

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

James A. Hairston,

Petitioner,

and

The District of Columbia Metropolitan
Police Department,

Respondent.

PERB Case No. 85-U-30
Opinion No. 129

DECISION AND ORDER

On August 21, 1985, James A. Hairston filed an Unfair Labor Practice (ULP) Complaint with the District of Columbia Public Employee Relations Board (Board) against the District of Columbia Metropolitan Police Department (MPD) alleging that the MPD violated Section 1704(a)(1) of the District of Columbia Comprehensive Merit Personnel Act of 1978 (CMPA) by failing to honor the provisions of Article 14, Sections 1 and 11 of the Collective Bargaining Agreement between the MPD and the Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP). The Complaint specifically alleges that under the terms of the Collective Bargaining Agreement the MPD can not bring charges, in the subject case, after an employee is returned to full pay status. Hairston requests that the Board order the MPD to comply with Article 14, Sections 1 and 11 of the Collective Bargaining Agreement and expunge his personnel record of any reference to any administrative action taken against him in connection with the now resolved criminal charges.

On September 3, 1985, the MPD filed a response denying that it violated the CMPA by failing to honor Article 13, Sections 1 and 11 of the Collective Bargaining Agreement. (MPD stated that Article 14, Section 11 is the indexing of the language in a previous contract and that the clause should be properly cited as Article 13, Section 11.) It is MPD's position that Article 13, Section 11 requires that employees be returned to full pay status if administrative charges are not brought within 30 days after criminal charges are resolved. MPD contends, however, that returning an employee to full pay status does not interfere with the Department's right to take disciplinary action against the employee for the subject offense at a later date.

MPD points out that the issue of whether Article 13, Section 11 acts as a Statute of Limitation on the bringing of Adverse Actions proceedings has already been addressed by an Arbitrator. Although, as of this date, disciplinary action has not been initiated against Hairston, MPD contends that there is a possibility that the Departmental Board of Appeals will recommend disciplinary action in the instant case. Asserting that the

MPD has not issued a Notification of Charges and proposed action and that an Arbitrator has previously resolved this issue, MPD requests that the Board dismiss the Complaint.

The issue before the Board is whether the Collective Bargaining Agreement prohibits the MPD from taking disciplinary action, in the subject case, against employees who are returned to full pay status after criminal charges are resolved.

The main question in this case was discussed in AAA Case No. 16-39-0145-83P. The Arbitrator, Leroy S. Merrifield, addressed the issue of whether the MPD violated the Collective Bargaining Agreement by issuing a Notification of Charges and proposed action more than 30 days after the criminal charges had been dropped and the Grievant returned to full pay status. The Arbitrator centered his discussion on whether the article deals only with the length of time in which an officer can be kept in a no-pay status after criminal charges are dropped or whether it also acts as a Statute of Limitation on the bringing of adverse action proceedings. Relying on the language and the collective bargaining history of the contract, the Arbitrator found that the article is primarily concerned with the amount of time an employee spends in a no-pay status after criminal charges are dropped. Accordingly, the Arbitrator found that the MPD did not violate the Collective Bargaining Agreement by issuing a notification of charges and proposed action more than 30 days after the resolution of the criminal charges.

The article discussed by the Arbitrator, (Article 14, Section 11) and Article 13, Section 11 read as follows:

"When the Employer removes an officer from a pay status position during the resolution of criminal charges and the criminal charges are dropped or in any other way resolved, then the Employer agrees to return the officer to a pay status immediately or issue the notification of the charges and proposed action within thirty (30) days of the date the criminal charges were either dropped or resolved."

The articles are from the same collective bargaining agreement and address the same issue.

The Board has reviewed this matter and finds the allegations do not constitute an Unfair Labor Practice. The collective bargaining agreement provides for final and binding arbitration. The parties bargained for the Arbitrator's interpretation of the contract. The Arbitrator rendered a decision drawn from the essence of the collective bargaining agreement. Accordingly, the Complaint is dismissed.

Decision and Order
Case No. 85-U-30
Opinion No. 129
Page 3

ORDER

IT IS ORDERED THAT:

The Complaint is dismissed.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
December 6, 1985