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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. 19-E-06
Petitioner	)	
v.	)	Opinion No.1728
	)	
Metropolitan Police Department	)	
	)	
Respondent	)	
	)	

**DECISION AND ORDER**

**I. Introduction**

On August 21, 2019, pursuant to Board Rule 560.1, the Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP) filed a Petition for Enforcement. The FOP requests enforcement of PERB Case No. 17-U-26, Opinion 1651 (Opinion 1651).<sup>1</sup> FOP alleges that the District of Columbia Metropolitan Police Department (MPD) has failed to comply with Opinion 1651. MPD opposes the Petition for Enforcement because it maintains that the initial disciplinary action was correct, but it does not contest the material facts of the Petition. The uncontested facts establish FOP’s entitlement to relief; thus, the Petition for Enforcement is granted.

**II. Opinion 1651 Background**

On April 8, 2016, an Arbitrator issued an award, which reversed the termination of a Grievant represented by FOP. The award reduced the Grievant’s termination to a 35-day suspension and ordered reinstatement. The Arbitrator retained jurisdiction over the question of attorney fees. On January 18, 2017, the Arbitrator issued an award, directing MPD to pay FOP’s attorney fees and cost. MPD did not file an arbitration review request of either award.

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<sup>1</sup> *FOP/MPD Labor Comm. v. MPD*, 65 D.C. Reg. 3306, Slip Op. No. 1651, PERB Case Nos. 17-U-26, 18-U-04, and 18-U-06 (2018). *FOP/MPD Labor Comm v. MPD*, 65 D.C. Reg. 6430, Slip Op. No. 1661, PERB Case No. 17-U-26 (2018).

On May 5, 2017, FOP filed an Unfair Labor Practice Complaint alleging non-compliance with the arbitration awards. On January 31, 2018, the Board found that MPD committed an unfair labor practice by failing to comply with both arbitration awards.<sup>2</sup> MPD requested reconsideration of the Board's decision. The Board denied the request for reconsideration on March 27, 2018.<sup>3</sup>

Thereafter, MPD filed a Petition for Review with the Superior Court of the District of Columbia. On March 12, 2019, the Superior Court of the District of Columbia affirmed the Board's order.<sup>4</sup> MPD did not appeal the decision.<sup>5</sup>

### **III. FOP's Entitlement to Relief**

FOP contends that MPD has failed to comply with Opinion 1651 by refusing to reinstate the Grievant or otherwise comply with the arbitration awards.

The elements for granting a petition for enforcement are present herein.<sup>6</sup> FOP prevailed at arbitration. The Board issued Opinion 1651, finding that MPD committed an unfair labor practice by failing to comply with the arbitration awards. MPD appealed to the Superior Court of the District of Columbia, which denied MPD's appeal.

FOP filed the instant Petition for Enforcement. MPD's answer does not dispute the material facts.<sup>7</sup> Despite the undisputed validity of the awards and the Board's order, MPD has refused to comply with the arbitration awards and has refused to reinstate the Grievant.<sup>8</sup>

MPD maintains an argument that the disciplinary action was appropriate, this argument was considered and rejected and thus only presents a mere disagreement with the arbitrator's decisions.<sup>9</sup> MPD's failure to comply is not based on a genuine dispute over the terms of the awards but is rather a simple refusal to comply. It is undisputed that the Board's order became final and that MPD did not comply.

The Board has held, "When a party fails or refuses to implement an arbitration award where there is no dispute over its terms, such conduct constitutes a failure to bargain in good

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<sup>2</sup> *FOP/MPD Labor Comm. v. MPD*, 65 D.C. Reg. 3306, Slip Op. No. 1651 at 3-4, PERB Case Nos. 17-U-26, 18-U-04, and 18-U-06 (2018).

<sup>3</sup> *FOP/MPD Labor Comm v. MPD*, 65 D.C. Reg. 6430, Slip Op. No. 1661, PERB Case No. 17-U-26 (2018).

<sup>4</sup> Pet. Ex. 5.

<sup>5</sup> Res. Ex. 1.

<sup>6</sup> *FOP/MPD Labor Comm. ex rel. Fowler v. MPD*, 65 D.C. Reg. 12487, Slip Op. No. 1681, PERB Case No. 18-E-02 (2018); *FOP/MPD Labor Comm. ex rel. Rosario v. MPD*, Slip Op. No. 1682, PERB Case No. 18-E-03 (2018).

<sup>7</sup> Res. Answer ¶¶ 7-11.

<sup>8</sup> Res. Ex. 1. ("The Department's position is that it will not reinstate these individuals. . ."). Also, MPD failed to comply with the requirement that it inform the Board within fourteen (14) days of posting notices as required in Opinion 1651.

<sup>9</sup> *Renee Jackson v. Teamsters Local 639*, 63 D.C. Reg. 10694, Slip Op. 1581, PERB Case No. 14-S-02 (2016).

faith and, thus, an unfair labor practice.”<sup>10</sup> Therefore, the Board will proceed with enforcement of this action. The Petition for Enforcement is granted. The Board will seek judicial enforcement of its Decision and Order in Opinion 1651, as provided under D.C. Official Code § 1-617.13(b).

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Fraternal Order of Police/Metropolitan Police Department Labor Committee's Petition for Enforcement is granted.
2. Within ten (10) days from the issuance of this Decision and Order, the Metropolitan Police Department shall fully comply with the terms of the arbitration awards, if it has not already done so, and shall notify the Public Employee Relations Board in writing that it has complied.
3. The Board shall proceed with enforcement of PERB Case 17-U-26, Opinion No. 1651, pursuant to §§ 1-605.02(16) and 1-617.13(b) of the D.C. Official Code, if full compliance with PERB Case 17-U-26 is not made within (10) ten days of the issuance of this decision and order.
4. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By vote of Board Chairperson Charles Murphy, Members Douglas Warshof, and Mary Anne Gibbons

Washington, D.C.

October 17, 2019

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<sup>10</sup> *FOP/MPD Labor Comm. v. MPD*, 63 D.C. Reg. 14055, Slip Op. No. 1592, PERB Case No. 11-E-02 (2016). See *D.C. Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 997 A.2d 65, 79 (D.C. 2010).

**Certificate of Service**

This is to certify that the attached Decision and Order in PERB Case Nos. 19-E-06, Opinion No. 1728 was sent by File and ServeXpress to the following parties on this the 18th day of October 2019.

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/s/

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