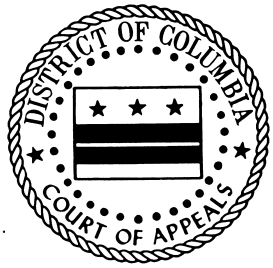
No. 22-CV-605



IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 631

APPELLANT,

V.

DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD, DISTRICT OF COLUMBIA OFFICE OF LABOR RELATIONS AND COLLECTIVE BARGAINING,

APPELLEES.

ON APPEAL FROM A JUDGMENT OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

BRIEF OF APPELLEE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD

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June 8, 2023

* Geoffrey H. Simpson is expected to argue this matter.

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RULE 28(a)(2) CERTIFICATE

The undersigned, counsel of record for Appellee District of Columbia Public Employee Relations Board, certifies that the following listed parties appeared below before the Superior Court of the District of Columbia:

The petitioner below was American Federation of Government Employees, AFL-CIO ("AFGE"). AFGE was represented by Barbara Hutchinson, Esq.

The District of Columbia Public Employee Relations Board ("PERB") was the respondent, represented by Bruce A. Fredrickson, Esq. and Geoffrey H. Simpson, Esq. of Webster & Fredrickson, PLLC.

The intervenor, the District of Columbia Office of Labor Relations and Collective Bargaining was initially represented by Daniel M. Thaler, Esq. and Andrea G. Comentale, Esq. of the Office of Attorney General and is now represented by Holly M. Johnson, Esq. of the Office of the Solicitor General.

Respectfully submitted,

WEBSTER & FREDRICKSON, PLLC

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June 8, 2023

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

Whether the decision of the Public Employee Relations Board ("PERB") finding that the District was not required to bargain over the impact and effects of a Vaccine Requirement for District employees under the Comprehensive Merit Personnel Act and COVID Emergency Response Act was clearly erroneous or not grounded in substantial evidence.

SUMMARY OF THE ARGUMENT

The CMPA and COVID Emergency Act both provide the District with authority to take action to respond to the COVID emergency. The CMPA has long permitted the District "[t]o take whatever actions may be necessary to carry out the mission of the District government in emergency situations." D.C. Code 1-617.08(a)(6). And the Council enacted the COVID-19 Response Emergency Amendment Act of 2020 as part of its efforts to give the Mayor additional tools to deal with the COVID emergency. COVID-19 Response Emergency Amendment Act of 2020, D.C. Act 23-0247, Sec. 301(b)(4) (2020) (codified as D.C. Code § 7-2304(b)(15)-(16) ("COVID Emergency Act"). These provisions each limit the requirement that the District bargain with unions concerning its efforts to respond to emergencies.

In the COVID Emergency Act, the Council determined that the Mayor and subordinate agencies could take personnel actions "notwithstanding" any provision of the CMPA or other personnel laws or rules. D.C. Code § 7-2304(b)(15)-(16). In a prior case, the Superior Court interpreted this provision as broadly expanding the District's rights to take action without bargaining with unions. Finding that the legislation "gives management the sole right to take any necessary personnel action in emergency situations, notwithstanding any contradictory provision of the CMPA, the Superior Court "held that management has 'flexible, expansive, open-ended authority" to take the actions necessary to ensure an effective response to the COVID-19 emergency.'" (Joint Appendix ("JA") at 6 (*quoting Office of Labor Relations and Collective Bargaining v. District of Columbia Public Employee Relations Bd.*, Case No. 2020 CA 003086 P(MPA) (D.C. Super. Ct. 2021).) Following this language, and providing its own expert interpretation of the CMPA, PERB reasonably held that the imposition of Vaccine Requirements—so far as the CMPA is concerned--implicates a management right permitting the District to respond to emergencies in general and to allow the District the ability to protect the workplace as contemplated by the COVID Emergency Act without the need to bargain with the union substantively or over the impact and effects of implementing

the Vaccine Requirements. PERB's decision so ruling is reasonable in light of the statutory text and Superior Court decision it followed. It is not "rationally indefensible" and PERB respectfully requests that the decision, and Superior Court decision, be affirmed.

STATEMENT OF THE CASE

On March 11, 2020, the Mayor of the District of Columbia issued an Executive Order declaring a state of emergency in response to the public health emergency caused by COVID-19. On March 17, 2020, the Council of the District of Columbia enacted the COVID-19 Response Emergency Amendment Act of 2020, (COVID-19 Emergency Act), which amended the District of Columbia Public Emergency Act and provided the Mayor with enumerated personnel powers to address COVID-19. COVID Emergency Act, D.C. Code § 7-2304(b).

As the COVID Emergency persisted, and interfered with daily life and public safety on a vast scale, the world waited for vaccines to becomes available. (*See* JA at 29-34.) Once vaccines were developed, and proved to be safe and effective, the Mayor ordered that the District's workforce be vaccinated or else submit to testing in returning to work in an August 10, 2021 order (the "Vaccine Requirements"). (JA at 29-34.)

Thereafter, AFGE, representing employees of the D.C. Department of Public Works, the D.C. Department of General Services, the D.C. Office of Planning, the D.C. Office of Contracting and Procurement, the D.C. Office of Zoning, and the D.C. Department of Environment and Energy, and the District engaged in negotiations over a Memorandum of Agreement (MOA) concerning the Vaccine Requirements. (JA at 5-6.) On October 8, 2021, the District submitted its last best offer, asserting that that the proposals are non-negotiable in whole or in part. (JA at 5-6.) On October 19, 2021, AFGE filed an appeal, and the parties briefed the matter before PERB. (JA at 5-6.)

The Negotiability Appeal concerned twelve proposals made by the Union and declared non-negotiable by the D.C. Office of Labor Relations and Collective Bargaining on behalf of the District Agencies. (JA at 13-28.) PERB, in a December 22, 2021, Decision Order found AFGE's proposals touching on the Vaccine Requirements were non-negotiable. (JA at 5-7.)

In reaching this conclusion, PERB reviewed a September 2021 Superior Court decision which found that the COVID Emergency Act granted the District broad flexibility in responding to the COVID emergency combined with the CMPA's management right provision allowing the District to take whatever steps necessary in an emergency, and

found that the District was not required to bargain over vaccine requirements. (JA at 6.) Then, upon AFGE's motion for reconsideration, PERB clarified and expanded its analysis that the CMPA's management rights provision, which states the District has a management right to take actions in response to emergencies interpreted with the COVID Emergency Act, permitted the District to mandate vaccination without bargaining. *American Federation of Gov't Employees, Local 631 v. District of Columbia Office of Collective Bargaining*, PERB Case No. 22-N-02, Slip Op. No. 1808 (Feb. 17, 2022). Specifically, PERB explained that the Superior Court's decision in *OLRCB*, Case No. 2020 CA 003086, assumed that the COVID Emergency Act incorporated the CMPA's emergency response authority and did not need to enumerate all actions the District may have to take in response to the COVID Emergency, because that authority already existed in the CMPA. *Id.* at *2. The COVID Emergency Act expanded that authority such that impact and effects bargaining is not required in response to the COVID emergency, as the Vaccine Requirement was. *Id.*

AFGE sought review of PERB's decision by a Petition for Review in Superior Court. Explaining that the Court could only set aside PERB's decision if substantial evidence does not support PERB's decision or else

PERB's decision was clearly erroneous, the Superior Court found (1) the COVID emergency was "unquestionably" an emergency and therefore (2) PERB's decision to classify the Vaccine Requirements as a response to that emergency which was necessary to carry out the mission of the District within the meaning of D.C. Code 1-617.08(a)(6) was 'far from unreasonable.'" (JA at 11-12.)

This appeal followed.

STANDARD OF REVIEW

The District of Columbia Court of Appeals reviews an appeal of a PERB decision as if the appeal initially had been heard by this Court rather than by the Superior Court and applies the same standard of review. *FOP/Dep't of Corr. Labor Comm. v. District of Columbia Public Employee Relations Bd.*, 973 A.2d 174, 176 (D.C. 2011) (*citing Gibson v. District of Columbia Public Employee Relations Bd.*, 785 A.2d 1238, 1241 (D.C. 2001)). This Court must sustain PERB's decision if it is "supported by substantial evidence in the record as a whole and not clearly erroneous as a matter of law." Super. Ct. Civil Agency Review Rule 1 (g); *see* D.C. Code § 1-617.13 (b) (2001) (PERB's factual findings "shall be conclusive if supported by substantial evidence in the record considered as a whole").

Agency Rule 1(g) of the Superior Court Rules of Civil Procedure and the CMPA set forth an exceptionally deferential standard of review for this Court to apply to PERB decisions. Applying this statutory standard, the Court of Appeals has concluded that courts reviewing a PERB decision must affirm PERB's decision unless the decision is "rationally indefensible." *District of Columbia Metro. Police Dep't v. District of Columbia Public Employee Relations Bd.*, 144 A.3d 14, 16-17 (D.C. 2016); *see also Am. Fed'n of State v. Univ. of the District of Columbia*, 166 A.3d 967, 972 (D.C. 2017). The deference to PERB afforded by the CMPA, the Superior Court Rules of Civil Procedure, and the Court of Appeals is grounded on PERB's status as an expert agency specifically tasked with interpreting and applying the CMPA. *See Hawkins v. Hall*, 537 A.2d 571, 575 (D.C. 1988) (PERB has "special competence" to handle questions arising under the CMPA). Because PERB has the "express statutory responsibility" to decide standards of conduct complaints, it is error for a reviewing Court to disturb a PERB decision unless the PERB decision is clearly erroneous. *District of Columbia Public Employee Relations Bd. v. Washington Teachers' Union*, 556 A.2d 206, 210 (D.C. 1989) (reversing Superior Court because the Superior Court applied the wrong standard of review).

PERB exercised its specific authority to interpret the CMPA. In so doing, PERB determined that management rights provided by the CMPA, especially together with the COVID Emergency Act on existing CMPA rights and found that the COVID Relief Act allowed to implement the Vaccine Requirement without bargaining. PERB's decision is reasonable and PERB respectfully requests it be affirmed.

ARGUMENT

I. The Statutory Scheme of the CMPA Allows the District to Exercise Management Rights without Bargaining

The CMPA was enacted to provide "a mechanism for addressing virtually every conceivable personnel issue among the District, its employees, and their unions." *District of Columbia v. Thompson*, 593 A.2d 621, 634 (D.C. 1991). The Council declared that it is the "purpose and policy" of the CMPA "to assure that the District of Columbia government shall have a modern flexible system of public personnel administration" that will "[p]rovide for a positive policy of labor-management relations including collective bargaining between the District of Columbia government and its employees." D.C. Code § 1-601.02(6).

The CMPA ordinarily forbids the District from refusing to bargain in good faith and otherwise forbids the District from using coercive tactics. D.C. Code §§ 1-617.04(a)(1), (5). In determining the limits surrounding the

obligation to bargain under the CMPA, PERB has adopted "the three-category approach articulated by the Supreme Court in *NLRB v. Borg-Warner Corp.*, 356 U.S. 342, 349, 2 L. Ed. 2d 823, 78 S. Ct. 718 (1958)." *Drivers, Chauffeurs & Helpers Local Union No. 639 v. District of Columbia*, 631 A.2d 1205, 1207 (D.C. 1993). Thus, there are "mandatory subjects over which the parties must bargain; permissive subjects over which the parties may bargain; and illegal subjects over which the parties may not legally bargain." *Id.* (*quoting Borg-Warner*, 356 U.S. at 349).

Excluded from mandatory subjects of bargaining are "management rights," subjects over which the District is not required to bargain. The CMPA defines "management rights" as follows:

> (a) The respective personnel authorities (management) shall retain the sole right, in accordance with applicable laws and rules and regulations:
>
> > (1) To direct employees of the agencies;
> >
> > (2) To hire, promote, transfer, assign, and retain employees in positions within the agency and to suspend, demote, discharge, or take other disciplinary action against employees for cause;
> >
> > (3) To relieve employees of duties because of lack of work or other legitimate reasons;
> >
> > (4) To maintain the efficiency of the District government operations entrusted to them;

> (5) To determine:
>
> > (A) The mission of the agency, its budget, its organization, the number of employees, and to establish the tour of duty;
> >
> > (B) The number, types, and grades of positions of employees assigned to an agency's organizational unit, work project, or tour of duty;
> >
> > (C) The technology of performing the agency's work; and
> >
> > (D) The agency's internal security practices; and
>
> (6) To take whatever actions may be necessary to carry out the mission of the District government in emergency situations.

D.C. Code 1-617.08(a). Thus, the CMPA has long provided a framework wherein management had the unilateral right to take a host of actions with or without bargaining with the respective unions to further the missions of the agencies.

The CMPA also ordinarily requires bargaining over the "impact and effects" of the District's exercise of management rights. *E.g.*, *Teamsters, Local Unions No. 639 and 730 v. District of Columbia Public Schools*, Slip Op. No. 249, PERB Case No. 89-U-17 (1990). This means that in non-emergency, non-COVID, actions, unions can request bargaining over

corollary issues connected to the imposition of changes the District may unilaterally impose.

II. The COVID Emergency Act Broadly Expanded Management Rights

Against this legal framework, and in response to the COVID-19 pandemic—an emergency situation by any measure--the Council enacted the COVID Emergency Response Act, which states:

> Notwithstanding any provision of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139, D.C. Official Code § 1-601.01 et seq.) ("CMPA") or the rules issued pursuant to the CMPA, . . . or any other personnel law or rules, the Mayor may take the following personnel actions regarding executive branch subordinate agencies that the Mayor determines necessary and appropriate to address the emergency:
>
> (A) Redeploying employees within or between agencies;
>
> (B) Modifying employees' tours of duty;
>
> (C) Modifying employees' places of duty;
>
> (D) Mandating telework;
>
> (E) Extending shifts and assigning additional shifts;
>
> (F) Providing appropriate meals to employees required to work overtime or work without meal breaks;
>
> (G) Assigning additional duties to employees;
>
> (H) Extending existing terms of employees;

> (I) Hiring new employees into the Career, Education, and Management Supervisory Services without competition;
>
> (J) Eliminating any annuity offsets established by any law; or
>
> (K) Denying leave or rescinding approval of previously approved leave.

D.C. Code § 7-2304(b)(16).

The Superior Court interpreted this provision to hold that, notwithstanding any provision in the CMPA, the District may take these additional actions it determines are appropriate to address the COVID crisis and that these provisions do not restrict, in any way, management rights afforded under the CMPA. *District of Columbia Office of Labor Relations and Collective Bargaining v. District of Columbia Public Employee Relations Bd.*, Case No. 2020 CA 003086 P(MPA) (D.C. Super. Ct. September 29, 2021). According to the Superior Court, the COVID Emergency Act broadly expanded management rights to act in response to the COVID emergency. *Id.*

With those broad management rights, the Superior Court found that the District was also not required to bargain over impacts and effects of actions taken under the COVID Emergency Act. *Id.* This is so because the COVID Emergency Act permits the District to take action to respond to

COVID notwithstanding any provision in the CMPA which, under PERB precedent, might require impact and effects bargaining even over mandatory subjects of bargaining. *Id*.

III. The COVID Emergency was an Emergency Under the CMPA

Under the CMPA, as found by PERB, District management has the right to "[t]o take whatever actions may be necessary to carry out the mission of the District government in emergency situations." D.C. Code 1-617.08(a)(6). The COVID pandemic is just the sort of emergency situation contemplated by the CMPA and which permits the District to take action like imposing a vaccine requirement: the Mayor's Order itself lays out in some detail of the effects and extent of the COVID emergency (JA at 68-71.)

After three years of living through the pandemic which has taken more than a million American lives and has fundamentally altered how people live and work--repetition of the specifics is hardly necessary to demonstrate the pandemic qualifies as an "emergency" for the purposes of D.C. Code 1-617.08(a)(6). Nor is there any basis to challenge PERB's conclusion that Vaccine Requirements are actions taken by management to respond to the COVID emergency. The vaccines reduce the risk of transmission and the severity of the disease in case of infection. (JA at 68-71.)

The plain language of the management rights provision, when construed broadly in the context of the COVID emergency, supports PERB's conclusion that the imposition of the Vaccine Requirement was a management right under D.C. Code 1-617.08(a)(6). Substantial evidence (if not irrefutable evidence) supports PERB's conclusions that the COVID pandemic is an emergency and that the Vaccine Requirements are actions which may be necessary to carry out the mission of the District agencies.

IV. The CMPA and COVID Emergency Act Together Relieve the District of Substantive Bargaining or Bargaining of Impact and Effects of the Vaccine Requirements

Where the Superior Court had interpreted the COVID Emergency Act to broadly expand management rights and to respond to the COVID emergency without bargaining over the impact and effects of such actions, PERB reasonably concluded that the District is not required to bargain over the impact and effects of the Vaccine Requirement. *See OLRCB v. PERB*, Case No. 2020 CA 003086 P(MPA) at *6-7 (JA at 130-31). As PERB observed, "the Court reasoned that the COVID-19 Emergency Act did not need to enumerate the specific actions management can take in an emergency because under [the CMPA] management already has, flexible expansive, open-ended authority to take whatever actions may be necessary to address the COVID-19 emergency." (JA at 6 (cleaned up).)

The COVID Emergency Act restates and reiterates that the District has the right to respond to the COVID emergency that was already provided-for in the CMPA. And when responding to the COVID emergency, the District need not bargain over impact and effects of its actions, according to *OLRCB*.

Broadly interpreting the COVID Emergency Act in the manner the Superior Court previously ordered PERB to do, requiring employees to take vaccines or else submit to testing is an additional duty which the District could order without substantive or impact and effects bargaining. *OLRCB v. PERB*, Case No. 2020 CA 003086 P(MPA) at *6-7; *see also* D.C. Code § 7-2304(b)(16)(G); *see also* D.C. Code 1-617.08(6). The proposals made by AFGE here assumed the Vaccine Requirement would take effect and largely sought to bargain over its impact and effects--bargaining the District was not required to undertake.

A closer look at AFGE's proposals confirm that PERB's answer is reasonable, even when viewed on an individual basis. Return to work proposals, like those made by AFGE, largely implicate management rights set out in § 7-2304(b)(16). *American Federation of Government Employees, AFL-CIO v. District of Columbia Public Employee Relations Bd.*, Case No. 2022 CA 002435 P(MPA) (D.C. Super. 2023). Here, the

proposals at issue were (1) whether the proposed agreement would concern substantive bargaining or just on impact and effects; (2) time to get tested for vaccine and to receive the vaccine; (3) time off for testing for those with religious exceptions; (4) notice to employees of COVID results in the workplace and sanitization of the workplace; (5) testing for employees on travel; (6) leave for employees who test positive and notification to others; (7) self-quarantining and telework for those exposed to COVID; (8) when employees may return from leave or quarantine related to COVID; (9) mask requirements for vaccinated employees; (10) social distancing in the workplace; (11) employee leave requests; and (12) the status of a prior memorandum of agreement. (JA 17-23.) Most all these proposals directly implicate leave and time off issues expressly contemplated under the COVID Emergency Act (proposals 2, 3, 6, 7, 8, 11 as enumerated herein) and duties in the workplace (5 (testing on travel), 9 (masking), 10 (social distancing)). (JA 17-23.) Proposal 4 involves modifying the workplace. (JA 20-21.) Proposals 1 and 12 concern the nature of bargaining (and whether it would concern substantive bargaining or only impact and effects) and status of a prior agreement. (JA 17-18, 22-23.)

The COVID Emergency Act explicitly relieved the District from bargaining over the impact and effects of management's exercise of these

management rights. *American Federation of Government Employees, AFL-CIO v. District of Columbia Public Employee Relations Bd.*, Case No. 2022 CA 002435 P(MPA) (D.C. Super. 2023). While PERB reasonably found that management was not required to bargain over the impact and effects of the Vaccine Requirements, the specific proposals themselves also implicated management rights.

PERB based its decision in large part on the Superior Court's language and logic permitting the District to respond to the COVID Emergency as authorized by the COVID Emergency Act in conjunction with the CMPA in *OLRCB*. AFGE contends that PERB misinterpreted *OLRCB* and that the Vaccine Requirement was not authorized by the COVID Emergency Act. Yet, AFGE cites cases post-dating PERB's decision, and which rely on arguments not made to PERB. AFGE did not make a frontal challenge to the legality of the Vaccine Requirement to PERB as was made in *Fraternal Order of Police/Metro. Police Dep't Labor Comm. v. District of Columbia*, Case No. 2022 CA 000584 B (D.C. Super. 2022).

PERB, restricted to the administrative record before it, was answering a different question than in *FOP*: whether the CMPA combined with the COVID Emergency Act required bargaining over the Vaccine Requirement and any impact and effects bargaining. *FOP* has no bearing on PERB's

decision here. And *contra* to *FOP*, when addressing the negotiability of a similar set of proposals related to the Vaccine Requirements, the Superior Court again affirmed PERB's conclusions that impact and effects bargaining was not required—and said so even after *FOP*, 2022 CA 584 issued. *AFGE*, Case No. 2022 CA 002435. That the Superior Court twice affirmed PERB on similar issues puts in stark relief the reasonableness of PERB's conclusions.

PERB's conclusion also broadly accords with decisions made in other states and under the Federal Labor Relation Act. Under the FLRA, 5 U.S.C. § 7106(a)(1), federal agencies have the right to determine the policies and practices that are necessary to safeguard its personnel, physical property, or operations against internal and external risks—and there is a management right to require vaccines in such circumstance without bargaining. The FLRA interpreted this to mean that where "management shows a link or a reasonable connection between its objective of safeguarding its personnel, physical property, or operations, or the public, and a policy or procedure designed to implement that objective, a proposal that 'conflicts with' that policy or procedure affects management's rights under § 7106(a)(1). *AFGE, Council of Locals No. 163 and DOD Contract Audit Agency*, 51 F.L.R.A. No 123 (1996). Once a link has been established, the Authority will not review

the merits of an agency's plan in the course of resolving a negotiability dispute. *AFGE[, Local 2143 and VA Medical Center],* 48 FLRA 41, 44 (1993)." *American Federation of Government Employees, Local 1345 and United States Department of the Army*, 64 F.L.R.A. No. 185 (F.L.R.A. June 30, 2010). Thus, the flu vaccine at issue there implicated the security of the agency and the agency was not required to bargain.

Similarly, under New Jersey law, "the impact of managerial prerogatives is non-negotiable if negotiating the impact would significantly or substantially encroach upon the prerogative." *In re City of Newark*, 264 A.3d 318, 328-29 (Super. Ct. App. Div. 2021) (*citing Piscataway Twp. Educ. Ass'n v. Piscataway Twp. Bd. of Ed.*, 307 N.J. Super. 263, 265, 704 A.2d 981 (App. Div. 1998). Under these principles, a vaccine requirement was non-negotiable. "In the context of a public health emergency, negotiating procedures for the implementation of a COVID-19 vaccination mandate, or the enforcement or timing of the mandate, would interfere with the managerial prerogative. COVID-19 has created an immediate and ongoing public health emergency that requires swift action to protect not only the City's employees, but the public they are hired to serve. Tens of thousands of people are sickened each day in our country. Hundreds are dying each day. Delaying, even on a temporary basis, the timelines for

implementing the vaccination mandate undercuts the effectiveness of the mandate." *Id.*

The CMPA has an even more explicit management right to take action in the case of emergency than under New Jersey law, and the COVID emergency is more closely linked to an "emergency situation" than an influenza vaccine is to the security of a hospital. PERB acted well within in reason when it held that the management right provision, especially when viewed through the COVID Emergency Act, gives the District management the right to impose a vaccine mandate without bargaining..

The Superior Court twice found that impact and effects bargaining was not required when the District's COVID response was at issue. Where impact and effects bargaining are not required to exercise management rights to take action without bargaining in the COVID Emergency Act, PERB reasonably interpreted the CMPA to not require impact and effects bargaining when the District responding to the COVID emergency and reasonably found that the District was not required to bargain over the Vaccine Requirement, or the impact and effects of its imposition.

CONCLUSION

For the reasons set forth above and for any reason the Court decides, the Court PERB respectfully requests that the Court affirm the Superior Court's decision.

Respectfully submitted,

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June 8, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June 2023, a copy of the foregoing Appellee PERB's Brief was served by the Court's electronic filing system, to counsel of record.

/s/ Geoffrey H Simpson
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Webster & Fredrickson, PLLC

REDACTION CERTIFICATE DISCLOSURE FORM

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:
   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;

     (2) the acronym "TID#" where the individual's taxpayeridentification number would have been included;

     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;

     (4) the year of the individual's birth;

     (5) the minor's initials; and

     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); see also 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the

purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

/s/ Geoffrey H. Simpson 22-cv-605
Signature Case Number

Geoffrey H. Simpson 6/8/2023
Name Date

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