Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Fraternal Order of Police /Metropolitan Police Department Labor Committee,	
Complainant,	
v.	PERB Case No. 07-U-15
District of Columbia Metropolitan Police Department,	Opinion No. 867
and	**Motion for Preliminary Relief**
Chief Charles Ramsey,	
and	
Assistant Chief Peter J. Newsham,	
and	
Commander Hilton Burton,	
Respondents.	

DECISION AND ORDER CONCERNING MOTION FOR PRELIMINARY RELIEF

I. Statement of the Case:

On December 18, 2006, the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Complainant" or "FOP"), filed an unfair labor practice complaint and a Motion for Preliminary Relief (Motion) against the Metropolitan Police Department ("Respondents" or "MPD"). FOP alleges that MPD has violated D.C. Code § 1-617.04 (a) (1) and (4) (2001 ed.) by "interfering with Officer Anderson's rights and by taking reprisals against him." (Complaint at p. 6)

The Respondents filed an Opposition to the Motion for Preliminary Relief ("Opposition") and an answer to the "Unfair Labor Practice Complaint" denying that they have violated the Comprehensive Merit Personnel Act ("CMPA"). As a result, the Respondents have requested that the Motion be denied. The Complainant's Motion and the Respondents' Opposition are before the Board for disposition.

II. Discussion

On or about March 18, 2006, Officer Anderson was involved in a discussion with Sergeant Serena Muse after roll call. Sgt. Muse alleged insubordination by Officer Anderson. She held a Resolution Conference with Officer Anderson on July 12, 2006 and offered Anderson a reduced penalty which he refused. The reduced penalty included that Officer Anderson would be removed from the "vehicle take home program." On July 24, 2006, Officer Anderson received notice of a proposed ten-day suspension. He appealed the proposed discipline on August 14, 2006. (See Complaint at p. 4).

On August 20, 2006, Officer Anderson received notice that he was being removed from the motor vehicle take home program. The notice was prepared on August 9. It states that the Vehicle Take Home Board reviewed Officer Anderson's conduct and made the recommendation for his removal from the vehicle take home program. (See Complaint at p. 5) The Union alleges that "the Vehicle Take Home Board did not meet and the Respondents summarily removed Officer Anderson from the . . . program without obtaining the Take Home Board's approval because he asserted his union rights and denied . . . [an] offer of [reduced] discipline and demanded an appeal to the Department's proposed adverse action." (Complaint at p. 5).

The Union asserts that the Respondents "engaged in unfair labor practices by disciplining Officer Anderson by removing him from the Motor Vehicle Take Home Program in retaliation of his engaging in union activities and asserting his union rights under the collective bargaining agreement." (Motion at para. 1). As a result, the Union seeks that the Board order the Respondents to cease and desist from disciplining Officer Anderson and reinstate him to the Motor Vehicle Take Home Program. (See Motion at ¶ 2).

FOP claims that MPD's violation of the CMPA is clear-cut, flagrant and seriously affect the public interest. (See Motion at ¶ 5) Also, FOP asserts that the Board's ultimate remedy will be inadequate. Therefore, FOP asserts that preliminary relief is appropriate in this case.

The criteria the Board employs for granting preliminary relief in unfair labor practice cases are prescribed under Board Rule 520.15.

Board Rule 520.15 provides in pertinent part as follows:

> The Board may order preliminary relief ... where the Board finds that the conduct is clear-cut and flagrant; or the effect of the alleged unfair labor practice is widespread; or the public interest is seriously affected; or the Board's processes are being interfered with, and the Board's ultimate remedy will be clearly inadequate.

The Board has held that its authority to grant preliminary relief is discretionary. See, *AFSCME, D.C. Council 20, et al. v. D.C. Government, et al.*, 42 DCR 3430, Slip Op. No. 330, PERB Case No. 92-U-24 (1992). In determining whether or not to exercise its discretion under Board Rule 520.15, this Board has adopted the standard stated in *Automobile Workers v. NLRB*, 449 F.2d 1046 (CA DC 1971). There, the Court of Appeals - addressing the standard for granting relief before judgement under Section 10(j) of the National Labor Relations Act - held that irreparable harm need not be shown. However, the supporting evidence must "establish that there is reasonable cause to believe that the [NLRA] has been violated, and that remedial purposes of the law will be served by *pendente lite* relief." *Id.* at 1051. "In those instances where [this Board] has determined that the standard for exercising its discretion has been met, the basis for such relief [has been restricted to the existence of the prescribed circumstances in the provisions of Board Rule [520.15] set forth above." *Clarence Mack, et al. v. FOP/DOC Labor Committee, et al.*, 45 DCR 4762, Slip Op. No. 516 at p. 3, PERB Case Nos. 97-S-01, 97-S-02 and 95-S-03 (1997).

In its response to the Motion, the Respondents deny the material elements of the allegations asserted in the Motion. They assert that the Vehicle Take Home Board voted concerning Officer Anderson and that there is no evidence of retaliation against Officer Anderson for union activities or asserting his union rights. Therefore, the Respondents conclude that there is no unfair labor practice and preliminary relief should not be awarded. Furthermore, the Respondents assert that even if the removal of Officer Anderson from the Vehicle Take Home Program were based on his misconduct, the collective bargaining agreement between the parties contains provisions for the resolution of disciplinary matters. Therefore, the Respondents conclude that the alleged violation is contractual in nature and the Board lacks jurisdiction. (Opposition at p. 2) Also, MPD asserts that if the Board determines that it has jurisdiction over this matter FOP has failed to satisfy the statutory requirements for preliminary relief. (Opposition at p.5)

It is clear that the parties disagree on the facts in this case. In cases such as this, the Board has found that preliminary relief is not appropriate where material facts are in dispute. See, *DCNA v. D.C. Health and Hospitals Public Benefit Corporations*, 45 DCR 6067, Slip Op. No. 559, PERB Case Nos. 98-U-06 and 98-U-11 (1998).

In the present case, FOP's claim that the Respondents' actions meet the criteria of Board Rule 520.15, is a repetition of the allegations contained in the Complaint. Even if the allegations are ultimately found to be valid, it does not appear that any of the Respondents' actions constitute clear-cut or flagrant violations, or have any of the deleterious effects the power of preliminary relief is intended to counterbalance. The Respondents' actions presumably affect FOP and its members. However, the Respondents' actions stem from a single action (or at least a single series of related actions), and do not appear to be part of a pattern of repeated and potentially illegal acts.

While the CMPA states that the District is prohibited from engaging in unfair labor practices, the alleged violations, even if determined to be valid do not rise to the level of seriousness that would undermine public confidence in the Board's ability to enforce compliance with the CMPA. Finally, while some delay inevitably attends the carrying out of the Board's dispute resolution process, FOP has failed to present evidence which establishes that these processes would be compromised, or that eventual remedies would be inadequate if preliminary relief is not granted.

In view of the above, we believe that the Respondents' actions do not appear to be clear-cut and flagrant as required by Board Rule 520.15. The questions of whether the Respondents' actions occurred as FOP claims or whether such actions constitute violations of the CMPA are matters best determined after the establishment of a factual record through an unfair labor practice hearing.

Under the facts of this case, the alleged violations and their impact do not satisfy the criteria prescribed by Board Rule 520. 15. Specifically, we conclude that FOP has failed to provide evidence which demonstrates that the allegations, even if true, are such that remedial purposes of the law would be served by *pendente lite* relief. Moreover, should violations be found in the present case, the relief requested can be accorded with no real prejudice to FOP following a full hearing. Therefore, we find that the facts presented do not appear appropriate for the granting of preliminary relief. In view of the above, we deny FOP's Motion for Preliminary Relief.

For the reasons discussed above, the Board: (1) denies FOP's request for preliminary relief; and (2) directs the development of a factual record through an unfair labor practice hearing.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Fraternal Order of Police/Metropolitan Police Labor Committee's (FOP) Motion for Preliminary Relief is denied.

2. The Board's Executive Director shall: (a) schedule a hearing. and (b) refer FOP's unfair labor practice complaint to a Hearing Examiner for disposition.

3. The Notice of Hearing shall be issued seven (7) days prior to the date of the hearing.

4. 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.

February 9, 2007

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 07-U-15 was transmitted via Fax and U.S. Mail to the following parties on this the 9th day of February 2007.

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