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

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In the Matter of:)
)
Fraternal Order of Police/ Metropolitan Police Department Labor Committee)
	Petitioner)
	v.)
)
District of Columbia Metropolitan Police Department)
	Respondent)
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PERB Case No. 20-E-02
Opinion No. 1752

DECISION AND ORDER

I. Statement of the Case

On May 4, 2020, pursuant to Board Rule 560.1, the Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP) filed a Petition for Enforcement (Petition). FOP requests enforcement of PERB Case No. 18-A-09, Opinion No. 1684.¹ FOP alleges that the District of Columbia Metropolitan Police Department (MPD) has failed to comply with Opinion No.1684. MPD opposes the Petition.

The Board finds that the uncontested facts establish FOP’s entitlement to relief. The Petition for Enforcement is granted.

II. Background

. MPD requested review of the arbitration award in this case, asserting that the Arbitrator improperly interpreted D.C. Official Code § 5-1031 (the 90-day rule) and that the award was contrary to law and public policy. The 90-day rule requires MPD to commence an adverse action within 90 days of when it knew or should have known of the alleged misconduct. When there is a criminal investigation, the 90-day rule is tolled until the conclusion of the investigation.² In the award, the Arbitrator found that there was no evidence in the record of a

¹ *MPD v. FOP/MPD Labor Comm.*, 65 D.C. Reg. 12884, Slip Op. No. 1684, PERB Case No. 18-A-09 (2018).

² D.C. Official Code § 5-1031(b)

criminal investigation after March 8, 2011.³ The Arbitrator found MPD violated the 90-day rule by not issuing a notice of proposed adverse action until over a year later. The Arbitrator directed MPD to make the Grievant whole by restoring him to work and providing back pay.⁴

Before the Board, MPD claimed that the investigation continued until the Grievant was convicted in Superior Court in December of 2011. The Board found that by submitting a matter to arbitration, the parties agree to be bound by the Arbitrator's interpretation of the parties' agreement, related rules and regulations, as well as the evidentiary findings on which the decision is based.⁵ The Board denied MPD's arbitration review request.

Thereafter, MPD appealed the Board's decision to the Superior Court of the District of Columbia. On January 17, 2020, MPD's appeal was denied as untimely.⁶ MPD then filed a Motion for Reconsideration of the Superior Court's January 17, 2020 Order. On January 28, 2020, the Superior Court issued an order denying MPD's Motion for Reconsideration.⁷ MPD did not appeal that decision to the D.C. Court of Appeals.⁸

III. FOP's Entitlement to Relief

FOP asserts that MPD has failed to comply with Opinion No. 1684 by refusing to reinstate the Grievant. FOP requests that the Board seek enforcement in Superior Court of the arbitration award at issue in Opinion No. 1684 and compel MPD to comply with the terms of the arbitration award.⁹

MPD's Opposition to the Petition does not dispute that FOP prevailed at arbitration and that MPD has not implemented the award. MPD admits it has not responded to FOP's request to reinstate the Grievant.¹⁰ MPD argues that the award is null and void based on the Board's decision in PERB Case No. 18-A-17, Opinion No. 1702. In Opinion No. 1702, the Arbitrator found that the 90-day rule was tolled by a criminal investigation. The Board found that the Arbitrator stopped the tolling of the statute while the conduct continued to be the subject of a criminal investigation and set aside the Arbitrator's determination that MPD violated the 90-day rule. MPD uses this case to argue that cases under investigation by the United States Attorney's Office (USAO) are tolled until the outcome of the USAO investigation when the Grievant was convicted. However, in the instant case, the Arbitrator found there was no criminal investigation after March 8, 2011, and did not toll the statute of limitations set by the 90-day rule. Opinion No. 1702 has no effect on the Board's decision in Opinion No. 1684. MPD is merely attempting to re-litigate the Board's earlier dismissal of its arbitration review request.

The elements for granting a petition are present herein. FOP prevailed at arbitration. The Board issued Opinion No. 1684, finding no grounds to set aside, modify, or remand the

³ Pet. Ex. 1 at 9.

⁴ Award at 10.

⁵ Slip Op. No. 1684 at 5.

⁶ Pet. Ex. 3.

⁷ Pet. Ex. 4.

⁸ Petition at 3.

⁹ Petition at 5.

¹⁰ Opposition to Petition at 3.

arbitration award. MPD untimely appealed to the Superior Court of the District of Columbia, and as a result, the Superior Court denied MPD's appeal.¹¹ MPD exhausted its appeal rights of the arbitration award, and the award is final. MPD must fully comply with the terms of the arbitration award, which includes reinstating the Grievant, providing back pay, compensating FOP for all legal fees in connection with this matter, and all other requirements specified by the award.¹²

The Board has held, "When a party fails or refuses to implement an arbitration award where there is no dispute over its terms, such conduct constitutes a failure to bargain in good faith [], thus, an unfair labor practice."¹³ Therefore, the Petition for Enforcement is granted. The Board will seek judicial enforcement of its Decision and Order in Opinion No. 1684, as provided under D.C. Official Code § 1-617.13(b).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Fraternal Order of Police/Metropolitan Police Department Labor Committee's Petition for Enforcement is granted;
2. Within ten (10) days from issuance of this Decision and Order, the Metropolitan Police Department shall fully comply with the terms of the arbitration award, if it has not already done so, and shall notify the Public Employee Relations Board in writing that it has complied;
3. The Board shall proceed with enforcement of PERB Case No. 18-A-09, Opinion No. 1684, pursuant to §§ 1-605.02(16) and 1-617.13(b) of the D.C. Official Code, if full compliance with PERB Case No. 18-A-09 is not made within ten (10) days of the issuance of this decision and order;
4. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of the Board Chairperson Douglas Warshof, Members Ann Hoffman, Barbara Somson, Mary Anne Gibbons, and Peter Winkler.

June 18, 2020
Washington, D.C.

¹¹ Pet. Ex. 3

¹² The Petition requests the Board to order all attorney fees incurred from the date of the award to the date the Superior Court enters its Order. The award in this matter directed MPD to compensate MPD for all legal fees incurred in connection with this matter. The Board has upheld attorney fees when presented with the question in the context of the Board's appellate jurisdiction. The Board finds that MPD is ordered to pay FOP's attorney fees in line with the award.

¹³ *FOP/MPD Labor Comm. v. MPD*, 63 D.C. Reg. 14055, Slip Op. No. 1592, PERB Case No. 11-E-02 (2016). See *MPD v. FOP/MPD Labor Comm.*, 997 A.2d 65, 79 (D.C. 2010).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 20-E-02, Opinion No. 1752 was sent by File and ServeXpress to the following parties on this the 2nd day of July, 2020.

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