Government of the District of Columbia

Public Employee Relations Board

In the Matter of:	)	
Michael P. Roney,	)	
Complainant,	)	PERB Case No. 15-U-03
	)	Opinion No. 1565
v.	)	
Clifford Lowery, AFGE 1975 President	)	
Respondent.	)	

DECISION AND ORDER

This case presents an unfair labor practice claim for breach of the duty of fair representation. The respondent failed to answer the complaint after being given several opportunities. The facts alleged by the complaint, which the respondent is deemed to have admitted, establish the unfair labor practice.

I. Statement of the Case

A. Pleadings

On October 29, 2014, Complainant Michael P. Roney ("Complainant" or "Roney"), a former employee of the D.C. Department of Transportation ("DOT"), acting *pro se*, personally delivered an unfair labor practice complaint to the offices of the Board during business hours in accordance with Board Rule 501.11. On November 12, 2014, the Executive Director sent Complainant a deficiency notice informing him that the complaint he filed lacked a certificate of service and a copy of the collective bargaining agreement. The notice gave Complainant until November 24, 2014, to cure those deficiencies. On November 21, 2014, Complainant filed an unfair labor practice complaint ("Complaint") that sufficiently addressed the cited deficiencies.[1]

[1] The Complaint contained a certificate of service, which certified contemporaneous service on the Respondent by e-mail on November 21, 2014. At the time, electronic mail was a permissible method of serving a complaint. *D.C. Child & Family Servs. Agency v. AFSCME Dist. Council 20, Local 241*, 62 D.C. Reg. 3565, Slip Op. No. 1408 at 6, PERB Case No. 14-A-08 (2015). *But see* Board R. 501.11(b) (2015) for requirements for initial pleadings filed on or after October 1, 2015. Exhibit J to the Complaint explains the Complainant's unsuccessful efforts to procure a copy

The Complaint names as the respondent Clifford Lowery, AFGE 1975 President ("Respondent" or "Lowery"). The Complainant served the Respondent with the Complaint on November 21, 2014.

Board Rule 520.6 requires an answer to be filed within fifteen days of service of the Complaint. Although not required by the Board's rules, the Executive Director twice notified the Respondent of the filing of the Complaint and gave him additional time to answer. The Executive Director sent the first such notice to the Respondent on January 21, 2015, by e-mail and File & ServeXpress, the Board's electronic filing and service program. The notice informed the Respondent that his answer would be due February 10, 2015. The Respondent did not file an answer by that date. Out of an abundance of caution, the Executive Director sent the Respondent a second notice by U.S. Mail and again by e-mail to the physical and e-mail addresses that the Respondent confirmed to a member of the Board's staff. The second notice was sent April 9, 2015. It enclosed the Complaint and informed the Respondent that he may file an answer no later than April 29, 2015. In between the two notifications, a representative of AFGE 1975 came to the Board's offices on April 8, 2015, and obtained a copy of the Complaint. Nonetheless, to date the Respondent has failed to file an answer.

As result of the Respondent's failure to answer the Complaint, he is "deemed to have admitted the material facts alleged in the complaint and to have waived a hearing."[2]

B. Undisputed Facts

The following are the material facts that the Complainant has alleged and that the Board deems admitted.

Complainant was employed by DOT as a civil engineer technician. Complainant sought the assistance of Respondent in disciplinary proceedings brought against him by DOT, but Respondent did not reply to any of Complainant's requests for his services. "This directly affected my chances of retaining my position negatively," Complainant states.[3] On January 10, 2012, DOT issued to Complainant a notice of its decision to remove him from his position.[4]

Subsequently, Respondent represented Complainant at a mediation on April 11, 2012. Respondent advised Complainant not to accept an offer to resign because he was certain he could

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of the collective bargaining agreement. As a policy matter, the Board does not require submission of a collective bargaining agreement when the parties do not have a bargaining relationship. *Mack v. F.O.P./Dep't of Corrs. Labor Comm.*, 46 D.C. Reg. 7609, Slip Op. No. 386 at 2 n.3, PERB Case No. 94-U-24 (1994). The Board obtained a copy of the collective bargaining agreement from DOT pursuant to Board Rules 500.15 and 520.8. The Board's staff had also requested the Respondent to provide a copy of the collective bargaining agreement, but he did not provide one despite stating that he would do so.

[2] Board R. 520.7.

[3] Complaint ¶ 1.

[4] Complaint ¶¶ 1-3, Ex. C.

win Complainant's case. Complainant did as he was advised and told the mediator that the relief he sought was to be returned to his position and to be made whole.[5]

Respondent informed Complainant that he would represent him in the subsequent appeal of his termination to the Office of Employee Appeals ("OEA").[6] On March 28, 2014, an administrative judge at OEA held a status conference on Complainant's appeal. Respondent represented Roney at the conference. The administrative judge orally gave DOT until April 25, 2014, to submit its brief and gave Roney until May 23, 2014, to submit his brief.[7] A written order to that effect was mailed to Roney and Lowery "as all correspondence concerning this matter has been."[8]

After Complainant repeatedly called Respondent and sent him an e-mail, the two met and discussed the content of the response they would submit to OEA. Respondent said he would prepare a letter, hand deliver it to OEA by May 23, and send Complainant a draft as well. Complainant did not hear back from Respondent after the meeting. Complainant assumed that Respondent had done as he had promised until Complainant received from OEA a "show cause order" dated June 3, 2014.[9] The show cause order issued by the OEA administrative judge stated that the employee's brief was due May 23, 2014, but had not been not filed. The administrative judge ordered the employee to submit a statement of good cause for his failure to file timely along with his brief on or before June 9, 2014.[10] After making telephone calls to Respondent and leaving messages that were not returned, Complainant e-mailed Respondent on June 4, 2014, attaching the show cause order and stating, "If you need an excuse just blame it on me."[11]

Respondent answered a call from Complainant on June 6, 2014, and said that he had been hospitalized the past week but was back from the hospital. Respondent promised to take care of the letter and to hand deliver it to OEA on time.[12]

On June 14, 2014, Respondent received OEA's Initial Decision.[13] The Initial Decision, issued June 12, 2014, stated, "To date, Employee has failed to respond to both the Post Status Conference Order and the Show Cause Order. The record is now closed."[14] That same day, Complainant called, texted, and e-mailed Respondent to no avail. Eleven days later Respondent took one of Complainant's calls. Complainant states, "I asked him if I was going to get another shot at my appeal, and he said yes. Of course this led me to believe that he was going to, or already had, file [*sic*] the Petition for Review, as allowed within 35 days of the Initial Decision."[15]

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[5] Complaint ¶ 4.
[6] Complaint ¶ 1.
[7] Complaint ¶ 5.
[8] Complaint ¶ 5; Complaint Ex. D.
[9] Complaint ¶ 5.
[10] Complaint Ex. E.
[11] Complaint Ex. F.
[12] Complaint ¶ 5.
[13] Complaint ¶ 5.
[14] Complaint Ex. G.
[15] Complaint ¶ 6.

On July 13, 2014, Complainant's case appeared on OEA's website as closed, and on that date Complainant tried to contact the Respondent by e-mail.[16] Complainant states, "Since time was getting close and Mr. Lowery's record of getting back to me was not good, I contacted AFGE['s] District 14 National Representative . . . [and] our shop steward. . . ."[17] The shop steward told Complainant that he spoke to Respondent about the case and Respondent said he was going to speak to the union's lawyers about it. That was the last response Complainant received from anyone connected with AFGE 1975 or District 14 despite numerous calls and e-mails. Complainant states that thereafter "time lapsed, case closed, and I could have taken other steps to be represented had I not been led to believe that the union had control of this matter."[18] OEA confirms that a petition for review was never filed in Complainant's appeal.[19]

II. Discussion

A. The complaint is timely as to only one of the alleged violations.

Complainant's original complaint was filed October 29, 2014.[20] Board Rule 520.4 provides that "[u]nfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred." One hundred twenty days before the Complaint was filed is July 1, 2014.

OEA's initial decision was issued June 12, 2014.[21] A petition for review may be filed within thirty-five days of issuance of the initial decision.[22] Complainant's claim based upon the failure to file a petition for review accrued on the last day on which Respondent could have filed a petition for review, [23] which was July 17, 2014. The Complaint was filed less than 120 days after that date. Therefore, the Complaint is timely with respect to Respondent's failure to file a petition for review, the latest alleged violation.

The earlier alleged violations, however, are not timely. Complainant argues in his "Statement on timeliness of Complaint," Exhibit I to his Complaint, that it was only after the expiration of the thirty-five days for filing a petition for review "that I realized something had gone wrong in the way Mr. Lowery handled my case." The period for filing a complaint commences when a complainant knew of or should have known of the acts giving rise to the violation[24] or, more specifically in this case, when the complainant knew or should have known that the union breached its duty of fair representation.[25] The facts set forth in the Complaint

[16] Complaint ¶6, Ex. H.
[17] Complaint ¶ 6.
[18] Complaint ¶ 6.
[19] *See* Board R. 520.8.
[20] "In the case of an individual acting *pro se* . . . a pleading shall not be considered filed with the Board unless it is personally delivered to the offices of the Board during business hours as defined in § 500.8." Board R. 501.11.
[21] Complaint Ex. G.
[22] Complaint ¶ 6; OEA R. 632.2.
[23] *See Wells v. Bottling Group, LLC*, 833 F. Supp. 2d 665, 670 (E.D. Ky. 2011).
[24] *Douglas v. AFGE Local 2725*, 60 D.C. Reg. 16483, Slip Op. No. 1437 at 6, PERB Case No. 13-U-12 (2013).
[25] *Demchik v. Gen. Motors Corp.*, 821 F.2d 102, 105 (2d Cir. 1982).

disclose that Complainant knew well before the expiration of the period for filing a petition for review that a number of things had gone wrong in the way Lowery was handling the case. Complainant knew no later than January 10, 2012, that despite Complainant's request Respondent did not represent him in DOT's internal disciplinary proceedings. Complainant knew no later than June 4, 2014, of Respondent's failure to file a brief with OEA as ordered. He knew on June 14, 2014, of Respondent's failure to comply with the show cause order. The Complaint is untimely as to these alleged violations because Complainant knew of them more than 120 days before the Complaint was filed.

B. The timely claim establishes a breach of the duty of fair representation.

1. Liability of Respondent

The Complaint asserts that Respondent violated D.C. Official Code § 1-617.04(b)(1), which states, "Employees, labor organizations, their agents, or representatives are prohibited from: (1) Interfering with, restraining, or coercing any employees or the District in the exercise of rights guaranteed by this subchapter. . . ." This provision "encompasses the right to be fairly represented by the labor organization that has been certified as the exclusive representative for the collective bargaining unit of which the employee is a part."[26] The duty of fair representation is derived from the authority of a single union to represent collectively all employees in the bargaining unit.[27]

Complaints filed by individuals acting *pro se* are to be construed liberally to determine whether a proper cause of action has been alleged.[28] Construed in that manner, the instant Complaint raises a claim for breach of the duty of fair representation by Respondent Clifford Lowery, AFGE 1975 President individually and acting in his official capacity as president of the local. The uncontested facts stated in the Complaint involve conduct of the Respondent taken in his official capacity and as an agent or representative of AFGE 1975..

The federal Labor Management Relations Act ("LMRA"), which is inapplicable to D.C. public employees,[29] does not permit money judgments against a labor organization to be enforced against any individual member or his assests.[30] In place of the LMRA, the Comprehensive Merit Personnel Act ("CMPA") is the exclusive remedy for a D.C. public employee who has a duty of fair representation claim.[31] In dismissing duty of fair representation claims brought in federal court against the Washington Teachers Union and individuals from the union, the U.S. District Court for the District of Columbia stated in *Younger v. D.C. Public Schools*:

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[26] *Hoggard v. AFSCME, Dist. Council 20, Local 1959*, 43 D.C. Reg. 2655, Slip Op. No. 356 at 2-3, PERB Case No. 93-U-10 (1993).
[27] *Price v. WMATA*, 41 A.3d 526, 530 n. 10 (D.C. 2012).
[28] *Beeton v. D.C. Dep't of Corrs.*, 45 D.C. Reg. 2078, 538 at 3 n.1, PERB Case No. 97-U-26 (1998).
[29] *Oskere v. Gage*, 698 F. Supp. 2d 209 (D.D.C. 2010).
[30] 29 U.S.C. § 185(b).
[31] *Oskere v. Gage*, 698 F. Supp. 2d at 211; *Cooper v. AFSCME Local 1033*, 656 A.2d 1141 (D.C. 1995)

> While the D.C. Code is not entirely clear as to whether duty of fair representation claims can be brought against individual Union representatives and agents, *see* D.C. Code § 1–617.04(b)(1) (providing that "[e]mployees, labor organizations, their agents, or representatives are prohibited from . . . [i]nterfering with, restraining, or coercing any employees or the District in the exercise of rights guaranteed by this subchapter"), the question must be presented to PERB in the first instance.[32]

The CMPA does not contain a restriction on the enforcement of money damages against union members like that found in the LMRA. To the contrary, as the court noted in *Younger*, section 1-617.04(b)(1) expressly applies to agents and representatives of labor organizations. Therefore, we find that under the CMPA a duty of fair representation claim may be brought against individual agents and representatives of labor organizations.

Thus, the Respondent is individually liable as an agent or representative of AFGE 1975. He is also liable in his official capacity as president of AFGE 1975. Noting that the U.S. Supreme Court has characterized "official capacity suits" as "another way of pleading an action against an entity of which an officer is an agent,"[33] the Board has recognized that suits against District officials in their official capacities should be treated as suits against the District[34] and that, when a governmental agency is also named as a party, the addition of an officer or agent in his official capacity is redundant and an inefficient use of resources.[35] Similarly, courts have held that, where a union has been named as a defendant, it is redundant to sue the union's president in an official capacity.[36] Where a union has not been named as a defendant, courts have allowed duty of fair representation cases to proceed against union representatives in their official capacities[37] and found the union to be liable for the employee's lost wages resulting from a breach of the duty of fair representation.[38]

The undisputed facts stated in the Complaint establish that Respondent owed Complainant a duty of fair representation in his OEA appeal and that he breached that duty.

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[32] 60 F. Supp. 3d 130, 140 (D.D.C. 2014).
[33] *Hafer v. Melo*, 502 U.S. 21, 25 (1991) (quoted in *F.O.P./Metro. Police Dep't Labor Comm. v. Metro. Police Dep't*, 59 D.C. Reg. 6579, Slip Op. No. 1118 at 4, PERB Case No. 08-U-19 (2011)).
[34] *F.O.P./Metro. Police Dep't Labor Comm*., Slip Op. No. 1118 at 4.
[35] *Nat'l Ass'n of Gov't Employees, Local R3-07 v. Gov't of D.C. Office of Unified Commc'ns*, 60 D.C, Reg. 563, Slip Op. No. 1343 at 2, PERB Case No. 10-U-32 (2012).
[36] *Webb v. Local 73, SEIU*, 2002 WL 31049841, at *6 (N.D. Ill. Sept. 13, 2002); *Crowne Investments, Inc. v. United Commercial Workers, Local No. 1657*, 959 F. Supp. 1473, 1479 (M.D. Ala. 1997).
[37] *Basnight v. HRSA-ILA Mgmt.*, 2006 WL 2850650, at * 7-8 (E.D. Va. 2006); *Gagliardi v. E. Hartford Hous. Auth.*, 2004 WL 78150, at *4-5 (D. Conn. 2004).
[38] *Byrne v. Buffalo Creek R.R. Co.*, 536 F. Supp. 1301 (W.D.N.Y. 1982). *See also White v. King*,319 F. Supp. 122, 126 (E.D. La. 1970) (awarding damages against union for action brought under the LMRA against union officers in their official capacities).

2. Duty

Whether or not Respondent had a duty to represent Complainant at OEA, having undertaken to do so Respondent owed to Complainant a duty of fair representation.[39] In *Cooper v. AFSCME Local 1033*,[40] the D.C. Court of Appeals recognized the Board's exclusive jurisdiction over a duty of fair representation claim arising out of a union's alleged promise to represent an employee in an OEA appeal. In that case, a former D.C. General Hospital employee argued that he could bring a duty of fair representation claim in D.C. Superior Court regarding the union's mishandling of an administrative appeal of his termination because the union's representation was outside of its obligations under the collective bargaining agreement and the CMPA provides no remedy for breach of a contractual obligation outside of the collective bargaining agreement.[41] The court rejected that argument, stating that if the union promised to represent the member outside of its obligations under the agreement, the union would be bound by its standards of conduct to provide "fair and equal treatment" to him as someone it represents and that the employee's duty of fair representation claim for breach of that promise was within the Board's exclusive jurisdiction.[42]

3. Breach

The duty of fair representation requires a labor organization to act in good faith motivated by honesty of purpose. To breach the duty of fair representation, a labor organization's conduct must be arbitrary, discriminatory, or in bad faith, or be based upon considerations that are irrelevant, invidious, or unfair.[43]

The uncontested facts reveal that Respondent's conduct with regard to the petition for review was in bad faith and thus a breach of the duty of fair representation. OEA's initial decision was a dismissal for failure to file a brief and failure to respond to a show cause order. The Complaint states:

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[39] *See Nedd v. UMW*, 556 F.2d 190, 200 (3d Cir. 1977); *Kesner v. NLRB*, 532 F.2d 1169, (7th Cir. 1976) ("It is venerable tort law that purporting to take action where duty is nonexistent creates in itself certain duties, or as the [National Labor Relations] Board puts the matter, 'it is a commonplace of our jurisprudence that those who act where they are not obliged to are nevertheless liable for misfeasence (sic) in the course of their undertaking.' It is one thing for a grievant to attempt to pursue his remedy without assistance and opposed only by one adversary. When that situation is compounded by two opponents, one of whom is supposedly his 'own people,' the bearing on the likelihood of his success assumes substantial significance.") *Aguinaga v. John Morrell & Co.*, 713 F. Supp. 368, 372 (D. Kan. 1988) ("[O]nce the Unions undertook to act affirmatively on behalf of plaintiffs, the duty of fair representation applied."). *Cf. Conley v. Gibson*, 355 U.S. 41, 47 (1957) ("We need not pass on the Union's claim that it was not obliged to handle any grievances at all because we are clear that once it undertook to bargain or present grievances for some of the employees it represented it could not refuse to take similar action in good faith for other employees just because they were Negroes."), *overruled on other grounds by Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 562-63 (2007).
[40] 656 A.2d 1141 (D.C. 1995).
[41] *Id.* at 1142-43.
[42] *Id.* at 1144.
[43] *Graham v. Williams*, 59 D.C. Reg. 2990, Slip Op. No. 787, PERB Case No. 05-U-24 (2005).

> Despite several more phone calls and text messages, I did not hear from Mr. Lowery until he finally answered my call on June 25, 2014. I asked him if I was going to get another shot at my appeal and he said yes. Of course this led me to believe that he was going to, or already had, file [*sic*] the Petition for Review as, allowed within 35 days of the initial Decision.[44]

The procedure "to get another shot" at an OEA appeal after an initial decision is to file a petition for review with OEA's board within thirty-days of the initial decision, as Respondent could easily have ascertained from OEA's rules or its website. However, as had been his practice,[45] Respondent did not keep his word to Complainant. He misled Complainant, abandoned the case, ignored Complainant's pleas to take action,[46] and refused to communicate with Complainant, not even to advise Complainant to handle the matter himself. Complainant detrimentally relied on Respondent's promise.[47]

The Supreme Court has held that where occurrences within the National Labor Relations Act's six-month period of limitations "may constitute, as a substantive matter, unfair labor practices . . . earlier events may be utilized to shed light on the true character of matters occurring within the limitations period. . . ."[48] Earlier events in this case shed light on the true character of Respondent's failure to petition for review. Respondent's repeated failures to do what he promised Complainant, resulting in a dismissal for want of prosecution, make clear that his failure to fulfill the representation he had made to Complainant by filing a timely petition for review was not based upon judgment, experience, or an evaluation of the case and was not an exercise of discretion, nor was it even mere negligence. Rather, the facts demonstrate dishonest conduct establishing bad faith.[49] Through his bad faith, Respondent breached his duty of fair representation.[50] As discussed, a breach of the duty of fair representation violates section 1-617.04(b)(1)'s prohibition against "[i]nterfering with, restraining, or coercing any employees or the District in the exercise of rights guaranteed by this subchapter."[51] Therefore, we find that the Respondent violated this provision of the CMPA.

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[44] Complaint ¶ 6.
[45] Complaint ¶¶ 1, 5, 6.
[46] Complainant's e-mail to Respondent of July 13, 2014, stated, "Call me and let me know what[']s going on please, I know you didn't just drop the ball on me. I'm serious Cliff, give me a call." Complaint Ex. H.
[47] Complaint ¶ 6 ("I could have taken other steps to be represented had I not been led to believe the union had control of this matter.")
[48] *Local Lodge No. 1424 v. NLRB*, 362 U.S. 411, 416 (1960).
[49] *See Amalgamated Ass'n of Street, Elec., Ry. & Motor Coach Employees v. Lockeridge*, 403 U.S. 274, 299 (1999) (requiring substantial evidence of fraud, deceitful action, or dishonest conduct to prove union's bad faith).
[50] *See IAM Local 39 and Evans*, 24 F.L.R.A. 352, 353 (1986) (Union breached its duty of fair representation where the union misled an employee into thinking that the union was going to file the grievance and his reliance on the union caused him to lose the right to file a timely grievance.).
[51] *Supra* p. 5.

III. Remedies

Complainant seeks to be made whole; he requests to "be re-instated to my position as Civil Engineer Technician with D.C. DOT, Grade 12 Step 7. This would include back pay dating from January 27, 2012 to reinstatement, including wage increases, Step increases, and missed overtime opportunities that occurred over said period."[52]

As DOT is not a respondent in this proceeding, reinstatement is not an available remedy. Respondent's liability for the lost wages that Complainant seeks has not yet been established. The appropriate remedy is that awarded by the Board in *Chisholm v. AFSCME District Council 20*,[53] where the union breached its duty of fair representation by cancelling an arbitration. The Board directed the union to request to have the arbitration reinstated. If the arbitration could not be reinstated, then the case would be remanded to a hearing examiner to consider whether the grievant likely would have prevailed on the merits of her grievance at arbitration. If the hearing examiner were to determine that the grievant would have prevailed, then he was to recommend to the Board the appropriate back pay relief.[54] The Board stated, "We believe that this relief is consistent with our mandate under D.C. Code § 1-618.13 (a), to make an employee whole for any loss resulting from unfair labor practices."[55] The Board also ordered the union to cease and desist from breaching its duty of fair representation and to post a notice concerning its violation.[56]

In *Foust v. International Brotherhood of Electrical Workers*,[57] the U.S. Court of Appeals for the Tenth Circuit upheld a remedy that included compensatory damages for lost wages and benefits from the date of discharge where, as in the present case, the employee could have brought the action in question himself. The court stated, "Having undertaken to act affirmatively on behalf of Foust, the Union is precluded from escaping responsibility by asserting that Foust could or should have presented the grievance rather than depend on it."[58]

In accordance with the precedent and guidance of *Chisholm*, the Board will order Respondent to cease and desist from breaching the duty of fair representation, to post a notice regarding the violation set forth herein, and to attempt to reinstate Complainant's OEA appeal. If the appeal cannot be reinstated, the Board orders the case to be referred to a hearing examiner to determine whether the Complainant would have prevailed in his appeal but for Respondent's breach of the duty of fair representation in failing to file a petition for review and, if so, what monetary relief should be awarded to the Complainant.

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[52] Complaint p. 6.
[53] 49 D.C. Reg. 789, Slip Op. No. 656, PERB Case Nos. 99-U-32 and 99-U-3 (2001).
[54] *Id.* at 8, 10.
[55] *Id.* at 8.
[56] *Id.* at 9-10.
[57] *Id.* at 8.
[58] *Id.* at 9-10

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent shall cease and desist from breaching his duty to fairly represent Complainant.

2. Respondent shall cease and desist from interfering with, restraining, or coercing, in any like or related manner, employees in the exercise of rights guaranteed by the Comprehensive Merit Personnel Act.

3. Respondent shall take the necessary steps to reinstate the Complainant's OEA appeal within thirty (30) days of the issuance of this Opinion including, but not limited to, requesting OEA in writing (with a copy to the Complainant and the Public Employee Relations Board) to reinstate the appeal.

4. Respondent shall notify the Board within thirty (30) days of service of this Decision and Order concerning the steps he has taken to comply with paragraph 3 of this Order.

5. In the event Complainant's appeal cannot be cannot be reinstated or has not been reinstated within sixty (60) days of service of this Decision and Order, the Board orders that the case be referred to a hearing examiner to determine whether the Complainant would have prevailed in his appeal but for Respondent's breach of the duty of fair representation in failing to file a petition for review. If the hearing examiner determines that the Complainant has shown by a preponderance of the evidence that the appeal would have prevailed, then the hearing examiner shall recommend to the Board the appropriate monetary relief.

6. Respondent shall conspicuously post a notice that the Board will furnish to Respondent. The notice shall be posted where AFGE 1975's notices to members are normally posted. The notice shall be posted within ten (10) days from Respondent's receipt of the notice and shall remain posted for thirty (30) consecutive days.

7. Respondent shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from receipt of the notice that it has been posted accordingly.

8. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

January 21, 2016
Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case Number 15-U-03 is being transmitted to the following parties on this the 8th day of February 2016.

Michael P. Roney **via File&ServeXpress**
1143 Claire Rd.
Crownsville, Maryland 21032

Clifford Lowery, AFGE 1975 President
and AFGE 1975 **via File&ServeXpress**
through their counsel of record
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/s/ Sheryl V. Harrington
Sheryl V. Harrington
Secretary