

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

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| In the Matter of: |) | |
| |) | |
| Fraternal Order of Police/ Metropolitan Police Department Labor Committee |) | PERB Case No. 18-U-19 |
| |) | |
| Petitioner |) | Opinion No. 1674 |
| |) | |
| v. |) | |
| |) | |
| District of Columbia Metropolitan Police Department |) | |
| |) | |
| Respondent |) | |
| |) | |

DECISION AND ORDER

I. Introduction

On February 1, 2018, the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“Union”) filed an unfair labor practice complaint, alleging that the Metropolitan Police Department (“MPD”) violated section 1-617.04(a)(1) and (5) of the D.C. Official Code by refusing to abide by an arbitration award (“Award”). The Union also named Chief of Police Peter Newsham (“Chief Newsham”) as a respondent.¹ On February 20, 2018, MPD filed an Answer and Motion to Dismiss.

After a thorough review of the record, the Board finds that MPD has committed an unfair labor practice by refusing to follow the arbitrator’s award.

¹ MPD requests that the Board dismiss Chief Newsham as an improper respondent. The Board has held that suits against District officials in their official capacity should be treated as suits against the District. *See Fraternal Order of Police/Metro. Police Dep’t Labor Comm. v. D.C. Metro. Police Dep’t*, 59 D.C. Reg. 6579, Slip Op. No. 1118 at p. 4-5, PERB Case No. 08-U-19 (2011); *see also Fraternal Order of Police/Metro. Police Dep’t Labor Comm. v. D.C. Pub. Emp. Relations Bd.*, Civ. Case No. 2011 CA 007396 P(MPA) (D.C. Super. Ct. Jan 9, 2013). Therefore, MPD’s request to dismiss Chief Newsham as a Respondent in this matter is granted.

II. Statement of the Facts

On August 9, 2011, an Adverse Action Hearing Panel found that Officer Malcolm Rhinehart (“Grievant”) assaulted an individual and should be removed from his position.² Following the Panel’s decision, MPD terminated the Grievant. Thereafter Grievant demanded arbitration.³

The Arbitrator addressed three issues: (1) whether MPD violated the 90-day rule, (2) whether there was sufficient evidence to support the charges, and (3) whether the penalty was appropriate.⁴ On October 6, 2017, the Arbitrator issued an Award which set aside the MPD’s decision to terminate the Grievant and ordered him reinstated with full back pay.⁵

Following the Award, MPD filed an arbitration review request with the Board but then elected to withdraw it.⁶ On December 13, 2017, and then again on January 12, 2018, counsel for the Union emailed MPD regarding reinstatement of the Grievant.⁷ MPD admits that it did not respond to either email and also admits that it has not reinstated the Grievant.⁸ On March 19, 2018, the parties participated in a mediation conference but were unable to come to an agreement.

III. Discussion

Board Rule 520.10 states that “if the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings or may request briefs and/or oral arguments.” The facts of this case are undisputed, and therefore it is appropriate for a decision on the pleadings.

MPD admits that it has failed to reinstate the Grievant in compliance with the Arbitrator’s Award. The Union argues that the MPD’s refusal to reinstate the Grievant and to compensate him with back pay and benefits is a direct violation of the Award. According to the Union, MPD interfered with union rights and failed to bargain in good faith in violation of the Comprehensive Merit Personnel Act.⁹

MPD requests that the Board deny the complaint and dismiss this matter in its entirety.¹⁰

To establish an unfair labor practice under section 1-617.04(a)(1), the Union must prove by a preponderance of the evidence that MPD interfered with, restrained or coerced an employee in the exercise of rights guaranteed by this subsection, or that MPD refused to bargain in good

² Award at 3.

³ Complaint at 3.

⁴ Award at 1-2.

⁵ Award at 5.

⁶ Complaint at 4.

⁷ Complaint at 5.

⁸ Answer at 4.

⁹ Complaint at 5.

¹⁰ Answer at 7.

faith with the union. 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 the D.C. Official Code.¹¹

MPD does not dispute that it has failed to reinstate the Grievant.¹² MPD also does not dispute that it withdrew its petition for review of the Award before the Board. MPD's failure to comply is not based on a genuine dispute over the terms of the Award, but rather is a simple refusal to comply. This conduct constitutes a violation of the MPD's duty to bargain in good faith under section 1-617.04(a)(5), and interference with bargaining unit employees' rights in violation of section 1-617.04(a)(1).

IV. Conclusion

MPD violated section 1-617.04(a)(1) and (5) by refusing to implement the terms of the Award. The unfair labor practice complaint is upheld and the MPD's motion to dismiss is denied. MPD is directed to fully comply with the terms of the arbitration award within ten (10) days of the issuance of this Decision and Order, if it has not done so already. Additionally, MPD shall post a notice of the violation.

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Metropolitan Police Department's request to dismiss Chief Peter Newsham in this matter is granted
2. FOP's unfair labor practice complaint is granted.
3. The District of Columbia Metropolitan Police Department shall cease and desist from violating section 1-617.04(a)(1) and (5) of the D.C. Official Code by failing to implement the arbitration award.
4. Within ten (10) days from the issuance of this Decision and Order, the District of Columbia Metropolitan Police Department shall fully comply with the terms of the arbitration award, if it has not already done so.
5. The District of Columbia Metropolitan Police Department shall conspicuously post, where notices to employees are normally posted, two (2) notices that the Board will furnish to MPD in each of the department's buildings. The notice shall be posted within fourteen (14) days from MPD's receipt of the notice and shall remain posted for thirty (30) consecutive days.

¹¹ *AFGE, Local 383 v. D.C. Dep't of Youth Rehab. Servs.*, 60 D.C. Reg., 15983, Slip Op. 1423, 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 p. 4, PERB Case No. 99-U-30 (2000).

¹² Answer at 9.

6. Within fourteen (14) days from the date of the receipt of the notice, MPD shall notify the Public Employee Relations Board in writing that the arbitration award has been complied with and the attached notice has been posted according to this Order and on what date the notices were posted.
7. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy and Board Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

July 26, 2018

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 18-U-19, Op. No. 1674 was transmitted to the following parties on this the 31st day of July, 2018.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

NOTICE

TO ALL EMPLOYEES OF THE METROPOLITAN POLICE DEPARTMENT, THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1674, PERB CASE No. 18-U-19 (July, 26, 2018).

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law in the manners alleged in PERB Case No. 18-U-19, and has ordered MPD to post this Notice.

WE WILL cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) in the manners stated in Slip Opinion No. 1674, PERB Case No. 18-U-19.

WE WILL cease and desist from refusing to implement the terms of an arbitration award in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5)

Metropolitan Police Department

Date: _____ By: _____

This Notice must remain posted for thirty (30) 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 MPD's compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board by U.S. Mail at 1100 4th Street, SW, Suite E630; Washington, D.C. 20024, or by phone at (202) 727-1822.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

July 31, 2018.

Washington, D.C.