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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. 06-U-49
)	
v.)	Opinion No. 1524
)	
District of Columbia Metropolitan Police Department)	
)	
Respondent)	

DECISION AND ORDER

I. Statement of Case

On September 20, 2006, the Fraternal Order of Police/Metropolitan Labor Committee (“FOP”) filed an Unfair Labor Practice Complaint against the Metropolitan Police Department (“MPD”), alleging MPD failed to bargain in violation of D.C. Official Code § 1-617.04(a)(1) and (5) of the Comprehensive Merit Personnel Act (“CMPA”). The Board referred the matter to a hearing, and received a Report and Recommendation from a hearing examiner.¹ For the reasons contained in this Decision, the Complaint is dismissed with prejudice.

II. Hearing Examiner’s Findings and Conclusions

On June 13, 2001, MPD entered into a Memorandum of Understanding (“MOU”) with the U.S. Department of Justice, regarding MPD’s use of force policy. The MOU covered a broad range of issues including standards for MPD’s use of force policy, documentation, discipline, and training. It also created the Personnel Performance Management System (“PPMS”) to measure personnel performance. On January 6, 2006, MPD provided official copies of its

¹ The hearing examiner who conducted the hearing was unable to write a report and recommendation. The record was referred to Hearing Examiner Bruce Rosenstein, who submitted a Report and Recommendation to the Board.

proposed General Order and Standard Operating Procedures, implementing the PPMS, to FOP's designated representative. From July 27, 2006, to September 12, 2006, MPD implemented the PPMS through the various police districts.²

The Hearing Examiner found that FOP was on notice of the PPMS as of January 6, 2006.³ Despite that fact, FOP did not file its Complaint for 257 days. The Hearing Examiner applied Board Rule 520.4, prescribing that unfair labor practice complaints must be filed within 120 days of the alleged violation, and determined that FOP's Complaint was untimely filed.

In addition, the Hearing Examiner found that FOP admitted that it had never demanded bargaining nor submitted any bargaining proposals, concerning the PPMS. Even after MPD implemented the PPMS city-wide on September 12, 2006, FOP did not demand to bargain over its impact and effects.⁴

Based on his findings and conclusions, the Hearing Examiner recommended dismissing the Complaint with prejudice.

III. Discussion

Neither party filed Exceptions to the Hearing Examiner's Report and Recommendation. "Whether exceptions have been filed or not, the Board will adopt the hearing examiner's recommendation if it finds, upon full review of the record, that the hearing examiner's 'analysis, reasoning and conclusions' are 'rational and persuasive.'"⁵

A. Timeliness of the Complaint

In its Complaint, FOP asserts that, during January 2005, FOP "attempted to negotiate the PPMS protocol, but Respondent refused."⁶ FOP further alleges, "By drafting General Order 120-28, Respondent has failed its obligation to negotiate the PPMS protocol in good faith."⁷ The Hearing Examiner found that, on January 6, 2006, MPD provided official copies of the draft General Order. The Hearing Examiner found that the Complaint was filed 257 days after FOP knew of the draft General Order regarding the PPMS. Board Rule 520.4 provides: "Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred." The Board has held that Board Rule 520.4 is mandatory and jurisdictional.⁸ The Board adopts the Hearing Examiner's findings and conclusions, and finds that the Board does not have jurisdiction over the Complaint because it was not timely filed.

² HERR at 1-2.

³ HERR at 2.

⁴ *Id.*

⁵ *Council of School Officers, Local 4, American Federation of School Administrators v. D.C. Public Schools*, 59 D.C. Reg. 6138, Slip Op. No. 1016 at p. 6, PERB Case No. 09-U-08 (2010) (quoting *D.C. Nurses Association and D.C. Department of Human Services*, 32 D.C. Reg. 3355, Slip Op. No. 112, PERB Case No. 84-U-08 (1985)).

⁶ Complaint at 2.

⁷ *Id.*

B. Duty to bargain

FOP alleges in its Complaint that MPD failed “to negotiate the PPMS protocol in good faith.”⁹ The Hearing Examiner found that the Union did not request that MPD engage in impact and effects bargaining over the PPMS. The Complaint alleged that MPD failed to bargain over the PPMS, and not specifically impact and effects bargaining. The Hearing Examiner erred in analyzing the Complaint’s allegations as impact and effects bargaining, because the Board may only consider allegations contained in a complaint.¹⁰ The Complaint did not allege impact and effects bargaining, but alleged unfair labor practices, regarding MPD’s duty to bargain the PPMS’s protocols.

After reviewing the record, the Board adopts the factual findings of the Hearing Examiner, but rejects his analysis of impact and effects bargaining. The Board considers FOP’s Complaint that MPD failed to bargain over the PPMS protocol. At the hearing, FOP’s representative admitted that he did not request bargaining over the PPMS protocol. As FOP did not request to bargain with MPD over the PPMS, the Board finds that FOP did not meet its burden of proof by a preponderance of the evidence that MPD committed an unfair labor practice.

IV. Conclusion

The Board adopts the factual findings of the Hearing Examiner, as they are based on the record. The Board finds that the Complaint is untimely. Even if FOP timely filed the Complaint, the Board finds that FOP failed to request to bargain with MPD over the PPMS. Therefore, the Complaint is dismissed with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Unfair Labor Practice Complaint is dismissed with prejudice.
2. 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.

May 21, 2015

⁹ Complaint at 2.

¹⁰ *FOP/MPD Labor Committee v. MPD*, 61 D.C. Reg. 8003, Slip Op. No. 1316, PERB Case No. 09-U-50 (2014).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 06-U-49 was served to the following parties via File & ServeXpress on May 28, 2015:

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