



Pressler, Jr. in connection with his representation of Officer Micheaux Bishop before a [MPD] Adverse Action Hearing. (See Complaint at p. 1).

MPD filed an Answer denying the allegations and requesting that the Board dismiss the Complaint. The Union's Complaint and MPD's Answer and motion to dismiss are before the Board for disposition.

## II. Discussion

FOP asserts the following facts:

4. Cathy L. Lanier is the MPD's Chief of Police.
5. Michael Eldridge is an Inspector with the Metropolitan Police Department and is the head of the MPD's Disciplinary Review Branch (DRB). At the time of these events, Inspector Eldridge reported to Chief Lanier.
6. Micheaux Bishop is a police officer with the Metropolitan Police Department and [is] a current member of the FOP.
7. James W. Pressler, Jr. is a principal partner in the law firm Pressler & Senfle, P.C. Pressler & Senfle operates as the General Counsel to the FOP and its membership. As part of its duties, Pressler & Senfle represents FOP members who are contesting their proposed removal from the Metropolitan Police Department.
8. On November 3, 2010, Mr. Pressler sent a letter to Inspector Eldridge, via facsimile, requesting that certain documents be produced in connection with his representation of Officer Bishop at the upcoming adverse action hearing.... Specifically, Mr. Pressler requested the following:

A clean and unredacted copy of the transcribed statement of the Complainant in this matter (See: Attachment 7 to April 21, 2010 Final Investigative Report);

A clean and unredacted copy of the transcribed statement of Tya Ransom identified as Attachment 10 of the April 21, 2010 Final Investigative Report;

A complete and unredacted copy of the audio recording of the Complainant's March 3, 2010 interview with the Internal Affairs Division;

A complete and unredacted copy of the audio recording of the November 3, 2009 interview of Sgt. Michael Coligan (See: IAD #09-0260);

Complete and unredacted copies of all email correspondence from October 11, 2009 to the present, and continuing, between Cherita F. Whiting and:

- a) Chief of Police Cathy Lanier;
  - b) Assistant Chief of Police Diane Groomes;
  - c) Assistant Chief of Police Michael Anzallo.
9. In response, on November 3, 2010, Inspector Eldridge denied the request...
  10. Thereafter, on November 8, 2010, in an effort to follow-up on his initial request, Mr. Pressler wrote to Inspector Eldridge and reiterated his desire to receive the previously requested documents in order for the Adverse Action Panel (Panel) to have the information needed to properly evaluate the facts surrounding the allegations against Officer Bishop. Mr. Pressler also informed Inspector Eldridge that these documents were necessary for Mr. Pressler to effectively represent Officer Bishop, as they were required to examine and/or cross-examine witnesses at the Adverse Action Hearing...
  11. On November 9, 2010, Inspector Eldridge again denied this request, stating in part that "the Department is precluded from releasing records you are requesting." See Attachment 5.
  12. The requested records were never produced to either Officer Bishop or Mr. Pressler.

(Complaint at pgs. 3-5).

FOP contends that "MPD. . . committed an Unfair Labor Practice by failing to timely produce the relevant and necessary information requested by James W. Pressler, Jr. [and that] [i]n view of the MPD's illegal action, Officer Bishop, the Union, and its membership are entitled to relief." (Complaint at p. 6).

As a remedy for the Respondents' alleged actions, FOP requests that the Board issue an order:

- a. Finding that the MPD, Chief Lanier and Inspector Eldridge have engaged in an unfair labor practice in violation of D.C. Code § 1-617.04(a)(1) and (5);
- b. Ordering the MPD, Chief Lanier and Inspector Eldridge to cease and desist from engaging in an unfair labor practice in violation of D.C. Code §1-617.04(a)(1) and (5);
- c. Compelling the MPD to conspicuously post no less than two (2) notices of their violations and the Board's Order in each MPD building;
- d. Compelling the MPD, Chief Lanier and Inspector Eldridge to provide the requested information to James W. Pressler, Jr. immediately;
- e. Compelling the MPD, Chief Lanier and Inspector Eldridge to pay the Union's costs associated with this proceeding; and
- f. Ordering such other relief and remedies as the Board deems appropriate.

(Complaint at pgs. 6-7).

Respondent disputes the Board's jurisdiction in this matter and argues that D.C. Code § 1-617.04(a):

does not confer upon the Board jurisdiction over individuals whose actions fall within their roles as agents of the government. As a result, any claim of conduct performed within the course of their duties and that may rise to the level of an unfair labor practice must be filed against the agency [that] the alleged offenders represent. To act otherwise would subject individuals to the Board's jurisdiction as private actors rather than government actors under § 1-617.04(a). This section does not grant the Board such authority. See D.C. Official Code § 1-617.04(a) (listing conduct by the "District, its agents, and representatives" that is prohibited). See also D.C. Official Code § 1-605.02 (listing the powers of the Board, including the power to decide if an unfair labor practice has been committed).

(Answer at p. 3).

Without citing any specific authority, the Respondents claim that the Board lacks jurisdiction over the named Respondents and request that the Board “dismiss the named individuals”. (Answer at pgs. 1-3). The language of D.C. Code §1-617.04(a)(1) (2001 ed.), clearly provides that “[t]he District, **its agents and representatives** are prohibited from: . . . [i]nterfering, restraining or coercing any employees in the exercise of the rights guaranteed by this subchapter[.]” (Emphasis added). Nothing in this provision of the CMPA limits the naming of respondents acting in a representative capacity. In addition, the issue of whether the individually named Respondents’ actions rise to the level of violations of the CMPA is a matter best determined after the establishment of a factual record, through an unfair labor practice hearing. See *Ellowese Barganier v. Fraternal Order of Police/Department of Corrections Labor Committee and District of Columbia Department of Corrections*, 45 DCR 4013, Slip Op. No. 542, PERB Case No. 98-S-03 (1998). Therefore, the Board rejects this argument as a basis for dismissal of the Complaint.

In addition, MPD asserts that:

The Board lacks jurisdiction over this matter as the Complainant made its request for information pursuant to the parties’ collective bargaining agreement, and the agreement provides a grievance and arbitration procedure to resolve contractual disputes. Since the Board’s precedent provides that the Board has no jurisdiction over information requests in such circumstances, the Board should dismiss the complaint in this matter.

The Board “distinguishes between those obligations that are statutorily imposed under the CMPA and those that are contractually agreed upon between the parties.” *American Federation of Government Employees, Local 2741 v. District of Columbia Department of Recreation and Parks*, 50 DCR 5049, Slip Op. No. 697, PERB Case No. 00-U-22 (2002) (citing *American Federation of State, County and Municipal Employees, Local 2921*, Slip Op. No. 339). In addition, it is well established that the Board’s “authority only extends to resolving statutorily based obligations under the CMPA.” *Id.* Therefore, the Board examines the particular record of a matter to determine if the facts concern a violation of the CMPA, notwithstanding the characterization of the dispute in the complaint or the parties’ disagreement over the application of the collective bargaining agreement.<sup>1</sup> Moreover, the Board has consistently held that if the allegations made in an unfair labor practice complaint *do* concern statutory violations, as in the instant case, “[t]he Board is empowered to decide whether [MPD] committed an unfair labor

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<sup>1</sup> In determining whether an allegation is contractual in nature, the Board looks to whether the record supports a finding that the alleged violation is: (1) restricted to facts involving a dispute over whether a party complied with a contractual obligation; (2) resolution of the dispute requires an interpretation of those contractual obligations; and (3) no dispute can be resolved under the CMPA. See *American Federation of Government Employees, Local Union No. 3721 v. District of Columbia Fire Department*, 39 DCR 8599, Slip Op. No. 287 at n. 5, PERB Case No. 90-U-11 (1991).

practice concerning the Union's document request, even though the document request was made . . . [pursuant to a contract's resolution provisions]." *Id.* at p. 6.<sup>2</sup>

### Motion to Dismiss

MPD requests that the Board dismiss the Complaint on the basis that there is no evidence of the commission of an unfair labor practice. Accordingly, MPD requests that the Board:

... deny Complainant's request to find that the Respondents have engaged in an unfair labor practice; deny Complainant's request that the Respondents be ordered to cease and desist from violating D.C. Code § 1-617.04(a); deny Complainant's request that the Department post no less than two notices of their alleged violation and the Board's Order in each Department building; deny Complainant's request that the Respondents provide the requested information to Mr. Pressler; deny Complainant's request to order the Respondents to pay the Complainant's costs and fees associated with the proceeding; and deny Complainant's request to order any other relief or remedy in this matter.

(Answer at p. 4).

The Union alleges that MPD violated the CMPA. Specifically, the Union cites D.C. Code §1-617.04(a)(1) (2001 ed.), which provides that "[t]he District, its agents and representatives are prohibited from: . . . [i]nterfering, restraining or coercing any employees in the exercise of the rights guaranteed by this subchapter[.]"<sup>3</sup> Also, D.C. Code § 1-617.04(a)(5) provides that "[r]efusing to bargain collectively in good faith with the exclusive representative" is a violation of the CMPA.

<sup>2</sup> Here, MPD does not dispute its obligation to furnish information relevant and necessary to the Union's statutory role under the CMPA as the employees exclusive representative, as derived from: (1) management's obligation to "bargain collectively in good faith"; and (2) employees' right "[t]o engage in collective bargaining concerning terms and conditions of employment, as may be appropriate under this law and rules and regulations, through a duly designated majority representative[.]", D.C. Code 1-617.05(a)(1) and (5); and *see* (R&R at p. 21); *see also* *International Brotherhood of Teamsters Locals 639 and 730 v. D.C. Public Schools*, 37 DCR 5993, Slip Op. No. 226, PERB Case No. 88-U-10 (1990); *Psychologists Union, Local 3758 of the D.C. Department of Health, 1199 National Union of Hospital and Health Care Employees, AFSCME v. D.C. Department of Mental Health*, 54 DCR 2644, Slip Op. No. 809, PERB Case No. 05-U-41 (2005); and *University of the District of Columbia v. University of the District of Columbia Faculty Association*, 38 DCR 2463, Slip Op. No. 272, PERB Case No. 90-U-10 (1991).

<sup>3</sup> "Employee rights under this subchapter are prescribed under D.C. Code [§1-617.06(a) and (b) (2001ed.)] and consist of the following: (1) [t]o organize a labor organization free from interference, restraint or coercion; (2) [t]o form, join or assist any labor organization; (3) [t]o bargain collectively through a representative of their own choosing. . . ; [and] (4) [t]o present a grievance at any time to his or her employer without the intervention of a labor organization[.]" *American Federation of Government Employees, Local 2741 v. District of Columbia Department of Recreation and Parks*, 45 DCR 5078, Slip Op. No. 553 at p. 2, PERB Case No. 98-U-03 (1998).

The Board has previously held that materials and information relevant and necessary to a union's duty as a bargaining unit representative must be provided upon request. (See *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. Metropolitan Police Department*, \_\_\_ DCR \_\_\_, Slip Op. No. 835, PERB Case No. 06-U-10 (2006). It is well established that an agency is obligated to furnish requested information that is both relevant and necessary to a union's role in: (1) processing of a grievance; (2) an arbitration proceeding; or (3) collective bargaining. See *Id.*; see also *American Federation of Government Employees, Local 2741 v. District of Columbia Department of Parks and Recreation*, 50 D.C.R. 5049, Slip Op. No. 697, PERB Case No. 00-U-22 (2002); and see *Teamsters Local Unions 639 and 670, International Brotherhood of Teamsters, AFL-CIO v. District of Columbia Public Schools*, 54 D.C.R. 2609, Slip Op. No. 804, PERB Case No. 02-U-26 (2002).

The Board has held that while a Complainant need not prove his or her case on the pleadings, he or she must plead or assert allegations that, if proven, would establish the alleged violations of the CMPA. See *Virginia Dade v. National Association of Government Employees, Service Employees International Union, Local R3-06*, 46 DCR 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-U-22 (1996); and see *Gregory Miller v. American Federation of Government Employees, Local 631, AFL-CIO and D.C. Department of Public Works*, 48 DCR 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994); See also *Doctors' Council of District of Columbia General Hospital v. District of Columbia General Hospital*, 49 DCR 1137, Slip Op. No. 437, PERB Case No. 95-U-10 (1995). Furthermore, the Board views contested facts in the light most favorable to the Complainant in determining whether the Complaint gives rise to an unfair labor practice. See *JoAnne G. Hicks v. District of Columbia Office of the Deputy Mayor for Finance, Office of the Controller and American Federation of State, County and Municipal Employees, District Council 20*, 40 DCR 1751, Slip Op. No. 303, PERB Case No. 91-U-17 (1992). Without the existence of such evidence, the Respondents' actions cannot be found to constitute the asserted unfair labor practice. Therefore, a Complaint that fails to allege the existence of such evidence, does not present allegations sufficient to support the cause of action. See *Goodine v. FOP/DOC Labor Committee*, 43 DCR 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996).

In the present case, there is no dispute that FOP requested materials from MPD which it considered necessary and relevant to duty as a bargaining unit representative. In addition, there is no dispute as to whether MPD denied FOP's initial and second requests for information. Whether the information requested is necessary and relevant is a determination which requires further development of the record. Establishing the existence of the alleged unfair labor practice violations requires the evaluation of evidence and the resolution of conflicting allegations. The Board declines to do so at this time based on these pleadings alone.

Specifically, the issue of whether the Respondents' actions rise to the level of violations of the CMPA is a matter best determined after the establishment of a factual record, through an unfair labor practice hearing. See *Ellowese Barganier v. Fraternal Order of Police/Department of Corrections Labor Committee and District of Columbia Department of Corrections*, 45 DCR 4013, Slip Op. No. 542, PERB Case No. 98-S-03 (1998). The Board finds that the Complainant has pled or asserted allegations that, if proven, would constitute a statutory violation. As a result,

the Board denies MPD's motion to dismiss. The Complaint will continue to be processed through an unfair labor practice hearing.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The District of Columbia Metropolitan Police Department's motion to dismiss is denied.
2. The Board's Executive Director shall refer the Fraternal Order of Police/Metropolitan Police Department Labor Committee's Unfair Labor Practice Complaint to a Hearing Examiner utilizing an expedited hearing schedule. Thus, the Hearing Examiner will issue the report and recommendation within twenty-one (21) days after the closing arguments or the submission of briefs. Exceptions are due within ten (10) days after service of the report and recommendation and oppositions to the exceptions are due within five (5) days after service of the exceptions.
4. The Notice of Hearing shall be issued seven (7) days prior to the date of the hearing.
5. 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.

August 15, 2011



**CERTIFICATE OF SERVICE**

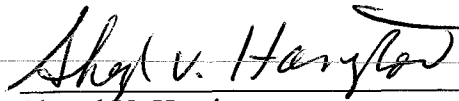
This is to certify that the attached Decision and the Board's Decision and Order in PERB Case No. 11-U-24 are being transmitted via Fax and U.S. Mail to the following parties on this the 15<sup>th</sup> day of August, 2011.

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