

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**

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| In the Matter of: |) | |
| |) | |
| Fraternal Order of Police/ Metropolitan Police Department Labor Committee |) | PERB Case Nos. 17-U-26, 18-U-04 18-U-06 |
| |) | |
| Complainant |) | Opinion No. 1651 |
| |) | |
| v |) | |
| |) | |
| Metropolitan Police Department |) | |
| |) | |
| Respondent |) | |
| |) | |

DECISION AND ORDER

I. Introduction

The Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP”) filed three unfair labor practice complaints, each alleging that the Metropolitan Police Department (“MPD”) committed an unfair labor practice by refusing to abide by an arbitration award. FOP also named Chief of Police Peter Newsham as a respondent.

Since all three of these cases involve the same parties and similar issues, the Board hereby consolidates the cases. The Board finds that MPD has committed an unfair labor practice by refusing to follow the arbitrators’ awards.

II. Statement of the Facts

PERB Case No. 18-U-04

Officer Aaron Harper was investigated by MPD’s Internal Affairs Division for receiving monetary compensation from MPD and an outside employer, Forza LLC, for overlapping times. An Adverse Action Panel found Officer Harper guilty and he was terminated from his position.¹ On June 28, 2017, Arbitrator Daniel LeClair issued an award reducing Officer Harper’s penalty

¹ Answer at 2.

from termination to a 45-day suspension. The Award stated that Officer Harper should be reinstated with full back pay, and lost benefits, subject to the 45-day suspension without pay, less interim earnings. The Award further stated that MPD shall remove any reference to termination from his personnel file and compensate the Union for 50% of all legal fees in connection with this grievance.² The Arbitrator in a separate opinion also awarded FOP attorney's fees and costs totaling \$12,480.00.³ MPD filed an arbitration review request with the Board but withdrew the petition for review on August 14, 2017.⁴

PERB Case No. 18-U-06

MPD's Adverse Action Hearing Panel found Officer April Gray and Officer Corey Williams guilty of untruthful statements and unauthorized outside employment. The Panel recommended termination for the untruthful statements and a 10-day suspension for the unauthorized outside employment.⁵ On August 16, 2017, Arbitrator Lawrence S. Coburn issued an award directing MPD to reinstate Officer Gray and Officer Williams to their former positions, make them whole, and remove from their personnel files all references to their termination from employment.⁶ MPD filed an arbitration review request with the Board, but withdrew the petition for review on September 12, 2017.⁷

PERB Case No. 17-U-26

In an Adverse Action Hearing, Officer Jay Hong pleaded guilty to driving while intoxicated and having a blood alcohol content of 0.12% or higher. The Panel also found Officer Hong guilty of the remaining charges to which he pled not guilty: sexual assault and displaying his weapon.⁸ The Panel recommended his removal from MPD. On August 18, 2016, Arbitrator Kathleen Miller issued an award reducing Officer Hong's penalty from termination to a 35-day suspension. The Arbitrator directed MPD to include the revocation of termination in Officer Hong's personnel file and make him whole by compensating him with full back pay, less any interim earnings, and lost job benefits.⁹ The Arbitrator issued an award granting FOP attorney's fees and costs in the amount of \$20,587.45.¹⁰ MPD did not elect to file an arbitration review request with the Board regarding the Award or the Award of Attorney's fees.¹¹

III. Discussion

The facts of these cases are undisputed, and therefore they are appropriate for a decision on the pleadings. Board Rule 520.10 states that "if the investigation reveals that there is no issue

² LeClair Award at 11.

³ LeClair Petition for Attorneys' Fees and Expenses

⁴ Complaint at 5.

⁵ Coburn Award at 8.

⁶ Coburn Award at 11.

⁷ Complaint at 4.

⁸ Miller Award at 6-7.

⁹ Complaint at 3-4.

¹⁰ Complaint at 4.

¹¹ Complaint at 4.

of fact to warrant a hearing, the Board may render a decision upon the pleadings or may request briefs and/or oral argument.”

MPD refused to reinstate these police officers in compliance with the Arbitrators’ Awards. FOP argues that pursuant to the D.C. Official Code, MPD is prohibited from “interfering, restraining, or coercing any employee in the exercise of the rights guaranteed by this subchapter...refusing to bargain collectively in good faith with the exclusive representative.” FOP argues that MPD violated D.C. Official Code section 1-617.04(a)(1) because its refusal to abide by the arbitrators’ awards ignores the rule of law and interferes with FOP members’ bargained-for arbitration right;¹² and that MPD further violated section 1-617.04(a)(5), failing to bargain in good faith with the Union by ignoring the bargained-for resolution of grievances through arbitration.¹³

MPD requests that the Board deny the Complaints. MPD argues that Chief Newsham is not a proper respondent in these matters and should be dismissed.¹⁴

D.C. Official Code section 1-617.04 provides that the “District, its agents, and representatives” are prohibited from engaging in unfair labor practices. The Board has held that suits against District officials in their official capacity should be treated as suits against the District.¹⁵ Therefore, MPD’s request to dismiss Chief Newsham as a Respondent in these matters is granted.

To establish an unfair labor practice under section 1-617.04(a)(1), the Complainant must prove by a preponderance of the evidence that the Respondent interfered with, restrained or coerced an employee in the exercise of rights guaranteed by this subsection, or that the Respondent refused to bargain in good faith with the union. Failure to implement the terms of an arbitration award where no genuine dispute exists over its terms constitutes a failure to bargain in good faith and, consequently, an unfair labor practice under the D.C. Official Code.¹⁶

MPD does not dispute that it has failed to reinstate the police officers.¹⁷ MPD also does not dispute that for PERB Case Nos. 18-U-06 and 18-U-04 it withdrew its petition for review of the Award before the Board.¹⁸ MPD elected not to invoke its right to file an arbitration review request for the Arbitration Award or the Award of Attorney’s Fees for PERB Case No. 17-U-26.¹⁹ MPD’s failure to comply is not based upon a genuine dispute over the terms of the

¹² Complaint at 7.

¹³ Complaint at 7.

¹⁴ Answer at 8.

¹⁵ See *Fraternal Order of Police/Metro. Police Dep’t Labor Comm. v. D.C. Metro. Police Dep’t*, 59 D.C. Reg. 6579, Slip Op. No. 1118 at p. 4-5, PERB Case No. 08-U-19 (2011); see also *Fraternal Order of Police/Metro. Police Dep’t Labor Comm. v. D.C. Pub. Emp. Relations Bd.*, Civ. Case No. 2011 CA 007396 P(MPA) (D.C. Super. Ct. Jan 9, 2013).

¹⁶ *AFGE, Local 383 v. D.C. Dep’t of Youth Rehab. Servs.*, 60 D.C. Reg., 15983, Slip Op. 1423, PERB Case No. 10-U-48 (2013), *Int’l Bhd. of Police Officers, Local 446 v. D.C. Health & Hosps. Pub. Benefit Corp.*, 47 D.C. Reg. 7184, Slip Op. 622 at p. 4, PERB Case No. 99-U-30 (2000).

¹⁷ Answer at 4.

¹⁸ Answer at 4.

¹⁹ Answer at 2.

Awards, but rather a simple refusal to comply. This conduct constitutes a violation of MPD's duty to bargain in good faith under section 1-617.04(a)(5), and interference with bargaining unit employees' rights in violation of section 1-617.04(a)(1).²⁰

Motion to Dismiss for Untimeliness

MPD filed a Motion to Dismiss for Untimeliness regarding 17-U-26. MPD argues 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.²¹ According to MPD, any violations in the Complaint occurring on or before January 5, 2017 are untimely and should be dismissed.²²

FOP filed an Opposition to the Motion to Dismiss which included the sworn statement and affidavit of Matthew N. Mahl, Chairman of FOP. The Chairman states that it was not until a meeting with Mark Viehmeyer, Director of Labor Relations for MPD, that it was clear MPD had no intention of reinstating Officer Hong. This meeting occurred on April 12, 2017.²³

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 violation occurred. The 120-day period for filing a complaint begins when the complainant first knew or should have known about the acts giving rise to the alleged violation.²⁴ MPD's motion to dismiss argues that the violation occurred on the day the Arbitrator issued her Award. FOP could not have known that MPD would refuse to follow the Award on the day it was issued, and MPD has presented no evidence that they indicated its intention to FOP. The date the Award was issued, August 8, 2016, cannot be the start date of the 120-day deadline. The date identified by FOP and not disputed by MPD is the only date presented on which the deadline could have attached. MPD's Motion to Dismiss is denied.

IV. Conclusion

MPD violated section 1-617.04(a)(1) and (5) by refusing to implement the terms of arbitration awards. The unfair labor practice complaint is upheld and MPD's motion to dismiss is denied. However, Chief Peter Newsham is dismissed as a respondent. MPD is directed to fully comply with the terms of arbitration awards within ten (10) days of the issuance of this Decision and Order, if it has not done so already. Additionally, MPD will post a notice of the violation.

ORDER

IT IS HEREBY ORDERED THAT:

²⁰ *AFGE, Local 1000 v. D.C. Dep't of Empl. Servs.*, 61 D.C. Reg. 9776, Slip Op. 1486, PERB Case No. 13-U-15 (2014), *See also AFGE, Local 2725 v. D.C. Hous. Auth.*, 46 D.C. Reg. 8356, Slip Op. 597, PERB Case No. 99-U-23 (1999).

²¹ Respondent's Answer to Unfair Labor Practice and Motion to Dismiss at 6.

²² Respondent's Answer to Unfair Labor Practice and Motion to Dismiss at 6.

²³ Affidavit at 1.

²⁴ *Pitt v. D.C. Dep't of Corr.*, 59 D.C. Reg. 5554, Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06 (2009).

1. The District of Columbia Metropolitan Police Department's motion to dismiss for untimeliness is denied.
2. The District of Columbia Metropolitan Police Department's request to dismiss Chief Peter Newsham in this matter is granted
3. FOP's unfair labor practice is granted.
4. The District of Columbia Metropolitan Police Department shall cease and desist from violating section 1-617.04(a)(5) of the D.C. Official Code by failing to implement the arbitration awards.
5. Within ten (10) days from the issuance of this Decision and Order, the District of Columbia Metropolitan Police Department shall fully comply with the terms of the arbitration awards, if it has not already done so.
6. The District of Columbia Metropolitan Police Department shall conspicuously post where notices to employees are normally posted two (2) notices that the Board will furnish to MPD in each of the department's buildings. The notice shall be posted within fourteen (14) days from MPD's receipt of the notice and shall remain posted for thirty (30) consecutive days.
7. Within fourteen (14) days from the date of the receipt of the notice, MPD shall notify the Public Employee Relations Board in writing that the attached notice has been posted accordingly and on what date they were posted.
8. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

January 18, 2018

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case Nos 17-U-26, 18-U-04, 18-U-06, Op. No. 1651 was sent by File and ServeXpress to the following parties on this the 31st day of January, 2018.

Marc L. Wilhite
Pressler Senftle & Wilhite, P.C.
1432 K Street, NW
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Nicole L. Lynch
Metropolitan Police Department
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/s/ Sheryl Harrington
PERB



Public
Employee
Relations
Board

GOVERNMENT OF
THE DISTRICT OF
COLUMBIA



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NOTICE

TO ALL EMPLOYEES OF THE METROPOLITAN POLICE DEPARTMENT, THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1651, PERB CASE Nos. 17-U-26, 18-U-04, AND 18-U-06 (JANUARY, 18, 2018).

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law in the manners alleged in PERB Case Nos. 17-U-26, 18-U-04, and 18-U-06, and has ordered MPD to post this Notice.

WE WILL cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) in the manners stated in Slip Opinion No. 1561, PERB Case Nos 17-U-26, 18-U-04, and 18-U-06.

WE WILL cease and desist from refusing to implement the terms of arbitration awards in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5)

Metropolitan Police Department

Date: _____ By: _____

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or MPD's compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board by U.S. Mail at 1100 4th Street, SW, Suite E630; Washington, D.C. 20024, or by phone at (202) 727-1822.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

January 18, 2018

Washington, D.C.