

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. 19-E-07
)	
Petitioner)	Opinion No. 1729
v.)	
)	
Metropolitan Police Department)	
)	
Respondent)	
)	

DECISION AND ORDER

I. Introduction

On August 21, 2019, pursuant to Board Rule 560.1, the Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP) filed a Petition for Enforcement related to PERB Case No. 18-A-11, Opinion 1686 (Opinion 1686).¹ FOP alleges that the District of Columbia Metropolitan Police Department (MPD) has failed to comply with Opinion 1686, in which FOP prevailed. MPD opposes the Petition for Enforcement because it maintains that the initial disciplinary action was correct, but it does not contest the material facts of the Petition. The uncontested facts establish FOP’s entitlement to relief; thus, the Petition for Enforcement is granted.

II. Opinion 1686 Background

On April 17, 2018, an Arbitrator issued an award that reversed the termination of a Grievant represented by FOP. The Arbitrator dismissed the charges in their entirety and ordered MPD to reinstate the Grievant with full back pay, plus pre-judgment and post-judgment interest.

On May 14, 2018, MPD filed an arbitration review request (Request) seeking review of the April 17, 2018 award. FOP opposed the Request.

¹MPD v. FOP/MPD Labor Comm., 66 D.C. Reg.867, Slip Op. No.1686, PERB Case No. 18-A-11 (2019).

In its Request, MPD asserted that the Arbitrator exceeded his jurisdiction by failing to consider a charge filed against the Grievant in the disciplinary notice and by awarding pre-judgment and post-judgment interest.²

On September 28, 2018, the Board found no cause to set aside, modify, or remand the arbitration award; and denied MPD's Request. Specifically, the Board found that the Arbitrator did not exceed his jurisdiction, as the decision was based on the precise issues agreed to and submitted by the parties.³ Likewise, the Board concluded that an award of pre-judgment and post-judgment interest arose out of the Arbitrator's broad equitable powers and that the awarded remedy was within the arbitrator's jurisdiction.⁴

Thereafter, on November 13, 2018, MPD filed a Petition for Review with Superior Court of the District of Columbia. On March 1, 2019, the Petition was dismissed as untimely.⁵ MPD filed a Motion to Alter or Amend, or in the Alternative Vacate the March 1, 2019 Order. On May 28, 2019, MPD's Motion to Alter or Amend, or in the Alternative Vacate the March 1, 2019 Order was denied.⁶ MPD did not appeal the decision.

III. FOP's Entitlement to Relief

FOP contends that MPD has failed to comply with Opinion 1686 by refusing to reinstate the Grievant. FOP requests that the Board enforce Opinion 1686 and compel MPD to comply with the terms of the arbitration award.⁷

The elements for granting a petition for enforcement are present herein.⁸ FOP prevailed at arbitration. The Board issued Opinion 1686, finding no grounds to set aside, modify, or remand the arbitration award. MPD appealed to the Superior Court of the District of Columbia, and MPD's appeal was denied.⁹

FOP filed the instant Petition for Enforcement. MPD's answer does not dispute the material facts. Despite the undisputed validity of the arbitration award and the Board's order, MPD has refused to comply with the arbitration award and has refused to reinstate the Grievant.¹⁰

MPD maintains an argument that the disciplinary action was appropriate, this argument was considered and rejected and thus only presents a mere disagreement with the arbitrator's decision.¹¹ MPD's failure to comply is not based on a genuine dispute over the terms of the

² *MPD v. FOP/MPD Labor Comm.*, 66 D.C. Reg. 867, Slip Op. 1686 at 3, PERB Case No. 18-A-11 (2019).

³ *Id.* at 4.

⁴ *Id.* at 4.

⁵ Pet. Ex. 3

⁶ Pet. Ex. 4

⁷ Petition at 5.

⁸ *FOP/MPD Labor Comm. ex rel. Fowler v. MPD*, 65 D.C. Reg. 12487, Slip Op. No. 1681, PERB Case No. 18-E-02 (2018); *FOP/MPD Labor Comm. ex rel. Rosario v. MPD*, Slip Op. No. 1682, PERB Case No. 18-E-03 (2018).

⁹ Pet. Ex. 3-4.

¹⁰ Res. Ex. 1 ("The Department's position is that it will not reinstate these individuals. . .").

¹¹ *Renee Jackson v. Teamsters Local 639*, 63 D.C. Reg. 10694, Slip Op. 1581, PERB Case No. 14-S-02 (2016).

award but is rather a simple refusal to comply. It is undisputed that the Board's order became final and that MPD did not comply.

The Board has held, "When a party fails or refuses to implement an arbitration award where there is no dispute over its terms, such conduct constitutes a failure to bargain in good faith [], thus, an unfair labor practice."¹² Therefore, the Petition for Enforcement is granted and the Board will seek judicial enforcement of its Decision and Order in Opinion 1686, as provided under D.C. Official Code § 1-617.13(b).

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 ten (10) days from the issuance of this Decision and Order, the Metropolitan Police Department shall fully comply with the terms of the arbitration 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 PERB Case 18-A-11 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 ten (10) 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 Charles Murphy, Members Douglas Warshof, and Mary Anne Gibbons

Washington, D.C.

October 17, 2019

¹² *FOP/MPD Labor Comm. v. MPD*, 63 D.C. Reg. 14055, Slip Op. No. 1592, PERB Case No. 11-E-02 (2016). See *D.C. Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 997 A.2d 65, 79 (D.C. 2010).

Certificate of Service

This is to certify that the attached Decision and Order in PERB Case No. 19-E-07, Opinion No. 1729 was sent by File and ServeXpress to the following parties on this the 18th day of October 2019.

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