

GOVERNMENT OF THE DISTRICT OF COLUMBIA

PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:

The Fraternal Order of Police
Metropolitan Police Department
Labor Committee,

and

Officer William E. Corboy and Detective I
Thomas J. Kilcullen,

Complainants,

PERB Case No. 84-U-02

Opinion No. 116

v.

The Metropolitan Police Department,

and

Deputy Chief Alfonso Gibson, Captain
Jimmy L. Wilson and Lieutenant John Harlow,

Respondents.

DECISION AND ORDER

On December 19, 1983, the Fraternal Order of Police, Metropolitan Police Department Labor Committee (FOP), on behalf of Officer Corboy and Detective Kilcullen, filed an Unfair Labor Practice Complaint (ULP) with the District of Columbia Public Employee Relations Board (Board), against the Metropolitan Police Department (MPD) and its agents, Deputy Chief Gibson, Captain Wilson, and Lieutenant Harlow, of the Criminal Investigations Division of MPD. The Complaint alleges that MPD and its agents assigned to the Criminal Investigations Division (CID) violated Section 1704 of the Comprehensive Merit Personnel Act of 1978 (CMPA) by intimidating and taking reprisals against Officer Corboy and Detective Kilcullen and restraining Officer Corboy from seeking the assistance of the FOP Labor Committee in complaining about a condition of his employment in the Criminal Investigations Division.

FOP seeks, as a remedy, that:

1. The Board notify the MPD officials involved in the termination of Officer Corboy's detail that they are violating the CMPA.
2. That the Board order MPD to return Officer Corboy and Detective Kilcullen to their previous positions.
3. That MPD be ordered to post notices on its bulletin boards for 60 days stating that it has engaged in an unfair labor practice and that it will refrain from doing so in the future.

4. That the Chief of Police be ordered to take corrective action against Deputy Chief Gibson.
5. That MPD be ordered to pay all costs and attorneys fees incurred by FOP in bringing this action.

On January 13, 1984, MPD filed its "Answer to the Complaint" denying that it violated the CIPA. MPD contends that its agents merely exercised management's right to assign and transfer employees and that this was done in accordance with the negotiated Agreement. MPD states that the Complaint is frivolous and asks the Board to dismiss it and to order FOP to reimburse MPD for its costs in defending against the Complaint.

The issue before the Board is whether or not the actions of MPD's agents terminating the detail of Officer Corboy and reassigning Detective Kilcullen constitute an unfair labor practice in violation of the CIPA.

On March 14, 1984, the Board referred the matter to a Hearing Examiner. A hearing was conducted on May 4, 14, 15, 24, 29, June 4, 5, 20, 26, July 12, 18 and 20, 1984. Post-hearing briefs as well as reply briefs were filed by both parties on September 4, 1984. The Hearing Examiner filed his Report and Recommendation on March 28, 1985. On April 11, 1985, FOP filed exceptions to the Hearing Examiner's Report and Recommendation.

This case stems from concerns expressed by some members of the FOP bargaining unit about the MPD practice of detailing officers to the Criminal Investigations Division (CID) without granting them the higher rate of pay and grade normally assigned to regular members of CID. Officer Corboy and Detective Kilcullen were members of the Homicide Branch of CID. Officer Corboy was one of twenty officers detailed to the Homicide Squad. Officer Corboy worked in CID thirty-one (31) months until on November 17, 1983 he was suddenly transferred back to the Fourth District on foot patrol duties. A week later, Detective Kilcullen was called to the Office of Deputy Chief Gibson, the Commander of CID, and shortly thereafter, was transferred to a different squad with different days off.

Shortly before these events, Officer Corboy had spoken to an FOP shop steward and to Captain Wilson, his superior, expressing dissatisfaction with functioning as a homicide investigator for two and one-half years without being assigned as an Investigator or Detective and without being formally transferred from the Fourth District of CID. On November 14, 1983, FOP Chairman Hankins wrote to the Chief of Police concerning the extended detail of officers to CID. Three days later, the termination of Officer Corboy's detail took place. Officer Corboy was reinstated five (5) days later. FOP alleges that the actions taken by MPD officials against Officer Corboy and Detective Kilcullen were reprisals against them for engaging in the protected activity of seeking to correct an alleged violation of the conditions of employment.

During the hearing, on June 20, 1984, FOP amended its Complaint to include three (3) additional allegations. FOP alleged that, during the course of the hearing Officer Corboy was terminated from his detail to the Homicide Branch a second time, the effect of which was to deny him promotion to Detective II. The amended Complaint also alleged that in May, 1984, during the course of the hearing, Detective Kilcullen was summarily removed from his position on the staff of the Homicide School. A final allegation was that Deputy Chief Gibson called the United States Attorney for the District of Columbia to complain that members of the U.S. Attorney's staff were scheduled to appear as witnesses in this case and that such an appearance would be detrimental to the relationship between MPD and the U.S. Attorney's office.

MPD contends that the actions were taken because Officer Corboy had become a disruptive influence in CID. In support of these charges, MPD contends that Officer Corboy and Detective Kilcullen made surreptitious efforts to obtain the files of Captain Wilson and that Officer Corboy was using official time to gather evidence for a civil suit against MPD. MPD further contends that Detective Kilcullen was assigned to a different squad in order to have a Detective Grade 1 working on each tour of duty for training purposes. He was one of only twenty members of MPD to hold the position of Detective Grade 1, a senior investigative position.

In his Report and Recommendation, the Hearing Examiner found that MPD's action in breaking up the Corboy-Kilcullen team and terminating Corboy's detail was a reprisal against the two officers for urging FOP to look into the status of officers on extended detail. He also found no evidence of any MPD rule, regulation or policy in place which would have restricted Officer Corboy's access to unlocked general correspondence files on projected promotions which were in Captain Wilson's office. Based on these findings, the Hearing Examiner concluded that the termination of Officer Corboy's detail, when viewed in the context of events surrounding it, was directly connected to his expressed dissatisfaction with MPD's inaction on his status and his seeking union assistance in the matter. Accordingly, the Hearing Examiner held that MPD committed an unfair labor practice.

As a remedy, the Hearing Examiner recommended that the Board order MPD to:

1. Post notices on bulletin boards containing a statement by the Chief of Police that members of the bargaining unit are free to communicate with and seek redress through their elected union representatives.
2. Order MPD and all its agents to cease and desist taking reprisals, retaliation or discriminatory actions against Officer Corboy and Detective Kilcullen.
3. Order MPD to treat Officer Corboy the same as other officers on extended detail to CID with respect to assignments and promotions.
4. Order MPD not to discriminate against Detective Kilcullen as a result of his participation in this case.

On April 11, 1985, FOP took exception to two aspects of the Hearing Examiner's Report and Recommendation. First, FOP disagrees with the conclusion that Detective Kilcullen's removal from the staff of the Homicide School was not a reprisal. Secondly, FOP disagrees with the Hearing Examiner's conclusion that the conduct of MPD's counsel was not frivolous or in bad faith. Both of these exceptions raise factual issues which were considered and specifically rejected in the Hearing Examiner's Report and Recommendation. FOP also contends that the language in the proposed notice to be posted by MPD is too vague. It further contends that the Hearing Examiner did not recommend any specific action to restore the status quo for the two officers.

Based upon its review of the entire record, the Board finds the Hearing Examiner's analysis, reasoning and conclusions to be thorough, rational and persuasive. Accordingly, the Hearing Examiner's recommendations are adopted by the Board.

ORDER

IT IS ORDERED:

1. The Metropolitan Police Department shall post on all bulletin boards within the Department for a period of sixty days a Notice containing a statement by the Chief of Police that members of the bargaining unit are free to communicate with and seek redress through their elected FOP representatives, and that improper efforts by any officials of the Department to discourage such communications or to intimidate members are unlawful and will be punished by the Chief of Police.
2. The MPD and all its agents and officials shall cease and desist from taking reprisals, retaliation and discriminatory actions against Officer Corboy and Detective Kilcullen. This does not prohibit the Department from exercising its management rights regarding assignments, promotions and other personnel actions, but such management rights shall not be exercised as to these employees in any manner which is arbitrary, discriminatory, or a reprisal, nor shall supervisors harass these employees in the performance of their duties in a manner that is arbitrary, discriminatory or a reprisal.
3. If and when any officers who are or were assigned to CID on extended details are "blanketed in" to positions as Investigators or Detective Grade II, Officer Corboy shall be treated the same as these other officers, and in no event shall Officer Corboy be discriminated against with respect to assignment or promotion for his participation in this proceeding.

Decision and Order
Case No. 84-U-02
Page Five

4. Detective Kilcullen shall not be discriminated against with respect to assignments or working conditions as a result of his participation in this proceeding.

5. Complainants' request that the MPD pay to the FOP/MPD Labor committee all costs of prosecuting this Complaint is denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
July 12, 1985