

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:)

Fraternal Order of Police/MPD)
Labor Committee,)

Complainant,)

v.)

District of Columbia)
Metropolitan Police Department,)

Respondent.)

PERB Case No. 89-U-07
Opinion No. 242

DECISION AND ORDER

On March 30, 1989, the Fraternal Order of Police/Metropolitan Police Labor Committee (FOP) filed with the D.C. Public Employee Relations Board (Board) an Unfair Labor Practice Complaint alleging that the D.C. Metropolitan Police Department (MPD), violated D.C. Code Sections 1-618.4(a)(1), (3) and (5) by seeking to obtain directly from three of its employees private agreements containing waivers of a negotiated provision in a collective bargaining agreement between the FOP and MPD. ^{1/} FOP claims that MPD by its alleged conduct, has (1) interfered with, restrained and coerced employees in their right to enjoy a negotiated benefit; (2) discriminated against employees regarding a term or condition of employment in order to discourage union membership and (3) bargained in bad faith with the exclusive representative. (Complaint p.2)

In response to the Complaint, MPD denied that it had any knowledge of the alleged conduct prior to the filing of the Complaint, nor did it authorize or condone any of its agents

^{1/} It is not disputed that Article 26, Section 2 of the parties' agreement states the following: "An employee detailed or assigned to a position carrying additional compensation for more than 90 consecutive days shall receive the higher rate of pay beginning the first full pay period following the 90 day period." (Complaint p. 2)

obtaining waivers of the employees' negotiated benefits.^{2/} MPD disputes that it violated D.C. Code Sec. 1-614.4 and also asserts in its Answer that it had attempted unsuccessfully to settle this matter as "it is not the intent of the department to allow its managers to abuse or engage in the unjust application of the contract... [and] any violations of the collective bargaining agreement brought to management's attention will be corrected immediately." (Answer p.2) Despite the FOP's refusal to accept a proposed settlement, MPD asserted that the Chief of Police directed that certain affirmative steps be taken to remedy the conduct which is the basis of this Complaint. Because of its efforts to settle this matter and to ensure compliance with the collective bargaining agreement, MPD requests that the Board dismiss the Complaint.^{3/} On May 3, 1989, FOP requested and MPD concurred, that the Board hold the Complaint in abeyance until May 15, 1989, pending the outcome of settlement negotiations between the parties. In the event that the parties could not resolve the Complaint, FOP requested the following relief:

- "1. The posting of an appropriate notice on all department bulletin boards notifying unit members that the Respondent has engaged in unlawful conduct in this matter. Such notice is to completely describe the nature of the violation in order that others who have been deprived of their negotiated rights may be located and inform any and all unit members who have been similarly treated of their right to the higher level of pay.

^{2/} The Complaint alleges and the MPD does not deny, that three (3) officers were approached by an agency official to enter into private contracts waiving the negotiated provisions. Two of the employees signed the agreements, and both served as acting sergeants. The third employee, however, refused to sign the agreement and allegedly was told that he could not work any of the overtime details and that his assignment as acting sergeant was immediately terminated.

^{3/} MPD attached to its Complaint a memo in which the Chief of Police directed that (1) a memorandum be issued to all commanding officers reiterating the department's position on Article 26 of the collective bargaining agreement; (2) the affected officers be returned to their original duty assignment; (3) retroactive pay be provided to those employees who served on details beyond the ninety (90) day period without receiving the higher rate of pay; (4) a letter of admonition be issued to Deputy Chief Jimmy Wilson for his conduct; and (5) the officers named in the Complaint be scheduled for promotions to the rank of Sergeant effective April 23, 1989.

2. The pay rates of Officer's (sic) Theodore Yorkshire, Robert Prout, James Beadel, and any other bargaining unit members who have executed waivers or been denied a higher rate of pay because of their refusal to execute a waiver, since the effective date of the contract, be adjusted to reflect the higher rate of pay beginning on the 1st day of their detail or the day following their refusal to sign the waiver. Such higher rate of pay to continue until such time as the position in question is or was filled through the normal procedures for filling such positions." (FOP Request pp. 1&2)

Although the Board took no formal action on FOP's request to hold the matter in abeyance, the parties were unsuccessful in achieving a settlement by the requested deadline. Accordingly, this case is now before the Board for a decision and order on the legal issues presented.

The issues before the Board are: (1) Assuming that the actions were unauthorized, whether MPD is nonetheless liable for the conduct of its officials; and if so, (2) whether MPD's efforts to resolve this dispute negate its liability; and if not, (3) whether by obtaining and attempting to obtain waivers of a negotiated contract provision from bargaining unit employees MPD committed unfair labor practices in violation of D.C. Code Sections 1-618.4(a)(1),(3) and (5).

We conclude for the reasons discussed below that the conduct FOP complained of constituted unfair labor practices in violation of D.C. Code Sec. 1-618.8(a)(1),(3) and (5). We conclude that MPD is responsible for the actions of its officials notwithstanding its assertions that such actions were neither authorized or condoned. We find that such efforts by MPD to voluntarily undertake actions to remedy the alleged violations do not preclude a finding of liability based on the violative conduct.

At the outset, the Board notes that the CMPA sets forth unequivocally the rights of an exclusive bargaining representative at D.C. Code Section 1-618.11(a), which states that: "[t]he labor organization which has been certified to be the exclusive representative of all employees in the unit shall have the right to act for and negotiate agreements covering all employees in the unit..." Accordingly, the FOP was undermined as the certified exclusive bargaining agent when MPD officials bypassed it and offered agreements to individual bargaining unit members. This conclusion is consistent with the National Labor Relations Act

which also makes it a duty of the employer to bargain collectively with the chosen representatives of its employees. ^{4/} As the Supreme Court observed in Medo Photo Supply Corp. v. National Labor Relations Board, 321 U.S. 678, 680 (1944), "[i]t is a violation of the essential principle of collective bargaining and an infringement of the Act for the employer to disregard the bargaining representative by negotiating with individual employees...with respect to wages, hours and working conditions".

With respect to MPD's contentions that it was not aware of nor did it authorize or intend any conduct that was violative of the collective bargaining agreement, we conclude that such assertions present no valid defense. It is a basic tenet of agency law that the actions of an agent within the scope of his employment are imputed to his principal. We find no basis for an exception to this rule. Moreover, this Board has previously held MPD liable for the conduct of its agents in similar circumstances, that is, when the detail of a bargaining unit member was terminated and another employee was reassigned for having complained to the FOP concerning their extended detail assignments. See, FOP and Officer Corby and Detective I. Kilcullen v. Metropolitan Police Dept. 32 D.C. Reg. 4530, Slip Op. No. 116, PERB Case No. 84-U-02 (1985).

In sum, we conclude that by offering private agreements to employees and by terminating the detail of an employee who refused to sign an agreement MPD violated D.C. Code Section 1-618.4(a)(1) and (3). We further conclude that in bypassing the Union, MPD refused to bargain collectively with FOP in violation of D.C. Code Section 1-618.4(a)(1) and (5).

ORDER

IT IS ORDERED THAT:

1. The Metropolitan Police Department (MPD) shall post conspicuously at all employee work sites, copies of the attached Notice not later than fourteen (14) days from the issuance of this opinion. Notices are to remain posted for a period of sixty (60) consecutive days;

^{4/} NLRA, as amended, Section 9(a), 29 U.S.C. Section 159(a).

2. MPD shall notify the Board, in writing, that the Notices have been posted accordingly;

3. MPD shall cease-and-desist from interfering with and discriminating against employees in their right to enjoy a negotiated benefit by offering them private agreements that contain a waiver of the additional compensation for employees serving on a detail to a higher-paying position more than 90 consecutive days, to which they were entitled by Article 26, Section 2 of the collective bargaining agreement, and by terminating their details upon their refusal to sign the agreements. MPD shall not in any like or related manner interfere with, or discriminate against its employees.

4. MPD shall cease-and-desist from failing and refusing to bargain collectively in good faith with the Fraternal Order of Police (FOP) by bypassing the Union and offering private agreements to bargaining unit employees.

5. MPD shall immediately take steps to provide appropriate make-whole relief by (1) providing compensation to officers Theodore Yorkshire, Robert Prout, James Beadel and any other bargaining unit members who have executed waivers or have been denied a higher rate of pay while serving on a detail more than 90 days, because of their refusal to execute a waiver, and (2) compensating these employees at the appropriate rate for a period retroactive to the 91st day of their detail or to such date beyond 90 consecutive days that they would have served on the detail had they not been terminated from this assignment, until the date that the detail was or would have ended.

6. The parties shall meet with a designated agent of the Board within thirty (30) days from the issuance of this opinion for the purpose of a status conference regarding MPD's compliance with this Order.

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

April 9, 1990



Public
Employee
Relations
Board

Government of the
District of Columbia

415 Twelfth Street, N.W.
Washington D.C. 20004
(202) 727-1822/23



NOTICE

TO ALL EMPLOYEES IN THE DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE GOVERNMENT OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 242 PERB CASE NO. 89-U-07

WE HEREBY NOTIFY our employees that the Government of the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered us to post this notice.

WE WILL cease-and-desist from interfering with our employees' right to enjoy negotiated benefits under their collective bargaining agreement, by offering them private agreements waiving their rights to compensation at the higher rate of pay while serving on a detail for more than 90 consecutive days.

WE WILL cease-and-desist from discriminating against employees in their terms and conditions of employment by terminating employees' detail assignments for their refusal to sign a private agreement waiving their rights to compensation at the higher rate of pay while serving on a detail for more than 90 consecutive days.

WE WILL cease-and-desist from refusing to bargain collectively in good faith with the Fraternal Order of Police by bypassing it and entering into private agreements with employees.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees, or refuse to bargain collectively in good faith the Fraternal Order of Police in the exercise of rights guaranteed them by the D.C. Comprehensive Merit Personnel Act of 1978.

District of Columbia
Metropolitan Police Department

By: _____
Chief

Date: _____

NOTICE

PERB Case No. 89-U-07

Page Two

This Notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 415-12th Street, N.W. Suite 309, Washington, D.C. 20004.