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

In the Matter of:)	
)	
District of Columbia)	
Metropolitan Police Department,)	
)	PERB Case No. 02-A-07
Petitioner,)	(MOTION TO STAY)
)	
and)	
)	Opinion No. 755
Fraternal Order of Police/Metropolitan)	
Police Department Labor Committee)	
(on behalf of Grievant, Angela Fisher),)	
)	
Respondent.)	
)	

DECISION AND ORDER

This matter involves a Motion to Stay filed by the District of Columbia Metropolitan Police Department (“MPD” or “Agency”) in the above captioned matter. Through this Motion, MPD seeks to stay the final entry and enforcement of the Board’s Decision and Order in PERB Case No. 02-A-07¹, pending the outcome of its appeal which was filed in D.C. Superior Court.²

MPD asserts that its Motion to Stay should be granted until such time as the D.C. Superior

¹PERB Case No. 02-A-07 involved an Arbitration Review Request filed by MPD. The Arbitration Review Request sought review of an arbitration award (Award) which rescinded a termination action that had been imposed on a bargaining unit employee (Angela Fisher). The Board’s Decision was issued on March 5, 2004 and is contained in Slip Opinion No. 738. In Slip Opinion No. 738, the Board denied MPD’s Arbitration Review Request on the basis that there were no statutory grounds for review. As a result, the Board determined that the Arbitrator’s Award reinstating Grievant Fisher with backpay and benefits should be implemented by MPD.

²MPD filed a Petition for Review of the Board’s Decision in this matter with the D.C. Superior Court.

Court has issued a final decision concerning its Petition for Review. In the interim, MPD requests that the Board's Decision and Order in this matter not become final or be enforced against it. In addition, MPD asserts that the Motion to Stay should be granted because it will be costly³ to reinstate Grievant Fisher. Additionally, MPD contends that, in the event that MPD prevails in its appeal, it will be difficult or impossible for it to recoup the money it spent reinstating Fisher with backpay.

The Fraternal Order of Police ("FOP" or "Union") argues that MPD's Motion to Stay should be denied because it was untimely filed. Specifically, the Union contends that Board Rule 559.2 gives a party ten (10) days from the date of issuance of a PERB decision to move for reconsideration. However, FOP claims that, in this case, MPD did not file its pleading seeking reconsideration of the March 5, 2004 Decision and Order⁴ until April 5, 2004, more than 10 days.⁵ According to the Union, MPD's Motion to Stay should be construed as a Motion for Reconsideration of the Board's decision to grant the Petitioner's January 17, 2003, Motion for Appropriate Relief.⁶ Because the Motion to Stay⁷ (which FOP characterizes as a Motion for Reconsideration) was not filed within 10 days of the issuance of the Board's Decision and Order in this matter, FOP contends that the Board's decision became final and may not be considered at this point.

In addition, the FOP asserts that the stay requested by Petitioner will only further delay the employee's reinstatement, as ordered by the Arbitrator on August 30, 2002. Finally, FOP claims that the longer the process is delayed, the "more harm is suffered by the employee who will almost certainly face greater impediments to her qualification for reinstatement as more time passes." (Response at pg. 3).

³MPD claims that the comprehensive background check and clearance by the Police and Fire Clinic will be costly.

⁴The March 5, 2004 Decision and Order directed compliance with the arbitration award.

⁵Board Rule 559.1, provides that the Board's Order is final 30 days after its issuance, unless stated otherwise. Pursuant to Board Rule 559.2, the Board's Order will not become final if any party files a Motion for Reconsideration within 10 days of the issuance of the Decision. In the present case, neither party filed a Motion for Reconsideration.

⁶We note for the record that the Board never acted to grant or deny FOP's Motion for Appropriate Relief. This was the case because the relief requested by FOP in its Motion for Appropriate Relief was the same relief granted as a result of the Board's denial of MPD's Arbitration Review Request in its March 5, 2004 Decision and Order. Since there was no basis for the Board to review the Arbitrator's Award in this matter, the relief awarded by the Arbitrator's decision was reinstated. FOP requested this same relief in its Motion for Appropriate Relief; therefore, in the Board's view, its request was *moot* and we made no ruling on it.

⁷MPD's Motion to Stay was filed on April 5, 2004.

Neither the Board's Rules, nor the relevant cases, provide for an automatic stay simply because a party has an appeal pending before D.C. Superior Court ("Superior Court") or any other decision making body. Indeed, relevant Board authority is to the contrary. See, Tracy Hatton v. Fraternal Order of Police/Department of Corrections Labor Committee⁸, 43 DCR 2947, Slip Op. No. 458, PERB Case No. 95-U-02 (1996). In addition, the Board's rules do not explicitly define the appropriate standard to be used when considering whether to grant or deny a "Motion to Stay."

Under relevant Board precedent, in considering whether granting a Motion to Stay is appropriate, the Board has considered whether the party seeking the Stay has articulated a compelling reason to grant the Motion. In the present case, the Board finds that MPD offered no compelling reason for granting the stay. The only reasons given by MPD to support its motion are that: (1) an appeal is pending in D.C. Superior Court and (2) reinstating Grievant Fisher would be too costly. As to the first reason articulated by MPD, the Board has held that this reason alone, is not a sufficient justification for granting a stay. See, Id. Furthermore, there is no way of knowing in advance whether MPD will prevail in its appeal. The Board also notes that nothing in the Board's Decision will prevent MPD from filing a Motion to Stay in Superior Court.⁹ Concerning its second argument, that reinstating the Grievant with backpay would be too costly¹⁰, we find that this argument has no merit. The mere fact that complying with the Board's order will cost MPD money does not constitute irreparable harm. See, General Carbon Company, A Division of St. Mary's Carbon Company v. Occupational Safety & Health Review Commission, 854 F. 2d 1329, 272 U.S. App. DC 120 (1988)- (where the District of Columbia Court of Appeals rejected General Carbon Company's irreparable harm argument that complying with the OSHRC's Order would impose on it "extreme" expense.¹¹) On this basis, we find that MPD has failed to provide a compelling enough

⁸ In Tracy Hatton v. Fraternal Order of Police/Department of Corrections Labor Committee, FOP filed a Motion requesting that the Board stay a portion of its Order which directed FOP to post a notice, until after the D.C. Superior Court had ruled on its Petition for Review. 43 DCR 2947, Slip Op. No. 458, PERB Case No. 95-U-02 (1996). In denying FOP's Motion to Stay, the Board stated that "there is no Board precedent, nor does FOP provide a basis for granting such relief under the circumstances of this case."

⁹Pursuant to Agency Review Rule 1(b), the Superior Court's standard for granting Motions to Stay provides that Motions to Stay may be granted "to the Extent Necessary to prevent Irreparable Injury." The Board notes that even reviewing MPD's Motion under the Superior Court's standard, no claim of irreparable harm was made before this Board. Therefore, the Board has no basis for granting the Motion to Stay.

¹⁰MPD provides no specific cost data to support its argument, nor does the Agency provide evidence to support its contention that it may not be able to recoup the money from Grievant Fisher if MPD is successful in its appeal.

¹¹In addition, the Federal Labor Relations Authority has denied a Petitioner's Motion to Stay where the "Irreparable Harm" element had not been met based on a cost argument. Specifically, the FLRA rejected a Union's assertion that it would suffer irreparable injury because it would lose "thousands of dollars in lost dues" if an election, ordered by the FLRA, goes forward. The FLRA found, *inter alia*, that the irreparable harm alleged by AFGE did not

reason to justify the Board's decision to grant extraordinary relief, such as a stay.

In view of the above, we hereby deny MPD's Motion to Stay Entry and Enforcement of the Board's Decision in PERB Case No. 02-A-07 (Slip Op. No. 738).

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Metropolitan Police Department's (MPD) Motion to Stay Entry of Final Order and Enforcement of Order Pending Appeal, is hereby denied.
2. Pursuant to Board Rule 559.1, this Order shall be final upon issuance.

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

September 1, 2004

exist. As a result, FLRA denied the Motion to Stay, based on the potential loss of "dues" money argument. See, Department of the Army, U.S. Army Aviation Missile Command (AMCOM) and American Federation of Government Employees, Local 1858, AFL-CIO and National Federation of Federal Employees, Local 405., 55 FLRA 640,643-644 (1999). In view of the foregoing precedent, we do not find that MPD's claim of potential financial loss supports a claim of irreparable harm.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 02-A-07 was transmitted via Fax and U.S. Mail to the following parties on this the 1st day of September 2004.

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