



January 28, 2016

MINUTES

The regular monthly meeting of PERB was held on January 21, 2016 at 11:08 a.m. at PERB headquarters. Chairman Charles Murphy, presiding, and Board members Yvonne Dixon, Ann Hoffman and Keith Washington being present.

Staff attendance: Executive Director Clarene Martin, Lindsey Maxwell, Erica Balkum, Benjamin Kraft, David McFadden and Yvonne Waller.

I. Minutes – The minutes from the January 21, 2016 meeting were approved.

Board Member Hoffman asked the Chair for consent to have Executive Director Martin give her report at this time. The Board had no objection.

II. Executive Director's Report

The Executive Director Martin reported the following:

- Agency will appear before Councilmember Orange on February 25, 2016, to report on compliance with the CBSE.
- Performance Oversight Committee hearing is scheduled March 3, 2016. Ms. Waller will start preparing responses to questions provided by Council.
- Budget Hearing is scheduled April 7, 2016.
- FY 2017 Performance Plan was submitted.
- Received FY 2015 Accountability Report.
- Second Tuesday held January 12, 2016. There were 56-57 people in attendance, 21 filled out the survey.
- Case management: No ULP complaints have been filed this month.

III. Public Forum

Michael Roney introduced himself as the Complainant in *Michael P. Roney v. Clifford Lowery, AFGE, Local 1975, PERB Case No. 15-U-03*. Mr. Roney commented on his case and thanked the Board for taking the time to consider his case.

IV. Summary of Cases:

A. Fraternal Order of Police/Metropolitan Police Department Labor Committee v. Metropolitan Police Department, PERB Case No. 11-U-20

The case before the Board, case number 11-U-20, was among four cases involving union requests for information that the Executive Director consolidated for hearing, namely case numbers 11-U-20, 12-U-05, 12-U-10, and 13-U-28. The Board decided all but the present case in *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D. C. Metropolitan Police Department, Slip Op. No. 1553, PERB Case Nos. 12-U-05, 12-U-10, and 13-U-28 (Oct. 29, 2015)*. Case number 11-U-20 is now before the Board for disposition.

The complaint filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP") in case number 11-U-20 names as respondents the Metropolitan Police Department ("MPD"), Commander Christopher LoJacono, Agent James McGuire, and Chief Cathy Lanier. FOP subsequently dismissed the individually-named respondents. The complaint alleges that FOP's executive steward, Delroy Burton, submitted to Commander LoJacono a request for documents pertaining to an investigation of the conduct of an Internal Affairs Division ("IAD") agent. The seventh item in the request for information ("RFI 7") asked for the policy that permits IAD agents to lie. FOP alleges that MPD violated D.C. Official Code § 1-617.04(a) by retaliating against the union steward for engaging in protected activity and by "interfering, restraining or coercing Executive Steward Burton's and the DCFOP's rights guaranteed by the CMPA." FOP alleges that MPD never responded to any of the requests for information in violation of D.C. Official Code § 1-617.04(a)(1) and (5). The complaint also alleges that MPD violated D.C. Official Code § 1-617.04(a)(2) by interfering with the existence or administration of FOP.

Following a hearing held on December 12, 2014, and briefing by the parties, the hearing examiner submitted his Report and Recommendations on April 28, 2015. The hearing examiner found that the Union abandoned its section 1-617.04(a)(2) claim and that MPD committed unfair labor practices by failing to respond to RFI 7 and by retaliating against the union steward for submitting that request. MPD submitted exceptions to the Report and Recommendations, and FOP submitted opposition to MPD's exceptions.

B. District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee, PERB Case No.14-A-09

On July 28, 2014, Petitioner District of Columbia Metropolitan Police Department ("MPD" or "Petitioner") filed a timely Arbitration Review Request ("ARR") of an Arbitration Award ("Award") that reduced a disciplinary action.

On September 29-30, 2007, Grievant and her boyfriend, MPD Officer Daniel McCullough, got involved in an argument and altercation that resulted in the Grievant's arrest. MPD initiated an administrative investigation. At the conclusion of the investigation, the Grievant was administratively charged with (1) conduct unbecoming an officer, (2) involvement in the commission of an act that could constitute a crime, and (3) "Drinking 'alcoholic beverage' ..., or being under the influence of 'alcoholic beverage' when off duty."

MPD proposed Grievant's termination. The Grievant exercised her right to request a departmental hearing and an Adverse Action Panel ("Panel") was convened. The Panel found the Grievant guilty on all charges and recommended termination. The Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP" or "the Union") appealed the Final Notice of Adverse Action to Chief of Police Cathy Lanier. Chief Lanier denied the appeal and terminated Grievant. Pursuant to Article 19 of the Collective Bargaining Agreement ("CBA"), the Grievant filed for arbitration.

The parties submitted the following issues to the Arbitrator:

1. Does sufficient evidence exist to support the charges against the grievant?
2. Is termination an appropriate penalty in this case?

Arbitrator Martha R. Cooper issued her Opinion and Award on September 19, 2014. She agreed with the findings of guilt but reduced the penalty from termination to a forty (40) day suspension. In her decision, she found that there was substantial evidence in the

administrative record to support the Panel's findings that the charges made against the Grievant were proven.

As to the second issue in dispute, the Arbitrator found that the Panel's recommended disciplinary penalty of termination was not supported by substantial evidence. As a result, she ordered that the penalty of termination be rescinded, and that the Grievant be reinstated to her position as a police officer. She further ordered that the Grievant be suspended without pay for forty (40) days and made whole, including back pay for any lost wages in excess of 40 days.

MPD has filed this Arbitration Review Request seeking to have the Arbitrator's Award reversed on the grounds that (A) the Arbitrator exceeded the authority granted to her by the CBA when she substituted her discretion for the Agency's in selecting a penalty; (B) the Arbitrator exceeded her authority when she considered disciplinary decisions that were not part of the departmental record; and (C) the award is contrary to law and public policy.

C. Michael P. Roney, v. Clifford Lowery, PERB Case No. 15-U-03

On October 29, 2014, Complainant Michael P. Roney ("Complainant" or "Roney"), a former employee of the D.C. Department of Transportation ("DOT"), acting *pro se*, filed an unfair labor practice complaint against the respondent Clifford Lowery, AFGE 1975 President ("Respondent" or "Lowery") for breach of the duty of fair representation. The Respondent failed to answer the complaint though given several opportunities to do so. The facts alleged by the complaint, which the respondent is deemed to have admitted, establish the unfair labor practice.

The Complainant was employed by DOT as a civil engineer technician. He sought the assistance of the Respondent in disciplinary proceedings brought against him by DOT, but the Respondent did not reply to any of his requests. Ultimately, on January 10, 2012, DOT issued to Complainant notice of its decision to remove Complainant from his position.

Subsequently, Respondent represented Complainant at a mediation on April 11, 2012. Respondent advised Complainant not to accept an offer to resign because he was certain he could win Complainant's case. Complainant did as he was advised and told the mediator that the relief he sought was to be returned to his position and to be made whole.

Complainant asked Respondent to represent him in the subsequent appeal of his termination to the Office of Employee Appeals ("OEA"). On March 28, 2014, an administrative judge at OEA held a status conference on Complainant's appeal. Respondent represented Roney.

After Complainant repeatedly called and e-mailed Respondent, the two met and discussed the content of the response they would submit to OEA. Respondent said he would prepare a letter, hand deliver it to OEA by May 23, and send Respondent a draft as well. Complainant did not hear back from Respondent after the meeting. Complainant assumed that Respondent had done as he had promised until Complainant received from OEA a "show cause order" dated June 3, 2014. The show cause order issued by the OEA administrative judge stated that the employee's brief was due May 23, 2014, but was not filed. The administrative judge ordered the employee to submit a statement of good cause for his failure to file timely along with his brief on or before June 9, 2014. After making telephone calls to Respondent and leaving messages that were not returned, the Respondent answered a call from Complainant on June 6, 2014, and said that he had been hospitalized but was back from the hospital and promised to take care of the letter and to hand deliver it to OEA on time.

On June 14, 2014, Respondent received OEA's Initial Decision. The Initial Decision, issued June 12, 2014, stated, "To date, Employee has failed to respond to both the Post Status Conference Order and the Show Cause Order. The record is now closed." That same day, Complainant called, texted, and e-mailed Respondent to no avail. Eleven days later Respondent took one of Complainant's calls and told the Complainant that he was going to file a Petition for Review, as allowed within 35 days of the Initial Decision. OEA confirms that a petition for review was never filed in Complainant's appeal.

The Complainant subsequently filed this complaint at PERB claiming a breach of the duty of fair representation to which the Respondent did not file an answer.

Board Rule 520.6 requires an answer to be filed within fifteen days of service of the Complaint. Although not required by the Board's rules, the Director twice notified the Respondent of the filing of the Complaint and gave him additional time to answer. The Director sent the first such notice to the Respondent on January 21, 2015, by e-mail and File & ServeXpress, the Board's electronic filing and service program. The notice informed the Respondent that his answer would be due February 10, 2015. The Respondent did not file an answer by that date. Out of an abundance of caution, the Director sent the Respondent a second notice by U.S. Mail and again by e-mail to the physical and e-mail addresses that the Respondent confirmed to a member of the Board's staff. The second notice was sent April 9, 2015. It enclosed the complaint and informed the Respondent that he may file an answer no later than April 29, 2015. In between the two notifications, Gina Walton of AFGE 1975 came to the Board's offices on April 8, 2015, and obtained a copy of the Complaint. Nonetheless, to date the Respondent has failed to file an answer.

As result of the Respondent's failure to answer the Complaint, he is "deemed to have admitted the material facts alleged in the complaint and to have waived a hearing."

D. Federation of Administrative Judges and District of Columbia, Office of Administrative Hearings, PERB Case No. 16-RC-01

On November 18, 2015, the Federation of Administrative Law Judges – D.C. ("Petitioner") filed a Recognition Petition ("Petition") with the Public Employee Relations Board. Petitioner seeks to represent, for the purpose of collective bargaining, a unit of unrepresented professional employees at the Office of Administrative Hearings ("OAH"). The Petition was in compliance with Board Rule 502.1, and included a roster of Petitioner's officers, and a copy of Petitioner's constitution, bylaws, articles of incorporation and objectives.

On December 8, 2015, OAH submitted an alphabetical list of employees in the proposed bargaining unit. Subsequent to filing the Petition, Petitioner delivered to the Board a showing of interest that satisfied Board Rule 502.2. Notices concerning the Petition were issued on December 15, 2015, with the requirement that they be conspicuously posted by December 28, 2015 for fourteen (14) days at OAH. The Notices required that comments or requests to intervene be filed no later than fourteen (14) days after the posting of the notice. No requests to intervene were received by the Board. Petitioner seeks to represent the following proposed bargaining unit:

All Attorney-Advisors in the District of Columbia Office of Administrative Hearings ("OAH" or "Agency") appointed pursuant to D.C. Code § 2-1831.12, excluding all management officials, supervisors, confidential employees, employees engaged in personnel work other than in a purely clerical capacity, and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2- 139.

The Executive Director determined that a majority of the employees in the proposed bargaining unit desired to be represented by Petitioner and on December 21, 2015, OAH notified the Board of its intent to voluntarily recognize the Petitioner as the exclusive representative of the employees in the proposed unit.

E. Alesia Hamilton v. American Federation of State, County and Municipal Employees, District Council 20, PERB Case No. 16-S-01

Alesia Hamilton ("Complainant") filed her initial complaint ("Complaint") with PERB on October 21, 2015. The Complaint asserted that AFSCME (1) was negligent in ensuring that she received a voluntary resignation; (2) breached its trust to her by failing to do its due diligence to ensure that her personnel record reflected a voluntary resignation; (3) failed its duty to review her personnel record, and provide a D.C. Government position as consideration for a settlement agreement, and protect her rights as an employee. Her complaint stated that all of these issues arose from negligence by AFSCME.

On October 30, 2015, the Executive Director dismissed the complaint because all of the allegations were untimely and because Ms. Hamilton failed to state a claim upon which relief could be granted by PERB. Pursuant to Board Rule 500.4, Ms. Hamilton filed a Motion for Reconsideration ("Motion"), appealing the Executive Director's dismissal of the complaint. AFSCME District Council 20 opposes the Motion.

F. Teamsters Local Union Nos. 639 and 730 a/w International Brotherhood of Teamsters, PERB Case No. 16-CU-01

On November 6, 2015, Teamsters Local Union Nos. 639 and 730 (jointly "Teamsters") filed a Petition for Compensation Unit Determination ("Petition") with the Board, pursuant to Board Rule 503. Teamsters are seeking a determination from the Board that all trade and craft labor employees that Teamsters represent at the Department of General Services ("DGS") be placed in Compensation Unit 2, and any professional, technical, or clerical employees that Teamsters represent at DGS be placed in Compensation Unit 1.

Pursuant to Board Rule 503.4, DGS posted the required notice for fourteen (14) consecutive days. No comments or requests for intervention were received by the Board.

The Department of General Services was created by the D.C. City Council in the fall of 2011. Employees from other agencies were transferred to the Facilities Management Division of DGS. Employees, represented by the two Teamsters Locals and who had been employed by the District of Columbia Public Schools' Office of Public Education Facilities Modernization, were among the employees transferred to DGS. While employed at DCPS, these employees were covered by a separate collective bargaining agreement for compensation, and were not placed in a citywide compensation unit.

V. Deliberations – After the summaries were provided, Board Member Ann Hoffman moved that the meeting be closed for deliberations pursuant to D.C. Office Code 2-575(b)(13). Board Member Yvonne Dixon seconded the motion. The motion passed unanimously.

The meeting was closed.

VI. Open Portion of Meeting Resumed

Final Votes – The following represents the final votes for each case:

FOP/MPD Labor Committee v. MPD, PERB Case No. 11-U-20

Member	Granted	Denied	Tabled
Yvonne Dixon	X		
Ann Hoffman	X		
Charles Murphy	X		
Keith Washington	X		

The Board voted in favor of adopting the report and recommendations of the Hearing Examiner. The Board ordered MPD to (1) cease and desist from refusing to bargain in good faith by failing to provide certain information requested by the Complainant in conjunction with the administration of the parties' collective bargaining agreement; (2) furnish the Complainant with all documents, if any exist, that were requested in item 7 of its October 14, 2010 request for information within ten (10) days from the issuance of this Decision and Order; (3) notify the Board of its compliance with paragraph 2 of this Order within ten (10) days from the issuance of this Decision and Order; (4) cease and desist from violating D.C. Official Code § 1-617.04(a)(1) by interfering with, restraining, or coercing employees in the exercise of the rights guaranteed under the CMPA; (5) conspicuously post where notices to employees are normally posted a notice that the Board will furnish to MPD. The notice shall be posted within ten (10) days from MPD's receipt of the notice and shall remain posted for thirty (30) consecutive days; and (5) notify the Public Employee Relations Board, in writing, within fourteen (14) days from receipt of the notice that it has been posted accordingly.

MPD v. FOP/MPD Labor Committee, PERB Case No. 14-A-09

Member	Granted	Denied	Tabled
Yvonne Dixon		X	
Ann Hoffman		X	
Charles Murphy		X	
Keith Washington		X	

The Board voted to deny MPD's Arbitration Review Request. Accordingly, the Arbitration Review Request is denied.

Michael P. Roney v. Clifford Lowery, AFGE, Local 1975, PERB Case No. 15-U-03

Member	Granted	Denied	Tabled
Yvonne Dixon	X		
Ann Hoffman	X		
Charles Murphy	X		
Keith Washington	X		

The Board voted to find that the Complainant's allegations, accepted as true, were sufficient to establish the commission of an unfair labor practice. The Board ordered the Respondent (1) to cease and desist from breaching his duty to fairly represent Complainant; (2) to cease and desist from interfering with, restraining, or coercing, in any like or related manner, employees in the exercise of rights guaranteed by the Comprehensive Merit Personnel Act;

(3) to take the necessary steps to reinstate the Complainant's OEA appeal within thirty (30) days of the issuance of this Opinion including, but not limited to, requesting OEA in writing (with a copy to the Complainant and the Public Employee Relations Board) to reinstate the appeal; (4) notify the Board within thirty (30) days of service of this Decision and Order concerning the steps he has taken to comply with paragraph 3 of this Order; (5) in the event Complainant's appeal cannot be reinstated or has not been reinstated within sixty (60) days of service of this Decision and Order, the Board orders that the case be referred to a hearing examiner to determine whether the Complainant would have prevailed in his appeal but for Respondent's breach of the duty of fair representation. If the hearing examiner determines that the Complainant has shown by a preponderance of the evidence that the appeal would have prevailed, then the hearing examiner shall recommend to the Board the appropriate monetary relief; (6) to conspicuously post a notice that the Board will furnish to Respondent. The notice shall be posted where AFGE 1975's notices to members are normally posted. The notice shall be posted within ten (10) days from Respondent's receipt of the notice and shall remain posted for thirty (30) consecutive days; and (7) to notify the Public Employee Relations Board, in writing, within fourteen (14) days from receipt of the notice that it has been posted accordingly.

Member Dixon stated that Mr. Roney's comments to the Board during the opening Public Session of the meeting did not constitute oral argument and were not considered by the Board in making its decision.

Federation of Administrative Judges and D.C. Office of Administrative Hearings, PERB Case No. 16-RC-01

Member	Granted	Denied	Tabled
Yvonne Dixon	X		
Ann Hoffman	X		
Charles Murphy	X		
Keith Washington			

The Board voted in favor of permitting the Agency to voluntarily recognize the Petitioner, Board Member Washington left the meeting before the vote. Accordingly, the Petitioner is the exclusive collective bargaining representative and the petition is granted.

Alesia Hamilton v. AFSCME, PERB Case No. 16-S-01

Member	Granted	Denied	Tabled
Yvonne Dixon		X	
Ann Hoffman		X	
Charles Murphy		X	
Keith Washington			

The Board voted to deny the Motion for Reconsideration of the Executive Director's Administrative Dismissal of the Complaint. Accordingly, the Motion is denied. Board Member Washington was absent.

Teamsters Locals Union 639 and 730 and DGS, PERB Case No. 16-CU-01

Member	Granted	Denied	Tabled
Yvonne Dixon	X		
Ann Hoffman	X		
Charles Murphy	X		
Keith Washington			

The Board voted to grant the Petition and assign the employees in question to Compensation Units 1 and 2, as specified in the Petition. The Board denied the Agency's position that the Board order Compensation Units 1 and 2 compensation agreements be prospectively applied. The employees were assigned to Comp Units 1 and 2. The effective date of the assignment was not determined. Board Member Washington was absent.

VII. Adjournment

The meeting was adjourned at 12:56 a.m.

Yvonne P. Waller, Administrative Officer