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**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. 17-U-26
)	
Petitioner)	Opinion No. 1661
)	
v.)	Motion for Reconsideration
)	
District of Columbia Metropolitan Police Department)	
)	
Respondent)	
)	

DECISION AND ORDER

I. Introduction

On February 14, 2018, the Metropolitan Police Department (“Department”), filed this motion for reconsideration. The Department seeks reconsideration, in part, of the Board’s Decision and Order issued on January 31, 2018, Slip Opinion No. 1651. The Department requests the Board reconsider its Decision and Order and declare the unfair labor practice petition in PERB Case No. 17-U-26 untimely. The Fraternal Order of Police/District of Columbia Metropolitan Police Department Labor Committee (“Union”) filed an opposition to the motion for reconsideration.

For the following reasons, the Department’s motion for reconsideration is denied.

II. Standard of Review

It is well settled that a motion for reconsideration cannot be based on a mere disagreement with the initial decision.¹ The moving party must provide authority which compels reversal of the initial decision. Absent such authority, the Board will not overturn its decision.²

¹ *AFSCME District Council 20, Local 2921 and D.C. Public Schools*, 62 D.C. Reg. 9200, Slip Op. No. 1518 at p. 3-4, PERB Case No. 12-E-10 (2015). *See also, F.O.P. /Metro. Police Dep’t Labor Comm. v. Metro. Police Dep’t*, Slip Op. No. 1554 at 8-9, PERB Case No. 11-U-17 (Nov. 19, 2015); *Rodriguez v. D.C. Metro. Police Dep’t*, 59 D.C. Reg. 4680, Slip Op. No. 954 at 12, PERB Case No. 06-U-38 (2010).

III. Background

On May 5, 2017, the Union filed PERB Case 17-U-26. The Union alleged that the Department committed an unfair labor practice by refusing to comply with an Arbitrator's Award ("Award") regarding the reinstatement of Office Jay Hong ("Grievant"). The Department filed a Motion to Dismiss for Untimeliness. The Department argued that the Complaint is untimely and should be dismissed because it was filed more than 120-days after the date on which the alleged violation occurred.³ The Board denied the Motion to Dismiss and found that the Department had violated section 1-617.04(a)(1) and (5) of the D.C. Official Code by refusing to implement the terms of the Award.⁴

IV. Discussion

According to the Department, the Board's decision incorrectly stated that the Department argued that the 120-day deadline began to run on August 8, 2016. Instead, the Department argues that the 120-day deadline began to run on August 29, 2016; the last day it could have appealed the Award.⁵ The Department argues that by August 29, 2016, the deadline to file an arbitration review request with the Board, the Union should have known the Department failed to comply with the Award. Therefore, any violations that occurred after January 5, 2017 (120 days after August 29, 2016) are untimely.⁶

The Department further states that the Union's actions show that it knew of the alleged violation well before April 12, 2017, the date that the Union claims it became aware of the violation. On November 2, 2016, the Union's counsel emailed the Department acknowledging that the deadline to file an arbitration review request had expired and that the Department had yet to comply with the Award to reinstate the Grievant.⁷ A similar email was again sent on November 16, 2016. Both of these emails were within the 120-day deadline and prove that the Union clearly knew that the Department had not complied with the Award.⁸

The Department also argues that the Board's 120-day deadline is "jurisdictional and mandatory" and parties' conduct cannot waive this deadline.⁹ The Union's actions of sending

² *FOP Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, 60 D.C. Reg. 12058, Slip Op. No. 1400 at p. 6, PERB Case No. 11-U-01 (2013).

³ Respondent's Answer to Unfair Labor Practice and Motion to Dismiss at 6.

⁴ *FOP Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, Slip Op. No. 1651 at 4-5, PERB Case No. 17-U-26 (Jan. 18, 2018).

⁵ Motion for Reconsideration at 6.

⁶ Motion for Reconsideration at 6.

⁷ Motion for Reconsideration at 6.

⁸ Motion for Reconsideration at 7.

⁹ Motion for Reconsideration at 7.

emails and/or meeting with the Department does not relieve the Union of its obligation to preserve the 120-day deadline by a filing a complaint when it clearly knew of the violation.¹⁰

The Union has filed an opposition to the motion for reconsideration. According to the Union, it became aware of the unfair labor practice violation during a meeting between Matthew N. Mahl, the Union Chairman, and Mark Viehmeyer, Director of Labor Relations for the Department, on April 12, 2017.¹¹ Prior to the April 12, 2017 meeting, the Union believed, as shown by the email correspondence, that the Department was adhering to the Award and preparing to reinstate the grievant.¹² Since the Award was silent on the deadline of its implementation and the Department took no affirmative efforts to inform the Union that it had no intention of abiding by the Award until April 12, 2017, the Department's timeliness calculation is clearly flawed and it would be improper for the Board to find the complaint untimely.¹³

PERB Rule 520.4 states that an unfair labor practice shall be filed no later than 120-days after the date on which the alleged violations occurred. The Board has stated that the 120-day filing period for a complaint begins when the complainant first knew or should have known about the acts giving rise to the alleged violation.¹⁴ The Department stated, in its answer to the complaint, that January 5, 2017, was the deadline to file an unfair labor practice. However it never stated any reason why 120-days prior to this date, the Union knew or should have known of the alleged violation. The only date presented by the Department, other than the deadline of January 5, 2017, was the date the Award was issued, August 8, 2016. The Department now argues for the first time that the January 5, 2017 date is in reference to the deadline to file an arbitration review request of the Award. The Department does not dispute that it did not comply with the Award. But the pertinent question is when the Union knew or should have known that the Department would not fully comply prior to April 12, 2017.

The lack of an arbitration review request is not an indicator of a refusal to comply with the Award; in fact it can just as easily be seen as an intention to fully comply. The Union's November 2, 2016 email the Department referenced in its motion for reconsideration said "[t]he time for filing an appeal of this arbitration decision with PERB expired in September. To my knowledge, no appeal was filed. Therefore, I am asking that you contact [the grievant] to begin the reinstatement process." The Department's response to this email simply said "I will check on this reinstatement and will advise."¹⁵ The Department has not pointed to any date when it indicated in any way to the Union that it would not comply with the Award. Therefore, the Board has no reason to find the complaint untimely.

¹⁰ This case is ultimately decided on other matters, however; it should be noted that the Board stated in *Jenkins v. Department of Corrections*, Slip Op. No. 1652 at 10-12, PERB Case No. 15-U-31 (Jan. 18, 2018) that PERB Rule 520.4 is claim-processing, not mandatory and jurisdictional.

¹¹ Opposition at 6.

¹² Opposition at 6.

¹³ Opposition at 8.

¹⁴ *Pitt v. D.C. Dep't of Corrections*, 59 D.C. Reg. 5554, Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06 (2009).

¹⁵ Attachment 4 at 2.

V. Conclusion

The Department has done nothing but expand on its previous argument and failed to provide any authority which compels reversal of the initial decision. The Board finds that the Department's motion for reconsideration fails to assert any legal grounds that compel reversal of the Board's earlier decision in Slip Op. 1651. Therefore, the motion for reconsideration is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The motion for reconsideration is denied.
2. 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 Mary Ann Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

March 27, 2018

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 17-U-26, Op. No. 1661 was transmitted to the following parties on this the 6th day of April, 2018.

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