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. 94-U-23 Opinion No. 384
v.	
District of Columbia, Metropolitan Police Department,	
Respondent.	

DECISION AND ORDER

On August 8, 1994, the Fraternal Order of Police\ Metropolitan Police Department Labor Committee (FOP) filed with the Public Employee Relations Board (Board) an Unfair Labor Practice Complaint alleging that the District of Columbia Metropolitan Police Department (MPD), by certain acts and conduct, violated the Comprehensive Merit Personnel Act (CMPA), D.C. Code § 1-618.4(a)(1), (3) and (5). The Office of Labor Relations and Collective Bargaining (OLRCB), by Answer filed on behalf of MPD, asserts that the Complaint is untimely and fails to state an unfair labor practice under the CMPA. [1/]

[1/] OLRCB's contention that the Complaint should be dismissed as untimely is based on FOP's claim that the allegedly violative action plan was promulgated in "April 1994" (Comp. at 1 and 2.) As OLRCB notes, Board Rule 520.4(a) requires a labor organization to file a unfair labor practice complaint "not later than ninety (90) days after the date on which the alleged violation(s) occurred..." Therefore, this allegation is untimely.

The Complaint, however, contains a second allegation, that Officer Johnson's suspension violated the parties' collective bargaining agreement. A copy of Officer Johnson's final notice of

(continued...)

Our review of the Complaint reveals that while some issues of fact are contested, taking all of Complainant's allegations as true, the Complaint does not give rise to any unfair labor practices or other claim under the CMPA within the Board's jurisdiction. Therefore, for the reasons that follow, we dismiss the Complaint.

The FOP alleges that MPD established a voluntary "action plan" to ensure compliance with existing requirements regarding the use of seat belts in police vehicles. FOP asserts that the procedure for imposing a monetary fine under the plan when a employee fails to adhere to these requirements violates the parties' collective bargaining agreement. The FOP also asserts that the MPD imposes discipline, e.g., suspensions, on employees who do not participate in the plan and who fail to comply with seat belt requirements, and that this contravenes the usual practice under existing collective bargaining provisions. [2]/ FOP contends that MPD's actions are "in contravention of the terms of the [parties' collective bargaining] agreement" and, thereby, "interfering (sic), restraining, and coercing employees in the exercise of their rights." (Comp. at 1.)

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[1](...continued)
her suspension, attached to OLRCB's Answer, reflects a date of June 15, 1994, which would place this alleged violation within the allowable period preceding the filing of the Complaint provided under Board Rule 520.4(a). In view of our dismissal of this alleged violation on other jurisdictional grounds, we need not determine the question of timeliness.

[2]/ Specifically, FOP alleges that in April 1994, MPD implemented this program in its third district. The plan imposes a $5 fine for noncompliance. Employees' participation in the plan, which was allegedly voluntary, was urged "under threats of reprisal", i.e., harsher discipline for infractions than under the plan or the "usual and customary" practice under the parties' collective bargaining agreement. (Comp. at 1.)

Furthermore, FOP alleges that a reprisal was carried out by MPD against Officer Diane Johnson, who had not initially volunteered to participate in the plan. She was suspended without pay for 5 days for failing to use her seat belt on March 14, 1994. FOP asserts that the suspension contravenes the "usual and customary practice" under the parties' agreement of imposing only "corrective action" for such a violation and exceeds the $5 fine that she would have received under the plan. (Comp. at 2.) FOP grieved Officer Johnson's suspension. The grievance is currently awaiting arbitration.

The Board has held that an alleged violation of the parties' collective bargaining agreement "does not state an unfair labor practice proscribed under the CMPA." American Federation of Government Employees, Local Union No. 3721 v. D.C. Fire Department, 39 DCR 8599, 8603, Slip Op. No. 287 at 4, PERB Case No. 90-U-11 (1991). Notwithstanding FOP's assertion that MPD's actions violate the CMPA, D.C. Code § 1-618.4(a)(1), (3) and (5), the Complaint allegations do not constitute violations of rights protected under the CMPA as unfair labor practices or other causes of action within the Board's jurisdiction, but rather rights secured by the parties' contract.

Since no statutory basis exists for the Board to consider claims that are strictly contractual in nature, the Complaint must be dismissed. See, e.g., William Sanders, et al. v. D.C. Department of Public and Assisted Housing, et al., __ DCR _____, Slip Op. No. 364, PERB Cases Nos. 93-U-13, 93-U-14, 93-U-15, 93-U-16, 93-U-17 and 93-U-20 and Carlease Madison Forbes v. Teamsters, Local No. 1714 and Teamsters Joint Council 55, 36 DCR 7097, Slip Op. 205, PERB Case No. 87-U-11 (1989).

ORDER

IT IS HEREBY ORDERED THAT:

Complaint is dismissed. [3]/

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

September 21, 1994

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[3]/ As previously noted, the parties are currently utilizing their grievance-arbitration process to resolve the grievance filed on behalf of Officer Johnson. This contractual dispute leaves no statutory violation within our jurisdiction for our determination. Thus, having no jurisdiction over these allegations, we also lack the authority to direct the parties to proceed to arbitration as requested by OLRCB. See, e.g., American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2921, AFL-CIO v. D.C. Public Schools, ___ DCR _____, Slip Op. No. 339, PERB Case No. 92-U-08 (1992). Applications to compel arbitration may be brought in the Superior Court of the District of Columbia. D.C. Code § 16-4302.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 94-U-23 was faxed and/or mailed (U.S. Mail) to the following parties on the 21st day of September, 1994.

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