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

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| In the Matter of: | |
| American Federation of Government Employees, Local 2725, AFL-CIO | |
| Complainant | PERB Case No. 24-U-41 |
| v. | Motion to Vacate |
| | Motion for Reconsideration |
| District of Columbia Department of Health | Opinion No. 1922 |
| Respondent | |

## DECISION AND ORDER

### I. Statement of the Case

On June 12, 2025, the District of Columbia Department of Health (DOH) filed a motion for reconsideration (Motion) of the Board's decision in Opinion No. 1914,[1] which denied the parties' joint motion to vacate (Motion to Vacate) the Board's decision in Opinion No. 1898.[2] Opinion No. 1898 reversed the Executive Director's earlier administrative dismissal of this case following a motion for reconsideration (Motion for Reconsideration) from the American Federation of Government Employees, Local 2725 (AFGE). AFGE did not file an opposition to DOH's Motion.[3]

For the reasons stated herein, the Motion for Reconsideration is denied.

[1] *AFGE Local 2725 v. DOH*, Slip Op. No. 1914, PERB Case No. 24-U-41 (2025).
[2] *AFGE Local 2725 v. DOH*, Slip Op. No. 1898, PERB Case No. 24-U-41 (2025).
[3] On July 9, 2025, DOH filed a document styled "supplement to motion for reconsideration" (Supplement), which addressed a D.C. Superior Court order regarding an order granting the D.C. Department of Building's motion to permanently stay arbitration in a separate case between AFGE and the District government. As discussed, *infra*, Opinion No. 1914 does not address the issue of arbitrability and, therefore, the cited D.C. Superior Court order is inapplicable to the merits of the Motion at issue in the instant case.

## 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 to bargain in good faith.[4] Specifically, the Complaint asserted that DOH refused to arbitrate grievances concerning the assignment of work outside position descriptions.[5]

AFGE invoked arbitration on July 29, 2024.[6] On August 5, 2024, DOH declined to arbitrate the case.[7] On September 17, 2024, DOH filed an answer (Answer), admitting its refusal to arbitrate the related grievance.[8]

After reviewing the Complaint and Answer, on December 3, 2024, PERB's Executive Director administratively dismissed the Complaint for lack of jurisdiction.[9] On December 6, 2024, AFGE filed a motion for reconsideration (AFGE's Motion), arguing that the Executive Director erred in dismissing the Complaint.[10] AFGE argued that the Board had jurisdiction over the matter.[11] On December 20, 2024, DOH filed an opposition to the Motion for Reconsideration (Opposition). On January 16, 2025, the Board issued Opinion No. 1898, finding the administrative dismissal inconsistent with PERB precedent regarding jurisdiction and, therefore, granting AFGE's Motion.[12] The Board exercised its jurisdiction to "determine whether a particular act or

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[4] Complaint at 2-5.
[5] 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.
[6] Complaint at 5.
[7] Complaint at 5.
[8] Answer at 3.
[9] December 3, 2024 Administrative Dismissal Letter at 2 (citing *FOP/MPD Labor Comm. v. MPD*, 60 D.C. Reg. 2585, Slip Op. No. 1360 at 4, PERB Case No. 12-U-13 (2013)).
[10] AFGE's Motion for Reconsideration at 5.
[11] AFGE's 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. AFGE's Motion for Reconsideration 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. AFGE's Motion for Reconsideration at 5.
[12] *AFGE, Local 2725*, 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

omission constitutes an unfair labor practice under the CMPA,"[13] and found 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.[14]

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, requesting the Board vacate its decision in Opinion No. 1898. The parties argued that Opinion No. 1898 met the standard for vacatur—established under *U.S. Bancorp Mortgage Co. v. Bonner Mall* (*Bancorp*).[15] which requires a showing of "unusual and of exceptional circumstances to override the judicial and public interests in the finality of judgments.[16] 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.'"[17] The Board concluded that the instant case did not meet the D.C. Superior Court's standards for vacatur, which require "**exceptional circumstances**

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over a contractually inarbitrable grievance. *Id*. (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) (*WTU v. DCPS*). Rather, questions of arbitrability shall initially be resolved by the arbitrator. *AFGE, Local 2725*, 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*, 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). 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*, 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*, 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*, Slip Op. No. 1898 at 4.

[13] *Hawkins v. Hall*, 537 A.2d 571, 574 (D.C. 1988).

[14] *AFGE, Local 2725*, Slip Op. No. 1898 at 4.

[15] *U.S. Bancorp Mortgage Co.*, 413 U.S. 18 (1994) (holding that judicial precedents "serve the public interest and are not merely the property of private litigants"). *See also Kids Holding, Inc. v. Hinojosa*, 311 A.3d 910, 915 (D.C. 2024) (holding that in order to respect the finality of judgments, the D.C. Superior Court provides 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). In the Motion to Vacate, the parties asserted that: (1) 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; (2) resolution of the instant case could have benefited from a hearing, which might have provided an opportunity for clarifying outstanding factual issues; (3) a decision based solely on the pleadings, despite the presence of material factual disputes, presents an exceptional circumstance warranting vacatur; (4) it is in the public interest that matters with disputed facts are resolved based on a fully developed factual record; (5) the parties were actively working toward settling the underlying grievance; (6) 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. The Motion to Vacate suggested that "[h]ad mediation been offered [by PERB], there [wa]s a strong possibility that a settlement could have been reached."[22] Motion to Vacate at 1-4. The parties further asserted that preserving the option for mediation, which PERB did not actively prompt the parties to partake in, was essential and in the public's interest. Motion to Vacate at 4.

[16] *U.S. Bancorp Mortgage Co.*, 413 U.S. 18, 27-28. *See also Kids Holding, Inc. v. Hinojosa*, 311 A.3d 910, 915 (D.C. 2024)

[17] *U.S. Bancorp Mortgage Co.*, 413 U.S. 18.

(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."[18]

## III. Discussion

DOH asserts that it seeks reconsideration of the Board's decision in Opinion No. 1914 on the grounds that the decision: (1) misinterpreted applicable case law and relied on outdated case law; and (2) created an erroneous presumption of substantive arbitrability. DOH appears to draw such assertions from Opinion No. 1914's citations to Opinion No. 1898.[19] However, the sole issue addressed in Opinion No. 1914 was whether the parties' Motion to Vacate Opinion No. 1898 met the requisite standard for vacatur. While the Board's decision in Opinion No. 1914 effectively upheld its decision in Opinion No. 1898,[20] DOH mischaracterizes Opinion No. 1914 by arguing that it addresses issues of arbitrability.

Pursuant to Board Rule 559.3, "[t]he Board will not entertain a motion to reconsider a ruling on a motion for reconsideration filed under § 559.2." DOH's Motion is an apparent attempt to circumvent this rule by challenging the holdings of Opinion No. 1898 under the guise of challenging Opinion No. 1914's denial of the parties' Motion to Vacate. The Motion does not address the issue of vacatur in challenging Opinion No. 1914. Further, to the extent that DOH made these arguments in its opposition to AFGE's Motion for Reconsideration, the Board

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[18] *AFGE Local 2725 v. DOH*, Slip Op. No. 1914 at 3 (citing *Kids Holdings, Inc. v. Hinojosa*, 311 A.3d 910, 915 (D.C. 2024)).

[19] *See, e.g.*, Motion for Reconsideration at 2, fn 2, in which DOH reiterated the substantive discussion in Opinion No. 1898:

> PERB Opinion No. 1914 (2025) (cites: *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 (citing *Washington Teachers' Union, Loc. No. 6, Am. Fed'n of Tchrs, AFL-CIO v. D.C. Pub. Sch.*, 77 A.3d at 447). 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. 1989 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.).

[20] Further, the basis of the Board's finding of an unfair labor practice in Opinion No. 1898 was not substantive arbitrability, but rather DOH's refusal to act—whether to arbitrate the grievance or to file for pre-emptive relief—and, therefore, failure to bargain in good faith with AFGE in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5). *AFGE Local 2725 v. DOH*, Slip Op. No. 1898 at 4.

considered and rejected those arguments in Opinion No. 1898.[21] DOH's only remaining avenue of redress regarding the Board's decision in Opinion No. 1898 is to appeal *that decision* to the District of Columbia Superior Court, which DOH has already done.

## IV. Conclusion

The Board finds no grounds to overturn the decision in Opinion No. 1914. Therefore, the Motion for Reconsideration is denied.

## ORDER

**IT IS HEREBY ORDERED THAT:**

1. The Motion for Reconsideration is denied; 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.

July 17, 2025.

**Washington, D.C.**

[21] *Local 36, International Association of Firefighters, AFL-CIO v. FEMS*, 61 D.C. Reg. 5632, Slip Op. No. 1466 at 4, PERB Case No. 13-N-04(aa) (2014). The Board further notes that it will not consider new arguments raised in a motion for reconsideration to serve as a basis for reconsidering a decision. *See, e.g., Andebrhan Berhe v. WTU*, 66 D.C. Reg. 15811, Slip Op. No. 1723 at 2-3 (2019).

## 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 file an appeal.