

FOP's Petition, MPD's Opposition and Motion, and FOP's Opposition are before the Board for consideration.

A. Discussion

On October 10, 2007, MPD issued a memorandum describing a crime fighting initiative called "Handler Deployment Outline." FOP filed an Unfair Labor Practice Complaint ("Complaint"), alleging that the initiative violated the Comprehensive Merit Personnel Act ("CMPA") and D.C. Code § 1-617.06(a)(2). FOP alleged MPD committed an unfair labor practice when it failed to engage in impacts and effects bargaining over the 2007 canine handler policy. (See, Petition at pg 2). On or about September 29, 2008, Hearing Examiner Shelly Hayes issued a Report and Recommendations ("R&R") in the matter, finding for FOP. On or about October 22, 2008, MPD filed exceptions to the R&R. (See, Petition at pg. 3.) On September 30, 2009, PERB issued a Decision and Order ("Decision"), adopting the Hearing Examiners recommendations and ordering that:

1. The District of Columbia Metropolitan Police Department ("MPD") and its agents and representatives shall cease and desist from violating D.C. Code § 1-617.04(a)(1) and (5) by unilaterally implementing the Handler Deployment Policy.
2. MPD shall cease and desist from violating: (a) D.C. Code § 1-617.04(a)(1) by interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by the Labor-Management Subchapter of the District of Columbia Comprehensive Merit Personnel Act ("CMPA"); and (b) D.C. Code § 1-617.04(a)(5) by refusing to bargain collectively in good faith with the exclusive representative.
3. MPD is directed to engage in impact and effects bargaining with the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP", "Union" or "Complainant") concerning the impact and effects of the implementation of the Handler Deployment Policy except as it relates to the scheduling of canine unit officers covered by Article 24 of the parties' collective bargaining agreement.
4. MPD shall conspicuously post within ten (10) days from the issuance of this Decision and Order the attached Notice where notices to employees are normally posted. The Notice shall remain posted for thirty (30) consecutive days.

5. MPD shall notify the Public Employee Relations Board ("Board"), in writing within fourteen (14) days from the issuance of this Decision and Order that the Notice has been posted accordingly. In addition, MPD shall notify the Board of the steps it has taken to comply with paragraph 3 of this Order.

(Decision at pgs. 14-15).

On or about October 15, 2009, MPD filed a Motion for Reconsideration of the Decision. On or about August 19, 2011, PERB denied MPD's Motion for Reconsideration. (See, Petition at pg. 4).

On September 1, 2011, MPD Chief of Police, Chief Lanier, posted a statement entitled "Information Pertaining to PERB Case # 08-U-19" on MPD's internal website. The post stated that Chief Lanier wanted to provide background information on PERB Case No. 08-U-19 because notice would be posted concerning the matter. (See, Petition at pg. 4). The post stated:

Some members of the Canine Unit did not like having to attend roll calls in the districts and they decide to challenge my authority to assign them to attend roll call. This challenge ultimately manifested itself in an unfair labor practice, filed by the Fraternal Order of Police Labor Committee, at the PERB.

This notice indicates that the PERB found that requiring Canine Officers to attend roll calls was an unfair labor practice, and thus I was directed in the findings to post the notice.

I just wanted to make sure that the circumstances surrounding this issue were clear to the force. In addition, know that I always consider the safety of our members, first, [sic] and foremost, and I will continue to do so- regardless of decisions such as this one.

(Petition at pgs. 4-5).

In its Petition for Enforcement, FOP alleges:

Chief Lanier flouted PERB's order by posting the September 1, 2011 message on the Department's internal website. Rather than simply posting the Notice required by PERB (which was attached to the September 30, 2009 Order), Chief Lanier posted a statement completely undercutting and negating the purpose and effect of the PERB-ordered Notice and, as result, the MPD refused to take any responsibility for the unfair labor practices that had been committed. (internal citations omitted)

(Petition at pg. 5). In addition, FOP alleges that Chief Lanier's post attacked FOP and its members in an attempt "to create and foster dissension among union members and generate controversy and create animus toward the FOP's efforts to advance the rights of its members." (Petition at pg. 5). FOP further states that Chief Lanier's post constituted an attempt to intimidate, restrain, and coerce the Union and Union members from filing any future unfair labor practice complaints and that the Agency "lacks any reasonable basis to justify its failure to comply with the Award and the PERB Order." (See, Petition at pgs. 5-6). Therefore, FOP requests that PERB enforce the Award and Decision by:

- (1) ordering Chief Lanier to retract her statements pertaining to the PERB Decision and Order in Case No. 08-U-19, (2) ordering the MPD to re-post the MPD to re-post the Notice as originally required by PERB's Order in Case No. 08-U-19, and (3) issuing an order barring Chief Lanier or any representative of the MPD from undermining the PERB Order in Case No. 08-U-19, or any other PERB case between the parties in the future.

In the Agency's Opposition, MPD admits to the factual allegations contained in FOP's Petition, however, it denies it has not complied with the Board's Order. The Respondent further states:

The Department complied with the Board's Order, and submitted a "Notice of Compliance with PERB Decision & Order" on September 2, 2011. In its submission, the Department notified the Board that it had complied with the notice posting requirement. The Department also advised the Board that the subject policy was no longer in effect and attached a memorandum formally rescinding the policy. A copy of this Notice was served the FOP [sic]. The FOP did not respond to the Notice, either informally or formally, nor did the FOP allege that the Department's compliance with PERB's Order was in any way deficient or inadequate. Even in its Petition for Enforcement, the FOP does not dispute that the Department complied with the Board's Order as detailed in its Notice.

The only "evidence" submitted by the FOP to support its assertion that the Department has not complied with the Board's Order is a statement posted by the Chief of Police on the Department's intranet. As detailed more fully in the attached Motion to Dismiss and for Sanctions, that statement is already the subject of a separate unfair labor practice complaint; is not prohibited or even covered by the Board's Order in this case; and is not properly part of the record in this case. Given the Department's uncontested and documented compliance with the Board's Order and the lack of any legitimate claim to the contrary, there is no basis to sustain the FOP's Petition. (internal citations omitted)

(Agency's Opposition at pg. 3).

In addition, MPD filed a Motion to Dismiss and For Sanctions, alleging that FOP's Petition is "frivolous and improper on its face." (Motion at pg. 4). MPD again asserts that it complied with the PERB Decision and Order and stated:

[t]he sole basis for the Petition lies not with any deficiency in the Department's compliance with PERB's order, but rather with a message posted by the Chief of Police on the Department's intranet. However, the Chief's posting constitutes neither legal or factual support for the Petition. The scope of relief granted by PERB in this matter was clearly delineated in the Board's September 30, 2009 Order. While the Board ordered that physical copies of its notice be posted in all Departmental facilities, there was absolutely no limitation on the Chief of Police's authority to post information to the Department's internal website. Moreover, no factual or legal allegations related to the Chief's intranet posting were contained in the complaint in this matter, nor were they considered by the hearing examiner, nor were they the subject of the parties' post-hearing briefs, nor were they in the record upon which the Board relied in issuing its Order. The FOP's attempt to add factual allegations and legal arguments to the record at this stage is improper. Even if the allegations were to be considered, they cannot serve as the basis for enforcement of an Order that in no way prohibits the actions alleged. The implicit scope of the FOP's Petition is absurd. It seeks to have the Board retroactively expand the scope of its three-month-old Order and consider new information introduced into a closed record for the purpose of enforcing the newly expanded Order. Unsurprisingly, the FOP cites no authority that would support such exotic legal machinations.

(Motion at pgs. 4-5). In addition, the Agency asserts that FOP's Petition is an "improper and redundant submission of PERB Case No. 12-U-02." (Motion at pg. 5). MPD alleges that the Chief's posting is the subject of an unfair labor practice, filed on October 6, 2011. (See, Motion at pg. 6). MPD states: "[e]ven a cursory inspection reveals that the FOP's Petition for Enforcement is virtually identical to the complaint in the PERB Case No. 12-U-02," and "the facts, allegations, and legal arguments cited as a basis for the unfair labor practice complaint in PERB Case No. 12-U-02 have simply been re-filed and styled as a Petition for Enforcement in the present matter." (Motion at pgs. 6-7). Moreover, MPD alleges that FOP "has demonstrated a pattern and practice of initiative duplicative proceedings," and that the Agency previously

received sanctions for similar conduct.¹ (Motion at pg. 8). MPD requests that the Board issue an order:

- a) Dismissing the instant Petition for Enforcement as meritless;
- b) Ordering the FOP again to cease and desist from filing frivolous and disingenuous actions;
- c) Compelling the FOP to engage in mandatory mediation prior to initiating an action against the Department;
- d) Compelling the FOP to pay the Department's costs and fees associated with the proceeding;
- e) Compelling the FOP to conspicuously post a copy of the Board's Order in each building where its members are located; and
- f) Providing such other relief and remedies as the Board deems appropriate.

(Motion at pg. 10).

In response to the Agency's Motion, FOP filed Complainant's Opposition to Respondent's Motion to Dismiss and for Sanctions. In the Opposition, the Union asserts:

even though PERB's Decision and Order clearly, and unequivocally, directed MPD to simply post copies of the Notice posting attached to its ruling, MPD ignored this directive and introduced "new facts" to this "closed record" in an attempt to minimize, change, and thwart the impact of the Notice Posting. These are actions that MPD cannot take, and the FOP has the right to file a Petition for Enforcement to ensure that MPD fairly and properly complies with the existing PERB Order. (internal citations omitted)

(Union's Opposition at pgs. 4-5). FOP further alleges that it has "properly set forth facts demonstrating that the Chief of Police took improper measures to circumvent the Notice Posting requirement," and "PERB should issue an order admonishing MPD and barring it from taking like measures in the future." (Union's Opposition at pg. 5). Moreover, the Union maintains that "while PERB Case No. 12-U-02 concerns the same set of operative facts as those contained in the Petition for Enforcement, the action sought and the relief requested is[sic] unique to each action," and thus the "filings cannot be considered duplicative, improper or vexatious as the MPD has claimed." (Union's Opposition at pg. 6).

In addition, the Union discusses two matters, one from the D.C. Court of Appeals and one from the Board, that it alleges support its assertion. FOP first cites to D.C. Court of Appeals Decision *District of Columbia Metropolitan Police Department v. Fraternal Order of Police*

¹ MPD references PERB Case No. 09-U-48 in which FOP received sanctions for filing frivolous and disingenuous actions in violation of D.C. Code §1-617.04(b)(1) and (3).

*Metropolitan Police Department Labor Committee*² and alleges that the case “encourages the filing of enforcement petitions with PERB so that the parties can have a complete record as to why one side believes the other is not in compliance with an Award.” (Union’s Opposition at pg. 6). In addition, FOP states:

Furthermore, within this same case, the D.C. Court of Appeals advised that instead of the FOP proceeding directly to Superior Court to air its grievances with how MPD has implemented PERB’s Order, the FOP should have availed itself of at least two (2) administrative remedies: “First FOP could have petitioned the Board to enforce its order affirming the award. Second, FOP could have challenged MPD’s alleged resistance by filing an unfair labor practice complaint.” For failing to do so, the Court of Appeals concluded that each was an independent reason that its Motion to Confirm an arbitration award filed in D.C. Superior Court should fail. Here, to avoid each of these potential problems, the FOP has taken special time and attention to avail itself of each remedy. (internal citations omitted)

(Union’s Opposition at pg. 7). The Union then discusses PERB Case *National Association of Government Employees v. D.C. Health and Hospitals Public Benefit Corporation, D.C. General Hospital*,³ and states that the case found an unfair labor practice complaint was properly filed when a party failed to implement a recent PERB order. (See, Union’s Opposition at pg. 7).

Board Rule 560. 1 states: “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.” Upon reviewing the allegations contained in the Petition, and the responses contained in the Agency’s Opposition, the Board determines that MPD complied with the Board’s Decision of September 30, 2009, by posting the requisite notices. Chief Lanier’s message on MPD’s internal website, while referencing the same subject matter, is a second transaction, and is the subject of a separate unfair labor practice complaint. Therefore, the Board dismisses the FOP’s Petition.

Concerning MPD’s Motion to Dismiss and for Sanctions, the Board grants the Agency’s Motion to Dismiss but denies its request for sanctions. As previously stated, the Board dismisses FOP’s Petition on the grounds that the Agency complied with Decision of September 30, 2009. In addition, the Board determines that MPD has not alleged facts supporting the imposition of sanctions.

Therefore, FOP’s Petition for Enforcement and MPD’s Motion to Dismiss and for Sanctions are dismissed.

² 997 A.2d 65, 81 (2010)

³ PERB Case No. 99-U-30, Slip Op. 622 (February 25, 2000)

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 dismissed.
2. The District of Columbia Metropolitan Police Department's Motion to Dismiss and for Sanctions is granted in part and denied in part.
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.**

February 7, 2011

CERTIFICATE OF SERVICE

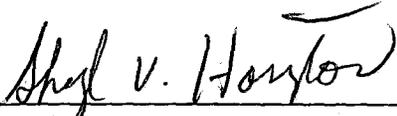
This is to certify that the attached Decision and Order in PERB Case No. 12-E-01 was transmitted via Fax and U.S. Mail to the following parties on this the 7th day of February 2012.

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