

I. Statement of the Case

The grievance before the Arbitrator was filed by FOP on June 18, 2013.⁴ The grievance alleged that DYRS violated the collective bargaining agreement when it issued and unilaterally implemented Policy No. DYRS-015, a Time, Attendance and Leave Policy, on June 17, 2013.⁵ DYRS-015 applied to all non-probationary Youth Development Representatives (“YDR’s”) in the bargaining unit, and outlined the discipline to be applied for employees who violated it.⁶ As a remedy, FOP asked the Arbitrator to order that DYRS-015 and any corrective and adverse actions issued to employees under it be rescinded, and that the affected employees be made whole for losses incurred as a result of any imposed discipline.⁷

DYRS argued that the grievance was improperly designated and filed as a “union/class” grievance when it should have been filed as a “group” grievance. Under Article 30, Section 3(D)(2) of the collective bargaining agreement, “group” grievances are those “involving a number of employees in the unit” and require that “[a]ll employees of the group must sign the grievance.”⁸ Under Article 30, Section 3(D)(3), “union/class” grievances may be “signed by the Union President or designee”, but “will be processed only if the issue raised is common to all bargaining unit employees.”⁹ FOP’s grievance in this matter was designated in the subject line as a “Union Grievance Concerning Time, Attendance, and Leave Policy”, and was only signed by FOP Chairperson Takisha Brown.¹⁰ Further, FOP’s Notice of Intent to Arbitrate was also designated in the subject line as a “Union Grievance” and again was only signed by Ms. Brown.¹¹

DYRS contended that DYRS-015 was not common to all bargaining unit employees because it only applied to non-probationary YDR’s, and did not apply to the unit’s probationary YDR’s and non-YDR’s.¹² Accordingly, DYRS argued that FOP’s grievance did not meet the requirements of a “union/class” grievance and instead needed to have been filed as a “group” grievance, and therefore needed to be signed by every employee affected by DYRS-015.¹³ DYRS’ position was that because FOP’s grievance did not meet the procedural requirements of either Section 3(D)(2) or Sections 3(D)(3), the entire grievance was nonarbitrable.¹⁴

In the Award, the Arbitrator rejected DYRS’ nonarbitrability argument, stating:

⁴ Award at 1.

⁵ On June 18, 2003, FOP also filed an unfair labor practice complaint with PERB which made similar allegations. That case (PERB Case No. 13-U-31) is still pending before PERB.

⁶ Award at 1.

⁷ *Id.* at 1-2.

⁸ *See Id.* at 2; *see also* CBA at 37.

⁹ *Id.*

¹⁰ (Request, Exhibit 2) (hereinafter cited as “Grievance”).

¹¹ (Request, Exhibit 4) (hereinafter cited as “Intent to Arbitrate”).

¹² Award at 12.

¹³ *Id.* at 12-13.

¹⁴ *Id.* at 13.

The record establishes that the Agency previously had accepted the Union's grievances filed as Union Grievances on behalf of all YDRs without the required signatures. Perhaps more importantly, there is no evidence indicating that the Agency has asserted nonarbitrability of a Union Grievance involving only YDRs as opposed to all job classifications in the unit. Indeed, it appears that the Agency has not previously asserted that such grievances were not signed by all YDRs, as is required for Group Grievances; except that in the instant grievance to the Agency's response at Step 3, Director Stanley noted that the grievance appears to be a Group Grievance and was not signed by all employees. In the same vein, former Human Resources Director Howell testified that he remembered handling grievances but didn't remember them being called one thing or the other.

The above facts indicate that the Agency has not required the Union to include all bargaining unit employees in grievances filed as Union Grievances. When coupled with the unrebutted practical difficulties in connection with obtaining the signatures, as noted by the Union, I find that the failure to garner the signatures of all bargaining unit employees lies somewhere between the parties' tacit agreement regarding the filing of Union Grievances and the fairness of, as the parties appear to have acknowledged, placing a nearly unsurmountable burden on the Union's ability to represent collectively the vast majority of the bargaining unit. For these reasons, I find that the grievance is arbitrable.¹⁵

On the merits, the Arbitrator found that DYRS-015 directly conflicted with several provisions in the parties' collective bargaining agreement as well as certain regulations in the District of Columbia Personnel Manual ("DPM"). Accordingly, the Arbitrator held that DYRS wrongly issued the policy without FOP's consent, and sustained the grievance.¹⁶ As a remedy, the Arbitrator ordered DYRS to immediately and retroactively rescind DYRS-015 and any disciplinary actions that were issued as a result of it.¹⁷

DYRS now asks PERB to set aside the Award based on its assertion that the Arbitrator was without authority or exceeded his jurisdiction when he found that FOP's grievance was arbitrable.¹⁸ DYRS does not challenge the Arbitrator's findings on the merits.¹⁹

¹⁵ *Id.* at 19.

¹⁶ *Id.* at 19-22.

¹⁷ *Id.* at 22.

¹⁸ (Request at 4, 6-14).

¹⁹ *Id.* at 4, 12-13.

II. Analysis

D.C. Official Code § 1-605.02(6) authorizes the Board to modify or set aside an arbitration award in only three limited circumstances: 1) if an arbitrator was without, or exceeded his or her jurisdiction; 2) if the award on its face is contrary to law and public policy; or 3) if the award was procured by fraud, collusion or other similar and unlawful means.

DYRS only raises arguments that the Arbitrator was without or exceeded his authority when he found that FOP's grievance was arbitrable, and does not make any contentions that the Arbitrator's finding was on its face contrary to law and public policy or that it was procured by fraud, collusion, or other similar and unlawful means.²⁰

A. Deferral to Arbitrator on Questions of Procedural Arbitrability

The Board finds that the Arbitrator had exclusive jurisdictional authority to determine whether FOP's grievance was procedurally arbitrable, and defers to the Arbitrator's conclusion.

Article 30, Section 10²¹ of the parties' collective bargaining agreement expressly authorized the Arbitrator to determine whether FOP's grievance was arbitrable. The record and Award show that the Arbitrator properly followed the process outlined in Section 10 by first ruling on the arbitrability question as a threshold issue before proceeding to his analysis of the merits.²² Further, the arbitrability of FOP's grievance was one of the precise issues the parties placed before the Arbitrator for resolution.²³ Thus, DYRS cannot now argue that the Arbitrator exceeded his jurisdiction or authority when he addressed and resolved that very question.

Moreover, the D.C. Court of Appeals has held that "issues of procedural arbitrability, i.e., whether prerequisites such as time limits, notice, laches, estoppel, and other conditions precedent to an obligation to arbitrate have been met, are for the arbitrators to decide."²⁴ Here, the crux of DYRS' argument before the Arbitrator was that FOP's grievance was nonarbitrable because it did not meet the prerequisite procedural requirements of Article 30, Sections 3(D)(2)-(3) in the parties' collective bargaining agreement (i.e. the "conditions precedent to an obligation to arbitrate").²⁵ There can be no doubt that DYRS's argument ultimately concerned procedure, since the parties and the Arbitrator continually referred to DYRS's nonarbitrability arguments as "the procedural piece" of the case.²⁶ Therefore, because the issue before the Arbitrator was wholly a question of procedural arbitrability, the Board finds it was exclusively for the Arbitrator

²⁰ *Id.*

²¹ Article 30, Section 10 – Questions of Grievability: "For matters arising under the terms of this Agreement, in the event either party should assert a grievance non-grievable or non-arbitrable, the original grievance shall be considered amended to include this issue. Any dispute of grievability or arbitrability shall be referred to arbitration as a threshold issue(s)."

²² Award at 18-19.

²³ See Award at 12; see also (Request at f. 5); and (Opposition to Request at 2).

²⁴ *Washington Teachers' Union, Local No. 6, AFT v. D.C. Public Schools*, 77 A.3d 441, 446, fn. 10 (2013).

²⁵ *Id.*; see also Award at 12-13; (Request at 11-12); and (Opposition to Request at 2).

²⁶ See, i.e. Transcript at 42-43, 56 (filed with DYRS's Request as an attachment).

to decide, and defers to the Arbitrator's analysis and conclusion that FOP's grievance was arbitrable.²⁷

B. Deferral to the Arbitrator's Factual Findings and Witness Credibility Assessments

Additionally, the Board defers to the factual findings and witness credibility assessments that the Arbitrator made to reach his conclusion that FOP's grievance, while technically non-compliant with the collective bargaining agreement, was still arbitrable because DYRS had previously accepted and processed other grievances that were similarly non-compliant.²⁸

DYRS contends that "nowhere in the record of the hearing does the Agency state that it previously had accepted the Union's grievances on behalf of all YDR's without any so-called required signatures."²⁹ DYRS further argues that:

[t]he only basis upon which [the Arbitrator] relies upon for this faulty assertion regarding the Agency's alleged prior history of accepting Union grievances filed as Union grievances on behalf of all YDRs without their signatures is the hearing testimony of the Union Chairperson, Takisha Brown [who testified that, in the past, management had accepted grievances pertaining primarily to the 200+ YDR's, but that were signed by the Board chair].³⁰

Notwithstanding DYRS' assertion, Ms. Brown was not the only witness the Arbitrator relied on in his findings. Indeed, the Arbitrator also noted the testimony of DYRS' former Human Resources Director Timothy Howell, who DYRS called as its "one witness [related] to the procedural piece" of the case.³¹ Mr. Howell testified that during his brief tenure as Director of Human Resources at DYRS, he was aware of "seven or eight" grievances that had been filed by FOP, and that while he did not recall whether DYRS had expressly distinguished any of those as "union/class" grievances or "group" grievances, he was sure that none of them had 200+signatures.³² In its Request, DYRS argues that PERB should discount Mr. Howell's testimony because he was only with the agency for nine months, and because he testified that he never personally responded to any of the grievances.³³

The Board has held that it will not second guess an arbitrator's credibility determinations or overturn an arbitrator's conclusions on the basis of a disagreement with the arbitrator's factual

²⁷ *Id.*; see also *District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Thomas Pair)*, 61 D.C. Reg. 11609, Slip Op. No. 1487 at p. 6, PERB Case No. 09-A-05 (2014) (holding that questions of procedural arbitrability are "exclusively" for the arbitrator to decide, and that the Board will defer to the arbitrator's conclusions).

²⁸ Award at 18-19.

²⁹ (Request at 7).

³⁰ *Id.* at 7-8 (citing Transcript at 61).

³¹ See Award at 19; *and* Transcript at 42-43.

³² Transcript at 51, 53, 55-56.

³³ (Request at f. 7).

findings.³⁴ In this case, the Board will not second guess the Arbitrator's reliance on Ms. Brown's unambiguous testimony that DYRS had previously, as a matter of practice, always accepted grievances labeled as "union/class" grievances even when the subject matters of those grievances were not common to all members of the bargaining unit.³⁵ DYRS's only witness on that issue, Mr. Howell, said nothing to rebut or contradict Ms. Brown's assertion; nor did he offer any examples wherein DYRS had rejected grievances that were not compliant with Article 30, Sections 3(D)(2)-(3).³⁶ Considering that Ms. Brown and Mr. Howell were the only witnesses the parties called upon to testify on this issue, DYRS can hardly argue now that the Arbitrator erred or exceeded his authority when he credited their testimony to reach his conclusion that FOP's grievance was arbitrable because DYRS had previously accepted other similarly non-compliant grievances.³⁷ Furthermore, the Board places very little weight in DYRS's argument that Mr. Howell's testimony should be discounted because first and foremost, he was called by DYRS to be its "one witness" on this issue, and secondly, even though Mr. Howell's tenure with the agency was short, he still oversaw the processing of seven or eight grievances and could not recall that any of them were rejected for being non-compliant with Article 30, Sections 3(D)(2)-(3), or that the agency had distinguished them as either "union/class" or "group" grievances.³⁸ Accordingly, the Board is without authority to upset or second-guess the factual findings and witness credibility assessments that the Arbitrator made to conclude that FOP's grievance was arbitrable.³⁹

C. Deferral to the Arbitrator's Interpretation of the Collective Bargaining Agreement

The Board further defers to the Arbitrator's interpretations of the parties' collective bargaining agreement.

The Board has long held that by agreeing to submit the settlement of a grievance to arbitration, it is the arbitrator's interpretation, not the Board's, for which the parties have bargained.⁴⁰ The Board has also adopted the Supreme Court's holding in *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, that arbitrators bring their "informed judgment" to bear on the interpretation of collective bargaining agreements....⁴¹ Further, the Board has held that when parties submit a matter to arbitration, they "agree to be bound by the arbitrator's interpretation of the parties' agreement, related rules and regulations, as well as the evidentiary findings on which the decision is based."⁴² Lastly, the "Board will not substitute its own

³⁴ *Fraternal Order of Police/Department of Corrections Labor Committee v. District of Columbia Department of Corrections*, 59 D.C. Reg. 9798, Op. No. 1271 at p. 6, PERB Case No. 10-A-20 (2012).

³⁵ Award at 19; *see also* Transcript at 43-56.

³⁶ *Id.*; *see also* Transcript at 58-61.

³⁷ *Id.*

³⁸ *See* Transcript at 42-43, 51, 53, 55-56.

³⁹ *FOP/DOC Labor Committee v. DOC*, *supra*, Op. No. 1271 at p. 6, PERB Case No. 10-A-20.

⁴⁰ *See University of the District of Columbia and University of the District of Columbia Faculty Association*, 39 D.C. Reg. 9628, Slip Op. No. 320, PERB Case No. 92-A-04 (1992).

⁴¹ 363 U.S. 593, 597 (1960).

⁴² *District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 47 D.C. Reg. 7217, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04 (2000); *and*

interpretation or that of the agency for that of the duly designated arbitrator.⁴³

In this case, Article 30, Section 10 of the parties' collective bargaining agreement expressly authorized the Arbitrator to resolve questions of arbitrability.⁴⁴ Additionally, Article 30, Section 2 of the agreement authorized the Arbitrator to resolve "any alleged violation of [the] Agreement... that affect[s] terms and conditions of employment,⁴⁵ In his exercise of these powers, the Arbitrator brought his "informed judgment" to bear on the arbitrability question before him, reasonably applied his interpretation of Article 30, Sections 3(D)(2)-(3), and concluded that FOP's technically noncompliant grievance was still arbitrable based on DYRS' established practice of accepting and processing similarly noncompliant grievances.⁴⁶ Article 30, Section 8(5) of the parties' agreement states that "[t]he Arbitrator's award shall be binding upon both parties." Therefore, because the parties expressly placed the arbitrability question before the Arbitrator, authorized the Arbitrator to interpret their collective bargaining agreement, and agreed beforehand to be bound by his conclusions, the Board cannot and will not substitute DYRS' interpretation over that of the parties' duly designated Arbitrator; nor will the Board set aside the Arbitrator's Award as DYRS requests.⁴⁷

D. The Arbitrator Did Not Exceed His Authority

The Board finds that the Arbitrator did not add to, subtract from, or modify Article 30, Sections 3(D)(2)-(3) of the parties' collective bargaining agreement, and thus did not exceed his authority in violation of Article 30, Section 8(4).⁴⁸ In order to determine if an arbitrator has exceeded his jurisdiction and/or was without authority to render an award, the Board evaluates "whether the award draws its essence from the collective bargaining agreement."⁴⁹ The U.S. Court of Appeals for the Sixth Circuit in *Michigan Family Resources, Inc. v. Service Employees International Union Local 517M*, has explained what it means for an award to "draw its essence" from a collective bargaining agreement by stating the following standard:

[1] Did the arbitrator act 'outside his authority' by resolving a dispute not

District of Columbia Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee (Grievance of Angela Fisher), 51 D.C. Reg. 4173, Slip Op. No. 738 PERB Case No. 02-A-07 (2004).

⁴³ *District of Columbia Department of Corrections and International Brotherhood of Teamsters, Local Union 246*, 34 D.C. Reg. 3616, Slip Op. No. 157, PERB Case No. 87-A-02 (1987).

⁴⁴ CBA at 40.

⁴⁵ *Id.* at 36.

⁴⁶ Award at 18-19; and *United Steelworkers*, *supra*.

⁴⁷ *MPD v. FOP*, *supra*, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04; *see also DOC and Teamsters, Local Union 246*, *supra*, Slip Op. No. 157, PERB Case No. 87-A-02; and *UDC and UDCFA*, *supra*, Slip Op. No. 320, PERB Case No. 92-A-04.

⁴⁸ Article 30, Section 8(4): "The Arbitrator shall not have the power to add to, subtract from, or modify the provisions of this Agreement through the award."

⁴⁹ *MPD and FOP (on Behalf of Kenneth Johnson)*, *supra*, Slip Op. No. 925, PERB Case No. 08-A-01 (*quoting D.C. Public Schools v. AFSCME, District Council 20*, 34 D.C. Reg. 3610, Slip Op. No. 156, PERB Case No. 86-A-05 (1987)); *see also Dobbs, Inc. v. Local No. 1614, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 813 F.2d 85 (6th Cir. 1987).

committed to arbitration?; [2] Did the arbitrator commit fraud, have a conflict of interest or otherwise act dishonestly in issuing the award?"; "[a]nd [3] [I]n resolving any legal or factual disputes in the case, was the arbitrator arguably construing or applying the contract"? So long as the arbitrator does not offend any of these requirements, the request for judicial intervention should be resisted even though the arbitrator made "serious," "improvident" or "silly" errors in resolving the merits of the dispute.⁵⁰

In this case, DYRS argues multiple times throughout its Request that the Arbitrator appeared to be confused about what constitutes a "union/class" grievance under the collective bargaining agreement because the Award analyzed and discussed whether DYRS had previously accepted other grievances that did not apply to all members of the bargaining unit, or contain the signatures of every member affected by the grievance's subject matter.⁵¹ DYRS suggests that because Article 30, Section 3(D)(3) only requires that "union/class" grievances be signed by the union President and be applicable to all bargaining unit members, the Arbitrator's discussion of whether all 200+ non-probationary YDRs were required to sign FOP's grievance "reveals a profound misunderstanding of both the record before him and what management's assertions are regarding this issue", and had "[no] basis whatsoever."⁵²

However, the Award clearly states that the Arbitrator was not just evaluating whether FOP's grievance met the requirements of a "union/class" grievance under Article 30, Section 3(D)(3), which the Arbitrator conceded it did not, but also whether it qualified as a "group" grievance under Article 30, Section 3(D)(2), which "[applies to] a number of employees in the unit" and requires that "[a]ll employees of the group must sign the grievance."⁵³ Although the Arbitrator noted that FOP's grievance did not technically qualify under that provision either, he still found it was arbitrable because DYRS had an established practice of not requiring "group" grievances to be signed by all YDR's even if they were labeled as "union" grievances and were only signed by the union President. As discussed previously, the Arbitrator's finding in this regard was supported by the un-rebutted testimony of Ms. Brown and DYRS' own witness, Mr. Howell.⁵⁴ Accordingly, the Board finds that the Award demonstrates that the Arbitrator had a clear and sound understanding of the issues before him, and further shows that he "arguably" construed and applied the contract in reaching his conclusion that FOP's grievance was arbitrable.⁵⁵ Thus, DYRS' argument that the Arbitrator appeared to be confused is rejected.⁵⁶

DYRS further argues that the Arbitrator's determination that FOP's grievance was

⁵⁰ 475 F.3d 746, 753 (6th Cir. 2007).

⁵¹ (Request at 6-12).

⁵² *Id.* (quoted portion on page 10).

⁵³ See Award at 18-19; see also CBA at 37.

⁵⁴ See Transcript at 42-43, 51, 53, 55-56.

⁵⁵ *Id.*; and *Michigan Family Resources, supra*, 475 F.3d at 753.

⁵⁶ *Id.* (The Board notes that under *Michigan Family Resources, supra*, even if the Arbitrator had been confused and had made "serious," "improvident" or "silly" errors in the Award as a result, such would still be insufficient grounds upon which the Board could upset or overturn the Award).

arbitrable added to, subtracted from, or modified the parties' collective bargaining agreement in violation of Article 30, Section 8(4).⁵⁷ DYRS relies on a U.S. Court of Appeals for the Sixth Circuit case, *Cement Divisions, National Gypsum, Co. v. United Steelworkers of America*, which held that:

An Award fails to derive its essence from the agreement when: (1) an award conflicts with express terms of the collective bargaining agreement; (2) an award imposes additional requirements that are not expressly provided in the agreement; (3) an award is without rational support or cannot be rationally derived from the terms of the agreement; and (4) an award is based on general considerations of fairness and equity instead of the precise terms of the agreement.⁵⁸

In this case, the Award did not violate any of these standards. For instance, the Award does not conflict with the express terms of the agreement. Under Article 30, Sections 3(D)(1)-(3), grievances are acceptable as long as they are signed and pertain to an individual, a group within the bargaining unit, or to the entire unit.⁵⁹ Nothing in the Award adds to, subtracts from, or modifies those rights. Additionally, the Award does not impose any additional requirements that are not expressly stated in the agreement. Further, as stated previously, the Award is more than rationally supported by the record—including the testimony of DYRS' own witness, Mr. Howell, which wholly supports the Arbitrator's analysis and conclusions⁶⁰—and more than sufficiently derives its conclusions from the terms and conditions of the parties' agreement. Last, while the Arbitrator relied on Ms. Brown's testimony to conclude that requiring all 200+ YDR's to sign every grievance filed on their behalf would be impractical and unfair, and would place "a nearly insurmountable burden on the Union's ability to represent collectively the vast majority of the bargaining unit",⁶¹ nothing in that conclusion changes the undisputed fact that DYRS had previously, until this grievance, always accepted and processed FOP's grievances regardless of how they were labeled, and regardless of who signed them. Indeed, DYRS previously never made any distinctions between "union/class" grievances or "group" grievances." They were all simply accepted and processed as just "grievances."⁶² Moreover, as discussed previously, the parties expressly placed the question of arbitrability before the Arbitrator, authorized him to interpret their agreement, and agreed to be bound by his conclusions.⁶³ Thus, the Board holds that the Arbitrator's decision drew its essence from the

⁵⁷ (Request at 11-12).

⁵⁸ 793 F.2d 759, 766 (6th Cir. 1986) (internal citations omitted).

⁵⁹ The Board categorically rejects DYRS' argument that the Arbitrator was unclear about which unit he was referring to on page 19 of the Award. See (Request at 9). The Board finds it is self evident that he was referring to the bargaining unit for which FOP is the exclusive representative. The Board further notes that even if it had been unclear which unit he was referring to, such by itself would not provide sufficient grounds to upset or overturn the Award. See PERB Rule 501.1; and *Michigan Family Resources, supra*, 475 F.3d at 753.

⁶⁰ See Transcript at 51-56.

⁶¹ Award at 19.

⁶² See Transcript at 42-56.

⁶³ *MPD v. FOP, supra*, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04.

parties' collective bargaining agreement and therefore did not violate Article 30, Section 8(4) of the parties' agreement.⁶⁴

In sum, under the guidelines of *Michigan Family Resources, supra*, the Award demonstrates that the Arbitrator (1) resolved only the precise questions presented to him by the parties; (2) did not commit fraud, have a conflict of interest or otherwise act dishonestly in issuing the Award; (3) "arguably" construed and applied the contract in developing the Award's factual findings and witness credibility assessments, and (4) exercised his express authority to analyze and interpret the applicable provisions of the parties' agreement and to resolve questions of arbitrability.⁶⁵ Accordingly, the Board finds that the Award's arbitrability determination adequately drew its essence from the parties' collective bargaining agreement and that the Arbitrator therefore did not exceed his authority.⁶⁶

E. Conclusion

Based on the foregoing, the Board finds that: (1) DYRS' Request concerns a question of procedural arbitrability that was exclusively for the arbitrator to decide; (2) DYRS' arguments constitute nothing more than a mere disagreement with the Arbitrator's findings and witness credibility assessments, which were reasonable and supported by the record; (3) the parties expressly placed the question of arbitrability before the Arbitrator, authorized him to interpret their agreement, and agreed to be bound by his interpretation; and (4) the Arbitrator's finding that FOP's case was arbitrable drew its essence from the parties' collective bargaining agreement. Accordingly, the Board rejects DYRS' arguments and finds no cause to reverse or set aside the Arbitrator's finding that FOP's grievance was arbitrable. DYRS' Request for a review of the Award is therefore denied and the matter is dismissed in its entirety with prejudice.

⁶⁴ *Id.*

⁶⁵ 475 F.3d at 753.

⁶⁶ *Id.*

ORDER

IT IS HEREBY ORDERED THAT:

1. DYRS' Request is denied and the matter is dismissed in its entirety with prejudice.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Donald Wasserman, Keith Washington, Yvonne Dixon, and Ann Hoffman.

March 19, 2015

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-A-02, Opinion No. 1513 was transmitted *via* File & ServeXpress and email to the following parties on this the 25th day of March, 2015.

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