Office of Compliance
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Washington, DC 20540-1999

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

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 case is before the Board pursuant to a petition for review ("PFR") filed by the United States Capitol Police ("Respondent or USCP") of the Hearing Officer's September 22, 2016 Decision on Motions for Summary Judgment, which found that the Respondent committed an unfair labor practice in violation of section 220(a) of the Congressional Accountability Act ("CAA") (2 U.S.C. § 1351) and 5 U.S.C. §§ 7116(a)(1) and (8) when it refused to arbitrate a grievance concerning the termination of Officer Christopher Donaldson, including any arbitrability questions.

Upon due consideration of the Hearing Officer's Decision, the parties' briefs and filings, and the record in these proceedings, the Board affirms the Hearing Officer's Decision.

I. Statement of the Case

Except as otherwise indicated, the following facts, as set forth in the Hearing Officer's Decision, are undisputed:

The USCP is an "employing office" within the meaning of CAA sections 101(9) and 220(a) (1). The Charging Party, FOP/U.S. Capitol Police Labor Committee ("Union"), is a

labor organization and is the duly-certified exclusive representative of the Respondent's officers who are included in the relevant bargaining unit.

On November 6, 2015, the USCP issued a request for disciplinary action for Officer Donaldson, a member of the bargaining unit covered by the parties' existing collective bargaining agreement ("CBA"). Pursuant to the CBA, Officer Donaldson requested a hearing through the USCP's Disciplinary Review Board ("DRB") process. The DRB recommended that, in lieu of termination, Officer Donaldson be suspended for 45 days. On March 15, 2016, the Union filed a grievance in accordance with the procedures set forth in the CBA which challenged the Request for Disciplinary Action, but accepted the suspension. On May 4, 2016, the USCP, through its Chief of Police, denied Officer Donaldson's grievance and concluded that termination was the appropriate penalty.

On June 20, 2016, the Union notified the USCP of its intent to proceed with Officer Donaldson's grievance and that it desired to have the matter submitted to arbitration. The parties received a panel of arbitrators from the Federal Mediation and Conciliation Service ("FMCS") on June 21, 2016. On June 22, 24, and 27, 2016, counsel for the Union requested that USCP employment counsel meet with her to select an arbitrator for the case in accordance with the procedures set forth in the CBA. On June 28, 2016, counsel for the USCP responded that the USCP would not participate in the arbitrator selection process because it believed that termination actions are not subject to arbitration.

On July 6, 2016, the Union filed an unfair labor practice charge with the Office of Compliance ("OOC") alleging that the USCP violated 5 U.S.C. §§ 7116(a)(1) and (8) when it refused to arbitrate the grievance, including any arbitrability questions. On August 2, 2016, the OOC General Counsel ("OOCGC") issued a Complaint based on the Union's unfair labor practice charge, alleging that the USCP committed an unfair labor practice in violation of CAA section 220(a) and 5 U.S.C. §§ 7116(a)(1) and (8) when it refused to arbitrate the unresolved grievance, including the question of arbitrability; and that it violated CAA section 220(a) and 5 U.S.C. § 7121 when it obstructed and interfered with the grievance process by refusing to participate in the selection of an arbitrator.

On August 11, 2016, counsel for the USCP again informed the Union of its position that Officer Donaldson's termination decision was not subject to arbitration, but stated for the first time that the USCP nonetheless agreed to select an arbitrator to determine procedural and substantive arbitrability issues. On August 19, 2016, the parties selected an arbitrator to hear the procedural and substantive arbitrability issues.

On August 23, 2016, the Hearing Officer issued an Order stating, *inter alia*, that after listening to the arguments of all parties, he had determined that no genuine issue existed as to any material fact in the case and that the matter was appropriate for decision on motions for summary judgment in accordance with OOC Procedural Rule 5.03(d). On November 17, 2016, the Hearing Officer granted summary judgment in favor of the OOCGC, and he denied the USCP's cross-motion for summary judgment, concluding that it had violated 2 U.S.C.

§ 1351(a) and 5 U.S.C. §§ 7116(a)(l) and (8) when it refused to arbitrate the termination grievance, including any arbitrability questions, and when it interfered with the grievance resolution process by refusing to participate in the selection of an arbitrator and pursue the termination grievance to a conclusion. In reaching this determination, the Hearing Officer rejected the USCP's position that the matter was moot because the parties had selected an arbitrator to decide the issues of procedural and substantive arbitrability.

The USCP's PFR followed.[1] In it, the USCP contends that the Hearing Officer's Decision granting the OOCGC's Motion for Summary Judgment must be reversed because it erroneously: (1) fails to apply or misapplies the proper standard for summary judgment; (2) fails to find that its refusal was justified by "clearly established law" precluding terminations approved by the Capitol Police Board ("CPB")[2] from arbitration proceedings; (3) fails to find that permitting USCP employees to grieve terminations is inconsistent with Congress's determination that such employees may not appeal their terminations to the Merit Systems Protection Board ("MSPB"); (4) determines that the case is not moot; and (5) is improperly based on the Hearing Officer's assessment of whether the USCP provided notice of its intent to terminate to the appropriate congressional committees. The OOCGC has filed a Brief in Opposition to the USCP's PFR, to which the USCP has filed a Reply.

II. Standard of Review

The Board's standard of review for appeals from a Hearing Officer's decision requires the Board to set aside a decision if the Board determines the decision to be: (1) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law; (2) not made consistent with required procedures; or (3) unsupported by substantial evidence. 2 U.S.C. § 1406(c). *Katsouros v. Office of the Architect of the Capitol,* Case Nos. 07-AC-48 (DA, RP), 09-AC-10 (DA, FM, RP), 2011 WL 332311, at *3 (OOC Jan. 21, 2011).

[1] It appears that, after the Hearing Officer issued his Decision, the question of arbitrability was submitted to an arbitrator, and the USCP submits as an exhibit to its PFR a November 28, 2016 decision by the Arbitrator denying its motion to dismiss and determining that the grievance is arbitrable. USCP PFR, Exhibit 3. The USCP further states in its Memorandum in Support of its PFR that an arbitration hearing on the merits was scheduled for December 15, 2016, but that it had to be rescheduled until January 12, 2017. There is no indication in the record whether that hearing took place or, if it took place, what the outcome was. Although, for the reasons stated below, these developments are immaterial to the issue whether the USCP committed unfair labor practices by engaging in the actions alleged in the OOCGC's Complaint, we consider them in the context of the USCP's contention that they rendered the current Board proceeding moot.

[2] The CPB is comprised of the Sergeant at Arms of the House of Representatives, Sergeant at Arms of the Senate, the Architect of the Capitol, and in an ex officio non-voting capacity, the Chief of Police. The CPB has statutory responsibility "to oversee and support the [USCP] in its mission and advance the coordination between the [USCP] . . . and the Congress." 2 U.S.C. § 1901, notes (a)(1)-(2).

We review a decision granting a motion for summary judgment *de novo*. *Patterson v. Office of the Architect of the Capitol,* No. 07-AC-31 (RP), 2009 WL 8575129, at *3 (OOC Apr. 21, 2009).

III. Analysis

A. The Hearing Officer Correctly Applied the Summary Judgment Standard in Determining that the OOCGC was entitled to Judgment as a Matter of Law.[3]

Summary judgment is appropriate if there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 247 (1986); OOC Procedural Rule 5.03(d). In determining whether the nonmoving party has raised a genuine issue of material fact, the Board must view the evidence in the light most favorable to the nonmoving party and must draw all reasonable inferences in that party's favor. *Talavera v. Shah,* 638 F.3d 303, 308 (D.C. Cir. 2011). Whether a fact is material is determined by the substantive law giving rise to the claims in the case. *Anderson,* 477 U.S. at 248. A fact is not material if a dispute over that fact will not affect the outcome of the suit under governing law. *Id.*

Here, the substantive law is contained in section 7121 of the Federal Service Labor Management Relations Statute ("FSLMRS"), which Congress extended to USCP employees when it enacted the CAA in 1995. Section 7121 states that any negotiated grievance procedure shall "provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration." 5 U.S.C. § 7121(b)(1)(C)(iii). Accordingly, the Federal Labor Relations Authority ("FLRA" or "Authority") has determined that the FSLMRS mandates arbitration of unsettled grievances. *Dep't of Transp., FAA,* 65 F.L.R.A. 208, 211 (2010) ("*FAA*"). The Authority has further determined that choosing an arbitrator to hear a grievance pursuant to the parties' agreed-upon procedures is a fundamental component of the binding arbitration process. *Id.* Moreover, a negotiated grievance procedure "must be read as providing that all questions of arbitrability not otherwise resolved shall be submitted to arbitration." *Dep't of Veterans Affairs, Veterans Canteen Serv., Martinsburg, W. Va.,* 65 F.L.R.A. 224, 228 (2010) ("*VCS"*). Accordingly, an agency's refusal to participate in the arbitration process pursuant to a negotiated grievance procedure conflicts with § 7121 of the FSLMRS and violates section 7116(a)(1) and (8) of the FSLMRS. *FAA,* 65 F.L.R.A. at 211. Such refusal results in the hindrance or obstruction

[3] As an initial matter, we reject the USCP's contention that the Hearing Officer erred in failing to allow the parties to file oppositions to the cross-motions for summary judgment. The Hearing Officer ordered that "summary judgment motions of the OOCGC and the Charging Party are due on or before September 12, 2016," that "Respondent's submission of response is due on or before September 26, 2016," and that "[t]here will be no replies permitted." The OOCGC timely filed a motion for summary judgment on September 12, 2016. The USCP filed a cross-motion for summary judgment on September 13, 2016. The USCP has failed to show that it was prejudiced by the Hearing Officer's determination to proceed in this manner. *See* CAA § 406(d), 2 U.S.C. § 1406(d) (requiring the Board to review the record as a whole and take due account of the rule of procedural error).

of grievance resolution through binding arbitration, which is contrary to the mandate and intent of Congress in enacting section 7121. *Id.*

In the instant case, Article 36.15 of the parties' CBA expressly provides that "issues concerning the arbitrability of a grievance presented for arbitration under the terms of the Agreement will be resolved by the arbitrator on written motion." Nonetheless, as stated above, it is undisputed that, in response to three requests from the Union to set a date to select an arbitrator, the USCP responded that it would not participate in arbitration because it had determined that the grievance was not arbitrable. The Union had every reason to believe that the USCP would not arbitrate the instant grievance given this response, as well as the USCP's refusal, on similar grounds, to comply with an arbitrator's award in *FOP/U.S. Capitol Police Labor Comm. v. U.S. Capitol Police,* No. 15-LMR-02 (CA) (OOC Sep. 25, 2017). The Union was therefore forced to file an unfair labor practice charge to break the stalemate, and the USCP took no action to select an arbitrator or otherwise participate in the arbitration process until after the OOCGC issued the Complaint in this case, resulting in a delay of more than 7 weeks from the date that the parties received a panel of arbitrators from the FMCS. We conclude that the USCP's conduct hindered or obstructed resolution of the instant grievance through binding arbitration, contrary to the mandate and intent of Congress in enacting section 7121.

We find no merit in the USCP's contention on review that, in granting the OOCGC's Motion for Summary Judgment, the Hearing Officer failed to construe undisputed facts in the light most favorable to the USCP by "ignor[ing] the facts that the USCP selected an arbitrator and moved forward with briefing procedural and substantive arbitrability issues to the arbitrator." First, as noted above, the Hearing Officer expressly found that on August 11, 2016, the USCP agreed to select an arbitrator to determine procedural and substantive arbitrability issues, and on August 19, the parties selected an arbitrator to hear the procedural and substantive arbitrability issues. Hearing Officer's Decision at 10 n.7. Thus, the Hearing Officer did not ignore these facts.

Second, and more importantly, however, these facts are immaterial. The FLRA has determined that, although a party may take the position that an arbitrator lacks jurisdiction over a matter, in doing so, it may not act or fail to act in a manner that actually impedes the arbitration and disposition of the case. *Dep't of Veterans Affairs Med. Ctr., Phoenix, Ariz.,* 60 F.L.R.A. 405, 407 (2004) ("*DVA*"); *see also Dep't of the Air Force, Langley Air Force Base, Hampton, Va.,* 39 F.L.R.A. 966, 969 (1991); *AFGE, Local 1457,* 39 F.L.R.A. 519 (1991); *Dep't of the Army, Headquarters, Washington, D.C.,* 22 F.L.R.A. 647, 650-51 (1986)*; AFGE Local 2782,* 21 F.L.R.A. 339 (1986). Thus, in *DVA,* the Authority determined that the agency did not violate the FSLMRS by departing an arbitration hearing after entering a "special appearance" to challenge the arbitrator's jurisdiction, because it had also agreed to submit the parties' dispute to arbitration. The agency also participated in selecting the arbitrator, provided a room for the arbitration hearing, arranged for a court reporter, and filed a post-hearing brief with the arbitrator. Here, by contrast, the USCP refused to select an arbitrator or otherwise participate in the process from the time it received a panel of

arbitrators from the FMCS on June 21 through August 11, 2016, thereby actually impeding the arbitration process and disposition of this case for more than 7 weeks. This outcome is unaffected by the USCP's belated agreement to submit to an arbitrator the question of arbitrability well after it had advised the Union that it would not participate in the arbitrator selection process, and after the Complaint had issued in this case. In any event, as the Hearing Officer correctly noted, an employing office may not insist on a bifurcated proceeding as a condition to participating in arbitration on the merits. *Dep't of the Army, Reserve Command, Columbus, Ohio,* 11 F.L.R.A. 55, 56-57 (1983). Accordingly, these facts, even when construed in the light most favorable to the USCP, are immaterial to the question whether it obstructed and interfered with the arbitration and disposition of this case, as charged.[4]

B. The "Clearly Established Law" Exception is Inapplicable.

As the USCP correctly notes, the Authority has found a limited exception to the rule that questions of arbitrability are solely for an arbitrator to decide where "clearly established law" precludes arbitrating a grievance, in which case an agency would not violate section 7116(a)(1) and (8) by refusing to arbitrate. *See Dep't of Homeland Sec., Immigration & Customs Enf't.,* 69 F.L.R.A. 72, 74 (2015) (stating that, "in order to justify a refusal to arbitrate, it is not enough to argue that a grievance is barred by statute; rather, it must be shown that the statutory bar is a matter of "clearly established law"). The USCP, however, has failed to demonstrate that any clearly established law justified its refusal to arbitrate the grievance in this case.

The gravamen of the USCP's position is that with the enactment of the United States Capitol Police Administrative Technical Corrections Act of 2009 ("TCA")[5], Congress precluded CPB termination approval decisions from being subject to arbitration by removing it as an "employing office" and, in the same statute, giving the CPB approval authority over terminations of USCP employees. The Board, however, rejected this very proposition when it denied the USCP's exceptions to an arbitrator's award in *FOP/U.S. Capitol Police Labor Comm. v. U.S. Capitol Police,* No. 14 ARB-01, 2014 WL 7215202, at *4 (OOC Dec. 12, 2014) (determining, *inter alia*, that the USCP failed to establish that employee terminations approved by the CPB are not subject to arbitration by virtue of the enactment of the TCA). Moreover, in *FOP/U.S. Capitol Police Labor Comm. v. U.S. Capitol Police,* No. 15-LMR-02 (CA) (OOC Sep. 25, 2017), this Board determined, *inter alia*, that the USCP is collaterally estopped from re-litigating that issue.[6] Collateral estoppel requires four factors: (1) the

[4] Moreover, as we discuss below, the USCP's belated actions did not render the instant proceeding moot.

[5] Pub. L. No. 111-145, 124 Stat. 49 (Mar. 4, 2010), 2 U.S.C. §1901, note.

[6] The USCP contends that the Hearing Officer was obligated to construe its contentions concerning the TCA in the light most favorable to it. This is clearly incorrect. Although all reasonable inferences should be drawn in favor of the nonmoving party when reviewing a motion for summary judgment, *see Washington Post Co. v. U.S. Dep't of Health and Human Servs.,* 865 F.2d 320, 325 (D.C. Cir. 1989),

issues are identical to those in a prior proceeding, (2) the issues were actually litigated, (3) the determination of the issues was necessary to the resulting judgment, and (4) the party defending against preclusion had a full and fair opportunity to litigate the issues. *Id.; see also Macon v, Office of Compliance,* __ Fed. App'x __, 2017 WL 2533509, *3 (Fed. Cir. Jun. 12, 2017). The issue whether employee terminations approved by the CPB are subject to arbitration is identical to the issue raised and decided in Case No. 14 ARB-01. Further, these issues were actually litigated and were necessary to the resulting judgment on the USCP's exceptions to the Award in Case No. 14-ARB-01. Finally, the USCP had a full and fair opportunity to litigate the issue. Accordingly, because the USCP is collaterally estopped from re-litigating these issues in this unfair labor practice proceeding, it cannot demonstrate that the TCA is "clearly established law" that precludes arbitrating the instant grievance.[7]

The USCP, citing *U.S. Dep't of Veterans Affairs Veterans Canteen Serv.*, 66 F.L.R.A. 944, 948-49 (2012) ("*VCS*"), also argues that where Congress has denied government employees statutory rights to appeal a termination to the MSPB under chapter 75 of title 5, they cannot attain those rights through a negotiated grievance procedure. It contends that USCP employees are precluded from appealing their terminations as a matter of law and that any provision of the parties' CBA purporting to grant these employees the right to grieve their terminations is therefore unenforceable. The Board rejected this position in Case No. 15-LMR-02, and, as with its argument concerning the TCA, we find that the USCP is collaterally estopped from re-litigating that issue. Thus, the USCP has also failed to establish that the FLRA's decision in *VCS* constitutes "clearly established law" precluding arbitration of the instant grievance.

Accordingly, we reject the USCP contention that the Hearing Officer erred in failing to consider any evidence on the merits of its contentions concerning the TCA and the *VCS* decision. Because the USCP's contentions do not concern matters of clearly established law, they present questions of arbitrability. As such, they are not properly before the Board in this unfair labor practice proceeding. *U.S. Dep't of Justice v. FLRA,* 792 F.2d 25, 28-29 (2d Cir. 1986); *VCS,* 65 F.L.R.A. at 228; *Dep't of the Navy, Portsmouth Naval Shipyard, Portsmouth,*

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nonetheless, a court must not accept legal conclusions couched as facts, s*ee Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). Despite the USCP's characterization to the above assertions as undisputed facts, its position is that its refusal to arbitrate was justified by the TCA as clearly established *law*. Because the undisputed facts to which the USCP refers are more accurately regarded as legal conclusions, the Hearing Officer did not err in failing to adopt them or construe them in the light most favorable to the USCP. *See Burkhart v. Washington Metro. Area Transit Auth.,* 112 F.3d 1207, 1212–13 (D.C. Cir. 1997) (testimony consisting of legal conclusions will not be permitted because such testimony merely states what result should be reached).

[7] In Case No. 15-LMR-02, we stated that, even if the USCP were not estopped from re-litigating this issue, we would find no basis for disturbing our determination in Case No. 14-ARB-01 that the TCA does not remove employee terminations approved by the CPB from the negotiated grievance/arbitration process. The Hearing Officer thus properly relied on Case No. 14-ARB-01 to reject the USCP's argument that its interpretation of the TCA represented "clearly established law."

NH, 11 F.L.R.A. 456, 457 (1983) (stating that an administrative law judge errs by "attempting to resolve the question of arbitrability" himself or herself).

C. The USCP's Belated Participation in the Arbitration Process Does Not Render this Case Moot.

The USCP also reiterates its position below that its belated participation in the arbitration process renders this matter moot. In rejecting the USCP's position, the Hearing Officer noted that the USCP had informed the OOCGC and the Union that it was unwilling to arbitrate the merits of Officer Donaldson's termination grievance if the arbitrator did not sustain its position regarding the issue of procedural arbitrability, and that it had also taken the position that future termination actions would not be submitted to arbitration. The Hearing Officer concluded that the USCP's "refusal to continue to participate in the substantive proceedings before an arbitrator raises to the level of obstruction of a grievance in the arbitration process, and undermines the mandate and intent of Congress." On review, the USCP contends that, in doing so, the Hearing Officer improperly based his determination on facts not in evidence.

The FLRA has determined that an alleged unfair labor practice becomes moot when the parties no longer have a legally cognizable interest in the outcome of the dispute. *Soc. Sec. Admin., Boston Region 1, Lowell, Mass.,* 57 F.L.R.A. 264, 268 (2001). The burden of demonstrating mootness is a heavy one. *Id.* The party asserting mootness meets its burden by demonstrating that: (1) there is no reasonable expectation that the alleged violation will recur; and (2) interim relief or events have completely or irrevocably eradicated the effects of the alleged violation. *Id.* ULP cases, however, generally do not become moot when the individual parties resolve the specific matter that gave rise to the dispute because the "Board is entitled to have the resumption of the unfair practice barred by an enforcement decree." *DOJ v. FLRA,* 991 F.2d 285, 289 (5th Cir. 1993) (citing *NLRB v. Raytheon Co.,* 398 U.S. 25, 27 (1970) and noting that the courts treat the issue of mootness the same under both the National Labor Relations Act and the FSLMRS); *NLRB v. Great Atl. & Pac. Tea Co.,* 407 F.2d 387, 388 (5th Cir. 1969) (stating that "the Board is entitled to judicial enforcement of its orders even in cases where the offending parties have already complied with the orders."); *Air Force Academy, Colo. Springs, Colo.,* 52 F.L.R.A. 874, 878 (1997) (ULP was not moot because "other remedies, including a cease and desist order and the posting of a notice, remain viable if it is determined that an unfair labor practice occurred").

Consistent with the foregoing, the remedies of a cease and desist order and posting of notice to employees remain available in this case, notwithstanding that the USCP subsequently agreed to select an arbitrator to determine procedural and substantive arbitrability issues, that the parties selected an arbitrator, that the arbitrator denied the USCP's motion to dismiss and determined that the grievance is arbitrable, and that an arbitration hearing on the merits was scheduled for January 12, 2017. *See, e.g., NTEU,* 48 F.L.R.A. 566, 570 (1993); *see also AFGE Local 3230,* 59 F.L.R.A. 610, 612 (2004).

Accordingly, we agree that the USCP has failed to meet its burden of demonstrating that there is no reasonable expectation that the alleged violation will recur and that interim events have completely or irrevocably eradicated the effects of the violation alleged in the Complaint. We therefore conclude that this matter is not moot and that the Hearing Officer's holding to this effect is supported by the substantial evidence on the record as a whole.[8]

D. The Hearing Officer did not Rely on the USCP's Lack of Evidence Regarding Notice to Congressional Committees to Reach his Conclusions of Law.

Finally, the USCP contends on review that the Hearing Officer misinterpreted the TCA to require evidence that it provided notice of the intent to terminate Officer Donaldson to the appropriate congressional committees. We agree with the OOCGC that this argument fails. The Hearing Officer's determination that the USCP committed unfair labor practices was not based on his assessment of whether the USCP provided notice of the intent to terminate to the appropriate congressional committees, and his observations made regarding the USCP's lack of evidence on that issue appear to be dicta and are not essential to the holding. Therefore, the Hearing Officer's statements in this regard were not prejudicial to the USCP.

E. The Hearing Officer Correctly Concluded the USCP Committed Unfair Labor Practices.

The Hearing Officer correctly concluded that the USCP violated 5 U.S.C. §§ 7116(a)(1) and (8), as applied by CAA section 220(a), when it refused to arbitrate the unresolved grievance, including the question of arbitrability; and that it violated CAA section 220(a) and 5 U.S.C. § 7121 when it obstructed and interfered with the grievance process by refusing to participate in the selection of an arbitrator. Its refusal to participate in the arbitration process resulted in the hindrance or obstruction of grievance resolution through binding arbitration, contrary to the mandate and intent of Congress in enacting section 7121 of the FSLMRS.

ORDER

The Respondent, United States Capitol Police, Washington, DC, its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) Failing or refusing to arbitrate the grievance concerning the termination of Officer Christopher Donaldson;

[8] Because we base our determination that the USCP did not meet its burden of demonstrating that this proceeding is moot on the foregoing grounds, we do not rely on the prehearing conference statements of USCP counsel as to the USCP's willingness to proceed to arbitration in this or other matters.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under 5 U.S.C. sections 7102, 7106, 7111-7117, 7119-7122 and 7131;

(c) Engaging in similar conduct in future USCP termination actions.

2. Take the following affirmative action necessary to effectuate the policies of the CAA:

(a) Proceed to arbitration on the grievance filed by the Union concerning the termination of Officer Christopher Donaldson;

(b) Within 14 days after service, post at its facilities in Washington, D.C. copies of the attached Notice marked "Appendix."[9] Copies of the notice, on forms provided by the Office of Compliance, after being signed by the Respondent's authorized representative, shall be posted immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by e-mail, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with their employees by such means. *Picini Flooring,* 356 N.L.R.B. 11 (2010); *DOJ, Fed. Bureau of Prisons Transfer Ctr., Okla. City, Okla.,* 67 F.L.R.A. 221 (2014). Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service, file with the Office of Compliance a sworn certification of a responsible official attesting to the steps that the Respondent has taken to comply.

It is so ORDERED.

Issued, Washington, DC, September 26, 2017.

[9] If this Order is enforced by a Judgment of the United States Court of Appeals for the Federal Circuit, the words in the notice reading "POSTED BY ORDER OF THE OFFICE OF COMPLIANCE" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT ENFORCING AN ORDER OF THE OFFICE OF COMPLIANCE."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
OFFICE OF COMPLIANCE
An Agency of the United States Government

The Office of Compliance has found that we violated the Congressional Accountability Act and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail or refuse to arbitrate the grievance filed by the FOP concerning the termination of Officer Christopher Donaldson.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce bargaining-unit employees in the exercise of the rights assured them by the CAA.

WE WILL engage in the process for the selection of an arbitrator as required by our collective bargaining agreement and participate in good faith to conclusion in the termination grievance of Officer Christopher Donaldson.

United States Capitol Police
Employer

Dated _____ By _____
Representative Title