

**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,	)	
	)	
Complainant,	)	
	)	PERB Case No. 11-U-17
v.	)	
	)	Opinion No. 1135
	)	
District of Columbia Metropolitan Police Department, <sup>1</sup>	)	
	)	
Respondents.	)	
	)	
	)	

**DECISION AND ORDER**

**I. Statement of the Case**

This case involves an Unfair Labor Practice Complaint (“Complaint”) filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“Complainant” or “FOP”) against the District of Columbia Metropolitan Police Department, Chief Cathy Lanier and Inspector Michael Eldridge (“Respondents” or “MPD”). FOP alleges that MPD committed an unfair labor practice by failing to provide any documents in response to the information requested by Treasurer Bonaccorsy, concerning an investigation involving a Union member. (See Complaint at p. 1).

The Union’s Complaint and MPD’s Answer and request to dismiss the case are before the Board for disposition.

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<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).

## II. Discussion

FOP asserts the following pertinent facts:

7. On September 27, 2010, Treasurer Bonaccorsy submitted an Information Request to the Department pursuant to Article 10 of the CBA and Section 1-617.04(a)(5) of the D.C. Code. This was submitted to Commander Christopher Lojacono.
8. The requested information concerned an investigation into an allegation of tampering with a private vehicle owned by a Lieutenant with the Metropolitan Police Department.
9. Specifically, the request sought the following documents:
  - a. Complete copies of all documents, including but not limited to, investigative packages on Sergeant Frank Edwards, Sergeant Mark Eckenrode, Officer Patty Cox, Officer Scott Mann and Officer Bernard Richardson in reference to an incident that occurred on Friday, April 23, 2010 when an unknown subject(s) tampered with Lieutenant Tracy Hayes privately owned vehicle at which time Sergeant Frank Edward[s] was detailed out of EOD to the First District. On Monday, April 26, 2010 Sergeant Mark Eckenrode was detailed out of EOD to the Fourth District, Officer Patty Cox was detailed out of EOD to the Sixth District and Officer Scott Mann was detailed out of EOD to the Seventh District. On Friday, April 30, 2010, Officer Bernard Richardson was detailed out of EOD to the Fourth District.
  - b. A complete copy of Sergeant Frank Edwards, Sergeant Mark Eckenrod, Officer Patty Cox, Officer Scott Mann and Officer Bernard Richardson Internal Affairs file, including, but not limited to, all documents and information contained or referenced in that file.

10. This information was being requested, *inter alia*, for the proper administration of the contract between the parties and was necessary for the Union to protect the interests of several of its members facing a pending disciplinary matter.
11. On September 30, 2010, and again on November 15, 2010, Lieutenant Samuel Golway of the Internal Affairs Division contacted Treasurer Bonaccorsy and indicated that the requested information would not be provided unless documentation was provided demonstrating that each involved Union member was represented by the Union.
12. On December 1, 2010, Commander Lojacono wrote to Treasurer Bonaccorsy and reiterated the position that the requested information would not be provided unless documentation was provided demonstrating that each involved Union member was represented by the Union.
13. To date, no information has been provided in response to the Union's September 27, 2010 information request.

(Complain at pgs. 3-4).

FOP asserts that MPD committed an unfair labor practice when:

FOP requested specific documents from the Department in order to protect the interests of Union members facing pending disciplinary charges. The Department's failure to provide any information after being asked to produce the requested documents, and withholding the production of such information by requesting irrelevant Union representation documentation, is tantamount to a clear refusal to provide Complainant with the necessary and relevant documents needed by the Union to administer the terms of the CBA and to protect the interests of dues paying members of the Union.

(Complaint at p. 5).

In addition, FOP argues that

[t]he Department's failure to provide the requested information to the Union is clearly in bad faith and a violation of D.C. Code Sections 1-617.04(a)(1) and (5). Even though the Union's request for information was made pursuant to D.C. Code § 1-617.04(a)(5) as well as Article 10 of the contract, the request was based upon a statutory right. The Board has held that under the CMP A,

employees have a statutory right to file a grievance. American Federation of Government Employees, Local 2741 v. D.C. Parks and Recreation, 50 DCR 5049, Case No. 00-U-22, Opinion No. 697 (2003). Statutory rights under the CMPA, even when raised “in the context of the Union exercising its contractual rights” are properly before the Board as an Unfair Labor Practice. *Id.*

As a remedy for the Respondents’ alleged actions, FOP requests that the Board issue an order:

- a. Finding that the Department, Chief Lanier, and Commander Lojocano have engaged in an unfair labor practice in violation of D.C. Code § 1-617.04(a)(1) and (5);
- b. Ordering the Department, Chief Lanier, and Commander Lojocano to cease and desist from engaging in an unfair labor practice in violation of D.C. Code § 1-617.04(a)(1) and (5);
- c. Compelling the Department to conspicuously post no less than two (2) notices of their violations and the Board's Order in each Department building;
- d. Compelling the Department, Chief Lanier, and Commander Lojocano to provide the requested information to the Union as soon as possible;

(Complaint at p. 6).

Respondents admit the allegations that the FOP requested information, and that in response MPD indicated that it would not provide the information without being provided information that the requests involved a union member. (See Complaint at pgs. 3-4). However MPD denies that it has not provided any information made in the September 27, 2010 information request.

MPD requests that the Board dismiss the Complaint based on the following:

1. The Board lacks jurisdiction over this matter as the parties’ collective bargaining agreement provides a grievance and arbitration procedure to resolve contractual disputes. Since the Board's precedent provides that the Board has no jurisdiction over contract disputes, the Board should dismiss the complaint in this matter.

2. The Board should dismiss the Complaint on the basis that Respondent has not committed an unfair labor practice.
3. The Board should dismiss the Complaint on the basis that there is no evidence of the commission of an unfair labor practice as stated in the foregoing paragraphs and, accordingly, deny Complainant's request to find that the Respondents have engaged in an unfair labor practice; deny Complainant's request that the Respondents be ordered to cease and desist from violating D.C. Code § 1-617.04(a); deny Complainant's request the Department post no less than two notices of their alleged violation and the Board's Order in each Department building; deny Complainant's request that the Respondents provide the requested information to the union; deny Complainant's request to order the Respondents to pay the Complainant's costs and fees associated with the proceeding; and deny Complainant's request to order any other relief or remedy in this matter.

(Answer at p. 4).

MPD also asks that the Board deny all other requests made in the Complaint. (See Answer at 5).

As to MPD's first defense, the Board "distinguishes between those obligations that are statutorily imposed under the CMPA and those that are contractually agreed upon between the parties." *American Federation of Government Employees, Local 2741 v. District of Columbia Department of Recreation and Parks*, 50 DCR 5049, Slip Op. No. 697, PERB Case No. 00-U-22 (2002) (citing *American Federation of State, County and Municipal Employees, Local 2921*, Slip Op. No. 339). In addition, it is well established that the Board's "authority only extends to resolving statutorily based obligations under the CMPA." *Id.* Therefore, the Board examines the particular record of a matter to determine if the facts concern a violation of the CMPA, notwithstanding the characterization of the dispute in the complaint or the parties' disagreement over the application of the collective bargaining agreement.<sup>2</sup> Moreover, the Board has consistently held that if the allegations made in an unfair labor practice complaint *do*, in fact, concern statutory violations, then "th[e] Board is empowered to decide whether [MPD]

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<sup>2</sup> The Board looks to whether the record supports a finding that the alleged violation is: (1) restricted to facts involving a dispute over whether a party complied with a contractual obligation; (2) resolution of the dispute requires an interpretation of those contractual obligations; and (3) no dispute can be resolved under the CMPA. See *American Federation of Government Employees, Local Union No. 3721 v. District of Columbia Fire Department*, 39 DCR 8599, Slip Op. No. 287 at n. 5, PERB Case No. 90-U-11 (1991).

committed an unfair labor practice concerning the Union's document request, even though the document request was made . . . [pursuant to a contract's resolution provisions]." *Id.* at p. 6.<sup>3</sup>

MPD requests that the Board dismiss FOP's Complaint on the basis that there is no evidence of the commission of an unfair labor practice as alleged in FOP's Complaint. (See Answer at p. 4).

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).

The Board has also held that while a Complainant need not prove their case on the pleadings, they must plead or assert allegations that, if proven, would establish the alleged violations of the CMPA. 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 see *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); See also *Doctors' Council of District of Columbia General Hospital v. District of Columbia General Hospital*, 49 DCR 1137, Slip Op. No. 437, PERB Case No. 95-U-10 (1995). 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 20*, 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."

<sup>3</sup> Here, MPD does not dispute its obligation to furnish information relevant and necessary to the Union's statutory role under the CMPA as the employees' exclusive representative as derived from: (1) management's obligation to "bargain collectively in good faith"; and (2) employees' 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[.]", D.C. Code 1-617.05(a)(1) and (5); see also *International Brotherhood of Teamsters Locals 639 and 730 v. D.C. Public Schools*, 37 DCR 5993, Slip Op. No. 226, PERB Case No. 88-U-10 (1990); *Psychologists Union, Local 3758 of the D.C. Department of Health, 1199 National Union of Hospital and Health Care Employees, AFSCME v. D.C. Department of Mental Health*, 54 DCR 2644, Slip Op. No. 809, PERB Case No. 05-U-41 (2005); and *University of the District of Columbia v. University of the District of Columbia Faculty Association*, 38 DCR 2463, Slip Op. No. 272, PERB Case No. 90-U-10 (1991).

*Goodine v. FOP/DOC Labor Committee*, 43 DCR 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996).

In the present case, there is no dispute that FOP requested materials from MPD which it considered necessary and relevant to its duty as a bargaining unit representative. However, the parties do dispute whether MPD denied all of FOP's requests for information. In addition, the question of whether: (1) MPD had cause to qualify providing the information based on the identity of union members; and (2) the information requested is, in fact necessary and relevant; is a determination which requires further development of the record. See *Ellowese Barganier v. Fraternal Order of Police/Department of Corrections Labor Committee and District of Columbia Department of Corrections*, 45 DCR 4013, Slip Op. No. 542, PERB Case No. 98-S-03 (1998). On the record before the Board, establishing the existence of the alleged unfair labor practice violations requires the evaluation of evidence and the resolution of conflicting allegations. Therefore, the Board declines to dismiss the complaint based on these pleadings alone.

The Complaint, and its allegations against the Respondent, will continue to be processed through an unfair labor practice hearing.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The District of Columbia Metropolitan Police Department's request to dismiss is denied.
2. The Board's Executive Director shall refer the Fraternal Order of Police/Metropolitan Police Department Labor Committee's Unfair Labor Practice Complaint to a Hearing Examiner utilizing an expedited hearing schedule. Thus, the Hearing Examiner will issue the report and recommendation within twenty-one (21) days after the closing arguments or the submission of briefs. Exceptions are due within ten (10) days after service of the report and recommendation and oppositions to the exceptions are due within five (5) days after service of the exceptions.
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.

September 15, 2011

**CERTIFICATE OF SERVICE**

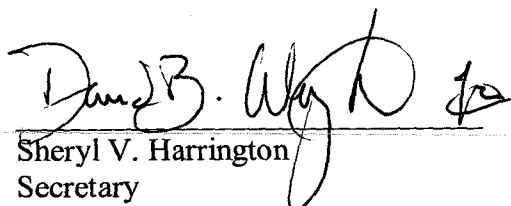
This is to certify that the attached Decision and Order in the Board's Decision and Order in PERB Case No. 11-U-17 is being transmitted via Fax and U.S. Mail to the following parties on this the 15<sup>th</sup> day of September, 2011.

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