

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:	)	
	)	
Fraternal Order of Police/ Metropolitan Police Department Labor Committee,	)	
Complainant,	)	PERB Case No. 91-U-18
	)	Opinion No. 295
v.	)	
	)	
District of Columbia Metropolitan Police Department,	)	
Respondent.	)	

DECISION AND ORDER

On July 12, 1991, the Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP) filed an Unfair Labor Practice Complaint (Complaint) alleging that the Metropolitan Police Department (MPD) refused to bargain collectively in good faith with the FOP in violation of D.C. Code Sec. 1-618.4(a)(5). The alleged violative conduct consists of MPD's (1) noncompliance with the provisions of a grievance arbitration award (Award) and (2) refusal to apply the holding of the Award to those pending grievances affected by the award, in accordance with the terms of the parties' collective bargaining agreement.

On July 29, 1991, MPD filed a Response to Unfair Labor Practice Complaint (Answer). MPD did not dispute any of the material allegations but denied that it had committed an unfair labor practice and requested that the Complaint be dismissed.

According to the Complaint, the parties had become "embroiled in a contractual dispute" over the interpretation of the 45-day time period stipulated in D.C. Code Sec. 1-617.1, regarding the imposition of adverse actions against employees by District agencies. (Comp. at 2.) The dispute resulted in the filing of several grievances in accordance with the terms of the parties' collective bargaining agreement for resolving such disputes. (Comp. at 1.) In conjunction with the settlement of one of these grievances, the parties agreed that the resolution of the time-period issue would be resolved by a pending arbitration decision addressing this issue. MPD does not dispute that the parties agreed to hold in abeyance all pending related grievances until the Award from that arbitration had been rendered. Id. FOP further states that "[t]he [parties']

collective bargaining agreement provides that the decision of the Arbitrator shall be binding upon both parties and all employees during the life of the agreement." Id.

On May 28, 1991, the Award addressing the 45-day issue was rendered and sustained the FOP's grievance. The FOP claimed, however, that contrary to the parties' agreement and the terms of their collective bargaining agreement, MPD refused to apply the terms of the Award to all employees. Rather, MPD informed FOP that it "would make those members whole who had been suspended... however, [it] would not make those members whole who had been terminated." Id. FOP further asserted that as of the date of the Complaint, MPD had neither "compl[ie]d with the [afore-mentioned] Arbitration Award, nor has [MPD] made any effort to comply with the agreement between the parties to resolve those cases held in abeyance." (Comp. at 3.) The FOP has requested that the Board order MPD to comply with the Award and apply the ruling established by the Award to those related cases held in abeyance pending its issuance.

The issue ultimately presented to the Board by the allegations contained in FOP's Complaint is two-fold: (1) whether a District agency's, e.g., MPD, refusal to comply with the terms of a grievance arbitration award constitutes a violation of D.C. Code Sec. 1-618.4(a)(5); and (2) whether the agency's refusal to apply the Award in accordance with the terms of the parties' collective bargaining agreement, constitutes a violation of D.C. Code Sec. 1-618.4(a)(5). For the reasons that follow, we rule with respect to both of these questions that such conduct does not give rise to an unfair labor practice under the Comprehensive Merit Personnel Act (CMPA).

D.C. Code Sec. 1-618.4(a)(5), which provides that "[t]he District, its agents and representatives are prohibited from ... [r]efusing to bargain collectively in good faith with the exclusive representative," makes an unfair labor practice conduct "in the nature of a refusal to bargain over a mandatory subject of bargaining or a unilateral change in established and bargainable terms and conditions of employment (not covered under an effective agreement between the parties)...." American Federation of Government Employees, Local Union No. 3721 v. District of Columbia Fire Department, \_\_\_ DCR \_\_\_, Slip Op. No. 287 at fn. 5, PERB Case No. 90-U-11 (1991). Failure to comply with the terms of an arbitration award resulting from the parties' agreed-upon vehicle for resolving grievable disputes concerns a breach of a

contractual obligation. <sup>1/</sup> Id. Although the Board possesses the authority to seek compliance with its decisions and orders, there is no explicit statutory authority to seek compliance with decisions or awards rendered by third parties, e.g., arbitrator, See D.C. Code Sec. 1-618.13(b). <sup>2/</sup>

Turning to the second allegation of the Complaint, FOP stated that MPD refused to apply the terms of the Award to pending employee grievances in contravention of a provision in the parties' collective bargaining agreement "that the decision of the Arbitrator shall be binding upon both parties and all

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<sup>1/</sup> We have on previous occasions retained jurisdiction over unfair labor practice complaints where a concurrent grievance was pending. Those occasions, however, involved grievances addressing the interpretation of a contractual provision that was "both necessary and appropriate to a determination of whether or not a noncontractual, statutory violation has been committed." Fraternal Order of Police, Metropolitan Police Department v. District of Columbia Metropolitan Police Department, 31 DCR 2204, Slip Op. No. 72 at 6, PERB Case No. 84-U-01 (1984). Although the Award discussed herein addresses whether MPD complied with D.C. Code Sec. 1-617.1(b)(1), which establishes a statutory time limit for commencing adverse actions against District employees, the "statutory violation" noted in FOP v. MPD, supra, refers to statutory provisions within the jurisdiction and authority of the Board. The District's non-compliance with D.C. Code Sec. 1-617.1 does not give rise to an unfair labor practice as proscribed by D.C. Code Sec. 1-618.4(a) et seq. or other action within the statutory jurisdiction of the Board under D.C. Code Sec. 1-605.2 and 1-618.2.

Moreover, it should also be noted that the Office of Employee Appeals (OEA), pursuant to D.C. Code Sec. 1-617.1(c) "shall be the final administrative appellate authority with respect to adverse action appeals..." Therefore, any alleged infractions of Sec. 1-617.1 are within the purview of OEA's jurisdiction or the parties' negotiated agreement, not PERB's statutory authority.

<sup>2/</sup> It is interesting to note that the Federal Service Labor-Management Relations Statute, the counterpart to the CMPA for federal government employees, makes an unfair labor practice the failure or refusal to comply with interest arbitration decisions or awards. See 5 USC Sec. 7116(a)(6). No parallel provision exists under the CMPA with respect to interest or grievance arbitration awards. Provisions for the enforcement of arbitration awards in the District are found under D.C. Code Sec. 16-4301 et seq.

employees during the life of the agreement." Based on our discussion above, relief from the alleged violative conduct by MPD lies not within the statutory authority of the Board but rather, as FOP acknowledges, an agreement between the parties.

Thus, no issue within our jurisdiction and authority remains. <sup>3/</sup> Accordingly, we dismiss this Complaint.

ORDER

**IT IS HEREBY ORDERED THAT:**

The Complaint is dismissed.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD  
Washington, D.C.**

**January 10, 1992**

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<sup>3/</sup> The Board has jurisdiction to review grievance arbitration awards under the proper statutory circumstances presented in D.C. Code Sec. 1-605.2(6). Our review, however, is limited and addresses, inter alia, the legal sufficiency of the award and not its compliance or enforcement.

CERTIFICATE OF SERVICE

I hereby certify that the attached Decision and Order in PERB Case No. 91-U-18 was hand-delivered, sent via facsimile transmission and/or mailed (U.S. Mail) to the following parties on this 10th day of January, 1992:

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