Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Fraternal Order of Police/Metropolitan Police Department Labor Committee,	
Complainant,	PERB Case No. 11-U-01
v.	Opinion No. 1400
District of Columbia Metropolitan Police Department,	**Motion for Reconsideration**
Respondent.	

DECISION AND ORDER

I. Statement of the Case

On October 20, 2010, Complainant Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Complainant" or "FOP") filed an Unfair Labor Practice Complaint ("Complaint") against Respondent D.C. Metropolitan Police Department ("Respondent" or "MPD"), alleging that Respondent violated D.C. Code § 1-617.04(a)(1) and (5) by unilaterally changing the classification of a grievance from "granted" to "denied, in part," and refusing to grant the remedies requested in the grievance. (Complaint at 6-7). In its Answer, Respondent denied the alleged violations of the Comprehensive Merit Personnel Act ("CMPA"), and raised the affirmative defenses that the Complaint was untimely, and that the Public Employee Relations Board ("Board") lacked jurisdiction because the Complaint was purely contractual. (Answer at 2-5).

On May 28, 2013, the Board issued a Decision and Order in this case. *Fraternal Order of Police/Metropolitan Police Dep't Labor Committee v. D.C. Metropolitan Police Dep't*, Slip Op. No. 1388, PERB Case No. 11-U-01 (May 28, 2013). In Slip Op. No. 1388, the Board held that the Complaint was timely, and that the Board had jurisdiction over the Complaint. Slip Op. No. 1388 at p. 3-4. Furthermore, the Board determined that by granting FOP's grievance and then changing the grievance classification to "denied, in part," MPD failed to adhere to its statutory duty to bargain in good faith with FOP. Slip Op. No. 1388 at p. 5. The Board ordered

MPD to cease and desist violating D.C. Code § 1-617.04(a)(1) and (5) by unilaterally changing the classification of a grievance after the grievance has been granted, and to post a notice where notices to bargaining unit members are normally posted in each of MPD's buildings. Slip Op. No. 1388 at p. 6-7.

On June 11, 2013, MPD submitted a Motion for Reconsideration ("Motion"), alleging that the Board erred in concluding that MPD failed to bargain in good faith by unilaterally changing the classification of the grievance because "the interpretation of the relief contemplated by Article 24 of the Collective Bargaining Agreement ("CBA") was in dispute by the parties. (Motion at 1-2). Additionally, MPD contends that that Board erred in asserting jurisdiction over the matter because a decision regarding FOP's requested relief would require interpretation of Article 24 of the CBA. (Motion at 2).

In response, FOP filed an Opposition to the Motion for Reconsideration ("Opposition"). In its Opposition, FOP asserted that the Board does not lack jurisdiction, there was no dispute over the relief requested in FOP's grievance that would require interpretation of the parties' CBA, and that MPD committed an unfair labor practice when it changed the grievance classification. (Opposition at 5-11).

II. Discussion

A. Factual Background

On April 9, 2010, Sergeant Horace Douglas ("Sergeant Douglas") was advised that his scheduled tour of duty on April 17, 2010, would be changed from 7:30 a.m. through 4:00 p.m. to 2:30 p.m. through 11:00 p.m. (Complaint at 3; Answer at 2). The tour of duty change was made to accommodate an international summit held from April 11, 2010, through April 17, 2010. (Complaint at 3; Answer at 2).

Alleging that the change to his tour of duty violated Articles 4, 9, and 24 of the parties' CBA, Sergeant Douglas filed a step one grievance. (Complaint at 3; Answer at 2). The step one grievance was denied by the commander of the MPD Special Operations Division, citing "the needs of the Department." (Complaint at 4; Answer at 2). Sergeant Douglas appealed the step one grievance denial and filed a step two grievance with Chief of Police Cathy Lanier. (Complaint at 4; Answer at 3). In the step two grievance, Sergeant Douglas requested the following remedies:

a) That the Department ceases and desists from violating District of Columbia law;

b) That the Department cease and desist from violating the Agreement and manage in accordance with applicable laws, rules, and regulations;

c) That the Department compensates Sergeant Horace Douglas at the rate of time and one-half for the day he worked outside his normal tour of duty;

d) That the Command staff of the Court Liaison Division be retrained on the Agreement's scheduling provisions.

e) That a letter of apology be issued from the Director of Court Liaison Division to Sergeant Horace Douglas concerning this matter.

(Complaint Exhibit 4). On May 27, 2010, Chief Lanier issued a letter agreeing that MPD violated Article 24[1] of the parties' CBA by changing Sergeant Douglas' tour of duty without providing the requisite fourteen day notice. (Complaint at 4; Answer at 3). On June 21, 2010, FOP contacted Chief Lanier to inquire when the step two grievance remedies would be implemented, particularly the Court Liaison Division command staff training and the letter of apology. (Complaint at 5, Complaint Exhibit 6). Chief Lanier responded in part that:

> As stated in my response to the grievance, the Department violated Article 24 by changing Sergeant Douglas's tour of duty without providing the requisite 14-day notice. The relief under the Agreement provides for compensation at the rate of time and one-half for the one day he worked outside his normal tour of duty. None of the other requested remedies are afforded by Article 24 or anywhere else in the Agreement.
>
> Accordingly, your request for additional relief not provided for under the Agreement is denied. To avoid any confusion regarding this matter, I am changing this grievance classification from "granted" to "denied, in part" to clarify that not all of the relief requested was provided. Sergeant Douglas will be compensated at the rate of time and one-half for the day he worked outside of his normal tour of duty.

(Complaint Exhibit 7). After receiving this response, FOP filed the underlying Complaint in this case.

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[1] Article 24, Section 1 states:

> Each member of the Bargaining Unit will be assigned days off and tours of duty that are either fixed or rotated on a known regular schedule. Schedules shall be posted in a fixed and known location. Notice of any changes to their days off or tours of duty shall be made fourteen (14) days in advance. If notice is not given of changes fourteen (14) days in advance the member shall be paid, at his or her option, overtime pay or compensatory pay at the rate of time and one half, in accordance with the provisions of the Fair Labor Standards Act. The notice requirement is waived for those members assigned to the Executive Protection Unit and the Office of Professional Responsibility. (Complaint Exhibit 1).

B. Position of MPD before the Board

In its Motion, MPD raises three arguments: 1) the Board lacks jurisdiction over this matter because resolution requires interpretation of the parties' CBA; 2) MPD did not commit an unfair labor practice because the interpretation of a relief provision of the CBA was in dispute by the parties; and 3) MPD did not violate the CMPA by changing the grievance designation. (Motion at 5-12).

First, MPD asserts that the Board lacks jurisdiction over this matter because resolution of the Complaint required an interpretation of the 14-day scheduling rule contained in the parties' CBA. (Motion at 5). MPD states that FOP "specifically made its request for the additional relief pursuant to Article 24, Section 1 of the parties' CBA." *Id.* MPD further asserts that the CBA provides a grievance and arbitration procedure to resolve contractual disputes, and that the Board's precedent provides that the Board lacks jurisdiction in these circumstances. (Motion at 5-6). MPD cites to the Board's decision in *FOP/MPD Labor Committee v. MPD*, 60 D.C. Reg. 2585, Slip Op. No. 1360, PERB Case No. 12-U-31 (2013), stating that the jurisdictional issue in the instant case is "identical to the jurisdictional issue that led the Board to dismiss 12-U-31." (Motion at 6). Specifically, MPD states that FOP made its request for remedies in addition to those afforded by Article 24, Section 1 of the CBA, which is unambiguous and not subject to interpretation. (Motion at 6-7). Whether MPD properly denied FOP's requests for additional relief beyond the remedy expressly authorized by Article 24, Section 1 of the CBA requires analysis and interpretation of the parties' CBA, which "[a]s it did most recently in PERB Case No. 12-U-31, the Board has consistently held it has no jurisdiction to do [sic] perform such interpretation." (Motion at 7). Further, MPD cites to *FOP/MPD Labor Committee v. MPD*, 59 D.C. Reg. 6039, Slip Op. No. 1007, PERB Case No. 08-U-41 (2011) to support its contention that because the parties are in dispute over the remedy to be awarded for an acknowledged breach of the CBA, the dispute falls outside the Board's jurisdiction. (Motion at 7-8).

Next, MPD alleges that it did not commit an unfair labor practice by "re-characterizing a disputed grievance remedy" because there was a dispute over the remedy to be provided for the contract violation at issue in this case. (Motion at 8-9). MPD states that in its response to FOP's grievance and demand for relief, Chief of Police Cathy Lanier expressly granted financial compensation provided for in the parties' CBA, and that "[t]he additional relief requested by the FOP was not granted; in fact, it was not even referenced." (Motion at 10). MPD contends that "[g]iven the specifically limited grant of relief, the Respondent fails to understand how the Board concluded that the grievance was granted 'without limitation.'" *Id.* After FOP sent a letter requesting implementation dates for the other forms of relief requested, MPD states that Chief Lanier's response "reiterated the grant of financial relief contained in her original grievance response – there was no alteration or change to the Chief's position as to the remedy to be provided." *Id.* MPD contends that the letter "simply clarified that [Chief Lanier] had not agreed to provide the additional remedies requested by FOP." *Id.* In support of its allegation that its actions did not violate the CMPA because the parties disputed the remedy for the contract violation, MPD cites to Board cases in which stated that the failure to implement an arbitration award does not constitute an unfair labor practice if the interpretation of the award is disputed by

the parties. (Motion at 8-9). MPD notes that while the instant case does not involve an arbitrator's award, the Board analogized the Respondent's actions as such in its Decision and Order. (Motion at 9). Additionally, MPD contends that it had a legitimate reason to not provide the additional relief requested by FOP, and therefore its refusal to provide the additional relief does not constitute an unfair labor practice. (Motion at 11; *citing FOP/Dep't of Youth Rehabilitation Services Labor Committee v. Dep't of Youth Rehabilitation Services*, 59 D.C. Reg. 6755, Slip Op. No. 1127, PERB Case No. 11-U-31 (2011).

Finally, MPD contends that it did not commit an unfair labor practice when it changed the grievance classification from "granted" to "denied, in part" because the change was made for clarification purposes, and the correspondence between the parties "clarified that there was no meeting of the minds as to the remedy to be provided." (Motion at 12). MPD alleges that the grievance classification change occurred because "the interpretation of the remedy contemplated by Article 24 of the CBA was in dispute by the parties," and the fact that the change was made does not establish a CMPA violation or confer jurisdiction over this matter to the Board. (Motion at 11-12).

C. Position of FOP before the Board

FOP disputes MPD's allegation that the Board lacks jurisdiction over this matter, and contends that MPD's reliance PERB Case Nos. 08-U-41 and 12-U-31 is misplaced. (Opposition at 5). FOP contends that the holdings in these cases "are not triggered until there is a belief that the hearing/case will require contract interpretation." *Id.* In the instant case, the Board is not required to interpret the parties' CBA in order to determine whether an unfair labor practice was committed. (Opposition at 6). FOP states:

> [D]ue to MPD's initial decision to *grant* the FOP's entire grievance, which contained five (5) specific requests for remedies, this is not a question of what can or cannot be granted under Article 24, but rather an assessment of whether MPD needed to bargain with the FOP after it agreed to these five (5) remedies and then later decided that it wanted to change its decision. Indeed, since MPD had already agreed to the FOP's proposed remedy, there was *nothing* for [the Board] to analyze within the contract.

(Opposition at 6) (emphasis in original). As MPD already agreed to the remedy for the contractual violation, there is no obligation for the Board to interpret Article 24 of the parties' CBA. (Opposition at 7-8). MPD notes that the Board has jurisdiction to decide disputes if there is not a need to interpret contractual provisions that are distinct from the CMPA. (Opposition at 8). Additionally, FOP cites to *AFSCME DC Council 20, Local 2921 v. D.C. Public Schools*, 42 D.C. Reg. 5685, Slip Op. No. 339, PERB Case No. 92-U-08 (1992) for its assertion that the Board has jurisdiction over CMPA questions that overlap with contractual provisions. (Opposition at 8).

Next, FOP contends that there is no dispute between the parties over the remedy to be provided for the contract violation at issue in this case. (Opposition at 9). FOP states that MPD disagrees with the Board's conclusion that Chief Lanier granted the grievance without limitation, and the remedies at issue "were clearly delineated in the FOP's Step 2 Grievance and it was granted, unequivocally, by MPD and without any indication of a limitation." (Opposition at 9-10). Further, "[i]f MPD had initially desired to limit its grant of the grievance to the payment of time and a half, It should have so stated." (Opposition at 10). FOP distinguishes the FOP/DYRS Labor Committee case relied upon by MPD, stating that "[w]hile MPD may have granted the Grievance in error it is not legally barred from providing the remedies that were requested by the FOP and that were originally agreed to by the MPD." *Id.*, *citing FOP/DYRS Labor Committee v. DYRS*, Slip Op. No. 1127.

Finally, FOP rejects MPD's argument that the grievance classification change does not constitute an unfair labor practice because it was done for clarification purposes only. (Opposition at 11). FOP contends that MPD's reclassification was a substantive change to the parties' CBA, and supports the Board's conclusion that MPD's actions constitute a failure to adhere to its statutory duty to bargain in good faith. *Id.* FOP states that MPD's Motion is a mere disagreement with the Board's decision, and must be denied. *Id.*

D. Analysis

The Board has repeatedly held that "a motion for reconsideration cannot be based upon mere disagreement with its initial decision." *University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia*, 59 D.C. Reg. 6013, Slip Op. No. 1004 at p. 10, PERB Case No. 09-U-26 (2009); *see also FOP/MPD Labor Committee v. MPD*, 59 D.C. Reg. 6579, Slip Op. No. 1118, PERB Case No. 08-U-19 (2011); *American Federation of Government Employees Local 2725 v. D.C. Dep't of Consumer and Regulatory Affairs and Office of Labor Relations and Collective Bargaining*, 59 D.C. Reg. 5041, Slip Op. No. 969, PERB Case Nos. 06-U-43 (2009); *D.C. Dep't of Human Services v. FOP/Dep't of Human Services Labor Committee*, 52 D.C. Reg. 1623, Slip Op. No. 717, PERB Case Nos. 02-A-04 and 02-A-05 (2003); *MPD v. FOP/MPD Labor Committee*, 49 D.C. Reg. 8960, Slip Op. No. 680, PERB Case No. 01-A-02 (2002). Absent authority which compels reversal, the Board will not overturn its decision and order in this case. *See Peterson v. Washington Teachers Union*, Slip Op. No. 1254 at p. 2, PERB Case No. 12-S-01 (March 28, 2012); *Collins v. American Federation of Government Employees National Office and Local 1975*, 60 D.C. Reg. 2541, Slip Op. No. 1351 at p. 3, PERB Case No. 10-S-10 (2013).

In its Motion, MPD alleges that the Board lacks jurisdiction over this matter because resolution of the Complaint requires an interpretation of the 14-day scheduling rule contained in the parties' CBA. (Motion at 5). In its initial Decision and Order, the Board considered a similar argument raised by MPD as an affirmative defense in its Answer to FOP's Unfair Labor Practice Complaint. (Slip Op. No. 1388 at p. 3-4). The Board rejected MPD's argument, stating that it examines the record of a case to determine if the facts concern a violation of the CMPA, regardless of how the dispute is characterized in the complaint or whether the parties disagree over the application of the CBA to the dispute. (Slip Op. No. 1388 at p. 4). Citing *American*

Federation of Government Employees, Local Union No. 3721 v. District of Columbia Fire Dep't, 39 D.C. Reg. 8599, Slip Op. No. 287 at n. 5, PERB Case No. 90-U-11 (1991), the Board noted that it looks to:

> whether the record supports a finding that the alleged violation is: (1) restricted to facts involving a dispute over whether a party complied with a contractual obligation; (2) resolution of the dispute requires an interpretation of those contractual obligations; and (3) no dispute can be resolved under the CMPA.

(Slip Op. No. 1388 at p. 4). The Board went on to state that "a contractual violation will be deemed an unfair labor practice if the complainant can establish that it also violates the CMPA, or constitutes a repudiation of the parties' CBA." (Slip Op. No. 1388 at p. 4; *citing University of the District of Columbia Faculty Ass'n v. University of the District of Columbia*, 60 D.C. Reg. 2536, Slip Op. No. 1350 at p. 2, PERB Case No. 07-U-52 (2013)). After considering the record of this case and applying the AFGE, Local Union 3721 test, the Board concluded that the matter was not purely contractual and may concern a violation of the CMPA. (Slip Op. No. 1388 at p. 4). The Board determined: (1) the case did not involve a dispute over the terms of the parties' CBA, but rather whether MPD acted in bad faith by altering its classification of Sergeant Douglas' s grievance; (2) the Board was not required to interpret the parties' CBA to resolve the dispute, and could instead resolve the dispute based upon its interpretation of D.C. Code § 1-617.04(a)(1) and (5) and its case law; and (3) the dispute could be resolved by the CMPA – specifically, whether MPD's actions constituted a failure to bargain in good faith. *Id.*

In its Motion, MPD presents no new facts or law that compels the Board to reverse its decision that it had jurisdiction to decide the dispute. Instead, MPD expands upon its original argument that was rejected by the Board. (Motion at 5-8). MPD characterizes this case as a question of whether it correctly interpreted Article 24, Section 1 of the parties' CBA when responding to FOP's grievance. (Motion at 5). However, as the Board held in its decision and order, the question in this case is not whether MPD awarded the correct remedy for its contractual violation, but whether altering the classification of the grievance from "granted" to "denied, in part" constituted a violation of the CMPA. (Slip Op. No. 1388 at p. 4) ("[T]he case does not involve a dispute over the terms of the parties' CBA, but rather whether MPD acted in bad faith by altering its classification of Sergeant Douglas's grievance.") As FOP correctly observes in its Opposition, "[t]he Unfair Labor Practice Complaint concerned the MPD's actions after it agreed to the remedy and then unilaterally changed it. As such, no contractual interpretation is required here." (Opposition at 8).

For that reason, MPD's reliance on PERB Case Nos. 12-U-31 and 08-U-41 is misplaced. In PERB Case No. 12-U-31, FOP alleged that MPD violated the CMPA by refusing to allow an officer to have a specific union representative serve as his union representative during an investigatory interview. (Slip Op. No. 1360 at p. 1). The Board concluded that it lacked jurisdiction over that case because in order to determine whether MPD acted improperly in refusing to allow the specific union representative to represent the officer during the investigatory interview, the Board would have had to interpret the portion of the parties' CBA

that covered the rules for investigatory interviews. *Id.* at p. 4. Similarly, in PERB Case No. 08-U-41, the Board was asked to determine whether a party's actions violated the parties' CBA. (Slip Op. No. 1007 at p. 8). In the instant case, the Board is not being asked to determine whether MPD acted improperly in altering Sergeant Douglas's work schedule without the required 14-day notice. MPD does not dispute that it violated the parties' CBA by failing to give the requisite notice. (Motion at 9). Instead, in its Complaint, FOP asked the Board to examine a different question – whether MPD changing the grievance classification from "granted" to "denied, in part" without bargaining over the change constitutes a failure to bargain in good faith, in violation of the CMPA. (Complaint at 1-2). As the Board held in its Decision and Order, the resolution of this issue does not require an interpretation of the parties' CBA, and therefore the case was properly before the Board. (Slip Op. No. 1388 at p. 4). The issue to be resolved in this case has not changed since the Board issued its Decision and Order, and therefore the Board's jurisdiction over the case has not changed since its initial Decision and Order. MPD disagrees with the Board's finding that the case was not purely contractual, and such disagreement cannot be the basis for overturning the Board's Decision and Order in Slip Op. No. 1388. *See University of the District of Columbia Faculty Association/NEA,* Slip Op. No. 1004 at p. 10.

MPD's assertion that it did not commit an unfair labor practice because the interpretation of Article 24, Section 1 was disputed by the parties is similarly unavailing. Sergeant Douglas' step 2 grievance requested five forms of relief:

> (a) That the Department ceases and desists from violating District of Columbia law;
> (b) That the Department cease and desist from violating the Agreement and manage in accordance with applicable laws, rules, and regulations;
> (c) That the Department compensates Sergeant Horace Douglas at the rate of time and one-half for the day he worked outside his normal tour of duty;
> (d) That the Command staff of the Court Liaison Division be retrained on the Agreement's scheduling provisions;
> (e) That a letter of apology be issued from the Director of Court Liaison Division to Sergeant Horace Douglas concerning this matter.

(Complaint Exhibit 4). In the response to the grievance, dated May 27, 2010, Chief Lanier states, "this grievance is *granted.* You will be compensated at the rate of time and one-half for the day you worked outside of your normal tour of duty." (Complaint Exhibit 5) (emphasis in original). The response contains no rejection of the other remedies requested in the grievance, nor does it point out that Article 24, Section 1 provides only for payment of time and one-half for the time worked outside the employee's regular tour of duty. *Id.* MPD could have denied the portions of the grievance requesting remedies outside of those provided for in the parties' CBA, or disputed FOP's right to request additional remedies, but it did not do so. Instead, as the Board determined in its initial Decision and Order, MPD "wholly" and "without limitation" chose to

grant Sergeant Douglas' grievance. (Slip Op. No. 1388 at p. 5). Chief Lanier's May 27 letter is clear and unambiguous, and does not support MPD's contention in its Motion that there was dispute over the interpretation of Article 24, Section 1. (Motion at 8-11). Further, *FOP/DYRS Labor Committee v. DYRS* is not applicable to this case, as FOP has not alleged that it was statutorily barred from implementing the remedies granted by Chief Lanier's May 27 letter. (Motion at 8-11). MPD disagrees with the Board's determination that Chief Lanier granted the grievance without limitation, and the Board will not alter its decision based on MPD's disagreement. *See University of the District of Columbia Faculty Association/NEA*, Slip Op. No. 1004 at p. 10.

Finally, the Board rejects MPD's contention that the initial Decision and Order should be overturned because the change in the grievance classification was done for clarification purposes only, and there was no "meeting of the minds as to the remedy to be provided." (Motion at 11-12). In its Decision and Order, the Board determined that the change in the grievance classification was a "partial rescission of its initial decision to grant the grievance," and that although this was a case of first impression, it bore similarity to other actions in which a party failed to bargain in good faith. (Slip Op. No. 1388 at p. 5). MPD's assertion that the change in the grievance classification was only a clarification, and there was disagreement over the remedy to be awarded, are simply disagreements with the Board's prior holding. MPD's allegation is denied.

MPD has not provided any authority or additional facts which compel reversal of the Board's Decision and Order. Therefore, as mere disagreement with the Board's findings does not merit reconsideration, MPD's Motion for Reconsideration is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Metropolitan Police Department's Motion for Reconsideration is denied.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

July 29, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 11-U-01 was transmitted via File & ServeXpress to the following parties on this the 29th day of July, 2013.

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