



## II. Background

On various dates in 2006 and 2007, FOP filed the above captioned complaints.<sup>1</sup>

In 06-U-23, FOP requested information it claimed was relevant and necessary to help two officers grieve their non-appointments to MPD's Horse Mounted Unit.<sup>2</sup> Specifically, FOP sought documents related to the selection process and the officers' scores. MPD admitted in its Post-Hearing Brief that it did not respond to the request or produce the information. Although MPD eventually agreed prior to arbitration to appoint the officers to the unit, FOP asserts that the information is still relevant and necessary to protect members who apply for similar positions in the future.<sup>3</sup>

In 07-U-11, MPD proposed to discipline an officer for failing to register a camera-phone that he used to photograph another MPD employee.<sup>4</sup> FOP requested information related to the number of disciplinary actions that MPD had taken against other officers for violations of the same General Order that was cited in the officer's proposed discipline letter. MPD did not respond to the request or produce the information. Although the proposed discipline was eventually dismissed, FOP asserts that the information is still relevant and necessary to protect members who may be similarly disciplined in the future.<sup>5</sup>

In 07-U-12, MPD proposed to discipline an officer for failing to timely transfer funds from the property office to the evidence control branch, which caused the funds to be lost.<sup>6</sup> FOP requested information seeking "all log books accounting for keys to the property office, all log books recording the names of individuals who had custody of keys to the property office, the names of people who had the combination to the safe in the property office, and any documents that describe the process of obtaining a key to the property office and/or the safe combination."<sup>7</sup> FOP requested that MPD provide the information within 10 days. After approximately two months, MPD provided all of the documents it claimed it had that were responsive to the request. Because the information was not provided within 10 days as FOP requested, FOP asserts that MPD's response was untimely and therefore constituted an unfair labor practice.<sup>8</sup>

In 07-U-16, MPD proposed to discipline an officer for failing to obey orders and directives following a traffic incident wherein he struck a civilian vehicle with his patrol car.<sup>9</sup> FOP requested information related to the incident, including the estimated and actual costs of the repairs for both vehicles. After approximately a month and a half, MPD provided all of the documents it claimed it had that were responsive to the request. Because the information was

---

<sup>1</sup> (Supplemental Report and Recommendation at 1) (hereinafter cited as "Supp. R&R").

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*; *see also* p. 6.

<sup>9</sup> *Id.*

not provided within the timeframe that FOP had requested, FOP asserts that MPD's response was untimely and therefore constituted an unfair labor practice.<sup>10</sup>

In 07-U-30, FOP requested information related to the investigation and discipline of any Assistant Chiefs of Police for unauthorized outside employment.<sup>11</sup> FOP submitted the request to MPD's Office of Professional Responsibility. Two days later, MPD informed FOP that it should redirect its request to the MPD's Office of the General Counsel, Labor and Employee Relations Unit. FOP asserts that MPD's response was a refusal to provide the information and therefore constituted an unfair labor practice.<sup>12</sup>

PERB consolidated the cases and assigned them to a hearing, which was held on July 19, 2007, before Hearing Examiner Aline Pacht. Ms. Pacht issued a Report and Recommendation finding that FOP's allegations were contractual and that PERB therefore lacked jurisdiction over the complaints. In *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department Labor Committee*, 62 D.C. Reg. 4685, Slip Op. No. 1490, PERB Case Nos. 06-U-23, *et al.* (2014), the Board rejected Ms. Pacht's findings on grounds that they were not consistent with PERB precedent, and remanded the cases to Ms. Pacht for further consideration and analysis on the merits.<sup>13</sup> However, Ms. Pacht was unavailable to address the remanded cases. So PERB's Executive Director, with the consent of the parties, re-assigned the matters to Supplemental Hearing Examiner, Bruce D. Rosenstein, who reviewed the existing record, and issued a Supplemental Report and Recommendation in accordance with the Board's Order in Slip Op. No. 1490.<sup>14</sup>

In the Supplemental Report and Recommendation, Mr. Rosenstein found that MPD committed unfair labor practices in PERB Case Nos. 06-U-23 and 07-U-11, but did not commit unfair labor practices in PERB Case Nos. 07-U-12, 07-U-16, and 07-U-30.<sup>15</sup> FOP filed exceptions to Mr. Rosenstein's findings in PERB Case Nos. 07-U-12, 07-U-16, and 07-U-30, to which MPD filed an Opposition. Neither party filed exceptions to Mr. Rosenstein's findings in PERB Case Nos. 06-U-23 and 07-U-11.

### III. Analysis

It is an unfair labor practice for an agency to withhold requested information that is relevant and necessary to a union's duties as the bargaining unit's exclusive representative.<sup>16</sup>

---

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 4.

<sup>12</sup> *Id.*

<sup>13</sup> *See* ps. 1-2, 5-8.

<sup>14</sup> (Supp. R&R at 1).

<sup>15</sup> *Id.* at 5-7.

<sup>16</sup> *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 3386, Slip Op. No. 835, PERB Case No. 06-U-10 (2006); *see also University of the District of Columbia v. University of the District of Columbia Faculty Association*, 38 D.C. Reg. 2463, Slip Op. No. 272, PERB Case No. 90-U-10 (1991).

When an agency fails or refuses, without a viable defense, to produce information that the union has requested, the agency violates its statutory duty to bargain in good faith under D.C. Official Code § 1-617.04(a)(5).<sup>17</sup> Further, a violation of the duty to bargain in good faith also derivatively constitutes a violation of the counterpart duty in D.C. Official Code § 1-617.04(a)(1) to not interfere, restrain, or coerce the employees' in the exercise of their statutory rights.<sup>18</sup>

The Board will affirm a hearing examiner's findings and recommendations if the findings are reasonable, supported by the record, and consistent with PERB precedent.<sup>19</sup> Determinations concerning the admissibility, relevance, and weight of evidence are reserved to the Hearing Examiner.<sup>20</sup> Issues concerning the probative value of evidence are also reserved to the Hearing Examiner.<sup>21</sup> Mere disagreements with a Hearing Examiner's findings and/or challenging the Examiner's findings with competing evidence do not constitute proper exceptions if the record contains evidence supporting the Hearing Examiner's conclusions.<sup>22</sup>

A. 06-U-23

In PERB Case No. 06-U-23, Mr. Rosenstein reasoned that (1) "MPD admits, in its post-hearing brief, that it did not respond to the FOP information requests nor did it provide any of the requested information," and (2) "[w]hile ... both grievances were resolved at the arbitration level and the officers were assigned to the Horse Mounted Unit, this does not negate the FOP's right to receive necessary and relevant information for the processing of a grievance or at the arbitration stage under the parties' CBA."<sup>23</sup> Thus, Mr. Rosenstein found that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) as alleged in FOP's complaint.<sup>24</sup>

As a remedy, Mr. Rosenstein recommends that the Board order MPD to (1) cease violating the statute as described, (2) release to FOP the requested information, (3) pay FOP's reasonable costs in PERB Case No. 06-U-23, and (4) post a notice detailing the violations found.<sup>25</sup> Mr. Rosenstein reasoned that costs are warranted in PERB Case No. 06-U-23 because "MPD failed to provide evidence to substantiate its claim that the information requested was not necessary and relevant for the FOP to represent bargaining unit employees in pending grievances

---

<sup>17</sup> *American Federation of Government Employees, Local 2725 v. District of Columbia Department of Health*, 59 D.C. Reg. 6003, Slip Op. No. 1003 at p. 4, PERB Case 09-U-65 (2009).

<sup>18</sup> *Id.*

<sup>19</sup> *American Federation of Government Employees, Local 872 v. District of Columbia Water and Sewer Authority*, 52 D.C. Reg. 2474, Slip Op. No. 702, PERB Case No. 00-U-12 (2003).

<sup>20</sup> *Hoggard v. District of Columbia Public Schools*, 46 D.C. Reg. 4837, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20 (1996).

<sup>21</sup> *American Federation of Government Employees, Local 2725, AFL-CIO v. District of Columbia Housing Authority*, 45 D.C. Reg. 4022, Slip Op. No. 544 at p. 3, PERB Case No. 97-U-07 (1998).

<sup>22</sup> *Hoggard v. DCPS, supra*, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20.

<sup>23</sup> (Supp. R&R at 5-6).

<sup>24</sup> *Id.* at 6 (citing *American Federation of Government Employees, Local 2741 v. District of Columbia Department of Parks and Recreation*, 50 D.C. Reg. 5049, Slip Op. No. 697, PERB Case No. 00-U-22 (2002)).

<sup>25</sup> *Id.* at 7-8.

or disciplinary matters,” and therefore, “MPD’s failure to provide the requested information was without merit.”<sup>26</sup>

The Board’s review of the hearing transcript and MPD’s post-hearing brief confirms that Mr. Rosenstein’s findings and recommendations are reasonable, supported by the record, and consistent with PERB precedent.<sup>27</sup> Furthermore, neither party excepted to Mr. Rosenstein’s findings in PERB Case No. 06-U-23. Accordingly, the Board finds that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) in PERB Case No. 06-U-23 and grants the relief that Mr. Rosenstein recommended.<sup>28</sup>

#### B. 07-U-11

In PERB Case No. 07-U-11, Mr. Rosenstein reasoned that (1) “[t]he record confirms that MPD did not reply to the request for information nor did it provide any of the information to the FOP,” and (2) “[w]hile ... the adverse action against [the officer] was ultimately dismissed, this does not negate the FOP’s right to receive necessary and relevant information for the processing of disciplinary appeals.”<sup>29</sup> Thus, Mr. Rosenstein found that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) as alleged in FOP’s complaint.<sup>30</sup>

As a remedy, Mr. Rosenstein recommends that the Board order MPD to (1) cease violating the statute as described, (2) release to FOP the requested information, (3) pay FOP’s reasonable costs in PERB Case No. 07-U-11, and (4) post a notice detailing the violations found.<sup>31</sup> Mr. Rosenstein reasoned that costs are warranted in PERB Case No. 07-U-11 because “MPD failed to provide evidence to substantiate its claim that the information requested was not necessary and relevant for the FOP to represent bargaining unit employees in pending grievances or disciplinary matters,” and therefore, “MPD’s failure to provide the requested information was without merit.”<sup>32</sup>

The Board’s review of the hearing transcript confirms that Mr. Rosenstein’s findings and recommendations are reasonable, supported by the record, and consistent with PERB

---

<sup>26</sup> *Id.* (citing D.C. Official Code § 1-617.13(d) (which grants the Board authority to require the payment of reasonable costs); and *American Federation of State, County and Municipal Employees, District Council 20, Local 2776 v. D.C. Department of Finance and Revenue*, 73 D.C. Reg. 5658, Slip Op. No. 245 at ps. 4-5, PERB Case No. 98-U-02 (1990) (holding that the Board can award costs if it is in the “interest of justice” to do so)).

<sup>27</sup> See Transcript at 14; and (MPD Post-Hearing Brief at 16-17); see also *AFGE, Local 2725 v. DOH, supra*, Slip Op. No. 1003 at p. 4, PERB Case 09-U-65; and *AFGE, Local 872 v. DC WASA, supra*, Slip Op. No. 702, PERB Case No. 00-U-12.

<sup>28</sup> *Id.*

<sup>29</sup> (Supp. R&R at 6) (citing *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 11371, Slip Op. No. 1302, PERB Case Nos. 07-U-49, 08-U-13, & 08-U-16 (2012)).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 7-8.

<sup>32</sup> *Id.* (citing D.C. Official Code § 1-617.13(d); and *AFSCME, Local 2776 v. DFR, supra*, Slip Op. No. 245 at ps. 4-5, PERB Case No. 98-U-02).

precedent.<sup>33</sup> Furthermore, neither party excepted to Mr. Rosenstein's findings in PERB Case No. 07-U-11. Therefore, the Board finds that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) in PERB Case No. 07-U-11 and grants the relief that Mr. Rosenstein recommended.

C. 07-U-12

In PERB Case No. 07-U-12, Mr. Rosenstein reasoned that FOP "admitted that on October 18, 2006, [FOP] received a response [to its August 10, 2006 information request<sup>34</sup>] from [MPD] that some of the requested documents did not exist but those that did would be provided."<sup>35</sup> Mr. Rosenstein further reasoned that FOP "acknowledged that [it] did receive the materials and used them during the [officer's] appeal proceeding."<sup>36</sup> Accordingly, Mr. Rosenstein found that (1) while MPD did not provide the information within 10 days as requested by FOP, it did provide the information "in just over two months," which was prior to the officer's appeal hearing, (2) the information provided contained "all of the documents responsive to [FOP's] request" except for the documents that MPD stated did not exist, and (3) MPD's delay in providing the information was therefore not unreasonable under *American Federation of Government Employees, Local 631 v. District of Columbia Water and Sewer Authority*, 51 D.C. Reg. 4163, Slip Op. No. 730, PERB Case No. 02-U-19 (2003) ("Slip Op. No. 730").<sup>37</sup> Thus, Mr. Rosenstein found that MPD did not violate D.C. Official Code §§ 1-617.04(a)(1) and (5) and recommended that the complaint in PERB Case No. 07-U-12 be dismissed.<sup>38</sup>

FOP asserts in its Exceptions that Mr. Rosenstein did not make any findings regarding the relevance and necessity of the requested documents in PERB Case No. 07-U-12, and that it must therefore be presumed that its information request met the "relevant and necessary" standard in PERB case law. Upon this predicate, FOP argues that although MPD did eventually provide the requested documents, its delay in doing so was unreasonable and therefore constituted an unfair labor practice.<sup>39</sup>

FOP cites to a string of National Labor Relations Board ("NLRB") cases to support its contention that MPD's alleged delay in producing the documents was "as much of a violation of

---

<sup>33</sup> See Transcript at 14; see also *AFGE, Local 2725 v. DOH, supra*, Slip Op. No. 1003 at p. 4, PERB Case 09-U-65; and *AFGE, Local 872 v. DC WASA, supra*, Slip Op. No. 702, PERB Case No. 00-U-12.

<sup>34</sup> Mr. Rosenstein states in the Supp. R&R that FOP's request was submitted on August 6, 2006. (See p. 3, 6). However, FOP asserts in its Exceptions that the request was actually submitted on August 10, 2006 (see p. 5, 11), which the Hearing Transcript confirms (see p. 9, 121, 174-175). Therefore, the Board finds that the request was submitted on August 10, 2006, not on August 6<sup>th</sup>.

<sup>35</sup> (Supp. R&R at 6).

<sup>36</sup> (Supp. R&R at 6) (citing *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 11371, Slip Op. No. 1302, PERB Case Nos. 07-U-49, 08-U-13, & 08-U-16 (2012)).

<sup>37</sup> *Id.* at 3, 6.

<sup>38</sup> *Id.*

<sup>39</sup> (Exceptions to the Supp. R&R at 9-10).

[the statute] as a refusal to furnish the information at all.”<sup>40</sup> Primarily, FOP relies on *Earthgrains Co.*, 349 NLRB 389 (2007)<sup>41</sup>, in which the NLRB held that, subject to the complexity and extent of the information sought, its availability, and the difficulty of retrieving the information, employers should make “a reasonable good faith effort to respond to the request as promptly as circumstances allow.”<sup>42</sup> FOP claims that, under this standard, MPD should have been able to quickly produce the information in PERB Case No. 07-U-12 because the request was specific, and the information sought was not complex. Nevertheless, FOP argues that MPD still waited over two months to comply with the request despite being aware of the officer’s short deadline to appeal the proposed discipline and the high burden she would face if she did not have the information. Thus, FOP contends that even though MPD responded to the request, it did not “respond to the request as promptly as circumstances allow[ed]” as required under *Earthgrains*, and therefore committed an unfair labor practice. Accordingly, FOP asserts that Mr. Rosenstein erred when he found that, based on the reasonableness standard in PERB’s 2003 Decision in Slip Op. No. 730 (which FOP claims was usurped by the NLRB’s 2007 decision in *Earthgrains*) MPD’s delay in providing the requested information was not unreasonable, and that MPD therefore did not commit an unfair labor practice.<sup>43</sup>

Further, FOP asserts that Mr. Rosenstein erred when he found that the documents “were received in advance of the officer’s appeal hearing” because, as FOP notes, the officer “only had ten (10) business days to respond to the proposed discipline at the first level,” and “there was no ‘hearing.’”<sup>44</sup> Accordingly, FOP contends that Mr. Rosenstein’s “inference that MPD has cured any perceived lengthy delay because [the officer] was able to use this information during a subsequent ‘hearing’ is false.”<sup>45</sup>

The Board rejects FOP’s exceptions, and finds that Mr. Rosenstein’s conclusions regarding PERB Case No. 07-U-12 are reasonable, supported by the record, and consistent with PERB precedent.<sup>46</sup> The record supports Mr. Rosenstein’s findings that MPD provided all the documents that could be produced, and that the information was produced in a sufficient and timely manner for FOP to use it in the officer’s defense. MPD’s witness, Supervisory Labor Relations Specialist Anna McClanahan, gave un-rebutted testimony detailing the lengthy and time consuming steps she took to respond to FOP’s August 10, 2006 information request, and the reasons why MPD was not able to fully respond to the request until October 18, 2006.<sup>47</sup> Additionally, Ms. McClanahan testified that FOP used the information MPD provided in the officer’s appeal to the Chief of Police.<sup>48</sup> FOP’s own witness, Labor Representative Philip

---

<sup>40</sup> *Id.* at 10-11 (citing *Amersig Graphics, Inc.*, 334 NLRB 880, 885 (2001)).

<sup>41</sup> (Enf. granted in part, denied in part, 514 F.3d 422 (5<sup>th</sup> Cir. 2008)).

<sup>42</sup> <sup>42</sup> See p. 400 (quoting *West Penn Power Co.*, 339 NLRB 585, 587 (2003), enf. in pertinent part, 349 F.3d 233 (4<sup>th</sup> Cir. 2005)).

<sup>43</sup> (Exceptions to Supp. R&R at 10-12).

<sup>44</sup> *Id.* at 12.

<sup>45</sup> *Id.*

<sup>46</sup> *AFGE, Local 872 v. WASA, supra*, Slip Op. No. 702, PERB Case No. 00-U-12.

<sup>47</sup> Transcript at 174-180, 196.

<sup>48</sup> *Id.* at 184.

Burton, also testified that the information MPD provided would be used at the officer's then pending arbitration proceeding.<sup>49</sup>

Since determinations concerning the admissibility, relevance, weight, and probative value of evidence are reserved to the Hearing Examiner, the Board finds, based on the above testimony and the specific facts of PERB Case No. 07-U-12, that Mr. Rosenstein's conclusion—that MPD's two-month delay in providing the requested information was not unreasonable—is supported by the record and reasonable.<sup>50</sup> Further, based on the above testimony, the Board finds that the record does not support FOP's assertions that the information was not used in the officer's defense and that there was "no hearing." While the information was not yet available when the officer submitted her initial response to the proposed discipline, Ms. McClanahan testified that the officer was able to proffer what the information showed, and was then able to substantiate that proffer in her later appeal to the Chief of Police after MPD provided the information.<sup>51</sup> Furthermore, FOP's witness, Philip Burton, testified that FOP never requested any extensions of time in the officer's appeals while the information request was still pending.<sup>52</sup> Lastly, FOP does not allege or offer any evidence that the officer lost her appeal, or that her defense was otherwise substantively prejudiced because MPD did not produce the information prior to October 18, 2006. Accordingly, the Board finds that Mr. Rosenstein's conclusion that the information was provided in a reasonably timely manner to be used in the officer's defense is also reasonable and supported by the record.<sup>53</sup>

Additionally, the Board rejects FOP's assertion that the NLRB's reasonableness standard in *Earthgrains* usurped PERB's reasonableness standard articulated in Slip Op. No. 730. As stated previously, the Board will uphold a hearing examiner's findings if they are "consistent with PERB precedent," not NLRB precedent.<sup>54</sup> While the Board does sometimes look to NLRB precedent for guidance when relevant,<sup>55</sup> it mostly does so when PERB's case law is silent on a particular issue.<sup>56</sup> Here, PERB already had a standard to measure whether a delay in providing requested information was reasonable or unreasonable. Thus, Mr. Rosenstein did not err when

---

<sup>49</sup> *Id.* at 150.

<sup>50</sup> See *AFGE, Local 872 v. WASA, supra*, Slip Op. No. 702, PERB Case No. 00-U-12; see also *Hoggard v. DCPS, supra*, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20; and *AFGE, Local 2725 v. DCHA, supra*, Slip Op. No. 544 at p. 3, PERB Case No. 97-U-07.

<sup>51</sup> Transcript at 183-184 (citing Hearing Joint Exhibit 10).

<sup>52</sup> *Id.* at 147-148.

<sup>53</sup> See *AFGE, Local 872 v. WASA, supra*, Slip Op. No. 702, PERB Case No. 00-U-12; see also *Hoggard v. DCPS, supra*, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20; and *AFGE, Local 2725 v. DCHA, supra*, Slip Op. No. 544 at p. 3, PERB Case No. 97-U-07.

<sup>54</sup> *Id.*

<sup>55</sup> The NLRB administers the National Labor Relations Act ("NLRA"), 29 U.S.C. §§ 151-169, a federal law governing private sector labor relations nationwide. PERB, however, administers the Comprehensive Merit Personnel Act ("CMPA"), D.C. Official Code § 1-601 *et seq.*, which governs public-sector labor relations in the District of Columbia. While there are certain similarities between the NLRA and the CMPA, there are also many key differences. Further, PERB is not in any way subject to or dependent upon the jurisdiction of the NLRB, and *vice versa*. Therefore, FOP's contention that PERB's case law is subject to NLRB case law is erroneous.

<sup>56</sup> See *American Federation of Government Employees, Local 2714 v. District of Columbia Department of Parks and Recreation*, 50 D.C. Reg. 5049, Slip Op. No. 697 at p. 8, PERB Case No. 00-U-22 (2002).

he failed to cite to and rely on the NLRB's standard in *Earthgrains* in his analysis.<sup>57</sup> Under Slip Op. No. 730, the Board considered the following factors<sup>58</sup> to determine whether the agency's delay in providing requested information was unreasonable and therefore constituted an unfair labor practice: (1) how many times the request was made, (2) whether the documents were eventually produced, and (3) the length of the delay. Applying this standard to the facts of this case, (1) FOP's witness, Philip Burton, testified that he never followed up or "made any other overtures to try to get [the] information" once MPD missed the 10-day deadline that FOP had set<sup>59</sup> in its August 10<sup>th</sup> request<sup>60</sup>; (2) the requested information was provided<sup>61</sup>; and (3) while it took MPD over two months to provide the information, Ms. McClanahan testified that due to the nature of the request, October 18<sup>th</sup> was the soonest that the information could have been provided.<sup>62</sup> In light of these facts, and based on PERB's reasonableness standard in Slip Op. No. 730, the Board holds that Mr. Rosenstein's finding—that MPD's delay in providing the requested information was not unreasonable and therefore did not constitute an unfair labor practice—is reasonable, supported by the record, and consistent with PERB precedent.<sup>63</sup>

Thus, the Board finds that FOP's exceptions in PERB Case No. 07-U-12 constitute nothing more than mere disagreements with Mr. Rosenstein's findings, and/or are simply based on competing evidence, and are therefore invalid.<sup>64</sup> Accordingly, the Board affirms Mr. Rosenstein's findings, and dismisses the complaint in PERB Case No. 07-U-12 in accordance with Mr. Rosenstein's recommendation.<sup>65</sup>

#### D. 07-U-16

In PERB Case No. 07-U-16, Mr. Rosenstein reasoned that MPD "promptly" responded to FOP's information request on October 17, 2006, "with all of the documents that the MPD

---

<sup>57</sup> The Board notes that even if Mr. Rosenstein had relied on *Earthgrains* instead of Slip Op. No. 730, he still would have likely concluded that MPD's delay was not unreasonable based on Ms. McClanahan's testimony that October 18<sup>th</sup> was the soonest that MPD could have responded to the request due to the complexity and extent of the information sought, its availability, and the difficulty of retrieving the information. See Transcript at 174-180, 196.

<sup>58</sup> See p. 5-6.

<sup>59</sup> FOP's witness, Philip Burton, testified that he was the one who set the 10-day deadline in FOP's request based on nothing more than how long *he* thought it would take for MPD to produce the information, and that no such deadline is set forth in or required by the parties' collective bargaining agreement. See Transcript at 150.

<sup>60</sup> Transcript at 147-148. The Board wishes to reiterate here what it stated in Slip Op. No. 730; that while there is no requirement that unions submit information requests more than once, PERB case law suggests that when an agency has delayed in producing requested information, "in the interest of labor relations, it may be better to request documents a second time" before filing an unfair labor practice complaint in order to better ascertain and understand the agency's motivations for the delay. See f. 9 (citing *International Brotherhood of Police Officers, Local 446 v. District of Columbia General Hospital*, 39 D.C. Reg. 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992)).

<sup>61</sup> See Transcript at 150, 184, 196.

<sup>62</sup> *Id.* at 174-180, 196.

<sup>63</sup> See *AFGE, Local 872 v. WASA, supra*, Slip Op. No. 702, PERB Case No. 00-U-12. Further, the Board notes that since the information was provided, then even if it is conceded that FOP's request was "relevant and necessary," such would still not likely change Mr. Rosenstein's or the Board's conclusions that MPD's delay was not unreasonable.

<sup>64</sup> See *Hoggard v. DCPS, supra*, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20.

<sup>65</sup> (Supp. R&R at 6).

maintained in its records that were responsive to the information request.”<sup>66</sup> Further, Mr. Rosenstein reasoned that “at no time after the receipt of the information did [FOP] inform [MPD] that it was not responsive to [the] request,” and that “the first time that this issue arose was during the hearing in this matter that was held on July 19, 2007.”<sup>67</sup> Thus, Mr. Rosenstein found that MPD did not commit an unfair labor practice and recommended that the Board dismiss the complaint in PERB Case No. 07-U-12.<sup>68</sup>

Similar to its exceptions in PERB Case No. 07-U-12, FOP relies on the NLRB’s reasonableness standard in *Earthgrains*, and asserts that since FOP’s information request in PERB Case No. 07-U-16 was “neither complex nor burdensome,” the information “should have been able to be located by making a couple of phone calls.”<sup>69</sup> FOP suggests that “[i]n fact, that is exactly what Ms. McClanahan testified that she did” to obtain the information.<sup>70</sup> Even so, FOP argues that MPD still did not respond to the request until October 17, 2006, which was over a month after FOP had filed the officer’s appeal to the Chief of Police.<sup>71</sup> Moreover, FOP asserts that the information MPD provided was not complete because it did not include the invoices detailing the actual costs of the repairs to both the patrol car and the civilian’s car that the officer hit.<sup>72</sup> FOP argues that those invoices were “the most crucial pieces of information requested.”<sup>73</sup> FOP contends that “[d]ue in large part to the Department’s unreasonable delay, [the officer] lost his appeal to the Chief of Police and, under the [collective bargaining agreement], his particular penalty [—a 3-day suspension—] does not allow the Union to take his imposed discipline to arbitration.”<sup>74</sup>

In regard to Mr. Rosenstein’s specific findings, FOP argues that Mr. Rosenstein’s reasoning erroneously focused on the facts that MPD eventually provided the information, and that FOP never informed MPD until the hearing that its response was incomplete.<sup>75</sup> FOP contends that “[w]hether or not MPD provided some (or even all) of the information requested on October 17, 2006 is irrelevant because that date is significantly after [the officer] lost his appeal—the primary reason why the Union was asking for the information in the first place.”<sup>76</sup> Accordingly, FOP urges PERB to discard Mr. Rosenstein’s reasoning and rationale.<sup>77</sup>

The Board rejects FOP’s exceptions. As reasoned above, PERB is not bound by the NLRB’s reasonableness standard in *Earthgrains*. Further, the Board finds that the record in this

---

<sup>66</sup> *Id.* at 7.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> (Exceptions to Supp. R&R at 12).

<sup>70</sup> *Id.* (citing Transcript at 181-182).

<sup>71</sup> *Id.* at 12-13.

<sup>72</sup> *Id.* at 7, 12-13.

<sup>73</sup> *Id.* at 13 (emphasis removed).

<sup>74</sup> *Id.* (emphasis removed).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 13-14.

<sup>77</sup> *Id.* at 14.

case does not warrant a finding that MPD's response to FOP's information request constituted an unfair labor practice in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5).

At the hearing, FOP's witness, Philip Burton, testified that he "drafted" the information request on August 31, 2006, but there is no testimony or other information in the record that establishes a date certain of when FOP's request was actually delivered to MPD.<sup>78</sup> Even FOP's complaint is vague about when the request was delivered—merely alleging that: "[o]n *or about* August 31, 2006, the FOP *forwarded* a written request for information pursuant to Article 10 of the CBA."<sup>79</sup> Indeed, Mr. Burton testified that "often there's a disparity between the date [a document] is drafted and the day it was delivered."<sup>80</sup> Further, there is nothing in the record establishing how the request was delivered to MPD.<sup>81</sup> This is important because even if the Board reads the available facts in the light most favorable to FOP and assumes that the request was hand-delivered<sup>82</sup> to MPD on August 31, 2006, FOP's demand that MPD provide the requested information by "no later than Monday, September 11, 2006,"<sup>83</sup> would have still only given MPD six (6) working days to gather all of the information and deliver it to MPD.<sup>84</sup> If, however, the request was sent by U.S. Mail, it is entirely possible that MPD might not have even received the request prior to FOP's designated deadline.<sup>85</sup>

Additionally, according to FOP's information request, the officer's appeal to the Chief of Police was due on September 12, 2006. FOP's witness, Philip Burton, testified that he intentionally did not request the information in advance of the officer's initial appeal to the Assistant Chief of Police because he (Mr. Burton) thought the officer "had an unbeatable disciplinary case" based solely on the documents that MPD had already provided with the officer's notice of proposed discipline.<sup>86</sup> It was only after MPD denied the officer's initial appeal on August 28, 2006, that Mr. Burton began drafting the information request and the officer's final appeal to the Chief of Police on August 31, 2006, and September 5, 2006,

---

<sup>78</sup> Transcript at 137.

<sup>79</sup> (Complaint in PERB Case No. 07-U-16 at 4) (emphases added).

<sup>80</sup> Transcript at 141.

<sup>81</sup> *See* (Complaint in PERB Case No. 07-U-16, Exhibit 2).

<sup>82</sup> A copy of FOP's written request is attached to the complaint as Exhibit 2. The Exhibit contained a photo-copy of an unstamped envelope addressed to MPD's General Counsel. Presumably, FOP included the copy because it used the envelope to deliver its request to MPD. Accordingly, the Board can reasonably surmise that the request was not sent by email or facsimile, but was instead likely either hand-delivered or sent by U.S. Mail.

<sup>83</sup> (Complaint in PERB Case No. 07-U-16, Exhibit 2).

<sup>84</sup> Labor Day in 2006 was on Monday, September 4, thus shortening the number of working days that FOP gave MPD to comply with its request.

<sup>85</sup> As noted in footnote 59 herein, the parties' collective bargaining agreement does not require MPD to respond to information requests within a specific timeframe. *See* Transcript at 150. That does not mean MPD can drag its feet or unreasonably delay its responses, but it does mean that it is not always an automatic unfair labor practice if MPD fails to produce requested information by a deadline that FOP has unilaterally chosen on its own, particularly if FOP's chosen deadline only gives MPD a very short timeframe to respond to the request, as was the case in PERB Case No. 07-U-16.

<sup>86</sup> Transcript at 135-136. The Board notes that Mr. Burton's testimony seemingly contradicts FOP's assertion in its information request that the officer "was forced by the deadlines imposed for adverse action appeals to submit [the] initial appeal without the [information that was being requested]." *See* (Complaint in PERB Case No. 07-U-16, Exhibit 2).

respectively.<sup>87</sup> Mr. Burton testified that even though the officer's final appeal was date-stamped by MPD on September 11, 2006, FOP may have actually sent it to MPD at any time between the 5<sup>th</sup> and the 11<sup>th</sup> since the date-stamp only indicates "when the document was actually delivered to the Chief's office."<sup>88</sup> Therefore, even if MPD had provided the information toward the end of the day on September 11, which would have been in accordance with the deadline that FOP had set in its request, it is still possible that it would have been too late because, according to Mr. Burton's testimony, FOP had already filed the officer's appeal, perhaps as early as September 5<sup>th</sup>.<sup>89</sup>

Furthermore, FOP's request does not conspicuously indicate that the information sought was urgent.<sup>90</sup> For instance, in the written request, the subject line did not state that the request was urgent, nor did the request conspicuously indicate anywhere on the front page that the information needed to be produced within just six (6) or less working days. Indeed, the one and only place that the request states that the information was needed in a shorter-than-normal timeframe was in a single un-bolded and un-underlined sentence in the middle of the fifth main section of FOP's two-page request, which stated that, "[t]o enable [the officer] to submit a Final Appeal to the Chief of Police with the relevant information required for his defense, and in time to meet his deadline of September 12, 2006, please forward the information no later than Monday, September 11, 2006." There is also no indication in the record that FOP ever followed up with MPD regarding the status of the request after it was submitted, or that FOP ever asked the Chief of Police for an extension of time to file the officer's final appeal while it waited for MPD to produce the information. While FOP was not necessarily required to conspicuously note that the request was urgent, or to follow up with MPD once the request was submitted, or to seek an extension of time from the Chief of Police to file the officer's appeal, the fact that FOP did none of these tends to negate FOP's assertions that it considered the requested information to be "crucial" to the officer's defense, and that the officer's appeal was denied "[d]ue in large part to the Department's unreasonable delay."

In regard to FOP's assertions that the requested information was "neither complex nor burdensome," and that Ms. McClanahan only had to "make a couple of phone calls" to obtain it, the Board notes that the record shows that while it is true that Ms. McClanahan coordinated MPD's effort to respond to the request by just making a few calls, it was actually Fleet Management that had to locate and compile all of the information.<sup>91</sup> Based on Ms. McClanahan's testimony that Fleet Management "eventually" sent her information, it is possible that the process of gathering and producing the information was more complex and time-consuming than FOP assumes.<sup>92</sup> At the very least, Ms. McClanahan's testimony does not, by

---

<sup>87</sup> *Id.* at 137, 140.

<sup>88</sup> *Id.* at 139-142.

<sup>89</sup> Indeed, if FOP did submit the officer's appeal on September 5<sup>th</sup>, and if FOP's information request was delivered to MPD on August 31<sup>st</sup> (which, as noted, is hardly certain), then that would mean FOP filed the officer's appeal just two (2) working days after it submitted its information request.

<sup>90</sup> *See* (Complaint in PERB Case No. 07-U-16, Exhibit 2).

<sup>91</sup> *See* Transcript at 181-182.

<sup>92</sup> *Id.*

itself, conclusively demonstrate by a preponderance of the evidence<sup>93</sup> that the information was easily producible, or that MPD's October 17, 2006 response was unreasonably untimely, as FOP asserts.

Additionally, the Board rejects FOP's "irrelevancy" argument concerning Mr. Rosenstein's findings that MPD did not commit an unfair labor practice because it eventually provided the information, and because FOP never informed MPD that its response was incomplete until the hearing. As stated previously, determinations concerning the admissibility, relevance, weight, and probative value of evidence are reserved to the Hearing Examiner.<sup>94</sup> Primarily, FOP alleges that MPD committed an unfair labor practice by failing to timely produce the requested information.<sup>95</sup> As noted in the Board's analysis of PERB Case No. 07-U-12, when determining whether or not an agency has committed an unfair labor practice by unreasonably delaying a response to an information request, the Board looks at (1) how many times the request was made, (2) whether the documents were eventually produced, and (3) the length of the delay.<sup>96</sup> As noted above, FOP only made its request once, and did not conspicuously note in the request that the documents were needed in a shorter-than-normal timeframe. FOP also did not follow up with MPD on the status of its request at any time prior to its stated September 11, 2006 deadline. Further, the record substantiates that MPD did produce all of the records it had that were responsive to the request in just over a month-and-a-half after the request was made.<sup>97</sup> Therefore, the Board holds that Mr. Rosenstein's finding that MPD did eventually produce the information was indeed relevant, contrary to FOP's assertion.

As to whether or not the information provided was complete, the Board agrees with Mr. Rosenstein that since FOP never notified MPD (either directly, or even in its complaint) that it did not consider MPD's response to be complete until Philip Burton's testimony at the hearing, it cannot be concluded by a preponderance of the evidence<sup>98</sup> that MPD's response (complete or not) constituted an unfair labor practice.

Based on the foregoing, the Board holds that Mr. Rosenstein's conclusion that MPD did not violate D.C. Official Code §§ 1-617.04(a)(1) and (5) is reasonable, supported by the record, and consistent with PERB precedent.<sup>99</sup> Further, the Board finds that FOP's exceptions in PERB Case No. 07-U-16 constitute nothing more than mere disagreements with Mr. Rosenstein's findings, and/or are simply based on competing evidence, and are therefore invalid.<sup>100</sup> Accordingly, the

---

<sup>93</sup> PERB Rule 520.11, states, in pertinent part, that "[t]he party asserting a violation of the CMPA, shall have the burden of proving the allegations of the complaint by a preponderance of the evidence."

<sup>94</sup> See *Hoggard v. DCPS*, *supra*, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20; and *AFGE, Local 2725 v. DCHA*, *supra*, Slip Op. No. 544 at p. 3, PERB Case No. 97-U-07.

<sup>95</sup> See (Complaint in PERB Case No. 07-U-16 at 7).

<sup>96</sup> *AFGE, Local 631 v. WASA*, *supra*, Slip Op. No. 730, PERB Case No. 02-U-19.

<sup>97</sup> Transcript at 181-183.

<sup>98</sup> See footnote 93, herein.

<sup>99</sup> See *AFGE, Local 872 v. WASA*, *supra*, Slip Op. No. 702, PERB Case No. 00-U-12. As it did in PERB Case No. 07-U-12, the Board notes here that since the information was provided, then even if it is conceded that FOP's request was "relevant and necessary," such would still not likely change Mr. Rosenstein's or the Board's conclusions that MPD's delay was not unreasonable.

<sup>100</sup> See *Hoggard v. DCPS*, *supra*, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20.

Board affirms Mr. Rosenstein's findings, and dismisses the complaint in PERB Case No. 07-U-16 in accordance with Mr. Rosenstein's recommendation.<sup>101</sup>

E. 07-U-30

In PERB Case No. 07-U-30, Mr. Rosenstein reasoned that FOP's witness, then FOP Treasurer Delroy Burton, "admitted that two days [after he submitted FOP's December 5, 2006 information request], he received a response to his request directing him to seek the information from [MPD's] Office of the General Counsel, Labor and Employee Relations Unit."<sup>102</sup> Mr. Rosenstein further reasoned that "[t]he record confirms that [Delroy] Burton did not resubmit the information request to the Labor and Employee Relations Unit, despite testifying that he knew the Unit could provide the information that he requested."<sup>103</sup> Thus, Mr. Rosenstein found that MPD "promptly" responded to FOP's request, and that MPD's direction to resubmit the request to the Labor and Employee Relations Unit did not constitute an unfair labor practice. Accordingly, Mr. Rosenstein recommended that the complaint in PERB Case No. 07-U-30 be dismissed.<sup>104</sup>

FOP's Exceptions assert that Mr. Rosenstein erred by considering MPD's December 7, 2006 letter to Delroy Burton to be a "response" to the information request because "(1) it didn't provide any substantive information and (2) it was a letter that was only created to frustrate the Union's purpose and to improperly deflect the MPD's responsibility."<sup>105</sup> FOP further argues that the information sought was relevant and necessary, that the request itself was narrowly tailored and not a "fishing expedition," and that the information sought is still needed.<sup>106</sup> Additionally, FOP contends that MPD's instruction to resubmit the request to the Labor and Employee Relations Unit "contravened the past practice of the parties [to request information] from 'the lowest level possible,'" and that Mr. Rosenstein's finding that FOP did not re-submit its request to the Labor and Employee Relations Unit is therefore "irrelevant."<sup>107</sup> Further, FOP asserts that even if the Labor and Employee Relations Unit was the only unit that could respond to the request (which FOP disputes), it was still MPD's responsibility to forward the request to that office, not FOP's. Accordingly, FOP argues that MPD's conduct violated *Earthgrains* and PERB case law,<sup>108</sup> and therefore urges the Board to reject Mr. Rosenstein's finding that MPD's response to its information request was "appropriate."<sup>109</sup>

---

<sup>101</sup> (Supp. R&R at 7).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> (Exceptions to Supp. R&R at 14).

<sup>106</sup> *Id.* at 14-15.

<sup>107</sup> *Id.* at 15.

<sup>108</sup> FOP cites to *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 3386, Slip Op. No. 835 at p. 9, PERB Case No. 06-U-10 (2006), which held it is an unfair labor practice for an agency to, without a viable defense, withhold from the exclusive representative information that is relevant and necessary to the representative's handling of a grievance.

<sup>109</sup> (Exceptions to Supp. R&R at 15-16).

The Board rejects FOP's exceptions. Again, PERB is not bound by the NLRB's decision in *Earthgrains*. Additionally, the Board notes that FOP's primary allegation in its complaint in PERB Case No. 07-U-30 is that MPD "refus[ed]" to provide the requested information.<sup>110</sup> The record does not show, however, that MPD's response constituted such a refusal. Indeed, unlike in PERB Case Nos. 06-U-23 and 07-U-11 above, where MPD never even acknowledged or responded to FOP's requests, in this case MPD "promptly" replied to the request after just two days and advised FOP that the Labor and Employee Relations Unit was the more "appropriate body to address [the] request."<sup>111</sup> MPD never stated in its response that it would not provide the information, that the information was unavailable, that the information was privileged or confidential, or that FOP was otherwise not entitled to the information. It merely stated that another unit needed to handle the request.<sup>112</sup> Thus, since MPD never stated it would not give FOP the information, but rather stated how FOP could obtain the information, the Board finds that Mr. Rosenstein did not err in labeling MPD's December 7, 2006 letter to FOP as a "response" to FOP's information request. Further, the Board finds that FOP has not proven, by a preponderance of the evidence, that MPD "refused" to provide the information in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5). Accordingly, the Board affirms Mr. Rosenstein's findings that MPD "promptly" responded to FOP's request, and that its response did not constitute an unfair labor practice.

Additionally, the Board disagrees with FOP's assertion that Mr. Rosenstein's finding that FOP never sent a second request was "irrelevant." At the hearing, FOP's witness, Delroy Burton, testified that he never forwarded the request to the Labor and Employee Relations Unit as instructed because "that had not been the pattern and practice of the Agency in providing [FOP] with information," and because MPD had not previously bargained with FOP in order to change that practice.<sup>113</sup> Even if Mr. Burton's assertions are true, there is absolutely no evidence in the record that FOP ever expressed that objection to MPD, or that FOP ever requested bargaining over MPD's alleged attempt to change the parties' pattern and practices. Instead, FOP remained silent for nearly four months and then filed the instant unfair labor practice complaint alleging that MPD had refused to comply with the request. While such was certainly within FOP's rights, if FOP had simply sent a reply back to MPD explaining its position, it is possible that this issue might have been resolved and the information provided years ago. At the very least, FOP would have been able to better ascertain whether MPD was truly refusing to produce the information, or whether it was simply waiting for FOP to resubmit the request to the Labor and Employee Relations Unit, as it had stated.<sup>114</sup> As the record currently sits, however, there is simply not enough evidence to conclude, by a preponderance of the evidence, that MPD's purpose was to frustrate FOP, or to improperly deflect the MPD's responsibilities under the parties' collective bargaining agreement, as FOP asserts. Furthermore, since determinations concerning the admissibility, relevance, weight, and probative value of evidence are reserved to the Hearing Examiner, the Board finds that Mr. Rosenstein did not err when he considered the

---

<sup>110</sup> (Complaint in PERB Case No. 07-U-30 at 3-4).

<sup>111</sup> *Id.*, Attachment 3.

<sup>112</sup> *Id.*

<sup>113</sup> Transcript at 64.

<sup>114</sup> *See* footnote 60 herein.

fact that FOP never resubmitted its request to be a relevant factor in his analysis and conclusions.<sup>115</sup>

Finally, even though the Board agrees with FOP that MPD's Assistant Chief should have simply forwarded FOP's request to the Labor and Employee Relations Unit himself rather than sending it back to FOP, the Board still cannot find, by a preponderance of all the evidence, that MPD's response constituted a flat-out refusal to produce the information at all.

Therefore, based on the foregoing, the Board holds that Mr. Rosenstein's conclusion that MPD's response in PERB Case No. 07-U-30 did not violate D.C. Official Code §§ 1-617.04(a)(1) and (5)<sup>116</sup> is reasonable, supported by the record, and consistent with PERB precedent.<sup>117</sup> Further, the Board finds that FOP's exceptions in PERB Case No. 07-U-16 constitute nothing more than mere disagreements with Mr. Rosenstein's findings, and/or are simply based on competing evidence, and are therefore invalid.<sup>118</sup> Accordingly, the Board affirms Mr. Rosenstein's findings, and dismisses the complaint in PERB Case No. 07-U-30 in accordance with Mr. Rosenstein's recommendation.<sup>119</sup>

---

<sup>115</sup> See *Hoggard v. DCPS*, *supra*, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20; and *AFGE, Local 2725 v. DCHA*, *supra*, Slip Op. No. 544 at p. 3, PERB Case No. 97-U-07.

<sup>116</sup> Notwithstanding the Board's finding that MPD's particular response to FOP's December 5, 2006 information request did not constitute an unfair labor practice, the Board notes that since FOP's request was not attached to or dependent upon any particular employee's grievance, and since FOP asserts that the information is still needed, there is really nothing that prevents FOP from resubmitting its request to either MPD's Office of Professional Responsibility or to the Labor and Employee Relations Unit, and then working with MPD to sort out any issues or objections that may arise.

<sup>117</sup> *AFGE, Local 872 v. WASA*, *supra*, Slip Op. No. 702, PERB Case No. 00-U-12. The Board notes that even if it is conceded that FOP's request was "relevant and necessary," such would still not likely change Mr. Rosenstein's or the Board's conclusions that the evidence does not support FOP's allegation that MPD refused to provide the information.

<sup>118</sup> See *Hoggard v. DCPS*, *supra*, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20.

<sup>119</sup> (Supp. R&R at 7).

## **ORDER**

### **IT IS HEREBY ORDERED THAT:**

1. In PERB Case Nos. 06-U-23 and 07-U-11, MPD must:
  - a. Cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) by refusing and failing, without a viable defense, to provide relevant and necessary information that is requested by the exclusive representative;
  - b. Provide FOP with the information requested in PERB Case Nos. 06-U-23 and 07-U-11 within fourteen calendar (14) days of the service of this Decision and Order;
  - c. Conspicuously post, within fourteen (14) calendar days of the service of this Decision and Order, the attached Notices in PERB Case Nos. 06-U-23 and 07-U-11 where notices to bargaining-unit employees are customarily posted. Said Notices shall remain posted for thirty (30) consecutive days; and
  - d. Pay FOP's reasonable costs in PERB Case Nos. 06-U-23 and 07-U-11 within forty-five (45) calendar days of the service of this Decision and Order, provided that FOP provides to MPD statements of said costs within fourteen (14) calendar days of the service of this Decision and Order. If FOP fails to submit said statements to MPD by that deadline, it will forfeit its right to the costs unless FOP files a motion with PERB showing good cause why it missed the deadline.
2. FOP's respective complaints in PERB Case Nos. 07-U-12, 07-U-16, and 07-U-30 are each dismissed with prejudice.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

### **BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By unanimous vote of Board Chairperson Charles Murphy, and Members Keith Washington, Yvonne Dixon, and Ann Hoffman.

June 25, 2015

Washington, D.C.

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case Nos. 06-U-23, 07-U-11, 07-U-12, 07-U-16, and 07-U-30, Op. No. 1526 was transmitted by File & ServeXpress to the following parties on this the 26<sup>th</sup> day of June, 2015.

Marc L. Wilhite, Esq.  
Pressler & Senftle, P.C.  
1432 K Street, N.W.  
Twelfth Floor  
Washington, D.C. 20005  
MWilhite@presslerpc.com

Mark Viehmeyer, Esq.  
Metropolitan Police Department  
300 Indiana Avenue, N.W.  
Room 4126  
Washington, D.C. 20001  
Mark.Viehmeyer@dc.gov

/s/ Felice Robinson  
PERB



Public  
Employee  
Relations  
Board

GOVERNMENT OF  
THE DISTRICT OF COLUMBIA



1100 4<sup>th</sup> Street S.W.  
Suite E630  
Washington, D.C. 20024  
Business: (202) 727-1822  
Fax: (202) 727-9116  
Email: [perb@dc.gov](mailto:perb@dc.gov)

# NOTICE

**TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT, THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1526, PERB CASE NO. 06-U-23, ET AL., (JUNE 26, 2015).**

**WE HEREBY NOTIFY** our employees that the District of Columbia Public Employee Relations Board has found that we violated the law in the manners alleged in PERB Case No. 06-U-23, and has ordered MPD to post this Notice.

**WE WILL** cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) in the manners stated in Slip Opinion No. 1526.

**WE WILL** cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) by refusing or failing, without a viable defense, to provide relevant and necessary information that is requested by the exclusive representative, the Fraternal Order of Police/Metropolitan Police Department Labor Committee.

Metropolitan Police Department

Date: \_\_\_\_\_ By: \_\_\_\_\_

**This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.**

If employees have any questions concerning this Notice or MPD’s compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board by U.S. Mail at 1100 4<sup>th</sup> Street, SW, Suite E630; Washington, D.C. 20024, or by phone at (202) 727-1822.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

June 26, 2015

Washington, D.C.



Public  
Employee  
Relations  
Board

GOVERNMENT OF  
THE DISTRICT OF COLUMBIA



1100 4<sup>th</sup> Street S.W.  
Suite E630  
Washington, D.C. 20024  
Business: (202) 727-1822  
Fax: (202) 727-9116  
Email: [perb@dc.gov](mailto:perb@dc.gov)

# NOTICE

**TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT, THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1526, PERB CASE NO. 06-U-23, ET AL., (JUNE 26, 2015).**

**WE HEREBY NOTIFY** our employees that the District of Columbia Public Employee Relations Board has found that we violated the law in the manners alleged in PERB Case No. 07-U-11, and has ordered MPD to post this Notice.

**WE WILL** cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) in the manners stated in Slip Opinion No. 1526.

**WE WILL** cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) by refusing or failing, without a viable defense, to provide relevant and necessary information that is requested by the exclusive representative, the Fraternal Order of Police/Metropolitan Police Department Labor Committee.

Metropolitan Police Department

Date: \_\_\_\_\_ By: \_\_\_\_\_

**This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.**

If employees have any questions concerning this Notice or MPD’s compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board by U.S. Mail at 1100 4<sup>th</sup> Street, SW, Suite E630; Washington, D.C. 20024, or by phone at (202) 727-1822.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

June 26, 2015

Washington, D.C.