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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 (on behalf of	)	
Philip Suggs),	)	
	)	
	)	
Petitioner,	)	PERB Case No. 08-E-02
v.	)	
	)	Opinion No. 966
	)	
District of Columbia Metropolitan Police	)	
Department,	)	Petition for Enforcement
	)	
	)	
Respondent.	)	
	)	

**DECISION AND ORDER**

**I. Statement of the Case**

On July 30, 2008, the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP" or "Union"), filed a document styled "Petition for Enforcement of Order" ("Petition"), regarding PERB Case No. 07-A-08 (Slip Op. No. 933). FOP alleges that the District of Columbia Metropolitan Police Department ("MPD") has failed to comply with Slip Op. No. 933 which was issued on March 12, 2008. Specifically, FOP claims that MPD has failed to implement the terms of an arbitration award issued on August 20, 2007 and affirmed by the Board on March 12, 2008. (See Petition at pgs. 1-2). FOP is asking the Board to enforce its Decision and Order of March 12, 2008. (See Petition at p. 2).

MPD opposes FOP's Petition. FOP's Petition and MPD's opposition are before the Board for disposition.

## II. Discussion

“On November 20, 2002, after completing the midnight tour of duty, Grievant returned to his home in Brandywine, Maryland.<sup>1</sup> At approximately 3:00 p.m., Grievant learned that his wife was involved in a motor vehicle accident while driving her mother-in-law’s vehicle. Upon learning that his wife had been in an accident,[the Grievant] became enraged. Grievant demanded that his wife contact his mother, and then left the house to see the scene of the accident.” (Award at pgs. 4-5).

At the time, the Grievant and his wife were seeing a marriage counselor in connection with a violent physical altercation on October 14, 2002. (See Award at p. 5). After the Grievant left to view the accident scene, his wife called their marriage counselor. “While speaking to the counselor Grievant returned home. Grievant grabbed the phone from his wife, began cursing and punching her in the back. Following this altercation, Grievant left the house and walked ten to twelve miles to a bar, where he consumed several alcoholic beverages. During his absence, Grievant’s parents, as well as the marriage counselor arrived at the home.” (Award at p. 5).

At approximately 7:00 p.m. the Grievant returned home and began to behave in an erratic and violent manner. (See Award at p. 5). The Grievant eventually retrieved his service weapon, racked a round into the chamber and exclaimed that he was going to “finish this myself.” (Award at p. 5 and Slip Op. No. 933 at p. 2). “Grievant went outside to the back of the house and put his gun to his head with suicidal intentions, but upon hearing his son’s voice, lowered the weapon. While doing so, a shot was fired. Grievant then ran into the wooded area behind his home.” (Award at p. 5).

Grievant’s wife immediately contacted the Prince George’s County Police Department and upon their arrival, Grievant surrendered to them. Grievant was not arrested, but was transported to Southern Maryland Hospital Center and admitted for psychiatric observation. On November 25, 2002, Grievant was released from the hospital and returned home.

The matter was assigned to the MPD’s Force Investigation Team (“FIT”) for investigation. On or about March 14, 2003, the FIT investigators concluded that the firing of the Grievant’s service weapon was negligent and that its use was not justified and not within MPD policy. “On March 22, 2003, the Director of the Force Investigation Division recommended that the Grievant be cited for Adverse Action on charges stemming from his involvement in negligently discharging his service weapon; being under the influence of alcoholic beverage at the time the pistol was fired; and admitting [to] having engaged in an act of domestic violence.” (Award at p. 6). On July 20, 2004, an Adverse Action hearing was held by a three member panel of the police Trial Board. The Trial Board recommended termination for sustained violations of MPD regulations.

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<sup>1</sup>The term Grievant refers to Officer Philip Suggs.

On August 20, 2004, the Assistant Chief for Human Services ("AC/HS") issued a Final Notice of Adverse Action ("Final Notice"). The Grievant was therein notified that he was found guilty of the Charges and Specifications as outlined in the Findings of the Panel and that he would be removed from the MPD, effective October 1, 2004. (See Award at p. 4). By letter dated August 30, 2004, the Grievant appealed the decision of the AC/HS to the Chief of Police. The Grievant argued that termination was an inappropriate penalty for the misconduct in this matter.

On September 13, 2004, the Chief of Police denied the Grievant's appeal. On September 27, 2004, FOP invoked arbitration on behalf of the Grievant.

In an Award issued on August 20, 2007, Arbitrator John Simpkins found that MPD failed to establish "cause" for terminating the Grievant. (See Award at p. 14). As a result, Arbitrator Simpkins reduced the penalty from termination to a suspension without pay for the "time off." (See Award at p.15).

On September 14, 2007, MPD filed an Arbitration Review Request ("Request") seeking review of the August 20, 2007 Award which rescinded the termination of Officer Phillip Suggs and found that the appropriate discipline should be a suspension without pay. (See Slip Op. No. 933 at p.1). MPD asserted that the Award was contrary to law and public policy. (See Request at p. 2 and Slip Op. No. 933 at p. 1). Specifically, MPD claimed that the Arbitrator's decision regarding the selected penalty was inconsistent with applicable law. (See Request at pgs. 6-7). FOP opposed the Request.

In Slip Op. No. 933 the Board found that MPD's Request for Review did not meet the statutory requirements for reversing Arbitrator Simpkins' Award. Specifically, we noted that "the record reveal[ed] that neither party challenged the Arbitrator's determination of the issue before him. We [found] that the absence of language in the parties' [collective bargaining agreement] establishing express limits on the Arbitrator's equitable power and the parties' failure to challenge the Arbitrator's identification of the issue to be determined, establish[ed] that the Arbitrator did not exceed his authority by exercising his powers to mitigate the Grievant's termination to a suspension." (Slip Op. No. 933 at p. 9).

With respect to MPD's claim that the Award was contrary to law and public policy, we stated that MPD had the burden to specify applicable law and definite public policy that mandated that the Arbitrator reach a different result. We found that MPD failed to do so. "Instead, MPD state[d] that 'an [arbitration award] violates public policy when it is inconsistent with and/or contrary to relevant law.'" (Slip Op. No. 933 at p. 10). We found that "MPD's public policy argument relied solely on general considerations of supposed public policy, and not a well-defined policy or legal precedent. Thus, MPD [] failed to point to any clear or legal public policy which the Award contravenes." (Slip Op. No. 933 at p. 10). Therefore, MPD's argument did not present a statutory basis for review. As

a result, we determined that we could not reverse the Award on this ground. In addition, the Board indicated that the Arbitrator's conclusions: (1) were based on a thorough analysis; and (2) could not be said to be clearly erroneous or contrary to law or public policy. (See Slip Op. No. 933 at p. 10). In view of the above, MPD's Request was denied.

On July 30, 2008, FOP filed the current Petition for Enforcement with the Board. FOP contends that MPD has failed to comply with Slip Op. No. 933. Specifically, FOP asserts that despite the Board's denial of MPD's Request, MPD has not reinstated Philip Suggs as required by Arbitrator Simpkins' August 20, 2007 Award. Also, FOP claims that:

[t]he parties previously had several meetings to discuss the reinstatement of Officer Phillip Suggs. The Metropolitan Police Department, however, has informed the FOP, through counsel, that it will not reinstate Officer Suggs . . . The Metropolitan Police Department's refusal to reinstate Officer Suggs is a direct violation of the Board's Decision and Order. (Petition at p. 2).

In light of the above, FOP is requesting that the Board enforce Slip Op. No. 933 and compel MPD to comply with the terms of Arbitrator Simpkins' Award.

MPD filed a timely response to the Petition. In their response, MPD does not deny that it has failed to comply with the Board's March 12, 2008 Decision and Order. Instead, MPD asserts that "Arbitrator Simpkins ordered, and the PERB approved, Officer Phillip Suggs' reinstatement 'provided that he [Officer Suggs] submits both medical and psychological documentation of his fitness for duty and submits to any medical and psychological examinations and tests which may be required by' MPD . . . MPD will take the necessary steps to comply with Arbitrator Simpkins' Opinion and Award forthwith." (MPD's Response to FOP's Petition at pgs 1-2).

We find that the material issues of fact and supporting documentary evidence are undisputed by the parties. Therefore, it is clear that MPD has not complied with Arbitrator Simpkins' Award. Specifically, MPD has not reinstated Officer Philip Suggs as required. As a result, the Board must determine if MPD's action is reasonable.

Board Rules 560.1 provides as follows:

**560.1 - Enforcement**

If any party fails to comply with the Board's decision within the time period specified in Rule 559.1, the prevailing party may petition the Board to enforce the order.

In the present case, on September 14, 2007, MPD filed an Arbitration Review Request seeking that the Board reverse the arbitrator's award. On March 12, 2008, the Board issued a Decision and Order denying MPD's Request. Pursuant to D.C. Code § 1-617.13(c) "[a]ny person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain review of such order in the Superior Court of the District of Columbia by filing a request within 30 days after the final order has been issued." See also, Superior Court Civil Rules, Part XV, Agency Review, Rule 1. Consistent with D.C. Code § 1-617.13(c) and Superior Court Rule I, MPD could have filed a Petition for Review of Agency Decision in the Superior Court of the District of Columbia within thirty days of the March 12, 2008 Board Decision and Order.<sup>2</sup> However, MPD did not file a Petition for Review. Therefore, MPD has waived its right to appeal the Board's March 12, 2008 Decision and Order in the Superior Court of the District of Columbia. In view of the above, we believe that MPD's failure to comply with the terms of the Award is not based on a genuine dispute over the terms of Arbitrator Simpkins' Award, but rather on a flat refusal to comply with the Award. We find that MPD has no "legitimate reason" for its on-going refusal to reinstate Officer Philip Suggs.

As previously discussed, the Board's Decision and Order was issued on March 12, 2008. Thus, it has been sixteen months since our Order was issued. We believe that MPD has had more than a reasonable period of time to comply with the terms of Arbitrator Simpkins' Award.

For the reasons noted above, we find that MPD has not complied with Slip Op. No. 933; therefore, FOP's Petition for Enforcement is granted. The Board will seek judicial enforcement of our March 12, 2008 Decision and Order, as provided under D.C. Code § 1-617.13(b) (2001 ed.).

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The Fraternal Order of Police/Metropolitan Police Department Labor Committee's "Petition for Enforcement of Order", is granted.
2. The Board shall proceed with enforcement of Slip Op. No. 933 pursuant to D.C. Code § 1-617.13(b) (2001 ed.), if full compliance with Slip Op. No. 933 is not made and documented to the Board within ten (10) days of the issuance of this Decision and Order.

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<sup>2</sup> Slip Op. No. 933 was issued on March 12, 2008, and the Order indicated that "[p]ursuant to Board Rule 559.1 the Decision and Order is final upon issuance." Slip Op. No. 933 at p. 11. Therefore, MPD was required to file its Petition for Review in the Superior Court within 30-days of the issuance of the final order-specifically by April 11, 2008.

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3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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

August 3, 2009

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 08-E-02 was transmitted via Fax and U.S. Mail to the following parties on this the 3<sup>rd</sup> day of August 2009.

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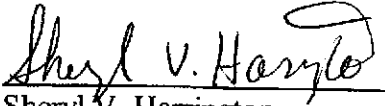
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