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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,)	PERB Case No. 13-U-10
)	
Complainant,)	Opinion No. 1505
)	
v.)	
)	Decision and Order
District of Columbia)	
Office of Unified Communications,)	
)	
and)	
)	
District of Columbia)	
Office of Labor Relations and Collective Bargaining,)	
)	
Respondents.)	

DECISION AND ORDER

I. Statement of the Case

On December 18, 2012, Complainant Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP”) filed an Unfair Labor Practice Complaint against the District of Columbia Office of Unified Communications (“OUC”) and the District of Columbia Office of Labor Relations and Collective Bargaining (“OLRCB”) (collectively, “Respondents”). The Complaint alleges that Respondents violated D.C. Official Code §§ 1-617.04(a)(1) and (5) by refusing and failing to produce information requested by FOP. Respondents categorically deny the allegations and seek an administrative dismissal¹ of the Complaint in its entirety.

The issue before the Board is whether OUC, a non-signatory to FOP’s collective bargaining agreement with the District of Columbia Metropolitan Police Department (“MPD”), committed an unfair labor practice when it refused to produce information requested by FOP under Article 10 of that collective bargaining agreement and D.C. Official Code § 1-617.04(a)(5). Based on PERB’s previous holdings on this issue, which have been affirmed by

¹ Filed on May 28, 2013.

the D.C. Superior Court, the Board finds that there is no privity of contract between FOP and OUC, and that OUC therefore had no obligation to produce the requested information. Accordingly, FOP's Complaint is dismissed with prejudice.

II. Background

FOP is the certified exclusive representative of a unit of sworn officers and other designated personnel employed by MPD. As the authorized bargaining agent, FOP is entitled to act for or on behalf of the unit in all matters subject to collective bargaining, and to seek information relevant and necessary to the execution of its duties.² On September 27, 2012, and again on October 5, 2012, FOP sent formal information requests to the Director of OUC. In its first request, FOP sought copies of any Standard Operating Procedure Manuals, lesson plans, or other manuals used for training dispatchers, and call takers within the OUC. In its second request, FOP sought a copy of the audio tape of a specified recorded landline.

OUC responded to the requests stating that it had consulted with OLRCB and determined that it would not produce the requested information.

FOP filed the instant complaint against both OUC and OLRCB asserting that they collectively committed an unfair labor practice when OUC refused to produce the information FOP had requested.

On May 28, 2013, Respondents filed a Motion to Administratively Dismiss the Complaint, arguing that this case is nearly identical to *Fraternal Order of Police v. District of Columbia Office of Police Complaints, et al.*, 60 D.C. Reg. 3041, Slip Op. 1364, PERB Case No. 12-U-16 (2013), in which PERB administratively dismissed an unfair labor practice complaint filed by FOP against the Office of Police Complaints ("OPC") for failing to comply with an information request.

On June 4, 2013, FOP filed an Opposition to Respondents' Motion arguing that in *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. Office of Police Complaints*, 59 D.C. Reg. 5510, Slip Op. No. 994, PERB Case Nos. 06-U-24, 06-U-25, 06-U-26 and 06-U-28 (2009), the Board held that FOP's collective bargaining agreement with MPD is a contract with the entire District and not just with MPD.³ FOP asserts that the D.C. Superior Court upheld the Board's holding in that case and that, as a result, OPC—as a District of Columbia agency that acts on behalf of the Mayor—is bound by the terms and conditions of the collective bargaining agreement, including the duty to provide information requested under Article 10 of the agreement.⁴ Therefore, FOP argues PERB must deny Respondents' Motion.⁵

² See *American Federation of Government Employees, Local 631 v. District of Columbia Water and Sewer Authority*, 59 D. C. Reg. 3948, Slip Op. No. 924 at p. 5-6, PERB Case No. 08-U-04 (2007).

³ (Opposition to Motion for Administrative Dismissal at 4-6).

⁴ *Id.* (citing *Office of Police Complaints v. D.C. Public Employee Relations Board*, Case No. 2009 CA 008122 P(MPA) (D.C. Super. Ct., Apr. 12, 2011)).

III. Analysis

A. Decision on the Pleadings

PERB Rule 520.8 states: “[t]he Board or its designated representative shall investigate each complaint.” PERB Rule 520.10 states 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.” However, PERB Rule 520.9 states that in the event “the investigation reveals that the pleadings present an issue of fact warranting a hearing, the Board *shall* issue a Notice of Hearing and serve it upon the parties”.⁶

Here, Respondents generally denied FOP’s legal conclusions, but did not dispute the Complaint’s alleged underlying facts, which are the following: (1) FOP sent OUC two information requests; and (2) OUC denied those requests.⁷ Therefore, because these facts are undisputed by the parties, leaving only legal questions to be resolved, the Board finds it can properly decide this matter based upon the pleadings in the record in accordance with Rule 520.10.⁸

Furthermore, in *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Public Employee Relations Board and District of Columbia Office of Police Complaints*, Civ. Case No. 2013 CA 002120 P(MPA) (D.C. Super. Ct. Aug. 21, 2014), the D.C. Superior Court held that PERB does not need to hold a hearing where, as a matter of law, the complaining party lacks standing to bring the claims stated in the complaint.⁹ In this case, because of the Board’s finding below that FOP lacks standing as a matter of law to bring its complaint against OUC, it is not necessary to hold a hearing in this matter.¹⁰

B. Decision

1. PERB Slip Op. No. 1364, PERB Case No. 12-U-16 is Directly on Point with the Facts of this Case

The facts of this case are nearly identical to those in *FOP v. OPC, et al., supra*, Slip Op. 1364, PERB Case No. 12-U-16. In both cases, (1) FOP requested information from a District agency with which it did not represent any employees or have a collective bargaining agreement; (2) FOP made the requests under the authority of D.C. Official Code § 1-617.04(a)(5) and Article 10 of FOP’s collective bargaining agreement with MPD; (3) the agencies denied FOP’s

⁵ *Id.* at 6.

⁶ (Emphasis added).

⁷ (Complaint at 4); (Answer and 3-4).

⁸ See *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 60 D.C. Reg. 5337, Slip Op. No. 1374 at p. 11, PERB Case No. 06-U-41 (2013); see also *American Federation of Government Employees, AFL-CIO Local 2978 v. District of Columbia Department of Health*, 60 D.C. Reg. 2551, Slip Op. No. 1356 at p. 7-8, PERB Case No. 09-U-23 (2013).

⁹ P. 4.

¹⁰ *Id.*

requests; and (4) FOP filed unfair labor practice complaints alleging that the refusing agencies violated D.C. Official Code §§ 1-617.04(a)(1) and (5) when they respectively refused to produce the requested information on grounds that FOP's collective bargaining agreement with MPD was binding on the entire District, not just MPD. PERB's reasoning in PERB Case No. 12-U-16 is therefore directly on point with this case.

In *FOP v. OPC, et al., supra*, Slip Op. 1364, PERB Case No. 12-U-16, PERB administratively dismissed FOP's unfair labor practice complaint against OPC. PERB found that OPC was not a party to FOP's collective bargaining agreement with MPD, and therefore it did not have a duty under Article 10 of that agreement or under D.C. Official Code § 1-617.04(a)(5) to provide FOP with the requested information.

2. OUC Was Not Obligated Under Article 10 of FOP's Collective Bargaining Agreement with MPD to Provide the Information FOP Requested

Just as OPC was not obligated under Article 10 of FOP's collective bargaining agreement with MPD to produce the information FOP requested in PERB Case No. 12-U-16, OUC is likewise not obligated under Article 10 of that same agreement in this case.

In PERB Case No. 12-U-16, PERB rejected FOP's argument that OPC was bound by Article 10 of its collective bargaining agreement with MPD on grounds that: (1) the title page and Article 1, Section 1 of the agreement stated it was the collective bargaining agreement between FOP and MPD; (2) the terms of the agreement were specific to FOP and MPD; and (3) FOP's and MPD's representatives were the only signers of the agreement.¹¹ As such, PERB found it was reasonable to conclude that the only entities on which the agreement bestowed any rights or obligations were FOP and MPD.¹² PERB stated:

Erroneously, FOP claims that Article 10 of the CBA empowers it to seek and receive information from OPC. (Complaint at 3, 5-7, and Exhibit #2). Section 1 of Article 10 states, "[t]he Parties shall make available to each other's duly designated representatives, upon reasonable request, any information, statistics and records relevant to negotiations or necessary for proper administration of the terms of this Agreement." (Complaint, Exhibit #2 at 8) (emphases added). In the instant matter, "the Parties" and "to each other" are the legally operative terms. They plainly dictate, without ambiguity, that the obligation to exchange information only applies between MPD and FOP. [*Mittal Steel USA ISG, Inc. v. Bodman*, 435 F.Supp.2d 106, 108-09 (Dist. Court, Dist. of Columbia 2006)]; [*Charlton v. Mond*, 987 A.2d 436, 441 (D.C. 2010)]; and [*YA Global Investments, L.P. v. Cliff*, 15 A.3d 857, 862

¹¹ *FOP v. OPC, et al., supra*, Slip Op. 1364 at ps. 6-7, PERB Case No. 12-U-16 (internal citations omitted).

¹² *Id.*

(N.J. Super. Ct. App. Div. 2011)]. Furthermore, there is nothing in the four (4) corners of Article 10 or the CBA to demonstrate that the CBA imposes any contractual requirement to request or disclose information on anyone who is not MPD or FOP. *Mittal Steel USA ISG, Inc. v. Bodman. supra*; and *Charlton v. Mond, supra*.

In its Complaint, FOP contends that its CBA is between it and the entire District of Columbia government, not just between it and MPD. (Complaint at 3, 5-7). However, such an argument cannot be squared with the CBA's plain and unambiguous identification of the parties, noted above, and therefore must fail. *See Mittal Steel USA ISG, Inc. v. Bodman. supra*; *see also American Federation of Government Employees, Local 2924 v. Federal Labor Relations Authority*, 470 F. 3d 375, 377 & 381 (D.C. Cir. 2006) (internal citations omitted). The only proper and legally sound reading of the CBA is that its terms only apply between FOP and MPD, not FOP and all other District agencies. *Mittal Steel USA ISG, Inc. v. Bodman. supra*; and *Charlton v. Mond, supra*; and *YA Global Investments, L.P. v. Cliff, supra*. To say otherwise would be to imply that a union's agreement with one (1) agency in the District is a binding contract upon all of the District's agencies. Simply put, at best, such an argument is unwarranted and ethereal. Basic contract law dictates that such is not the case. *Id.* OPC is not bound by the terms of the CBA between FOP and MPD any more than the Department of Health or some other non-party agency is. *Id.*¹³

FOP appealed PERB's dismissal of PERB Case No. 12-U-16 to the D.C. Superior Court. The Court, in its August 21, 2014 Order, affirmed PERB's dismissal, stating:

[The argument that Article 10 applies to agencies other than MPD] has already been presented to PERB, which thoroughly explained in its ten-page Administrative Dismissal why the CBA does not extend to OPC. Taking [FOP] through the basic concepts of contract law, PERB explained that to apply the CBA to OPC would "imply that a union's agreement with one (1) agency in the District is a binding contract upon all of the District's agencies ... OPC is not bound by the terms of the CBA between FOP and MPD any more than the Department of Health or some other non-party agency." To find otherwise would be overbroad and, moreover, it is clear from the PERB decision citing to the specific language of

¹³ *Id.* at 7-8.

the CBA that there is no privity of contract between FOP and OPC. The CBA includes numerous explicit references to the parties bound by it, naming only FOP and MPD. It was thus reasonable for PERB to find that the CBA only applied to FOP and MPD and reject [FOP's] argument that the OPC is additionally bound by its terms.¹⁴

Collective bargaining agreements are negotiated between particular agencies and unions with specific agency processes and specific bargaining units in mind.¹⁵ While certain statutory rights (i.e. *Weingarten* rights) apply to all District agencies regardless of their respective agreements, the obligation to produce information is imposed by the collective bargaining agreement, not by a statute.¹⁶ That right therefore does not apply to agencies that are not parties to a particular agreement.¹⁷ In this case, the plain language of Article 10 in the agreement between FOP and MPD “defines and establishes a right to seek and receive information [only] between FOP and MPD.”¹⁸ Accordingly, it is unreasonable for FOP to now seek enforcement of that provision against OUC, which was not present during negotiations, did not have the benefit of making proposals or counterproposals, and was not a signer of the final agreement.¹⁹

Therefore, based on the foregoing, the Board rejects FOP’s argument in this case that Article 10 of its collective bargaining agreement with MPD obligated OUC to produce the requested information.²⁰

3. OUC Was Not Obligated Under D.C. Official Code § 1-617.04(a)(5) to Provide the Information FOP Requested

The Board similarly rejects FOP’s contention that OUC had an obligation to provide the requested information under D.C. Official Code § 1-617.04(a)(5).

In its dismissal of PERB Case No. 12-U-16, PERB noted that, normally, agencies are obligated to provide documents to the exclusive representatives of their employees.²¹ Moreover, the United States Supreme Court has held that an employer’s duty to disclose information “unquestionably extends beyond the period of *contract negotiations* and applies to labor-

¹⁴ *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Public Employee Relations Board and District of Columbia Office of Police Complaints*, Civ. Case No. 2013 CA 002120 P(MPA) at p. 7 (D.C. Super. Ct. Aug. 21, 2014) (internal citations omitted).

¹⁵ *Mittal Steel USA ISG, Inc. v. Bodman*, *supra*.

¹⁶ See *FOP v. OPC, et al.*, *supra*, Slip Op. 1364 at p. 9, PERB Case No. 12-U-16 (holding that “[t]he object that establishes and defines...the authority to seek and receive information...is the collective bargaining agreement”); see also *FOP v. OPC, supra*, Slip Op. No. 994 at ps. 19-20, PERB Case Nos. 06-U-24, 06-U-25, 06-U-26 and 06-U-28.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at ps. 6, 9.

²⁰ *Id.*

²¹ P. 8 (citing *AFGE v. DC WASA, supra*, Slip Op. No. 924 at p. 5-6, PERB Case No. 08-U-04).

management relations *during the term of an agreement*.²² Based on these authorities, PERB has held that when an agency fails, without a viable defense, to provide information requested by its employees' exclusive representative, that agency violates its duty under D.C. Official Code § 1-617.04(a)(5) to "bargain collectively in good faith *with the exclusive representative*", and further derivatively violates its counterpart duty under D.C. Official Code §1-617.04(a)(1) to not interfere with its employees' "statutory rights to organize a labor union free from interference, restraint or coercion; to form, join or assist any labor organization or to refrain from such activity; and to bargain collectively through representatives *of their own choosing*."²³

Applying these authorities to FOP's allegations in PERB Case No. 12-U-16, PERB stated:

The object that establishes and defines the obligation to "bargain collectively"—and in this case, the authority to seek and receive information—is the collective bargaining agreement. The CBA cited and relied upon by FOP in its November 3, 2011, request for information and in its Complaint defines and establishes a right to seek and receive information between FOP and MPD, but it does not establish rights between FOP and OPC. Indeed, FOP and OPC have not engaged in any "contract negotiations" regarding information requests. *NLRB v. Acme Industrial, supra*. Likewise, FOP and OPC are not currently in the "term [(time period)] of an agreement" governing information requests. *Id.* As such, OPC was not obligated to "bargain collectively in good faith" with FOP and was not obligated to provide FOP with the information it requested under D.C. [Official] Code § 1-617.04(a)(5), as no collective bargaining agreement or requirement to bargain existed between FOP and OPC. *Id.*

Therefore, FOP lacks standing to allege under D.C. [Official] Code § 1-617.04(a)(5) that OPC failed to bargain with it in good faith.²⁴

In its affirmation of PERB's administrative dismissal, the D.C. Superior Court agreed, stating:

PERB acknowledged that generally agencies are obligated to provide documents in response to a request by a union. PERB cites to the United States Supreme Court in *National Labor Relations Board v. Acme Industrial Co.*, 385 U.S. 432, 436-37

²² *National Labor Review Board v. Acme Industrial Co.*, 385 U.S. 32, 36 (1967) (emphases added).

²³ *American Federation of Government Employees, Local 2725 v. District of Columbia Department of Health*, 59 D.C. Reg. 5996, Slip Op. No. 1003 at ps. 4-5, PERB Case 09-U-65 (2009) (internal citations omitted) (emphases added).

²⁴ *FOP v. OPC, et al., supra*, Slip Op. 1364 at p 9, PERB Case No. 12-U-16.

(1967) for the proposition that the duty to disclose information applies to both contract negotiations and labor management relations during the term of a collective bargaining agreement. PERB explained, however, that OPC is simply not an employer of FOP, has never entered into contract negotiations, and is not a party to any agreements with OPC. Therefore, PERB held that FOP did not have standing under the CMPA to compel compliance with its request for information.²⁵

In this case, FOP is similarly not the “exclusive representative” of any of OUC’s employees as required by the express language of D.C. Official Code § 1-617.04(a)(5). Further, none of OUC’s employees have “chosen” FOP to be their representative as required by the stated language of PERB’s holding in *AFGE, Local 2725 v. DCDOH, supra*, Slip Op. No. 1003 at ps. 4-5, PERB Case 09-U-65. Additionally, FOP and OUC have never engaged in “contract negotiations”, nor have they been parties to “the term of an agreement” as envisioned by the U.S. Supreme Court’s holding in *NLRB v. Acme, Industrial Co., supra*.²⁶ As stated in the dismissal of PERB Case No. 12-U-16, “[t]he object that establishes and defines the obligation to ‘bargain collectively’—and in this case, the authority to seek and receive information—is the collective bargaining agreement.”²⁷

In this case, because there is no “collective bargaining agreement” between FOP and OUC, and based on the plain meaning of D.C. Official Code § 1-617.04(a)(5), which only establishes a duty to bargain collectively in good faith “with the exclusive representative”, the Board finds that the only statutory obligation Article 10 created was between FOP and MPD, not between FOP and all other District agencies.²⁸ As such, OUC had no obligation under D.C. Official Code § 1-617.04(a)(5) to provide the information FOP requested.²⁹

4. *FOP v. OPC, Supra*, Slip Op. No. 994, PERB Case Nos. 06-U-24, 06-U-25, 06-U-26 and 06-U-28 Did Not Hold That FOP’s Collective Bargaining Agreement With MPD is Binding On All District Agencies

The Board rejects FOP’s contention in its Opposition to OUC’s Motion for Administrative Dismissal in this case that PERB found in *FOP v. OPC, supra*, Slip Op. No. 994, PERB Case Nos. 06-U-24, 06-U-25, 06-U-26 and 06-U-28 that the parties to the collective bargaining agreement were FOP and the District of Columbia, and that the agreement’s terms and conditions are therefore binding on all other District agencies.³⁰ A plain reading of Slip Op. No. 994 demonstrates that such is not what the Board held.

²⁵ *FOP v. PERB and OPC, supra*, Civ. Case No. 2013 CA 002120 P(MPA) at p. 5 (internal citations omitted).

²⁶ See also *FOP v. PERB and OPC, supra*, Civ. Case No. 2013 CA 002120 P(MPA) at p. 5.

²⁷ *FOP v. OPC, et al., supra*, Slip Op. 1364 at p. 9, PERB Case No. 12-U-16.

²⁸ *Id.*; see also *FOP v. PERB and OPC, supra*, Civ. Case No. 2013 CA 002120 P(MPA).

²⁹ *Id.*

³⁰ (Opposition to Motion for Administrative Dismissal at 4-6).

In PERB Case Nos. 06-U-24, 06-U-25, 06-U-26 and 06-U-28, the Board adopted a hearing examiner's report and recommendation which found that "the parties to the Labor Agreement [between MPD and FOP] are the District of Columbia and [FOP]."³¹ Notwithstanding, the hearing examiner expressly rejected the notion that that meant all District agencies and officials were therefore bound by all of the agreement's terms.³² The hearing examiner stated: "[t]he fact that the District of Columbia is a party to the [collective bargaining agreement] does not by itself mean that all definitions, provisions, and requirements of a particular collective bargaining agreement are automatically transmuted or otherwise modified or redefined to fit the organizational arrangements or circumstances of agencies other than the one that [employs] the affected employees."³³ The hearing examiner further reasoned that determining which provisions applied to other agencies and which ones did not required an interpretation of the contract, and that such determinations should therefore be deferred to the parties' grievance and arbitration process.³⁴ The Board agreed and dismissed FOP's allegations.³⁵ FOP appealed PERB's Decision to the D.C. Superior Court, which affirmed the Board's findings as rationally defensible.³⁶ The Board notes, however, that the Superior Court's affirmation of Slip Op. 994 was later vacated and dismissed by the D.C. Court of Appeals for lack of jurisdiction.³⁷

Notwithstanding PERB's unambiguous holding in Slip Op No. 994 that not all of the terms of FOP's collective bargaining agreement with MPD apply to other agencies, FOP still advanced its argument that the agreement is binding on all other District agencies in its appeal of PERB's dismissal of PERB Case No. 12-U-16 before the D.C. Superior Court. The Court, rejecting FOP's argument, stated:

[FOP] argues that PERB and the D.C. Superior Court have previously held that OPC must bargain collectively in good faith with FOP. In turn, then, [FOP] argues that PERB has consistently held that a request for information constitutes a request for

³¹ *FOP v. OPC, supra*, Slip Op. No. 994 at p. 13, 26, PERB Case Nos. 06-U-24, 06-U-25, 06-U-26 and 06-U-28.

³² (Opposition to Motion for Administrative Dismissal, Exhibit 1 at 25-27).

³³ *Id.* at 27. As an example, the hearing examiner noted that even though the agreement requires the District to provide FOP with bulletin board space, it would not be reasonable to require every agency in the District to comply with that provision.

³⁴ *Id.* at 27-29.

³⁵ *FOP v. OPC, supra*, Slip Op. No. 994 at ps. 26-27, PERB Case Nos. 06-U-24, 06-U-25, 06-U-26 and 06-U-28.

³⁶ *OPC v. PERB*, Case No. 2009 CA 008122 P(MPA) (D.C. Super. Ct., Apr. 12, 2011).

³⁷ See *D.C. Office of Police Complaints v. D.C. Public Employee Relations Board*, 11 CV-621 (D.C., Aug. 5, 2011). Even though the Superior Court's affirmation of Slip Op. 994 was later vacated, the Superior Court's reasoning still demonstrates that the Court had rejected FOP's argument that its collective bargaining agreement with MPD applied to all agencies in the District. Indeed, the Court expressly stated that "not all of the terms of the collective bargaining agreement necessarily applied to OPC" and that "OPC *could have been*, but was not necessarily, a party to the agreement that was ratified by the Mayor." *OPC v. PERB, supra*, 2009 CA 008122 at ps.5-7 (emphasis in original). Further, the Court found that PERB has the authority to determine, on a case by case basis, "whether the Mayor as the employer of all public employees is the agent for collective bargaining purposes, or whether the other statutorily designated candidate, an 'appropriate personnel authority' pursuant to [D.C. Official Code § 1-617.01(c) of the CMPA], is the agent for collective bargaining." *Id.* at 6.

bargaining. In support of its position, [FOP] cites a vacated opinion in a dismissed Superior Court case [*OPC v. PERB, supra*, 2009 CA 008122] and claims that OPC had a bargaining obligation with FOP that “creates certain rights, the violation of which *could* constitute a ULP complaint even absent a collectively bargained agreement.” In this instance, there is no privity of contract between OPC and FOP; OPC is not FOP’s employer and OPC was not subject to any management obligations or duties provided for in the CMPA. [FOP’s] cited case does not explicitly hold that OPC is definitively required to bargain “collectively in good faith” as required by the CMPA statute, but suggested that certain bargaining rights *may* exist in the absence of a CBA. The sole case cited by [FOP] does not explicitly hold that OPC has a duty to collectively bargain with FOP but merely raises the possibility. Also, given that that case was dismissed for want of jurisdiction ... on September 30, 2011 [*OPC v. PERB, supra*, 11 CV-621], the Court does not place much weight on its conclusions.³⁸

If every collective bargaining agreement in the District was binding on all District agencies, there would be nothing to prevent FOP from enforcing against MPD a provision articulated in an agreement between another agency and another union that it (FOP) failed to bargain for in its own negotiations with MPD. Reason and established contract law dictate that such cannot be the case.³⁹ Therefore, based on PERB’s and the Superior Court’s clear and unambiguous findings that FOP’s agreement with MPD was not binding on OPC under the facts alleged in PERB Case No. 12-U-16, the Board finds that that same agreement was likewise not binding on OUC under the nearly identical facts of this case.⁴⁰

5. Conclusion

When considering a motion to dismiss, the Board views the facts in the light most favorable to the Complainant.⁴¹ Nevertheless, even when viewing the facts of this case in the light most favorable to FOP, the Board still cannot conclude that OUC repudiated a contract to

³⁸ *Id.* (internal citations omitted) (emphases in original).

³⁹ See *FOP v. OPC, et al., supra*, Slip Op. 1364 at p. 6-8, PERB Case No. 12-U-16; see also *Charlton v. Mond, supra* (holding that non-parties owe no contractual duty to contracting parties); and *Fort Lincoln Civic Ass’n, Inc. v. For Lincoln New Town Corp.*, 944 A.2d 1055, 1063 (D.C. 2008) (holding that generally a stranger to a contract may not bring a claim on the contract).

⁴⁰ *Id.*

⁴¹ *Osekre v. American Federation of State, County, and Municipal Employees, Council 20, Local 2401*, 47 D.C. Reg. 7191, Slip Op. No. 623, PERB Case Nos. 99-U-15 and 99-S-04 (1998) (citing *Doctor’s Council of District of Columbia General Hospital v. District of Columbia General Hospital*, 49 D.C. Reg. 1237, Slip Op. No. 437, PERB Case No. 95-U-10 (1995); and *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 20*, 40 D.C. Reg. 1751, Slip Op. No. 303, PERB Case No. 91-U-17 (1992)).

which it was not a party.⁴² Therefore, based on the reasoning and authority stated in *FOP v. OPC, et al., supra*, Slip Op. 1364, PERB Case No. 12-U-16, and based on the D.C. Superior Court's affirmation of that dismissal in *FOP v. PERB and OPC, supra*, Civ. Case No. 2013 CA 002120 P(MPA), and in consideration of the arguments presented by the parties in their pleadings, the Board finds that there was no privity of contract between FOP and OUC that required OUC to provide FOP with the information it requested under Article 10 of its collective bargaining agreement with MPD, or under D.C. Official Code § 1-617.04(a)(5).⁴³

This is not to say that FOP cannot request the information through other means. Since the collective bargaining agreement is between FOP and MPD, FOP may be able to request that MPD obtain the information from OUC. Furthermore, as PERB noted in its dismissal of PERB Case No. 12-U-16, FOP may also be able to obtain the information it seeks from OUC under the District of Columbia Freedom of Information Act (FOIA), D.C. Official Code §§ 2-531 *et seq.*

Based on the foregoing, Respondents' Motion to Administratively Dismiss the Complaint is granted, and FOP's Complaint is dismissed with prejudice.⁴⁴

ORDER

IT IS HEREBY ORDERED THAT:

1. FOP's Complaint is dismissed with prejudice.
2. Pursuant to PERB 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, and Members Donald Wasserman and Keith Washington.

August 21, 2014

Washington, D.C.

⁴² See *FOP v. OPC, et al., supra*, Slip Op. 1364, PERB Case No. 12-U-16; see also *FOP v. PERB and OPC, supra*, Civ. Case No. 2013 CA 002120 P(MPA); and *Mond, supra*.

⁴³ *Id.*

⁴⁴ As a result of the Board's dismissal of the Complaint, it is not necessary to address Respondents' affirmative defenses, Respondents' Motion to Dismiss OLRCB as a party respondent, Respondents' arguments about whether or not the phrase "the Department" in the Complaint referred to the Respondents, or the parties' arguments about PERB's procedures concerning deficiencies in complaints.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 13-U-10, Opinion No. 1505 was transmitted *via* File & ServeXpress and Email to the following parties on this the 31st of December, 2014.

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