

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 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:)	
)	
Fraternal Order of Police/ Metropolitan Police Department Labor Committee)	
)	PERB Case No. 21-E-08
Petitioner)	
v.)	Opinion No. 1790
)	
Metropolitan Police Department)	
)	
Respondent)	

DECISION AND ORDER

I. Statement of the Case

On April 29, 2021, the Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP) filed a Petition for Enforcement (Petition). Pursuant to PERB Rule 560.1, FOP requests enforcement of PERB Case No. 19-A-02, Opinion No. 1705 (Opinion 1705).¹ FOP alleges that the District of Columbia Metropolitan Police Department (MPD) has failed to comply with Opinion 1705.² MPD opposes the Petition for Enforcement but does not contest the facts.³ For the following reasons, the Petition for Enforcement is granted.

II. Background

On August 16, 2013, MPD held an adverse action hearing. Following the hearing MPD sustained the charges and terminated the Grievant. The Grievant appealed the termination to the Chief of Police, who denied the appeal. Thereafter, FOP invoked arbitration.

On December 12, 2017, the Arbitrator issued an arbitration award (Award) that ordered MPD to reinstate the Grievant and reduced the Grievant's termination to a 30-day, unpaid suspension. The Arbitrator also ordered MPD to provide the Grievant with back pay minus the 30-

¹ Petition at 5.

² Petition at 3-4.

³ On June 8, 2021, the PERB Supervisory Attorney Advisor conducted a compliance review to investigate the allegations of the Petition. During the compliance review, MPD admitted that it had not reinstated the Grievant, provided back pay, or otherwise complied with the arbitration award and Opinion 1705.

day suspension and restore the Grievant's lost benefits. On January 2, 2019, MPD filed an arbitration review request (Request) seeking review of the Award. In its Request, MPD argued that the Arbitrator exceeded his jurisdiction and that the Award was contrary to law and public policy. FOP opposed the Request. On April 18, 2019, the Board found that MPD's Request did not meet the requirements for reversing the Award. Specifically, the Board found that MPD did not show that the Arbitrator exceeded his jurisdiction nor show that the Award was contrary to law and public policy. Accordingly, in Opinion 1705, the Board found no cause to modify, set aside, or remand the Award.

MPD filed a Petition for Review in D.C. Superior Court. On February 2, 2021, the Hon. Kelly A. Higashi affirmed the Board's decision and dismissed MPD's Petition for Review. MPD did not appeal the Superior Court's decision to the Court of Appeals.

On April 29, 2021, FOP filed the instant Petition for Enforcement. FOP contends MPD has failed to comply with Opinion 1705 by refusing to reinstate Grievant and provide back pay and benefits as required by the Award. FOP is requesting that the Board seek enforcement in the Superior Court to compel MPD to comply with the Award's terms.

III. The Union's Entitlement to Relief

The elements for granting a petition for enforcement are present herein. FOP prevailed at arbitration, and MPD filed an arbitration review request. The Board denied MPD's Request and issued Opinion 1705. MPD appealed Opinion 1705 to Superior Court and the court affirmed Opinion 1705. MPD did not appeal the Superior Court's decision and did not comply with the Award. FOP then filed the instant Petition for Enforcement. MPD has admitted the material facts.

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.⁴ 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. It is undisputed that the Board's order affirming the Award became final and that MPD did not comply with the Award after an unsuccessful petition for review to the D.C. Superior Court. No dispute over the terms of the Award has been raised and no reason for noncompliance has been offered. Therefore, the Petition for Enforcement is granted. The Board will seek judicial enforcement of Opinion 1705, as provided under D.C. Official Code § 1-617.13(b). The Board will also seek costs and attorney fees incurred in seeking judicial enforcement of Opinion 1705.

⁴ *American Federation of Government Employees, Local 2725, AFL-AO v. District of Columbia Housing Authority*, 46 D.C. 6278, Slip Op. No. 585 at p. 3, PERB Case Nos. 98-U-20, 99-U-05 and 99-U-12 (1999).

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 seven (7) 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 Opinion 1705, 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 seven (7) 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 vote of Board Chairperson Douglas Warshof and Members Barbara Somson and Peter Winkler.

June 17, 2021

Washington, D.C.