Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Fraternal Order of Police/Metropolitan Police Department Labor Committee,	
Complainant,	
v.	PERB Case No. 07-U-10
	Opinion No. 1283
District of Columbia Metropolitan Police Department,	Motion for Reconsideration
Respondent.	

DECISION AND ORDER

I. Statement of the Case

This case involves a Motion for Reconsideration ("Motion") filed by the District of Columbia Metropolitan Police Department ("Respondent" or "MPD"). MPD is requesting that the Board reconsider its decision of February 20, 2008 finding that the MPD committed an unfair labor practice.

The Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Complainant" or "FOP") filed an Unfair Labor Practice Complaint ("Complaint") against the District of Columbia Metropolitan Police Department. FOP alleged that MPD violated D.C. Code § 1-617.04(a)(1) of the Comprehensive Merit Personnel Act ("CMPA") by denying bargaining unit members[1] union representation during questioning by MPD's Office of Internal Affairs ("OIA"). MPD filed an Answer denying the allegations and contending that the police officers were not entitled to union representation on the ground that the OIA investigation was not administrative.

[1] Specifically, the affected bargaining unit members described in the Complaint were First District Police Officers Phuson Nguyen, Richard Mazloom, Amy Oliva, Keri Long and Richmond Phillips.

A hearing was held in this matter on June 28, 2007. Hearing Examiner Leonard M. Wagman issued his Report and Recommendation ("R&R") on August 28, 2007. In his R&R, the Hearing Examiner concluded that MPD did not violate the CMPA because the police officers were not entitled to union representation during criminal exploratory questioning. The Hearing Examiner recommended that the Board dismiss the Complaint.

FOP filed exceptions ("Exceptions") to the Hearing Examiner's R&R. MPD filed a Response to FOP's Exceptions. The Hearing Examiner's Report and Recommendation, FOP's Exceptions and MPD's Response were before the Board for disposition. The Board considered the Hearing Examiner's R&R and rejected his conclusion that MPD did not violate the CMPA by failing to grant bargaining unit members their right to union representation during investigatory hearings.

Upon review, the Board observed that the Hearing Examiner's findings that the officers reasonably feared that the interviews might result in disciplinary action and therefore were entitled to union representation were amply supported by the record. The Hearing Examiner found that it was only *after* the officers were denied representation that they were informed that they were not the subject of the investigation. The Board rejected the Hearing Examiner's recommendation that denial of the officers' right to union representation was cured when the officers were informed that they were not the target of the investigation. The Board determined that the right to representation attaches when an employee reasonably fears discipline might arise from an interview and requests representation. By denying union representation at that point, the Board concluded that MPD's actions constituted a violation of D.C. Code § 1-617.04(a)(1).

On March 10, 2008, the Respondent submitted the present Motion pursuant to Board Rule 500.4. FOP filed an Opposition to the Motion. The Respondent's Motion and FOP's Opposition are before the Board for disposition.

MPD argues that the Board has "misinterpret[ed] the Hearing Examiner's findings and analysis." (Motion at p. 7). Specifically, MPD contends that the Hearing Examiner found that the uncertainty surrounding the interviews only supported a subjective fear and not an "objective reasonable belief required for *Weingarten*." (Motion at 7). In addition, MPD argues that "even if Weingarten rights would have applied, they have been waived pursuant to the terms of the parties' CBA." (Motion at p. 11).

The Board finds that the arguments presented in the MPDs Motion are largely a reiteration of the arguments raised in its initial filing, and rejected by the Board in Slip Opinion No. 932. In addition, MPD's contentions are merely a disagreement with the Board's determination in Slip Opinion No. 932. MPD has failed to allege any error of law or in the Board's reasoning which requires reconsideration of its decision.

In view of the above, the Board finds that MPD has not presented evidence which supports a reversal of Opinion No. 932. Therefore, we deny MPD's Motion for Reconsideration.

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Metropolitan Police Department's Motion for Reconsideration is denied.

2. 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.

April 29, 2008

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 07-U-10 is being transmitted via U.S. Mail to the following parties on this the 18th day of June 2012.

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