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

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In the Matter of:)	
)	
American Federation of State, County and)	
Municipal Employees,)	
District Council 20, Local 2743)	PERB Case No. 24-E-02
)	
Complainant)	
)	Opinion No. 1902
v.)	
)	
District of Columbia Department of)	
Insurance, Securities and Banking)	
)	
Respondent)	
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DECISION AND ORDER

I. Statement of the Case

On August 16, 2024, the American Federation of State, County and Municipal Employees, Local 2743 (AFSCME) filed a petition for enforcement (Petition). Pursuant to PERB Rule 560.1, AFSCME requests enforcement of PERB Case No. 23-U-06, Opinion No. 1864 (Opinion 1864).¹ AFSCME alleges that the District of Columbia Department of Insurance, Securities and Banking (DISB) has failed to comply with Opinion 1864.² DISB opposes the Petition, asserting that the Board’s order in Opinion 1864 is *ultra vires* and that DISB is statutorily prohibited from full compliance.³ For the following reasons, the Petition is granted.

II. Background

The AFSCME Vice-President (Complainant), an employee at DISB, repeatedly engaged in protected union activity, including testifying at District of Columbia Council hearings and filing unfair labor practice complaints against DISB.⁴ On October 28, 2022, the Complainant submitted

¹ Petition at 1.
² Petition at 3.
³ Answer at 8-9.
⁴ AFSCME, *District Council 20, Local 2743 v. DISB*, 71 D.C. Reg. 4050, Slip Op. No. 1864 at 2, PERB Case No. 23-U-06 (2024). In one of these cases, PERB Case No. 21-U-17, AFSCME submitted an affidavit by the

a memorandum to the Compliance Analysis Division Director (CAD Director) requesting reevaluation of the Complainant's preliminary FY22 Performance Evaluation and a seven (7) percent Performance Allowance, as defined by the District Personnel Manual (DPM) Chapter 11B-59.⁵ The Complainant further requested that any denial of this Performance Allowance be included in his personnel file along with a written rationale for the denial.⁶ On November 4, 2022, the Complainant reiterated this request for a rationale for denying him a Performance Allowance in an email to multiple DISB management officials, as well as highlighting his high key performance indicators.⁷ On November 22, 2022, the Complainant filed a grievance at steps 1 and 2 regarding DISB's failure to grant him a Performance Allowance, alleging that DISB had violated D.C. Official Code § 1-617.04 and Article 23 of the parties' collective bargaining agreement (CBA).⁸

On September 20, 2023, PERB held a hearing on the matter. On January 2, 2024, the Hearing Examiner issued a report and recommendations (Report) concluding that DISB had committed an unfair labor practice by denying the Complainant a Performance Allowance in retaliation for his protected union activity.⁹ The Hearing Examiner, out of concern that DISB's unfair labor practices would taint the typical procedure for recommending an employee for a Performance Allowance, further recommended that the Board order DISB to implement the requested Performance Allowance, including interest.¹⁰ On March 21, 2024, the Board affirmed the Hearing Examiner's Report, finding that DISB had committed an unfair labor practice against the Complainant and ordering the agency to make the Complainant whole by paying him the requested seven (7) percent Performance Allowance bonus for FY22 and four (4) percent interest from the date the bonus should have been paid.¹¹

On April 5, 2024, DISB filed a motion for reconsideration (Motion) of the Board's decision in Opinion 1864. DISB argued that: (1) the ordered remedy was contrary to law; and (2) the Board

Complainant's former supervisor asserting that the Deputy Commissioner had told her that the Complainant spent too much "Agency time" having union-related conversations, as well as that DISB management "were tired of [the Complainant] and that he has to go." *AFSCME, District Council 20, Local 2743 v. DISB*, Slip Op. No. 1864 at 3. The parties in Opinion 1864 stipulated the affidavit into evidence. *AFSCME, District Council 20, Local 2743 v. DISB*, Slip Op. No. 1864 at 3.

⁵ *AFSCME, District Council 20, Local 2743 v. DISB*, Slip Op. No. 1864 at 2.

⁶ *AFSCME, District Council 20, Local 2743 v. DISB*, Slip Op. No. 1864 at 2.

⁷ *AFSCME, District Council 20, Local 2743 v. DISB*, Slip Op. No. 1864 at 2-3.

⁸ *AFSCME, District Council 20, Local 2743 v. DISB*, Slip Op. No. 1864 at 3. The Complainant moved the Grievance to step 3 on December 5, 2022. On December 19, 2022, the DISB Deputy Commissioner responded via letter asserting that the Grievance was deficient and therefore not in line with the requirements of the parties' CBA. The Deputy Commissioner further asserted that the step 3 Grievance was both untimely, as the Complainant had not met "settlement effort" requirements of the CBA, and "not ripe and moot," as the Complainant's FY22 Performance Evaluation had not been finalized. The Deputy Commissioner stated that the Complainant had ten (10) days to correct the asserted deficiencies. On January 11, 2023, the Complainant moved the Grievance to step 4 and requested arbitration. On January 18, 2023, DISB denied the Grievance as untimely and vague. Moreover, DISB held that the grievance did not arise out of the parties' CBA, and that "the subject matter of performance allowance is non-arbitrable." *AFSCME, District Council 20, Local 2743 v. DISB*, Slip Op. No. 1864 at 3.

⁹ *AFSCME, District Council 20, Local 2743 v. DISB*, Slip Op. No. 1864 at 1, 5-6.

¹⁰ *AFSCME, District Council 20, Local 2743 v. DISB*, Slip Op. No. 1864 at 6.

¹¹ *AFSCME, District Council 20, Local 2743 v. DISB*, Slip Op. No. 1864 at 10. The Board further ordered DISB to post an attached Notice and notify the Board of its compliance with the order. *AFSCME, District Council 20, Local 2743 v. DISB*, Slip Op. No. 1864 at 10.

erred in finding that AFSCME had met its burden under the *Wright Line* test.¹² On June 26, 2024, the Board found that DISB's Motion consisted solely of new arguments that could have been, but were not, presented to the Hearing Examiner, and, therefore, had been waived by DISB.¹³ Consequently, the Board denied DISB's Motion. DISB did not appeal the Board's denial of its Motion to the D.C. Superior Court within thirty (30) days.

On August 16, 2024, AFSCME filed the instant Petition. AFSCME contends that DISB has failed to comply with Opinion 1864 in its entirety and requests that the Board: (1) recommend disciplinary action against multiple DISB management officials; and (2) seek enforcement in the Superior Court to compel DISB to comply with the Board's order in Opinion 1864.¹⁴

III. The Union's Entitlement to Relief

The elements for granting a petition for enforcement are present in the instant case. AFSCME prevailed in the original case before the Board. DISB filed a motion for reconsideration of Opinion 1864, which was denied in Opinion No. 1876 (Opinion 1876). DISB's arguments against the Petition constitute mere repetition of arguments from its Motion. DISB failed to appeal the denial of the Motion to the Superior Court but has still refused to comply with the Board's order. While DISB's Answer purports to deny facts asserted by the Petition, these denials are primarily semantic and do not amount to any genuine or material factual dispute regarding its failure to comply with the Board's order in Opinion 1864.

The Board has held that, when there is no genuine dispute over the terms of an arbitration award, a failure to comply with those terms is an unfair labor practice.¹⁵ The Board has applied that holding to the enforcement of orders in unfair labor practice cases.¹⁶ DISB's failure to comply with the Board's order in Opinion 1864, although purportedly because of a statutory prohibition on compliance, amounts to a flat refusal to comply with the Board's order. If DISB wished to genuinely dispute the legality of its compliance with the Board's order, the agency could have appealed the Board's denial of its Motion to the Superior Court.

It is undisputed that the Board's order reaffirming its decision in Opinion 1864 became final and that DISB did not comply with the order after an unsuccessful motion for reconsideration and no attempt to seek review with the Superior Court. Therefore, the Petition for Enforcement is granted. The Board will seek judicial enforcement of Opinion 1864 in its entirety, as provided by D.C. Official Code § 1-617.13(b). The Board will also seek costs and attorney fees incurred in seeking judicial enforcement of Opinion 1864. Further, the Board has considered AFSCME's

¹² *AFSCME, District Council 20, Local 2743 v. DISB*, 71 D.C. Reg. 10660, Slip Op. No. 1876 at 2, PERB Case No. 23-U-06(MFR) (2024).

¹³ *AFSCME, District Council 20, Local 2743 v. DISB*, Slip Op. No. 1876 at 5.

¹⁴ Petition at 4-5. The Complainant also reiterates the original order from Opinion 1864 in its prayer for relief. Petition at 5-6.

¹⁵ *FOP/MPD Labor Comm. v. MPD*, 68 D.C. Reg. 6740, Slip Op. No. 1790 at 2, PERB Case No. 21-E-08 (2021) (citing *AFGE, Local 2725, AFL-AO v. DCHA*, 46 D.C. Reg. 6278, Slip Op. No. 585 at 3, PERB Case Nos. 98-U-20, 99-U-05 and 99-U-12 (1999)).

¹⁶ *AFSCME, District Council 20, Local 2921, AFL-CIO v. DCPS*, 62 D.C. Reg. 5904, Slip Op. No. 1512 at 4, PERB Case No. 12-E-10 (2015).

request to recommend disciplinary action against multiple DISB management officials. The Board finds that such relief is not warranted at this time.

ORDER

IT IS HEREBY ORDERED THAT:

1. The American Federation of State, County and Municipal Employees, Local 2743's petition for enforcement is granted;
2. The American Federation of State, County and Municipal Employees, Local 2743's request for a recommendation of disciplinary action against Department of Insurance, Securities and Banking management officials is denied;
3. Within seven (7) days from the issuance of this Decision and Order, the Department of Insurance, Securities and Banking shall fully comply with the Board's order in Opinion No. 1864, if it has not already done so, and shall notify the Public Employee Relations Board in writing that it has complied;
4. The Board shall proceed with enforcement of Opinion 1864, pursuant to D.C. Official Code §§ 1-605.02(16) and 1-617.13(b), if full compliance with Opinion 1864 is not made and documented within seven (7) days of the issuance of this Decision and Order; and
5. 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 Douglas Warshof and Members Renee Bowser, Mary Anne Gibbons and Peter Winkler.

January 16, 2025

Washington, D.C.