

**Office of Congressional Workplace Rights
LA 200, John Adams Building 110 Second Street, SE
Washington, DC 20540-1999**

UNITED STATES CAPITOL POLICE,)	
)	
Respondent,)	
)	
and)	Case No. 16-LMR-01 (CA)
)	
FRATERNAL ORDER OF POLICE,)	
DISTRICT OF COLUMBIA LODGE NO. 1)	
U.S. CAPITOL POLICE LABOR COMMITTEE,)	
)	
Charging Party.)	
)	
)	

Before the Board of Directors: Barbara Childs Wallace, Chair; Susan S. Robfogel; Alan V. Friedman; Roberta L. Holzwarth; Barbara L. Camens, Members.

DECISION OF THE BOARD OF DIRECTORS

This matter concerns compliance with an order from the Board of Directors of the Office of Congressional Workplace Rights (OCWR), which was confirmed and ordered enforced by United States Court of Appeals for the Federal Circuit. At the outset, the Board recognizes that in November 2019, it issued a decision regarding compliance with an arbitration award awarding back pay, expenses and attorney’s fees and costs to Officer Ricken in a substantially similar case: 15-LMR-02 (CA).

As in the *Ricken* case, here both parties agreed to have the Board resolve their dispute and have submitted position papers for the Board’s consideration. In their position papers, each party has taken the same position with regard to the arbitration award in 16-LMR-01 (CA) (awarding Officer Christopher Donaldson back pay, expenses, and attorney’s fees and costs) that they took with regard to the arbitration award in *Ricken*. Also similar to *Ricken*, this case has a long and complicated procedural history, which is very briefly summarized below.

In this case, Officer Christopher Donaldson was terminated by the United States Capitol Police (USCP) in June 2016. Officer Donaldson elected to contest the termination at arbitration. The USCP initially refused to select an arbitrator, however, and the Union filed the above-captioned unfair labor practice (ULP) charge. After duly investigating the charge, the OCWR General Counsel filed a complaint. Both a Hearing Officer and the OCWR Board agreed that the USCP's failure to select an arbitrator constituted a ULP, and the Board issued a final decision on September 26, 2017. The USCP appealed that decision to the United States Court of Appeals for the Federal Circuit, and the Court affirmed the Board's decision in May 2019 and granted the Board's petition for enforcement.

While the ULP case regarding the USCP's failure to arbitrate was pending, the USCP agreed to select an arbitrator and proceed to arbitration. In May 1, 2017, the Arbitrator issued an award reinstating Officer Donaldson and ordering back pay. The USCP filed exceptions to the award, which were denied by the Board in a February 15, 2018 decision. Following that decision, the Union requested that the USCP provide information needed to calculate the back pay award. The Arbitrator then set out a briefing schedule for the parties regarding the back pay issue. The Union submitted its calculations and legal authorities for back pay and other damages on April 16, 2018, as required by the Arbitrator. The USCP never responded to the Union's information request and failed to provide any submissions or any response by the deadline of May 16, 2018, as set by the Arbitrator. As such, the Arbitrator issued her award on June 4, 2018, requiring the USCP to:

- 1) immediately return Officer Christopher Donaldson to service as a U.S. Capitol Police Officer;
- 2) pay Officer Donaldson back pay totaling \$380,095.41 in total back pay and interest owed within thirty (30) days of the award;
- 3) pay Officer Donaldson \$103,791.31 for other expenses incurred; and
- 4) pay the Union's attorneys' fees and expenses of \$219,080.19 within thirty (30) days.

The USCP did not file exceptions to the June 4, 2018 Award, and that award became final. Moreover, following the Court of Appeals ruling issued in May 2019, the USCP indicated that they intended to comply with the arbitration award and have since taken some steps toward compliance, such as reinstating Officer Donaldson as required by the arbitration award. With regard to the specific amounts of back pay, expenses and attorney's fees awarded in the June 4, 2018 arbitration award, however, the USCP has not requested the OCWR Executive Director pay any amounts out of the Treasury account

established by section 415(a) of the CAA¹ to satisfy the Arbitration Award, contending instead that the Union and Officer Donaldson artificially inflated the back pay award.

Thus, not only has the USCP failed to request payment of the \$380,095.41, in total back pay and interest, but it has also failed to request payment of the \$103,791.31 in other expenses incurred by Officer Donaldson and the \$219,080.19 in attorneys' fees and expenses. Instead, the USCP, more than 1 year later, now attempts to raise factual issues challenging the accuracy of the back pay calculation made by the Arbitrator in the Award. The USCP contends, as it did in *Ricken*, that the Union and Officer Donaldson so artificially inflated their estimates of the back pay owed that such estimates constitute fraud and that it therefore need not request payment of the back pay specified in the June 4, 2018 Award.

As noted above, the Board recently addressed similar contentions with regard to the USCP's compliance with the arbitration award in *Ricken*. As in *Ricken*, here the USCP failed to respond to information requests concerning the back pay amount from the Union, failed to furnish any such information to the Arbitrator, and failed to file any exceptions to the back pay award. Consequently, under the CAA, the back pay award became "final and binding" upon the USCP when the thirty-day period for filing exceptions expired – on July 5, 2018. 5 U.S.C. § 7122(b) & 2 U.S.C. § 1351(a)(1). The USCP has offered no explanation for its failure to provide information relating to the back pay calculation to the Union or the Arbitrator. Clearly, the information submitted by the USCP during this proceeding was available to the USCP when the Arbitrator was deciding the back pay issue during April and May of 2018. We find the USCP's conduct particularly troubling because, on September 25, 2017, we issued our decision in *Ricken* finding that the USCP committed an unfair labor practice when it failed to respond to the information request regarding back pay during that arbitration proceeding and ordered the USCP to cease and desist from engaging in similar conduct.² The USCP has failed to provide us with any legal authority – and we can find none – that would allow us to undo a factual determination made in a final and binding arbitration award. We certainly find no evidence of fraud and can only conclude that any potential error in the back pay calculation was due to the USCP's failure to respond to the information requests.

¹Section 415(a) provides, in relevant part, that "only funds which are appropriated to an account of the Office in the Treasury of the United States for the payment of awards and settlements may be used for the payment of awards and settlements under" the CAA.

² While the *Ricken* decision was on appeal during 2018, the order was never stayed by us or by the Federal Circuit during the appellate proceedings.

Finally, as in *Ricken*, we find that the USCP waived its right to challenge the underlying facts related to an arbitration award for back pay, fees, and expenses. Our decision in *Ricken*, which was affirmed and ordered enforced by the Federal Circuit, contains an order directing the USCP to cease and desist from engaging in similar conduct in future termination actions, which would certainly include a prohibition against failing to implement an arbitration award in a termination case once it becomes final and binding.

Consequently, consistent with the Board's order in *Ricken*, the June 4, 2018 Arbitration Award must be immediately implemented. As such, and given the USCP's failure to request that the Executive Director pay the amounts specified in the Arbitration Award,³ we will direct the Executive Director to pay the specified amounts from the Treasury account.

ORDER

The Board directs the Executive Director to make payments from the treasury account in the amounts specified in the June 4, 2018 Arbitration Award.

It is so ORDERED.

Issued, Washington, DC, February 6, 2020

³ This Order only requires treasury account payment of those amounts set forth in the June 4, 2018 Arbitration Award. The parties have indicated to the OCWR that they have agreed upon a process to immediately determine the additional amounts owed in back pay, expenses and legal fees for the period from June 4, 2018 to present, and will seek timely payment from the treasury account for those such additional amounts.