

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**Government of the District of Columbia
Public Employee Relations Board**

_____)	
Fraternal Order Of Police/)	
Metropolitan Police)	
Department Of Labor Committee,)	
)	
Petitioner,)	
)	
and,)	
)	
District Of Columbia)	PERB Case No. 11-E-1
Metropolitan Police)	
Department,)	
)	
Respondent.)	Slip Opinion No. 1216
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_____)	

DECISION AND ORDER

I. Statement of the Case

On January 12, 2011, the Fraternal Order of Police/Metropolitan Police Department of Labor Committee (“FOP” or “Petitioner”) filed “Petition for Enforcement of PERB Decision and Order” (“Petition”) regarding PERB Case No. 04-A-18 (Slip Op. No. 789). FOP alleges that the District of Columbia Metropolitan Police Department (“MPD” or “Respondent”) has failed to comply with Slip Op. No. 789 which was issued on September 30, 2005. Specifically, FOP claims that MPD has failed to implement the terms of an Arbitration Award (“Award”) issued on July 19, 2004, and affirmed by the Board on September 30, 2005. (See Petition at p.2.) FOP is asking the Board to “grant its Petition for Enforcement and order MPD to comply with the September 30, 2005 Order of the Board.” MPD opposed FOP’s Petition. FOP’s Petition and MPD’s opposition are before the Board for disposition.

A. Discussion

On December 12, 2003, five members of the MPD, Pablo Figueroa, Brian Murphy, Donald Yates, John Brennan and Curtis Sloan filed a group grievance against the MPD alleging that they were “assigned” to the positions of Detective Sergeant without the stipend of \$595.00 per annum allegedly required by D.C. Code Sec. 543-02(c). The Union alleges that the five grievants, sergeants employed by the MPD investigative units for varying periods of time, have been performing the duties of Detective

Sergeants, which requires supervisory work. (See Award p.4) The Union further claims that each was designated "Inv. Sgt." In their performance evaluations (See Award p.2). Indeed, in support of its grievance, the Union attached form I (Personnel Action) showing Sgt. Figueroa as being reassigned from the Third District to the Major Narcotics Branch. In Sgt. Figueroa's evaluation form is a handwritten notation showing his assignment to be "Inv. Sgt."

On December 12, 2003, the five sergeants filed a Group Grievance with the Chief of Police. It was signed by the Union Chairman Gregory I. Greene and Lead Grievant Sgt. Pablo Figueroa. On December 29, 2003, the Chief of Police denied the grievance. He provided the following reasons for denying the grievance: "the position of Detective Sergeant has not been utilized by the Department for more than two decades. There is no Detective Sergeant position therefore there can be no compensation for such a position." (See Chief of Police's letter at p. 18.) On April 23, 2004, a hearing was conducted. The parties were given the opportunity to present oral and documentary evidence to examine and cross examine witnesses. On May 23, 2004, the parties filed post hearing briefs. Ultimately, arbitration was invoked and the Arbitrator, Richard G. Trotter, issued the following Award:

1. The Grievance of December 12, 2003, was filed in a timely manner.¹
2. The five grievants were awarded the status of Detective Sergeant pursuant to D.C. Code §5-543.02(c) and back pay of \$595.00 retroactive to the date that each grievant was assigned to the position of Detective Sergeant. The Award applied to all similarly situated employees as described in the grievance.
3. The Employer/Agency was not the prevailing party and so was responsible for all of the Arbitrator's compensation and expenses. (See Award p.8)

The MPD subsequently filed an Arbitration Review Request ("Request") with PERB challenging the Award. PERB denied the Request. (See PERB Case No. 04-A-18.) Following PERB's denial of the Request, MPD did not invoke its right to file a petition for review in District of Columbia Superior Court. Further, MPD failed to comply with the terms of the Arbitration Award. On April 21, 2006, FOP filed a Motion to Confirm the arbitration decision in D.C. Superior Court in order to enforce the arbitration award. The Motion was confirmed by Judge Terrell. MPD appealed the confirmation to the D.C. Court of Appeals which set aside Judge Terrell's Order confirming the arbitration award. The Court ruled, in part, that the FOP needed to exhaust its remedies with PERB before proceeding to Superior Court. (See District of Columbia Court of Appeals No. 08-CV-1590, June 25, 2010.) On January 12, 2011, FOP filed a Petition for Enforcement of Order with PERB; on January 31, 2011, MPD filed an Opposition to Petition for Enforcement of Order.

¹ As noted in PERB Slip Opinion No. 789: "Of relevance here, the arbitrator concluded that the group grievance, dated December 12, 2003, was timely on a variety of theories. The arbitrator rejected MPD's proffered interpretation of Article 19, Section B of the CBA, which provides that a grievance must be presented, "not later than ten (10) days from the date of the occurrence giving rise to the grievance or within ten (10) days of the employee's knowledge of its occurrence," concluding that the 10-day filing period did not begin to run until the grievants discovered the statutory basis for their grievance, i.e., D.C. Code 5-543.03(c). In so holding, the arbitrator concluded that MPD was estopped from raising its timeliness defense because the grievants had relied to the detriment on MPD's representations, presumable dating back to the date of the grievant's assignments to these positions, that Detective Sergeant position did not exist."

In the MPD's Opposition to Petition for Enforcement, it relies on the doctrine of Laches² (See Opposition to Petition for Enforcement, p.3) and two previous PERB decisions: Opinion No. 162 and Opinion No. 191.

In Slip Opinion 789, the Board found that MPD's Request for Review did not meet the requirements for reversing Arbitrator Trotter's Award. MPD had the burden to specify applicable law and definite public policy that mandated that the Arbitrator reach a different result.³ We found that the MPD failed to do so. The Board disagreed with the MPD that the Arbitrator's Award was contrary to law and public policy when he concluded that the grievants did, in fact, timely file. (See Opinion and Award at p.4) The Board found that the Arbitrator correctly identified the occurrence giving rise to the grievance as the discovery by Sgt. Figueroa of the relevant statute (See D.C. Code §5-543.02 (c))and, thus, the MPD's violation. The Board also agreed with the Arbitrator that the issue of pay is a continuing one. Therefore, the Board did not agree with the MPD that the grievance must be tied to the 10-day grievance-filing period of Article 19 of the Collective Bargaining Agreement. Further the Board did not find that the back pay award to the grievants was an improper modification of the CBA and therefore contrary to law and public policy. The Board did not conclude that Article 19 constituted an express restriction on the Arbitrator's authority, thus the Arbitrator did not exceed his authority. (See Slip Op. 789 at p.3.)

On January 12, 2011, the FOP filed the current Petition for Enforcement with the Board. FOP contends that MPD has failed to comply with Slip Op. No. 789. Specifically, FOP asserts that despite the Board's denial of MPD's Request, MPD has not provided the grievants with their back pay as required by the Award. FOP requests that the Board enforce Slip. Op. No. 789 and compel MPD to comply with the terms of Arbitrator Trotter's Award.

Board Rules 560. 1 provides in relevant part as follows:

560.1 - Enforcement

If any party fails to comply with the Board's decision within the time period specified in Rule 559.1, the prevailing party may petition the Board to enforce the order.

The MPD has not complied with the following: the original Arbitration Award, PERB Opinion No. 789 denying MPD's Arbitration Review Request, and FOP's current Petition for Enforcement. In its Opposition to Petition for Enforcement, the MPD asserts the doctrine of Laches, citing PERB Case nos. 162 and 191. The current case can be distinguished from Slip Opinion Nos. 162 and 191 in several ways. First, in both cases upon which MPD relies, the doctrine of Laches was asserted because the Complainants failed to file their Complaints in a timely manner. Complainant in Slip Opinion No. 162, Ms. Irene Wilkes, waited approximately one year and 3 months from the date of the occurrence giving rise to the alleged violation before filing a Standards of Conduct complaint. The Complainant in Case

² As cited in PERB Slip Opinion No. 162 citing Black's Law Dictionary, 4, Ed. Rev. (1968): "conduct of (a) party which has placed (the) other party in a situation where his rights will be imperiled and his defenses embarrassed..."

³ See D.C. *Housing Authority and American Federation of Government Employees*, Slip Op. No. 738 at 4 PERB Case No. 02-A-07 (1997).

No. 191, Mr. James Monroe, waited four years from the date of the triggering occurrence before filing a Standards of Conduct complaint. In the present case, as noted above, the Complainants filed a grievance as soon as they learned of the relevant statute and the MPD's alleged violation. Thus this grievance began a series of regular filings from that of the original grievance until the present Petition. Further, unlike the cases on which the MPD relies, the Respondents have refused to comply with the terms of an Arbitration Award. As previously discussed, the Board's decision denying the MPD's Arbitration Review Request was issued on September 30, 2005. Considerable time has passed and the MPD has had more than a reasonable amount of time to comply with the terms of Arbitrator Trotter's Award. MPD's failure to comply with the terms of the Award is not based on a genuine dispute over the terms of Arbitrator Trotter's Award but rather on a simple refusal to comply with the Award itself. MPD has articulated no reason for its ongoing refusal to make the grievants whole by providing them with the backpay of \$595.00 retroactive to the date that each grievant was assigned to the position of Detective Sergeant. (See Arbitration Award.)

ORDER

IT IS HEREBY ORDERED THAT:

1. The Fraternal Order of Police/Metropolitan Police Department Labor Committee's "Petition of Enforcement of PERB Decision and Order" is granted.
2. The Board shall proceed with enforcement of Slip Op. No. 789 pursuant to D.C. Code §1-617.13(b) (2001 ed) if full compliance with Slip Op. 789 is not made and documented to the Board within ten (10) days of the issuance of this Decision and Order.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ISSUANCE OF THE PUBLIC EMPLOYEES RELATIONS BOARD
Washington, D.C.
November 4, 2011

CERTIFICATE OF SERVICE

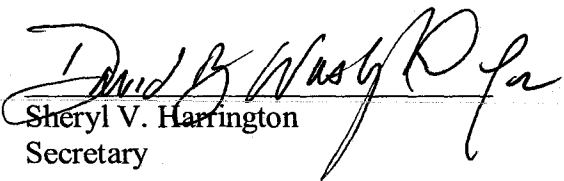
This is to certify that the attached Decision and the Board's Decision and Order in PERB Case No. 11-E-01 are being transmitted via Fax and U.S. Mail to the following parties on this the 4th day of November, 2011.

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