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**Government of the District of Columbia  
Public Employee Relations Board**

In the Matter of:	)	
	)	
District of Columbia	)	
Department of Corrections	)	
	)	
Petitioner,	)	PERB Case No. 12-E-08
	)	
and	)	Opinion No. 1385
	)	
Fraternal Order of Police/Department	)	
of Corrections Labor Committee,	)	
	)	
Respondent.	)	
	)	

**DECISION AND ORDER**

**I. Statement of the Case**

On August 29, 2012, the Board issued a Decision and Order in PERB Case No. 10-A-14, affirming an arbitration award, which was reviewed at the request of District of Columbia Department of Corrections ("DOC"). *District of Columbia Department of Corrections and Fraternal Order of Police/Department of Corrections Labor Committee*, 59 D.C. Reg. 12702, Slip Op. No. 1326, PERB Case No. 10-A-14 (2012). On August 31, 2012, the Fraternal Order of Police/ Department of Corrections Labor Committee ("FOP") filed a Petition for Enforcement of the Board's Decision and Order for Slip Opinion Number 1326 ("Enforcement Petition"). On September 13, 2012, the DOC, through its representative the Office of Labor Relations and Collective Bargaining, ("OLRCB"), filed a Motion for Reconsideration of Slip Opinion No. 1326. On September 17, 2012, DOC filed a Motion to Dismiss the Enforcement Petition ("Motion to Dismiss"). On September 20, 2012, FOP filed an Opposition to Motion for Reconsideration. On September 24, 2012, FOP filed an Opposition to the Motion to Dismiss Enforcement Petition ("Opposition to Motion").

FOP's Petition for Enforcement is before the Board for disposition.

## II. Background

On October 23, 2009, Arbitrator Joyce M. Klein ("Arbitrator") issued an award finding that charges against three (3) correctional officers were sustained in part and denied in part. The Arbitrator reduced the officers' removals to a fifteen (15) day suspension for one officer and a ten (10) day suspension for the two other officers. Slip Op. No. 1326, at 2. The Arbitrator retained jurisdiction over the issue of attorney's fees sought by FOP. *Id.* FOP submitted a motion for attorney's fees to the Arbitrator, which was opposed by DOC. *Id.* On January 12, 2010, the Arbitrator granted the Union attorney fees in the amount of \$52,206.00 in a Supplemental Award ("Award").

On February 2, 2010, DOC filed an Arbitration Review Request of the Arbitrator's Supplemental Award ("Request") in the above-captioned matter, asserting that the Arbitrator exceeded her jurisdictional authority by granting attorney's fees to the Union. FOP filed an Opposition to the Request.

On August 23, 2012, the Board decided to deny DOC's Arbitration Review Request, finding that "the Arbitrator's conclusions are based on a thorough analysis and cannot be said to have exceeded his authority." *District of Columbia Department of Corrections and Fraternal Order of Police/Department of Corrections Labor Committee*, 59 D.C. Reg. 12702, Slip Op. No. 1326, PERB Case No. 10-A-14 (2012).

## III. Discussion

On August 29, 2012, PERB issued Opinion No. 1326 to FOP and MPD via U.S. Mail and electronic service. On August 31, 2012, PERB received via electronic service FOP's Petition for Enforcement of the Board's Decision and Order in Opinion No. 1326. On September 13, 2012, DOC timely filed a Motion for Reconsideration of Opinion No. 1326.

In FOP's Enforcement Petition, FOP requests the Board to enforce its Decision and Order in Opinion No. 1326, because "[t]he District of Columbia has not complied with the award of attorneys fees." (Enforcement Petition at 3).

In its Motion to Dismiss, DOC argues that FOP's Enforcement Petition is deficient, because DOC's Motion for Reconsideration prevented Opinion No. 1326 from becoming final, until the Board's resolution of DOC's Motion for Reconsideration. (Motion to Dismiss at 2-3). DOC argues that Board Rules 560.1, 559.1, and 559.2 are dispositive of the issue. *Id.*

In FOP's Opposition to DOC's Motion to Dismiss, FOP argues that the Decision and Order stated that "this Decision and Order is final upon issuance," and that the Board designated a specific point of finality, which FOP argues was "upon issuance." (Opposition to Motion at 2) (quoting *District of Columbia Department of Corrections and Fraternal Order of Police/Department of Corrections Labor Committee*, Slip Op. No. 1326, at 6. FOP reasons that "[b]y designating a specific point of finality (upon issuance), PERB merely utilized the language in Rule 559.1, which states 'unless the order specifies otherwise.'" (Opposition at 2) (quoting Board Rule 559.1).

Board Rules 560.1, 559.1, and 559.2 provide in relevant part as follows:

**560.1 - Enforcement**

Board Rule 560.1: If any respondent 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.

**559.1 - Finality of Board Decision and Order**

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

**559.2 - Finality of Board Decision and Order (cont'd)**

The Board's Decision and Order shall not become final if any party files a motion for reconsideration within ten (10) days after issuance of the decision, or if the Board reopens the case on its own motion within ten (10) days after issuance of the decision, unless the order specifies otherwise.

**559.3 - Finality of Board Decision and Order (cont'd)**

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.

Board Rule 560.1 for a petition for enforcement must be read in conjunction with Board Rules 559.1, 559.2, and 559.3. At a minimum, the Board's Decision and Order must be final in order to be enforceable. *See also, Fraternal Order of Police/Department of Corrections Labor Committee (on behalf of Carl B. Butler) v. District of Columbia Department of Corrections*, 59 D.C. Reg. 6175, Slip Op. No. 1022, PERB Case No. 10-E-03 (2012) (granting enforcement petition of an arbitration award upheld by the Board in a previous decision, when Agency failed to comply within a reasonable period of time after the Board's Decision and Order); *Fraternal Order of Police/Department of Corrections Labor Committee (on behalf of Carl B. Butler) v. District of Columbia Department of Corrections*, 59 D.C. Reg. 3919, Slip. Op. No. 920 PERB Case No. 07-E-02 (2012) (granting enforcement petition of an arbitration award affirmed by the Board, when Agency was found to have "no legitimate" reason for not complying with the Arbitration Award).

FOP, however, argues that Board Rule 559.2 should be read in conjunction with Board Rule 559.1 to toll the thirty (30) day period for finality, only when the Board has not exercised its discretion to provide a different finality timeline. (Opposition to Motion at 2-3). In the present case, FOP argues that the Board did order a different finality time period in Opinion No. 1326 by stating "this Decision and Order is final upon issuance." *Id.*

The Board finds that the plain language of Board Rule 559.2 tolls the finality of a Board Decision and Order when a Motion for Reconsideration is filed. *See District of Columbia Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Grievant, Angela Fisher), \_ D.C. Reg. \_, Slip Op. No. 755, PERB Case No. 02-A-07 (2004) (denying a Motion to Stay entry and enforcement of a Board Decision and Order, which affirmed an arbitration award, when no timely motion for reconsideration was filed and there was no "sufficient justification for granting a stay" of enforcement).* Furthermore, the language of Board Rule 559.3, as stated above, makes clear that a Decision and Order is not final until a motion for reconsideration, made pursuant to Board Rule 559.2, is decided.

As DOC filed a timely Motion for Reconsideration, the Board's Decision and Order was not yet final to enforce. Therefore, FOP's Petition for Enforcement was premature, and must be denied.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Fraternal Order of Police/Department of Corrections Labor Committee's Petition for Enforcement of Slip Opinion Number 1326 is denied.
2. 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.

April 30, 2013

**CERTIFICATE OF SERVICE**

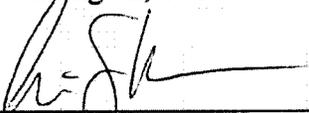
This is to certify that the attached Decision and Order in PERB Case No. 12-E-08 was transmitted via LexisNexis File & Serve to the following parties on the 1<sup>st</sup> of May, 2013.

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