

PUBLIC EMPLOYEE RELATIONS BOARD
FY2022-FY2023 Performance Oversight Questions
Committee on Executive Administration and Labor
At-Large Councilmember Anita Bonds, Chair

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I. Agency Priorities, Performance, and Evaluation

1. Please discuss PERB's **top five priorities**.
 - a. How did the agency address its top five priorities in FY2022, including the impact of and any adjustments or modifications due to COVID-19?

Response:

Priority 1-Eliminate off-site document storage: PERB documents located off-site have been shredded, and PERB no longer has this expense. This saves the agency a storage fee of approximately \$4,800.00 annually.

Priority 2-Training for PERB attorneys: In FY22, PERB attorneys attended a one-week mediation course.

Priority 3-Making resource materials available: Unforeseen circumstances and emergencies with staff hindered PERB from addressing this priority.

Priority 4-Expand access to training: PERB continued making training available for the DC government labor and management community. The training continued to be virtual.

Priority 5-Enhance transparency: PERB selected a vendor to procure and install equipment in the hearing room to live-stream hearings. Unfortunately, the vendor was unable to procure parts and equipment before September 30, 2022.

- b. What are the agency's top five priorities in FY2023? Please explain in detail how the agency expects to address each priority in FY2023.

Response:

Priority 1-Eliminate on-site hardcopy files: PERB has determined that documents kept on-site are no longer needed.

Priority 2-Training for PERB attorneys: PERB plans to offer continuing education opportunities to its attorneys, including labor relations and legal writing courses.

Priority 3-Expand access to training: PERB plans to make available both in-person and virtual training. To allow for virtual training, budget permitting, PERB intends to install equipment in its training room to permit live-streaming of its trainings.

Priority 4-Re-establish in-house filing terminal for pro se complainants in anticipation of returning to servicing the public in-person

Priority 5- Simplify the pro se complaint form for easier understanding.

2. Please list each **program** or body of work operated or administered by PERB during FY2022 and FY2023. Highlight any programs new in FY2022 or FY2023. For each program, please provide a description of the program, the office that carries out the program, activities in FY2022 and FY2023, and any documented results of the program.

Response:

- a. Decisions and Orders – As a quasi-judicial agency, PERB’s principal activity is the resolution of cases concerning labor-management disputes. Board members receive all filings and exhibits in a case a week prior to the Board’s consideration of the case at the monthly Board meeting. For cases in which a hearing was conducted by a hearing examiner, the Board members analyze the hearing examiner’s report and recommendation, the case record, and the staff’s written recommendations on the issues in the case. In such cases, the Board will adopt a hearing examiner’s recommendation if it is consistent with PERB precedent. After the Board members decide on the outcome of a case, the Board instructs PERB’s staff attorneys to issue a written decision and order, which may require multiple rounds of editing and changes by Board members prior to issuance. In FY2022, the Board issued twenty-two decisions and orders. In FY2023, the Board issued seven decisions and orders. The Board’s decisions and orders and the minutes of its monthly meetings are available on PERB’s website.
- b. Hearings – Hearings are conducted for representation cases, unfair labor practice and standards of conduct cases. Hearing examiners are attorneys with a demonstrated history as labor relations experts. Hearings allow the parties to present evidence to a hearing examiner who ultimately prepares a report with factual findings and recommendations for the Board.
- c. Mediations – Generally, mediations are conducted prior to hearings to encourage the parties to reach a mutually agreeable result prior to further litigation. Mediation sessions are paid for by PERB and are free to the parties. Mediations also help preserve long-term bargaining relationships.
- d. Representation Elections – When petitioned, PERB conducts representation elections to allow employees to select a bargaining representative. PERB attorneys discuss election issues with the parties. PERB attorneys then develop the ballots and personally conduct the representation election at the employees’ work site. PERB attorneys count the ballots and resolve any ballot challenges or other election issues. After reviewing the election results and resolving any additional election issues, the Board members will certify the election results. In FY2021, PERB attorneys adopted new procedures to conduct elections in response to the pandemic. PERB attorneys coordinated with the parties virtually to produce election agreements, ballots, and notice postings. PERB contracted a third-party to run a mail ballot election and virtually conducted the ballot count.
- e. Training Program – Second Tuesdays at PERB are monthly, two-hour training sessions conducted for both management and union participants by an esteemed labor relations

expert. PERB advertises its Second Tuesdays trainings on its website and sends monthly notices to PERB's listserv, which provides information about the upcoming training session. Agency-specific or union-specific training sessions are conducted for 4 hours upon request or through outreach by the Executive Director to solicit their participation in the program. In FY2022, PERB held seven Second Tuesdays. In addition, trainings on PERB's rules were conducted by PERB staff. PERB also conducted four agency-specific training at FEMS. In the first quarter of FY2023, PERB held three Second Tuesdays sessions and expects to hold five additional sessions for the remainder of the fiscal year

f. Law Student Internship Program – PERB has partnered with Howard University's Law School Internship Program. One to two law students intern at PERB annually.

3. Please describe any **initiatives** that PERB implemented in FY2022 or FY2023, as of Jan. 1, 2023, to improve the internal operations of the agency or the interaction of the agency with external parties. Please describe the results, or expected results, of each initiative.

Response:

PERB's initiative was to maintain the ability for filers to file without coming into PERB's office. PERB also focused on improving electronic recordkeeping and access to the agency's documents.

4. Please provide a copy of PERB's FY2022 **performance accountability report**.

Response: See Exhibit Q4 FY22 Performance Accountability Report

- a. Please explain which performance plan strategic objectives and key performance indicators (KPIs) were met or completed in FY2022 and which were not.

Response:

PERB met all KPIs except for one i.e., resolving cases within 120 days that did not require a hearing. The goal for this KPI was 75% and PERB reached 71.4%.

- b. For any met or completed objective, also note whether they were completed by the project completion date of the objective and/or KPI and within budget. If they were not on time or within budget, please provide an explanation.

Response:

Strategic objective – Resolve cases: For met KPIs, the completion date objective was September 30, 2022, which PERB met. PERB also met its budget for this strategic objective.

Strategic objective – Training: The KPI had a completion date objective of September 30, 2022, which PERB met. PERB also met its budget for this strategic objective.

Strategic objective – Public access to decisions: For met KPIs, the completion date objective was September 30, 2022, which PERB met. PERB also met its budget for this strategic objective.

- c. For any objective not met or completed, please provide an explanation.

Response:

The agency did not meet the KPI for resolving cases within 120 days that did not require a hearing.

5. Regarding the PERB’s FY2023 **performance plan:**

- a. Please provide a copy of PERB’s FY2023 performance plan as submitted to the Office of the City Administrator.

Response: See Exhibit Q5 FY23 Performance Plan

- b. Discuss any changes to any outcomes measurements in FY2023, including the outcomes to be measured or changes to the targets or goals of outcomes; list each specifically and explain why it was dropped, added, or changed.

Response: PERB made no changes to outcome measurements in FY2023.

6. Please describe the timeline of managing cases? About how long are cases processed? What types of deadlines does the agency have?

Response:

The timeliness of PERB cases is managed in compliance with three (3) statutory deadlines. These statutory deadlines are as follows:

- D.C. Official Code §1-605.04 The Board shall cause a copy of each order, decision, or opinion rendered by it to be published in the District of Columbia Register within 60 days of its issuance. PERB publishes Board decisions to its website for 30 days prior to submission to the D.C. Register.
- D.C. Official Code §1-617.10(d)-(e) The Board shall certify the results of each election within 10 working days after the final tally of votes if no objection to the election is filed. The Board shall hold a hearing on the matter within 2 weeks after the date of receipt of an objection unless the Board determines that the allegations within the objection did not affect the outcome of the election.
- D.C. Official Code § 1-617.14 All decisions of the Board shall be rendered within a reasonable period of time, and in no event later than 120 days after the matter is submitted or referred to it for a decision. The District of Columbia Court of Appeals has interpreted the language of the statute as directory in *Brown v. Public Employee Relations Board*, 19 A. 3d. 351, 357 (2011). The Board’s goal is to render a decision within 120 days after a matter has been submitted to the agenda for the Board’s consideration at a meeting.

In addition to the above statutory deadlines, PERB utilizes its pre-pandemic internal guidelines to process cases. **See Exhibit Q6 Case Management Chart**

7. Does the agency follow any particular set of standards to determine cases?

Response:

Case decisions are based on long-standing local and federal labor relations precedent.

8. Please explain the recruitment of board members? Who is eligible?

Response:

Pursuant to D.C. Code § 1–605.01, PERB consists of five Board members, all of whom are selected by the Mayor with Council approval. Subsection (b) of the statute states that Board members are selected “from persons who through their experience have demonstrated an expert knowledge of the field of labor relations and who possess the integrity and impartiality necessary to protect the public interest and the interests of the District of Columbia government and its employees.” Preference is given to select members with public sector labor relations experience. Individuals in the employ of labor organizations granted exclusive recognition in the District of Columbia are generally not eligible for selection to the Board.

The composition of Board members is as follows—one member is chosen from lists proposed by labor organizations granted exclusive recognition for at least 250 District government employees (union member); one member is chosen from a list proposed by an ad hoc committee appointed by the Mayor representing agency heads within District government (management member); and three neutral members, including the Chairperson, are selected from the public (public members).

9. Please explain why complaints for MPD and DBH are not processed by the agency?

Response:

PERB has processed all complaints filed on behalf of or against MPD and DBH in accordance with PERB’s rules and guidelines.

10. Please discuss any remaining disruptions to program activity levels and timeliness of issued decisions due to the **Coronavirus public health emergency**. Please include:

- a. The impact of the public health emergency on the regular operation of each program listed in the answer to question #2, and the agency’s response to those challenges, if any.

Response: All PERB’s programs were maintained.

- b. For each statutory deadline, please describe any challenges, if any, specific to the public emergency, which reduce the ability of the agency to meet the deadline, if any. Please list any resolution implemented or recommended by the agency.

Response: No statutory deadlines were affected.

11. How many **mediations** were conducted by PERB in FY2022 and the first quarter of FY2023, and to what result? How many were by PERB employees and how many by contractors, with what results for each group? During FY2022 or FY2023, has PERB hired a mediator on staff or trained an attorney in mediation?

Response:

In FY2022, a total of twenty (20) mediations were conducted resulting in seven (7) settlements. In FY2023, a total six (6) mediations have been conducted during the first quarter. All mediations have been conducted by contracted mediators. All attorneys have attended mediation training.

II. Budget and Expenditures

Budget

12. **Budget.** Please *complete the attached table* in Excel showing your agency's budget, including Council-approved original budget, revised budget (after reprogrammings, etc.), and actual expenditures, by program and activity, for fiscal years 2022, and the first quarter of 2023. For each activity, please include total amount budgeted and break down the budget by funding source (federal, local, special purpose revenue, or intra-district funds). Include any over- or under-spending. Explain any variances between the revised budget and actual expenditures for fiscal year 2023 for each program and activity code.

Response: See Exhibit Q12 Budget

- Q12A FY22 Budget by Program
- Q12B FY22 Budget by Activity
- Q12C FY23 Budget

13. Please provide a copy of the detailed FY2023 **non-personnel services spending plan** for each activity and fund in PERB's budget.

Response: See Exhibit Q13 NPS Spend Plan

14. Please provide the following information for all **intra-District memoranda of understanding (MOUs)** for FY2022 and FY2023 as of Jan. 1, 2023, *including anticipated MOUs* for the remainder of FY2022.

- a. *Attach copies* of all intra-district MOUs.
- b. Please *complete the attached table* in Excel for all MOUs, including anticipated MOUs.

Response: See Exhibit Q14 MOUs

- Q14A DCHR-PERB MOU for FY2022

- Q14B DCHR-PERB MOU for FY2023
- Q14C OCTO-PERB MOU for FY2023
- Q14D MOUs Table

15. Please provide the following information for all **intra-District memoranda of agreement (MOAs)** for FY2022 and FY2023 as of Jan. 1, 2023, including anticipated MOAs for the remainder of FY2023.

- Attach copies* of all intra-district MOAs.
- For each MOA, including anticipated MOAs, complete the table below; add rows as necessary.

Response: Not Applicable

Memoranda of Agreement, FY2022 and FY2023, including anticipated MOAs

<i>Description of MOA services or purpose, including name of project or initiative</i>	<i>Names of all agencies party to the agreement</i>	<i>Service period (dates)</i>
N/A	N/A	N/A

Response: Not applicable

16. Please *complete the attached table* for each **interagency reprogramming** of funds into and out of the agency for FY2022 and FY2023, as of Jan. 1, 2023, including anticipated inter-agency reprogrammings for the remainder of FY2023.

- Please *attach copies* of the reprogramming documents, including the Agency Fiscal Officer’s request memo and the attached reprogramming chart.
- For each reprogramming, including anticipated reprogrammings, complete the attached chart in Excel

Response: See Exhibit Q16 Interagency Reprogramming

17. Please *complete the attached table* for each **intra-agency reprogramming** *within* your agency during FY2022 and FY2023, as of Jan. 1, 2023, as well as any anticipated intra-agency reprogrammings for the remainder of FY2023.

- Please *attach copies* of any reprogramming documents.
- Please include in the chart a detailed rationale for the reprogramming: why the funds were available and what they will be used for.

Response: Not applicable

18. Please attach all **budget enhancement requests** submitted by your agency to the Mayor or Chief Financial Officer as part of the budget process for FY2023.

Response: See Exhibit Q18 Enhancement Details

Expenditures

19. Please provide a table of itemized litigation and enforcement costs for all of PERB’s work in FY2022. Please include PERB case numbers and names, the case type and original filing date, and subsequent steps and costs after filing e.g. at Superior Court for enforcement.

Response: See Exhibit Q19 Litigation and Enforcement Costs

20. Please *complete the attached table* in Excel with information on each **contract, procurement, and lease** leveraged in FY2022 and FY2023 as of Jan. 1, 2023, with a value amount of \$10,000 or more. “Leveraged” includes any contract, procurement, or lease used by the agency as a new procurement, contract extension, or contract option year execution. This also includes direct payments, if applicable.

Response: See Exhibit Q20 Contract and Procurement FY22 and FY23

21. Please complete the following table with information on all **credit card, p-card, or purchase card purchases and expenditures** for FY2022 and FY2023, as of Jan. 1, 2023; add rows as necessary. Alternatively, you may attach monthly statements with this *same* information; however, please name the ultimate vendor and specific purpose of the purchase for any PayPal or other transaction with an indirect payment service like PayPal.

Response: See Exhibit Q21 P-Card Expenditures, FY22 and FY23

Credit, p-card, and purchase card expenditures, FY2022 and FY2023

<i>Employee name</i>	<i>Date of expenditure</i>	<i>Vendor name (do not list “PayPal;” name the ultimate vendor)</i>	<i>Dollar amount</i>	<i>Purpose of expenditure</i>

22. Were any protests or appeals filed with the **Contract Appeals Board** in FY2022 or FY2023 as of Jan. 1, 2023, against or involving your agency? If so, please complete the following table with information on each such protest or appeal; add rows as necessary.

Contract Appeals Board cases filed FY2022 or FY2023, as of Jan. 1, 2023

<i>Case number</i>	<i>Name of complainant</i>	<i>Date of complaint</i>	<i>Description of complaint</i>	<i>Disposition or Status</i>
N/A	N/A	N/A	N/A	N/A

Response: Not applicable

III. Agency Organization and Personnel

23. Please provide an **organizational chart** for the agency, arranged by division and subdivision, as of Jan. 1, 2023.

- a. Show for each division and subdivision:
 - a. The names and titles of all personnel;
 - b. Include on the chart, and denote as vacant or frozen, any such positions;
- b. Note on the chart the date of the information if not Jan. 1, 2023.

Response: See Exhibit Q23 PERB Organizational Chart

24. Please *complete the attached table* in Excel with a chart of all positions (i.e., Schedule A) at the agency, as of Jan. 1, 2023.

Response: See Exhibit Q24 Chart of PERB Personnel

25. Please list each **vacant position’s** position number and provide: (1) the date on which it became vacant and (2) the step or status of the hiring process for the position as of Jan. 1, 2023.

Response: See chart below

Position Number	Date Position Became Vacant	Status as of Jan. 1, 2023
00016462	September 13, 2022	Offer made to employee who started on January 3, 2023
00074998	December 29, 2022	Not yet started

26. What was the **caseload** for each attorney or attorney adviser each year of FY2021, FY2022, and FY2023, as of Jan. 1, 2023?

Response: See chart below

	FY2021	FY2022	FY2023
Attorney 1	16	33	4
Attorney 2	N/A	14	2
Attorney 3	N/A	2	3
Attorney4- Resign Oct21	31	2	N/A

27. How many and what percentage of employees at PERB as of Jan. 1, 2023, were **District residents**?

Response: As of January 1st, three (3) PERB employees are District residents (37.5%). However, as of January 30th, with one new hire, the percentage of employees that are District residents is 50%.

28. Please complete the following charts about the **residency of new hires** at PERB in FY2022 and FY2023:

DC Residency of Employees Hired in FY 2022

<i>Position Type</i>	<i>Total Number</i>	<i>Number who are District Residents</i>	<i>Percent of total who are District residents</i>
Continuing	2	1	50%
Term	0	0	0%
Temporary	0	0	0%

DC Residency of Employees Hired in FY 2023, as of Jan. 1, 2023

<i>Position Type</i>	<i>Total Number</i>	<i>Number who are District Residents</i>	<i>Percent of total who are District residents</i>
Continuing	0	0	0%
Term	0	0	0%
Temporary	0	0	0%

Response: None

29. Please complete the following table regarding employees placed on **administrative leave** in FY2022 or FY2023. Specify (column 3) why the employee was placed on leave and note if the leave is a result of discipline or due to an investigation.

<i>Employee's job title</i>	<i>Position number</i>	<i>Reason placed on leave; specify if disciplinary or due to investigation</i>	<i>Length of leave</i>	<i>Whether employee was separated</i>	<i>Whether the leave was/is paid or unpaid</i>	<i>Their current status (as of Jan. 1, 2022).</i>

Response: None

30. For FY2022 and FY2023, as of Jan. 1, 2023, please complete the following table on each **employee separated** from the agency, whether voluntarily or at the agency's initiation.

Employees Separated from Agency, FY2022 and FY2023

<i>Employee name</i>	<i>Job title</i>	<i>Number of days employed at PERB</i>	<i>Amount of separation pay, if relevant</i>	<i>Number of weeks of separation pay, if relevant</i>	<i>The reason for the separation</i>
Antwanette Murphy	Administrative Officer	1,188	N/A	N/A	Resignation
Erica Balkum	Supervisory Attorney Advisor	1,263	N/A	N/A	Resignation

IV. Public Employee Relations Board

31. Please complete the chart below with board **member information** as of Jan. 1, 2023. Please note any vacancies.

PERB Board members

<i>Member's name</i>	<i>Member type (public, management, labor)</i>	<i>Confirmation date</i>	<i>Term expiration date</i>	<i>District resident? (y/n)</i>
Douglas Warshof	Chairman	6/14/2022	12/12/2024	Y
MaryAnne Gibbons	Management	6/15/2021	12/12/2023	Y
Renee Bowser	Labor	6/15/2021	12/12/2023	Y
Peter Winkler	Public	2/4/2020	12/12/2022	Y
Vacant	Public	N/A	N/A	N/A

32. Please complete the following charts with information about **PERB cases by case type** in FY2021, FY2022, and FY2023 as of Jan. 1, 2023:

PERB Cases by Type

Case Type	Number of complaints or cases filed			Number of decisions issued			Average Number of Days from Filing to Initial Decision		
	FY2021	FY2022	FY2023	FY2021	FY2022	FY2023	FY2021	FY2022	FY2023
Arbitration Review Request	10	9	0	9	8	2	87.4	88.6	0
Negotiability: Standards of Conduct:	4	2	0	4	1	0	85	86.5	0
Standards of Conduct:	1	5	0	3	0	1	191	317	0
Impasse (Compensation)	2	7	1	1	1	0	92	89.7	10
Impasse (Noncompensation)	1	0	0	0	0	0	0	0	0
Unfair Labor Practice Complaint	27	22	4	5	3	0	136.8	119.1	0
Enforcement: Unit Decertification	8	0	0	6	0	0	90.5	0	0
Unit Decertification	0	0	0	0	0	0	0	0	0
Unit Clarification:	3	0	0	1	1	1	411	0	0
Election:	0	0	1	2	1	1	0	220	0
Petition to Amend Certification:	0	0	0	0	0	0	0	0	0
Unit Modification	1	1	0	1	0	0	182	0	0

32a. Please identify the agencies with the highest number of complaints or cases filed for the following case types in FY2021, FY2022, and FY2023 as of Jan. 1, 2023:

Response: See chart below

	FY2021	FY2022	FY2023
Arbitration Review Request	MPD (7)	MPD (4)	No ARRs filed (0)
Unfair Labor Practice	DCPS (4)	MPD (6)	UDC (2)

33. What percentage arbitration review requests filed in FY2021, FY2022, and FY2023 (as of Jan. 1, 2023) involved the termination of a District government employee? The Rules of the Public Employee Relations Board (DCMR Title 6-B) provides for an initial staff review (6 DCMR B520.6) and investigation (6 DCMR B520.7) of Unfair Labor Practice complaints filed with PERB to determine whether a hearing is warranted. For FY2022 and FY2023, as of Jan. 1, 2023, please provide the average number of days staff took to complete the staff review and investigation, respectively.

Response:

In FY2021, seventy percent (70%) of the arbitration review requests filed with PERB involved the termination of a District government employee. Out of these, 85.71% involved MPD and 14.28% involved DGS. In FY2022, eighty-eight percent (88.9%) of the arbitration review requests filed with PERB involved the termination of a District government employee. Out of these, 50% involved MPD, 25% involved DOC, 12.5% involved DPW, and 12.5% involved DCPS. No arbitration review requests have been filed in FY2023 (as of Jan. 1, 2023). The initial staff review related to unfair labor practice complaints involves a review of documents to determine whether there is a filing deficiency or procedural issue that would require dismissal or amendment of the complaint. Following the review, PERB issues an administrative letter of dismissal or deficiency, refers the case to mediation or hearing, or makes a determination on the merits. Based on the complexity of the case, the initial review takes 3-15 days.

34. Please complete the following charts with **data on PERB cases** in FY2021, FY2022, and FY2023 as of Jan. 1, 2023:

PERB Cases and Decisions, FY2021 through 2023

	FY2021	FY2022	FY2023
Number of complaints or cases filed	58	48	6
Number of complaints dismissed	12	13	4
Number of decisions issued	30	22	7
Number of petitions for enforcement	8	0	0
Number of cases settled	10	12	1
Number of cases withdrawn	15	8	1
Number of decisions appealed			
• DC Superior Court	10	7	7
• DC Court of Appeals	2	2	3
Number of pending appeals (total)	16	9	0
• DC Superior Court	13	7	7
• DC Court of Appeals	3	3	3
Number of PERB decisions overturned or remanded on appeal (total)	1	2	0
• DC Superior Court	1	1	0
• DC Court of Appeals	0	1	0
Number of PERB decisions upheld on appeal (total)	5	8	4
• DC Superior Court	5	9	4
• DC Court of Appeals	1	0	0

35. Please fill in the chart below with **cases by agency** in each year FY2021, FY2022, and FY2023.

PERB cases or complaints by agency, FY2021-FY2023, as of Jan. 1, 2023

Agency name	Number of cases filed against an agency			Number of cases filed by agency or on behalf of agency by OLRCB or other		
	FY2021	FY2022	FY2023	FY2021	FY2022	FY2023
DBH	2	0	0	1	0	0
D.C. National Guard	1	0	0	0	0	0
DCHA	0	0	0	0	0	0
DCPS	4	1	0	2	0	0
DCRA	6	0	0	0	0	0
DFS	5	1	0	1	0	0
DGS	4	2	0	0	0	0

DISB	2	0	0	0	0	0
DOC	2	0	1	0	0	0
DOH	2	0	0	1	0	0
DDS	2	0	0	0	0	0
DYRS	2	0	0	1	0	0
DOES	2	0	0	0	0	0
DHCD	2	0	0	0	0	0
DOEE	3	2	1	0	0	0
DPR	2	0	0	0	0	0
DCOZ	0	2	0	0	0	0
DCOP	0	1	0	0	0	0
RHC	2	0	0	0	0	0
OSSE	5	1	1	0	1	0
MPD	12	2	0	6	1	0
OCP	0	2	0	0	0	0
Events DC	1	0	0	0	0	0
FEMS	0	0	0	0	0	0
OAH	0	1	0	0	0	0
OLRCB	2	3	0	0	0	0
PSC	0	0	0	0	0	0
DCHR	2	0	0	0	0	0
OZ	1	0	0	0	0	0
OAG	0	0	1	0	0	0
DDOT	0	2	0	0	0	0
DOB (formerly DCRA)	----	-----	0	0	0	0
DLCP (formerly DCRA)	----	-----	0	0	0	0
DMV	0	2	0	0	0	0
DFHV	0	2	0	0	0	0
UDC	1	0	3	0	0	0
WASA	3	4	1	0	0	0

36. Please provide a narrative description **explaining each decision that was reversed or remanded by Superior Court or the Court of Appeals** in FY2022 or FY2023 as of Jan. 1, 2023. Please attach a copy of any opinion issued with the remand or reversal.

PERB Case No. 18-A-04

In *MPD v. FOP/Metro. Police Dep't Labor Comm. (on behalf of Thomas)*, PERB Case No. 18-A-04, MPD filed an Arbitration Review Request, asking the Board to overturn an arbitration award (Award) that reversed an MPD officer's termination on the grounds that the Arbitrator's determination of the appropriate penalty was contrary to law and public policy. The Board denied MPD's Request, finding no violation of law or public policy. MPD appealed the case to the D.C. Superior Court, which affirmed the PERB's decision. MPD appealed the Superior Court's decision to the D.C. Court of Appeals. The Court of Appeals vacated the Superior Court judgment and remanded the issue to the lower court for remand to PERB. The Court of Appeals held that PERB should address, on remand, some of MPD's unaddressed arguments that the Award was contrary to law, and adequately explain PERB's decision not to set aside the Award as against public policy. The Superior Court then remanded the case to PERB. A Board decision is pending.

PERB Case No. 18-U-01

In *Fraternal Order of Police/Protective Services Div. Labor Comm. v. D.C. Dep't of General Services*, PERB Case No. 18-U-01, FOP filed an unfair labor practice complaint against DGS, alleging that DGS violated its duty to bargain in good faith by unilaterally implementing a change to its worksite parking policy. FOP requested, among other remedies, attorney fees and back pay. Following a hearing, the Board found that DGS had committed an unfair labor practice. The Board further held that the PERB had authority to award attorney fees as a remedy to prevailing complainants in unfair labor practice cases under the CMPA's incorporation of the Federal Back Pay Act (FBPA). DGS moved for reconsideration of the Board's ruling on PERB's authority to award attorney fees, which PERB denied. DGS appealed the matter to the D.C. Superior Court. The Superior Court declined to resolve the issue of whether PERB had authority to award attorney fees but determined that PERB did not provide sufficient reasoned analysis to support its ruling. The Superior Court remanded the case to PERB to provide a reasoned analysis for its conclusion that the District Personnel Manual (DPM) is not a new compensation system that supplants the application of the FBPA, and for its interpretation that its "make whole" remedial authority includes the authority to award attorney fees. A Board decision pursuant to the remand order is pending.

Copies of the Superior Court and Court of Appeals decisions in these cases are attached as **Exhibit Q36 Superior Court and Court of Appeals Decisions**.

37. Regarding **training** that PERB provided to members of public unions or agency officials in FY2022 and FY2023, as of Jan. 1, 2023:
- a. Please provide a list of each training by date, along with the topic, agencies in attendance, the number of attendees, and whether the training was in person or remote. Indicate whether the training was recorded and posted to PERB's website or YouTube channel.

Response: See attached two charts.

PERB Trainings for Fiscal Year 2023				
Month	Training Held Yes/No	Training Date	Subject	Total Participants
October	Yes	Tuesday, October 11, 2022	Second Tuesday - Mutual Obligation to Supply Information	19
December	Yes	Tuesday, December 13, 2022	Second Tuesday - PERB and the Arbitration Process	22
January	Yes	Tuesday, January 10, 2023	Second Tuesday - Resume Discussion on : PERB and The Arbitration Process	12
Total Number of All Trainings				3
Total Number of All Training Participants				53
Total number of Second Tuesday Trainings				3
Total number of Non-Second Tuesday Trainings (i.e. other trainings)				0
Total number of Second Tuesday Training Participants				53
Total number of Non-Second Tuesday Training Participants				0
Note(s):		All trainings are virtual until further notice.		

PERB Trainings for Fiscal Year 2022				
Month	Training Held Yes/No	Training Date	Subject	Total Participants
December	Yes	December 14, 2022	Second Tuesday - D.C. Public Employee Relations Board: Structure and Procedures	12
January	Yes	January 11, 2022	Second Tuesday - Weingarten Rights	22
February	Yes	February 8, 2022	Second Tuesday - Bargaining: General Duty and Impacts & Effects	33
March	Yes	March 15, 2022	Second Tuesday - Subjects of Bargaining & Impasse Procedures	28
April	Yes	April 12, 2022	Second Tuesday - Duty of Fair Representation & Standards of Conduct	22
September	Yes	September 13, 2022	Second Tuesday - An Overview of PERB Law and Procedures	23
February**	Yes	February 24, 2022	Special Presentation / The 1968 Memphis Sanitation Strike: It's Place in Labor History	7
Total Number of All Trainings				7
Total Number of All Training Participants				147
Total number of Second Tuesday Trainings				6
Total number of Non-Second Tuesday Trainings (i.e. other trainings)				1
Total number of Second Tuesday Training Participants				140
Total number of Non-Second Tuesday Training Participants				7
Note(s):		Special Presentation / The 1968 Memphis Sanitation Strike: It's Place in Labor History – February 24, 2022 (Video)		

b. What strategy did PERB use to target outreach to agencies for remote trainings (because of the public health emergency) in FY2022 and so far in FY2023?

Response: PERB targets approximately 200 labor relations specialists and union officials monthly regarding specialized trainings. PERB has continued to develop this listserv since its inception in 2014.

c. What tools does PERB use to receive attendee feedback and evaluate the effectiveness of these trainings?

Response: PERB implemented post-training surveys to poll the level of attendee satisfaction with trainings. The surveys proved to be less effective after PERB transitioned to virtual training due to lower attendee response rates. The post training surveys are an area that PERB is targeting for improvement.

- d. How many trainings are planned for the remainder of FY2023? Will they be in person or virtual?

Response: Six virtual trainings are planned for the remainder of FY23.

38. Complete the table below with information on **each PERB decision issued** in FY2022 or FY2023, until Jan. 1, 2023, **that required action by agency management**. For example, an order for a unit to move to a different union (list the union local name) would be the description and date of implementation would be the date the unit received the necessary pay adjustment. If the date of implementation is not known, please state so. Add rows as necessary.

<i>Case Number or identifier</i>	<i>Case Type</i>	<i>Agency</i>	<i>Union Local (name, number)</i>	<i>Brief description of action to be taken</i>	<i>Date of PERB decision</i>	<i>Date of final implementation by agency</i>	<i>If petition for enforcement filed, date of petition</i>
22-A-03	Arbitration Review Request	MPD	FOP/MPD Labor Committee	Arbitration award sustained → grievant to be reinstated with full back pay less certain exceptions, MPD to make grievant whole and reimburse for any lost benefits, MPD to bear arbitration fees/expenses	6/22/22	No complaint of non-compliance	N/A
21-U-10 & 21-UC-01	Unfair Labor Practice & Unit Clarification	DFS	NAGE	Agency shall cease and desist from refusing to recognize Union, refusing to recognize non-statutory exempt positions, interfering with, restraining, or coercing employees in rights under D.C. Official Code § 1-617.04(a)(1). Agency shall inform Union/employees in Information Technology, Digital Evidence Unit, and Safety and	7/21/22	Agency certified compliance	N/A

				Occupational Health Specialist positions individually in writing that Agency recognizes Union as bargaining representative. Agency shall post notice within 14 days of service of decision and order. Within 21 days of service of decision and order, Agency shall file with PERB sworn certification of a responsible official attesting to steps Agency has taken to comply			
22-RC-01	Recognition and Noncompensation Unit Determination	OSSE	AFGE, Local 631	Election to be held to determine whether majority of eligible employees in proposed unit desire representation by AFGE or no union, absent voluntary recognition by OSSE	7/21/22	N/A (MFR filed before election)	N/A
22-A-04	Arbitration Review Request	DPW	AFGE, Local 631	Arbitration award sustained → grievant termination to be reduced to a 30-day suspension, grievant to be reinstated with full back pay less certain expenses	9/15/22	No complaint of non-compliance	N/A
22-RC-01	Recognition and Noncompensation Unit Determination	OSSE	AFGE, Local 631	Election to be held to determine whether majority of eligible employees in proposed unit desire representation by AFGE or no union, absent voluntary recognition by OSSE	9/15/22	9/23/22 Agency voluntarily recognized	N/A
21-UC-03	Unit Modification	DCR A	AFGE, 2743	Grade 12 Account Manager/Public Affair Specialist positions to be excluded from AFCME Local 2743 bargaining unit	10/20/22	N/A	N/A
22-A-07	Arbitration Review Request	OFCO	AFSCME, Local 2401	Arbitration award sustained → compensate grievant in line with arbitration award calculations	11/09/22	No complaint of non-compliance	N/A

PERB decisions requiring action by management, FY2022 and FY2023, as of Jan. 1, 2023

39. If the chart in Question 38 does not include **every petition for enforcement** filed (indicated by the date in the final column), please list those cases separately and describe the circumstances, including the agency at issue and whether the enforcement involved reinstating a terminated or suspended employee.

Response: No cases in this category

40. In each year of FY2022 and FY2023, how many **unfair labor complaints** alleging non-compliance with an order issued by PERB were filed? In how many cases did PERB require an agency to notify the Board after complying with the Board's order?

Response: In FY2022 and FY2023, there were no unfair labor practice complaints filed seeking enforcement of an order issued by PERB. In FY2022, one PERB case required the agency to notify PERB of compliance.

V. Agency Operations, Disputes, and Evaluation

41. Please list in chronological order any other (non-union) **grievances or complaints against or regarding the agency or any of its personnel, filed by any District government employee**, that were filed or pending in FY2022 or FY2023. Do not include items covered in question 30-32 Include complaints filed in any forum, including with other District agencies; complaints on any matter, including human resources, personnel, sexual harassment, financial, or other matters; and complaints filed against a current agency employee related to their employment at the agency, or related to any previous employment at another District agency. Include on the list any earlier grievance that is still pending in any forum, including review by another District agency. For each grievance or complaint:

- a. Provide the agency name and office of the complainant at the time the matter occurred.

Response: There was one complaint filed against PERB during the FY2022-FY2023 timeframe. The complainant is a D.C. Department of Behavioral Health employee, working at Saint Elizabeth's Hospital.

- b. Provide the name of the forum or agency to which the complaint was filed.

Response: The complainant filed an informal complaint with PERB. To the knowledge of PERB staff, the complainant has not filed her complaint against PERB with any other forum or agency.

- c. Specify if the complaint concerns a colleague or supervisor.

Response: The complaint primarily concerns PERB as an agency. The complaint secondarily concerns a PERB employee.

- d. Provide a brief description of the matter and the current status.

Response: On September 29, 2022, the complainant filed an unfair labor practice (ULP) Complaint against a labor organization. On October 12, 2022, this office issued a deficiency letter, finding that the ULP Complaint failed to comply with Board Rules 502.1(d); 502.4(c) and (d); 520.3; and 544.3. On October 17, 2022, the Executive Director held a conference call with the complainant to clarify the identified deficiencies. On October 25, 2022, this office issued a second deficiency letter, and extended the deadline for the complainant to cure the deficiencies.

On November 2, 2022, the complainant filed her Amended ULP Complaint, which did not cure the previously identified deficiencies. On December 5, 2022, the Executive Director administratively dismissed the case. On December 13, 2022, the complainant emailed PERB staff, stating that she did not understand the Administrative Dismissal. On December 30, 2022, this office issued a letter clarifying the Administrative Dismissal.

On December 30, 2022, PERB received an email from the complainant, in which she expressed her displeasure at how PERB had handled her ULP Complaint. In her email, the complainant alleged that PERB's filing process was unduly complicated and displayed a lack of concern for *pro se* complainants, such as herself. Secondly, the complainant's email alleged that a PERB staff member was rude to her and failed to return her phone calls.


The Executive Director met with the complainant on January 10, 2023, to discuss the complainant's concerns and further review her ULP Complaint. The Executive Director clarified PERB's filing rules and assured the complainant that her allegations concerning employee conduct would be addressed internally.

The complainant and the Executive Director plan to reconvene in the future regarding the complainant's ULP complaint. The complainant has not expressed any further discontentment with PERB or its staff.

- e. Describe the response to the complaint or grievance, including any disciplinary action taken and any changes to agency policies or procedures.

Response: PERB has not implemented any changes to its policies or procedures. The complainant appears to have an improved understanding of the relevant PERB Rules. Moreover, PERB has not taken any disciplinary action regarding this matter. PERB records demonstrate that staff responded to the complainant's voicemails via email. The conduct of PERB staff has been consistent with the guidelines set by PERB.

- f. For any complaint or grievance that was resolved in FY2022 or FY2023, as of Jan. 1, 2023, describe the resolution or outcome.

Response: As of January 1, 2023, this matter was not resolved. However, since her January 10, 2023, meeting with the Executive Director, the complainant has not expressed any negative sentiments toward PERB or its staff. 

42. Please list in chronological order all **administrative grievances or complaints filed by parties outside District government** against the agency regarding services provided by or actions of the agency or any employee of the agency in FY2022 or FY2023, as of Jan. 1, 2023. Do not include items covered in questions 30-32. Include on the chronological list any earlier grievance that is still pending in any forum.
- Describe the complainant (e.g. [Program name] customer)
 - For each grievance or complaint, give a brief description of the matter as well as the current status.
 - Please describe the process utilized to respond to the complaint or grievance and any changes to agency policies or procedures as a result.
 - For any complaints or grievances that were resolved in FY2022 or FY2023, as of Jan. 1, 2023 describe the resolution.

Response: None



43. Please list all **lawsuits** that name or are concerned with the agency, division, or employee of the agency (related to the employee's work) as a party, which are pending or which concluded in FY2022 or FY2023, as of Jan. 1, 2023. Do not include items covered in questions 30-32
- Provide the case name, court, where claim was filed, case docket number, current status of case, and a description of all causes of action, counts, and/or allegations in the filed complaint.
 - Attach a copy of each complaint and any response filed by the agency or its legal representative.

Response: None

44. Please list all **settlements** entered into by PERB or by the District on behalf of the agency in FY2021, FY2022, or FY2023, as of Jan. 1, 2023, including those authorized by D.C. Code § 2-402(a)(3), which requires the Mayor to pay certain settlements from agency operating budgets if the settlement is less than \$10,000 or results from an incident or allegation within two years of the filing date. For each settlement, provide:
- The parties' names;
 - The date the underlying claim was filed with the agency/District government;
 - The date the settlement was executed;
 - The amount of the settlement and time period over which it was/will be paid;
 - Non-financial terms required of the agency, such as rescission of discipline, waiver of future claims, etc.;
 - If related to litigation, court where claim was initially filed, case docket number, and a description of the allegations; or

- f. If unrelated to litigation, please describe the underlying dispute (e.g. administrative complaint related to sexual harassment, etc.).

Response: None

45. For all **studies, research papers, reports, evaluations, and analyses**, including those provided by contractors or consultants, that PERB prepared or contracted for during FY2022 and FY2023, as of Jan. 1, 2023:
- . For any study, paper, report, or analysis that is complete, please attach a copy.
 - a. For any study, paper, report, or analysis still underway, please provide Report name, author(s), and purpose; expected completion date; purpose and description of contents; and contract number or grant name if the report was produced by a contractor or grantee.

Response: None

46. Please list and describe any **investigations, audits, or reports by outside entities** that have requested or required participation by PERB or any employee that were conducted during FY2022 and FY2023, as of Jan. 1, 2023, or that are ongoing. Also, please provide the url or *attach copies* of any such document that is not online. Include any routine or ad hoc monitoring, site reviews, desk audits, or other reviews or audits by federal agencies, the Office of the Inspector General, the DC Auditor, or *any other* local or federal governmental entity.

Response: None

47. Please list all **recommendations identified by the Office of the Inspector General, DC Auditor, or other federal or local oversight entities** during FY2021, FY2022, or FY2023, as of Jan. 1, 2023 about PERB. Please provide an update on what actions have been taken to address each recommendation. If the recommendation has not been implemented, please explain why.

Response: HSEMA notified PERB that the agency had not documented that the Continuity of Operations – After Action Report had been tested. Testing was conducted among employees and board members by December 22, 2022, and HSEMA was notified of the agency’s compliance.

48. Please attach a copy the agency’s **FOIA disclosure report(s)** for FY2022.

Response: See Exhibit Q48 FOIA Disclosure Reports

49. Please attach a **log of all FOIA requests** received in FY2022 and FY2023 with the request number, the name of the requestor, the request date, and a brief description of the information requested.

Response: See Exhibit Q49 FOIA Requests Log



PUBLIC EMPLOYEE RELATIONS BOARD

FY 2022 PERFORMANCE AND ACCOUNTABILITY REPORT

JANUARY 15, 2023

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1 PUBLIC EMPLOYEE RELATIONS BOARD

Mission: The District of Columbia Public Employee Relations Board (hereafter, “PERB”) is an impartial, quasi-judicial, independent agency empowered with the exclusive jurisdiction to resolve labor-management disputes.

Services: PERB determines appropriate compensation and non-compensation bargaining units. PERB also certifies, decertifies, amends, clarifies and modifies labor organizations as exclusive bargaining representatives; facilitates and reviews election procedures and results concerning the selection of labor organizations as the exclusive bargaining representative; investigates and adjudicates unfair labor practices and standards of conduct complaints; reviews appeals of grievance arbitration awards; determines impasse status of collective bargaining between District government agencies and District government employee unions; facilitates Impasse arbitration bargaining between District government agencies and District government employee unions; determines negotiability of proposals submitted during collective bargaining contract negotiations between District government agencies and District government employee unions; mediates disputes submitted to PERB; issues subpoenas and conducts hearings; and adopts rules and regulations for conducting PERB business.

2 2022 ACCOMPLISHMENTS

Accomplishment	Impact on Agency	Impact on Residents
PERB conducted 7 labor/management training sessions, including a special film presentation for black history month on the 1968 Memphis Sanitation Strike.	In some situations, education and knowledge decreases the number of cases filed.	The training sessions assisted managers and union officials to understand their role in an union environment and promotes labor peace and amicable relationships.
All PERB attorneys received a week-long mediation training.	In certain circumstances, PERB attorneys can conduct mediations that preserve agency resources.	No direct impact on residents.
PERB conducted 20 mediations in FY2022 resulting in 7 settlements.	With each settlement, no hearing is required, thus saving PERB resources.	Mediations allow managers and union officials the opportunity to talk directly to each other with the assistance of a third party. It allows a better expression of ideas and concerns without litigation; and allows parties to reach a mutual agreement that is satisfactory to both parties.

3 2022 OBJECTIVES

Strategic Objective	Number of Measures	Number of Operations
Resolve cases efficiently to provide stable labor relations in District agencies.	3	2
Assist parties to reach mutually agreed resolutions of labor disputes to promote harmony between unions and District agencies	1	1
Provide training sessions and resources that promote better understanding and knowledge of labor relations and various responsibilities to District government managers and union representatives.	1	2
Maintain a system to allow the public to have access to all decisions rendered by PERB	2	1

4 2022 OPERATIONS

Operation Title	Operation Description	Type of Operation
Resolve cases efficiently to provide stable labor relations in District agencies.		
Decisions and Orders	Drafting opinions for Board approval.	Daily Service
Information Technology	PERB will seek to modernize the Information Technology Infrastructure of the office.	Key Project
Assist parties to reach mutually agreed resolutions of labor disputes to promote harmony between unions and District agencies		
Mediation	Dispute resolution that may reduce time and cost traditionally associated with these disputes and identify mutually agreeable solutions.	Daily Service
Provide training sessions and resources that promote better understanding and knowledge of labor relations and various responsibilities to District government managers and union representatives.		
Trainings	PERB will provide training sessions to promote better understanding and knowledge of labor relations and responsibilities to DC government managers and union representatives.	Daily Service
Training Center	PERB will create an in-house training center to further promote better understanding of labor relations and responsibilities to DC government managers and union representatives.	Key Project
Maintain a system to allow the public to have access to all decisions rendered by PERB		
Publishing	PERB will publish Decisions and Orders in a timely fashion for public distribution.	Daily Service

5 2022 STRATEGIC INITIATIVES

In FY 2022, Public Employee Relations Board had 1 Strategic Initiatives and completed 100%.

Title	Description	Completion to Date	Update	Explanation for Incomplete Initiative
In FY22, PERB will eliminate vendor-supplied, off-site document storage to decrease administrative cost.	The agency will achieve this administrative cost decrease by auditing stored paper files, destroying files not required by the agency's record retention policy, and temporarily relocating the required paper files to the agency's library.	Complete	PERB has closed its off-site vendor account and no longer will be using the service.	

6 2022 KEY PERFORMANCE INDICATORS AND WORKLOAD MEASURES

Key Performance Indicators

Measure	Directionality	FY 2020	FY 2021	FY 2022 Target	FY 2022 Q1	FY 2022 Q2	FY 2022 Q3	FY 2022 Q4	FY 2022	Was 2022 KPI Met?	Explanation of Unmet KPI
Resolve cases efficiently to provide stable labor relations in District agencies.											
Percent of cases requiring a hearing that are resolved within 300 days	Up is Better	42.3%	72.2%	60%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	70%	Met	
Percent of cases not requiring a hearing that are resolved within 120 days	Up is Better	52.9%	70.8%	75%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	71.4%	Nearly Met	
Percent of cases referred to the Board with a Decision within 120 days	Up is Better	96.8%	100%	100%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	100%	Met	
Assist parties to reach mutually agreed resolutions of labor disputes to promote harmony between unions and District agencies											
Percentage of settlements resulting from mediation	Neutral	New in 2022	New in 2022	New in 2022	Annual Measure	Annual Measure	Annual Measure	Annual Measure	60%	-	
Provide training sessions and resources that promote better understanding and knowledge of labor relations and various responsibilities to District government managers and union representatives.											
Number of training sessions conducted	Up is Better	4	12	8	Annual Measure	Annual Measure	Annual Measure	Annual Measure	11	Met	
Maintain a system to allow the public to have access to all decisions rendered by PERB											
Percent of Board decisions published in the D.C Register within 60 days of issuance	Up is Better	54.8%	100%	100%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	100%	Met	
Percent of decisions uploaded to PERB's website within 60 days	Up is Better	74.2%	100%	100%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	100%	Met	

Q4 FY22 Performance Accountability Report

Workload Measures

Measure	FY 2020	FY 2021	FY 2022 Q1	FY 2022 Q2	FY 2022 Q3	FY 2022 Q4	FY 2022
Decisions and Orders							
Number of total cases closed in Fiscal Year	47	71	Annual Measure	Annual Measure	Annual Measure	Annual Measure	50
Number of total cases filed with PERB in Fiscal Year	55	58	Annual Measure	Annual Measure	Annual Measure	Annual Measure	48
Number of Arbitration Review Requests filed with PERB in Fiscal Year	8	10	Annual Measure	Annual Measure	Annual Measure	Annual Measure	9
Number of cases that held a hearing in Fiscal Year	9	6	Annual Measure	Annual Measure	Annual Measure	Annual Measure	5
Number of Representation cases filed with PERB in Fiscal Year	2	6	Annual Measure	Annual Measure	Annual Measure	Annual Measure	2
Number of Negotiability cases filed with PERB in Fiscal Year	0	4	Annual Measure	Annual Measure	Annual Measure	Annual Measure	2
Number of Non-Compensation Negotiation Impasse cases filed with PERB in Fiscal Year	0	1	Annual Measure	Annual Measure	Annual Measure	Annual Measure	2
Number of motions for reconsideration of Board decisions filed	6	7	Annual Measure	Annual Measure	Annual Measure	Annual Measure	5
Number of Compensation Negotiation Impasse cases filed with PERB in Fiscal Year	1	1	Annual Measure	Annual Measure	Annual Measure	Annual Measure	5
Number of Enforcement Petitions filed in Fiscal Year	4	8	Annual Measure	Annual Measure	Annual Measure	Annual Measure	0
Number of Standards of Conduct Complaints filed in Fiscal Year	6	1	Annual Measure	Annual Measure	Annual Measure	Annual Measure	5
Number of Unfair Labor Practice Complaints filed in Fiscal Year	34	27	Annual Measure	Annual Measure	Annual Measure	Annual Measure	22
Mediation							
Number of mediations conducted	New in 2022	New in 2022	Annual Measure	Annual Measure	Annual Measure	Annual Measure	20
Trainings							
Number of participants who completed training, outreach and facilitation activities	73	235	Annual Measure	Annual Measure	Annual Measure	Annual Measure	192
Publishing							
Number of cases published in the D.C. Register	31	38	Annual Measure	Annual Measure	Annual Measure	Annual Measure	24
Number of cases uploaded to PERB's website	29	38	Annual Measure	Annual Measure	Annual Measure	Annual Measure	23

Public Employee Relations Board FY2023

Agency Public Employee Relations Board

Agency Code CGO

Fiscal Year 2023

Mission The District of Columbia Public Employee Relations Board (hereafter, "PERB") is an impartial, quasi-judicial, independent agency empowered with the exclusive jurisdiction to resolve labor-management disputes.

Strategic Objectives

Objective Number	Strategic Objective
1	Resolve cases efficiently to provide stable labor relations in District agencies.
2	Assist parties to reach mutually agreed resolutions of labor disputes to promote harmony between unions and District agencies
3	Provide training sessions and resources that promote better understanding and knowledge of labor relations and various responsibilities to District government managers and union representatives.
4	Maintain a system to allow the public to have access to all decisions rendered by PERB

Key Performance Indicators (KPIs)

Measure	Directionality	FY 2020 Actual	FY 2021 Actual	FY 2022 Target	FY2022 Actual	FY 2023 Target
1 - Resolve cases efficiently to provide stable labor relations in District agencies. (3 Measure records)						
Percent of cases requiring a hearing that are resolved within 300 days	Up is Better	42.3%	72.2%	60%	70%	60%
Percent of cases not requiring a hearing that are resolved within 120 days	Up is Better	52.9%	70.8%	75%	71.4%	75%
Percent of cases referred to the Board with a Decision within 120 days	Up is Better	96.8%	100%	100%	100%	100%
2 - Assist parties to reach mutually agreed resolutions of labor disputes to promote harmony between unions and District agencies (1 Measure)						
Percentage of settlements resulting from mediation	Neutral	New in 2022	New in 2022	New in 2022	New in 2022	No Target Set
3 - Provide training sessions and resources that promote better understanding and knowledge of labor relations and various responsibilities to District government managers and union representatives. (1 Measure)						
Number of training sessions conducted	Up is Better	4	12	8	11	8
4 - Maintain a system to allow the public to have access to all decisions rendered by PERB (2 Measure records)						
Percent of Board decisions published in the D.C Register within 60 days of issuance	Up is Better	54.8%	100%	100%	100%	100%
Percent of decisions uploaded to PERB's website within 60 days	Up is Better	74.2%	100%	100%	100%	100%

Operations

Operations Title	Operations Description	Type of Operations
1 - Resolve cases efficiently to provide stable labor relations in District agencies. (1 Activity)		
Decisions and Orders	Drafting opinions for Board approval.	Daily Service
2 - Assist parties to reach mutually agreed resolutions of labor disputes to promote harmony between unions and District agencies (1 Activity)		
Mediation	Dispute resolution that may reduce time and cost traditionally associated with these disputes and identify mutually agreeable solutions.	Daily Service
3 - Provide training sessions and resources that promote better understanding and knowledge of labor relations and various responsibilities to District government managers and union representatives. (2 Activity records)		
Trainings	PERB will provide training sessions to promote better understanding and knowledge of labor relations and responsibilities to DC government managers and union representatives.	Daily Service

Q5 FY23 Performance Plan

Operations Title	Operations Description	Type of Operations
Training Center	PERB will create an in-house training center to further promote better understanding of labor relations and responsibilities to DC government managers and union representatives.	Key Project
4 - Maintain a system to allow the public to have access to all decisions rendered by PERB (1 Activity)		
Publishing	PERB will publish Decisions and Orders in a timely fashion for public distribution.	Daily Service

Workload Measures (WMs)

Measure	FY 2020 Actual	FY 2021 Actual	FY2022 Actual
1 - Decisions and Orders (12 Measure records)			
Number of Enforcement Petitions filed in Fiscal Year	4	8	0
Number of total cases closed in Fiscal Year	47	71	50
Number of motions for reconsideration of Board decisions filed	6	7	5
Number of cases that held a hearing in Fiscal Year	9	6	5
Number of Representation cases filed with PERB in Fiscal Year	2	6	2
Number of total cases filed with PERB in Fiscal Year	55	58	48
Number of Negotiability cases filed with PERB in Fiscal Year	0	4	2
Number of Unfair Labor Practice Complaints filed in Fiscal Year	34	27	22
Number of Arbitration Review Requests filed with PERB in Fiscal Year	8	10	9
Number of Non-Compensation Negotiation Impasse cases filed with PERB in Fiscal Year	0	1	2
Number of Compensation Negotiation Impasse cases filed with PERB in Fiscal Year	1	1	5
Number of Standards of Conduct Complaints filed in Fiscal Year	6	1	5
2 - Mediation (1 Measure)			
Number of mediations conducted	47	Not Available	20
3 - Trainings (1 Measure)			
Number of participants who completed training, outreach and facilitation activities	73	235	192
4 - Publishing (2 Measure records)			
Number of cases published in the D.C. Register	31	38	24
Number of cases uploaded to PERB's website	29	38	23

Case Resolution Management Chart

Category	Resolution
Negotiability Cases	120 Days
Compensation Negotiation Impass Cases	240 Days
Non-Compensation Negotiation Impass Cases	240 Days
Arbitration Review Requestss	120 Days
Representation Cases	240 Days
ULP/SOC Cases	300 Days
ULP/SOC Hearings	Scheduled within 60 days
Mediations	Held within 45 days

CGO - Public Employee Relations Board (FY2022 Budget by Program)

Object Category	CSG	Comptroller Source Group Title	Approved Budget	Revised Budget	Expenditures	Funds Remaining
1000 - AGENCY MANAGEMENT						
PERSONNEL SERVICES	0011-PERSONNEL SERVICES	REGULAR PAY - CONT FULL TIME	\$182,027	\$182,027	\$189,070	(\$7,043)
	0013-PERSONNEL SERVICES	ADDITIONAL GROSS PAY	\$0	\$0	\$7,325	(\$7,325)
	0014-PERSONNEL SERVICES	FRINGE BENEFITS - CURR PERSONNEL	\$37,498	\$37,498	\$22,982	\$14,516
PERSONNEL SERVICES			\$219,525	\$219,525	\$219,377	\$148
NON-PERSONNEL SERVICES	0031-NON-PERSONNEL SERVICES	TELECOMMUNICATIONS	\$26,035	\$26,035	\$24,477	\$1,558
NON-PERSONNEL SERVICES			\$26,035	\$26,035	\$24,477	\$1,558
1000 - AGENCY MANAGEMENT			\$245,560	\$245,560	\$243,855	\$1,706
1000 - AGENCY MANAGEMENT PROGRAM						
1000 - PUBLIC EMPLOYEE RELATIONS BOARD						
1000 - PUBLIC EMPLOYEE RELATIONS BOARD (CC)						
2000 - ADJUDICATION						
PERSONNEL SERVICES	0011-PERSONNEL SERVICES	REGULAR PAY - CONT FULL TIME	\$692,697	\$647,509	\$580,976	\$66,533
	0013-PERSONNEL SERVICES	ADDITIONAL GROSS PAY	\$0	\$0	\$31,816	(\$31,816)
	0014-PERSONNEL SERVICES	FRINGE BENEFITS - CURR PERSONNEL	\$142,696	\$142,696	\$168,999	(\$26,303)
	0015-PERSONNEL SERVICES	OVERTIME PAY	\$0	\$0	\$2	(\$2)
PERSONNEL SERVICES			\$790,205	\$790,205	\$781,793	\$8,412
NON-PERSONNEL SERVICES	0020-NON-PERSONNEL SERVICES	SUPPLIES AND MATERIALS	\$9,800	\$9,800	\$5,644	\$4,156
	0040-NON-PERSONNEL SERVICES	OTHER SERVICES AND CHARGES	\$112,258	\$112,258	\$108,646	\$3,612
	0041-NON-PERSONNEL SERVICES	CONTRACTUAL SERVICES - OTHER	\$101,573	\$81,573	\$77,536	\$4,037
	0070-NON-PERSONNEL SERVICES	EQUIPMENT & EQUIPMENT RENTAL	\$10,000	\$10,000	\$9,652	\$348
NON-PERSONNEL SERVICES			\$233,631	\$213,631	\$201,476	\$12,155
0100 LOCAL FUND			\$1,069,024	\$1,003,836	\$983,270	\$20,566
2000 - ADJUDICATION			\$1,069,024	\$1,003,836	\$983,270	\$20,566
0100 LOCAL FUND						
PUBLIC EMPLOYEE RELATIONS BOARD			\$1,314,584	\$1,249,396	\$1,227,124	\$22,272



CG0 - Public Employee Relations Board - FY2022 by Activity (All Local Funds)

Object Category	CSG	Comptroller Source Group Title	Appropriation	Expenditures	Funds Remaining
1010 - PERSONNEL					
1020 - CONTRACTING & PROCUREMENT					
1030 - PROPERTY MANAGEMENT					
1040 - INFORMATION TECHNOLOGY					
NON-PERSONNEL SERVICES	0031-NON-PERSONNEL SERVICES	TELECOMMUNICATIONS	\$26,035	\$24,477	\$1,558
NON-PERSONNEL SERVICES			\$26,035	\$24,477	\$1,558
1040 - INFORMATION TECHNOLOGY			\$26,035	\$24,477	\$1,558
1085 - CUSTOMER SERVICE					
1090 - PERFORMANCE MANAGEMENT					
PERSONNEL SERVICES	0011-PERSONNEL SERVICES	REGULAR PAY - CONT FULL TIME	\$182,027	\$189,070	(\$7,043)
	0013-PERSONNEL SERVICES	ADDITIONAL GROSS PAY	\$0	\$7,325	(\$7,325)
	0014-PERSONNEL SERVICES	FRINGE BENEFITS	\$37,498	\$22,982	\$14,516
PERSONNEL SERVICES			\$219,525	\$219,377	\$148
1090 - PERFORMANCE MANAGEMENT			\$219,525	\$219,377	\$148
1100 - PUBLIC EMPLOYEE RELATIONS BOARD					
2001 - ADJUDICATION					
2001 - LEGAL SUPPORT					
PERSONNEL SERVICES	0011-PERSONNEL SERVICES	REGULAR PAY - CONT FULL TIME	\$271,464	\$282,511	(\$11,047)
	0013-PERSONNEL SERVICES	ADDITIONAL GROSS PAY	\$0	\$10,827	(\$10,827)
	0014-PERSONNEL SERVICES	FRINGE BENEFITS	\$55,922	\$80,994	(\$25,072)
PERSONNEL SERVICES			\$327,386	\$374,332	(\$46,946)
NON-PERSONNEL SERVICES	0020-NON-PERSONNEL SERVICES	SUPPLIES AND MATERIALS	\$4,000	\$1,522	\$2,478
	0040-NON-PERSONNEL SERVICES	OTHER SERVICES AND CHARGES	\$81,058	\$81,946	(\$888)
	0041-NON-PERSONNEL SERVICES	CONTRACTUAL SERVICES - OTHER	\$81,573	\$77,536	\$4,037
NON-PERSONNEL SERVICES			\$166,631	\$161,004	\$5,627
2001 - LEGAL SUPPORT			\$494,017	\$535,335	(\$41,319)

2002 - COURT APPEALS

PERSONNEL SERVICES	0011-PERSONNEL SERVICES	REGULAR PAY - CONT FULL TIME	\$376,045	\$298,465	\$77,580
	0013-PERSONNEL SERVICES	ADDITIONAL GROSS PAY	\$0	\$20,989	(\$20,989)
	0014-PERSONNEL SERVICES	FRINGE BENEFITS	\$86,774	\$88,005	(\$1,231)
	0015-PERSONNEL SERVICES	OVERTIME PAY	\$0	\$2	(\$2)
PERSONNEL SERVICES			\$462,819	\$407,461	\$55,358
NON-PERSONNEL SERVICES	0020-NON-PERSONNEL SERVICES	SUPPLIES AND MATERIALS	\$5,800	\$4,121	\$1,679
	0070-NON-PERSONNEL SERVICES	EQUIPMENT & EQUIPMENT RENTAL	\$10,000	\$9,652	\$348
NON-PERSONNEL SERVICES			\$15,800	\$13,773	\$2,027
2002 - COURT APPEALS			\$478,619	\$421,234	\$57,385

2002 - HEARINGS

2003 - PUBLIC EMPLOYEE RELATIONS BOARD

NON-PERSONNEL SERVICES	0040-NON-PERSONNEL SERVICES	OTHER SERVICES AND CHARGES	\$31,200	\$26,700	\$4,500
NON-PERSONNEL SERVICES			\$31,200	\$26,700	\$4,500
2003 - PUBLIC EMPLOYEE RELATIONS BOARD			\$31,200	\$26,700	\$4,500

PUBLIC EMPLOYEE RELATIONS BOARD			\$1,249,396	\$1,227,124	\$22,272
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CG0 - FY2023 BUDGET As of February 03, 2023

Program	FY2023 Approved Budget	FY2023 Revised Budget	FY2023 Expenditures	Remaining Funds
Information Technology Services	\$25,011.15	\$25,011.15	\$1,480.92	\$23,530.23
Legal Services	\$560,231.33	\$560,231.33	\$102,525.04	\$457,706.29
Performance and Strategic Management	\$222,987.21	\$222,987.21	\$72,100.87	\$150,886.34
Medication Services	\$554,598.63	\$554,598.63	\$215,321.97	\$339,276.66
Total	\$1,362,828.32	\$1,362,828.32	\$391,428.80	\$971,399.52

PERB FY23 -SPEND PLAN (Q13)

Information Technology Services	
Vendor	Amount
Telecommunications (OCTO/DCNet Support)	\$ 25,011.15
Total	\$ 25,011.15

Legal Services - General	
Vendor	Amount
Imprest Fund* Estimate (Total Spending)	\$ 100.00
Time Matters Subscription	\$ 6,007.50
Michael Matters/David Michael	\$ 4,000.00
Hearings	\$ 32,000.00
Mediations	\$ 12,000.00
Attorney Training and Travel	\$ 10,500.00
Second Tuesdays/Labor Relations Training	\$ 6,000.00
West Publishing/Thompson Reuters	\$ 8,728.68
Adobe Software	\$ 466.26
Commonwealth Digital Office	\$ 600.00
ALRA Membership	\$ 500.00
Chicago Press-The University of Chicago Press	\$ 164.00
MOU Human Resources	\$ 10,828.00
Court Reporter	\$ 21,240.00
Postage	\$ 100.00
Surplus packing and delivery	\$ 1,248.00
AV Equipment (Training and Hearing Rooms)	\$ 15,848.40
Webster & Frederickson	\$ 60,000.00
Courier Services	\$ 200.00
Total	\$ 190,530.84

Mediation Services	
Vendor	Amount
Board Member Stipends	\$ 31,200.00
Office Supplies	\$ 5,800.00
IT Equipment (Laptops (s), Desktop and accessories)	\$ 10,000.00
Total	\$ 47,000.00

Q13 NPS Spend Plan

Program Code Summary	
Program	Amount
Information Technology Services	\$ 25,011.15
Legal Services - General	\$ 190,530.84
Mediation Services	\$ 47,000.00
Grand Total	\$ 262,541.99

INTRA-DISTRICT STANDARD REQUEST FORM
Government of the District of Columbia

PART I

GENERAL

MOU NUMBER: _____ EFF DATE OF MOU: 10/1/2021

SELLER INFORMATION

AGENCY: Department of Human Resources AGENCY CODE: BE0

NAME OF CONTACT: James Hurley, Agency Fiscal Officer

ADDRESS : 441 4th Street, NW Ste 890N
Washington, DC 20002

TELEPHONE # : _____

FAX # : _____

AUTHORIZING OFFICER _____ DATE: ___ / ___ / ___

BUYER INFORMATION

AGENCY: Public Employee Relations Board AGENCY CODE: CG0

NAME OF CONTACT: Paul Blake, Agency Fiscal Officer

ADDRESS : 441 4th Street, NW Ste 890N
Washington, DC 20002

TELEPHONE # : 202-727-9833

FAX # : _____

AUTHORIZING OFFICER Paul K. Blake DATE: 2,01,22

Q14A DCHR-PERB MOU for FY2022

PART II

MOU NUMBER: _____ 2 OF _____ 2

SERVICE INFORMATION AND FUNDING CODES

GOOD/ SERVICE: To provide HR services

\$ 10,564.00

	AGY	YR	ORG CODE	FUND	INDEX	PCA	OBJ	AOBJ	GRANT/PH	PROJ/PH
Seller	BE0	22								
Buyer	CG0	22		0100	20001	12001	0408	0408		

GOOD/ SERVICE: _____

DATE: ___/___/___

TOTAL: _____

	AGY	YR	ORG CODE	FUND	INDEX	PCA	OBJ	AOBJ	GRANT/PH	PROJ/PH
SELLER										
BUYER										

GOOD/ SERVICE: _____

DATE: ___/___/___

TOTAL: _____

	AGY	YR	ORG CODE	FUND	INDEX	PCA	OBJ	AOBJ	GRANT/PH	PROJ/PH
SELLER										
BUYER										

GOOD/ SERVICE: _____

DATE: ___/___/___

TOTAL: _____

	AGY	YR	ORG CODE	FUND	INDEX	PCA	OBJ	AOBJ	GRANT/PH	PROJ/PH
SELLER										
BUYER										



MEMORANDUM OF UNDERSTANDING

BETWEEN

THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD

AND

THE DISTRICT OF COLUMBIA DEPARTMENT OF HUMAN RESOURCES

FOR FISCAL YEAR 2022

I. INTRODUCTION

This Memorandum of Understanding (MOU) is entered into between the District of Columbia (District) Public Employee Relations Board (PERB or Buyer) and the Department of Human Resources (DCHR or Seller), collectively known as the Parties and individually as a Party.

II. PROGRAM GOALS AND OBJECTIVES

The Buyer serves as the personnel authority for its staff and provides personnel and resource support to other offices. However, the Buyer lacks the human resources (HR) processing infrastructure necessary to accommodate its personnel related operations. Through this MOU, the Seller shall provide the Buyer the needed HR services.

III. SCOPE OF SERVICES

Pursuant to the applicable authorities and in pursuit of the shared goals of the Parties to carry out the program goals and objectives expeditiously and economically, the Parties agree as follows:

A. RESPONSIBILITIES OF DCHR

DCHR shall provide PERB the HR services listed in *Attachment A*. For each service, DCHR shall provide policy guidance, data processing and customer service to PERB, its management staff, and its employees, when applicable.

B. RESPONSIBILITIES OF PERB

In support of the services listed in *Attachment A*, PERB shall:

1. Advance to DCHR \$10,564 (ten thousand, five hundred, sixty-four dollars) for HR services;
2. Ensure that DCHR receives all documentation reasonably necessary in a timely fashion to carry out its responsibilities under this MOU;
3. Ensure that PERB employees are actively enrolled in Employee Self Service;
4. Designate an PERB employee to serve as a Human Resources Advisor (HRA), who will coordinate with DCHR personnel to facilitate the services provided by DCHR.
5. Coordinate, in good faith and promptly, with DCHR before engaging in any corrective or adverse action procedure involving an PERB employee, non-union dispute resolution or mediation, or non-union grievance process;
6. Ensure that all PERB management are properly trained in performance management concepts and PeopleSoft's ePerformance application. The HRA shall be responsible for PERB level ePerformance training and administration once they have received initial training from DCHR;
7. PERB agrees to be bound by the provisions of the Comprehensive Merit Personnel Act, Title 6B of the D.C. Municipal Regulations, and all implementing DCHR policies, procedures, issuances and other guidance, unless specifically superseded by statute; and
8. PERB agrees that this MOU does not include any services relating to enhanced suitability assessments pursuant to Chapter 4 of Title 6B of the D.C. Municipal Regulations.

IV. DURATION OF MOU

- A. The period of this MOU shall be from October 1, 2021 through September 30, 2022, unless terminated in accordance with Section XI prior to the expiration.
- B. The Parties may extend the term of this MOU by exercising a maximum of one (1) one-year option period. PERB shall provide DCHR with written notice of its intent to exercise an option period thirty (30) days prior to the expiration of the initial year of this MOU.
- C. The exercise of an option period is subject to the availability of funds at the time of the exercise of the option.

V. AUTHORITY FOR MOU

The authority for this MOU may be found at D.C. Official Code § 1-301.01(k).

VI. FUNDING PROVISIONS

A. COST OF SERVICES

1. Total cost for services under this MOU shall not exceed \$10,564 (ten thousand, five hundred, sixty-four dollars)¹ for Fiscal Year 2022. Funding for services shall not exceed the actual cost of the goods and services.
2. The cost of this MOU is based upon the current average annual total compensation for an HR staff employed by DCHR multiplied by the standard ratio of HR staff to the current workforce.

B. PAYMENT

1. Payment for the services shall be made through an Intra-District advance by PERB to DCHR based on the total amount of this MOU. DCHR shall receive the advance and bill PERB only for those goods and services actually provided pursuant to the terms of this MOU.
2. PERB shall report all services received under this MOU in its monthly Financial Review Process (FRP) report to the Office of Budget and Planning of the District of Columbia Office of the Chief Financial Officer.
3. Advances to DCHR for the services to be performed and goods to be provided shall not exceed \$10,564 (ten thousand, five hundred, sixty-four dollars) in Fiscal Year 2022.
4. DCHR shall receive the advance and bill PERB through the Intra-District process only for those services provided pursuant to the terms of this MOU. DCHR shall notify PERB within forty-five (45) days of the then current fiscal year if it has reason to believe that all of the advance will not be billed during

¹FY2022 costs are based on the following calculation: The current average total compensation of the HR staff providing services under this MOU is \$100,612. The ratio of HR staff to the current workforce used for this MOU is 1.5 HR staff for every 100 employees. Given that PERB has a workforce of 7 employees, the resulting ratio is 0.105. The resulting formula is $0.105 \times \$100,612 = \$10,564$.

the fiscal year. DCHR shall return any excess advance to PERB within thirty (30) days of the end of that fiscal year.

VII. ANTI-DEFICIENCY CONSIDERATIONS

The Parties acknowledge and agree that their respective obligations to fulfill financial obligations of any kind pursuant to any and all provisions of this MOU, or any subsequent agreement entered into by the Parties pursuant to this MOU, are and shall remain subject to the provisions of: (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1351; (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01-355.08; (iii) D.C. Official Code § 47-105; and (iv) D.C. Official Code § 1-204.46, as the foregoing statutes may be amended, regardless of whether a particular obligation has been expressly so conditioned.

VIII. COMPLIANCE AND MONITORING

As this MOU is funded by District of Columbia funds, DCHR will be subject to scheduled and unscheduled monitoring reviews by PERB to ensure compliance with all applicable requirements.

IX. RECORDS AND REPORTS

DCHR shall maintain records and receipts for the expenditure of all funds provided for a period of no less than three (3) years from the date of expiration or termination of this MOU and, upon the request of PERB or another the District of Columbia government agency with legal authority to request review, make these documents available for inspection by duly authorized representatives of PERB or the relevant District of Columbia government agency.

X. CONFIDENTIAL INFORMATION

The Parties to this MOU will use, restrict, maintain, safeguard, and dispose of all information related to services provided under this MOU, in accordance with all relevant federal and local statutes, regulations, and policies. Information received by either Party in the performance of responsibilities associated with this MOU shall remain the property of PERB.

XI. TERMINATION

Either Party may terminate this MOU in whole or in part by giving forty-five (45) calendar days advance written notice to the other Party. In the event of the termination of this MOU, the Seller shall return any unused funds after all required fiscal reconciliation, but not later than September 30th of the then current fiscal year.

XII. NOTICE

The following individuals are the contact points for each Party under this MOU:

Nicole A. Cook, Chief Administrative Officer
DC Department of Human Resources
1015 Half Street, SE, 9th Floor
Washington DC 20003
(202) 316-8543

Clarene P. Martin, Executive Director
Public Employee Relations Board
1100 4th Street, SW, Suite 630 E
Washington, DC 20024
(202) 727-1822

XIII. AMENDMENTS AND MODIFICATIONS

The terms and conditions of this MOU may be modified only upon prior written agreement by the Parties. Amendments or modifications shall be dated and signed by the authorized representatives of the Parties.

XIV. MISCELLANEOUS

The Parties shall comply with all applicable laws, rules and regulations whether now in effect or hereafter enacted or promulgated, and agree to be bound by the Comprehensive Merit Personnel Act, D.C. Official Code § 1-601.01 *et seq.*, as implemented through the District Personnel Manual.

XV. PROCUREMENT PRACTICES REFORM ACT

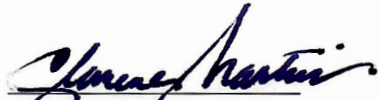
If a District of Columbia agency or instrumentality plans to utilize the goods or services of an agent, contractor, consultant or other third party to provide any of the goods or services under the MOU, then the agency or instrumentality shall abide by the provisions of the District of Columbia Procurement Practices Reform Act of 2010 (D.C. Official Code § 2-351.01, *et. seq.*) to procure the goods or services.

XVI. RESOLUTION OF DISPUTES

The Parties' Directors, or their designees, shall resolve all disputes or adjustments resulting from goods or services provided under this MOU. In the event the Parties are unable to resolve a financial issue, the matter shall be referred to the Office of Financial Operations and Systems (OFOS) of the District of Columbia Office of the Chief Financial Officer. The decision of OFOS shall be final.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as follows:

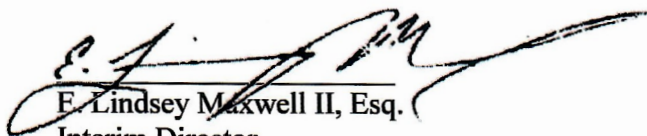
FOR THE PUBLIC EMPLOYEE RELATIONS BOARD



Clarene P. Martin
Executive Director

January 28, 2022
Date

FOR THE DEPARTMENT OF HUMAN RESOURCES



E. Lindsey Maxwell II, Esq.
Interim Director

1/27/2022
Date

DC DEPARTMENT OF HUMAN RESOURCES

Attachment A - HR SUPPORT SERVICES

Benefits and Retirement Services

Administrative processing of employee benefits coverage
Access to wellness programs
Retirement counseling, calculations & processing
Retirement seminars

Recruitment and Staffing Services

Administrative processing of personnel actions
Posting of vacancy announcements
Rating and ranking of candidates
Targeted recruitment
Creation and maintenance of Official Personnel Folders
New Hire Orientation services

Classification and Compensation Services

Classification of newly created positions
Recertification of existing positions
Desk audits
Agency reorganizations or realignments
Establishment of compensation schedules
Processing of Within Grade Increases and COLAs

Strategic Data Management Services

PeopleSoft Access, Troubleshooting & Support
Customized PeopleSoft Training

Legal Review and Consultation Services

Legal consultation and risk mitigation guidance, as requested

Policy Advisement Services

Management guidance on District Personnel Manual policies
Access to electronic DPM
Access to DPM Issuances and Administrative Orders

Employee Relations Services

Management guidance on the progressive discipline process
Guidance on FMLA/PFL policies and requirements
Access to templates and instructions

Performance Management Services

Guidance on implementation of e-Performance
Management guidance on effective Performance Management principles
Access to e-Performance training and technical assistance
Oversight of performance management plans & evaluations
Access to Performance Management appeals process

Learning and Development Services

Access to Learning & Development courses
Access to e-learning
Access to tuition discounts for employees



MEMORANDUM OF UNDERSTANDING

BETWEEN

THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD

AND

THE DISTRICT OF COLUMBIA DEPARTMENT OF HUMAN RESOURCES

FOR FISCAL YEAR 2023

I. INTRODUCTION

This Memorandum of Understanding (MOU) is entered into between the District of Columbia (District) Public Employee Relations Board (PERB or Buyer) and the Department of Human Resources (DCHR or Seller), collectively known as the Parties and individually as a Party.

II. PROGRAM GOALS AND OBJECTIVES

The Buyer serves as the personnel authority for its staff and provides personnel and resource support to other offices. However, the Buyer lacks the human resources (HR) processing infrastructure necessary to accommodate its personnel related operations. Through this MOU, the Seller shall provide the Buyer the needed HR services.

III. SCOPE OF SERVICES

Pursuant to the applicable authorities and in pursuit of the shared goals of the Parties to carry out the program goals and objectives expeditiously and economically, the Parties agree as follows:

A. RESPONSIBILITIES OF DCHR

DCHR shall provide PERB the HR services listed in *Attachment A*. For each service, DCHR shall provide policy guidance, data processing, and customer service to PERB, its management staff, and its employees, when applicable.

B. RESPONSIBILITIES OF PERB

In support of the services listed in *Attachment A*, PERB shall:

Q14B DCHR-PERB MOU for FY2023

1. Advance to DCHR \$10,828 (ten thousand, eight hundred twenty-eight dollars) for HR services within thirty (30) days of the effective date;
2. Ensure that DCHR receives all documentation reasonably necessary in a timely fashion to carry out its responsibilities under this MOU;
3. Ensure that PERB employees are actively enrolled in Employee Self Service;
4. Designate an PERB employee to serve as a Human Resources Advisor (HRA), who will coordinate with DCHR personnel to facilitate the services provided by DCHR.
5. Coordinate, in good faith and promptly, with DCHR before engaging in any corrective or adverse action procedure involving an PERB employee, non-union dispute resolution or mediation, or non-union grievance process;
6. Ensure that all PERB management are properly trained in performance management concepts and PeopleSoft's ePerformance application. The HRA shall be responsible for PERB level ePerformance training and administration once they have received initial training from DCHR;
7. PERB agrees to be bound by the provisions of the Comprehensive Merit Personnel Act, Title 6B of the D.C. Municipal Regulations, and all implementing DCHR policies, procedures, issuances and other guidance, unless specifically superseded by statute; and
8. PERB agrees that this MOU does not include any services relating to enhanced suitability assessments pursuant to Chapter 4 of Title 6B of the D.C. Municipal Regulations.

IV. DURATION OF MOU

- A.** The period of this MOU shall be from October 1, 2022 through September 30, 2023, unless terminated in accordance with Section XI prior to the expiration.
- B.** The Parties may extend the term of this MOU by exercising a maximum of one (1) one-year option period. PERB shall provide DCHR with written notice of its intent to exercise an option period thirty (30) days prior to the expiration of the initial year of this MOU, or no later than August 31, 2023.
- C.** The exercise of an option period is subject to the availability of funds at the time of the exercise of the option.

V. AUTHORITY FOR MOU

The authority for this MOU may be found at D.C. Official Code § 1-301.01(k).

VI. FUNDING PROVISIONS

A. COST OF SERVICES

1. Total cost for services under this MOU shall not exceed \$10,828 (ten thousand, eight hundred twenty-eight dollars) for Fiscal Year 2023. Funding for services shall not exceed the actual cost of the goods and services.

B. PAYMENT

1. Payment for the services shall be made through an Intra-District advance by PERB to DCHR based on the total amount of this MOU. DCHR shall receive the advance and bill PERB only for those goods and services actually provided pursuant to the terms of this MOU.
2. PERB shall report all services received under this MOU in its monthly Financial Review Process (FRP) report to the Office of Budget and Planning of the District of Columbia Office of the Chief Financial Officer.
3. Advances to DCHR for the services to be performed and goods to be provided shall not exceed \$10,828 (ten thousand, eight hundred twenty-eight dollars) in Fiscal Year 2023.
4. DCHR shall receive the advance and bill PERB through the Intra-District process only for those services provided pursuant to the terms of this MOU. DCHR shall notify PERB within forty-five (45) days of the then current fiscal year if it has reason to believe that all of the advance will not be billed during the fiscal year. DCHR shall return any excess advance to PERB within thirty (30) days of the end of that fiscal year.

VII. ANTI-DEFICIENCY CONSIDERATIONS

The Parties acknowledge and agree that their respective obligations to fulfill financial obligations of any kind pursuant to any and all provisions of this MOU, or any subsequent agreement entered into by the Parties pursuant to this MOU, are and shall remain subject to the provisions of: (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1351; (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01-355.08; (iii) D.C. Official Code § 47-105; and (iv) D.C. Official Code § 1-204.46, as the foregoing statutes may be amended, regardless of whether a particular obligation has been expressly so conditioned.

VIII. COMPLIANCE AND MONITORING

Q14B DCHR-PERB MOU for FY2023

As this MOU is funded by District of Columbia funds, DCHR will be subject to scheduled and unscheduled monitoring reviews by PERB to ensure compliance with all applicable requirements.

IX. RECORDS AND REPORTS

DCHR shall maintain records and receipts for the expenditure of all funds provided for a period of no less than three (3) years from the date of expiration or termination of this MOU and, upon the request of PERB or another the District of Columbia government agency with legal authority to request review, make these documents available for inspection by duly authorized representatives of PERB or the relevant District of Columbia government agency.

X. CONFIDENTIAL INFORMATION

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XI. TERMINATION

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The following individuals are the contact points for each Party under this MOU:

Nicole A. Cook, Chief Administrative Officer

DC Department of Human Resources
1015 Half Street, SE, 8th Floor
Washington DC 20003
(202) 316-8543

Clarene P. Martin, Executive Director

Public Employee Relations Board
1100 4th Street, SW, Suite 630 E
Washington, DC 20024
(202) 727-1822

XIII. AMENDMENTS AND MODIFICATIONS

The terms and conditions of this MOU may be modified only upon prior written agreement by the Parties. Amendments or modifications shall be dated and signed by the authorized representatives of the Parties.

XIV. MISCELLANEOUS

The Parties shall comply with all applicable laws, rules and regulations whether now in effect or hereafter enacted or promulgated, and agree to be bound by the Comprehensive Merit Personnel Act, D.C. Official Code § 1-601.01 *et seq.*, as implemented through the District Personnel Manual.

XV. PROCUREMENT PRACTICES REFORM ACT

If a District of Columbia agency or instrumentality plans to utilize the goods or services of an agent, contractor, consultant or other third party to provide any of the goods or services under the MOU, then the agency or instrumentality shall abide by the provisions of the District of Columbia Procurement Practices Reform Act of 2010 (D.C. Official Code § 2-351.01, *et. seq.*) to procure the goods or services.

XVI. RESOLUTION OF DISPUTES

The Parties' Directors, or their designees, shall resolve all disputes or adjustments resulting from goods or services provided under this MOU. In the event the Parties are unable to resolve a financial issue, the matter shall be referred to the Office of Financial Operations and Systems (OFOS) of the District of Columbia Office of the Chief Financial Officer. The decision of OFOS shall be final.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as follows:

FOR THE PUBLIC EMPLOYEE RELATIONS BOARD

Clarene Phyllis Martin
Clarene P. Martin
Executive Director

11/18/2022
Date

FOR THE DEPARTMENT OF HUMAN RESOURCES


E. Lindsey Maxwell II, Esq.
Interim Director

1/6/2023
Date



Q14C OCTO-PERB MOU for FY2023

Interagency Standard Request Form (IASRF) Agreement

(Completed by Awarding Agency after approval of MOU and Setup a Project, Budget & Award in DIFS)

Agreement Title: PERB CaseSearch Application Agreement Number TO0CG0-2023-01852

Buyer Contact

Table with 4 columns: Program Management, Agency Budget, Agency Accountant, and Name/Phone. Buyer contact details for Paul Blake and Lakisha Kelly.


for Paul Blake
Buyer Agency: Signature Christine Muskolwe

Seller Contact

Table with 4 columns: Program Management, Agency Budget, Agency Accountant, and Name/Phone. Seller contact details for Mark McDermott, Phil Peng, and Mekonnen Dibaba.

Seller Agency: Abdi Yusuf Signature Abdi Yusuf

Main table with 4 columns: Description, Attributes, Attributes (additional if needed), and Attributes (additional if needed). Contains project details like Seller Agency Code, Buyer Agency Code, Service Period, and Funding Amount.

<p>OFFICE OF THE CHIEF TECHNOLOGY OFFICER GOVERNMENT OF THE DISTRICT OF COLUMBIA</p> 	<p>MOU Executive Brief OCTO Division</p>
<p>OCTO Deputy/Executive: Carol Harrison</p>	<p>Program Manager: Mark McDermott</p>
<p>Agency: DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD (PERB)</p>	<p>Dollar Amount: \$3,900.00</p>
<p>Date Submitted: Oct 11 2022 12:18PM</p>	<p>eMOU#: TO0CG0-2023-01852</p>
<p>Project Description: This MOU covers production application support for the PERB CaseSearch application ("Application") for Fiscal Year 2023</p>	
<p>Risks:</p>	
<p>Challenges:</p>	
<p>Urgency: <input checked="" type="checkbox"/> Normal <input type="checkbox"/> Rush <input type="checkbox"/> Expedite</p>	



MEMORANDUM OF UNDERSTANDING

BETWEEN

DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD

AND

**DISTRICT OF COLUMBIA OFFICE OF THE CHIEF TECHNOLOGY
OFFICER**

FOR FISCAL YEAR 2023

MOU Number: TO0CG0-2023-01852

I. INTRODUCTION

This Memorandum of Understanding ("MOU") is entered into between the **DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD** ("PERB" or "Buyer Agency") and the **DISTRICT OF COLUMBIA OFFICE OF THE CHIEF TECHNOLOGY OFFICER** ("OCTO" or "Seller Agency"), each of which is individually referred to in this MOU as a "Party" and both of which together are collectively referred to in this MOU as the "Parties".

II. LEGAL AUTHORITY FOR MOU

D.C. Official Code § 1-301.01(k).

III. OVERVIEW OF PROGRAM GOALS AND OBJECTIVES

This MOU covers support of the PERB CaseSearch application ("Application") for Fiscal Year 2023.

IV. SCOPE OF SERVICES

Pursuant to the applicable authorities and in furtherance of the shared goals of the Parties, the Parties agree as follows:

A. RESPONSIBILITIES OF SELLER AGENCY

The Seller Agency shall provide a total of 160 hours of:

1. Application management and maintenance;
2. Monthly Application patching to address known vulnerabilities; and
3. Technical support.

B. RESPONSIBILITIES OF BUYER AGENCY

The Buyer Agency shall:

1. Provide a Point of Contact ("POC") for PERB;
2. Verify from the PERB side that the Application is operating without issue after each patching cycle; and
3. Provide the funding described under the heading "Payment" in this MOU.

V. DURATION OF THIS MOU

A. PERIOD

The period of this MOU shall be from **October 01, 2022** (the "effective date") through **September 30, 2023**, unless early terminated pursuant to Section XI of this MOU.

B. EXTENSION

The Parties may extend the period of this MOU by exercising a maximum of **four (4), 12-month** option period(s). Option periods may consist of a fiscal year, a fraction thereof, or multiple successive fractions of a fiscal year. Buyer Agency shall provide Seller Agency with written notice of its intent to exercise an option period at least **sixty (60)** days before the expiration of the initial or extended term of this MOU. The exercise of an option period is subject to the availability of funds at the time it is exercised.

VI. FUNDING PROVISIONS

A. COST OF SERVICES

The total cost to the Buyer Agency for the goods and/or services provided under this MOU shall not exceed **\$3,900.00** for Fiscal Year 2023. The total cost of the goods and/or services is based on the Buyer Agency and Seller Agency's estimate of the actual cost of the goods and/or services that will be provided under this MOU, including labor, materials and overhead.

B. PAYMENT

1. **Within thirty (30)** days after this MOU is **fully executed**, the Buyer Agency shall create an Interagency Project and fund it through an Award in the amount set forth in Section VI.A of this MOU. The Interagency Project shall be established in a manner that allows the Seller Agency to directly charge the Project for the costs the Seller Agency incurs in providing goods and/or services under this MOU.
2. The Seller Agency shall charge the Interagency Project only for the actual cost of goods and/or services provided under this MOU.
3. For each charge against the Interagency Project, other than personnel costs documented in Peoplesoft, the Seller Agency shall attach, to the Project, documentation that supports the charge, including invoices as applicable. [NOTE: THE PARTIES MAY AGREE TO A PROCESS FOR DOCUMENTING PERSONNEL COSTS IN THE PROJECT. IF SO, THE PHRASE "OTHER THAN PERSONNEL COSTS DOCUMENTED IN PEOPLESOFT" SHOULD BE REVISED TO "INCLUDING PERSONNEL COSTS".]

C. ANTI-DEFICIENCY CONSIDERATIONS

The Parties acknowledge and agree that nothing in this MOU creates a financial obligation in anticipation of an appropriation and that all provisions of this MOU are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1351, (ii) the District of Columbia Anti-deficiency Act, D.C. Official Code §§ 47-355.01-355.08, (iii) D.C. Official Code § 47-105, and (iv) D.C.

Official Code § 1-204.46, as the foregoing statues may be amended from time to time, regardless of whether a particular obligation has been expressly so conditioned.

VII. AMENDMENTS

This MOU may be amended only by the written agreement of the Parties. Amendments shall be dated and signed by authorized representatives of the Parties.

VIII. CONSISTENT WITH LAW

The Parties shall comply with all applicable laws, rules, and regulations whether now in effect of hereafter enacted or promulgated.

IX. COMPLIANCE AND MONITORING

The Seller Agency will be subject to scheduled and unscheduled monitoring reviews to ensure compliance with all applicable requirements of this MOU.

X. RECORDS AND REPORTS

A. The Buyer Agency and Seller Agency shall maintain records and receipts for the expenditure of all funds provided pursuant to this MOU for a period of no less than three (3) years after the date of expiration or termination of this MOU.

B. Both the Buyer Agency and Seller Agency shall have access to all records in the Interagency Project established pursuant to section VI.B. of this MOU.

XI. TERMINATION

A. Either Party may terminate this MOU in whole or in part by giving thirty (30) calendar days advance written notice to the other Party.

B. In the event of termination of this MOU, the Buyer Agency and Seller Agency shall reconcile any amounts due to the Seller Agency under this MOU. The Buyer Agency shall not remove funding from the Interagency Project established pursuant to section VI.B. of this MOU until the Seller Agency has drawn down the amounts due, except to the extent that the funding in the Interagency Project exceeds the amounts due to the Seller Agency.

XII. NOTICES

The following individuals are the contact points for each Party:

PERB

Clarene P. Martin
717 14th Street NW
Washington, D.C. 20005
Phone: (202) 727-4990
Email: clarene.martin@dc.gov

OCTO

Mark McDermott

Q14C OCTO-PERB MOU for FY2023

200 I ST SE, 5th Floor
Washington, D.C. 20003
Phone: (202) 727-5959
Email: mark.mcdermott@dc.gov

XIII. RESOLUTION OF DISPUTES

All disputes arising under this MOU shall be referred to Clarene P. Martin and Mark McDermott for resolution. If these individuals are unable to resolve such a dispute, the dispute shall be referred to the directors of the **DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD** and the **DISTRICT OF COLUMBIA OFFICE OF THE CHIEF TECHNOLOGY OFFICER** for resolution.

XIV. CONFIDENTIAL INFORMATION

The Parties shall use, restrict, safeguard, and dispose of all information related to good and/or services provided under this MOU in accordance with all relevant federal and District statutes, regulations, and policies.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as follows:

DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD, District of Columbia

CL M

Date: 10/18/2022

Executive Director
Clarene Martin

Office of the Chief Technology Officer, District of Columbia

L nd V. P

Date: 12/2/2022

Chief Technology Officer
Lindsey V. Parker

INTRA-DISTRICT STANDARD REQUEST FORM

Government of District of Columbia

MOU TO0CG0-2023-01852 **Date of** 10/12/2022
Number: **MOU:**

Buyer Information

Agency Name: PERB Agency Code: CG0
 Name of Contact: Paul K. Blake Address: 717 14th Street NW
 Telephone #: (202) 727-4990 Fax #:
P K. BL Date: 12/02/2022

Signature

Seller Information

Agency Name: OCTO Agency Code: TO0
 Name of Contact: Address: 200 I ST, SE WASHINGTON, DC 20003
 Telephone #: Fax #:
 Date:

Signature

Service Information and Funding Codes

GOOD/
 SERVICE:

Buyer

AGY	YR	ORG	FUND	INDEX	PCA	OBJ	AOBJ	GRANT	PROJ	AG1	AG2	AG3	AMOUNT
-----	----	-----	------	-------	-----	-----	------	-------	------	-----	-----	-----	--------

Seller

AGY	YR	ORG	FUND	INDEX	PCA	OBJ	AOBJ	GRANT	PROJ	AG1	AG2	AG3	AMOUNT
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eMOU Approval History

12/2/2022 4:07:21 PM

TO0CG0-2023-01852

Step Name	Name	Status Name	Status Date	Comments
MOU Author Review	Juan Easley (OCTO)	Approved	10/11/2022 12:19:59 PM	
OCTO Program Manager Review	Mark McDermott (OCTO)	Approved	10/11/2022 1:06:51 PM	
OCTO General Counsel Review	Folashade Bamikole (OCTO)	Approved	10/12/2022 2:46:28 PM	
OCTO Executives Review	Carol Harrison (OCTO)	Approved	10/18/2022 4:46:55 PM	
Buyer Agency Final Review of MOU	Clarene P. Martin (PERB)	Approved	10/18/2022 4:56:09 PM	
MOU Signature - Buyer Agency	Clarene P. Martin (PERB)	Signed	10/18/2022 4:56:54 PM	
IDSR Form Signature - Buyer Agency	Paul Blake, AFO (OCFO)	Signed	12/2/2022 12:43:45 PM	
MOU Signature - OCTO	Lindsey Parker (OCTO)	Signed	12/2/2022 3:49:19 PM	

PERB INTERAGENCY MOUS, FY2022 AND FY2023, INCLUDING ANTICIPATED MOUS (Q14D)

Buyer agency name	Seller agency name	Seller Program name	Seller Program code	Buyer Activity name	Buyer Activity code	Original funding source (i.e. local, federal, SPR)	Service period (dates)	Description of MOU services, including name of project or initiative	Total MOU amount (\$), including any modifications	(Final) Date of signature on letter of intent	Date that funds were transferred to the buyer agency
PERB	Dept of Human Resources				12001	Local	10/1/21-9/30/22	DCHR provided HR services, to include but not limited to: policy guidance, data processing and customer service.	\$ 10,564.00	1/27/2022	
PERB	Dept of Human Resources				400130.5028	Local	10/1/22-9/30/23	DCHR provides HR services, to include but not limited to: policy guidance, data processing and customer service.	\$ 10,828.00	1/6/2023	
PERB	Office of the Chief Technology Office				100092.5028	Local	10/1/22-9/30/23	Case Search Application maintenance, updating, and technical support. (See Attachment Q10)	\$ 3,900.00	12/22/2022	

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
GOVERNMENT OPERATIONS CLUSTER
OFFICE OF FINANCE AND RESOURCE MANAGEMENT



MEMORANDUM

TO: The Office of Policy and Legislative Affairs

FROM: for Sheila Barfield, Executive Director
Office of Employee Appeals *Hemchand Hemraj*

Clarene Martin, Executive Director
Public Employee Relations Board *Clarene Martin*

DATE: October 8, 2022

SUBJECT: FY 2022 Request to Reprogram \$60,000.00 from the Public Employee Relations Board agency (CG0) to the Office of Employee Appeals (CH0)

The Office of Employee Appeals (OEA) requests to reprogram \$60,000.00 from the Public Employee Relations Board to the Office of Employee Appeals. This reprogramming is necessary for OEA to avoid violation of the Anti-Deficiency Act for Fiscal Year 2022.

Why are the funds needed?

The funding is needed to cover unbudgeted personnel services expenditures in the 2022 fiscal year.

Is this a reprogramming to restore a budget cut authorized by the Mayor and/or Council?

No, this reprogramming will not restore a budget cut authorized by the Mayor or Council.

How will the funds be reprogrammed?

The funding will be reprogrammed from The Public Employee Relations Board comptroller source group 0011 and 0041 to the Office of Employee Appeals comptroller source group 0011.

Why are the funds available?

The funding is available due to salary lapse and lower than expected third party legal fees.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
GOVERNMENT OPERATIONS CLUSTER
OFFICE OF FINANCE AND RESOURCE MANAGEMENT**



What hardship will the District face if the action is postponed until the subsequent fiscal year?

Without this reprogramming the Office of Employee Appeals will have a local funds deficit in the 2022 fiscal year.

What programs, services or other purchases will be delayed as a result of the action, and the impact on the program or agency?

No services or purchases will be delayed as a result of this action.

Should you have any questions, please contact Paul Blake at 202-727-9833.

Form 2: Operating Budget Enhancement Requests
 FY 2023 Agency Budget Submission

Complete a separate Form 2 for each enhancement request in your submission.

SECTION I. OVERVIEW Required for ALL requests

ENHANCEMENT TITLE* <h2 style="margin: 0;">PERB Case Search Website</h2>	ENHANCEMENT PRIORITY* <h2 style="margin: 0;">1</h2> OUT OF <h2 style="margin: 0;">2</h2>
AGENCY* Public Employee Relations Board	AGENCY CODE* CGO
AGENCY POINT OF CONTACT* Clarene Martin	POINT OF CONTACT EMAIL* clarene.martin@dc.gov

REQUEST TYPE*
 Mark the one request type that best describes this enhancement. No type is preferred over any other, but the questions in Section II: Rationale differ by type.

<input checked="" type="checkbox"/> A. Restore previous budget reduction/one-time funding	}	For these request types, complete Sections I-III only
<input type="checkbox"/> B. Increased cost to <u>maintain</u> existing program/activity		
<input type="checkbox"/> C. Operational improvement with strong business case		
<input type="checkbox"/> D. Expand high-performing existing program/activity	}	For these request types, complete Sections I through V
<input type="checkbox"/> E. Completely new program/activity with highly likely or proven positive outcomes for District residents		

FUNDING REQUEST*
 Enter amount of Local Funds requested and indicate whether funds are one-time or recurring.

FY 2023 PERSONAL SERVICES (PS)	FY 2023 NON-PERSONAL SERVICES (NPS)	FY 2023 TOTAL REQUEST AMOUNT
0	\$3900	\$3900

ONE-TIME
 PARTIALLY RECURRING
 RECURRING

FUTURE COSTS*
 If recurring, enter estimated costs over the life of the Financial Plan.

TOTAL FY 2024	TOTAL FY 2025	TOTAL FY 2026
\$3900	\$3900	\$3900

ENHANCEMENT SUMMARY*
 In 1-3 sentences, tell us what this enhancement is.

The enhancement request is to cover the maintenance cost of PERB’s case search website, which OCTO charges through an MOU with PERB.

ENHANCEMENT IMPACT*
 In 1-3 sentences, tell us what the expected positive impact is on District residents or government operations.

The enhancement will fund PERB’s case search website, which allows the public access to all of PERB’s decisions free of charge.

AGENCIES: Please use Form 2 to provide additional details about enhancement requests in your FY 2023 budget submission. This information is an important part of the decision-making process. Well thought-out and reasoned requests are much more likely to receive favorable consideration.

NEW IN FY 2023: RACIAL EQUITY BUDGET TOOL
 The Office of Racial Equity (ORE) has developed the Racial Equity Budget Tool (REBT) to guide agencies toward assessing how their budgets benefit and/or negatively impact communities based on race, specifically Black, Indigenous, and People of Color (BIPOC) communities. Please use Section III of this form to share your agency’s work in considering racial equity in developing budget enhancements requests. Discussion of racial equity considerations may be shared in other sections of the form as well.

REQUIRED SECTIONS

- Sections I-III are required for ALL requests.
- Sections I-V are required for Type D and Type E requests.

Please remember to submit the Form 2 Summary spreadsheet along with the separate Form 2s for each enhancement.

Does this enhancement specifically seek to mitigate racial equity gaps in the District?* YES NO

Regardless of yes/no, please complete Section III to share more information about this enhancement’s impact on racial equity.

SECTION II. RATIONALE *Required for ALL requests*

Responses below may include discussion of racial equity issues addressed by this enhancement request. Use Section III to expand on these ideas and share more about the racial equity work that has informed this request.

What problem for the District are you aiming to address?*

The enhancement will fund public access to PERB’s decisions.

What are the reasons why this problem exists?*

Maintenance costs are assessed by OCTO to support PERB’s case search website.

How does this enhancement address this problem and its underlying causes?*

The enhancement funds the MOU with OCTO to maintain PERB’s case search website.

Will legislative support be required?*

If yes, please submit a proposed BSA subtitle using Attachment D.

YES NO

QUESTIONS SPECIFIC TO ENHANCEMENT TYPE*

Mark the appropriate enhancement type and use the space below the table to answer the questions for that enhancement type.

IF YOUR ENHANCEMENT TYPE IS...	THEN ANSWER THESE QUESTIONS...
<input checked="" type="checkbox"/> A. Restore previous budget reduction/one-time funding	Why is the restoration of this reduction critical for the District at this time? What negative impact will result if this reduction is not restored?
<input type="checkbox"/> B. Increased cost to <u>maintain</u> existing program/activity	Why are costs increasing to maintain existing levels of service? What are the main cost drivers and what options has the agency already implemented or considered implementing to lower these costs?
<input type="checkbox"/> C. Operational improvement with a strong business case	How will this enhancement help the District save money in this or future fiscal years? How much will it save?
<input type="checkbox"/> D. Expand high-performing existing program/activity	Why is this program or activity considered to be high performing? How do the outputs or outcomes compare to those of similar programs within or outside of District government?
<input type="checkbox"/> E. Completely new program or initiative with highly likely or proven positive outcomes for District residents	What will be the District’s return on this investment, as measured by how many and/or which District residents are served, and/or relative social benefit?

Responses to Questions*

If the reduction is not restored, then PERB will not be able to maintain its case search website.

SECTION III. BUDGETING FOR RACIAL EQUITY *Required for ALL requests*

How does this budget enhancement align with the goal of advancing racial equity in the District?*

Not applicable.

Please indicate the racial, ethnic, and/or economic inequities experienced by District residents that could be addressed via specific portions of this enhancement request.*

Please cite the data or data source(s) that support this determination.

Not applicable.

Did your agency conduct a racial equity impact assessment of this proposed enhancement?*

YES NO

If yes, please describe below. If not, please explain why not.

Not applicable.

Did your agency utilize race and ethnicity data to inform this enhancement request?*

YES NO

If yes, please describe below. If not, please explain the origin of this enhancement.

Not applicable.

What additional disaggregated demographic data will your agency collect, track, design, implement, and/or evaluate to assess equity impacts in the community moving forward and inform future budget decisions?*

Not applicable.

Is this enhancement in direct response to community engagement or requests?*

YES NO

If yes, please describe below. If not, please explain the origin of this enhancement.

Not applicable.

STOP HERE for enhancement types A, B, or C.
CONTINUE to Section IV for enhancement types D or E.

SECTION IV. EVALUATION & PERFORMANCE *Required for Type D and E requests*

Required for all enhancement requests to expand existing programs or activities or launch completely new programs or activities. Incomplete submissions will be returned.

What evidence supports the likelihood that this enhancement will achieve the desired outcome?*

Please describe outcomes from similar efforts that have been undertaken before in the District or in other cities. If possible, include formal evaluation studies and lessons learned from both successes and failures in any similar attempts. Provide links to cite your sources.

[Click or tap here to enter text.](#)

Is your enhancement identical to the model the evidence comes from?*

- YES.** The enhancement is identical to the model the evidence comes from and the population served is similar. Indicate below how you will ensure your agency implements the model fully.
- NO.** The enhancement differs from the model the evidence comes from, is just a part of that model, serves a different population, etc. Below, describe how it differs and why.

[Click or tap here to enter text.](#)

If the enhancement is granted, is your agency willing to evaluate whether the enhancement achieves the desired outcome?* This could involve piloting the enhancement. The Lab @ DC is able to provide guidance on how to do this

- YES** **NO**

List any agency key performance indicators (KPIs) impacted by this enhancement.*

List KPIs from most significant to least. If you are proposing a new KPI, write "NEW" in the columns for FY 2020-FY 2022.

KEY PERFORMANCE INDICATOR (KPI)	WHICH DIRECTION IS DESIRED?	FY 2020 ACTUAL	FY 2021 ACTUAL	FY 2022 TARGET

EVALUATING ENHANCEMENTS

As part of the budget formulation process, OBPM will categorize the research evidence you cite based on whether:

- the study design was rigorous, and the study was well implemented;
- the findings are positive and statistically significant; and
- the evidence is based on a model and population similar to the proposed enhancement.

THE LAB@DC TEAM IS HERE TO HELP!

Have questions about the evidence? Email thelab@dc.gov (and CC your budget analyst). The Lab can pre-review evidence, brainstorm future evaluation ideas, offer suggestions on where to look for evidence, and help you think through the evidence you've found.

SECTION V. PROJECT PLAN

Required for Type D and E requests

Required for all enhancement requests to expand existing programs or activities or launch completely new programs or activities. Incomplete submissions will be returned.

Complete this draft project plan to show how the agency will deliver the intended results before the end of the fiscal year. This will also help OBPM determine when full funding will be required for implementation. Complete as best you can, knowing the plan might evolve.

PROJECT OWNER*

Who is the single person who will be most responsible for this initiative? If the project owner must be hired, specify who will own the project until that time.

NAME [Click or tap here to enter text.](#)
 TITLE [Click or tap here to enter text.](#)
 EMAIL [Click or tap here to enter text.](#)
 PHONE [Click or tap here to enter text.](#)

BUSINESS PARTNER COORDINATION*

What other agencies or stakeholders would be critical to this project’s success, and what communication have you had with them?

[Click or tap here to enter text.](#)

PROJECT TIMELINE*

Describe below anticipated implementation milestones by month to show how the agency will deliver the intended results.

PREPARATION FOR PROJECT LAUNCH (before start of fiscal year)	
JUNE 2022	
JULY	
AUG	
SEPT	
FISCAL YEAR STARTS, FUNDS DISBURSED	
OCT 2022	
NOV	
DEC	
JAN 2023	
FEB	
MARCH	
APRIL	
MAY	
JUNE	
JULY	
AUG	
SEPT	

Form 2 Summary: FY 2023 Enhancement Requests & Offsetting Reductions

FY 2023 Agency Budget Submission

AGENCY INFORMATION

Agency Code	CGO
Agency Name	Public Employee Relations Board
Agency Point of Contact	Clarene Martin
Agency POC Email	clarene.martin@dc.gov
Agency POC Phone	202-727-1822

AGENCIES: Please complete this form to provide a summary view of all enhancement requests submitted by your agency, as well as offsetting reductions for any requests to expand existing high-performing programs or to launch completely new programs or initiatives. Remember to complete a separate Form 2 (Detail) for each enhancement request. **Sort the table below by the agency's priority ranking of enhancements. Insert additional lines as necessary. For recurring enhancements and/or reductions, please note out-year costs. If in doubt, use a multiplier of 1.75%.**

ENHANCEMENT REQUESTS

Enhancement Title	Enhancement Type <small>As indicated on Form 2</small>	Summary Description <small>In the first sentence, describe the enhancement. In the second, describe the likely impact</small>	Total FY23 amount requested	PS FY23 amount requested	NPS FY23 amount requested	# of FTEs requested	FY24	FY25	FY26	Agency Priority
OCTO Case search website MOU	A. Restore previous budget reduction/one-time funding	The enhancement funds the cost assessed by OCTO for maintaining PERB's case search website. Without OCTO's assistance, PERB cannot provide free access to all of its decisions on its website.	\$3,900		\$3,900	0.0	\$3,900	\$3,900	\$3,900	1 of 2
			\$0							
			\$0							
			\$0							
			\$0							
			\$3,900	\$0	\$3,900	0.0	\$3,900	\$3,900	\$3,900	

Q19 Litigation and Enforcement Costs

PERB Case Name	PERB Case Number	PERB Case Type	PERB Filing Date	Superior Court (1st Appeal) Case Name	Superior Ct. Petitioner	Superior Court No. (1st Appeal)	Superior Ct. Filing Dt	Superior Ct. Appeal Litigation Cost	Court of Appeals No. (2nd Appeal)	Court of Appeals Petitioner	Court of Appeals Filing Dt	Court of Appeals Litigation Cost	Enforcement Case Name
FOP v. DGS	18-U-01	ULP	10/9/2017	DGS v. PERB (18-U-01)	DGS	2020 CA 003165 P(MPA)	7/16/2020	3,225.00	N/A	N/A	N/A		N/A
MPD v. FOP	18-A-04	ARR	11/27/2017	MPD v. PERB	MPD	2018 CA 004340 P(MPA)	6/18/2018	5,900.00	2019-CV-1115	MPD	11/21/2019		N/A

Q19 Litigation and Enforcement Costs

Enforcement in Superior Ct. No.	Petitioner	Enforcement Filing Date	Enforcement Litigation Cost	Notes and Status
N/A	N/A			Status Open
N/A	N/A			Status Open

PERB CONTRACTS AND PROCUREMENTS, FY2022 AND FY2023, AS OF JAN 1, 2023 (Q2)

2020 Contract (Q2) Procurement FY22 and FY23

FY2022

Contract Number, as it appears in OCP's Awarded Contracts Database	Contractor / Vendor Name	Contract Administrator name	Contracting Officer name	Solicitation method (e.g. competitive bid, via GSA or DCSS, sole source, task order against other agency's contract)	Contract type (e.g. HCA, IDIQ, BPA, Sole Source, exempt from competition)	Specific description of contractual goods and/or services	Names of any subcontractors	Period of performance (dates)	Number of option years available	Current year of contract (e.g. Base Year, Option Year 1, etc.)	Program code	Activity code	Index code
N/A	Webster & Fredrickson	Antwanette Murphy	Renell Roberts	Sole Source	Exempt from competition	Outside Legal Council for Superior Court Cases	N/A	10/01/2021-09/30/2022	N/A	FY22	20001	20001	20001
N/A	Neal Gross	Antwanette Murphy	Renell Roberts	Competitive bid	IDIQ	Transcription Services for All Hearings	N/A	10/01/2021-09/30/2022	N/A	FY22	20001	20001	20001
N/A	West Publishing	Antwanette Murphy	Renell Roberts	Sole Source	Exempt from competition	Legal Research Services	N/A	10/01/2021-09/30/2022	N/A	FY22	20001	20001	20001
N/A	Carahsoft Technology Corp	Clarene Martine	Tyranny Hunter	Sole Source	Exempt from competition	PC Law/Time Matters Annual subscription renewal	N/A	10/01/2021-09/30/2022	N/A	FY22	20001	20001	20001
N/A	Iron Mountain, Inc.	Clarene Martine	Tyranny Hunter	Sole Source	Exempt from competition	Destroy file folders currently housed at Iron Mountain	N/A	10/01/2021-09/30/2022	N/A	FY22	20001	20001	20001

Q20 Contract and Procurement FY22 and FY23

PCA code	Requisition numbers	Purchase order numbers	Funding source (e.g. federal, local, SPR)	Maximum or total contract or procurement value in FY2022, per contract	Actual expenditures in FY2022 for each contract	Maximum or total contract or procurement value in FY2023	Total actual payments made in FY2023 for each contract
12001	RK194117	PO652398	Local	\$ 66,572.99	\$ 45,080.94	\$ -	\$ -
12001	RK193726	PO652190	Local	\$ 24,997.70	\$ 12,290.98	\$ -	\$ -
12001	RK194735	PO652880	Local	\$ 11,864.16	\$ 11,864.16	\$ -	\$ -
12001	RK212023	PO665706	Local	\$ 6,007.50	\$ 6,007.50	\$ -	\$ -
12001	RK216603	PO667301	Local	\$ 7,445.09	\$ 7,445.09	\$ -	\$ -

Q21 P-Card Expenditures, FY22 and FY23

Q21 Credit, p-card, and purchase card expenditures, FY2022 and FY2023

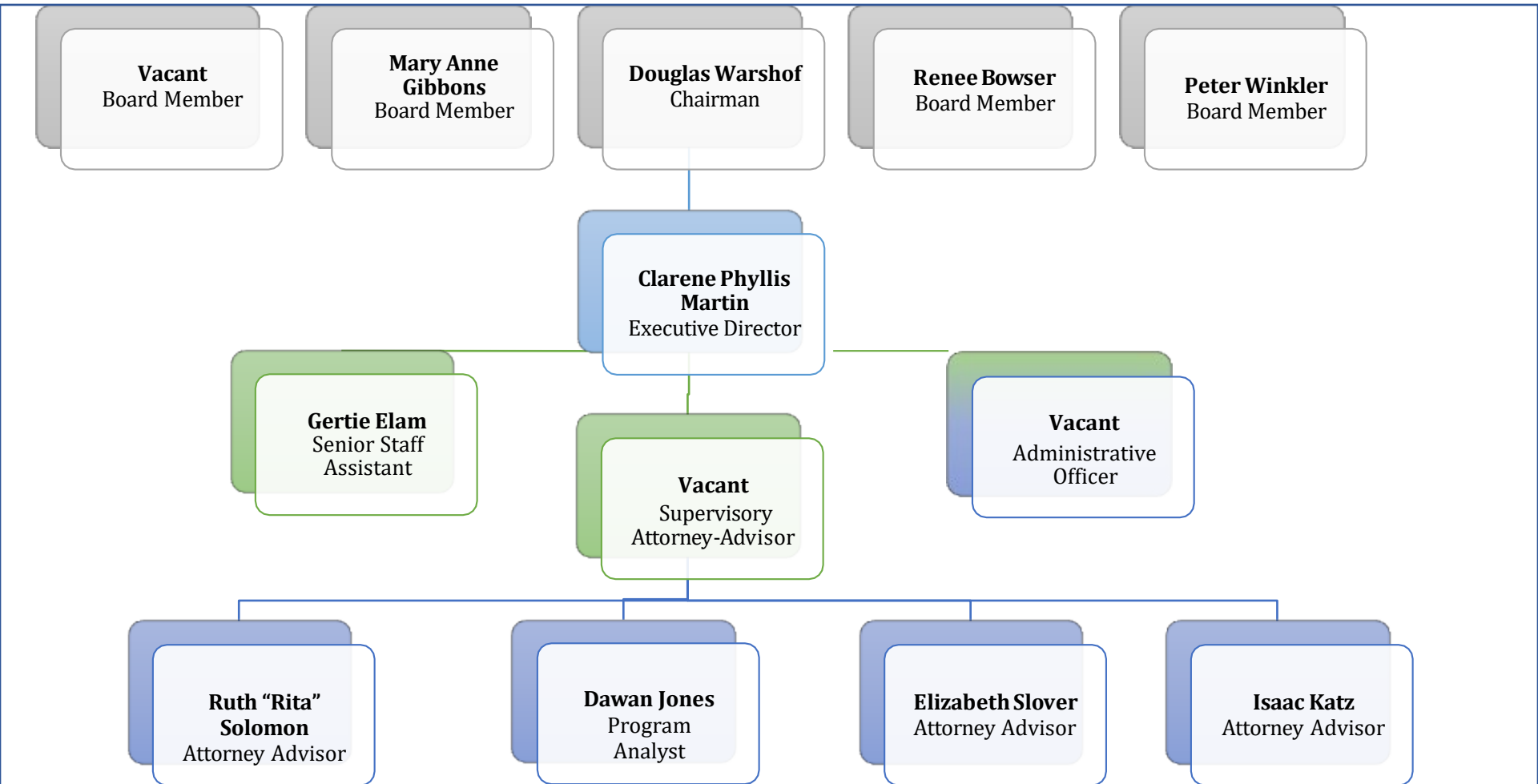
<i>Employee Name</i>	<i>Date of Expenditure</i>	<i>Vendor name (do not list "PayPal;" name the ultimate vendor)</i>	<i>Dollar amount</i>	<i>Purpose of expenditure</i>
Antwanette Murphy	10/28/2021	IRON MOUNTAIN	\$ 400.13	Monthly Document Storage and Administration Fees: Storage Period October 1 - 31, 2021
Antwanette Murphy	11/09/2021	STANDARD OFFICE SUPPLY	\$ 41.55	Office Supplies
Antwanette Murphy	11/22/2021	STANDARD OFFICE SUPPLY	\$ 249.28	Office Supplies
Antwanette Murphy	12/10/2021	SQ *COLE-MINDS LOGISTI	\$ 1,248.00	Packing, removal and delivery of Surplus
Antwanette Murphy	12/14/2021	COMMONWEALTH DIGITAL O	\$ 15.76	Monthly copier usage, and services
Antwanette Murphy	12/14/2021	STANDARD OFFICE SUPPLY	\$ 44.99	Office Supplies
Antwanette Murphy	12/20/2021	STANDARD OFFICE SUPPLY	\$ (63.30)	Refund- Office Supplies return
Antwanette Murphy	12/30/2021	IRON MOUNTAIN	\$ 1,215.62	Monthly Document Storage and Administration Fees: Storage Periods November 1 - 30, 2021, December 1 - 31, 2021, and January 1 -31, 2022
Antwanette Murphy	02/02/2022	QUICK MESSENGER SERVIC	\$ 40.90	Courier Services- Performance Oversight Binders to JAWB
Antwanette Murphy	02/03/2022	IRON MOUNTAIN	\$ 400.50	Monthly Document Storage and Administration Fees: Storage Period February 1 - 28, 2022
Antwanette Murphy	02/03/2022	COMMONWEALTH DIGITAL O	\$ 6.81	Monthly copier usage, and services
Antwanette Murphy	02/11/2022	ADOBE ACROPRO SUBS	\$ 407.76	Annual Adobe Subscriptions for PERB staff
Antwanette Murphy	03/03/2022	CHICAGO BOOKS & JOURNA	\$ 164.00	IT Software - Chicago Press Manual-Legal
Antwanette Murphy	03/04/2022	IRON MOUNTAIN	\$ 400.50	Monthly Document Storage and Administration Fees: Storage Period March 1 - 31, 2022
Antwanette Murphy	04/01/2022	COMMONWEALTH DIGITAL O	\$ 23.84	Monthly copier usage, and services
Antwanette Murphy	04/11/2022	Electronic Language Communications	\$ 50.00	ALRA Conference Fee for Elizabeth Slover
Antwanette Murphy	04/11/2022	Electronic Language Communications	\$ 50.00	ALRA Conference Fee for Erica Balkum

Q21 P-Card Expenditures, FY22 and FY23

Antwanette Murphy	04/12/2022	Electronic Language Communications	\$ 50.00	ALRA Conference Fee for Isaac Katz
Antwanette Murphy	04/13/2022	IRON MOUNTAIN	\$ 402.57	Monthly Document Storage and Administration Fees: Storage Period April 1 - 30, 2022
Antwanette Murphy	04/13/2022	STANDARD OFFICE SUPPLY	\$ 280.76	Office Supplies
Antwanette Murphy	05/02/2022	MICHAEL MATTERS, INC.	\$ 562.50	Time Matters System - Account set-up and installation for Isaac Katz and Erica Balkum
Antwanette Murphy	05/02/2022	COMMONWEALTH DIGITAL O	\$ 18.40	Copier supplies
Antwanette Murphy	05/13/2022	COMMONWEALTH DIGITAL O	\$ 6.98	Monthly copier usage, and services
Antwanette Murphy	05/17/2022	IRON MOUNTAIN	\$ 402.57	Monthly Document Storage and Administration Fees: Storage Period May 1 - 31, 2022
Antwanette Murphy	06/03/2022	IN *SUPRETECH, INC.	\$ 270.00	Webcameras for PERB Staff (7)
Antwanette Murphy	06/14/2022	AMZN MKTP US	\$ 31.75	Door Measure Gauge used for ADA Compliance Tool Project
Antwanette Murphy	07/15/2022	MVS INC	\$ 739.80	IT Equipment - Docking Stations (2)
Antwanette Murphy	07/22/2022	STANDARD OFFICE SUPPLY	\$ 1,058.13	Office Supplies
Antwanette Murphy	07/26/2022	STANDARD OFFICE SUPPLY	\$ 25.90	Duplicate Charge by Merchant. Credit issued
Antwanette Murphy	08/02/2022	STANDARD OFFICE SUPPLY	\$ 34.56	Office Supplies
Antwanette Murphy	08/05/2022	THE CENTER FOR ADR	\$ 800.00	Mediation Training for Ruth Solomon
Antwanette Murphy	08/05/2022	THE CENTER FOR ADR	\$ 800.00	Mediation Training for Isaac Katz
Antwanette Murphy	08/05/2022	THE CENTER FOR ADR	\$ 800.00	Mediation Training for Elizabeth Slover
Antwanette Murphy	08/24/2022	COMMONWEALTH DIGITAL O	\$ 17.95	Copier supplies
Antwanette Murphy	08/26/2022	QUICK MESSENGER SERVIC	\$ 25.25	Courier Services
Gertie Elam	09/09/2022	MICHAEL MATTERS, INC.	\$ 1,260.00	Specialized training for PERB system - Time Matters
Gertie Elam	10/25/2022	RED*CROSS TRNG & PROD	\$ 1,050.00	American Red Cross CPR Training for Staff and Demo on Defibrillator



PUBLIC EMPLOYEE RELATIONS BOARD ORGANIZATIONAL CHART



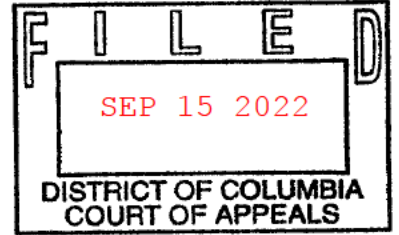
Public Employee Relations Board (CG0) - Schedule A as of January 25, 2023

	Position Number	Title	Name	Hire Date	Vacant S	Grade	Step	Salary	Distribution %	Fund	Program	CostCent	Location Name
1	00000503	Executive Director	Martin,Clarene P	8/6/2007	F	3	0	\$193,164.29	100	1010001	100154	50279	1100 4th St SW 6th Floor
2	00015675	GENERAL ATTORNEY	Slover,Elizabeth G	1/21/2020	F	12	4	\$100,819.00	100	1010001	100092	50279	1100 4th Street
3	00016462	Administrative Officer	Davis,Crystal L.	12/16/2013	F	14	1	\$109,999.00	100	1010001	100092	50279	1100 4th Street
4	00017718	Staff Assistant	Elam,Gertie A	10/12/2020	F	11	3	\$69,481.00	100	1010001	100092	50279	1100 4th Street
5	00035204	Attorney Advisor	Katz,Isaac R	4/11/2022	F	11	2	\$79,018.00	100	1010001	500197	50279	1100 4th Street
6	00074998	Supervisory Attorney Advisor			V	1	0	\$161,467.00	100	1010001	500197	50279	1100 4th Street
7	00077408	Program Analyst	Jones,Dawan	9/3/2019	F	12	3	\$85,794.00	100	1010001	500197	50279	1100 4th Street
8	00077442	Attorney Advisor	Solomon,Ruth	8/29/2022	F	11	2	\$79,018.00	100	1010001	500197	50279	1100 4th Street

Q24 Chart of PERB Personnel

Reports to Position	Reports to Name	F/P Time	Reg/Temp/ Term	Sal Plan	WGI Due Date	Gvt Lei Date
00074998	VACANT	F	Reg	LX0001		11/27/2016
00074998	VACANT	F	Reg	LA0001	12/3/2023	12/4/2022
00000503	Martin,Clarene P	F	Reg	DS0087	12/31/2023	1/1/2023
00000503	Martin,Clarene P	F	Reg	DS0087	10/22/2023	10/23/2022
00074998	VACANT	F	Reg	LA0001	4/23/2023	4/11/2022
	VACANT	F		LX0001		
00074998	VACANT	F	Reg	DS0087	8/13/2023	8/14/2022
00074998	VACANT	F	Reg	LA0001	9/10/2023	8/29/2022

**District of Columbia
Court of Appeals**



No. 19-CV-1115

DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT,
Appellant,

v.

CAP4340-18

DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD (PERB),
Appellee,

and

FRATERNAL ORDER OF POLICE/METROPOLITAN
POLICE DEPARTMENT LABOR COMMITTEE,
Intervenor.

On Appeal from the Superior Court
of the District of Columbia

BEFORE: Easterly and McLeese, Associate Judges, and Thompson,* Senior
Judge.

J U D G M E N T

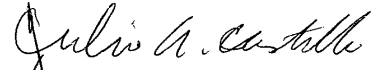
This case came to be heard on the transcript of record and the briefs filed, and it was argued by counsel. On consideration whereof, and as set forth in the opinion filed this date, it is now hereby

ORDERED and ADJUDGED that the judgment of the Superior Court is vacated and the case is remanded for the Superior Court to remand the case to PERB for further proceedings consistent with this opinion.

* Senior Judge Thompson was an Associate Judge of the court at the time of argument. She began her service as a Senior Judge on February 18, 2022.

No. 19-CV-1115

For the Court:

A handwritten signature in black ink that reads "Julio A. Castillo". The signature is written in a cursive style with a large initial 'J'.

JULIO A. CASTILLO
Clerk of the Court

Dated: September 15, 2022.
Opinion by Associate Judge McLeese.

Notice: This opinion is subject to formal revision before publication in the Atlantic and Maryland Reporters. Users are requested to notify the Clerk of the Court of any formal errors so that corrections may be made before the bound volumes go to press.

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 19-CV-1115

FILED 09/15/2022
District of Columbia
Court of Appeals
Julio A. Castillo
Julio Castillo
Clerk of Court

DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT, APPELLANT,

v.

DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD, APPELLEE,

and

FRATERNAL ORDER OF POLICE/METROPOLITAN POLICE DEPARTMENT LABOR
COMMITTEE, INTERVENOR.

Appeal from the Superior Court
of the District of Columbia
(CAP-4340-18)

(Hon. John M. Campbell, Trial Judge)

(Argued February 8, 2022)

Decided September 15, 2022)

Stacy L. Anderson, Assistant Attorney General, with whom *Karl A. Racine*, Attorney General for the District of Columbia, *Loren L. AliKhan*, Solicitor General at the time the brief was filed, *Caroline S. Van Zile*, Principal Deputy Solicitor General, and *Carl J. Schifferle*, Deputy Solicitor General, were on the brief, for appellant.

Geoffrey H. Simpson, with whom *Bruce A. Fredrickson* was on the brief, for appellee.

Daniel J. McCartin, with whom *Anthony M. Conti* was on the brief, for intervenor.

Before EASTERLY and MCLEESE, *Associate Judges*, and THOMPSON,* *Senior Judge*.

MCLEESE, *Associate Judge*: Appellant, the Metropolitan Police Department (MPD), terminated Officer Michael Thomas based on an incident in which Officer Thomas, while off duty and in Maryland, shot an unarmed civilian. An arbitrator reinstated Officer Thomas, ruling that Officer Thomas instead should be suspended for forty-five days. Appellee, the Public Employee Relations Board (PERB), upheld the arbitrator's decision, as did the Superior Court. We vacate and remand the case to the Superior Court to in turn remand the case to PERB for further proceedings.

I. Factual Background

In sum, the evidence about the shooting was as follows. Officer Thomas was with his girlfriend, Hope Mathis, at a home in Maryland early one morning. Officer Mathis was also an MPD officer, and both officers were off duty. Officer Thomas heard and saw someone near his car. Officer Thomas and Officer Mathis went onto the front porch, without calling 911. The officers were outside of their jurisdiction,

* Senior Judge Thompson was an Associate Judge of the court at the time of argument. She began her service as a Senior Judge on February 18, 2022.

and they had received training indicating that they should have called 911 before taking any police action in response to a nonviolent property crime.

After stepping onto the porch, Officer Thomas yelled “police truck,” in an attempt to get the person by the car, Julio Lemus, to run away. Mr. Lemus did not run away. Officer Thomas then demanded that Mr. Lemus show his hands.

According to Officer Thomas, Mr. Lemus moved toward Officer Thomas and moved his hands towards the front pocket of his hoodie. Officer Thomas then shot Mr. Lemus twice.

Mr. Lemus’s testimony differed from Officer Thomas’s in certain respects. Mr. Lemus testified that he had his hands up and that Officer Thomas never identified himself as a police officer. Mr. Lemus had consumed a substantial amount of alcohol before the incident. When Officer Thomas approached, Mr. Lemus was trying to urinate near the car. Mr. Lemus was unarmed. As a result of the shooting, Mr. Lemus was hospitalized for over two months and underwent six surgeries.

II. Procedural Background

Officer Thomas was not prosecuted for the shooting. MPD sought to terminate Officer Thomas, charging him with (1) committing a crime by creating a substantial risk of death or serious injury, and (2) violating MPD's use-of-force policy. After an evidentiary hearing, an MPD adverse-action panel found by a preponderance of the evidence that Officer Thomas was guilty of both charges. The panel also concluded that the charges warranted termination. In determining the appropriate sanction, the panel applied a set of factors taken from *Douglas*, 5 M.S.P.B. 313, 331-32 (1981) (providing non-exhaustive list of twelve factors in determining appropriate penalty for employee misconduct).

Officer Thomas appealed to the chief of police, who accepted the recommendation of termination.

Intervenor, the Fraternal Order of Police (FOP), which is the union that represents Officer Thomas, took the matter to arbitration. The arbitrator found sufficient evidence of Officer Thomas's guilt on both charges but concluded that termination was not an appropriate remedy. After listing the *Douglas* factors, the arbitrator noted that several of those factors are routinely considered by arbitrators

when determining whether proposed discipline is appropriate. The arbitrator also cited a treatise discussing factors considered by arbitrators when making such determinations.

The arbitrator took issue with the adverse-action panel's treatment of three of the twelve *Douglas* factors. First, the arbitrator focused on whether the sanction proposed in this case was consistent with sanctions imposed on other employees for the same or similar offenses. The adverse-action panel had not cited comparable cases, and the arbitrator concluded that several cases the parties had cited were not comparable. The arbitrator also discussed a case in which an off-duty police officer, Officer Ford, had received a forty-five day suspension for shooting and killing a person who had attacked the officer. Second, the arbitrator questioned whether only termination would suffice to deter future misconduct. Finally, the arbitrator expressed the view that a sanction short of termination might have sufficed to rehabilitate Officer Thomas.

In the arbitrator's view, the adverse-decision panel's analysis of those three *Douglas* factors was not "within tolerable limits of reasonableness." *Douglas*, 5 M.S.P.B. at 329. The arbitrator then imposed the same forty-five day suspension

imposed in Officer Ford's case, which the arbitrator described as involving "as close to similar misconduct as is in evidence."

MPD challenged the arbitrator's decision before PERB, arguing that the decision was "on its face . . . contrary to law and public policy." D.C. Code § 1-605.02(6) (authorizing PERB to set arbitral awards aside on that ground). MPD argued that the arbitrator's decision was on its face contrary to law in several respects. First, MPD argued that the arbitrator erroneously placed the burden on MPD to show that other employees had been terminated for similar conduct. Rather, MPD would have had such a burden only if Officer Thomas had made an "initial showing that . . . [MPD] treated similarly[]situated employees differently." *D.C. Metro. Police Dep't v. D.C. Off. of Emp. Appeals*, 88 A.3d 724, 730 n.3 (D.C. 2014) (internal quotation marks omitted). Second, MPD argued that, under *Douglas*, an agency's selected sanction may be set aside only if the agency failed to weigh the relevant factors or the proposed sanction fell outside the limits of reasonableness. According to MPD, the arbitrator did not reach either conclusion and could not properly have done so. Third, MPD argued that the arbitrator erred by imposing a forty-five day sanction based on the Ford case, because that case involved self-defense and thus was not comparable to the present case.

MPD also argued that the arbitrator's decision was contrary to public policy. Specifically, MPD argued that (1) there is a clear public policy against police officers committing crimes involving the use of deadly force, and (2) reinstating Officer Thomas would be contrary to that public policy.

PERB upheld the arbitrator's decision. PERB explained that its authority to overturn arbitral awards is limited. Citing a number of its previous decisions, PERB concluded that the arbitrator could permissibly reach his own decision about the appropriate sanction, rather than being required to defer to the sanction picked by MPD as long as that sanction was reasonable. PERB did not specifically address MPD's other arguments as to why the arbitrator's award was contrary to law. Instead, PERB stated generally that "mere disagreement with the Arbitrator's interpretation does not make an award contrary to law and public policy."

PERB also concluded that the arbitrator's award was not contrary to public policy. After emphasizing that the authority to set aside arbitral awards on that basis is narrow, PERB stated without explanation that MPD had not identified a clear violation of public policy.

MPD appealed to the Superior Court, which affirmed PERB's decision.

III. Standards of Review

We owe no deference to the trial court's ruling, instead reviewing PERB's decision "as if the matter had been heard initially in this court." *Gibson v. D.C. Pub. Emp. Rels. Bd.*, 785 A.2d 1238, 1241 (D.C. 2001).

This court's cases have been unclear on the nature of the deference this court owes to PERB's decisions. The earliest cases reviewed PERB's decisions under generally applicable standards of administrative review. *See, e.g., Teamsters Loc. Union 1714 v. Pub. Emp. Rels. Bd.*, 579 A.2d 706, 709 n.3 (D.C. 1990) ("[O]ur cases involving review of PERB decisions have proceeded on the ground that . . . PERB's legal conclusions are subject to the ordinary amount of deference given to agencies entrusted with implementation of statutes."). We subsequently stated, however, that unless PERB's "decision is rationally indefensible, we are obliged to sustain it." *Drivers Loc. Union No. 639 v. District of Columbia*, 631 A.2d 1205, 1216 (D.C. 1993). We have used the latter formulation in several other cases addressing the deference we owe to PERB decisions. *E.g., Am. Fed'n of State, Cnty., & Mun. Emps. Loc. 2087 v. Univ. of D.C.*, 166 A.3d 967, 972 (D.C. 2017).

It is not entirely clear whether the court intended the words “rationally indefensible” to indicate that the decisions of PERB are entitled to unusually strong deference. In any event, we are bound to follow our earlier decisions to the extent there is any inconsistency between them and our later decisions. *See, e.g., Thomas v. United States*, 731 A.2d 415, 420 n.6 (D.C. 1999) (“Where a division of this court fails to adhere to earlier controlling authority, we are required to follow the earlier decision rather than the later one.”). We therefore clarify that our review of PERB’s decisions is not unusually deferential but rather is governed by the same principles of review that apply to other expert agencies. “Recognizing agency expertise, we accord great weight to any reasonable construction of an ambiguous statute by the agency charged with its administration.” *Johnson v. D.C. Dep’t of Emp. Servs.*, 111 A.3d 9, 11 (D.C. 2015) (brackets, ellipses, and internal quotation marks omitted). “We will sustain the agency’s interpretation even if a [party] advances another reasonable interpretation of the statute or if we might have been persuaded by the alternate interpretation had we been construing the statute in the first instance.” *Id.* (internal quotation marks omitted).

PERB “has only limited authority to overturn an arbitral award.” *D.C. Pub. Emp. Rels. Bd. v. Fraternal Ord. of Police/Metro. Police Dep’t Lab. Comm.*, 987 A.2d 1205, 1208 (D.C. 2010) (internal quotation marks omitted). In the present case,

MPD asked PERB to set aside the arbitrator's award on the ground that the award "on its face is contrary to law and public policy." D.C. Code § 1-605.02(6). We have acknowledged the ambiguity of the phrase "on its face is contrary to law and public policy." *Fraternal Ord. of Police/Dep't of Corr. Lab. Comm. v. D.C. Pub. Emp. Rels. Bd.*, 973 A.2d 174, 177-78 (D.C. 2009). Under ordinary principles of administrative law, we therefore would defer to PERB's reasonable interpretation of what it means for an arbitral award to be on its face contrary to law and public policy. *Id.* at 178. An agency decision, however, must "state the basis of its ruling in sufficient detail and be fully and clearly explained, so as to allow for meaningful judicial review of and deference to the agency's decision." *DC Appleseed Ctr. for L. & Just., Inc. v. D.C. Dep't of Ins., Sec., & Banking*, 214 A.3d 978, 985 (D.C. 2019) (internal quotation marks omitted).

IV. Analysis

We flag at the outset one lurking issue. Section 1-605.02(6) authorizes PERB to set aside an arbitral award if the award "on its face is contrary to law *and* public policy." (Emphasis added.) The word "and" is ordinarily understood as a term of conjunction. *See, e.g., Whitfield v. United States*, 99 A.3d 650, 657 (D.C. 2014) ("[U]se of the word 'and' is—absent evidence to the contrary—treated as a

conjunctive”). Section 1-605.02(6) thus arguably provides that an arbitral award can be set aside only if the award is contrary to both law and public policy. In some settings, however, “and” can be interpreted to mean “or.” *See, e.g., Fields v. District of Columbia*, 232 A.2d 300, 304 (D.C. 1967) (“It is a well-recognized principle of statutory construction that the conjunctive and disjunctive are signified interchangeably if to do so is consistent with the legislative intent.”) (internal quotation marks omitted); 1A Norman Singer & Shambie Singer, *Sutherland Statutes and Statutory Construction* § 21.14 (7th ed. Nov. 2021 update) (citing authority for proposition that “laxity in the use of the conjunctive ‘and’ and the disjunctive ‘or’ is so frequent that the doctrine has been accepted that they are interchangeable and the one may be substituted for the other if to do so is necessary to give effect to any part of a statute or to effectuate the intention of the Legislature”).

The court discussed this issue in *Fraternal Ord. of Police*, 973 A.2d at 179. Without deciding the issue, we suggested that the terms “contrary to law” and contrary to “public policy” overlap, because “an award that is contrary to a specific law *ipso facto* may be said to be contrary to the public policy that the law embodies.” *Fraternal Ord. of Police*, 973 A.2d at 179. We also decline to resolve this issue in the present case. MPD’s brief in this court takes the position that the arbitral award should properly be set side if the award on its face is contrary to either law or public

policy. Neither FOP nor PERB explicitly disputes that position. We therefore take the point as conceded and decide the case accordingly.

A. On Its Face Contrary to Law

Our prior cases establish three principles that provide guidance as to the meaning of the words “on its face contrary to law.” First, an arbitral award will not be set aside as “on its face contrary to law” simply because PERB or this court might reach a different conclusion as to a legal issue decided by the arbitrator. *E.g., D.C. Metro. Police Dep’t v. D.C. Pub. Emp. Rels. Bd.*, 901 A.2d 784, 789 (D.C. 2006). That is because, by agreeing to arbitrate, “the parties bargained for the arbitrator’s interpretation” of the law, not that of PERB or the court. *Id.* Second, an arbitral award can be set aside if a “clear violation of law” is “evident on the face of the arbitrator’s award.” *Id.* (internal quotation marks omitted); *see Fraternal Ord. of Police*, 973 A.2d at 178 (“[T]he statutory reference to an award that on its face is contrary to law and public policy may include an award that was premised on a misinterpretation of law by the arbitrator that was apparent on its face.”) (internal quotation marks omitted). Third, an award will be viewed as on its face contrary to law if, “in arriving at the award, the arbitrator looks to an external law for guidance

and purports to apply that law, but overlooks or ignores the law's express provisions." *Fraternal Ord. of Police*, 973 A.2d at 178.

As we have previously noted, MPD argued to PERB that the arbitrator's decision was on its face contrary to law for three reasons: (1) the arbitrator erroneously placed the burden on MPD to show that other employees had been terminated for similar conduct; (2) under *Douglas*, the arbitrator erred by setting aside MPD's selected sanction without finding either that MPD failed to weigh the relevant factors or that the proposed sanction fell outside the limits of reasonableness; and (3) the arbitrator erred by imposing a forty-five day sanction based on a case that was not comparable to the present case.

PERB addressed one aspect of MPD's argument in some detail, concluding that the arbitrator could permissibly reach his own decision about the appropriate sanction, rather than being required to defer to the sanction picked by MPD as long as that sanction was reasonable. MPD argues, however, that the collective bargaining agreement contains provisions that should be interpreted to require the arbitrator to defer to MPD's selected remedy as long as that remedy is reasonable. MPD has provided this court with the collective bargaining agreement, but apparently did not provide the collective bargaining agreement to PERB. MPD also

did not argue to PERB that the terms of the collective bargaining agreement required the arbitrator to defer to MPD's selected sanction. We decline to consider information and argument that were not presented to PERB. *See, e.g., Fraternal Ord. of Police*, 973 A.2d at 179 (declining to consider argument made for first time before this court; citing D.C. Code § 1-617.13(b) ("No . . . objection to an order of [PERB] shall be considered . . . , unless such . . . objection was first urged before [PERB].")); *Friends of McMillan Park v. D.C. Zoning Comm'n*, 211 A.3d 139, 148 (D.C. 2019) ("Our review, however, is limited to the evidence in the administrative record before the agency."). Given the limited arguments and information presented to PERB, we agree that PERB's ruling on this point was reasonable. *See generally* Elkouri & Elkouri, *How Arbitration Works* 15-28 to -30 (7th ed. 2012) ("Court decisions recognize broad arbitral discretion to review the reasonableness of the penalty imposed by the employer in relation to the employee's wrongful conduct. . . . Of course, . . . the parties may limit the discretion of the arbitrator to modify the discipline imposed by the employer by [using] express language to that effect in the collective bargaining agreement."); *id.* at 15-33 to -39 (noting different approaches taken as to authority of arbitrator to modify sanctions).

We note, however, that it is not at all clear to us whether the arbitrator understood himself to be exercising general authority to modify the sanction selected

by MPD or instead understood himself to be conducting the more limited review authorized under *Douglas*. If this matter is returned to the arbitrator, that issue would warrant clarification.

We conclude that a remand to PERB is necessary with respect to MPD's other arguments that the arbitrator's award was on its face contrary to law. PERB did not specifically address those arguments, instead simply stating without further explanation that "mere disagreement with the Arbitrator's interpretation does not make an award contrary to law and public policy." On remand, PERB should address MPD's specific arguments in light of the general principles noted above.

Finally, we address an argument raised by FOP and PERB at oral argument: that an arbitrator's determination as to the appropriate sanction for employee misconduct could never be on its face contrary to law. FOP and PERB took the position, for example, that PERB and the courts would be powerless to overturn an arbitral award reinstating a police officer who had committed cold-blooded mass murder of other officers and civilians. We disagree. In sufficiently extreme circumstances, an arbitrator's selection of penalty could be so arbitrary and capricious as to be on its face contrary to law. *Cf. Love v. D.C. Off. of Emp. Appeals*, 90 A.3d 412, 425 (D.C. 2014) (agency's decision to terminate employees for

misconduct was “arbitrary, capricious, and not in accordance with the law”); *Douglas*, 5 M.S.P.B. at 334 n.72 (“[I]t is possible for a penalty to be so disproportionate to the offense as to be illegal”) (internal quotation marks omitted).

B. On Its Face Contrary to Public Policy

The public-policy exception to the enforcement of arbitral awards is “*extremely narrow*.” *D.C. Metro. Police Dep’t*, 901 A.2d at 789 (internal quotation marks omitted). The “public policy alleged to be contravened must be well defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests.” *Id.* (internal quotation marks omitted). The Supreme Court of the United States has explained that the issue is not whether the employee’s misconduct violated public policy but rather whether enforcing the arbitral award would do so. *E. Associated Coal Corp. v. UMW, Dist. 17*, 531 U.S. 57, 62-63 (2000). The Supreme Court also has stated, however, that “courts’ authority to invoke the public policy exception is not limited solely to instances where the arbitration award itself violates positive law.” *Id.* at 63. It does not appear that either PERB or this court has expressly addressed the latter issue.

MPD argues in the present case that there is a well-defined and dominant public policy against the criminal use of deadly force by the police. PERB and FOP understandably do not dispute that point. Rather, the dispute is over whether reinstating Officer Thomas would violate that public policy. Courts around the country have divided when confronting similar issues. *Compare, e.g., City of Seattle, Seattle Police Dep't v. Seattle Police Officers' Guild*, 484 P.3d 485, 489-507 (Wash. Ct. App. 2021) (upholding trial-court order setting aside arbitral award as against public policy, where arbitrator reinstated officer who used excessive force by punching handcuffed suspect in face, breaking suspect's orbital bone), *and City of Des Plaines v. Metro. Alliance of Police, Chapter No. 240*, 30 N.E.3d 598, 600-610 (Ill. App. Ct. 2015) (upholding in part trial-court order setting aside arbitral award as against public policy, where arbitrator reinstated officer who used excessive force against arrestees; case remanded for arbitrator to further consider appropriate sanction), *with, e.g., Town of South Windsor v. S. Windsor Police Union Loc. 1480*, 770 A.2d 14, 16-30 (Conn. 2001) (reversing order setting aside arbitral award as contrary to public policy, where arbitrator reinstated officer who pointed gun at young men playing basketball without permission at gymnasium); *see generally* Tracy Bateman Farrell, *Vacating on Public Policy Grounds Arbitration Awards Reinstating Discharged Employees—State Cases*, 112 A.L.R.5th 263, § 18 (2003 & Cum. Supp.) (citing cases).

We do not view PERB as having adequately explained its decision not to set aside the arbitral award as against public policy. After emphasizing that the authority to set aside arbitral awards on that basis is narrow, PERB simply stated without explanation that MPD had not offered a clear violation of public policy. A remand to PERB is therefore necessary on this issue as well.

For the foregoing reasons, the judgment of the Superior Court is vacated and the case is remanded for the Superior Court to remand the case to PERB for further proceedings.

So ordered.

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DC METROPOLITAN POLICE
DEPARTMENT

:
:
:
:
:
:
:

v.


Case No. 2018 CA 004340 P(MPA)

DC PUBLIC EMPLOYEE RELATIONS
BOARD

ORDER REMANDING CASE

Consistent with the mandate issued by the District of Columbia Court of Appeals on October 7, 2022, this Court remands this case to the District of Columbia Public Employee Relations Board for further proceedings consistent with the Judgment dated September 15, 2022.

SO ORDERED.



Anthony C. Epstein
Judge

Date: October 7, 2022

Copies to:

All counsel by CaseFileXpress

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**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

D.C. DEPARTMENT OF :
GENERAL SERVICES :
 :
v. : Case No. 2020 CA 003165 P(MPA)
 :
D.C. PUBLIC EMPLOYEE :
RELATIONS BOARD :

ORDER

The Court grants the petition of the D.C. Department of General Services (“DGS”) for review of a decision of the D.C. Public Employee Relations Board (“PERB”) concerning attorney fees.¹

I. BACKGROUND

Intervenor Fraternal Order of Police, Protective Services Labor Division Labor Committee (“FOP”) filed a complaint with PERB alleging that DGS committed an unfair labor practice by failing to bargain before it unilaterally changed its policies and practices concerning reimbursement of parking costs. In an order finding that DGS committed an unfair labor practice, PERB overturned its prior precedent and concluded that it has authority to award attorney fees under the D.C. Comprehensive Merit Personnel Act (“CMPA”) and the Federal Back Pay Act (“FBPA”). DGS moved for reconsideration of the ruling that PERB has authority to award attorney fees in these circumstances, and PERB denied the motion.

DGS filed a timely petition for review in this Court. On March 19, 2021, DGE filed its opening brief (“DGS Brief”). On May 21, PERB filed its answer (“PERB Brief”), and FOP filed its brief as an intervenor (“FOP Brief”). On June 25, DGS filed its reply brief (“DGS Reply”).

¹ The undersigned judge assumed responsibility for this case while the calendar judge is on leave.

II. STANDARD OF REVIEW

DGS's petition raises a pure question of law. "Courts must defer to an agency's interpretation of the statute it administers, as long as that interpretation is reasonable and not plainly wrong or inconsistent with its legislative purpose." *Zenian v. D.C. Office of Employee Appeals*, 598 A.2d 1161, 1166 (D.C. 1991). "The corollary of this proposition, however, is that we are not obliged to stand aside and affirm an administrative determination which reflects a misconception of the relevant law or a faulty application of the law." *Id.* (cleaned up). "An order may not stand if the agency has misconceived the law." *Id.* (cleaned up).

"An agency, of course, may change its interpretation of a governing statute, but only if it provides cogent reasons for doing so." *Hensley v. D.C. Department of Employment Services*, 49 A.3d 1195, 1205 n.9 (D.C. 2012). "An agency's view of what is in the public interest may change, either with or without a change in circumstances." *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 57 (1983). "While an agency may change over time the interpretation it gives to a controlling statutory term, an agency changing its course is obligated to supply a reasoned analysis for the change." *Brentwood Liquors v. D.C. Alcoholic Beverage Control Board*, 661 A.2d 652, 656 (D.C. 1995) (cleaned up) (citing *Motor Vehicle Manufacturers Ass'n*, 463 U.S. at 42). "The agency must explain and justify its change of mind or its use of a different standard from one situation to the next." *Brentwood Liquors*, 661 A.2d at 656. "If an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute." *Id.* at 656-57 (cleaned up).

"It is the rationale of the agency that we review, not the post hoc rationalizations of counsel." *Durant v. D.C. Zoning Commission*, 99 A.3d 253, 260-61 (D.C. 2014) (cleaned up). "An administrative order can only be sustained on grounds relied on by the agency." *Id.*

(cleaned up). “Similarly, this court may not substitute its reasoning for the agency’s when that reasoning appears to be lacking in the agency’s order.” *Id.* (cleaned up). A reviewing court “may not supply a reasoned basis for the agency’s action that the agency itself has not given.” *Motor Vehicle Manufacturers Ass’n*, 463 U.S. at 43.

III. DISCUSSION

The Court grants DGS’s petition for review because PERB did not supply the required “reasoned analysis” for its decision to change course from three decades of contrary precedent and conclude that it has the authority to award attorney fees to a prevailing complainant in an unfair labor practice case. *See Brentwood Liquors*, 661 A.2d at 656. On remand, PERB is free to determine whether or not it has this authority, so long as its analysis is reasoned and consistent with the principles in this Order.

The Court emphasizes that it does *not* hold PERB’s conclusion is plainly wrong or inconsistent with the purpose of the CMPA. *See Zenian*, 598 A.2d at 1166. For reasons explained below, PERB may be able to provide a reasoned analysis for a conclusion that the District Personnel Manual (“DPM”) is not a new compensation system that superseded the FBPA or that its “make whole” remedial authority includes the authority to award attorney fees. PERB may address these issues on remand. *See Zenian*, 598 A.2d at 1166 n.10 (observing that “a construction of the CMPA which would bar awards of counsel fees to successful employee litigants would have the potential of substantially chilling the private enforcement of legal workplace rights,” and expressing doubt “that Congress or the Council could have intended such a result, especially since the FBPA’s explicit authorization for such ‘make whole’ relief has been effectively incorporated by reference”).

The starting point of PERB's analysis was that its original decision in 1980 holding that it did not have authority to award attorney fees to prevailing complainants in unfair labor practice cases was inconsistent with *Zenian*, which was decided six months later. *See* Decision at 9. This conclusion is not only reasonable but plainly correct. *Zenian*, 598 A.2d at 1162, squarely held that attorney fees may be awarded to D.C. government employees under the compensation system in effect on January 1, 1980 and that the CMPA required that system to remain in effect until the District approved a new compensation system. *Zenian* and its progeny make clear that unless and until the District adopted a new compensation system pursuant to the CMPA, employees' rights under the "jump back" provision of the CMPA included rights under the FBPA to attorney fees in unfair labor practice cases.

However, it is equally clear that the CMPA gave the District the right to adopt a new compensation system that superseded the FBPA and other federal statutes and regulations that created the patchwork that the CMPA directed the District to replace. *See Zenian*, 598 A.2d at 1163 ("The CMPA was designed to replace an existing personnel system which was said to be in disarray and chaos – an inefficient hodge-podge system that ignored the rudimentary merit rules and awkwardly meshed the District personnel apparatus with the federal personnel system.") (cleaned up, quoting legislative history of the CMPA). The Court of Appeals explicitly identified the FBPA as "a vestige of the patchwork system in effect prior to the passage of Home Rule in 1973 that awkwardly meshed federal substantive law with the District's own personnel system." *AFGE v. D.C. Water & Sewer Authority*, 942 A.2d 1108, 1112 (D.C. 2007). *White v. D.C. Water & Sewer Authority*, 962 A.2d 258 (D.C. 2008), expressly held that once an agency adopts a new compensation system, that system supplants the application of the FBPA.

DGS argued before PERB that the DPM is a “new compensation system” within the meaning of D.C. Code § 1-611.04(e) that superseded the FBPA. Thus the key issue facing PERB was whether the DPM qualifies as a “new compensation system.” On this issue, PERB has two responses in its decision, each involving Court of Appeals decisions, and neither resolves the issue. First, PERB stated, “On at least three occasions following the implementation of the DPM, the D.C. Court of Appeals has maintained that the attorney fees provision of the Back Pay Act continues to apply to District employees as a part of the ‘compensation system’ that existed on December 31, 1979, which must be retained until a new system is adopted.” Decision at 12-13 & n.103. This statement is completely accurate, but it does not address, and the three Court of Appeals decisions cited by PERB did not address, whether the District adopted a new system through the DPM.

Second, PERB stated, “the D.C. Court of Appeals has previously accepted the District’s argument that the DPM ‘provides an interpretation of the [Back Pay Act] in concert with federal holdings’ and therefore does not conflict with the ‘jump back’ provisions incorporation of the Back Pay Act into the CMPA.” *Id.* & n.104. PERB cited *Walker v. Office of the Chief Information Technology Officer*, 127 A.3d 524 (D.C. 2015), but *Walker* does not stand for the broad proposition that the DPM incorporates all of the remedial provisions of the FBPA. The issue in *Walker* was whether unlawfully discharged District government employees had a duty to mitigate their damages by attempting to find another job while litigating their challenges to their terminations, and the Court of Appeals “accept[ed] the government’s alternative argument that the DPM’s relevant provision does not abridge but merely explains the common law mitigation requirement that has long been read into the FBPA.” *Id.* at 530. That the DPM incorporates common law mitigation requirements does not mean it authorizes the award of attorney fees as a

remedy. With respect to attorney fees, the common law generally does not allow the prevailing party to recover attorney fees, *e.g.*, *District of Columbia v. Hunt*, 520 A.2d 300, 307 n.5 (D.C. 1987) (“It is the well settled American Rule that attorney’s fees are generally not available unless there exists an explicit statutory or contractual entitlement.”), and as discussed below, PERB did not analyze in its decision whether its “make whole” remedial authority should be interpreted to include attorney fees in appropriate cases.

In this Court, PERB argues that the DPM did not supersede the FBPA because “any replacement compensation system would need to maintain the concrete benefits available in 1979” and the right of a prevailing party to attorney fees is one of these concrete benefits. PERB Brief at 13. This argument that the FBPA “sets a floor” under any new compensation system (PERB Brief at 13) is flatly inconsistent with *White*. *White* held that an employee unlawfully discharged by the D.C. Water and Sewer Authority (“WASA”) was not entitled to attorney fees under the FBPA because WASA had adopted a new compensation system that did not provide for attorney fees. “The fact that the benefits available to WASA employees are not equivalent in all respects to those provided other District employees is immaterial” because WASA’s establishment of a new compensation system relieved it of the application of the CMPA and, thereby, the FBPA and its attorney fee provision. *See* 962 A.2d at 259-60. The CMPA does not unambiguously require any new compensation system adopted by the District to provide for attorney fees to prevailing parties in unfair labor practices cases. PERB’s contrary argument reflects a misconception of the relevant law. *See Zenian*, 598 A.2d at 1166.

It is true, as PERB argues, that the Court of Appeals has never found that the DPM displaced the FBPA, PERB Brief at 11, but it is equally true that the Court of Appeals has never found that it did *not* displace the FBPA. Indeed, the Court of Appeals has explicitly stated that it

Q36 Superior Court and Court of Appeals Decisions

has not resolved the issue one way or the other: “neither PERB nor this court has yet ruled whether the DPM supersedes the application of the BPA.” *AFSCME v. University of the District of Columbia*, 166 A.3d 967, 970 n.5 (D.C. 2017). Both sides invoke appellate decisions, but none of these decisions supports either side’s position with respect to whether the DPM displaces the FBPA.²

The Court addresses one final point concerning PERB’s authority to award attorney fees. In its brief, PERB’s lead argument is that it reasonably interpreted its authority to provide “make whole” relief to include the authority to award attorney fees to prevailing complainants in unfair labor practice cases. PERB Brief at 9-10. PERB also argues that the provision in the DPM for “make whole” relief authorizes it to award attorney fees pursuant to the DPM. PERB Brief at 11. However, the Court can sustain PERB’s decision only on the grounds on which the agency relied, and these arguments are *post hoc* rationalizations of counsel. *See Durant*, 99 A.3d at 260-61. In its decision, PERB makes one, passing reference to its authority to provide “make whole” remedies: “Relevant here, the Board is authorized to award back pay, costs, and make whole remedies.” Decision at 9. PERB’s decision does not explain how or why this authority is relevant to its authority to award attorney fees. Moreover, PERB explicitly acknowledges that “[p]reviously, the Board found that it is not authorized to award attorney fees under the CMPA because there is no explicit statutory language empowering it to provide a remedy of attorney fees.” Decision at 11. In its decision, PERB did not provide a cogent reason for changing this interpretation of its governing statute, and if it swerved from these prior precedents, it crossed

² PERB’s analysis of its authority to award attorney fees was driven less its own interpretation of the CMPA than by the Court of Appeals’ interpretation of the CMPA. In effect, PERB deferred to the Court of Appeals. This Court is as capable as PERB of interpreting and applying decisions of the Court of Appeals, and it is not required to defer to PERB’s interpretation of these decisions.

“the line from the tolerably terse to the intolerably mute.” *See Hensley*, 49 A.3d at 1205 n.9; *Brentwood Liquors*, 661 A.2d at 656-57.

Lastly, DGS argues that even if PERB has authority to award attorney fees to FOP, it should not exercise that authority because FOP is not entitled to attorney fees under the criteria imposed by the FBPA and an award of attorney fees would not be in the interests of justice. DGS Brief at 11-13. However, in the decision under review, PERB decided only whether it has authority to award attorney fees to FOP, and it did not decide whether to exercise that authority and award attorney fees to FOP. PERB should decide this issue in the first instance. If and when PERB decides that FOP is entitled to fees, DGS can seek review of that decision.

IV. CONCLUSION

For these reasons, the Court orders that:

1. The petition for review is granted.
2. The case is remanded to PERB for proceedings consistent with this decision.



Anthony C. Epstein
Judge

Date: March 24, 2022

Copies to all counsel via CaseFileXpress

Q48 FOIA Disclosure Reports

Agency Name

PERB

Annual Freedom of Information Act Report for Fiscal Year 2022

October 1, 2021, through September 30, 2022

FOIA Officer Reporting: Gertie Elam

PROCESSING OF FOIA REQUESTS

- 1. Number of FOIA requests received during the reporting period 1
- 2. Number of FOIA requests pending on October 1, 2021 0
- 3. Number of FOIA requests pending on September 30, 2022 0
- 4. The average number of days unfilled requests have been pending before each public body as of September 30, 2022 0

DISPOSITION OF FOIA REQUESTS

- 5. Number of requests granted, in whole 1
- 6. Number of requests granted, in part, denied, in part 0
- 7. Number of requests denied, in whole 0
- 8. Number of requests withdrawn 0
- 9. Number of requests referred or forwarded to other public bodies 0
- 10. Other disposition 0

NUMBER OF REQUESTS THAT RELIED UPON EACH FOIA EXEMPTION

- 11. Exemption 1 - D.C. Official Code § 2-534(a)(1).....
- 12. Exemption 2 - D.C. Official Code § 2-534(a)(2).....
- 13. Exemption 3 - D.C. Official Code § 2-534(a)(3)
 - Subcategory (A).....
 - Subcategory (B).....
 - Subcategory (C)
 - Subcategory (D)
 - Subcategory (E)
 - Subcategory (F)
- 14. Exemption 4 - D.C. Official Code § 2-534(a)(4)
- 15. Exemption 5 - D.C. Official Code § 2-534(a)(5).....

Q. 49 PERB FOIA Requests Log FY2022 and FY2023

FOIA Requests FY2022and FY2023

<i>Request Number</i>	<i>Name of Requester</i>	<i>Request Date</i>	<i>Request Description</i>
2022-FOIA-09628	Binta Robinson	9/8/2022	Request for award information in a PERB Case from 2012