

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of 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/Department of Corrections Labor Committee,)	
)	PERB Case Nos. 01-U-21, 01-U-28 and 01-U-32
Complainant,)	
)	Opinion No. 749
v.)	
)	Petition for Enforcement
District of Columbia Department of Corrections,)	
)	
Respondent.)	
)	

DECISION AND ORDER

I. Statement of the Case:

Pursuant to Board Rule 560.1, the Fraternal Order of Police/Department of Corrections Labor Committee ("FOP" or "Complainant"), filed a Petition for Enforcement, in the above-referenced matter. FOP asserts that the District of Columbia Department of Corrections ("Respondent" or "DOC") has failed to comply with Slip Op. No. 722, which was issued on August 13, 2003. FOP is requesting that the Public Employee Relations Board ("Board" or "PERB") initiate an enforcement proceeding in the Superior Court of the District of Columbia in order to compel DOC to comply with Slip Op. No. 722.

DOC filed a response to the Petition for Enforcement ("Petition") denying that it has failed or refused to comply with the Board's August 13, 2003 Decision and Order. As a result, DOC has requested that the Board dismiss the Petition. FOP's Petition and DOC's answer are before the Board for disposition.

II. Discussion

In Slip Op. No. 722 the Board found that DOC violated the Comprehensive Merit Personnel Act. Specifically, the Board determined that DOC violated D.C. Code §1-617.04(a)(1), (4) and (5) by: (1) failing to bargain collectively and in good faith with FOP concerning the impact and effects of a reduction-in-force (RIF); (2) refusing to provide information necessary for FOP to conduct its representational function concerning the impact and effects of the RIF; and (3) taking reprisals against William Dupree when it sought to eliminate four years of service he had earned. As a result, the

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Board ordered DOC to: (1) cease and desist from refusing to bargain with FOP; (2) cease and desist from refusing to produce documents; (3) bargain on an expedited basis and with retroactive effect over the impact and effects of the previous RIF; (4) cease and desist from retaliating against William Dupree for engaging in protected activity; and (5) restore four years of service to William Dupree. (See, Slip Op. No. 722 at p. 8). In addition, the Board issued a Notice to employees which was to be posted by DOC. Subsequently, DOC filed a "Petition for Agency Review" with the Superior Court of the District of Columbia. The Board through its counsel filed a "Motion to Dismiss Petition for Review." On February 2, 2004, Judge Melvin Wright of the Superior Court of the District of Columbia dismissed DOC's "Petition for Agency Review", with prejudice.

On March 25, 2004, FOP filed a Petition for Enforcement with the Board. FOP contends that DOC has failed to comply with Slip Op. No. 722 by failing to: (1) post the Notice which was attached to the Board's Decision and (2) provide FOP with dates for retroactive bargaining. (Pet. at p. 2). FOP is requesting that the Board initiate an enforcement proceeding in the Superior Court of the District of Columbia in order to compel DOC to: (1) comply with the terms of the Board's Decision and Order and (2) post a Notice to employees.

The Office of Labor Relations and Collective Bargaining (OLRCB) filed a response on behalf of DOC. In its response DOC has requested that FOP's Petition be dismissed. In their submission DOC "admits that as of the date of the filing of the Petition, no dates had been provided to [FOP] to engage in PERB's unique 'retroactive bargaining' order."¹ (DOC's Response to Motion for Enforcement at p. 3). However, DOC claims that on April 7, 2004, it submitted several proposed dates "to the FOP/DOCLC on which to conduct the 'retroactive RIF bargaining' pursuant to the PERB Decision and Order." (DOC's Response to Motion for Enforcement at p. 3). In addition, DOC asserts that it has not posted the Notice because the Board did not order DOC to post the Notice.

The Board's Decision and Order was issued on August 13, 2003. In addition, Superior Court Judge Melvin Wright dismissed DOC's appeal on February 2, 2004. Also, FOP's Petition was filed

¹DOC contends that the Board's Order directing retroactive bargaining in this case is a unique remedy. However, we note that this remedy is not unique. For example, in International Brotherhood of Police Officers, Local 445 v. D.C. Office of Property Management, Slip Op. No. 704 at pgs. 7-8, PERB Case No. 01-U-03 (2003), the Board stated the following:

[T]he Board recognizes that the passage of time may have rendered some of the issues concerning management's decision moot. Nonetheless, we believe that ordering the parties to engage in impact and effects bargaining over issues which are still ripe or relevant is appropriate. We believe that this remedy will achieve the goals of the Board's remedies, as outlined in the CMPA and the relevant Board precedent.

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on March 25, 2004. In view of the above, it is clear that at the time FOP filed its Petition, more than seven months had elapsed since the Board's Decision and Order was issued. In addition, almost two months had elapsed since Judge Wright dismissed DOC's Petition for Review. Despite this passage of time, DOC has not complied with all of the terms of the Board's Order. In fact, DOC did not provide FOP with possible dates for commencing impact and effects bargaining, until after FOP asked the Board to enforce the August 13th Order. Specifically, FOP filed its Petition on March 25, 2004. However, DOC acknowledged that it did not provide FOP with possible meeting dates until April 7, 2004. (See DOC's Response to Motion for Enforcement at p. 3). In light of the above, we believe that DOC has had more than a reasonable period of time within which to initiate compliance with the impact and affects bargaining ordered by the Board. However, DOC has failed to commence bargaining.

Regarding the posting of the Notice, DOC "admits that as of the date of the filing of the Petition, the Respondent had not posted the Notice attached to PERB's Decision and Order." (DOC's Response to Motion for Enforcement at p. 3). However, DOC claims that it has not posted the Notice because the Board did not require it to do so. We find that DOC's argument concerning its failure to post the Notice, is not persuasive for several reasons. First, DOC acknowledged that the Notice was attached to the Board's August 13, 2003 Decision and Order. In addition, paragraph one of the Notice provides as follows: "**WE HEREBY NOTIFY** our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered us to post this notice." Furthermore, the Notice contains the following language: "**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.** In view of the above, we conclude that DOC's argument that it was not required to post the Notice, lacks merit.

For the reasons noted above, we find that DOC has not complied with our Order in Slip Op. No. 722; therefore, FOP's Petition for Enforcement is granted. Before seeking judicial enforcement of our August 13th Decision and Order, as provided under D.C. Code §1-617.13(b) (2001 ed.), we will grant DOC five (5) business days from the issuance of this decision to finally and fully comply with our Decision and Order in Slip Op. No. 722. However, we emphasize that continued disregard of the Board's Decision and Order, will be met with prompt action for enforcement and other sanctions as the Board may deem appropriate.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Fraternal Order of Police/Department of Corrections Labor Committee's (FOP) "Petition for Enforcement," is granted.

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2. The District of Columbia Department of Corrections' (DOC) request that FOP's Petition be dismissed with prejudice, is denied.
3. The Board shall proceed with enforcement of its Order pursuant to D.C. Code §1-617.13(b) (2001 ed.), if full compliance with the Board's Order in Slip Op. No. 722 is not made and documented to the Board within five (5) business days of the issuance of this Decision and Order.
4. DOC shall post conspicuously, within three (3) business days from the service of this Decision and Order, the attached Notice. The Notice shall be posted where notices to bargaining unit members are customarily posted. The Notice shall remain posted for thirty (30) consecutive days.
5. DOC and FOP shall within three (3) business days from the service of this Decision and Order agree on a date for the first impact and effects bargaining session. Also, DOC shall bargain on an expedited basis and with retroactive effect over the impact and effects of the previous reduction-in-force.
6. Within five (5) business days from the issuance of this Decision and Order, DOC shall notify the Public Employee Relations Board (PERB), in writing, that the Notice has been posted. Also, DOC shall notify PERB of the specific steps it has taken to comply: (a) with our Order in Slip Opinion No. 722 and (b) paragraph five (5) of this Order.
7. Pursuant to Board Rule 559.2, this Decision and Order is final upon issuance.

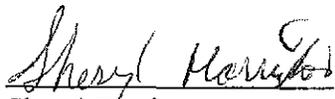
BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

May 26, 2004

Certificate of Service
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Mary Leary, Director
Office of Labor Relations
and Collective Bargaining
441 4th Street, N.W.
Suite 820 North
Washington, D.C. 20001

U.S. MAIL


Sheryl Harrington
Sheryl Harrington
Secretary

NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS (DOC), 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. 722, PERB CASE NOS. 01-U-21, 01-U-28 & 01-U-32 (August 13, 2003).

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered us to post this Notice.

WE WILL cease and desist from refusing to bargain in good faith with the Fraternal Order of Police/Department of Corrections Labor Committee (FOP) concerning a reductions-in-force related to the closure of the Lorton Correctional Complex by the conduct set forth in Slip Opinion No. 722.

WE WILL cease and desist from refusing to produce documents, upon request, where those documents are relevant and necessary for the exclusive bargaining agent's representational functions.

WE WILL cease and desist from retaliating against William Dupree, FOP's former Chairman, and any other DOC employees represented by FOP, for engaging in protected activities.

WE WILL NOT, in any like or related manner, interfere, restrain or coerce, employees in their exercise of rights guaranteed by the Labor-Management subchapter of the Comprehensive Merit Personnel Act.