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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 (on behalf of	)	
Joseph Stimmel),	)	
	)	
Complainant,	)	PERB Case No. 00-U-33
	)	
v.	)	Opinion No. 1346
	)	
District of Columbia Metropolitan Police	)	
Department	)	
	)	
Respondent.	)	
	)	

**DECISION AND ORDER**

**I. Statement of the Case**

An arbitrator sustained a grievance filed on behalf of Officer Joseph Stimmel ("Grievant") and ordered that he "be restored to his former position with back pay and all benefits restored." On March 20, 2000, counsel for the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Union" or "Complainant") sent the Metropolitan Police Department ("Department" or "Respondent") a letter asserting that the Grievant's back pay should have, but did not, include an amount for the overtime which the Grievant would have received had he been working. The letter calculated what that amount would be based on what the Grievant had earned in prior years. (Complaint Attachment 8). The Union received no reply to the letter and on July 18, 2000 filed its complaint. The complaint alleges that "[t]he back pay award did not include any premium pay which Officer Stimmel would have received had he been working. Specifically, the back pay did not include any overtime pay which Officer Stimmel would have earned." (Complaint at p. 3, ¶ 5). The complaint further alleges that Department's failure to comply with the arbitration award by not paying overtime was an unfair labor practice. (*Id.* at pp. 3-4).

The Department's answer to the complaint denied "the allegations of paragraph 5 with regard to premium pay owed to Officer Stimmel" and asserted that the complaint was untimely and that the Board had no authority to enforce arbitration awards. (Amended Answer at p. 1).

The case was referred to a hearing examiner, who conducted a hearing and received post-hearing briefs. The Union's post-hearing brief argued that under the District Personnel Manual overtime is a type of premium pay and back pay is to include premium pay. The Union cited cases decided under the Federal Back Pay Act consistent with the Union's position. The Union further claimed that the method of calculation it had proposed was reasonable and that the Department had not objected to it at the hearing. The Department responded that the Union had acknowledged the inapplicability of the Federal Back Pay Act. The Department asserted that its payroll manager interpreted the rules to authorize back pay only when the job description states that a specific number of overtime hours are expected and maintained that the payroll manager's interpretation was entitled to deference.

The hearing examiner found that the complaint was untimely and failed to state an unfair labor practice claim. He recommended that the complaint be dismissed with prejudice.

## II. Discussion

Board Rule 520.4 provides: "Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred." The hearing examiner reasoned that the pending cause of action was the Union's because the Union, and not the Grievant, was a party to the arbitration.<sup>1</sup> Thus, the 120-day filing period of Rule 520.4 could not begin until the Union knew, or should have known, the facts to which it objected. (Hearing Examiner's Report of Findings and Recommendations ("Report") at p. 4). The Grievant testified that he contacted the Union in February 2000 and told the Union's attorney then that overtime was not factored into his back pay. The hearing examiner observed that "[t]he precise date in February on which this contact occurred is not clear from the record." (*Id.* at 5). The hearing examiner averred that even if the Grievant's contact with the Union occurred on the very latest date that the testimony would support—on the last day of February—the filing of the Union's complaint on July 18, 2000 was nevertheless untimely. (*Id.*)

The hearing examiner went on to state that "[e]ven if the Complaint had been timely filed, Respondent's action would still not constitute violations of DCC § 1-618.4(a)(1) or (5)." (*Id.*) Arbitration is a contractual rather than a statutory arrangement. In addition, the hearing examiner noted that the Public Employee Relations Board ("Board") had held in *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. Metropolitan Police Department*, 39 D.C. Reg. 9617, Slip Op. No. 295, PERB Case No. 91-U-18 (1992), that the Board has authority to enforce its orders but not the orders of third parties such as arbitrators. The hearing examiner also noted that the Board had found no unfair labor practice where an

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<sup>1</sup>In addition, only the exclusive bargaining agent has standing to bring an action alleging that refusal to comply with an undisputed arbitration award constitutes a breach of the duty to bargain in good faith. *Forrester v. Am. Fed'n of Gov't Employees, Local 2725*, 46 D.C. Reg. 4048, Slip Op. No. 577 at p. 5, PERB Case No. 98-U-01 (1998).

agency had not refused to implement the arbitration award at issue but rather disputed the union's interpretation of the award's terms with regard to computation of back pay. (Report at p. 5)(citing *Int'l Bhd. of Police Officers, Local 446 v. D.C. Health & Hosps. Pub. Benefit Corp.*, 47 D.C. Reg. 7184, Slip Op. No. 622, PERB Case No. 99-U-30 (2000)); see also *Psychologists Union Local 3758, 1199 v. D. C. Dep't of Mental Health*, 59 D.C. Reg. 9770, Slip Op. No. 1260 at p. 3, PERB Case No. 06-U-40 (2012) (finding that there was no genuine dispute over the terms of an award and consequently failure to comply with the award was an unfair labor practice). The hearing examiner concluded, "In the instant Complaint, there is a dispute over interpretation of regulations rather than over facts, but the legal issue is much the same as in the above-cited PERB decisions." (Report at p. 6).

Accordingly, the hearing examiner's findings and recommendations were:

- 1) The Complaint was untimely filed under PERB Rule 520.4
- 2) The Complaint should be dismissed with prejudice.

(*Id.*).

No exceptions were filed to the hearing examiner's recommendation that the complaint be dismissed. Pursuant to D.C. Code § 1-605.02(3) and Board Rule 520.14, the Board has reviewed the findings, conclusions and recommendations of the hearing examiner and the entire record. A review of the record reveals that the hearing examiner's findings and conclusions are supported by evidence, are reasonable and consistent with Board precedent regarding standing, timeliness, and alleged non-compliance with awards. Accordingly, pursuant to Rule 520.14 we adopt the Hearing Examiner's findings and recommendations and dismiss the complaint.

#### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The unfair labor practice complaint is dismissed.
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.

December 20, 2012

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**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 00-U-33 is being transmitted via U.S. Mail to the following parties on this the 21st day of December, 2012.

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