

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:)	
)	
Fraternal Order of Police/Metropolitan)	
Police Department Labor Committee)	
(on behalf of Duane Fowler and Hiram)	
Rosario))	PERB Case Nos. 18-U-16 and 18-U-25
)	
Petitioner/Complainant)	
)	Opinion No. 1683
v.)	
)	
Metropolitan Police Department)	
)	
Respondent)	
_____)	

DECISION AND ORDER

These cases involve two arbitration awards that the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“Union”) obtained against the Metropolitan Police Department (“MPD”). For each award, the Union has filed an unfair labor practice complaint alleging noncompliance with the award. The two unfair labor practice cases are consolidated for decision herein.¹ As the uncontested facts establish the Union’s entitlement to relief under the Comprehensive Merit Personnel Act, the unfair labor practice complaints are granted.

¹ The Union named the chief of police as a respondent in both unfair labor practice cases. The respondents requested that the chief of police be dismissed, claiming that a suit against an official in his official capacity should be treated as a suit against the District. The Board has removed his name from the caption consistent with controlling precedent. See *FOP/MPD Labor Comm. v. D.C. Pub. Emp. Relations Bd.*, Civ. Case No. 2011 CA 007396 P(MPA) (D.C. Super. Ct. Jan 9, 2013); *FOP/MPD Labor Comm. and MPD*, 59 D.C. Reg. 6579, Slip Op. No. 1118 at p. 5, PERB Case No. 08-U-19 (2011).

I. Statement of the Cases

A. The Fowler Case, 18-U-16

On January 22, 2018, the Union filed an unfair labor practice complaint, Case No. 18-U-16, alleging noncompliance with an arbitration award in which Officer Duane Fowler was the grievant. MPD filed an answer. The pleadings establish the following uncontested facts.

Officer Duane Fowler was discharged from his employment with MPD on July 30, 2010. Following Officer Fowler's discharge, the Union brought a grievance on his behalf. The grievance was denied. On August 24, 2010, the Union invoked arbitration on behalf of Officer Fowler. The arbitration was held in 2016. The Union and MPD both agreed upon the selection of Roger P. Kaplan to arbitrate the discharge of Officer Fowler.

On March 24, 2017, Arbitrator Kaplan issued an award in writing. The Department states that the award speaks for itself. The award stated, "The Grievant shall be reinstated forthwith. The Grievant is entitled to back pay and other lost benefits for the period he was wrongfully terminated."

MPD filed an arbitration review request. On August 17, 2017, the Board issued a Decision and Order sustaining the award in PERB Case No. 17-A-06, Slip Op. No. 1635.² MPD did not exercise its right to file a petition for review in D.C. Superior Court and has not reinstated Officer Fowler. In addition, MPD sent an e-mail to the Union that said "[t]he Chief will not be reinstating Officer Fowler."

B. The Rosario Case, 18-U-25

On March 1, 2018, the Union filed an unfair labor practice complaint, Case No. 18-U-25, alleging noncompliance with an arbitration award in which Officer Hiram Rosario was the grievant. The Department filed an answer. The pleadings establish the following uncontested facts.

On April 15, 2005, Officer Hiram Rosario was served with a notice of proposed adverse action for his removal from the Master Patrol Officer Program. After an adverse action hearing and an appeal to the chief of police, Officer Rosario was removed from the program. On his behalf, the Union demanded arbitration.

On or about October 17, 2016, Arbitrator Kathleen Miller issued an Opinion and Award regarding Officer Rosario. The award stated, "The Agency is directed to reinstate Grievant to his former position in the Master Officer Patrol Program and to make him whole for any loss of pay or other benefits which resulted from his removal from that Program. The MPD also is directed to note this revocation of demotion in Grievant's personnel file."

² *MPD v. FOP/MPD Labor Comm. (on behalf of Fowler)*, 64 D.C. Reg. 10115, Slip Op. No. 1635, PERB Case No. 17-A-06 (2017).

On April 4, 2017 the Board denied MPD's Arbitration Review Request in PERB Case No. 17-A-01, Slip Op. No. 1615.³ On May 4, 2017, the Department filed a petition for review of the Board's denial of the MPD's arbitration review request in D.C. Superior Court. Subsequently, MPD filed a praecipe withdrawing this petition on November 2, 2017. The D.C. Superior Court dismissed the case on November 3, 2017.

MPD has not reinstated Officer Rosario to the Master Patrol Officer Program or made him whole as directed by the arbitrator.

II. Discussion

When a party fails or refuses to implement an award where no dispute over its terms exists, such conduct is a failure to bargain in good faith in violation of D.C. Official Code 1-617.04(1)(1) and (5).⁴

The elements of an unfair labor practice are present in the *Fowler* and the *Rosario* cases. In both cases the Department appealed to the Board from the arbitrator's award. The Board affirmed the awards in Slip Opinion Nos. 1615 and 1635. It is undisputed that the Board's orders affirming the awards in question here became final and that MPD did not effectively seek review of the orders of the Board, nor comply with the Awards. No dispute over the terms of the Awards has been raised and no reason for noncompliance has been suggested. Therefore, the unfair labor practice complaints are granted.

ORDER

IT IS HEREBY ORDERED THAT:

1. PERB Case Nos. 18-U-16 and 18-U-25 are consolidated.
2. The Fraternal Order of Police/Metropolitan Police Department Labor Committee's unfair labor practice complaints are granted.
3. The 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 awards. The Metropolitan Police Department shall immediately comply with the two awards.
4. The Metropolitan Police Department shall conspicuously post, where notices to employees are normally posted, a notice that the Board will furnish to the

³ *MPD v. FOP/MPD Labor Comm. (on behalf of Rosario)*, 64 D.C. Reg. 4893, Slip Op. No. 1615, PERB Case No. 17-A-01 (2017).

⁴ *E.g., Washington Teachers' Union Local No. #6 and DCPS*, 64 D.C. Reg. 4885, Slip Op. No. 1611 at 2, PERB Case No. 16-U-32 (2017).

Department. The notice shall be posted within fourteen (14) days from the Department's receipt of the notice and shall remain posted for thirty (30) consecutive days.

5. Within fourteen (14) days from the date of the receipt of the notice, the Metropolitan Police Department shall notify the Public Employee Relations Board in writing that the notice has been posted according to this Decision and Order and on what date the notice was posted.
6. 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, Members Ann Hoffman, Barbara Somson, Douglas Warshof, and Mary Anne Gibbons

Washington, D.C.

September 27, 2018

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in Case Nos. 18-U-16 and 18-U-25 was sent by File & ServeXpress to the following parties on this the 27th day of September 2018.

Nicole Lynch
Metropolitan Police Department
300 Indiana Ave. NW, Room 4126
Washington, DC 20001

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/s/ Sheryl V. Harrington
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NOTICE

TO ALL EMPLOYEES OF THE METROPOLITAN POLICE DEPARTMENT, THIS NOTICE IS POSTED BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1683, PERB CASE NOS. 18-U-16 and 18-U-25 (Sept. 27, 2018).

WE HEREBY NOTIFY our employees that the Public Employee Relations Board has found that we violated the law and has ordered us to post this notice.

WE SHALL cease and desist from violating section 1-617.04(a) (1) and (5) of the D.C. Official Code by the actions and conduct set forth in Slip Opinion No. 1683.

WE SHALL cease and desist from refusing to bargain in good faith by failing to comply with the arbitration awards obtained by Duane Fowler and Hiram Rosario.

Metropolitan Police Department

Date: _____ By: _____
Chief of Police or Designee

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 4th Street SW, Suite E630; Washington, D.C. 20024. Phone: (202) 727-1822.

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

September 27, 2018