

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)	
)	
)	
Fraternal Order of Police/ Metropolitan Police Department Labor Committee,)	
)	
Complainant,)	PERB Case No. 10-U-46
)	
v.)	Opinion No. 1245
)	
District of Columbia, Metropolitan Police Department,)	Unfair Labor Practice Complaint
)	
Respondent. ¹)	CORRECTED
)	

DECISION AND ORDER

I. Statement of the Case

The Fraternal Order of Police/Metropolitan Police Department Labor Committee (“Complainant,” “FOP” or “Union”) filed an Unfair Labor Practice Complaint (“Complaint”) against the District of Columbia Metropolitan Police Department (“Respondent,” “MPD,” “Employer” or “Agency”). The Complaint alleges that the Respondent violated D.C. Code § 1-617.04(a)(5) and Article 10 of the parties’ collective bargaining agreement (“CBA”) by failing to provide information requested by the Union. See, Complaint at pg. 1.

The Respondent filed an Answer to Unfair Labor Practice Complaint (“Answer”), denying that it committed an unfair labor practice and asserting that the Board has no jurisdiction over the Complaint as the Complainant “made its request for information pursuant to the parties’

¹ The Executive Director is administratively dismissing the names of individuals named in this matter pursuant to – DCR-, Slip Op. No. 1118 at pg. 5, PERB Case No. 08-U-19 (August 19, 2011).

collective bargaining agreement, and the agreement provides a grievance and arbitration procedure to resolve contractual disputes.” (Answer at pg. 5).

II. Discussion

Complainant alleges that Hilton Burton is an inspector with the MPD and the Head of the Department’s Court Liaison Division. In addition, FOP asserts that during the relevant time period, Mr. Burton reported to Chief Cathy Lanier. (See, Complaint at pg. 3). Respondent denies the allegations. (See, Answer at pg. 2).

FOP alleges that Tom Wilkins is the Director of the Department’s Command Information Center and, at the relevant time period, reported to Chief Cathy Lanier. (See, Complaint at pg. 3). Respondent denies the allegations. (See, Answer at pg. 2).

Both parties admit that Sergeant Delroy Burton is a member of the FOP’s bargaining unit and serves in his elected capacity as the Executive Steward of the Union. (See, Complaint at pg. 4; see also, Answer at pg. 2).

The Union alleges that on April 8, 2010, Executive Steward Burton filed a request for information pursuant to D.C. Code § 1-617.04(a)(5) and Article 10 of the parties’ CBA. The request included eleven (11) items:

- 1) Sergeant Carl Jackson’s cellular telephone number and a copy of his phone records for February 2010 referred to as an attachment to his statement in the Investigative Report’s attachment No. 3.
- 2) Inspector Hilton Burton’s MPD cellular telephone number and a copy of the phone records associated with that number for February 2010.
- 3) Assistant Chief of Police Michael Anzallo’s MPD cellular telephone number and a copy of the phone records associated with that number for February 2010.
- 4) A document including email correspondence from Sergeant Karl Jackson regarding Sergeant Horace Douglas during February and March of 2010.
- 5) A document including email correspondence from Inspector Burton regarding Sergeant Horace Douglas during February and March of 2010.
- 6) A document including email correspondence from Lieutenant Jacqueline Hamm regarding Sergeant Horace Douglas during February and March of 2010.
- 7) A document including email correspondence from Inspector Burton regarding Court Liaison Division (CLD) staff members designated to work in Command Information Center (CIC) on February 6, 2010.
- 8) A document including email correspondence from Inspector Burton to Assistant Chief Michael Anzallo regarding CLD staff members designated to work in the CIC on February 6, 2010.
- 9) A document including email correspondence from Assistant Chief Michael Anzallo regarding CLD and CIC staffing for February 2010.
- 10) A document including email correspondence from Inspector Burton to CIC Director Tom Wilkins regarding Sergeant Horace Douglas for February 2010.
[and]

- 11) A document including email correspondence from Assistant Chief Michael Anzallo to CIC Director Tom Wilkins regarding CIC staffing for February 2010.

(Complaint at pgs. 4-5).

Respondent admits that Executive Steward Burton sent a letter to Inspector Burton requesting the eleven items listed above. (See, Answer at pg. 2). Respondent further asserts: “[t]he remaining allegations in paragraph 8 of the Complaint are the legal conclusion of the pleader to which no response is required. To the extent that a response is deemed required, the allegations are denied in entirety.” (Answer at pgs. 2-3).

In addition, Complainant asserts that the basis for the information request was an allegation that Sergeant Horace Douglas was absent without leave (“AWOL”) on February 6, 2010. (See, Complaint at pg. 5). Respondent maintains that it is “without sufficient knowledge or information to admit or deny the allegations...To the extent that a response is deemed required, the allegations are denied in their entirety.” (Answer at pg. 3).

The parties admit that on April 12, 2010, Inspector Burton forwarded a Memorandum to Executive Steward Burton requesting information describing the relevancy of the April 8, 2010 request for enforcement of the CBA or negotiations. No documents were provided at that time. (See, Complaint at pg. 5; see also, Answer at pg. 3).

Complainant alleges that on April 12, 2010, Executive Steward Burton replied to Inspector Burton’s Memorandum, indicating that the information is necessary for the defense of a member of the collective bargaining unit who has a pending disciplinary matter and that Inspector Burton should be aware of the relevancy of the information because of his personal involvement in the matter. (See, Complaint at pg. 5). The Union asserts that it again requested the information. See, Complaint at pg. 5. MPD admits that Executive Steward Burton responded to Inspector Burton by letter on or about April 20, 2010. (See, Answer at pg. 3). The Respondent then asserts: “[t]he remaining allegations...are legal conclusions of the pleader to which no response is required. To the extent that a response is deemed required, the allegations are denied in entirety.” (Answer at pg. 5).

FOP alleges that on April 24, 2010, Inspector Burton responded via e-mail, acknowledging that Executive Steward Barton advised him that the requested information was needed to defend a member against a pending disciplinary action, but asserting that Executive Steward Burton had not provided any additional information related to the relevancy of the information requested. (See, Complaint at pgs. 5-6). The Union further alleges that no documents were provided by Inspector Burton at that time. (See, Complaint at pg. 6). MPD admits that Inspector Burton responded to Executive Steward Burton on April 24, 2010, but it contends that the remaining allegations are legal conclusion on the part of the pleader to which no response is required. To the extent that a response is required, the Respondent denies the remaining allegations in their entirety. (See, Answer at pg. 3).

Complainant alleges that on April 8, 2010, Executive Steward Burton filed a request for information to Director Wilkins, pursuant to D.C. Code § 1-617.04(a)(5) and Article 10 of the parties' CBA, in which he requested:

- 1) A copy of the Command Information Center (CIC) roll call sheets for Saturday, February 6, 2010.
- 2) A copy of the CIC Patrol Signal Systems Book (PSS Book) pages for Saturday, February 6, 2011. [and]
- 3) A copy of any document from Inspector Hilton Burton Director of Court Liaison Division notifying you who from his command was designated to work in the CIC on Saturday, February 6, 2010.

(Complaint at pg. 6). Respondent admits that on or about April 9, 2010, Executive Steward Burton sent a request to Director Wilkins for the above stated documents. (See, Answer at pg. 3). Respondent then states that the "remaining allegations...are the legal conclusions of the pleader to which no response is required. To the extent that a response is required, the allegations are denied in entirety." (Answer at pg. 3).

FOP asserts that the basis for the April 8, 2010 information request was that Sergeant Horace Douglas was AWOL on February 6, 2010. (See, Complaint at pg. 6). The Respondent alleges it is "without sufficient knowledge or information to admit or deny the allegations...To the extent that a response is deemed required, the allegations are denied in their entirety." (Answer at pg. 4).

The Complainant alleges that Director Wilkins did not respond to the April 8, 2010 request. (See, Complaint at pg. 6). Respondent denies the allegation. (See, Answer at pg. 4).

FOP asserts that as of August 5, 2010, the Union had not received the requested materials from either Inspector Burton or Director Wilkins. (See, Complaint at pg. 6). Respondent admits the allegation. (See, Answer at pg. 4).

Complainant alleges that the Union's failure to provide the documents is a violation of D.C. Code § 1-617.04(a)(1) and (5), and that the an unreasonable delay in providing information is an unfair labor practice in itself. (See, Complaint at pgs. 6-7).

Respondent asserts that its conduct did not constitute a violation of D.C. Code § 1-617.04(a)(1) and (5). (See, Answer at pg. 5). In addition, MPD alleges that:

[t]he 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.

(Answer at pg. 5).

The Board has previously held that materials and information relevant and necessary to its 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). The Board's precedent is 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).

Board Rule 520.10 - Board Decision on the Pleadings, provides that: "[i]f the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings or may request briefs and/or oral argument." Consistent with that rule, the Board finds that the circumstances presented do not warrant a decision on the pleadings.

In the present matter, there is no dispute that that the Union requested materials from the Agency which it considered necessary and relevant to its duty as a collective bargaining unit representative. Nevertheless, the parties do dispute whether Respondent was informed why the Union was requesting the information. The parties also disagree on whether Director Wilkins failed to respond to the Union's information request. On the record before the Board, establishing the existence of the alleged unfair labor practice violations requires the evaluation of evidence and the resolution of conflicting allegations. Therefore, the Board declines to dismiss the allegation based on the pleadings.

The Complaint, and its allegations against the Respondent, will continue to be processed through an unfair labor practice hearing.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Board's Executive Director shall refer the Fraternal Order of Police/Metropolitan Police Department Labor Committee's Unfair Labor Practice 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.
2. The Notice of Hearing shall be issued seven (7) days prior to the date of the hearing.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

Decision and Order
PERB Case No. 10-U-46
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BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

February 3, 2011

CERTIFICATE OF SERVICE

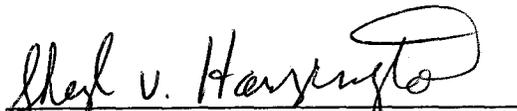
This is to certify that the attached Decision and Order in PERB Case No. 10-U-46 was transmitted via Fax and U.S. Mail to the following parties on this the 3rd day of February 2012.

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