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

In the Matter of:)	
)	
)	
Fraternal Order of Police/Metropolitan Police Department Labor Committee,)	PERB Case No. 11-U-01
)	
Complainant,)	Opinion No. 1547
)	
v.)	
)	Decision and Order
District of Columbia)	
Metropolitan Police Department,)	
)	
Respondent.)	

DECISION AND ORDER

I. Statement of the Case

On February 10, 2015, the D.C. Superior Court reversed PERB’s Decisions and Orders in *Fraternal Order of Police/Metropolitan Police Dept. Labor Comm. v. D.C. Metropolitan Police Dep’t*, 60 D.C. Reg. 9186, Slip Op. No. 1388, PERB Case No. 11-U-01 (2013) (hereinafter “Op. No. 1388”) and *Fraternal Order of Police/Metropolitan Police Dept. Labor Comm. v. D.C. Metropolitan Police Dep’t*, 60 D.C. Reg. 12058, Slip Op. No. 1400, PERB Case No. 11-U-01 (2013) (hereinafter “Op. No. 1400”). Consistent with the Court’s Order, the Board vacates Op. Nos. 1388 and 1400, and dismisses the complaint.

II. Background

A. Step One and Step Two Grievances

On April 9, 2010, Metropolitan Police Department (“MPD”) advised Sergeant Horace Douglas (“Sgt. Douglas”) that it would change the hours of his shift on April 17, 2010.¹ Sgt. Douglas filed a grievance with MPD alleging that the schedule change violated Article 24 of the collective bargaining agreement. MPD denied the grievance at step one, after which the

¹ *D.C. Metropolitan Police Dep’t v. D.C. Pub. Emp. Relations Bd.*, 2013 CA 005896 P(MPA) at p. 2 (D.C. Super. Ct. Feb. 10, 2015).

Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP”) filed a step two grievance to the Chief of Police, Cathy Lanier. FOP alleged that Sgt. Douglas’ schedule change violated Articles 4, 9, and 24 of the collective bargaining agreement, and D.C. Official Code § 1-612.01(b)(3). FOP’s step two grievance sought five remedies:

- a) That the Department ceases and desists from violating District of Columbia law;
- b) That the Department cease and desist from violating the [CBA] and manage in accordance with applicable laws, rules, and regulations;
- c) That the Department compensates [sic] Sgt. 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; [and]
- e) That a letter of apology be issued from the Director of Court Liaison Division to Sgt. Douglas concerning this matter.²

In her May 27, 2010 response, Chief Lanier found that the schedule change did not violate Articles 4 and 9, but did find that it violated Article 24’s 14-day notice requirement.³ Accordingly, Chief Lanier stated: “for this reason outlined above, this grievance is *granted*.”⁴ As a remedy, Chief Lanier determined that Sgt. Douglas “will be compensated at the rate of time and one-half for the day you worked outside of your normal duty.”⁵

On June 21, 2010, FOP sent Chief Lanier a letter asking when remedies (d) and (e) would be implemented. On June 22, 2010, Chief Lanier sent a response stating that her initial step two ruling only granted the requested relief of time and one-half compensation for the day Sgt. Douglas worked outside of his normal schedule, and did not grant any of the other requested relief because they were not provided for in the collective bargaining agreement. Chief Lanier further stated that, “[t]o 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 in the grievance was provided.”⁶

B. FOP’s Complaint and PERB’s Decisions

Thereafter, FOP filed its instant unfair labor practice complaint alleging that changing the grievance classification from “granted” to “denied, in part” constituted a failure to bargain in good faith in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5). In its Answer to FOP’s

² *Id.* at 2.

³ *Id.* at 2-3.

⁴ *Id.* at 3 (emphasis in original).

⁵ *Id.*

⁶ *Id.* (emphasis in original).

complaint, MPD argued that the Board lacked jurisdiction over the matter because the complaint was untimely, and because the dispute was purely contractual and did not implicate the CMPA.

On May 28, 2013, the Board issued Op. No. 1388, in which it found that the complaint was timely, and that it was not a purely contractual matter since the basis of the allegation was that MPD had acted in bad faith in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5). Accordingly, the Board found that its jurisdiction over the matter was proper.⁷

On the merits of FOP's allegations, the Board likened MPD's actions to cases in which an agency fails to implement an arbitration award. The Board found that MPD committed an unfair labor practice, reasoning that "MPD chose to grant the step two grievance without limitation." Therefore its "actions [of later changing the grievance decision to 'denied, in part'] constitute[d] a failure to respect the bargaining relationship between itself and FOP, and a failure to adhere to its statutory duty to bargain in good faith."⁸

On June 11, 2013, MPD filed a Motion for Reconsideration ("Motion") alleging that the Board erred in asserting jurisdiction over the case and in finding that MPD had committed an unfair labor practice.⁹ On July 29, 2013, the Board issued Op. No. 1400 denying MPD's Motion.¹⁰

C. Superior Court Order

MPD appealed the Board's Decisions in Op. Nos. 1388 and 1400 to the D.C. Superior Court. In its February 10, 2015 Order Reversing Agency Decision, the Court agreed with PERB's reasoning that its jurisdiction over the case was proper,¹¹ but reversed the Board's findings that MPD committed an unfair labor practice.¹²

To the question of PERB's jurisdiction over the case, the Court reasoned:

Respondent's Decision and Order, issued May 28, 2013, [Op. No. 1388], addressed Petitioner's argument that it lacked jurisdiction, finding, "upon consideration of the record of this case, the Board determines that the matter is not purely contractual and may concern a violation of the CMPA." Indeed, Respondent set forth in its Decision and Order a three-part test..., [namely that] "the Board 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)

⁷ Op. No. 1388 at 3-4.

⁸ Op. No. 1388 at 6.

⁹ Motion at 2.

¹⁰ See p. 6-9.

¹¹ *MPD v PERB*, 2013 CA 005896 P(MPA) at p. 6-9.

¹² *Id.* at 9-12.

resolution of the dispute requires an interpretation of those contractual obligations, and (3) no dispute can be resolved under the CMPA.” Concluding that it did not lack jurisdiction, Respondent explained in its Decision and Order that the case did not involve a dispute over the terms of the parties’ CBA; rather it involved whether MPD acted in bad faith by altering its classification of the grievance. Furthermore, Respondent indicated that it was not required to interpret the CBA to resolve the dispute. Instead, the dispute could have been resolved based on the PERB’s interpretation of D.C. Code § 1-617.04(a)(1), (5), its case law, and the CMPA. Respondent cited several cases in its Decision and Order for the proposition that its authority “only extended to resolving statutorily based obligations under the CMPA” and not obligations that are contractually agreed upon by the parties.

Respondent reiterated these principles in the Decision and Order it issued on July 29, 2013 [Op. No. 1400] in response to Petitioner’s Motion for Reconsideration. ...

Here, Petitioner’s claim that Respondent lacked jurisdiction is denied, as Petitioner merely reiterates asserted arguments that this matter is contractual in nature. Respondent’s decision is not clearly erroneous as a matter of law. ... The CMPA provides PERB jurisdiction to “decide whether unfair labor practices have been committed.” D.C. Code § 1-605.02(3). D.C. courts should defer to PERB’s “interpretation of the CMPA unless the interpretation is unreasonable in light of the prevailing law or inconsistent with the statute or is plainly erroneous.” Petitioner has failed to demonstrate that Respondent’s finding as to jurisdiction is unreasonable in light of the prevailing law or plainly erroneous.¹³

Accordingly, the Court sustained PERB’s findings that it had jurisdiction over FOP’s complaint.

However, concerning the merits of the case, the Court held that PERB’s finding that MPD’s changing of the grievance classification constituted a failure to bargain in good faith in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5) was not supported by substantial evidence. The Court reasoned:

The May 27, 2010 letter from Chief Lanier forms the basis of Respondent’s decision. The letter addresses, and specifically rejects, Sgt. Douglas’ contentions that MPD violated Articles 4 and

¹³ *Id.* at 7-9 (some citations omitted).

9 of the CBA, and D.C. Code § 1-612.01(b)(3). After conceding that MPD violated Article 24 of the CBA by changing Sgt. Douglas' tour of duty without providing the requisite 14-day notice, Chief Lanier awarded Sgt. Douglas the only remedy contemplated under Article 24, namely, "compensate[ion] at the rate of time and one-half for the day you worked outside of your normal tour of duty[.]" Although Respondent argues that "all one has to do is take seriously Chief Lanier's statement (and MPD's admission) that she granted the grievance," the record does not support that conclusion.

* * *

Here, ...the maxim [*expressio unius est exclusio alterus*, which generally means, "the mention of one thing implies the exclusion of another,"] is particularly instructive. Indeed, Respondent's explicit finding that the grievance was "wholly granted," and "without limitation," is not supported by the evidence given the express language of the letter. A finding that Chief Lanier "wholly granted" the grievance is incongruous with the evidence in the record, namely, her express rejection of Sgt. Douglas' arguments arising under Articles 4 and 9 of the CBA, and D.C. Code § 1-612.01(b)(3), ...her acceptance of [only] his claim under Article 24, and the ultimate award of compensation at a rate of time and one-half. Additionally, the Record supports Petitioner's contention that the change in status represents a clarification, as opposed to a failure to bargain in good faith. [Administrative Record at 76] ("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 in the grievance was provided.").

Accordingly, as Respondent's factual finding that the relief was "wholly granted" and "without limitation" is not supported by substantial evidence in the record considered as a whole, the Petition for Review of Agency Decision is granted.¹⁴

In accordance with its findings, the Court ordered that PERB's findings that MPD committed an unfair labor practice be reversed, and remanded the matter to PERB "for further proceedings consistent with [its] Order."

¹⁴ *Id.* at 10-12 (some citations omitted) (emphases in original).

III. Analysis

Consistent with the D.C. Superior Court's Order, the Board vacates its Decisions and Orders in Op. Nos. 1388 and 1400 that found that MPD's actions constituted an unfair labor practice.¹⁵

Additionally, in accordance with the Court's finding that Chief Lanier's June 22, 2010 letter that changed the classification of Sgt. Douglas' grievance from "granted" to "denied, in part" was merely a clarification and not a failure to bargain in good faith, the Board finds that MPD did not violate D.C. Official Code §§ 1-617.04(a)(1) and (5), and dismisses FOP's complaint with prejudice.¹⁶

ORDER

IT IS HEREBY ORDERED THAT:

1. The Board's Decisions and Orders in Op. Nos. 1388 and 1400 that found MPD committed an unfair labor practice are vacated;
2. FOP's unfair labor practice complaint is dismissed with prejudice; and
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Keith Washington, Ann Hoffman, and Yvonne Dixon.

October 29, 2015

Washington, D.C.

¹⁵ *Id.*

¹⁶ *Id.*

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 11-U-01, Opinion No. 1547, was served by File & ServeXpress on the following parties on this the 30th day of October, 2015.

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/s/ Sheryl Harrington
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