

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 Nos. 11-U-38 (R)
Complainant,	)	
	)	
v.	)	Opinion No. 1501
	)	
District of Columbia Metropolitan Police Department,	)	
	)	
Respondent.	)	
	)	

**DECISION AND ORDER ON REMAND**

**I. Statement of the Case**

This matter comes before the Board on remand from the Superior Court pursuant to its order in *District of Columbia Metropolitan Police Department v. Public Employee Relations Board*, No. 2014 CA 005330 (D.C. Super. Ct. Nov. 17, 2014). The case was before the Superior Court upon a petition for judicial review brought by the D.C. Metropolitan Police Department ("MPD").

MPD petitioned for judicial review of a decision and order that ruled upon motions for reconsideration filed by both parties in the above-captioned matter. On July 24, 2014 the Board issued the following order:

**IT IS HEREBY ORDERED THAT:**

1. FOP's motion for reconsideration is granted.
2. MPD's motion for reconsideration is denied.
3. Paragraphs 1 and 3 of the Order issued with Opinion No. 1370 are vacated.

4. FOP's unfair labor practice Complaint will be referred to a hearing examiner for an unfair labor practice hearing.
5. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

*F.O.P./Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, 61 D.C. Reg. 9056, Slip Op. No. 1479 at 5, PERB Case No. 11-U-38 (2014) ("Opinion No. 1479").

The Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP") intervened and moved the Superior Court to dismiss MPD's petition for judicial review. FOP argued that the Board's order refers FOP's complaint to a hearing. Consequently, the order is not final but interlocutory and MPD failed to exhaust its administrative remedies, i.e., the procedures involved in an unfair labor practice hearing. MPD responded that the order itself in its fifth paragraph states that it is final. Because Board Rule 559.4 provides that "[a]dministrative remedies are considered exhausted when a Decision and Order becomes final in accordance with this section," MPD asserted that it had exhausted its administrative remedies and properly filed its petition for judicial review.

The court averred:

Petitioner and Intervenor have highlighted an apparent conflict in PERB's July 24 Order. The body of the Decision and other paragraphs of the Order plainly direct the parties to further action, therefore indicating that administrative remedies have not been exhausted. The last sentence of the Order, however, announces its finality in accordance with Rule 559.1. This Court cannot resolve the conflict. Accordingly, it **REMANDS** this matter back to the PERB for clarification of its July 24, 2014 Order.

*D.C. Metro. Police Dep't v. Pub. Employee Relations Bd.*, No. 2014 CA 005330, slip op. at 3 (D.C. Super. Ct. Nov. 17, 2014).

## **II. Discussion**

The following Board rules are pertinent to the court's remand:

Rule 559.1 The Board's Decision and Order shall become final thirty (30) days after issuance unless the order specifies otherwise.

Rule 559.3 Upon the issuance of an Opinion on any motion for reconsideration of a Decision and Order, the Board's Decision and Order shall become final.

Rule 559.4 Administrative remedies are considered exhausted when a Decision and Order becomes final in accordance with this section.

The Board's rules contemplate that only final orders of the Board resolving the entire matter, not its interlocutory orders, are appealable. In this case, MPD's administrative remedies have not been exhausted. Rather, the Board intended that there would be further proceeding before the Board including but not limited mediation, hearings and resolution of the unfair labor practice charge. The efficient use of administrative and judicial resources would require PERB to decide the entire matter before any appeal is taken. As such, the Board finds that Opinion No. 1479 is interlocutory and the appeal was premature. The statement in the Opinion No. 1479 that the "Decision and Order is final upon issuance" was in error.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Decision and Order issued in Opinion No. 1479 was not final upon issuance.
2. Pursuant to paragraph 4 of the order issued with Opinion No. 1479, FOP's unfair labor practice Complaint will be promptly referred to a hearing examiner for an unfair labor practice hearing.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By unanimous vote of Board Chairman Charles Murphy and Members Donald Wasserman, Keith Washington, Ann Hoffman and Yvonne Dixon

Washington, D.C.

December 22, 2014

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 11-U-38 was transmitted to the following parties on this the 24th day of December 2014.

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/s/ Sheryl V. Harrington  
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