police/Department of Corrections Labor Committee (FOP), or no union as their exclusive representative.

¹ *AFGE, District 14 and DOC and FOP/DOC Labor Committee*, Slip Op. No. 1901, PERB Case No. 24-RC-03 (2025). On February 28, 2025, the Board issued a corrected copy of Opinion No. 1901, which remedied a minor, non-substantive error identified by AFGE.

On January 28, 2025, AFGE submitted a request (Request) for the election to be held in person in the interest of saving money; drawing greater participation; eliminating the risk of lost ballots; and allowing the parties to appoint poll watchers.²

On January 30, 2025, FOP filed a Request for Reconsideration and Clarification of the Bargaining Unit (“Motion” or “Motion for Reconsideration”). The Motion argues that the instant election proceedings should be postponed pending resolution of the related appeal, currently before the D.C. Superior Court, in which FOP contests the Board’s recent decision to decertify FOP as the exclusive bargaining representative for the DOC employees at issue.³ The Motion contends that an abeyance is necessary due to an October 22, 2024, court Order, which enjoined the Board from enforcing or recognizing the decertification of FOP until the conclusion of the appeal.⁴ The Motion further argues that if the election proceeds, it should be overseen by a third party instead of the Board, as the ongoing litigation between FOP and PERB has demonstrably prejudiced the Board against FOP.⁵ Additionally, FOP challenges the bargaining unit description in Opinion No. 1901⁶, arguing it is inconsistent with those provided by the parties.⁷ Lastly, FOP concurs with AFGE that, if an election is held, it should be conducted in person, as opposed to via mail ballot.⁸

For the reasons stated herein, the Motion for Reconsideration is granted, in part and denied, in part.

II. Standard of Review

The Board has established that the standard for a motion for reconsideration is clear legal error.⁹ The Board will deny a motion for reconsideration which is based on mere disagreement with the underlying decision, or which does not provide a statutory basis for reversal.¹⁰ Additionally, the Board has held that a motion for reconsideration must assert new issues for the Board to reverse its decision.¹¹ The Board will deny a motion for reconsideration which solely raises arguments that the Board addressed in its initial decision.¹²

² Request at 2.

³ Motion at 2, 5-6 (citing *FOP/DOC Labor Comm. v. PERB*, Case No. 2024-CAB-003838).

⁴ Motion at 3-4, 14.

⁵ Motion at 1, 8, 13-16.

⁶ Slip Op. No. 1901 at 1-2, 4.

⁷ Motion at 2-4, 16.

⁸ Motion at 3, 14-16.

⁹ *FOP/DOC Labor Comm. v. MPD*, 59 D.C. Reg. 7165, Slip Op. No. 1233 at 4, PERB Case No. 11-E-01 (2012).

¹⁰ *FOP/DOC Labor Comm. v. BEGA*, 62 D.C. Reg. 14628, Slip Op. No. 1538 at 2, PERB Case No. 13-U-35 (2015) (citing *AFGE, Local 1000 v. DOES*, 61 D.C. Reg. 9776, Slip Op. No. 1486, PERB Case no. 13-U-15 (2014)).

¹¹ *DOC and FOP/DOC Labor Comm.*, 59 D.C. Reg. 6493, Slip Op. No. 1105 at 8, PERB Case No. 07-E-09 (2012).

¹² *FOP/DOC Labor Comm. v. MPD*, 59 D.C. Reg. 9817, Slip Op. No. 1283 at 2, PERB Case No. 07-U-10 (2012); *DiAngelo and Doctor’s Council of D.C. v. OCME*, 59 D.C. Reg. 6399, Slip Op. No. 1006 at 5, PERB Case Nos. 05-U-47 and 07-U-22 (2012).

III. Discussion

A. The request to hold this matter in abeyance is denied.

In Opinion No. 1901, the Board addressed FOP's argument that, due to the court's order upholding the contract between FOP and DOC, this matter should be held in abeyance until the conclusion of the related appeal.¹³ The Board explained that the existing noncompensation CBA between DOC and FOP spans a definite three-year duration from Fiscal Year 2016 through Fiscal Year 2019.¹⁴ The Board found that, because there has not been a valid majority status determination, a new certification of representative, or a compensation unit placement for the employees at issue within the past twelve (12) months, there is no contractual bar to the petitioned-for election.¹⁵ Pursuant to the Board rules, competing unions now have the opportunity to petition for an election.¹⁶ In Opinion No. 1901, the Board explained that the court's order returned the parties to the pre-revocation status quo, but did not bar an election, as such a bar would grant FOP protection beyond the status quo and diminish the statutory rights of employees to select their representative.¹⁷

Regarding the issue of abeyance, the Motion does not raise any new considerations, merely reiterating arguments previously presented to the Board and rejected in Opinion No. 1901.¹⁸ FOP's contentions regarding the need for an election postponement¹⁹ constitute mere disagreement with the Board's prior determination on this subject, and do not provide a statutory basis for reversal. FOP has failed to establish that the Board committed a clear legal error when it declined to hold this matter in abeyance until the conclusion of the related appeal. Accordingly, the Motion for Reconsideration is denied to the extent that it requests an abeyance.

B. PERB is not biased against FOP.

The Board turns to the various allegations of bias presented in the Motion. FOP alleges that, at the inception of this matter, the Board demonstrated partiality toward AFGE by failing to include FOP as a party to this case.²⁰ FOP's allegation is unfounded. AFGE filed its Initial Petition on June 19, 2024. The Board revoked the certification of FOP as the exclusive bargaining representative on May 16, 2024.²¹ Thereafter, the court issued its October 22, 2024, Order declaring the existing contract between DOC and FOP enforceable.²² Pursuant to the Board's May 16, 2024, decision in Opinion No. 1871, the six-month bar prohibiting FOP from re-petitioning for

¹³ *AFGE, District 14*, Slip Op. No. 1901 at 3-4.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ *Id.* at 3-4.

¹⁷ *Id.* at 4.

¹⁸ *Id.* at 3-4.

¹⁹ Motion at 2-3.

²⁰ Motion at 1.

²¹ *Bryant, et al. v. FOP/DOC Labor Comm.*, 71 D.C. Reg. 7891, Slip Op. No. 1871, PERB Case No. 22-S-05 (2024).

²² *FOP/DOC Labor Comm. v. PERB*, Case No. 2024-CAB-003838.

exclusive recognition was in effect.²³ The Board's initial omission of FOP as a party to this case demonstrates consistency with the Board's previous revocation of certification.

FOP also argues that the PERB has overlooked various flaws in AFGE's submissions, demonstrating bias in favor of AFGE.²⁴ For example, FOP asserts that AFGE failed to comply with Board Rule 503.1(b), which requires the petitioner to provide the telephone number of any other known labor organization claiming recognition as the exclusive bargaining representative of employees in the proposed unit.²⁵ While AFGE's submissions acknowledged that the employees at issue were previously represented by FOP,²⁶ they did not include a telephone number for FOP. The Board has discretion to overlook such inconsequential deficiencies, and PERB's decision to exercise that discretion in this instance was not an indication of bias.

FOP further asserts that AFGE failed to comply with Board Rule 503.1(d), which requires the petitioning party to demonstrate that the employees in the proposed unit share a community of interest.²⁷ This argument is unfounded. In the deficiency letter issued June 20, 2024, PERB informed AFGE that its Initial Petition did not comply with Board Rule 503.1(d). In response, AFGE submitted the Amended Petition, asserting that the employees in the proposed unit share a community of interest due to their shared mission of "ensur[ing] public safety for citizens of the District of Columbia by providing a safe and orderly secure and humane environment for the confinement of pretrial detainees and sentenced inmates, while providing meaningful opportunities for community reintegration."²⁸ This statement, also included in the Second Amended Petition,²⁹ explains the distinctiveness of the functions which the affected employees perform, in compliance with Board Rule 503.1(d).³⁰

Additionally, FOP challenges the validity of AFGE's showing of interest and asserts that PERB's acceptance thereof demonstrates bias.³¹ Under Board Rule 503.2, a petition for exclusive recognition must be supported by a showing of interest, not more than one year old, that at least thirty percent (30%) of the current employees in the proposed unit desire representation by the petitioner. This showing of interest must be submitted to the Board via commercial delivery, U.S. mail, or personal delivery. FOP argues that the Initial Petition inaccurately represented the date that the showing of interest was mailed to PERB's office.³²

²³ *Bryant, et al.*, Slip Op. No. 1871 at 12 (decertifying FOP as the exclusive noncompensation bargaining representative for DOC employees).

²⁴ Motion at 6, 8-13.

²⁵ Motion at 8-9.

²⁶ Petition at 2; Amended Petition at 2; and Second Amended Petition at 2.

²⁷ Motion at 8-9.

²⁸ Amended Petition at 2-3.

²⁹ Second Amended Petition at 2-3.

³⁰ Board Rule 503.1(d) requires the petitioning labor organization to provide "[a] statement as to how the employees in the proposed unit share a community of interest, by virtue of such common factors as skills, working conditions, supervision, physical location, organizational structure, distinctiveness of functions performed, *or* the existence of integrated work processes" (emphasis added).

³¹ Motion at 10, fn. 6.

³² Motion at 9.

These arguments are unpersuasive. AFGE has provided a timely and sufficient showing of interest through signed interest cards and authorization forms which were sent to PERB via U.S. mail, in accordance with Board Rule 503.2. The specific mailing date is inconsequential. Of the eight hundred and ninety-eight (898) employees in the proposed unit, four hundred and fourteen (414) submitted documentation showing their desire to be represented by AFGE. This forty-six percent (46%) showing of interest³³ is well above the 30% required under Board Rule 503.2. FOP has not presented any evidence that the showing of interest is fraudulent, nor has PERB found any indication thereof. Thus, PERB's acceptance of AFGE's showing of interest does not demonstrate bias in favor of AFGE.

FOP also contends that PERB has displayed a pattern of bias through inconsistent imposition of deadlines and inconsistent treatment of filings.³⁴ Many of FOP's allegations concern events which transpired prior to its intervention in this matter. For example, FOP alleges that PERB displayed bias in favor of AFGE when it accepted the Amended Petition, as that submission was not properly served on DOC.³⁵ This claim is unsupported. Unbeknownst to PERB staff, AFGE's Initial Petition and Amended Petition were inadvertently served on DOC at the wrong address.³⁶ DOC informed AFGE and PERB of this error and, at PERB's direction, it was corrected in the Second Amended Petition.³⁷ Thus, PERB's initial acceptance of the Amended Petition does not demonstrate bias in favor of AFGE.

Additionally, FOP criticizes PERB's decision to deny DOC's July 11, 2024, Motion to Dismiss for Improper Service (Motion to Dismiss) because the denial letter was issued on July 15, 2024, only four (4) days after that motion was filed.³⁸ Under Board Rule 555.2, "Any response to a written motion must be in writing and filed no later than fourteen (14) days after service of the motion." DOC filed its Response to the Motion to Dismiss on July 12, 2024. Where, as here, a response is received before the deadline established under Board Rule 555.2, PERB may issue a decision before the 14 days have run. This is a common practice and does not demonstrate bias. Rather, it promotes efficient case processing, which benefits all parties. FOP also objects to PERB's subsequent decision to grant DOC's Motion for an Extension of Time to File a Complaint.³⁹ PERB regularly grants extensions⁴⁰ where parties or their representatives experience unforeseen life events, as was the case here. PERB's leniency in this department applies equally to all parties and does not indicate bias.

Some of FOP's allegations regarding procedural bias concern events which occurred after FOP became a party to the instant case. For example, FOP alleges that PERB did not provide it with adequate time, under Board Rule 555.2, to respond to DOC's Motion to Postpone the Pre-

³³ In fact, the showing of interest is heightened to 50% based on the eight hundred and twenty-five (825)-person list of eligible employees that DOC submitted.

³⁴ Motion at 10-12.

³⁵ Motion at 10.

³⁶ See Petition at 4.

³⁷ Second Amended Petition Certificate of Service.

³⁸ Motion at 10-11.

³⁹ Motion at 11.

⁴⁰ See Board Rule 555.2.

Hearing Conference and Motion for Order of Mediation or Election (Motion to Postpone), filed December 16, 2024.⁴¹ FOP argues that, by granting the Motion to Postpone on December 20, 2024, and scheduling a mediation, PERB displayed bias against FOP.⁴² While PERB's response to the Motion to Postpone was issued before the time for FOP to respond had elapsed, this procedural misstep was not born of bias against FOP, nor did it prejudice FOP. Indeed, PERB granted FOP's subsequent opposition to the mediation, holding a conference with the Executive Director which provided all parties with the opportunity to voice their positions. FOP also argues that PERB ignored the Motion for Expedited Reconsideration which FOP filed following the Executive Director's decision to order an election. This is inaccurate, as the Board acknowledged FOP's Motion for Expedited Reconsideration in Opinion No. 1901.⁴³

Lastly, FOP asserts it is "troubling" that AFGE "somehow knew" of the Board's decision in Opinion No. 1901 before it was issued and posted election notices on DOC property on or about January 16, 2025 (the day the Board met and reached its determination that an election would be held).⁴⁴ PERB did not have *ex parte* communications with any of the parties to this case. AFGE's knowledge of the Board's decision resulted from AFGE attending the Board's January 16, 2026, Board Meeting, where the decision was announced. Such meetings are open to the public and all parties in attendance were privy to the same information.

FOP has failed to demonstrate that PERB's processes constitute clear legal error or demonstrate bias against any party to this case.⁴⁵

C. The request for third-party election oversight is denied.

Neutrality is at the core of PERB's mission, and FOP's ongoing appeal of Opinion No. 1871 has not affected PERB's commitment to facilitating a fair and equal representation election. Pursuant to § 1-617.10(c) of the CMPA, "Representation elections shall be conducted by an impartial body selected by the mutual agreement of the parties or, in the absence of a mutual agreement, by the Board." Board Rule 510.1 further provides that:

Representation elections will be conducted by the Board or by an impartial body selected by the mutual agreement of the parties. The parties to a representation election must inform the Board as to whether they have selected by mutual agreement an impartial body to conduct the election. If they inform the Board that they have not selected an impartial body, the Board will conduct the election.

Here, the parties have not mutually agreed on an impartial body to conduct the election. While FOP opposes PERB as the election overseer, AFGE and DOC do not. FOP has failed to demonstrate that PERB's position as overseer for the instant election constitutes clear legal error.⁴⁶

⁴¹ Motion at 13.

⁴² Motion at 13.

⁴³ Opinion No. 1901 at 3.

⁴⁴ Motion at 13.

⁴⁵ See *FOP/DOC Labor Comm.*, Slip Op. No. 1233 at 4.

⁴⁶ See *Id.*

Therefore, the request for third-party election oversight is denied, and PERB will conduct the instant election, in accordance with § 1-617.10(c) of the CMPA and Board Rule 510.1.

D. The request for unit clarification is denied, insofar as it seeks alteration of the proposed bargaining unit description.

The description of the proposed unit, established in Opinion No. 1901, is derived from AFGE's Second Amended Petition.⁴⁷ It includes eight hundred and ninety-eight (898) employees in twenty-three (23) position classifications, and reads as follows:

720 Correctional Officers CS-0007-6-8, 57 Lead Correctional Officers CS-0007-9, 1 Library Technician CS-1411-5, 1 Door System Mechanic CS-4749-9, 3 Material Handlers CS-6907-4, 4 Mail Clerks CS-0305-5, 9 IT Specialists CS-2210-11-12, 26 Clerical Assistants CS-303-7, 9 Maintenance Mechanics CS-4779-9, 2 Locksmith CS-4808-9, 3 Electrician Forman CS-2805-10, 4 Staff Assistants CS-303-9, 1 Masonry Worker CS-3603-8, 25 Legal Instrument Examiners CS-0963-9, 18 Case Managers CS-0101-11-12, 1 Sanitation Officer, 5 Lean Instrument Examiners CS-0963-9, 3 Plumber/Pipefitters CS-4206-9, 2 Payroll Technicians CS-0544-8, 1 Security Guard 0080-5, 1 Material Handlers, CS-6907-4, 1 AC Equipment Mechanic CS-5301-9, 1 Volunteer Service Assistant CS-0006-1.⁴⁸

By contrast, DOC provided a list of only eight hundred and twenty-five (825) individuals who are eligible for the proposed bargaining unit.⁴⁹ In light of this discrepancy, FOP "dispute[s] the actual number of employees in the bargaining unit, as well as the employees to be included,"⁵⁰ and requests that the Board reconsider and clarify the description thereof.⁵¹ In its Motion, FOP asserts that it may request a modification of the unit, with or without DOC's participation.⁵²

Under Board Rule 503.1(a), a recognition petition must include the number of employees in the proposed unit, as well as the general position classifications of those employees. A reasonable estimation of the number of employees in the proposed unit is required. However, where, as here, the showing of interest and employee list unequivocally demonstrate that the 30% minimum has been met, the precise number of employees in the proposed unit description is not determinative. More important is the list of position classifications included in the proposed unit. Especially in a large bargaining unit such as this one, the precise number of individuals covered is bound to frequently fluctuate. Regardless of any minor, accidental inaccuracies or fluctuations in the number of individuals covered, the positions permitted to participate in the election, and thus, the positions covered by any elected representative, will remain the same. FOP has not provided a statutory basis for alteration of the proposed bargaining unit description. Thus, the Board declines to change or expand upon it.

⁴⁷ Second Amended Petition at 1-2.

⁴⁸ Opinion No. 1901 at 1-2, 4.

⁴⁹ Motion at 7-8.

⁵⁰ Motion at 7.

⁵¹ Motion at 8.

⁵² Motion at 8.

Under Board Rule 505.1, a petition for unit modification of a non-compensation unit may be filed by a labor organization or by a labor organization and an agency jointly. If the proposed unit at issue is certified and FOP wishes to modify it, FOP may file a separate unit modification petition with PERB.

E. The request for an in-person election is granted.

In Opinion No. 1901, the Board established that the election in this case would be held via mail ballot.⁵³ Since that decision was issued, both FOP and AFGE have expressed a preference for an in-person election.⁵⁴ DOC has not opposed their request. Under Board Rule 510.8, parties are encouraged to enter into election agreements to determine procedural matters, such as the method of election. In the absence of an election agreement, PERB will “decide election procedures and issue a direction of election, without prejudice to the rights of a party to file objections to the procedural conduct of the election.” Here, FOP and AFGE have objected to a mail ballot election, and DOC has not expressed a preference. Accordingly, the election shall be held in person to accommodate the desires of the parties.

IV. Conclusion

An in-person ballot election shall be conducted by PERB to determine whether a majority of eligible employees in the proposed unit desire recognition of AFGE, FOP, or no union as their exclusive representative. Pursuant to Board Rule 510.8, the remaining procedural aspects of the election shall be determined by the parties’ election agreement or by the Executive Director, if no election agreement is reached.

⁵³ Slip Op. No. 1901 at 3-4.

⁵⁴ Motion at 14; Request at 2.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Motion for Reconsideration is denied, with respect to the request to hold this matter in abeyance.
2. The Motion for Reconsideration is denied, with respect to the request for third-party election oversight.
3. The Request for Reconsideration is denied, with respect to the request for unit clarification, insofar as it seeks alteration of the proposed bargaining unit description. The Board affirms that the following is an appropriate unit for collective bargaining over terms and conditions of employment:

720 Correctional Officers CS-0007-6-8, 57 Lead Correctional Officers CS-0007-9, 1 Library Technician CS-1411-5, 1 Door System Mechanic CS-4749-9, 3 Material Handlers CS-6907-4, 4 Mail Clerks CS-0305-5, 9 IT Specialists CS-2210-11-12, 26 Clerical Assistants CS-303-7, 9 Maintenance Mechanics CS-4779-9, 2 Locksmith CS-4808-9, 3 Electrician Forman CS-2805-10, 4 Staff Assistants CS-303-9, 1 Masonry Worker CS-3603-8, 25 Legal Instrument Examiners CS-0963-9, 18 Case Managers CS-0101-11-12, 1 Sanitation Officer, 5 Lean Instrument Examiners CS-0963-9, 3 Plumber/Pipefitters CS-4206-9, 2 Payroll Technicians CS-0544-8, 1 Security Guard 0080-5, 1 Material Handlers, CS-6907-4, 1 AC Equipment Mechanic CS-5301-9, 1 Volunteer Service Assistant CS-0006-1.

4. The Request for Reconsideration is granted, with respect to the request for an in-person election.
5. PERB shall conduct an in-person election in accordance with the provisions of D.C. Official Code § 1-617.10 and Board Rule 510 to determine whether a majority of eligible employees in the proposed unit desire to be represented for bargaining on terms and conditions of employment by the American Federation of Government Employees, District 14, the Fraternal Order of Police/Department of Corrections Labor Committee, or no union.
6. 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.

March 20, 2025
Washington, D.C.

APPEAL RIGHTS

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 is issued to file an appeal.