

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

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**PUBLIC EMPLOYEE RELATIONS BOARD**

In the Matter of:	)	
	)	
Fraternal Order of Police/Metropolitan Police Department Labor Committee	)	
	)	PERB Case No. 09-U-59
Complainant,	)	
	)	Opinion No. 1131
v.	)	
	)	
District of Columbia Metropolitan Police Department,	)	<b>Motion to Dismiss</b>
	)	
Respondent. <sup>1</sup>	)	

**DECISION AND ORDER**

**I. Statement of the Case**

The Fraternal Order of Police/Metropolitan Police Department Labor Committee (“Complainant,” “FOP,” or “Union”) filed an Unfair Labor Practice Complaint (“Complaint”) against the District of Columbia Metropolitan Police Department and Chief Cathy Lanier (“Respondents” or “MPD”). The Complaint alleges that the Respondents have violated the Comprehensive Merit Protection Act (“CMPA”). Specifically, the Complaint alleges that Respondents have violated D.C. Code §1-617.04(a)(1) and (5) by refusing to provide information requested by Union Vice Chairman Wendell Cunningham concerning the Department’s change in policy regarding employee’s use of take-home vehicles. (See Complaint at p. 4-5).

<sup>1</sup> Additional respondent names have been removed from the caption in the instant matter pursuant to the Board’s decision in Fraternal Order of Police/Metropolitan Police Department Labor Committee and Metropolitan Police Department, \_DCR\_, Slip Op. No. 1118 at p. 5, PERB Case No. 08-U-19 (2011).

MPD filed an Answer to the Unfair Labor Practice Complaint ("Answer") denying the allegations set forth in the Complaint and any violation of the CMPA. (See Answer at pgs. 2-5). The Union's Complaint and MPD's Motion to Dismiss are before the Board for disposition.

## II. Discussion

In its Complaint, FOP makes the following factual allegations:

6. On August 4, 2008, Chief Lanier issued a Department-wide memorandum announcing that the Department was unilaterally changing its policy regarding officers' use of take-home police cruisers, and that several members' take-home vehicle privileges would be revoked as a result of the policy change.

7. By memorandum of February 18, 2009, Union Vice Chairman Cunningham, made a written request for specific information regarding the Department's decision to change its policy on the use of take-home vehicles.

9. By letter of March 4, 2009, Chief Lanier responded to Vice Chairman Cunningham's Request for Information, stating that the request had been received and that the relevant documents would be promptly forwarded.

10. On April 29, 2009, Vice Chairman Cunningham sent a letter to Chief Lanier stating that the Union had not received any of the documents in response to its February 18, 2009[,] request for information.

11. Without any response to his April 29, 2009[,] letter, on May 21, 2009, Vice Chairman Cunningham sent a second letter to Chief Lanier stating that the Union had not received any of the documents in response to its February 18, 2009 request for information.

12. To date, [August 26, 2009], the Union has not received any of the information requested in its February 18, 2009[,] request for information.

(Complaint at pgs. 3-4).

Based on these factual allegations, FOP contends that:

The Department committed an Unfair Labor Practice by refusing to provide relevant and necessary information regarding the Department's change in its take-home vehicle policy sought by Vice Chairman Cunningham. In view of the Department's illegal actions, Vice Chairman Cunningham, the Union, and its membership are entitled to relief.

(Complaint at pgs. 4-5).

The Respondents do not deny the factual allegations in the Complaint, but they do deny that their conduct violated the CBA. (See Answer at pgs. 2-3). Moreover, the Respondents contend "that there is no evidence of the commission of an unfair labor practice as stated in the [Complaint] and, accordingly, deny . . . [they] have engaged in an unfair labor practice." (See Answer at p. 4).

#### Motion to Dismiss

The Board has held while a Complainant need not prove their case on the pleadings, they must plead or assert allegations that, if proven, would establish the alleged statutory violations. See *Virginia Dade v. National Association of Government Employees, Service Employees International Union, Local R3-06*, 46 DCR 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-U-22 (1996); and *Gregory Miller v. American Federation of Government Employees, Local 631, AFL-CIO and D.C. Department of Public Works*, 48 DCR 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994). Furthermore, the Board views contested facts in the light most favorable to the Complainant in determining whether the Complaint gives rise to an unfair labor practice. See *JoAnne G. Hicks v. District of Columbia Office of the Deputy Mayor for Finance, Office of the Controller and American Federation of State, County and Municipal Employees, District Council 24*, 40 DCR 1751, Slip Op. No. 303, PERB Case No. 91-U-17 (1992). Without the existence of such evidence, Respondent's actions cannot be found to constitute the asserted unfair labor practice. Therefore, a Complaint that fails to allege the existence of such evidence, does not present allegations sufficient to support the cause of action." *Goodine v. FOP/DOC Labor Committee*, 43 DCR 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996).

"The validation, i.e. proof, of the alleged statutory violation is what proceedings before the Board are intended to determine." *Jackson and Brown v. American Federation of Government Employees, Local 2741, AFL-CIO*, 48 DCR 10959, Slip Op. No. 414 at p. 3, PERB Case No. 95-S-01 (1995).

In the present case, Complainant alleges that "MPD committed an Unfair Labor Practice by refusing to provide relevant and necessary information regarding the Department's change in its take-home vehicle policy sought by Vice Chairman Cunningham." (See Complaint at 4-5). Specifically, Complainant alleges that MPD violated D.C. Code § 1-617.04(a)(1) and (5) by refusing to provide relevant and necessary information to the Union. (See Complaint at p. 4).

FOP states that D.C. Code §1-617.04(a)(1) (2001 ed.), provides that “[t]he District, its agents and representatives are prohibited from: . . . [i]nterfering, restraining or coercing any employees in the exercise of the rights guaranteed by this subchapter[.]”<sup>2</sup> D.C. Code § 1-617.04(a)(5) provides that “[r]efusing to bargain collectively in good faith with the exclusive representative” is a violation of the CMPA.<sup>3</sup>

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

Board Rule 520.10 - Board Decision on the Pleadings, provides that: “[i]f the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings or may request briefs and/or oral argument.” Consistent with that rule, the Board finds that the circumstances presented warrant a decision on the pleadings.

The Board has no intention of deviating from the longstanding precedent of viewing contested facts in the light most favorable to the Complainant in determining whether the Complaint gives rise to an unfair labor practice. The Board finds that the Union’s Complaint, as drafted, fails to indicate the purpose of the requested information. On the record before the Board, the Complaint merely asserts that Respondent’s actions violate the CMPA by asserting that Respondent failed to provide the requested information. FOP has not alleged facts that it sought information relevant and necessary to the Union’s collective bargaining duties. Moreover, the parties’ pleadings present no issue of fact. Whereas the Union has not provided any allegations that, if proven, establish a violation of the CMPA, and finding no disputed issue

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

<sup>3</sup>The Board notes that, pursuant to the CMPA, management has an obligation to bargain collectively in good faith and employees have the right “[t]o engage in collective bargaining concerning terms and conditions of employment, as may be appropriate under this law and rules and regulations, through a duly designated majority representative[.]” *American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2921 v. District of Columbia Public Schools*, 42 DCR 5685, Slip Op. 339 at p. 3, PERB Case No. 92-U-08 (1992). Also, D.C. Code § 1-617.04(a)(5) (2001) provides that “[t]he District, its agents and representatives are prohibited from...[r]efusing to bargain collectively in good faith with the exclusive representative.” Further, D.C. Code §1-617.04(a)(5) (2001ed.) protects and enforces, respectively, these employee rights and employer obligations by making their violation an unfair labor practice.

of fact, the Board finds that the circumstances presented warrant a decision on the pleadings because the Complaint has failed to plead facts which if proven establish a statutory cause of action under the CMPA.

As a result, FOP's Complaint is DISMISSED.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Complaint filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Complaint," "Union," or "FOP") is **DISMISSED WITHOUT PREJUDICE**.
2. 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.

September 15, 2011

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No.09-U-59 was transmitted via Fax and U.S. Mail to the following parties on this 15<sup>th</sup> day of September 2011.

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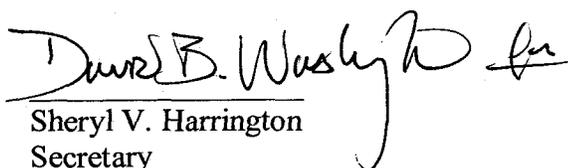
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