Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Government of the District of Columbia, District of Columbia Public Schools, and Child and Family Services Administration,	PERB Case No. 12-N-03
Complainants,	Opinion No. 1429
v.	Motion for Reconsideration
American Federation of State, County, and Municipal Employees, District Council 20, Local Union 2921, AFL-CIO, and Washington Teachers Union, Local #6, American Federation of Teachers, AFL-CIO,	
Respondents.	

DECISION AND ORDER

I. Statement of the Case

Complainants Government of the District of Columbia ("District"), District of Columbia Public Schools ("DCPS"), and District of Columbia Child and Family Services Administration ("CFSA") (collectively, "Complainants") filed with the Public Employee Relations Board ("PERB") an Amended Motion for Injunctive Relief[1] ("Motion for Injunction") pursuant to PERB Rule 553.1, in which Complainants named American Federation of State, County, and Municipal Employees, District Council 20, Local 2921, AFL-CIO ("AFSCME") and Washington Teachers Union, Local 6 ("WTU") (collectively, "Respondents") as the Respondents. (Motion for Injunction, at 1-3). In the Motion, Complainants moved PERB to "issue a permanent injunction effectively staying the arbitration proceedings in Federal

[1] Complainants' original Motion for Injunctive Relief listed DCPS as the only Complainant and AFSCME as the only Respondent.

Mediation and Conciliation Services ("FMCS") Case Nos. 101106-51126-A and 101106-51122-A, both involving a Reduction-in-Force ("RIF") by DCPS; American Arbitration Association ("AAA") Case No. 16 390 00555 10, involving a RIF by CFSA; and [AAA] Case No. 16 390 00817 10, to the extent the grievance challenges the final ratings of DCPS teachers under the IMPACT performance-evaluation instrument." (Motion for Injunction, at 1-2).

Respondents subsequently filed an Opposition to the Motion for Injunction and a Motion to Dismiss. (Opposition to Motion for Injunction, at 1-7). PERB's Executive Director administratively dismissed the Motion for Injunction on grounds that Complainants failed to "[establish] grounds or authority for the Board to grant a motion to stay the arbitration proceedings cited." (Admin. Dismissal, at 3).

Complainants subsequently filed a Motion for Reconsideration, Clarification and/or Amendment of the Executive Director's Dismissal ("Motion for Reconsideration"), to which Respondents filed an Opposition ("Opposition to Motion for Reconsideration"). (Motion for Reconsideration, at 1-3); and (Opposition to Motion for Reconsideration, at 1-6).

No other pleadings having been filed in this matter, Complainants' Motion for Reconsideration is now before the Board for disposition.

II. Background

A. AFSCME & DCPS RIF Cases

On October 2, 2009, DCPS issued a notice that it would RIF approximately 41 employees in AFSCME's bargaining unit on November 2, 2009. (Motion for Injunction, at 3). On October 16, 2009, AFSCME filed a grievance challenging the RIF, which DCPS denied. *Id.*, at 3-4. AFSCME demanded arbitration and the matter was referred to FMCS, which issued a panel on November 6, 2009, as FMCS Case No. 101106-51126-A. *Id.*, at 4. When FMCS sent a letter asking DCPS to rank the arbitrators on the panel, DCPS labor counsel, Michael Levy ("Mr. Levy"), provided conditional rankings of arbitrators but further asserted that DCPS objected to ranking the arbitrators because "protests regarding RIF implementations are, by statute, substantively non-arbitrable." *Id.*, at 2, 4 (citing the Revised Uniform Arbitration Act, D.C. Code § 16-4407(b) and (c)[2] ("RUAA")). Mr. Levy further requested that FMCS cease its

[2] D.C. Code § 16-4407 (b) and (c): "(b) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate. (c) If the court finds that there is no enforceable agreement, it may not, pursuant to subsection (a) or (b) of this section, order the parties to arbitrate."

involvement in the case because, "pursuant to its own regulations, it cannot resolve arbitrability issues." *Id.*, at 4 (citing 29 CFR § 1404.4). This same scenario played out with regard to another DCPS RIF and AFSCME grievance from August and September 2009, resulting in FMCS Case No. 101106-51122-A. *Id.* FMCS appointed arbitrators for the two (2) cases, but both matters were stayed indefinitely when DCPS' filed motions in D.C. Superior Court ("Court") seeking to have the cases declared non-arbitrable under the RUAA. *Id.*, at 4-5.

B. AFSCME & CFSA RIF Case

On April 26, 2010, CFSA notified AFSCME that it intended to realign the agency which would result in a RIF of all Social Services Assistant ("SSA") positions and create the new position of Family Support Worker ("FSW"). *Id.*, at 5-6. On May 21, 2010, AFSCME filed a grievance challenging the RIF, which CFSA later denied on the grounds that the RIF was governed by D.C. Code § 1-624.08 *et seq.* (governing the abolishment of positions in the District for the fiscal year 2000 and subsequent fiscal years), which it said granted CFSA "unfettered discretion to identify positions for abolishment notwithstanding the provisions of [D.C. Code §§] 1-617.08 [(governing management rights)] or 1-624.02(d) [(requiring that RIFs not take place until the employee has been afforded at least 15 days written advance notice of the action and applicable retention standing and appeal rights)]." *Id.*, at 6-7. CFSA further asserted that "any attempt to subject a RIF to the grievance and arbitration procedure of a [collective bargaining agreement] is invalid" because D.C. Code § 1-624.08(f)(2) limits appeals of RIFs to the D.C. Office of Employee Appeals ("OEA"). *Id.*, at 7. AFSCME demanded arbitration and the matter was referred to AAA, which issued a panel on July 20, 2010, under AAA Case No. 16 390 00555 10. *Id.* Despite CFSA's assertion that "AAA does not have jurisdiction to resolve substantive arbitrability issues", AAA appointed an arbitrator to the case. *Id.*

C. WTU & DCPS IMPACT Case

In or about fall 2009, DCPS implemented a new teacher evaluation procedure known as IMPACT. *Id.*, at 8. Following the 2009-2010 school year, approximately 94 WTU bargaining unit members were rated "Ineffective" and approximately 670 members were rated "Minimally Effective" in their IMPACT evaluations. *Id.* DCPS terminated all but six (6) of those who received "Ineffective" ratings. *Id.* Those who received "Minimally Effective" ratings were informed that they would be terminated after the next school year if they received a second "Minimally Effective" or lower rating. *Id.* WTU demanded arbitration and the matter was referred to AAA, which issued a panel on November 19, 2010, under AAA Case No. 16 390 00817 10. *Id.* D.C.'s Office of Labor Relations and Collective Bargaining ("OLRCB"), on behalf of DCPS, conditionally participated in the arbitrator selection process, but simultaneously

objected to the arbitrability of the matter on grounds that D.C. Code § 1-617.18 "makes it clear that the evaluation process for DCPS employees shall be a non-negotiable item for collective bargaining," and Section 15.3 of the collective bargaining agreement between DCPS and WTU "says that 'DCPS's compliance with the evaluation process, and not the evaluation judgment, shall be subject to the grievance and arbitration procedure.'" *Id.*, at 8-9.

D. D.C. Superior Court Motions to Stay Arbitrations

On July 2, 2010, Complainants filed a Motion to Stay Arbitration Proceedings with the D.C. Superior Court in each of the three (3) RIF cases asking the Court to declare the Respondents' challenges to the RIFs non-arbitrable under the RUAA. *Id.*, at 9-10. All three (3) motions were assigned to Judge Joan Zeldon ("Judge Zeldon"), who on March 7, 2012, issued a single opinion dismissing the three (3) motions on grounds that the Court lacked jurisdiction to stay the arbitrations because the CMPA preempted the RUAA and because Complainants had not yet exhausted their administrative remedies ("Zeldon Decision"). *Id.*, and Exhibit 9. On April 5, 2012, DCPS appealed the Zeldon Decision to the D.C. Court of Appeals, after which the Court of Appeals consolidated the three (3) cases[3]. *Id.*, at 10; and (Opposition to Motion for Injunction, at 2).

On February 11, 2011, DCPS filed a motion with the D.C. Superior Court to stay the arbitration proceedings in the IMPACT grievance, also invoking the RUAA. *Id.*, at 10. DCPS' motion was assigned to Judge Anita Josey-Herring ("Judge Josey-Herring"), who on August 3, 2011, entered an order permanently staying the arbitration proceedings "to the extent that the IMPACT Grievance seeks to challenge the final evaluations or ratings of DCPS employees",[4] but denied DCPS' motion to stay the arbitration "to the extent that the IMPACT Grievance seeks to challenge whether DCPS properly adhered to the evaluative process outlined in the IMPACT Instrument" ("Josey-Herring Decision"). *Id.*, at 10, and Exhibit 11. WTU appealed the Josey-Herring Decision to the D.C. Court of Appeals, arguing that "the Superior Court did not have jurisdiction to enter the stay because PERB's jurisdiction over the matter preempted the RUAA", and alternatively, that "DCPS failed to exhaust its administrative remedies by seeking relief from PERB." *Id.*, at 10.

[3] Case Nos. 12-CV-476, 12-CV-477, and 12-CV-500.

[4] Judge Josey-Herring further found that "any challenge to the final ratings and evaluations under the IMPACT instrument must follow the administrative appeals process outlined in 5 DCMR §§ 1306.8-1306.13." (Motion for Injunction, Exhibit 11).

E. Motion for Injunctive Relief, Respondents' Opposition, and Administrative Dismissal

On May 22, 2012, Complainants filed with PERB its Motion for Injunction, which it amended on May 30, 2012.[5] In the Motion, Complainants state that they "[do] not believe PERB has authority to grant the relief sought" because they "[do] not believe that, under the best view of the law, PERB has jurisdiction to interpret a law or a collective bargaining agreement to determine the arbitrability of particular matters." *Id.*, at 2, 11. Complainants contend that the RUAA places said authority instead with the D.C. Superior Court. *Id.*, at 2. As a result, Complainants assert that they believe "Judge Zeldon wrongly dismissed [their] motions to stay under the RUAA, and that Judge Josey-Herring rightly exercised jurisdiction over a similar motion." *Id.*, at 11. Notwithstanding, Complainants filed their Motion for Injunction with PERB to "preserve [their] ability to seek relief should the D.C. Court of Appeals eventually rule that PERB, rather than the Superior Court, is the proper body to entertain motions to stay arbitration like those at issue." *Id.*, at 2.

In addition, Complainants admit that none of PERB's statutory authorities fit "comfortably" with their requests that PERB determine whether it has authority to issue permanent stays of arbitration and, if it does, to issue said injunctions. *Id.*, at 11.

Complainants suggest that under D.C. Code § 1-605.02(3)[6], PERB could consider whether Respondents committed an unfair labor practice and order a stay of the arbitrations if PERB determines that Respondents' "pursuit of arbitration over matters that are plainly not arbitrable under their respective CBAs or applicable laws" constitutes a "refusal to bargain in good faith" in violation of D.C. Code § 1-617.04(b)(1) and (3)[7]. *Id.*, at 12-13 (citing *District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 59 D.C. Reg. 6956, Slip Op. No. 1224, PERB Case No. 09-U-48 (2011)).

Alternatively, Complainants suggest that under D.C. Code § 1-615.02(5)[8], PERB could consider whether it can assert jurisdiction over the arbitrations in accordance with its power to determine whether a matter is negotiable within the scope of collective bargaining. *Id.*, at 14-15.

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[5] See Footnote 1.

[6] D.C. Code § 1-605.02(3): "The Board shall have power to do the following: ... (3) Decide whether unfair labor practices have been committed and issue an appropriate remedial order".

[7] D.C. Code § 1-617.04(b)(1) & (3): "(b) Employees, labor organizations, their agents, or representatives are prohibited from: (1) Interfering with, restraining, or coercing any employees or the District in the exercise of rights guaranteed by this subchapter; ... (3) Refusing to bargain collectively in good faith with the District if it has been designated in accordance with this chapter as the exclusive representative of employees in an appropriate unit".

[8] D.C. Code § 1-605.02(5): "The Board shall have power to do the following: ... (5) Make a determination in disputed cases as to whether a matter is within the scope of collective bargaining".

Complainants argue that under this theory, PERB could find that in accordance with "D.C. Code § 1-624.04 (2006 Repl.) (which applies to the DCPS RIF-related grievances), and D.C. Code § 1-624.08 (2006 Repl.) (which applies to the CFSA RIF-related grievance), as well as PERB precedent—RIFs and RIF procedures are not within the scope of collective bargaining" and that, as a result, "any grievances attacking the administration of a RIF are non-arbitrable." *Id.* Furthermore, Complainants argue that because D.C. Code § 1-617.18 states that "[n]otwithstanding any other provision of law, rule, or regulation, the evaluation process and instruments for evaluating [DCPS] employees shall be a nonnegotiable item for collective bargaining purposes," PERB could find that WTU's IMPACT-related grievance is similarly non-arbitrable. *Id.* Complainants admit, however, that this theory "is not a perfect fit, because it is not clear how this matter becomes a 'disputed case' before PERB." *Id.*, at 14. Furthermore, Complainants admit that "while [they base their] RIF-related motions on statutes and regulations that remove RIF-related grievances from the scope of collective bargaining, much of [their] authority for arguing the non-arbitrability of WTU's IMAPCT-related claims arises out of the plain language of [collective bargaining agreement between WTU and DCPS]." *Id.*

Lastly, Complainants suggest that under D.C. Code § 1-615.02(6)[9], PERB could consider whether its power to hear appeals from and to enforce arbitration awards empowers it to exercise jurisdiction over the arbitrations. *Id.*, at 15. Complainants note that D.C. Code § 1-615.02(6) is the provision the D.C. Court of Appeals cited in its holdings that the CMPA preempts the RUAA. *Id.* (citing *District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 997 A.2d 65 (D.C. 2010); and *District of Columbia v. American Federation of Government Employees, Local 1403*, 10 A.3d 764 (D.C. 2011)).

Because of Complainants' belief that PERB does not have authority to issue the relief they request in their Motion for Injunction under any of the three (3) possible theories they present, and because Complainants failed to label its Motion under any of their three (3) theories, PERB designated the case as a negotiability appeal solely for the purpose assigning it a case number. (Motion for Injunction, at 1).

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[9] D.C. Code § 1-605.02(6): "The Board shall have power to do the following: ... (6) Consider appeals from arbitration awards pursuant to a grievance procedure; provided, however, that such awards may be modified or set aside or remanded, in whole or in part, only if the arbitrator was without, or exceeded, his or her jurisdiction; the award on its face is contrary to law and public policy; or was procured by fraud, collusion, or other similar and unlawful means; provided, further, that the provisions of this paragraph shall be the exclusive method for reviewing the decision of an arbitrator concerning a matter properly subject to the jurisdiction of the Board, notwithstanding any provisions of Chapter 44 of Title 16 of the District of Columbia Official Code".

In their Opposition to Motion for Injunction, Respondents urge PERB to dismiss Complainants' Motion for Injunction on grounds that: 1) "PERB's Rules do not allow for a stand-alone action for 'injunctive relief"; 2) Complainants' Motion "is procedurally deficient as it does not comply with many of the initial filing requirements of [PERB] Rules 520, 532, or 538"; 3) the Motion cannot be analyzed as an arbitration review request under D.C. Code § 1-605.02(b) "when there is, in fact, no arbitration award to review"; 4) the Zeldon Decision held that while "it very well may be" that the issues in the arbitrations are non-arbitrable under D.C. Code § 1-624.08(a) and (j) and PERB precedent, the question of their arbitrability should have been first "directed to the arbitrators" to make the determination and then appealed to PERB and ultimately to the D.C. Superior Court if Complainants were dissatisfied with the results[10]; and 5) Complainants' Motion is "unripe and without merit". (Opposition to Motion for Injunction, at 1-7) (internal citations omitted except that noted in Footnote 9).

On July 13, 2012, PERB's then Executive Director, Ondray Harris, administratively dismissed Complainants' Motion for Injunction reasoning that: 1) no unfair labor practice complaint had been filed with PERB under which it could consider Complainants' Motion in accordance with D.C. Code § 1-605.02(3); 2) no "disputed case" over the negotiability of a subject of collective bargaining had been brought or alleged under which PERB could consider Complainants' Motion in accordance with D.C. Code § 1-605.02(5); and 3) there had not been an arbitration award issued or an appeal of an award filed under which PERB could consider Complainants' Motion in accordance with D.C. Code § 1-605.02(6). (Admin. Dismissal, at 2-3). PERB's Executive Director further reasoned that PERB could not stay the arbitrations on the alleged basis that the issues being arbitrated were not arbitrable because established PERB precedent required such initial questions of arbitrability to be first brought to and resolved by the arbitrator. *Id.*, at 3 (citing *American Federation of State, County and Municipal Employees, District Council 20, AFL-CIO v. District of Columbia General Hospital and the District of Columbia Office of Labor Relations and Collective Bargaining*, 36 D.C. Reg. 7101, Slip Op. No. 227, PERB Case No. 88-U-29 (1989)). Based on these rationales, the Executive Director found that Complainants failed to "[establish] grounds or authority for the Board to grant a motion to stay the arbitration proceedings cited" and administratively dismissed the Motion. *Id.*

F. Motion for Reconsideration and Respondents' Opposition

On July 27, 2012, Complainants filed a Motion for Reconsideration of the Executive Director's Administrative Dismissal, arguing that his opinion that initial questions of arbitrability

[10] *D.C. v. AFSCME, Local 2921*, Superior Court Case No. 10-CA-4944; *D.C. v. AFSCME, Local 2921*, Superior Court Case No. 10-CA-4943; and *D.C. v. AFSCME, District Council 20*, Superior Court Case No. 10-A-9096, Order, *supra*, at 9.

should be first directed to the arbitrator 1) is contrary to the RUAA and established U.S. Supreme Court and District precedent; 2) is superfluous and not germane to his decision that PERB does not have jurisdiction over the matter; and 3) applies to questions of procedural arbitrability, but not to questions of substantive arbitrability which Complainants assert "have long been held to be decided by the courts." (Motion for Reconsideration, at 1-3) (citing the RUAA, *supra*; *American Federation of Government Employees, Local No. 383, AFL-CIO v. District of Columbia*, 2008 CA 006932 B (D.C. Sup. Ct., April 28, 2009) (holding that "[the court], not an arbitrator, must decide whether the Abolishment Act invalidates the arbitration clause and thereby precludes arbitration of [the complainant union's] claims"); and *AT&T Technologies, Inc. v. Communications Workers of America, et al.*, 475 U.S. 643, 648 (1986) (holding that "whether or not the company was bound to arbitrate, as well as what issues it must arbitrate, is a matter to be determined by the Court on the basis of the contract entered into by the parties")). Relying on the foregoing authority, Complainants urge the Board "to amend the Executive Director's decision and clarify that arbitrability is an initial question for the arbitrator only where jurisdiction with PERB is sought by way of an arbitration review request pursuant to D.C. Official Code § 1-605.02(6) (2001 ed.)." *Id.*, at 3. Complainants further assert that "legal precedent establishes that with regard to issues of arbitrability PERB is limited to its enumerated authority to review arbitration decisions only" and that, accordingly, "PERB's Executive Director[11] is hereby urged to reconsider, clarify and/or amend his Denial to reflect the limited circumstance to which his reference to the arbitrability question being resolved by an arbitrator applies." *Id.*

In their July 31, 2012, Opposition to Complainants' Motion for Reconsideration, Respondents argue that it is unclear what Complainants are asking the Board to reconsider, clarify, or amend. (Opposition to Motion for Reconsider, at 1). Respondents note that Complainants appear to challenge PERB's longstanding precedent that questions of arbitrability should be first addressed by the arbitrator, and then seem to contradict their argument by urging the Executive Director to amend or clarify his Dismissal to emphasize that D.C. Code § 1-605.02(6) mandates that PERB can only address an arbitrability question when an arbitrator has previously made a determination on said question. *Id.*, at 1-2. Speaking to this apparent contradiction, Respondents state:

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[11] The Board notes that Complainants first ask *the Board* "to reconsider and issue a clarification and/or amendment of the Executive Director's Denial of Complainants' Amended Motion for Injunctive Relief", but later in the Motion ask "*PERB's Executive Director* ... to reconsider, clarify and/or amend his Denial to reflect the limited circumstance to which his reference to the arbitrability question being resolved by an arbitrator applies. " (Motion for Reconsideration, at 1, 3) (emphasis added). In addition, Complainants filed their Motion for Reconsideration under PERB Rule 559, which governs motions for reconsideration of Board opinions. The appropriate Rule to file a motion for reconsideration of an action by the Executive Director is PERB Rule 500.4. Notwithstanding these confusions and errors, the Board assumes that Complainants want the Board to review the Executive Director's Dismissal and has proceeded accordingly.

> Obviously, it is a prerequisite that there be an arbitration award already issued before a party can seek relief before PERB in the context of an arbitration review request. But before there can be an arbitration award, there must be a determination of arbitrability. Before that determination is made, there would be no way for the parties to know whether they would later wish to seek PERB's review. Thus, [Complainants'] request for 'clarification' ... makes no sense and should be denied.

Id., at 2.

In response to Complainants' argument that the Executive Director erred in his analysis because the RUAA voids PERB's longstanding precedent that questions of substantive arbitrability should be first addressed by the arbitrator and instead places that authority with the Court, Respondents contend that "PERB's determination in this case is in keeping with well-established authority" that Judge Zeldon upheld and affirmed when she found that these very questions of arbitrability should have been first "directed to the arbitrators," then appealed to PERB and ultimately to the D.C. Superior Court if Complainants were dissatisfied with the results. *Id.*, at 3-6 (internal citations omitted[12]). Furthermore, Respondents contend that Complainants' argument concerning the Executive Director's failure to distinguish between procedural and substantive arbitrability is irrelevant because "PERB's case law is clear that questions of both procedural and substantive arbitrability concerning CMPA sanctioned arbitrations must be presented to the arbitrator in the first instance." *Id.*, at 4-5 (citing *American Federation of Government Employees, Local 2725 v. District of Columbia Department of Consumer and Regulatory Affairs, et al.*, 59 D.C. Reg. 5041, Slip Op. No. 969, PERB Case No. 06-U-43 (2009) (holding that matters of substantive arbitrability must be initially determined by the arbitrator and that the exclusive method by which a party can challenge the arbitrator's determination is to appeal the decision to PERB pursuant to D.C. Code § 1-605.02(6)); and *District of Columbia Department of Human Services v. Fraternal Order of Police/Department of Human Services Labor Committee*, 50 D.C. Reg. 5028, Slip Op. No. 691, PERB Case Nos. 02-A-04 and 02-A-05 (2002)).

Finally, Respondents note that:

> With respect to the remainder of its [Motion for Reconsideration], the District appears to have lost sight of the fact that it initiated this

[12] To support their contention that "PERB's determination in this case is in keeping with well-established authority", Respondents cites approximately seven (7) PERB cases from 1989-2011 that stand for the principle that "arbitrability is an initial question for the arbitrator to decide if the parties challenge jurisdiction on this ground." (Opposition to Motion for Reconsideration, at 1-7).

> case in an effort to persuade PERB to exercise jurisdiction to enjoin the Union's various arbitration matters on the theory that the grievances are not arbitrable. In its amended motion for a permanent injunction, the District openly admitted that it believes PERB lacks the jurisdiction to grant the requested relief. It should come as no surprise then, that PERB dismissed the motion for an injunction on the grounds that it lacked jurisdiction to issue the requested relief. ... Apparently, the District is dissatisfied with the state of the law; but it does not explain how PERB should exercise jurisdiction over its pre-arbitration claims.

Id., at 2-3. Respondents concluded that Complainants have "presented no compelling reason for PERB to revisit its order dismissing [Complainants'] motion for a permanent injunction" and that "[f]ar from clarifying the decision, [Complainants'] suggested revision is confusing, circular, contrary to law, and entirely unnecessary." *Id.*, at 6. As such, Respondents urge PERB to deny Complainants' Motion for Reconsideration. *Id.*

III. Discussion

Initially, the Board notes that Complainants' Motion for Reconsideration does not challenge the Executive Director's rejection of the three (3) proposed theories that Complainants originally suggested PERB could rely on to exercise jurisdiction over the arbitrations, in which the Executive Director reasoned that: 1) because no unfair labor practice complaint had been filed, PERB could not consider Complainants' Motion in accordance with D.C. Code § 1-605.02(3); 2) because no "disputed case" over the negotiability of a subject of collective bargaining had been brought or alleged, PERB could not consider Complainants' Motion in accordance with D.C. Code § 1-605.02(5); and 3) because there had not been an arbitration award issued and no appeal of an award had been filed, PERB could not consider Complainants' Motion in accordance with D.C. Code § 1-605.02(6). (Admin. Dismissal, at 2-3). The Board therefore affirms the parts of the Executive Director's Dismissal that were based upon that reasoning.[13]

Additionally, the Board finds it is not necessary "to clarify or amend" the Executive Director's Dismissal to emphasize that D.C. Code § 1-605.02(6) limits PERB's authority to review arbitration awards only to instances when there is a previously issued award or decision

[13] The Board agrees with Respondents that even if PERB could consider staying the arbitrations under one or all of Complainants' proposed theories, Complainants' Motion for Injunction would still be dismissed for being "procedurally deficient as it does not comply with many of the initial filing requirements of [PERB] Rules 520, 532, or 538". (Opposition to Motion for Injunction, at 2, Footnote 1).