

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 formal 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: )	
Tracy Hatton, )	
Complainant, )	PERB Case No. 95-U-02
and )	Opinion No. 458
Fraternal Order of Police )	
Department of Corrections )	
Labor Committee, )	
Respondent. )	
_____ )	

DECISION AND ORDER

The Board's Decision and Order on the Complainant's Unfair Labor Practice Complaint, Opinion No. 451, was issued on September 19, 1995. On September 29, 1995, Respondent FOP filed a Motion to modify the portion of the Board's Order concerning FOP's liability for Complainant's backpay. Thereafter, on October 17, 1995, Respondent FOP also filed with the District of Columbia Superior Court a "Petition for Review of Agency Decision", appealing the Board's Order. On October 26, 1995, FOP filed a second Motion requesting that the Board stay that part of its Order directing FOP to post the Notice attached to the Board's Order, until after the Superior Court has ruled on its Petition for Review. The Complainant filed oppositions to both Motions.

In the first Motion, FOP contends that the Board's Order concerning backpay is not consistent with the U.S. Supreme Court's Decisions in Vaca v. Sipes, 386 U.S. 171 (1967) and Bowen v. United States Postal Service, 459 U.S. 212 (1983). FOP takes issue with the following portion of the relief:

...FOP's liability for backpay, if awarded, shall run from, June 29, 1994, the date FOP's arbitration committee declined to arbitrate Complainant's grievance, to the date the grievance is reinstated.

FOP asserts that the holding of Vaca and Bowen limits a union's liability to the actual damage caused by the union. FOP contends that its liability should commence from the time an arbitration decision would have issued if Complainant's grievance was advanced to arbitration.

Under our Order in Opinion No. 451, FOP's liability would commence on June 29, 1994, the date FOP decided not to arbitrate Mr. Hatton's grievance, and run until the date the grievance is reinstated. This ruling is based on our adoption of the Hearing Examiner's determination that this time period represented the delay caused by FOP as a direct result of its violative conduct. We find nothing inconsistent in this determination with Vaca and Bowen.

Because of FOP's violation, there is no way to determine when an arbitration decision would have issued if the grievance had not been withdrawn. However, it is certainly clear that the arbitration process was delayed for the period of that withdrawal. Our Order proposes the cost of that delay on FOP.

With respect to FOP's Motion for a stay, there is no Board precedent nor does FOP provide a basis for granting such relief under the circumstances of this case. In view of the above, we hereby deny FOP's motions to modify and stay the Board's Order in Opinion No. 451.

ORDER

**IT IS HEREBY ORDERED THAT:**

The Fraternal Order of Police/Department of Corrections Labor Committee's (FOP) Motions for Modification and Stay of Order in Opinion No. 451 are denied.

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

December 22, 1995