

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**

In the Matter of:	)	
	)	
Metropolitan Police Department	)	
	)	PERB Case No. 10-U-14(R)
Petitioner	)	
	)	Opinion No. 1533
v.	)	
	)	
Fraternal Order of Police/ Metropolitan Police Department Labor Committee	)	
	)	
Respondent	)	

**DECISION AND ORDER ON REMAND**

This case is before the Board on remand from the D.C. Superior Court.<sup>1</sup> Complainant, Fraternal Order of Police/Metropolitan Police Department (“FOP”), filed a Petition for Review with the Superior Court of the Board’s Decision and Order in the above-captioned case, Opinion No. 1397, appealing the Board’s Decision and Order in regards to PERB Case No. 10-U-14.<sup>2</sup> The Superior Court affirmed, in part, reversed in part, and remanded for further proceedings.

<sup>1</sup> *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D.C. Public Employee Relations Board*, Case No. 2013 CA 005151 P(MPA)(November 17, 2014).

<sup>2</sup> *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D.C. Public Employee Relations Board*, Slip Op. No. 1397, PERB Case Nos. 09-U-41, 09-U-42, 09-U-43, 09-U-44, 10-U-01, and 10-U-14 (2013). In Opinion No. 1397, the Board granted Respondent Metropolitan Police Department’s (“MPD”) Motion for Reconsideration, in part, finding that the allegations in PERB Case No. 10-U-14 were untimely filed. The Board had previously, in Opinion No. 1391, adopted a Hearing Examiner’s findings that the MPD had committed an unfair labor practice.

The Superior Court overturned the Board's Decision in Opinion No. 1397, finding that one of three allegations in an unfair labor practice complaint, PERB Case No. 10-U-14, was untimely. The Superior Court remanded to the Board an allegation that MPD improperly proposed the suspension of FOP Vice Chairman Wendell Cunningham. In Opinion No. 1397, the Board had determined that the allegation was untimely, because the Board calculated the Board Rule 520.4's filing period to have begun when Cunningham was first questioned and not when the suspension was proposed. The Superior Court reversed this determination and found that the Board's 120-day timeline for filing an unfair labor practice complaint begins "once the employer has made an unequivocal statement to that employee regarding the underlying adverse employment decision."<sup>3</sup> The Superior Court affirmed that the two other allegations in the complaint were untimely filed.

Pursuant to the Order issued by the Superior Court on November 17, 2014, the Board finds that the allegation regarding Cunningham's proposed discipline was timely filed. The Board vacates its Decision and Order in Opinion No. 1397 and reinstates its Decision and Order in Opinion No. 1361, regarding the allegation of proposed discipline of Cunningham.<sup>4</sup>

#### ORDER

1. The Board's Decision and Order in Opinion No. 1397, regarding the allegation of proposed discipline of FOP Vice Chairman Wendell Cunningham, and the Board's Decision and Order in Opinion No. 1361 for this allegation is reinstated.
2. MPD will cease and desist from interfering, restraining, or coercing FOP in the exercise of its rights guaranteed by D.C. Code § 1-617, et seq., by disciplining FOP officials for engaging in protected union representational activities and speech;
3. MPD will immediately withdraw *in toto*, and with prejudice the second specification in the disciplinary action against FOP Vice Chairman Wendell Cunningham, expunge all personnel records concerning the disciplinary action, and reimburse him for any lost salary and benefits;
4. MPD shall conspicuously post within ten (10) days from the issuance of this Decision and Order the attached Notice where notices to bargaining unit members are normally posted. The Notice shall remain posted for thirty (30) consecutive days;

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<sup>3</sup> Superior Court Order at 6.

<sup>4</sup> *Fraternal Order of Police/Metropolitan Police Dep't Labor Committee v. D.C. Metropolitan Police Dep't*, 60 D.C. Reg. 2283, Slip Op. No. 1361, PERB Case Nos. 09-U-41, 09-U-42, 09-U-43, 09-U-44, 10-U-01, and 10-U-14 (2013). In Opinion No. 1361, the Board reviewed and adopted the Hearing Examiner's findings and conclusions for Cunningham's proposed discipline in Case No. 10-U-14. The Board finds that the Board's remedies in Opinion No. 1361 are appropriate for the finding that MPD interfered with, coerced, or restrained Cunningham in the exercise of his CMPA rights by proposing discipline against him and that the proposed discipline was in retaliation for Cunningham's exercise of protected union activity and speech. The Board and reinstates the remedies that the Board awarded.

**Decision and Order on Remand**

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5. MPD shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from the issuance of this Decision and Order that the Notice has been posted accordingly;
6. MPD will pay FOP's costs in the litigation of PERB Case No. 10-U-14; and
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, Member Yvonne Dixon, Member and Member Keith Washington. Member Ann Hoffman was not present.

Washington, D.C.

July 20, 2015

**CERTIFICATE OF SERVICE**

This is to certify that the attached Corrected Copy of the Decision and Order in PERB Case No. 10-U-14(R) was served to the following parties via File & ServeXpress on this the 19th day of August 2015:

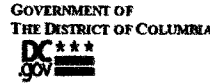
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# NOTICE

**TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT ("MPD"), 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. 1533, PERB CASE NO. 10-U-14(R).**

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

**WE WILL** cease and desist from violating D.C. Code § 1-617.04, et seq., by the actions and conduct set forth in Slip Opinion No. 1533.

**WE WILL** cease and desist from interfering, restraining, or coercing employees in the exercise of rights guaranteed by the Labor-Management subchapter of the Comprehensive Merit Personnel Act ("CMPA").

**WE WILL NOT**, in any like or related manner, interfere, restrain or coerce employees in their exercise of rights guaranteed by the Labor-Management subchapter of the CMPA.

**WE WILL NOT**, in any like or related manner, discipline Fraternal Order of Police/Metropolitan Police Department Labor Committee officials for engaging in protected union representational activities and speech when they are acting in a representational capacity.

District of Columbia 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 compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 1100 4<sup>th</sup> Street, SW, Suite E630; Washington, D.C. 20024. Phone: (202) 727-1822.

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

July 20, 2015