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**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. 07-U-40, 08-U-28, 08-U-34, 08-U-37, 08-U-39, 08-U- 50, 09-U-11 and 09-U-40
v.)	
)	Opinion No. 1521
District of Columbia Metropolitan Police Department)	
Respondent)	

DECISION AND ORDER

I. Statement of the Case

Before the Board are nine Unfair Labor Practice Complaints (“Complaints”) that were filed by the Fraternal Order of Police/Metropolitan Police Department (“FOP”) against Metropolitan Police Department (“MPD”). FOP alleges that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) of the Comprehensive Merit Personnel Act (“CMPA”) by failing to comply or fully comply with the Union’s information requests that were relevant and necessary to its duties as exclusive representative for collective bargaining. MPD denied the allegations and filed a motion to dismiss, arguing that the Board did not have jurisdiction over the cases.

The nine cases were consolidated and referred to a Hearing Examiner to conduct an unfair labor practice hearing to develop the factual record.¹

II. Discussion

A. Hearing Examiner's Application of Relevant Law

An agency has an obligation to furnish information that a union requests, which is both relevant and necessary to the union's role in processing a grievance, an arbitration proceeding, or collective bargaining. Failure to do so is an unfair labor practice.² The Hearing Examiner found that MPD committed unfair labor practices in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5) "by interfering with and restraining employee rights, refusing to bargain in good faith with the Union, and failing to comply with the Union's information requests in PERB Case Nos. 07-U-40, 07-U-44, 08-U-28, 08-U-34, 07-U-50 and 09-U-11...."³ In addition, the Hearing Examiner found that "Complainant did not meet its burden of proof in PERB Case Nos. 08-U-37, 08-U-39, and 09-U-40."⁴

In reaching her determinations, the Hearing Examiner considered PERB's case law and persuasive National Labor Relations Board ("NLRB") case law. The Hearing Examiner observed that management has a duty to supply information that is relevant and necessary to a union's statutory role under the CMPA as the employees' exclusive representative.⁵ As MPD raised the affirmative defense that some of the requested information was confidential and not subject to disclosure, the Hearing Examiner considered the issue of confidentiality in regards to the information requests. The Hearing Examiner stated:

In certain circumstances, an employer may not have to provide information that it has a legitimate interest in protecting. Using the defense of confidentiality or privacy, an employer may, therefore, limit information that a union would otherwise find useful or helpful.⁶

The Hearing Examiner observed that PERB's test for determining whether a defense of confidentiality or privacy for withholding requested information is "whether the information sought is relevant and necessary to the union's legitimate collective bargaining functions and whether this need is outweighed by privacy concerns."⁷ Further, the Hearing Examiner stated that "PERB has found an agency must articulate or document a position 'which justifies a policy

¹ The hearing examiner who presided over the hearing was unable to write the Report and Recommendation for the Board. Hearing Examiner Carole Wilson reviewed the record of the proceedings and submitted a Report and Recommendation to the Board, which is under consideration by the Board.

² *D.C. Nurses Ass'n v. D.C. Dep't of Mental Health*, 59 D.C. Reg. 15187, Slip Op. No. 1336 at p. 3, PERB Case No. 09-U-07 (2012).

³ HERR at 50.

⁴ *Id.*

⁵ *Id.* at 31-32.

⁶ *Id.* at 32.

⁷ *Id.* at 32 (quoting *FOP/MPD Labor Committee v. MPD*, PERB Case Nos. 07-U-49, 08-U-13 and 08-U-16 (2012) Slip Op. at 14.

of confidentiality as to records of this type...⁸ In addition, the Hearing Examiner applied *Detroit Edison*⁹ finding that:

The key to properly restricting the disclosure of information, therefore, is the willingness of an agency to present alternatives to the initial demands made by the union. The alternatives put forward must reflect the appropriate balance between a union's valid need for necessary and relevant information to perform its obligations as the exclusive representative of an agency's employees and an agency's appropriate concerns about confidentiality and privacy.¹⁰

The Hearing Examiner noted that the application of the above standards under PERB case law is to be made on a case-by-case basis.¹¹ The Hearing Examiner in making her conclusions for each of the cases addressed:

(1) whether the FOP has satisfied its burden of proof to show by a preponderance of the evidence that the requested information was relevant and necessary to the Union's functions as the exclusive bargaining representative of the MPD's employees; (2) if so, whether the Union's needs are not outweighed, where applicable, by MPD's specific articulated and documented confidentiality or privacy concerns as to records of this type; and (3) if so, did Respondents offer the Union an alternative solution, such as offering the information in redacted form, or under a protective order restricting its dissemination.¹²

The Board has well established precedent regarding an employer's obligation to provide information to the exclusive representative under the CMPA.¹³ In addition, the Board has followed the United States Supreme Court precedent holding that the duty to bargain collectively includes a duty to provide relevant information needed by a labor union for the proper performance of its duties as the employees' bargaining representative.¹⁴ The Board has held that the test concerning information that may be confidential is whether the information sought is relevant and necessary to the union's legitimate collective bargaining functions and whether this need is outweighed by confidentiality concerns.¹⁵ Therefore, the Board finds that the Hearing

⁸ HERR at 33(quoting *International Brotherhood of Teamsters, Locals 639 and 730 v. D.C. Public Schools*, PERB Case No. 88-U-10 (1989), Slip Op No. at fn. 5.

⁹ *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979).

¹⁰ *Id.*

¹¹ HERR at 33.

¹² *Id.*

¹³ *University of the District of Columbia v. University of the District of Columbia Faculty Association*, Slip Op. No. 272, *supra*.

¹⁴ See *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 76 S. Ct. 753, 100 L.Ed. 1027; *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 87 S.Ct. 565, 17 L.Ed.2d 495.

¹⁵ 2012 WL 3901586. See *University of the District of Columbia Faculty Association v. University of the District of Columbia*, 36 DCR 2469, Slip Op. No. 215 at p.3, PERB Case No. 86-U16 (1989)(citing *N.L.R.B. v. Acme Industries Co.*, 385 U.S. 432 (1967)). See also *District of Columbia Nurses Association v. The Mayor of the District*

Examiner's analysis of PERB case law is reasonable and consistent with Board precedent. The Board now reviews the Hearing Examiner's findings and conclusions and the parties' exceptions in accordance with the Board's relevant case law discussed above.

B. The Board's Jurisdiction

MPD raised the affirmative defense that the Board lacked jurisdiction over the Unfair Labor Practice Complaints and moved to dismiss the Complaints, arguing that the subject was dealt with by the parties' collective bargaining agreement. Based on the pleadings, the record presented to the Hearing Examiner, and her consideration of the parties' post-hearing briefs, the Hearing Examiner concluded that the Board has jurisdiction over the Complaints, and denied MPD's motion to dismiss.¹⁶ In reaching her determination, the Hearing Examiner applied the Board's precedent that "[w]hile PERB case law holds that the PERB lacks jurisdiction over violations that are 'strictly contractual' in nature, it is well-settled that PERB precedent does not prohibit PERB from exercising its jurisdiction over complaints merely because the alleged statutory violation could also be resolved by an application of the parties' Agreement and a grievance/arbitration procedure."¹⁷

The Board finds that the Hearing Examiner's findings and conclusions with respect to the Board's jurisdiction are reasonable, supported by the record, and consistent with Board precedent. Therefore, the Board adopts the Hearing Examiner's determination that the Board has jurisdiction over the parties' dispute.

C. Timeliness of MPD's Request for an Enlargement of Time to File an Answer

The Hearing Examiner recommended that the Board grant MPD's request for an enlargement of time to file its Answer in Case No. 08-U-28.¹⁸ The Hearing Examiner relied upon Board Rule 501.1, and found that the Executive Director exercised the discretion afforded to him under Board Rule 501.1 to grant MPD a one-day extension to file its Answer.¹⁹ Further, the Hearing Examiner found that FOP was not prejudiced by the one-day extension, and that FOP was afforded a full opportunity to present its facts and arguments at the hearing on the Complaint.

The Board has reviewed the Hearing Examiner's findings and conclusions on timeliness, and determined that they are reasonable, based on the record, and consistent with Board

of Columbia, and District of Columbia Health and Hospitals Public Benefit Corporation, District of Columbia General Hospital, 45 D.C. Reg. 6736, Slip Op. No. 558 at pgs. 4-5, PERB Case Nos. 95-U-03, 97-U-16 and 97-U-28 (1998).

¹⁶ HERR at 30.

¹⁷ *Id.* (citing *American Federation of Government Employees, Local Union No. 3721 v. District of Columbia Fire Department*, PERB Case No. 90-U-11 (1991), Slip Op. at fn. 5.)

¹⁸ *Id.*

¹⁹ *Id.*

precedent.²⁰ Therefore, the Board adopts the Hearing Examiner's recommendation, and does not disturb the Executive Director's decision to provide MPD with a one-day extension of time to file its Answer in Case No. 08-U-28.

III. Analysis of Cases Involving Information Requested to Assist Particular Members

A. Case No. 07-U-40

The Hearing Examiner found, "On January 30, 2007, Sergeant Delroy A. Burton, a FOP Union Representative, sent a request for information to MPD Assistant Chief of Police ("Assistant Chief") William Ponton, who was in charge of the MPD Office of Professional Responsibility."²¹ Burton requested the information for a grievance he was preparing on behalf of a union member and to determine if the member was being treated negatively when checking in at the D.C. Superior Court.²² On February 14, 2007, Burton was directed by Ponton to submit a request for information to MPD's Office of General Counsel, Labor and Employee Relations Unit ("LERU").²³ Burton testified that he did not request the information from the LERU, and that he did not have time to request and receive information from the LERU before filing the grievance.²⁴ Burton filed the grievance, which was denied, and the requested information was never provided.

The Hearing Examiner recommended that PERB find that:

- (1) the FOP has satisfied its burden of proof to show by a preponderance of the evidence that the requested information was relevant and necessary to the Union's functions as the exclusive bargaining representative of the MPD's employees as the information was needed to represent Sergeant Young in finding out why he allegedly continues to receive detrimental treatment in checking into the Superior Court of the District of Columbia and to file a grievance on his behalf;
- (2) the MPD failed to articulate a position to support a policy of confidentiality or privacy as to the specific requested records that would outweigh its statutory duty to disclose the requested information; and
- (3) Respondents failed to offer any alternative solutions to the Union as to how the information could be provided to the Union, such as either in redacted form or under a protective order.²⁵

²⁰ The Board notes that Board Rule 501.2 provides the Executive Director the discretion to grant a motion for an extension for good cause. MPD requested a one-day extension, because of a calendaring error.

²¹ HERR at 10.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 11.

²⁵ *Id.* at 34.

The Hearing Examiner recommended that the Board find that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) “by interfering with and restraining employee rights and refusing to bargain in good faith with the Union by failing to comply with the FOP’s request for information and also in its unreasonable delay in responding to the Union’s request.”²⁶

In reaching her conclusions, the Hearing Examiner found that the MPD Office of Professional Responsibility was the repository for the requested information, and that there was no established practice requiring FOP to go to LERU for information.²⁷ In addition, the Hearing Examiner rejected MPD’s argument that MPD required specific authorization from the union member before releasing the information to the Union, and if MPD had an objection to FOP’s authorization to receive the requested information, it did not raise it nor require FOP to receive authorization from the union member. The Hearing Examiner found that “MPD failed to introduce evidence to support a policy of confidentiality or privacy as to the specific requested records,” and at the hearing, Assistant Chief Groomes, representative of MPD, “acknowledged that information considered to be confidential ‘could’ be provided if it is properly redacted.”²⁸ The Hearing Examiner found that there was “no evidence that the MPD offered the Union any alternative solutions to the Union’s need for the information, such as offering the information in redacted form, or under a protective order restricting its dissemination” and that “nothing in the DPM precludes redacting and providing the requested information, or providing it under a restrictive order.”²⁹ The Hearing Examiner found that “MPD could not claim reports of investigation are private as it ‘routinely’ leaves them unsecured at FOP members’ homes, accessible to the public.”³⁰ The Hearing Examiner accepted the Union’s testimony that MPD has in the past sent the Union to various locations to track down requested information as a delay tactic.³¹

No Exceptions were filed to the Hearing Examiner’s findings and conclusions for Case No. 07-U-40. The Board finds that the Hearing Examiner’s findings and conclusions are reasonable, based on the record, and consistent with the Board’s precedent. Therefore, the Board adopts the Hearing Examiner’s Report and Recommendation for Case No. 07-U-40.

B. Case No. 07-U-44

1. Hearing Examiner’s findings and conclusions

The Hearing Examiner found that on March 19, 2007, Officer Wendell Cunningham, the Vice Chairman of the FOP, sent an information request to Michael Anzallo, the MPD Commander of the Office of the Superintendent of Detectives, for information on behalf of a union member, who had received a “below average” performance rating.³² The Hearing

²⁶ HERR at 34.

²⁷ *Id.* at 35.

²⁸ *Id.*

²⁹ *Id.* at 35.

³⁰ HERR at 36.

³¹ *Id.*

³² *Id.* at 12.

Examiner observed, "Specifically, Officer Cunningham requested, among other things, the arrest statistics that correspond to each individual in the Environmental Crimes Unit (ECU) for the past three years, and the performance ratings for all other investigators in the ECU ... from October 2004 to September 30, 2006."³³ In response to the information request, Anzallo provided some of the requested information to FOP, but did not provide the information requested for the arrest records and the performance ratings for the other ECU investigators and did not provide a substantive explanation as to why the information was not being provided.

The Hearing Examiner recommended that PERB find that "FOP has satisfied its burden of proof to show by a preponderance of the evidence that the requested information was relevant and necessary to the Union's functions as the exclusive bargaining representative of the MPD's employees," that "Respondents failed to articulate or document a position to support a policy of confidentiality or privacy as to the specific requested records that would outweigh its statutory duty to disclose the requested information," and that "Respondents failed to offer any alternative solutions to the Union as to how the necessary and relevant information could be provided to the Union, such as either in redacted form or under a protective order."³⁴

The Hearing Examiner recommended that the Board find that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) "by interfering with and restraining employee rights and refusing to bargain in good faith with the Union by failing to comply with the FOP's request for information and in its unreasonable delay in responding to the Union's requests."³⁵

In reaching her conclusion, the Hearing Examiner relied upon similar findings and conclusions as Case No. 07-U-40. In addition, the Hearing Examiner found that "as to good faith, if the Respondents had any doubt that the Union was representing the other employees in the ECU, which they asserted only at the hearing, they could have asked the Union or required the Union to seek authorization from them, which they did not" and "the facts show" that the Union represented the member in his appeal.

2. MPD's Exceptions

In its Exceptions, MPD argues that the Hearing Examiner erred when she found that MPD had a duty to provide information. MPD contends that the Union representative did not make a proper request for arrest information and performance ratings, because the Union representative did not give notice to MPD that he was authorized to represent any of the individuals whose performance information he was requesting.³⁶ MPD relies upon the District Personnel Manual ("DPM") § 3115.3(c). Further, MPD asks the Board to construe the DPM with the D.C. Freedom of Information Act to find that it would be impermissible for MPD to have provided the requested performance evaluation information to FOP.³⁷ MPD argues that had FOP sought statistical information in a manner not directly linked to individuals, or requested

³³ *Id.*

³⁴ HERR at 37.

³⁵ HERR at 37.

³⁶ MPD's Exceptions at 3.

³⁷ MPD's Exceptions at 4-5.

performance evaluation statistics without the identity of an individual, "the request would not have intruded into the area of protected personnel information, the disclosure of which would constitute a violation of personal privacy."³⁸

The Board finds MPD's exceptions to be a repetition of the arguments made before, and rejected by, the Hearing Examiner. The Board finds that the Hearing Examiner's findings and conclusions are reasonable, supported by the record and consistent with Board precedent. The Board adopts the Hearing Examiner's findings and conclusions.

As a result, the Board adopts the Hearing Examiner's recommendation and denies MPD's Exceptions.

C. Case No. 09-U-11

1. Information concerning Crime Scene Search Officer (CSSO) selection process and duty status

Union representative Hiram Rosario sent MPD Assistant Chief Winston Robinson an information request, seeking "all documents and records used in the selection process for the position of CSSO [Crime Scene Search Officer], specifically for Vacancy Announcement MPD #08-01."³⁹

The Hearing Examiner recommended that PERB find that:

(1) the FOP has satisfied its burden of proof to show by a preponderance of the evidence that the requested information was relevant and necessary to the Union's functions as the exclusive bargaining representative of the MPD's employees to represent its members in response to their complaints that certain people had been selected for the CSSO job who were not qualified due to their duty status;

(2) Respondents failed to articulate or document a position to support a policy of confidentiality or privacy as to the specific requested records that would outweigh their statutory duty to disclose the requested information; and

(3) Respondents failed to offer any alternative solutions to the Union as to how the necessary and relevant information could be provided to the Union, such as in redacted form or under a protective order.⁴⁰

The Hearing Examiner recommended that the Board find that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) "by interfering with and restraining employee rights and refusing

³⁸ MPD's Exceptions at 6.

³⁹ HERR at 13.

⁴⁰ *Id.* at 39.

to bargain in good faith with the Union by failing to comply with the FOP's request for information and in its unreasonable delay in responding to the Union's request."⁴¹

In making her recommendation, the Hearing Examiner noted that the MPD relied upon similar arguments as in the case discussed above, and relied upon the same findings and conclusions.⁴² In addition, the Hearing Examiner found that "[u]ncontradicted testimony demonstrated that MPD Chief of Police Cathy L. Lanier had disclosed the duty status of a detective on a radio news program, and had also stated, just two weeks before the hearing in these cases, in a training session, that 'if any of her officials had ever put in writing that duty status was a protected issue, that she wanted to see it...'"⁴³ the Hearing Examiner also observed that "undisputed testimony showed that, when MPD has officers who are involved in a shooting, the MPD 'routinely' announced their duty status to the media."

MPD repeats its arguments in Case No. 07-U-44, arguing that there was no authorization to MPD by the individuals to release the information to FOP.⁴⁴ MPD's arguments were raised before the Hearing Examiner. The Hearing Examiner rejected MPD's arguments based on the Hearing Examiner's factual findings and conclusions. The Board finds that the Hearing Examiner's findings and conclusions reasonable, supported by the record, and consistent with the Board's precedent. Therefore, the Board rejects MPD's Exceptions, and adopts the Hearing Examiner's recommendations.

2. Information Regarding In-Service Training of Officials

In addition to the information requested above, Rosario sent an information request to Commander Anzallo, seeking all documents related to in-service training of Third District officials.⁴⁵ "Commander Anzallo denied the request based on his understanding that the letter was a request for 'personnel records.'"⁴⁶

The Hearing Examiner recommended that the Board find that:

- (1) FOP has satisfied its burden of proof to show by a preponderance of the evidence that the requested information was relevant and necessary to the Union's functions as the exclusive bargaining representative of the MPD's employees to assist with pending grievances and to ensure compliance with Article 24 of the contract;
- (2) Respondents failed to articulate or document a position to support a policy of confidentiality or privacy as to the specific requested records that

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 40.

⁴⁴ MPD's Exceptions at 14.

⁴⁵ HERR at 40.

⁴⁶ *Id.*

would outweigh their statutory duty to disclose the requested information;
and

(3) Respondents failed to offer any alternative solutions to the Union as to how the necessary and relevant information could be provided to the Union, such as in redacted form or under a protective order.⁴⁷

The Hearing Examiner recommended that the Board find that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) “by interfering with and restraining employee rights and refusing to bargain in good faith with the Union by failing to comply with the FOP’s request for information and in its unreasonable delay in responding to the Union’s request.”⁴⁸

In making her recommendation, the Hearing Examiner noted that MPD relied upon similar arguments as in the cases discussed above, and relied upon the same findings and conclusions.⁴⁹ In addition, the Hearing Examiner found that “it is undisputed that in-service training information had been provided in the past during at least two public forums, the Committee on the Judiciary and a newspaper article.”⁵⁰

MPD filed Exceptions, arguing that the DPM and the Department’s General Order prohibited disclosure of the information. MPD’s argument is based upon testimony and evidence.⁵¹ The Hearing Examiner considered MPD’s arguments and evidence, and found that there was no basis in law or practice that the requested information was prohibited from being provided to FOP as the exclusive representative. The Board finds that the Hearing Examiner’s findings and conclusions are reasonable, supported by the record, and consistent with Board precedent. The Board adopts the Hearing Examiner’s findings and conclusions.

As a result, the Board adopts the Hearing Examiner’s recommendation and denies MPD’s Exceptions.

IV. Analysis of cases involving information requests to assist in the proper administration of the collective bargaining agreement for comparative discipline purposes

A. Case No. 08-U-28

1. Hearing Examiner’s findings and conclusions

FOP representative Burton sent an information request to MPD Assistant Groomes, seeking a copy of a completed investigative report prepared by the MPD concerning a bargaining unit employee’s allegation of misconduct by a non-union employee. Assistant Chief Groomes denied the request on the grounds that the information was protected under the DPM, relying on

⁴⁷ HERR at 40-41.

⁴⁸ *Id.* at 41.

⁴⁹ HERR at 41.

⁵⁰ *Id.*

⁵¹ MPD’s Exceptions at 15.

DPM § 3112.11 and § 3112.14. The Hearing Examiner found that Groomes provided a statement to FOP: "I can confirm for you that the administrative investigation in the referenced matter has been completed and was closed with a finding of 'unfounded' on October 16th, 2007."⁵²

Burton made a second request to Groomes for a copy of the investigation, asserting that FOP was a "concerned party" under DPM §3113.1, because the victim of the alleged misconduct was a bargaining unit employee. Groomes denied Burton's second request for information, based on DPM § 3112.14.⁵³

The Hearing Examiner recommended that PERB find that:

- (1) the Union has demonstrated by a preponderance of the evidence that the requested information was necessary and relevant to the Union in order for it to properly administer the Agreement for comparative discipline purposes between non-bargaining unit and bargaining unit employees and to ensure that investigations are done and conducted properly for its members;
- (2) the MPD failed to articulate or document a policy of confidentiality or privacy as to the specific requested records; and
- (3) Respondents failed to show that they had offered the Union any alternative solutions as to how the necessary and relevant information could be provided to the Union, such as either in redacted form or under a protective order.⁵⁴

The Hearing Examiner recommended that the Board find that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) "by interfering with and restraining employee rights and refusing to bargain in good faith with the Union by failing to comply with the FOP's request for information."⁵⁵

In making her recommendation, the Hearing Examiner found that MPD "failed to produce evidence to support a policy of confidentiality or privacy as to the specific requested records;" "there is nothing in the DPM that precludes redacting and providing the requested information, and, in fact the DPM discusses redacting only exempt portions;" and "at the hearing Assistant Chief Groomes, Respondents' representative, acknowledged that information considered to be confidential 'could' be provided if it is properly redacted." The Hearing Examiner noted that MPD offered FOP no alternatives to receive the information, that the MPD could not claim reports of investigations are confidential since MPD routinely leaves these documents at officers' front doors that are accessible to the public, MPD never notified FOP that

⁵² HERR at 14.

⁵³ *Id.* at 14-16.

⁵⁴ HERR at 42-43.

⁵⁵ *Id.* at 43.

it required the non-bargaining unit member's specific authorization to release the document to FOP, that the Assistant Chief Groomes could not provide a reason why the information was "not relevant," and FOP was a "concerned party" entitled to personnel information.⁵⁶

2. *MPD's Exceptions*

MPD asserts in its Exceptions that FOP was not a representative of the non-bargaining unit employee, and therefore, was not entitled to the information requested. In addition, MPD asserts that FOP is not a "concerned party" under DPM § 3113.10. Further, MPD argued that the investigative report requested by FOP was not one of the public disclosure exceptions outlined in DPM § 3118.8.⁵⁷

The Board finds MPD's exceptions to be a repetition of the arguments made before, and rejected by, the Hearing Examiner. The Board finds that the Hearing Examiner's findings and conclusions are reasonable, supported by the record and consistent with Board precedent. The Board adopts the Hearing Examiner's findings and conclusions.

As a result, the Board adopts the Hearing Examiner's recommendation and denies MPD's Exceptions.

B. Case No. 08-U-34

1. *Hearing Examiner's findings and conclusions*

FOP Representative Burton requested a copy of the Report and Investigation concerning a non-bargaining unit employee ("Commander"), who was involved in an incident in which it was alleged that the Commander told a bargaining unit employee not to issue traffic tickets to a woman who identified herself as working for the Mayor.⁵⁸ The Hearing Examiner found that Assistant Chief Newsham denied the information request for the similar reasons as asserted by MPD in Case No. 08-U-28.⁵⁹ Burton made a second request to Assistant Chief Newsham for a copy of the investigation, and asserted his legal argument for receiving the final investigative report.⁶⁰ Burton asserted that the information was necessary to ensure that similar processes and similar discipline must be followed and given out for similar acts by both management and non-management employees.⁶¹

The Hearing Examiner recommended that the Board find that:

- (1) the Union has shown by a preponderance of the evidence that the requested information was necessary and relevant to the Union in order for

⁵⁶ *Id.*

⁵⁷ MPD's Exceptions at 7-9.

⁵⁸ HERR at 16-17.

⁵⁹ *Id.* at 17.

⁶⁰ *Id.*

⁶¹ *Id.*

it to properly administer the Agreement to see that non-bargaining unit and bargaining unit employees were being given similar discipline for similar acts and to ensure that investigations are conducted properly for its members;

(2) the MPD failed to articulate or document how its general confidentiality and privacy concerns outweighed its statutory duty to disclose the requested necessary and relevant information; and

(3) Respondents failed to offer any alternative solutions to the Union as to how the necessary and relevant information could be provided, such as providing the information to the Union in redacted form or under a protective order.⁶²

The Hearing Examiner recommended that the Board find that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) by “interfering with and restraining employee rights and refusing to bargain in good faith with the Union by failing to comply with the FOP’s request for information.”⁶³ In making her recommendation, the Hearing Examiner relied upon similar findings and conclusions as set forth in Case No. 08-U-28.⁶⁴

2. MPD’s Exceptions

In its Exceptions, MPD argues that it “incorporates and reiterates all of the same arguments made above in reference to PERB Case No. 08-U-28.”⁶⁵ MPD argues that it provided information to FOP that the investigation of the Commander had ended, and that he was exonerated.⁶⁶ MPD denies that it was required to provide any more information. As stated above, MPD’s arguments are rejected. MPD presented these same arguments to the Hearing Examiner. The Board finds that the Hearing Examiner’s findings and conclusions are reasonable, supported by the record and consistent with Board precedent. The Board adopts the Hearing Examiner’s findings and conclusions.

As a result, the Board adopts the Hearing Examiner’s recommendation and denies MPD’s Exceptions.

C. Case No. 08-U-50

1. Hearing Examiner’s findings and conclusions

FOP Representative Cunningham requested a copy of a misconduct investigation involving a commander from Assistant Chief Newsham. Assistant Chief Newsham denied the

⁶² *Id.* at 44-45.

⁶³ HERR at 45.

⁶⁴ Compare HERR at 43 and 45.

⁶⁵ MPD’s Exceptions at 11.

⁶⁶ MPD’s Exceptions at 11.

request for the same reasons as in Case No. 08-U-28 and Case No. 08-U-34.⁶⁷ FOP asserted that the information was requested as having potential evidence that could exonerate a bargaining unit member from an Official Reprimand that the member had received.⁶⁸

The Hearing Examiner recommended that the Board find that: “(1) the Union has established by a preponderance of the evidence that the requested information is necessary and relevant in order for it to properly administer the Agreement to:” represent a member in a disciplinary matter, to ensure a proper investigation was completed of the Commander, [to] use the information in “future comparative discipline cases,” and to use the information to ensure that discipline given to its member[s] was comparatively appropriate.⁶⁹ In addition, the Hearing Examiner recommended that the Board find that “the MPD failed to articulate or document how its general confidentiality and privacy concerns outweighed its statutory duty to disclose the requested information,” and that “Respondents failed to offer any alternative solutions to the Union as to how the necessary and relevant information could be provided, such as providing the information to the Union in redacted form or under a protective order.”⁷⁰

The Hearing Examiner recommended that the Board find that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) by “interfering with and restraining employee rights and refusing to bargain in good faith with the Union by failing to comply with the FOP’s request for information.”⁷¹ In making her recommendation, the Hearing Examiner relied upon similar findings and conclusions as in Case No. 08-U-28.⁷²

2. MPD’s Exceptions

In its Exceptions, MPD asserts that it “incorporates and reiterates all of the same arguments made above in reference to PERB Case No. 08-U-28.”⁷³ As stated above, MPD’s arguments are rejected. The Board finds that the Hearing Examiner’s findings and conclusions are reasonable, supported by the record and consistent with Board precedent.

In addition, MPD argues that “FOP failed to sufficiently allege facts that it sought information relevant and necessary to the FOP’s collective bargaining duties.”⁷⁴ MPD did not argue this issue before the Hearing Examiner.⁷⁵ The Hearing Examiner found that the Union provided an adequate position as to why the information was relevant and necessary, and concluded that the information was relevant and necessary to the Union’s duties as exclusive representative for collective bargaining. The Board finds that MPD’s argument is a mere

⁶⁷ HERR at 17.

⁶⁸ *Id.* at 18.

⁶⁹ *Id.* at 46.

⁷⁰ *Id.*

⁷¹ HERR at 46-47.

⁷² Compare HERR at 43 and 45.

⁷³ MPD’s Exceptions at 12.

⁷⁴ MPD’s Exceptions at 12-13.

⁷⁵ HERR at 27.

disagreement with the Hearing Examiner and not grounds for rejecting the Hearing Examiner's recommendation.⁷⁶

The Board finds that the Hearing Examiner's findings and conclusions are reasonable, supported by the record and consistent with Board precedent. Therefore, the Board adopts the Hearing Examiner's findings and conclusions, and denies FOP's Exceptions.

IV. Information requested to facilitate the role of the Union and to ensure that the Union is notified of new policies or procedures

A. Case No. 08-U-37

1. Hearing Examiner's findings and conclusions

FOP Secretary Marcello Muzzatti made an information request to MPD Lieutenant Richard Matiello in the Office of Human Resources Management. The information requested was the number of officers and sergeants that were assigned to each unit.⁷⁷ The information was requested to "assist the Union in determining whether proper weighting with regard to voting was being applied to each police district and that members were not being assigned or moved without the Union's knowledge."⁷⁸ The Hearing Examiner found that it was undisputed that the information was provided to the Union eleven (11) days after the request was made.⁷⁹ The Hearing Examiner rejected FOP's argument that the information was unresponsive, inadequate, or untimely. Therefore, the Hearing Examiner recommended that FOP's Complaint be dismissed with prejudice.

2. FOP's Exceptions

FOP asserts in its Exceptions that the testimony at the hearing and evidence presented by FOP supports a finding that MPD committed an unfair labor practice.⁸⁰ FOP's Exceptions amount to no more than a disagreement with the Hearing Examiner's findings of fact. This Board has held that a mere disagreement with the hearing examiner's findings is not grounds for reversal of the findings where they are fully supported by the record.⁸¹ The Board has rejected

⁷⁶ This Board has held that a mere disagreement with the hearing examiner's findings is not grounds for reversal of the findings where they are fully supported by the record. See *Teamsters Local Unions 639 and 670, International Brotherhood of Teamsters, AFL-CIO v. District of Columbia Public Schools*, 54 D.C. Reg. 2609, Slip Op. No. 804, PERB Case No. 02-U-26 (2003).

⁷⁷ HERR at 18.

⁷⁸ *Id.* at 47.

⁷⁹ *Id.*

⁸⁰ FOP's Exceptions at 3 and 9.

⁸¹ See *Teamsters Local Unions 639 and 670, International Brotherhood of Teamsters, AFL-CIO v. District of Columbia Public Schools*, 54 D.C. Reg. 2609, Slip Op. No. 804, PERB Case No. 02-U-26 (2003).

challenges to a Hearing Examiner's findings based on: (1) competing evidence; (2) the probative weight accorded evidence; and (3) credibility resolutions.⁸²

The Board finds that the Hearing Examiner's findings and conclusions are reasonable, supported by the record and consistent with Board precedent. The Board adopts the Hearing Examiner's findings and conclusions that FOP did not meet its burden of proof that MPD committed an unfair labor practice.

As a result, the Board adopts the Hearing Examiner's recommendation and denies FOP's Exceptions.

B. Case No. 08-U-39

1. Hearing Examiner's findings and conclusions

FOP representative Russell Mullins, Jr., requested similar information as in Case 08-U-37.⁸³ The information requested was "a copy of MPD's seniority list, broken down by divisions, to carry" out representational duties for filing grievances/appeals on behalf of members.⁸⁴ The Hearing Examiner found that Lieutenant Matiello responded to the information request that the information had already been requested and provided to FOP, because he mistakenly thought that the information requested was the same information requested in Case No. 08-U-37.⁸⁵

The Hearing Examiner found that, after Chairman Baumann responded to Lieutenant Matiello and after Assistant Chief Ederheimer called Matiello, Matiello checked his email and realized that the information had not been provided to the Union.⁸⁶ The Hearing Examiner found that "it is undisputed that the requested information was provided by Lieutenant Matiello through his chain of command to MPD Assistant Chief Ederheimer, who sent the information to Union Chairman Baumann, on April 22, 2008, one day after the initial request by Union Chief Shop Steward Mullins."⁸⁷ The Hearing Examiner found that FOP did not provide any evidence that the response provided to Chairman Baumann was inadequate, insufficient or unduly delayed.⁸⁸ Therefore, the Hearing Examiner recommended that the Complaint be dismissed with prejudice, because the Union did not satisfy its burden of proof by a preponderance of the evidence.⁸⁹

⁸² See *American Federation of Government Employees, Local 2741 v. D.C. Department of Recreation and Parks*, 46 DCR 6502, Slip Op. No. 588, PERB Case No. 98-U-16 (1999); see also *American Federation of Government Employees v. District of Columbia Water and Sewer Authority*, Slip Op. 702, PERB Case No. 00-U-12 (2003).

⁸³ HERR at 19.

⁸⁴ *Id.*

⁸⁵ HERR at 48.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

2. *FOP's Exceptions*

FOP asserts similar arguments in its Exceptions as in Case No. 08-U-37. FOP disputes the factual findings of the Hearing Examiner. As stated above, this is not grounds for finding that the Hearing Examiner has erred. Therefore, the Board finds that the Hearing Examiner's findings and conclusions are reasonable, supported by the record, and consistent with Board precedent. As a result, the Board rejects FOP's arguments and denies its Exceptions. The Board adopts the Hearing Examiner's findings and conclusions that FOP did not meet its burden of proof that MPD committed an unfair labor practice.

C. Case No. 09-U-40

1. *Hearing Examiner's findings and conclusions*

FOP Rosario requested from MPD Assistant Chief Michael Anzallo "a copy of the documents related to the MPD written policy stating that 'a teletype message supersedes posted schedules.'" ⁹⁰ The Hearing Examiner found that Assistant Chief Anzallo responded to this request by attaching General Order 201.26. ⁹¹ According to Anzallo, there is nothing in the General Order that specifically addressed "a teletype message," but that the language of the General Order contained "dispatches," which would have covered a teletype message. ⁹² The Hearing Examiner found that "it is undisputed that the Union did not inform Assistant Chief Anzallo that the response that he provided was inadequate in any way, nor communicate with him further concerning this issue after the Union received Assistant Chief Anzallo's response, until it filed the unfair labor practice." ⁹³ The Hearing Examiner recommended that the Board find that the Union did not satisfy its burden of proof by a preponderance of the evidence that MPD committed an unfair labor practice by providing the General Order to the Union in response to its request. ⁹⁴

2. *FOP's Exceptions*

FOP asserts similar arguments in its Exceptions as in Case No. 08-U-37. ⁹⁵ FOP disputes the factual findings of the Hearing Examiner. As stated above, this is not grounds for finding that the Hearing Examiner has erred. Therefore, the Board finds that the Hearing Examiner's findings and conclusions are reasonable, supported by the record and consistent with Board precedent. As a result, the Board denies FOP's Exceptions. The Board adopts the Hearing Examiner's findings and conclusions that FOP did not meet its burden of proof that MPD committed an unfair labor practice.

⁹⁰ HERR at 20.

⁹¹ *Id.* at 48.

⁹² *Id.* at 49.

⁹³ HERR at 49.

⁹⁴ *Id.*

⁹⁵ FOP's Exceptions at 10.

V. Conclusion

Pursuant to D.C. Official Code § 1-605.02(3) and Board Rule 520.14, the Board has reviewed the findings and conclusions of the Hearing Examiner and finds them to be reasonable, supported by the record, and consistent with Board precedent. The Board adopts the findings and conclusions of the Hearing Examiner that MPD committed unfair labor practices in violation of D.C. Code § 1-617.04(a) (1) and (5) for Case Nos. 07-U-40, 07-U-44, 08-U-28, 08-U-34, 08-U-50, and 09-U-11. The Board adopts the findings and conclusions of the Hearing Examiner that FOP did not meet its burden of proof for Case Nos. 08-U-37, 08-U-39, and 09-U-40.

ORDER

IT IS HEREBY ORDERED THAT:

1. FOP's Complaints in Case Nos. 08-U-37, 08-U-39, and 09-U-40 are dismissed with prejudice.
2. MPD, its agents, and representatives shall cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) by failing and refusing to respond to the information requests made by FOP that are relevant and necessary to its duty as an exclusive representative.
3. MPD shall conspicuously post, within ten (10) days of the service of this Decision and Order, a Notice where notices to bargaining unit employees are customarily posted. The Notice shall remain posted for thirty (30) consecutive days. Within fourteen (14) days from the issuance of this Decision and Order, MPD shall notify the Board, in writing, that the Notice has been posted accordingly.
4. MPD shall deliver to FOP within thirty (30) days of the service of this Decision and Order the information requested in Case Nos. 07-U-40, 07-U-44, 08-U-28, 08-U-34, 08-U-50, and 09-U-11 with redaction as necessary under District laws.
5. 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, Member Yvonne Dixon, Member Ann Hoffman, Member Keith Washington, and Member Donald Wasserman

Washington, D.C.

April 24, 2015

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 07-U-40, et al. was served to the following parties via File & ServeXpress and a Notice for posting via U.S. Mail to MPD on this the 28th day of April 2015:

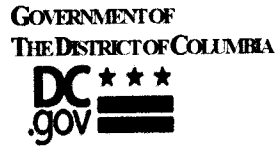
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//s/ Sheryl Harrington
Sheryl Harrington
Administrative Assistant



Public
Employee
Relations
Board



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Email: perb@dc.gov

NOTICE

TO ALL EMPLOYEES OF THE METROPOLITAN POLICE DEPARTMENT (“MPD”), THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1521, PERB CASE NO. 07-U-40, et al.

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law 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) by the actions and conduct set forth in Slip Opinion No. 5121.

WE WILL cease and desist from interfering, restraining, or coercing employees in the exercise of rights guaranteed by the Labor-Management subchapter of the Comprehensive Merit Personnel Act (“CMPA”).

WE WILL NOT, in any like or related manner, interfere, restrain or coerce employees in their exercise of rights guaranteed by the Labor-Management subchapter of the CMPA.

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 compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 1100 4th Street, SW, Suite E630; Washington, D.C. 20024.
Phone: (202) 727-1822.

BY NOTICE OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

April 24, 2015