



Public
Employee
Relations
Board



1100 4th Street S.W.
Suite E630
Washington, D.C. 20024-
4451
Business: (202) 727-1822
Fax: (202) 727-9116
Email: perb@dc.gov

March 19, 2015

MINUTES

The regular monthly meeting of PERB was held on March 19, 2015, 11:25 a.m. at PERB headquarters. Chairman Charles Murphy, presiding, and Board members Yvonne Dixon, Ann Hoffman, Keith Washington and Donald Wasserman present

Also in attendance were Executive Director Clarene Martin, Lindsey Maxwell, Erica Balkum, Colby Harmon, David McFadden, Benjamin Kraft, Margaret Cox and Yvonne Waller.

The minutes of the last meeting were read and approved.

I. Public Forum:

None.

II. Docket:

- A. 08-U-26: Fraternal Order of Police/Metropolitan Police Department Labor Committee v. Committee v. District of Columbia Metropolitan Police Department: Unfair Labor Practice Complaint. David McFadden presented the case to the Board. This case involved an allegation that MPD retaliated against Sgt. Andrew Daniels for filing two grievances by imposing a special leave policy on him, investigating him, obtaining IS numbers, ordering him to complete a PD 119, and issuing a letter of prejudice to him. The staff recommendation is as follows: FOP alleged and proved retaliatory adverse actions was taken against Daniels, namely, requiring Daniels to complete a witness statement and investigating Daniels. The Board should order MPD to cease and desist from further interference with and retaliation against protected activities and to post two notices of its violation, as the hearing examiner recommended. The Board so moved. After discussion, the motion was seconded, carried and adopted.
- B. 12-E-06: American Federation of Government Employees. Local 3721 v. District of Columbia Fire and Emergency Medical Services: Enforcement Petition. Colby Harmon presented the case to the Board. AFGE seeks enforcement of the Board's April 25, 2012, order in District of Columbia Fire and Emergency Medical Services v. American Federation of Government Employees, Local 3721, 59 D.C. Reg. 9757, Op. No. 1258, PERB Case No. 10-A-09 (2012) ("PERB Order"), which upheld a November 24, 2009, Arbitration Award ("Award") that directed FEMS to compensate paramedics and EMTs "appropriate overtime pay for the previously uncompensated hours worked over 40 in a workweek from October 1, 2006, forward," plus liquidated damages and attorneys' fees. The staff recommendation is to deny the Petition because (1) AFGE

effectively agreed to FEMS' proposed calculations via its conduct; and (2) FEMS reasonably relied on AFGE's implication that it had accepted the proposed calculations when it secured funding for the payouts and then made the payments, thus estopping AFGE from seeking further enforcement of the Award or PERB's Order. The Board so moved. After discussion, the motion was seconded, carried and adopted.

- C. 12-E-10: American Federation of State, County and Municipal Employees, Local 2921 v. District of Columbia Public Schools; Enforcement Petition. Colby Harmon presented the case to the Board. The issue is whether DCPS failed to comply with the Board's order in Slip Opinion 1299 and, if so, whether PERB should grant AFSCME's petition seeking enforcement of the order. The Board amended the staff recommendation as follows. The order will indicate that the Board takes timely compliance with its orders seriously and, in an appropriate case, will seek enforcement if the respondent does not comply in a timely manner. But in this case, the Board will seek enforcement only with respect to the underlying grievance. It shall be processed within ten days of the Board's order. However, because AFSCME did not submit a statement of its cost and did not comply with the Board's order, the Board will not enforce that part. The Board so moved. After discussion, the motion was seconded, carried and adopted.
- D. 14-U-03: American Federation of State, County and Municipal Employees, District Council 20, Local 2091 v. District of Columbia Department of Public Works; Unfair Labor Practice Complaint. Erica Balkum presented the case to the Board. AFSCME alleges that DPW did not bargain before implementing its performance evaluations nor engage in impact and effects bargaining. The hearing examiner found the performance evaluations were not a mandatory subject of bargaining, but arrived at her conclusions without court precedence. Staff recommended that the Board find that 1) the performance evaluations were not a mandatory subject of bargaining and that DPW did not violate its duty to bargain; and 2) dismiss the Union's complaint with prejudice because management notified the Union in July or August of 2013 that it would not bargain, but the Union did not file its complaint until December, 2014, outside the prescribed 120 day deadline. The Board so moved. After discussion, the motion was seconded, carried and adopted.
- E. 14-U-10: Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department; Unfair Labor Practice Complaint. Erica Balkum presented the case to the Board. A union member, who is an MPD Officer, had an interaction with court liaison officials prior to testifying at a criminal trial, which she thought may lead to discipline. The member went to her union representative, who sent a letter to the Inspector General, asserting that there had been witness intimidation. During the course of an Internal Affairs investigation, the union filed the present complaint, asserting that the member had been intimidated and threatened during a November 6, 2013 Internal Affairs meeting. The issue is whether the Board recognizes a labor relations privilege? If so, whether the Agency violated that privilege through its actions? And finally, whether MPD's conduct at the Internal Affairs meeting violated the CMPA? Staff

recommendations are as follows: 1) Adopt Hearing Examiner's Recommendation finding that the Agency had engaged in intimidation and order a posting and reasonable costs. The Board so moved. After discussion, the motion was seconded, carried and adopted.

F. 15-A-02: District of Columbia Department of Youth Rehabilitation Services vs. Fraternal Order of Police/Department of Youth Rehabilitation Services Labor Committee: Arbitration Review Request. Colby Harmon presented the case to the Board. DYRS seeks review of an Arbitration Award which found: (1) the grievance filed by FOP challenging DYRS-015 on a time, attendance, and leave policy, was arbitrable, and (2) that the policy violated District regulations and the parties' collective bargaining agreement and therefore must be rescinded. DYRS challenges the arbitrability finding on the basis that the Arbitrator exceeded his authority. The staff recommends that the arbitration review request be denied because (1) questions of procedural arbitrability are exclusively for arbitrators to decide; (2) DYRS arguments constitute nothing more than a mere disagreement with the Arbitrator's findings and witness credibility assessments, which were reasonable and supported by the record; (3) the parties expressly placed the question of arbitrability before the Arbitrator, authorized him to interpret their agreement, and agreed to be bound by his interpretation; and (4) the Arbitrator's finding that FOP's case was arbitrable drew its essence from the parties' collective bargaining agreement. The Board so moved. After discussion, the motion was seconded, carried and adopted.

G. 15-A-05: District of Columbia Public Schools v. Council of School Officers. Local 4. American Federation of School Administrators, AFL-CIO: Arbitration Review Request. The Board tabled this matter until the next Board meeting.

III. Executive Director's Report

The Executive Director, Clarene Martin presented the case management report. She also reported on the success of *Second Tuesdays at PERB*.

IV. Old Business

The Board finished reviewing proposed new rules and voted to adopt them as discussed.

The meeting was adjourned at 1:30 p.m.

Prepared by Felice Robinson, Paralegal