

in violation of D.C. Code § 1-617.04(a); Respondents are ordered to cease and desist from their interference and retaliatory actions against the FOP; Respondents are to conspicuously post no less than (2) notices of their violations and PERB's Order in each MPD building; Respondent is to impose discipline against the MPD members found to have engaged in unfair labor practices consistent with its disciplinary requirements.

(Decision at 6). In addition, the Board found that there was a factual dispute regarding the subsequent investigation, and ordered that those matters be referred to a hearing examiner. *Id.*

On December 6, 2011, MPD filed a Motion for Reconsideration of the Board's decision that MPD committed an unfair labor practice. On December 19, 2011, FOP filed an Opposition to Respondent's Motion for Reconsideration.

II. Analysis

Board Rule 559.2 states: "The Board's Decision and Order shall not become final if any party files a motion for reconsideration within ten (10) days after issuance of the decision, or if the Board reopens the case on its own motion within ten (10) days after issuance of the decision, unless the order specifies otherwise." MPD filed a timely Motion for Reconsideration; in the course of reviewing the Decision on MPD's Motion, however, the Board has determined that it lacked jurisdiction to determine whether an unfair labor practice had occurred when the sergeant sent the email.

On March 15, 2011, the sergeant sent the email in question. Notwithstanding, FOP did not file the present unfair labor practice complaint until September 14, 2011.² Board Rule 520.4 states: "Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred." Pursuant to Board Rule 520.4, the Board only has authority to review unfair labor practice allegations that took place during the 120 days preceding the filing of an unfair labor practice complaint. Further, the Board has held that Rule 520.4 is jurisdictional and mandatory. *See Hoggard v. D.C. Public Schools and AFSCME Council 20, Local 1959*, 43 D.C. Reg. 1297, Slip Op. No. 352, PERB Case No. 93-U-10 (1993), *aff'd sub nom., Hoggard v. Public Employee Relations Board*, MPA-93-33 (D.C. Super. Ct. 1994), *aff'd*, 655 A.2d 320 (D.C. 1995); *see also Public Employee Relations Board v. D.C. Metropolitan Police Department*, 593 A.2d 641 (D.C. 1991). In short, the Board does not have discretion to make exceptions for extending the deadline for initiating an action. *Hoggard, Slip Op. No. 352*. Thus, the Board did not have jurisdiction to decide the issue of whether the March 15, 2011, email constituted an unfair labor practice.

Even though MPD's Motion did not argue that the Board lacked jurisdiction, the Board

² Prior to the filing of the present case, in PERB Case No. 11-U-38, FOP filed a timely unfair labor practice complaint against MPD under D.C. Code § 1-617.04(a) regarding the sergeant's March 15, 2011, email. *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department*, Slip Op. No. 1370, PERB Case No. 11-U-38 (2013). Moreover, FOP filed an additional unfair labor practice complaint against the sergeant under D.C. Code § 1-617.04(b). *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department*, Slip Op. No. 1371, PERB Case No. 11-U-43 (2013).

has the authority to raise jurisdiction before a Decision and Order becomes final. As the District of Columbia Court of Appeals has stated, parties "cannot waive subject matter jurisdiction by their conduct or confer it ... and the absence of jurisdiction can be raised at any time." *District of Columbia v. American Federation of Government Employees, Local 1403*, 19 A.3d 764, 766 (D.C. 2011) (citing *Chase v. Pub. Defender Serv.*, 956 A.2d 67, 75 (D.C.2008) and *Customers Parking, Inc. v. District of Columbia*, 562 A.2d 651, 654 (D.C.1989)). Furthermore, "[l]ack of jurisdiction may be raised at any time. Whenever it affirmatively appears that the jurisdiction fails, the objection may be raised by the parties or the court itself." *In re Estate of Dapolito*, 331 A.2d 327, 328 (D.C.1975) (quoting *Laughlin v. Cummings*, 105 F.2d 71, 72 (D.C. Cir. 1939)). Therefore, for lack of jurisdiction, the Board vacates, in part, Opinion No. 1227, regarding its finding that the March 15, 2011, email constituted an unfair labor practice by MPD.

As the Board did not have jurisdiction to decide whether the sergeant's email constituted an unfair labor practice complaint, it will not address the merits of MPD's Motion for Reconsideration, as it has been rendered moot by the Board's lack of jurisdiction.

III. Conclusion

The Board's Decision in Opinion No. 1227, finding that the March 15, 2011, email constituted an unfair labor practice by MPD, is vacated by the Board. The Board's Order for remedies related to the vacated Decision will be vacated. The remaining matters in Opinion No. 1227 are best determined by an establishment of a factual record through an unfair labor practice hearing. Prior to the hearing, the Parties will attend mandatory mediation, pursuant to Board Rule 558.4.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Decision in Opinion No. 1227 that MPD committed an unfair labor practice is vacated for lack of jurisdiction.
2. The Order in Opinion No. 1227 for remedies to FOP related to the Decision that MPD committed an unfair labor practice are vacated.
3. The unfair labor practice claim by FOP, regarding MPD's investigation into the March 15, 2011, email will be referred to a hearing examiner for an unfair labor practice hearing. That dispute will be first submitted to the Board's mediation program to allow the parties the opportunity to reach a settlement by negotiating with one another with the assistance of a Board appointed mediator.
4. The parties will be contacted to schedule the mandatory mediation within seven (7) days of the issuance of this Decision and Order.
5. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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

March 18, 2013

CERTIFICATE OF SERVICE

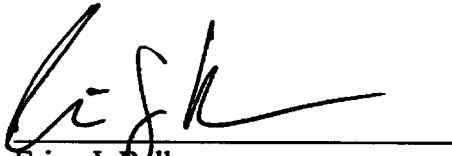
This is to certify that the attached Decision and Order was transmitted to the following parties on this the 18th day of March, 2013.

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