



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

## II. Discussion

FOP asserts the following pertinent facts:

4. Cathy L. Lanier is the Department's Chief of Police.
5. Diana Haines Walton is the Director of the Department's Human Resources Management Division and at the time of these events reported to Chief Lanier.
6. Detective Mary Bonaccorsy is a member of the CBU and currently serves in her elected capacity as the Treasurer for the FOP.
7. On August 30, 2010, Treasurer Mary Bonaccorsy filed a formal request for information to Director Haines Walton pursuant to D.C. Code 1-617.04(a)(5) and Article 10 of the CBA, in which she requested the following items be produced within ten days: See Attachment 2.
  - 1) Justification as to why Sergeant Derwin Weldon was transferred from the Professional Development Bureau, Human Resource Management Division Recruiting Branch to Patrol Services and School Security Bureau, Second District.
  - 2) Information reflecting other members who were transferred along with Sergeant Derwin from the Professional Development, Human Resource Management Division Recruiting Branch.
  - 3) Documentation as it relates to Article 14, Section 2, Where possible, an employee will be given (5) days advance notice of his/her transfer.
  - 4) Copies of Sergeant Derwin's evaluations starting from 2006 to the most recent evaluation in 2010.
8. The basis for this request was the Department, through teletype TT08-089-10, announced on August 27, 2010, that Sergeant Derwin Weldon would be transferred from the Professional Development Bureau, Human Resource

Management Division, Recruiting Branch, to the Patrol Services and School Security Bureau, Second District, effective August 29, 2010.

9. Director Haines Walton never responded to the August 30, 2010 request.
10. On September 17, 2010, Treasurer Bonnacorsy sent to Director Haines Walton a follow-up letter on the original August 30, 2010 request. See Attachment 4.
11. Director Haines Walton never responded to the August 30, 2010 request or the September 17, 2010 follow-up request.
12. As of the date of this Complaint, Treasurer Bonnacorsy has not received the requested information for Sergeant Weldon from either Director Haines Walton or any other employee of the Metropolitan Police Department.
13. The requested information was, and remains necessary for the Union to continue to protect the interests of its members and to help clarify the Department's transfer policy.

(Complaint at pgs. 3-4).

Based on these factual allegations, FOP contends that MPD "committed an Unfair Labor Practice by failing to timely produce the relevant and necessary information requested by Treasurer Bonnacorsy. In view of the Department's illegal action, Treasurer Bonnacorsy, Sergeant Derwin Weldon, the Union, and its membership are entitled to relief." (Complaint at p. 5).

As a remedy for the Respondent's alleged actions, FOP requests that the Board issue an order:

- a. Finding that the Department, Chief Lanier, and Director Haines Walton 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 Director Haines Walton 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 Director Haines Walton to provide the requested information to Treasurer Bonnacorsy immediately;
- e. Compelling the Department, Chief Lanier, and Director Haines Walton to pay the Union's costs associated with this proceeding; and
- f. Ordering such other relief and remedies as the Board deems appropriate.

(Complaint at pgs. 5-6).

Respondent admits that Treasurer Mary Bonaccorsy submitted an information request to Director Diana Haines Walton and that the basis for this request was the Department's transfer of Sergeant Weldon. (See Answer at p. 2). However, Respondent denies the allegations of paragraphs 9-12 (which contend that Respondent failed to respond to FOP's requests for information. (See Answer at p. 3).

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] 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>

(Answer at p. 4).

---

<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).

<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).

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." *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 FOP requests for information. In addition, the question of whether 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**

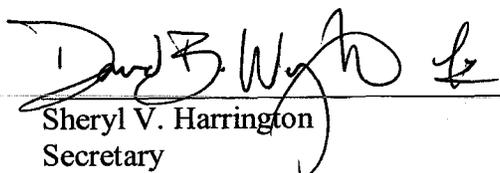
This is to certify that the attached Decision and Order in the Board's Decision and Order in PERB Case No. 11-U-16 is being transmitted via Fax and U.S. Mail to the following parties on this the 15<sup>th</sup> day of September, 2011.

Marc. L. Wilhite, Esq.  
Mark A. Schofield, Esq.  
PRESSLER & SENFTLE, P.C.  
927 15<sup>TH</sup> Street, N.W.  
Twelfth Floor  
Washington, D.C. 20005  
(202) 822-8384

**FAX AND U.S. MAIL**

Mark Viehmeyer, Esq.  
Metropolitan Police Department  
300 Indiana Avenue, N.W.  
Room 4126  
Washington, D.C. 20001  
(202) 724-4253

**FAX AND U.S. MAIL**

  
Sheryl V. Harrington  
Secretary