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

In the Matter of:	)	
	)	
Fraternal Order of Police /	)	PERB Case No. 13-U-35
Metropolitan Police Department	)	
Labor Committee	)	Opinion No. 1538
Petitioner,	)	
	)	
v.	)	Motion for Reconsideration
	)	
District of Columbia	)	
Board of Ethics and Government	)	
Accountability	)	
Respondent.	)	

**DECISION AND ORDER**

**I. Statement of the Case**

The above-captioned matter is before the Board on a Motion for Reconsideration (“Motion”) by the Fraternal Order of Police/Metropolitan Police Department (“FOP”). The Respondent requests that the Board reconsider and clarify the decision issued by the Executive Director on June 10, 2015, dismissing with prejudice its unfair labor practice charge against the District of Columbia Board of Ethics and Government Accountability (“BEGA”). In the dismissal letter, the Executive Director found that FOP lacked standing to bring an unfair labor practice complaint against BEGA because there is no privity of contract between the parties. For the reasons stated below, the Board denies the Motion for Reconsideration.

**II. Background**

On February 13, 2013, the District of Columbia’s Ethics Act was modified by the Government Accountability Emergency Amendment Act of 2013 (the “Act”).<sup>1</sup> The Act instituted measures that can be used by BEGA to carry out its statutory purposes. These measures included the authority to investigate ethics violations, hold hearings, and assess civil penalties for violations of the Code of Conduct.<sup>2</sup> On March 5, 2013, FOP contacted BEGA requesting a meeting to discuss how the new policies would be administered to ensure

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<sup>1</sup> MFR at 1.

<sup>2</sup> See D.C. Official Code §§ 1-1162.12-14 and 21.

compliance with the provisions of the Labor Agreement between FOP and the Metropolitan Police Department (“MPD”).<sup>3</sup> On April 26, 2013, FOP sent BEGA a proposed Memorandum of Understanding (“MOU”) requesting impact and effects bargaining over the Act and how it would be administered to FOP members.<sup>4</sup> After a third letter from FOP to BEGA on June 3, 2013, BEGA responded on June 17, 2013, that BEGA was under no obligation to bargain with FOP.<sup>5</sup>

On June 28, 2013, FOP filed the instant Unfair Labor Practice Complaint claiming that BEGA interfered with the collectively bargained for rights of the members of FOP and violated D.C. Official Code §§ 1-617.04(a)(1) and (5) by refusing to bargain in good faith with FOP over the impact and implementation<sup>6</sup> of the Act, despite repeated requests by FOP.<sup>7</sup> The Board scheduled the case for mediation to occur on April 13, 2015. However, on April 10, 2015, the Board canceled the mediation and issued an Order to Show Cause for FOP to demonstrate why the case should not be dismissed pursuant to *FOP/MPD Labor Committee v. OUC and OLRCB*, 62 D.C. Reg. 2902, Slip Op. No. 1505, PERB Case No. 13-U-10 (2014) (hereinafter “Slip Op. No. 1505”).<sup>8</sup> After a review of FOP’s response, on June 10, 2015, the Executive Director dismissed FOP’s Complaint for lack of standing.<sup>9</sup> On July 7, 2013, FOP filed this motion for reconsideration.

### III. Analysis

#### A. The Standard for a Motion for Reconsideration

The Board has consistently held that it will deny motions for reconsideration that are based upon mere disagreement with the initial decision or which do not provide a statutory basis for reversal.<sup>10</sup> Moreover, PERB will uphold an Executive Director’s decision where it is reasonable and supported by PERB precedent.<sup>11</sup>

#### B. The Holding in Slip Op. No. 1505

In Slip Op. No. 1505, FOP filed a complaint against OUC and OLRCB alleging that the Respondents committed an unfair labor practice when they refused to produce information

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<sup>3</sup> Complaint at 3.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 4.

<sup>6</sup> While the Complaint refers to impact and implementation bargaining, PERB case law consistently refers to the right as impact and effects bargaining. See, for example, *AFGE, Local 383 v. D.C. Youth Rehabilitation Services*, 61 D.C. Reg. 1544, Slip Op. No. 1449, PERB Case No. 13-U-06 (2014).

<sup>7</sup> Complaint at 5.

<sup>8</sup> See also *FOP/MPD Labor Committee v. D.C. PERB and OUC*, Civ. Case No. 2013 CA 002120 P(MPA) (D.C. Super. Ct. Aug. 21, 2014).

<sup>9</sup> PERB finds that the dismissal letter is clear that the Complaint was dismissed for lack of standing. There is one sentence where the letter states that FOP “was seeking information.” This is in error. However, the rest of the dismissal makes it clear that FOP’s original Complaint sought impact and effects bargaining.

<sup>10</sup> See *AFGE, Local 1000 v. Dep’t of Emp. Services*, 61 D.C. Reg. 9776, Slip Op. No. 1486, PERB Case No. 13-U-15 (2014).

<sup>11</sup> *DCPS and CFSA v. AFSCME, Dist. Council 20, Local 2921 and WTU Local 6*, 60 D.C. Reg. 16222, Slip Op. No. 1429, PERB Case No. 12-N-03 (2013).

requested by FOP under D.C. Official Code §§ 1-617.04(a)(1) and (5) and Article 10 of FOP's collective bargaining agreement with MPD. PERB ruled in that case that OUC was not under any obligation to produce information under MPD's and FOP's collective bargaining agreement because it was not a signatory to that agreement. PERB went on to find that OUC was not obligated under D.C. Official Code §§ 1-617.04(a)(1) and (5) to provide the information because the statutory duty to provide information, was imposed by the collective bargaining agreement.

FOP uses dictum from Slip Op. No. 1505 to stand for the proposition that statutory rights "*apply to District agencies regardless of their respective agreements.*"<sup>12</sup> FOP's reliance on this small section of text is misplaced as that was not the holding of that case. The entire portion of the applicable text in Slip Op. No. 1505 states:

While certain statutory rights (i.e. Weingarten rights) apply to all District agencies regardless of their respective agreements, the obligation to produce information is imposed by the collective bargaining agreement, not by a statute.<sup>13</sup>

In analyzing just the statutory claim in that case, PERB held that FOP was not the "exclusive representative" of any employees of OUC as required by the express language of D.C. Official Code § 1-617.04(a)(5). Further, none of OUC's employees had chosen FOP to be their representative as required by the stated language of PERB's holding in *AFGE, Local 2725 v. D.C. Dep't of Health*, 59 D.C. Reg. 6003, Slip Op. No. 1003 at p. 4-5, PERB Case No. 09-U-65 (2009).

In its Motion for Reconsideration, FOP claims that it is not seeking to enforce contractual rights, as was the case in Slip Op. No. 1505, but is seeking to enforce the statutory rights as cited in the dictum of Slip Op. No. 1505. FOP argues that, because the Board stated that certain statutory rights apply to all District agencies, the instant complaint should not be dismissed because the rights at issue here are those based in statute. In its complaint, the statutory rights that FOP believes have been violated are those found in D.C. Official Code § 1-617.04(a)(5).<sup>14</sup>

D.C. Official Code § 1-617.04(a)(5) prohibits the District, its agents and representatives from refusing to bargain collectively in good faith with the exclusive representative of its employees. As stated in the Executive Director's dismissal of this action, FOP is not the exclusive representative of any employees at BEGA as required by the express language in § 1-617.04(a)(5). Therefore, BEGA is not under any statutory obligation to bargain collectively with FOP.

Further, FOP seeks to bargain over the impact and effects of the Act<sup>15</sup> without the main tool; a collective bargaining relationship. FOP's Complaint bears this out by stating that "BEGA also interfered with the collectively bargained for rights of the members of the D.C. Police Union,

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<sup>12</sup> Motion at 6 (emphasis in original).

<sup>13</sup> Slip Op. No. 1505 at p. 6.

<sup>14</sup> Complaint at 5.

<sup>15</sup> *Id.*

and violated D.C. Code §1-617.04(a), by refusing to implement the provisions of the Labor Agreement, entered into by the District of Columbia, that govern investigations and penalties or discipline.”<sup>16</sup> In that statement, FOP is correct to some extent. The rights that FOP seeks to enforce – the right to engage in impact and effects bargaining - are those that were “collective[ly] bargained for” in the collective bargaining agreement by the exclusive representative. However, this argument fails because the collective bargaining agreement and the rights that have been bargained for are with MPD, not BEGA.

Moreover, the Act is administered under statute by BEGA. BEGA is not in an employee/employer relationship with any FOP members and is therefore incapable of disciplining or terminating any FOP members. The Act does not give BEGA that type of authority. The Act empowers BEGA to enforce its statutory purpose by investigating, holding hearings, and if necessary, assessing administrative penalties.<sup>17</sup>

#### **IV. Conclusion**

The Board has consistently held that it will deny motions for reconsideration that are based upon mere disagreement with the initial decision or which do not provide a statutory basis for reversal. Absent authority which compels reversal, PERB will not overturn its initial decision. In the case at hand, FOP has presented no authority that would compel reversal. Because the arguments made in the Motion for Reconsideration are the same arguments made in FOP’s previous pleadings, the Motion is nothing more than a disagreement with the Executive Director’s decision to dismiss the case.

For these reasons and pursuant to the authorities cited herein, FOP’s Motion for Reconsideration is hereby DENIED.

#### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The Motion for Reconsideration is DENIED.
2. The Complaint is DISMISSED with prejudice.
3. Pursuant to PERB 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 Members Keith Washington, Ann Hoffman, and Yvonne Dixon.

Washington, D.C.

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<sup>16</sup> *Id.* at 6.

<sup>17</sup> Indeed, it is conceivable that any District employee who violates the Act could be subject to both administrative penalties from BEGA as well as discipline from the employing agency.

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 13-U-35, Op. No. 1538 was transmitted by File & ServeXpress to the following parties on this the 26<sup>th</sup> day of August, 2015.

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