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. 07-U-16
	)	
Complainant,	)	Opinion No. 864
	)	
v.	)	Motion for Preliminary Relief
	)	
District of Columbia Metropolitan Police Department,	)	
	)	
and	)	
	)	
Chief Charles Ramsey,	)	
	)	
	)	
Respondents.	)	

I. Statement of the Case:

On December 22, 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 against the Metropolitan Police Department and Chief Charles Ramsey ("Respondents" or "MPD"). FOP alleges that MPD has violated D.C. Code § 1-617.04 (a) (1) and (5) (2001 ed.) "by failing to provide information requested [by FOP] pursuant to Article 10 of the [parties'] Collective Bargaining Agreement (CBA)." (Motion at p. 1)

FOP claims that MPD's action prevented bargaining unit member Nosner to adequately prepare his appeal of a notice of adverse action. Consequently, the adverse action was sustained and Officer Nosner received a three-day suspension. FOP asserts that: (1) MPD's conduct is clear-cut and flagrant; (2) the effect of MPD's violation is widespread; (3) public interest is seriously effected because of the clear-cut, widespread effect of the violations; and (4) the ultimate remedy afforded by the Board will be inadequate. (See Motion at pgs. 2 and 3). Therefore, FOP contends that preliminary relief is appropriate.

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 Board dismiss the Motion. The Complainant's Motion and the Respondents' opposition are before the Board for disposition.

II. Discussion

On or about March 9, 2006, Officer Nosner was involved in a motor vehicle accident while operating his police cruiser on Minnesota Avenue, S.E. in the District of Columbia. Based upon the recommendations of the Crash Review Board ("CRB"), Officer Nosner was served with a Notice of Proposed Adverse Action because of the accident. FOP claims that the CRB's recommendation was based on an internal point system devised to determine the level of punishment in accidents ruled preventable. Depending on the number of points assigned to an accident, an officer can be subject to either corrective action (lower number of points) or adverse action (higher number of points).

The CRB assigned five points to Officer Nosner's accident. Three of the five points were based on a finding that the total damage to the vehicles involved exceeded $3,000. However, FOP contends that "MPD General Order 301.1 (Vehicle Operation and Maintenance), Part I (D) (3) requires the investigating body of a traffic accident involving a departmental vehicle 'to obtain three (3) written estimates of reported damages from authorized facilities'." (Compl. at p. 3) FOP asserts that Officer Nosner was not provided with evidence to show that MPD "complied with this general order, thereby calling into question the propriety of the number of points assigned to the accident and, thus, the level of penalty assessed to Officer Nosner." (Compl. at pgs. 3-4)

FOP claims that on August 31, 2006, it forwarded a written request for information to MPD pursuant to Article 10 of the CBA. (See Compl. at p. 4 and Exhibit 2).[1] The reason for the request was to assist FOP in preparing Officer Nosner's defense against the proposed adverse action.

FOP argues that MPD failed to provide the requested information, which prevented Officer Nosner to adequately prepare his appeal to the Notice of Adverse Action. Consequently, the adverse action was sustained and Officer Nosner received a three (3)-day suspension.

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[1] In the August 31st letter FOP requested information regarding all estimates of damage to the police cruiser (a 2005 Ford Crown Victoria, Scout Car 664) as a result of the accident; all invoices, bills, or other documents that show the actual cost of repair to the cruiser; and all invoices, bills, or other documents that show the actual cost of repair to the other vehicle involved in the accident. (See Compl at p. 4) FOP claims that the intent of this request was to assist in the defense of Officer Nosner.

FOP claims that MPD's ongoing violations of the CMPA are clear-cut, flagrant and seriously effect public interest. (See Motion at p. 2) 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 is 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, MPD disputes the material elements of the allegations asserted in the Motion. MPD asserts that the "Respondents have in fact responded to . . . the request for information. [Specifically,] [o]n October 17, 2006, Supervisory Labor Relations Specialist Anna McClanahan transmitted via facsimile and first class mail the response to [the] Complainant's . . . request." (Respondents' Opposition at p. 5)

In addition, the Respondents contend that the Motion should be denied because the issue in this case involves a contract interpretation; therefore, the Board lacks jurisdiction. 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. (Respondents' Opposition at p.5)

In light of the above, 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, are 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 asserts 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 question 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 any of 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.

We note that the FOP has also filed another unfair labor practice complaint (PERB Case No. 07-U-12) involving the same issue. Since that case (PERB Case No. 07-U-12) and the present case (PERB Case No. 07-U-16) involve common issues of fact and law, we are consolidating the two cases.

For the reasons discussed above, the Board: (1) denies FOP's request for preliminary relief; (2) directs the development of a factual record through an unfair labor practice hearing and (3) consolidates PERB Case No. 07-U-16 and PERB Case No. 07-U-12.

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. PERB Case No. 07-U-16 and PERB Case No. 07-U-12 are consolidated.

3. 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.

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

5. 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 8, 2007

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 07-U-16 was transmitted via Fax and U.S. Mail to the following parties on this the 8th day of February 2007.

James W. Pressler, Esq.
Pressler & Senftle, P.C.
927 15th Street, N.W.
12th Floor
Washington, D.C. 20005

FAX & U.S. MAIL

Mark Viehmeyer, Esq.
Agency Representative
Metropolitan Police Department
300 Indiana Avenue, N.W.
Suite 4126
Washington, D.C. 20001

FAX & U.S. MAIL

James C. Mehigan, Esq.
Pressler & Senftle, P.C.
927 15th Street, N.W.
12th Floor
Washington, D.C. 20005

FAX & U.S. MAIL

Sheryl V. Harrington
Secretary