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

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In the Matter of:)	
)	
Fraternal Order of Police/Metropolitan)	
Police Department Labor Committee)	
(on behalf of Duane Fowler))	
)	PERB Case Nos. 18-E-02
Petitioner/Complainant)	
)	Opinion No. 1681
v.)	
)	
Metropolitan Police Department)	
)	
Respondent)	
<hr/>)	

DECISION AND ORDER

On January 22, 2018, the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP”) filed pursuant to Rule 560.1 a Petition for Enforcement regarding PERB Case No 17-A-06, Slip Op. No. 1635. FOP alleges that MPD has failed to comply with Slip Opinion 1635, which was issued on August 25, 2017, regarding an arbitration award (“Award”) reinstating and awarding backpay to Officer Duane Fowler (“Grievant”). FOP is requesting the Board to enforce its Decision and Order of August 25, 2017. MPD opposes FOP’s Petition for Enforcement but did not contest the facts. Thus, as the uncontested facts establish the Union’s entitlement to relief, the Petition for Enforcement is granted.

I. Statement of the Case

On July 30, 2010, MPD terminated Officer Fowler due to his conviction on criminal charges and for making untruthful statements in the related criminal investigation.¹ Following his termination, the Union filed a grievance on his behalf. The grievance was denied. On August 24, 2010, the Union invoked arbitration.

On March 24, 2017, Arbitrator Kaplan issued an Award in which he 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.”²

¹ Petition Attachment 2 at 2.

² Petition Attachment 1 at 26-27.

On April 19, 2017, MPD filed an Arbitration Review Request (“Request”) seeking review of the March 24, 2017 Award. FOP opposed the Request. In its Request, MPD asserted that the Arbitrator’s conclusions on both charges were contrary to law and public policy.³ In Slip Opinion 1635, the Board found that MPD’s Request for Review did not meet the requirements for reversing the Award. Specifically, the Board found that the Arbitrator properly interpreted the law applied in the case and that there were no grounds presented to modify, set aside, or remand the Award.

MPD did not file a petition for review of the Board’s Decision and Order in D.C. Superior Court and has not reinstated Officer Fowler.

On January 22, 2018, the Union filed the instant Petition for Enforcement. FOP contends that MPD has failed to comply with Slip Opinion 1635. More specifically, FOP asserts that despite the Board’s denial of MPD’s arbitration review request, MPD has not reinstated Officer Fowler or provided him his back pay and benefits as required by the Award. FOP is requesting that the Board enforce Slip Opinion 1635 and compel MPD to comply with the terms of the Award.

II. The Union’s Entitlement to Relief

The elements for granting a petition for enforcement are present herein. The Department filed an arbitration review request. The Board affirmed the Award in Slip Opinion 1635.⁴ The Department did not appeal the Board’s decision to the Superior Court. The Union then filed the instant Petition. MPD filed a response admitting the material facts. Therefore, it is clear that MPD has not complied with the Award. MPD has not reinstated or provided back pay to Officer Fowler as required.

MPD’s failure to comply with the terms of the Award is not based on a genuine dispute over the terms of the Award but is rather a flat refusal to comply with it. The Board finds that MPD has no “legitimate reason” for its ongoing refusal to reinstate Officer Fowler or provide him with back pay and benefits as required by the Award. For the reasons noted above, we find that MPD has not complied with Slip Opinion 1635. It is undisputed that the Board’s order affirming the Award became final and that the Department did not comply with the Award. No dispute over the terms of the Award has been raised and no reason for noncompliance has been suggested. Therefore, the Petition for Enforcement is granted. The Board will seek judicial enforcement of its August 25, 2017 Decision and Order, as provided under D.C. Official Code § 1-617.13(b).

³ Petition Attachment 2.

⁴ *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).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Fraternal Order of Police/Metropolitan Police Department Labor Committee's petition for enforcement is granted.
2. Within ten (10) days from the issuance of this Decision and Order, the Metropolitan Police Department shall fully comply with the terms of the Award, if it has not already done so, and shall notify the Public Employee Relations Board in writing that it has complied.
3. The Board shall proceed with enforcement of Slip Opinion 1635 pursuant to D.C. Official Code §§ 1-605.02(16) and 1-617.13(b) if full compliance with the Award is not made and documented within ten (10) days of the issuance of this Decision and Order.
4. 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 No. 18-E-02 was sent by File & ServeXpress to the following parties on this the 27th day of September 2018.

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