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In the Matter of:	)	
	)	
District of Columbia Fire and Emergency	)	
Medical Services Department	)	
	)	
Petitioner	)	PERB Case No. 24-UC-01
	)	
and	)	Opinion No. 1969
	)	
International Association of Fire Fighters,	)	Motion for Reconsideration
Local 36	)	
	)	
Respondent	)	
	)	

I. Statement of the Case

For the reasons stated herein, FEMS' Motion for Reconsideration is Denied.

FEMS staff fall into two categories—civilian, unsworn single-role employees who are trained emergency medical services (EMS) providers and sworn dual-role employees who are trained as both EMS providers and firefighters.³ These categories have traditionally been split into two bargaining units such that only the sworn dual-role employees are members of IAFF.⁴ The

⁴ Petition at 2.

IAFF bargaining unit is defined as: “all sworn employees of the D.C. Fire and Emergency Medical Services Department through the Rank of Captain.”⁵

While membership in the IAFF bargaining unit has historically been reserved for dual-role employees, a memorandum of agreement in effect from June 17, 2009, through February 14, 2020 (2009 MOA) granted single-role EMS providers the opportunity to apply for distinct sworn positions, and those who were selected became sworn members of the IAFF bargaining unit.⁶ However, another memorandum of agreement (2020 MOA) was issued in April 2020, which removed the opportunity for employees without firefighter training (single-role employees) to become sworn employees.⁷

Despite the 2009 MOA no longer being in effect, in October 2022, FEMS promoted a civilian single-role EMS provider to a sworn role within the IAFF bargaining unit—that of Lieutenant/Paramedic.⁸ The following month, the Union filed a grievance concerning the applicability of the 2009 MOA to that employee, given the existence of the 2020 MOA.⁹ FEMS denied the grievance, asserting inarbitrability based on management rights.¹⁰ On March 4, 2024, FEMS initiated the instant case, requesting that the Board clarify that the employee in question is within the IAFF bargaining unit.

Meanwhile, IAFF’s grievance went to arbitration in May 2024. During the pendency of arbitration, PERB held this unit clarification case in abeyance. The Arbitrator issued an award (Award) on August 1, 2024, finding that the matter was arbitrable, holding that FEMS violated the 2020 MOA when it promoted the employee in question, and ordering the Agency to remove her from the sworn position.¹¹ On August 22, 2024, FEMS filed an arbitration review request with PERB, asserting that the Arbitrator exceeded her jurisdiction and the Award was contrary to law and public policy. PERB denied the request on December 19, 2024.¹²

On January 21, 2025, FEMS appealed PERB’s denial of the arbitration review request to the Superior Court, which denied the appeal on January 27, 2026.¹³ The related arbitration review request proceedings having concluded, PERB lifted the abeyance in this case on February 25, 2026.¹⁴ On June 2, 2026, the employee at issue filed a motion to intervene in this matter.

On June 8, 2026, FEMS filed its Petition, requesting that the Board clarify that the employee at issue is within the bargaining unit represented by IAFF. On June 22, 2026, IAFF filed an answer (Answer), requesting that PERB deny the Petition based on the doctrine of *res judicata*, as both the Board and the Superior Court had previously established that the contested individual

⁵ Petition at 2.

⁶ 2009 MOA at 1.

⁷ 2020 MOA at 1.

⁸ Answer at 2 and 6-7.

⁹ Answer, Exhibit 3 at 4.

¹⁰ Answer, Exhibit 3 at 4.

¹¹ Answer, Exhibit 3 at 20.

¹² *FEMS v. IAFF, Local 36*, 72 D.C. Reg. 463, Slip Op. No. 1893, PERB Case No. 24-A-16 (2025).

¹³ *Fire and Emergency Medical Services Department v. Public Employee Relations Board*, Case No. 2025-CAB-345.

¹⁴ On June 2, 2026, the employee who is the subject of this case filed a motion to intervene. The denial of the Petition renders that motion moot.

was not a sworn FEMS employee and, therefore, was ineligible for inclusion in the bargaining unit.¹⁵

On July 16, 2026, the Board issued Opinion No. 1962 in this matter. The Board established that the doctrine of *res judicata* or claim preclusion prevents relitigation of the same claim between the same parties.¹⁶ The Board explained that a final arbitration award is *res judicata* in a subsequent action involving the same parties and facts, and that an arbitration award is final if it shows an intention to resolve the issues submitted and has been confirmed by the Superior Court.¹⁷ The Board found that the instant Petition raised claims which were duplicative of those already resolved through arbitration and confirmed by the Superior Court.¹⁸ The court upheld its decision not to overturn the Award—an Award which ordered FEMS to remove the employee in question from her sworn position, thereby precluding her from inclusion in the bargaining unit. Thus, Opinion No. 1962 dismissed this case as *res judicata*. Given the dismissal, the Board deemed the employee's outstanding intervention request to be moot.

On July 28, 2026, FEMS filed a motion for reconsideration (Motion), arguing that the Board's decision should be overturned because: 1) Opinion No. 1962 was not served on the employee at issue, thereby depriving her of procedural due process;¹⁹ 2) the Board did not explain its decision to deny the intervention request;²⁰ and 3) the Board wrongly applied the doctrine of *res judicata*.²¹ IAFF filed an opposition on August 11, 2026.

III. Discussion

A motion for reconsideration must show clear error.²² The moving party must provide authority which compels reversal of the initial decision.²³ Motions that do not provide a basis to compel reversal of an initial decision will be denied.

In its Motion, FEMS argues that pursuant to D.C. Official Code § 1-617.13, the employee at issue was a “person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought” and therefore, was entitled to service of Opinion No. 1962.²⁴ The Agency argues that because the employee at issue was not served with the decision denying her

¹⁵ Answer at 12 (citing *Fire and Emergency Medical Services Department v. Public Employee Relations Board*, Case No. 2025-CAB-345; *FEMS v. IAFF, Local 36*, 72 D.C. Reg. 463, Slip Op. No. 1893, PERB Case No. 24-A-16 (2025)).

¹⁶ *FEMS*, Slip Op. No. 1962 at 3.

¹⁷ *Id.* (citing *Peterson v. WTU, Local 6*, 64 D.C. Reg. 74, Slip Op. No. 1596 at 7, PERB Case No. 12-S-01 (2017)).

¹⁸ *Id.*

¹⁹ Motion at 4-5 and 10-11.

²⁰ Motion at 5-7.

²¹ Motion at 7-9.

²² *FOP/DOC Labor Comm. v. MPD*, 59 D.C. Reg. 7165, Slip Op. No. 1233 at 4, PERB Case No. 11-E-01 (2012).

²³ *AFSCME, District Council 20 v. OSSE*, 65 D.C. Reg. 11554, Slip Op. No. 1679 at 3, PERB Case No. 17-N-04(a) (2018).

²⁴ Motion at 4-5.

intervention request, she was not informed of her appeal rights and thus, was deprived of her due process rights and vested property interest,²⁵ amounting to a reversible error by the Board.²⁶

This argument is unpersuasive. First, FEMS lacks standing to argue for reconsideration based on the interests of a third party it does not represent. The Board has established that an employer does not have standing to represent the interests of its employees before PERB.²⁷ But even if the Agency had standing, its argument is based on a misreading of Opinion No. 1962. That decision did not deny the employee's motion to intervene. Rather, it found the motion moot. Additionally, FEMS asserts that "According to the Certificate of Service for Opinion 1962 and according to an examination of all other filings in File & ServeXpress [the intervenor] was not served. . . ." FEMS' contention has no basis in fact and demonstrates a lack of candor before the Board. A review of the record in File & ServeXpress shows that the representative for the intervenor was E-served a copy of Opinion 1962 on July 17, 2026, at 11:59 AM, the same time as E-service was provided for the Respondent and the Agency. Although the Certificate of Service does not include the address for the intervenor's representative, the representative was in fact served a copy of the decision. FEMS asserts that it examined all filings in File & ServeXpress but failed to disclose that the representative of the intervenor was E-served in a manner authorized by the rules.

FEMS also argues that Opinion No. 1962 should be reversed because it does not comply with Board Rule 502.16, which the Agency asserts requires that a decision granting or denying an intervention request be accompanied by an explanation of the reasons for that decision.²⁸ In support of this argument, FEMS cites the Superior Court's holding that a Board decision is defective if the determination is "simply stated without explanation."²⁹

This argument is also unavailing. As stated, FEMS lacks standing to advocate on behalf of the employee, as she is a third party whom the Agency does not represent. Additionally, the Agency's argument is predicated on a misunderstanding of the Board's rules. Under Board Rule 502.15, "[a]n interested party who wishes to intervene in a pending proceeding must promptly file a request to intervene and state the grounds for intervention." Board Rule 502.16 simply states that "[t]he Board or the Executive Director may grant or deny a request for intervention, taking into consideration the nature of the interests of the intervenor, whether those interests will be adequately protected by existing parties, and the timeliness of the intervenor's request." These rules do not require the Executive Director to explain the deliberative process surrounding

²⁵ Motion at 10 (citing *Hoey v. D.C.*, 540 F. Supp. 2d 218, 225 (D.D.C. 2008)).

²⁶ Motion at 9-11 (citing *Leonard v. D.C.*, 794 A.2d 618, 623-24 (D.C. 2002)).

²⁷ See *D.C. Nurses Ass'n and Nat'l Ass'n of Special Police and Security Officers v. Not-for-Profit Hosp. Corp.*, 65 D.C. Reg. 7486, Slip Op. No. 1669 at 9, PERB Case No. 17-RC-01 (2018) (citing *Pennsylvania v. State Conference of Police Lodges of the FOP*, 520 A.2d 25, 27 (Pa. 1987) (holding that a public employer lacked standing to assert that an arbitration award establishing a closed shop violated the constitutional rights of public employees who chose not to join the union); *Metro. Alliance of Police, Barrington Hills Police Chapter 576 v. Village of Barrington Hills (Police Dep't)*, No. S-RC-10-049, slip op. at 6 (Ill. Labor Relations Bd. Mar. 1, 2010) (holding that employer lacked standing to assert the procedural due process rights of its employees)).

²⁸ Motion at 4-5.

²⁹ Motion at 6 (citing *D.C. Metro. Police Dep't v. D.C. Pub. Emp. Rel. Bd.*, 282 A.3d 598, 606 (D.C. 2022)).

determinations regarding intervention petitions, merely to consider certain factors. Moreover, in the instant case, the motion was deemed moot.

Lastly, FEMS contends that PERB wrongly applied the doctrine of *res judicata*.³⁰ The Agency asserts that *res judicata*, or claim preclusion, dictates that “a final judgment on the merits of a claim bars relitigation in a subsequent proceeding of the same claim between the same parties or their privies.”³¹ FEMS asserts that in the underlying arbitration, the core issue was whether, if the employee’s grievance was timely or arbitrable, the Agency violated the 2020 MOA.³² The Agency contends that at arbitration, the issue was the employee’s placement into a specific position, while the issue before PERB is whether she is included in the IAFF bargaining unit.³³

This argument also fails. The doctrine of *res judicata* or claim preclusion prevents relitigation of the same claim between the same parties. The Board has established that this doctrine bars not only claims that were raised in the first action but also claims arising out of the same transaction that could have been raised in the first action.³⁴ While the issue at arbitration was the employee’s placement into a sworn position, the Arbitrator’s holding, affirmed by the court, dictated her eligibility for the bargaining unit. Moreover, the parties could have raised the eligibility issue at arbitration, but they did not. Thus, *res judicata* applies.

IV. Conclusion

The Motion for Reconsideration is hereby 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 Peter Winkler and Members Lee Clark, Mary Anne Gibbons, and Renee Bowser.

September 17, 2026

Washington, D.C.

³⁰ Motion at 7-9.

³¹ Motion at 7 (quoting *Bell v. Weinstock, Friedman & Friedman, P.A.*, 285 A.3d 505, 509 (D.C. 2022)).

³² Motion at 7.

³³ Motion at 7-8.

³⁴ *Peterson v. WTU*, 64 D.C. Reg. 74, Slip Op. No. 1596 at 7, PERB Case No. 12-S-01 (2017) (citing *Calomiris v. Calomiris*, 3 A.3d 1186, 1190 (D.C. 2010)).

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.