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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:

International Brotherhood of
Police Officers, Local 445,

Complainant,

v.

District of Columbia Department
of Administrative Services,
Bureau of Protective Services,

Respondent.

PERB Case No. 94-U-07
Opinion No. 388

DECISION AND ORDER ON
MOTION FOR ENFORCEMENT

On February 16, 1994, the Public Employee Relations Board (Board) issued Opinion No. 382 granting a Motion for preliminary injunctive relief filed by the International Brotherhood of Police Officers, Local 445 (IBPO) in the above-captioned unfair labor practice complaint proceeding. ^{1/} On February 28, 1994, IBPO filed a Motion for Enforcement of our Order in Opinion No. 382. The Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of Respondent D.C. Department of Administrative Services (DAS), filed a Response to the Motion on March 8, 1994, stating that DAS had complied with the Board's Order and that the Motion should be denied.

^{1/} The Complaint charged that the District of Columbia Department of Administrative Services, Bureau of Protective Services (DAS) violated the Comprehensive Merit Personnel Act (CMPA), D.C. Code Sec. 1-618.4(a)(1) and (5), by unilaterally implementing a drug testing policy for special police officers, without first bargaining with IBPO, their exclusive bargaining representative.

For the reasons explained below, we deny IBPO's Motion for Enforcement.

The basis of IBPO's request that the Board enforce its Order lies in its assertion that "[b]argaining unit employees continue to be required to pass a drug test" to receive or renew commissions authorizing employees to carry a gun, which is a job requirement. IBPO acknowledges that drug-testing is being required by the D.C. Metropolitan Police Department, which is responsible for the administration of the municipal regulation that governs the issuance of these commissions. Nevertheless, IBPO asserts that DAS is responsible for continuing to subject employees to drug testing as a requirement of the commission.

OLRCB states that DAS has ceased to test employees for drugs and has continued to collectively bargain over the impact and effects of drug testing on employees' terms and conditions of employment. Moreover, OLRCB asserts that MPD, not DAS, is requiring testing for drugs as a prerequisite for obtaining or renewing commissions. Accordingly, OLRCB contends that DAS is in compliance with the Board's Order.

Our Order in Opinion No. 382 primarily directed DAS to cease and desist from drug testing employees while the parties were engaged in mediation and, if invoked, arbitration of issues concerning the impact, effects and procedures of DAS' drug-testing policy. The pleadings and the evidence presented in support of IBPO's Motion for Enforcement do not establish that DAS is doing anything to the contrary. IBPO does not assert that DAS continues to test employees for drugs. Nor do these pleadings establish that DAS is authorized to determine or direct MPD to change the criteria it has adopted for issuing commissions to DAS' officers. ^{2/}

^{2/} D.C. Municipal Regulation, Title 17, Chapter 21, Section 2103 states with respect to health eligibility requirements to qualify for a commission, in relevant part, the following:

Each applicant for certification shall be required to submit a physician's certificate stating, that to the best of the physician's knowledge after examining the applicant, the following:

(a) The applicant is not presently addicted to drugs or alcohol;

(continued...)

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In view of the above, IBPO has not established that DAS has not complied with our Order in Opinion No. 382; therefore, IBPO's Motion to enforce our Order must be denied.

ORDER

IT IS HEREBY ORDERED THAT:

The Motion to enforce the Decision and Order of the Public Employee Relations Board in Opinion No. 382 is denied.

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

March 17, 1994

²(...continued)

(b) The applicant is not suffering from any debilitating mental defect or disorder; and

(c) The applicant is not suffering from serious heart disease, severe epilepsy, or other physical defect which might cause substantial loss of control in situations of severe stress.

We do not know why this regulation, promulgated in 1974 and previously administered by the MPD without required drug testing (at least with respect to these employees), is now interpreted by the MPD as requiring drug testing. However, the Board is not the appropriate forum for IBPO to challenge MPD's interpretation of this regulation, as it is presently being applied to the DAS' employees.