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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. 24-U-10
Complainant)	
)	Opinion No. 1879
v.)	
)	
District of Columbia Metropolitan)	
Police Department)	
)	
Respondent)	

DECISION AND ORDER

I. Statement of the Case

On January 4, 2024, the Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP) filed an Unfair Labor Practice Complaint¹ (Complaint) against the District of Columbia Metropolitan Police Department (MPD). The Complaint asserts that MPD violated the Comprehensive Merit Personnel Act (CMPA)² by failing to comply with a final arbitration award (Award) which ordered MPD to facilitate payment for the purchase of lateral service from lateral officers with prior law enforcement experience.³ FOP requests that the Board order MPD to comply with the Award, post a notice, and pay FOP's costs and attorney fees.⁴ On January 18, 2024, MPD filed an Answer, requesting that the Board dismiss the Complaint.⁵

On February 12, 2024, the parties participated in a mediation session, but did not reach a settlement. Pursuant to Board Rule 520.7, the Acting Executive Director conducted an investigatory conference on March 8, 2024. The conference revealed that there are no outstanding disputes of fact and demonstrated that the parties solely disagree regarding whether MPD's past actions constitute compliance with the relief ordered in the Award. On March 8, 2024, at PERB's

¹ The Complaint was combined with a Motion for Judgment on the Pleadings, which PERB denied on January 19, 2024.

² Complaint at 5, 8 (citing D.C. Official Code § 1-617.04(a)(1) and (5)).

³ Complaint at 3 (citing Award at 11).

⁴ Complaint at 8.

⁵ Answer at 1.

direction, the parties submitted post-conference briefs concerning the issue of whether MPD has complied with the Award. FOP's Brief asserts that that MPD has failed to comply with the Award, as the Grievants have not received their purchase price.⁶ MPD's Brief argues that the authority to implement the Award lies with the District of Columbia Retirement Board (DCRB) and the Office of the Chief Financial Officer (OCFO),⁷ and contends that although the Grievants have not received their purchase price, MPD's "diligent and reasonable" efforts to facilitate implementation constitute compliance with the Award.⁸

For the reasons discussed herein, the Complaint is dismissed.

I. Background

The Lateral Appointment of Law Enforcement Officers Amendment Act of 2000 (Act)⁹ sets forth the process through which MPD recruits experienced law enforcement officers, known as "laterals," from agencies across the country.¹⁰ Under the Act, MPD has "discretion to assess and credit prior lateral service for the purposes of setting compensation and leave accrual rates."¹¹ In order for their prior years of law enforcement experience to be credited toward their retirement, laterals "must purchase those years of prior service by depositing the monies into the retirement fund managed by [DCRB]."¹² The Act dictates that, at the time of hire, MPD must notify lateral officers of the "number of years of prior law enforcement service that [MPD] has decided to accord to them,"¹³ as well as "the cost of purchasing those prior years of service for deposit into the fund."¹⁴

Although the Act was codified in 2000, MPD did not begin informing laterals of the purchase requirement until 2010.¹⁵ Mistakenly believing that they would receive credit for prior service at no cost, the laterals hired between 2000 and 2010 "lost their right to elect to purchase prior service for deposit into the retirement fund at the earliest possible date."¹⁶ On November 26, 2010, FOP filed a group grievance on behalf of the laterals hired between 2000 and 2010.¹⁷ The grievance was never resolved, prompting FOP to invoke arbitration.¹⁸ After years of being held in abeyance, the matter went to arbitration hearings on December 5, 2017, and January 16, 2018.¹⁹

On July 13, 2023, the Arbitrator issued an initial award, finding that MPD violated the Act and Article 4 of the parties' Collective Bargaining Agreement (CBA) by failing to notify the

⁶ FOP Brief at 7-15.

⁷ MPD Brief at 4-5.

⁸ MPD Brief at 5-12.

⁹ D.C. Official Code § 1-610.71, *et seq.*

¹⁰ Award at 2-3.

¹¹ Award at 23 (citing D.C. Official Code § 1-610.74).

¹² Award at 23 (citing D.C. Official Code § 1-610.75).

¹³ Award at 23 (citing D.C. Official Code § 1-610.72).

¹⁴ Award at 23 (citing D.C. Official Code § 1-610.76).

¹⁵ Award at 2.

¹⁶ Award at 2.

¹⁷ Award at 2.

¹⁸ Award at 2.

¹⁹ Award at 2.

laterals of the prior service purchase retirement at the time of hire.²⁰ The Arbitrator declined to order a make whole remedy in the initial award, as the means for calculating the purchase price for prior service rested with DCRB, not MPD.²¹ Instead, the Initial Award directed MPD to identify the affected laterals; work with FOP to develop a method for calculating the amount those laterals could have paid into the retirement fund while working for MPD; calculate each lateral's monetary loss; and inform each lateral of the amount they could deposit into the fund.²² On April 8, 2019, the Arbitrator issued a compliance order, retaining jurisdiction for the purpose of implementing a make whole remedy after the terms of the initial award were met.²³

DCRB contracted with an actuary to accomplish the necessary calculations and emailed the results of the actuarial study (Cavanaugh study) to FOP on August 6, 2019.²⁴ FOP rejected the Cavanaugh study, concluding that it “grossly skewed the purchase price numbers” by using an actuarial valuation performed in 2018, despite the affected laterals being hired between 2000 and 2010.²⁵ FOP contracted its own actuary, who produced an alternative study (Milliman study) on November 4, 2021.²⁶ The purchase price figures presented in the Milliman study were generally much lower than those in the Cavanaugh study.²⁷ Because the parties were unable to agree on a calculation method, they jointly contracted a third actuary to create a new study (Bolton study).²⁸ The Bolton study was completed on December 9, 2022, and contained purchase price figures which fell between those in the two previous studies.²⁹ FOP was unsatisfied with the Bolton study and requested an additional arbitration hearing to present the actuarial findings to the Arbitrator.³⁰

On May 9, 2023, the parties participated in another arbitration hearing.³¹ The Arbitrator issued a final award (Award) on October 16, 2023,³² finding that the calculations contained in the Bolton study were consistent with the goal of make whole relief (i.e., placing the aggrieved individuals in the same position they would have been, but for the violation).³³ Thus, the Award ordered MPD to accomplish the following remedy:

- (1) Facilitate payment for purchase of lateral service from Lateral Officers identified in the Bolton study, to the DCRB and its Retirement Plan.
- (2) The purchase cost from Lateral Officers will be their “Purchase Cost At Date of Hire,” set forth in the Bolton Study, plus an amount that is adjusted for inflation through December 16, 2010. The rates for inflation to be used for calculating the

²⁰ Award at 1-2.

²¹ Award at 2.

²² Award at 2-3.

²³ Award at 2-3.

²⁴ Award at 4.

²⁵ Award at 4.

²⁶ Award at 4.

²⁷ Award at 4.

²⁸ Award at 4.

²⁹ Award at 4.

³⁰ Award at 4.

³¹ Award at 1.

³² Award at 1.

³³ Award at 10.

total purchase cost from each Lateral Officer through December 16, 2010, are 5.00% from 10/2000-9/2008 and 4.25% from 10/2008-12/16/2010.

(3) If the DCRB and its Retirement Plan require additional monies to be paid to account for the difference in time between December 16, 2010 and the date of each Lateral Officer's payment at a future date, those additional amounts must be paid by [MPD].³⁴

Immediately after the Award was issued, MPD shared it with DCRB.³⁵ During the following month, MPD and DCRB met multiple times to discuss the Award and exchanged emails regarding DCRB's ongoing conversation with its actuary.³⁶ In these communications, MPD expressed its eagerness to promptly implement the Award.³⁷ On October 20, 2023, FOP sent a letter to MPD, requesting expedited completion of the purchase price calculations and payment options for the Grievants.³⁸ In mid-November of 2023, MPD informed FOP that DCRB's confirmation was required to implement the Award.³⁹ On November 22, 2023, MPD followed-up with DCRB regarding the proposal.⁴⁰ DCRB responded on December 4, 2023, summarizing the progress it had made toward implementation, and requesting to schedule another meeting.⁴¹

On December 7, 2023, MPD updated FOP regarding its efforts to achieve implementation.⁴² FOP contacted MPD again on December 20, 2023, to request immediate compliance with the Award,⁴³ and MPD assured FOP that it was working toward compliance.⁴⁴ On December 21, 2023, MPD met with DCRB and its actuary to discuss the actuary's statement of work.⁴⁵ On January 3, 2024, MPD contacted DCRB and emphasized FOP's desire to proceed with implementation of the Award.⁴⁶ FOP filed the instant unfair labor practice Complaint on January 4, 2024.⁴⁷ DCRB's actuary provided DCRB with its statement of work on January 5, 2024.⁴⁸ On January 11, 2024, MPD once again urged DCRB to move forward with implementation.⁴⁹ MPD filed an Answer to FOP's Complaint on January 18, 2024, denying the alleged unfair labor practice violations.⁵⁰

³⁴ Award at 10-11. Neither party appealed the Award to the Board.

³⁵ MPD Brief at 5.

³⁶ MPD Brief at 5-6.

³⁷ MPD Brief at 6.

³⁸ Complaint at 4.

³⁹ MPD Brief at 6.

⁴⁰ MPD Brief at 6.

⁴¹ MPD Brief at 6.

⁴² MPD Brief at 6.

⁴³ Complaint at 4.

⁴⁴ MPD Brief at 6.

⁴⁵ MPD Brief at 6.

⁴⁶ MPD Brief at 7.

⁴⁷ Complaint at 5.

⁴⁸ MPD Brief at 7.

⁴⁹ MPD Brief at 7.

⁵⁰ Answer at 4-5.

On January 25, 2024, MPD reached out to DCRB to discuss a Memorandum of Understanding (MOU) which MPD planned to sign to facilitate payment for actuarial services.⁵¹ During February of 2024, MPD and DCRB exchanged drafts of the MOU⁵² and kept FOP apprised of their progress.⁵³ MPD signed the MOU on February 14, 2024.⁵⁴ On February 27, 2024, DCLRB signed the MOU and requested that MPD make arrangements for the funding necessary for implementation of the Award to be sent to DCRB.⁵⁵ The next day, MPD sent the executed MOU to OCFO and asked OCFO to facilitate transfer of the necessary funding.⁵⁶ On March 8, 2024, OCFO informed MPD that “the transfer request was awaiting approval and it should be processed no later than...March 11, 2024.”⁵⁷ On March 18, 2024, DCRB informed MPD that “they had received the necessary funds and that the actuary, Bolton, could begin building the actuary tool necessary to begin the implementation of the...Award.”⁵⁸

II. Discussion

The Board has held that failure to implement the terms of an arbitration award where no genuine dispute exists over its terms constitutes a failure to bargain in good faith and, consequently, an unfair labor practice under D.C. Official Code § 1-617.04(a)(1) and (5) of the CMPA.⁵⁹ However, the Board has established that delayed award implementation does not constitute a CMPA violation where the respondent has (1) exhausted its opportunity to file an arbitration review request with the Board; and (2) implemented the award within a reasonable timeframe.⁶⁰ In the present case, the parties do not dispute the terms of the Award, and agree that implementation of the Award is incomplete. Further, the opportunity to file an arbitration review request with the Board has been exhausted.⁶¹ Thus, the issue presented is whether MPD’s implementation timeline is reasonable.⁶²

The Board has held that where an agency is responsible for a months-long delay in award implementation and fails to provide a legitimate reason for the delay, the agency has violated D.C. Official Code § 1-617.04(a)(1) and (5) of the CMPA.⁶³ Months have passed since the Award was issued, but MPD has provided a legitimate reason for the delay and the uncontested facts reveal

⁵¹ MPD Brief at 7.

⁵² MPD Brief at 7-8.

⁵³ FOP Brief at 5-6.

⁵⁴ MPD Brief at 8.

⁵⁵ MPD Brief at 8.

⁵⁶ MPD Brief at 8.

⁵⁷ MPD Brief at 8.

⁵⁸ MPD Brief at 8.

⁵⁹ *AFGE, Local 383 v. DYRS*, 60 D.C. Reg., 15983, Slip Op. 1423 at 2, PERB Case No. 10-U-48 (2013); *Int’l Bhd. of Police Officers, Local 446 v. D.C. Health & Hosps. Pub. Benefit Corp.*, 47 D.C. Reg. 7184, Slip Op. 622 at 4, PERB Case No. 99-U-30 (2000).

⁶⁰ *Watkins v. DOC*, 48 D.C. Reg. 8542, Slip Op. No. 655 at 4-5, PERB Case No. 99-U-28 (2002).

⁶¹ Board Rule 538.1 (requiring an aggrieved party to file a request for review within 21 days after service of arbitration award).

⁶² The Board has established that where, as here, the parties do not dispute material issues of fact or the evidentiary record, the Board may issue a decision on the pleadings. *AFSCME, Local 2921 v. DCPS*, 50 D.C. Reg. 5077, Slip Op. No. 712 at 3, PERB Case No. 03-U-17 (2003).

⁶³ *Id.* (citing *AFGE, Local 2725 v. DCHA*, 46 D.C. Reg. 8356, Slip Op. No. 597 at 2, PERB Case No. 99-U-23 (1999)).

that implementation of the Award is dependent not only on the actions of MPD, but also on the actions of DCRB, the actuary, and OFCO. These entities are separate from MPD and fall outside of its control. The uncontroverted evidence also demonstrates that since the Award was issued, MPD has made repeated, diligent efforts to fulfill its terms. Due to the unusual factors present, MPD's documented efforts indicate that the timeline, while lengthier than ideal, is reasonable. FOP's dissatisfaction with the pace of implementation is understandable, and MPD's progress, moving forward, will be monitored. However, the Board finds that MPD's failure to implement the Award, at this time, does not constitute an unfair labor practice.

III. Conclusion

Consistent with the discussion above, the Board hereby retains jurisdiction and orders MPD to provide monthly reports describing the progress MPD, DCRB, and OCFO have made toward implementing the October 16, 2023, Award.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Board retains jurisdiction to monitor MPD's implementation of the October 16, 2023, Award.
2. Within 14 days of the issuance of this decision, MPD shall provide PERB with a report, describing progress MPD, DCRB, and OCFO have made toward implementing the October 16, 2023, Award.
3. MPD shall provide a report every 30 days after its initial report.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By vote of Board Chairperson Douglas Warshof and Members Renee Bowser, Mary Anne Gibbons, and Peter Winkler.

June 26, 2024

Washington, D.C.

APPEAL RIGHTS

Pursuant to Board Rule 559.2, a party may file a motion for reconsideration, requesting the Board reconsider its decision. Additionally, a final decision by the Board may be appealed to the District of Columbia Superior Court pursuant to D.C. Official Code §§ 1-605.2(12) and 1-617.13(c), which provides 30 days after a decision file an appeal.